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b. Docket No. 120009-EI

In Re: Nuclear Power Plant Cost Recovery Clause

c. The document is being filed on behalf of Florida Power & Light Company.

d. There are a total of fifty-two (52) pages.

e. The document attached for electronic filing is: Florida Power & Light Company's Post-Hearing Brief.

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DOCUMENT NUMBER-DATE

06608 OCT-1 2012

FPSC-COMMISSION CLERK

10/1/2012

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Power Plant)
Cost Recovery Clause)

Docket No. 120009-EI
Filed: October 1, 2012

**POST-HEARING BRIEF OF
FLORIDA POWER & LIGHT COMPANY**

Florida Power & Light Company (“FPL” or the “Company”) hereby files with the Florida Public Service Commission (the “FPSC” or the “Commission”) its Post-Hearing Brief in the above-referenced docket, pursuant to Order Nos. PSC-12-0078-PCO-EI, PSC-12-0341-PCO-EI, and PSC-12-0455-PHO-EI, and states as follows:

INTRODUCTION

In response to the State’s policy of encouraging additional nuclear generation, FPL applied for determinations of need from the Commission in 2007 for the two projects that are the subject of this annual nuclear cost recovery (“NCR”) review: (i) the Turkey Point 6 & 7 new nuclear project and (ii) the Extended Power Uprate (“EPU” or “Uprate”) project. After thorough review, the Commission approved both projects through need determination orders issued in early 2008. *See In Re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant by Florida Power & Light Co.*, Docket No. 070650-EI, Order No. PSC-08-0237-FOF-EI (issued April 11, 2008) and *In Re: Petition for determination of need for expansion of Turkey Point and St. Lucie nuclear power plants, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through the Commission’s Nuclear Power Plant Cost Recovery Rule, Rule 25-6.0423, F.A.C.*, Docket No. 070602-EI, Order No. PSC-08-0021-FOF-EI (issued Jan. 7, 2008).

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Section 403.519(4), Florida Statutes, Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code (“the NCR Rule”) establish the legal and regulatory framework for the recovery of costs in the development of nuclear generation in Florida.¹ Section 403.519(4)(e), Florida Statutes, makes clear that a utility is entitled to recover all its prudently incurred costs in the development of nuclear generation. Specifically, with respect to cost recovery after a determination of need is granted, it states:

the right of a utility to recover any costs incurred prior to commercial operation, including but not limited to costs associated with the siting, design, licensing, or construction of the plant . . . shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred.

§ 403.519(4)(e), Fla. Stat. (emphasis added).

Section 366.93, Florida Statutes, establishes specific, well-defined parameters for nuclear cost recovery, and requires the Commission to establish by rule a cost recovery mechanism that promotes utility investment in nuclear power plants and “allow[s] for the recovery in rates of *all* prudently incurred costs.” § 366.93(2), Fla. Stat. (emphasis added). In response to the direction provided in Section 366.93, the Commission promulgated the NCR Rule. This rule states, among other things, that its purpose is to promote utility investment in nuclear generation and to allow for the recovery in rates of *all* such prudently incurred costs. *See* Rule 25-6.0423(1), Fla. Admin. Code.

Pursuant to Section 403.519(4), Section 366.93, and the NCR Rule, FPL is requesting to recover preconstruction costs to obtain needed authorizations and to undertake early site preparation activities for the Turkey Point 6 and 7 project. These steps are necessary to enable

¹ All Florida statutory references are to the 2012 Florida Statutes.

the future construction of the two new nuclear units at FPL's Turkey Point site. *See* Tr. 765, 828 (Scroggs). In nominal terms, the Turkey Point 6 & 7 project is currently projected to save customers \$58 billion in fuel cost savings over the life of the new plant. Tr. 1200 (Sim); Ex. 81. Additionally, Turkey Point 6 & 7 will reduce reliance on natural gas by about 13% and reduce carbon dioxide emissions by about 255 million tons over the life of the plant. Tr. 1201-02 (Sim); Ex. 81.

The EPU project is nearly complete and already providing customers with more nuclear power. *See* Tr. 1030 (Jones). The Uprate project is expected to increase the nuclear generation from FPL's existing units by about 522-532 MW – 33% more than expected at the time of the affirmative need determination. Tr. 1075-76 (Jones). In nominal terms, the Uprate project is projected to save customers \$3.8 billion in fuel cost savings over the lives of the uprated plants. Tr. 1200 (Sim); Ex. 81. Additionally, it will reduce reliance on natural gas by about 3%, and reduce carbon dioxide emissions by about 32 million tons over the lives of the uprated units. Tr. 1200, 1202 (Sim); Ex. 81. As in prior years, FPL is requesting to recover financing costs on the amounts incurred for construction.²

FPL's cost recovery request for 2013 for both of these projects totals approximately \$151 million or \$1.65 on a typical 1,000 kilowatt-hour monthly residential bill. Tr. 1032-33, 1192 (Jones). This is 25% lower than the NCR amount being collected in 2012. Tr. 950, 953 (Powers); Tr. 1033 (Jones). A small fraction of the total request is for the Turkey Point 6 & 7 project. Most of the costs are for the Uprate project, which is scheduled for completion in the near term. *See* Ex. 67.

² A portion of FPL's request is also for recoverable Operations & Maintenance ("O&M") expense and for partial-year revenue requirements associated with components being placed into service. Tr. 421 (Powers).

SUMMARY OF ARGUMENT

FPL's management decisions and project costs in 2011 are subject to a prudence review in this proceeding. *See* Rule 25-6.0423(5)(c)a, Fla. Admin. Code. A management decision is prudent if it is within the range of reasonable decisions that a utility manager could make based upon information known or reasonably available to management at the time the decision was made. Hindsight review is prohibited. Tr. 32-33 (Reed); Tr. 1436-38 (Deason); *see also, In re: Nuclear Cost Recovery Clause*, Docket No. 090009-EI, Order No. PSC-09-0783-FOF-EI, p. 13 (issued Nov. 19, 2001) and *In re: Petition on Behalf of Citizens of the State of Fla. to Require Progress Energy Florida to Refund Customers \$143 Million*, Docket No. 060658-EI, Order No. PSC-07-0816-FOF-EI, p. 4 (issued Oct. 10, 2007). There is a rebuttable presumption of prudence. *See* Tr. 32 (Reed). In Florida, with respect to nuclear project cost recovery, the rebuttable presumption of prudence has been codified. Pursuant to Section 403.519(4)(e), Fla. Stats., parties arguing for a disallowance have the burden of demonstrating that certain costs were imprudently incurred by a preponderance of the evidence.

The record shows that FPL's 2011 management decisions with respect to Turkey Point 6 & 7 were prudent and that its project costs were prudently incurred. The record contains extensive, unrebutted testimony and evidence demonstrating the prudence of FPL's management decisions and costs for the Turkey Point 6 & 7 project, including the favorable results of an external review by Concentric Energy Advisors, Inc. ("Concentric") and by the FPSC Division of Economic Regulation, Office of Auditing and Performance Analysis ("Audit Staff"). *See* Tr. 67-87 (Reed); Ex. 100. Intervenors did not file any testimony claiming that any Turkey Point 6 & 7 management decision was imprudent or that any 2011 cost was imprudently incurred. As in prior years, the only argument advanced with respect to Turkey Point 6 & 7 was an argument

made by the Southern Alliance for Clean Energy (“SACE”) that FPL has not demonstrated an “intent to build” Turkey Point 6 & 7. And once again, the evidence presented by FPL demonstrates that its costs qualify for cost recovery and further that it intends to construct Turkey Point 6 & 7. *See, e.g.*, Tr. 828 (Scroggs). Accordingly, the Commission should find that FPL’s 2011 Turkey Point 6 & 7 management decisions were prudent and its costs were prudently incurred.

FPL’s 2011 management decisions with respect to the EPU project also were prudent, and its project costs were prudently incurred. This was shown by extensive record evidence, including that:

- The Nuclear Regulatory Commission (“NRC”) accepted three EPU License Amendment Requests (“LARs”) for review and approved the Turkey Point Alternative Source Term LAR and Spent Fuel Criticality LAR. Tr. 984, 992 (Jones);
- FPL successfully completed two EPU outages, one at Turkey Point Unit 4 and one at St. Lucie Unit 2 which brought the first 31 MW of uprated capacity on-line. Tr. 983, 991, 1008-09 (Jones);
- FPL continued to manage its major vendors, including its Engineering, Procurement, and Construction (“EPC”) vendor, to ensure costs were reasonable and appropriate. This included performing extensive due diligence to challenge its vendor’s estimates and awarding certain scopes of work to other vendors to control costs. Tr. 1011-12 (Jones); and
- The EPU project was audited by FPL’s external auditors, and by the Audit Staff of the Commission, with good results. Ex. 100. Audit Staff recommended one disallowance which was resolved by FPL and rendered moot by a stipulation approved by the Commission. Tr. 727-28.

By the time of the 2012 hearing, the NRC had approved all but one EPU LAR. Further, all EPU design engineering was complete, the St. Lucie Unit 1 and Turkey Point Unit 3 uprates were complete, and the final outage at St. Lucie Unit 2 was underway, with an expected total increase in nuclear power in 2012 of approximately 400 MWe. Tr. 1077 (Jones). This is a

remarkable achievement made possible by the legislative and regulatory policies supporting nuclear power plant cost recovery in Florida.

The only imprudence claimed by any intervenor witness was the Office of Public Counsel's ("OPC's") allegation (through Dr. Jacobs) that FPL misused draft information provided by High Bridge Associates, Inc. ("High Bridge") – an allegation overwhelmed by record evidence to the contrary. *See, e.g.*, Tr. 1330-33 (Jones). As in prior years' proceedings, OPC again has failed to identify any specific project cost that resulted from any alleged imprudent 2011 management decision. Accordingly, the Commission should find that FPL's 2011 management decisions with respect to the EPU project were prudent and that its costs were prudently incurred.

Turning to project feasibility, FPL filed detailed feasibility analyses using the same rigorous analytical processes well known and accepted by the Commission in past NCR and need determination proceedings. Tr. 1205-06 (Sim). A feasibility analysis is a snapshot of how a project's long term economics may play out over a number of future scenarios, reflecting a range of fuel and environmental costs and other factors. This year's feasibility analyses show that completing the Turkey Point 6 & 7 project and completing the EPU project remain solidly cost-effective for FPL's customers. Tr. 1195 (Sim); Ex. 88; Ex. 91.

The adequacy of FPL's Turkey Point 6 & 7 feasibility analysis was not contested by any witness, and the record overwhelmingly supports its approval. FPL's EPU feasibility analysis should similarly be approved, for many reasons including the following:

- The uprates of FPL's four nuclear units were approved by the Commission as one EPU project to meet more than 400 MW of customer need beginning in 2012. Order No. PSC-08-0021-FOF-EI. FPL's feasibility analysis properly examines the entire EPU project that was approved by the Commission;

- The EPU project has been undertaken and managed as one project from the outset, obtaining economies of scale and cost avoidance for personnel, volume discounts on major equipment purchases, and synergies through the sharing of lessons learned and best practices. Tr. 1329 (Jones); and
- FPL's feasibility analysis uses the same robust method accepted in the EPU determination of need proceeding and in every NCR proceeding since. Tr. 1205-06 (Sim).

The Commission should reject OPC's claim, raised for the second year in a row, that the project should be broken apart for analysis and viewed as two projects, rather than the single project that was approved by the Commission in its determination of need in 2008. Last year the Commission found that "a separate economic analysis for each of the EPU project plant is unnecessary, and would be difficult to calculate . . . [C]ompleting separate analyses would incorrectly attribute to the individual plants the benefits gained from performing uprates at both plants simultaneously." Order No. PSC-11-0547-FOF-EI, p. 40. These reasons for rejecting OPC's position are equally true today, and even more compelling in light of the fact that the project is nearly finished.

Nuclear power has a long and successful history of operation in FPL's power generating fleet. FPL's four reactors have been generating power for an average of over 35 years, and have benefited customers by reliably producing emissions-free energy, decreasing fuel costs, enhancing the diversity of fuel used to generate power, and insulating customers from commodity price spikes. Tr. 28-29 (Reed). The Florida NCR framework is essential to FPL's continued investment in additional nuclear generation to provide more of these benefits to FPL's customers.

OPC seeks, for the third year in a row, to radically change the fundamental principles of the NCR framework in a manner contrary to clear statutory language. OPC claims that the Commission should disallow all EPU costs incurred for the Turkey Point work over a

preliminary, 2012 estimate of \$1.6 billion. Through its witnesses' testimony, this recommended disallowance was purportedly attributable to OPC's assertion that completing the Turkey Point portion of the EPU project is not economic. *See* Tr. 1283 (Jacobs). In its prehearing position, OPC modified its argument and now claims the disallowance is warranted based on FPL's use (or misuse, as OPC asserts) of draft 2010 Turkey Point cost estimate information prepared by High Bridge.³ Order No. PSC-12-0455-PHO-EI, p. 61. Regardless of the basis for OPC's proposed cost cap, it is neither factually supported nor legally permissible.

Mr. Jones's testimony as to the reasons for the project-wide, non-binding cost estimate increases is unrebutted in the record. *See* Tr. 1017, 1046-1049 (Jones). FPL's 2012 non-binding cost estimate range reflects the significant amount of progress made on the project since its 2011 non-binding cost estimate. For example, when FPL developed its 2011 non-binding cost estimate range, 36% of engineering had been completed, and when FPL developed its 2012 non-binding cost estimate range, 90% of engineering had been completed. Tr. 1041 (Jones). The primary cost drivers of the non-binding cost estimate increase include NRC regulatory requirements and delays,⁴ design evolution, and construction implementation and logistics. Tr. 1046-47 (Jones). Ultimately, it is the human effort required to complete the project and the number of people that are required to be employed for that effort that drives the project cost estimate. Tr. 1047 (Jones).

³ OPC's witness Jacobs testified that the draft 2010 High Bridge information was a "changed circumstance" that warranted examination of the EPU work at each plant in isolation – not that FPL's use of the High Bridge information caused any imprudently incurred costs. *See* Tr. 1283 (Jacobs). The draft 2010 High Bridge information was provided to OPC in 2010, and thus does not in fact reflect any change in circumstances. Tr. 1330 (Jones).

⁴ NRC delays impact the Turkey Point 6 & 7 project and the EPU project differently, in light of the different stages of the projects. Regulatory delays caused costs to be deferred for Turkey Point 6 & 7. Tr. 853-54 (Scroggs). Regulatory delays in the approval of the EPU LARs, however, required FPL to perform work and incur significant costs to change the outage schedule. Tr. 1091-92 (Jones).

OPC states in its prehearing position that FPL has “failed to manage those activities associated with [the] Turkey Point uprate project that have led to a \$555 million increase” (Order No. PSC-12-0455-PHO-EI, p. 61). However, neither of OPC’s witnesses identified any activities that FPL “failed to manage” that caused the cost of the Turkey Point uprate work to increase or any specific 2011 costs caused by any alleged imprudent decision.

While OPC’s testimony fails to identify any imprudently incurred cost, it nevertheless makes a broad brush assertion that a hard cost cap should be imposed to disallow some combination of past, present, and future costs. OPC’s recommended disallowance is prohibited by Florida law. The proposed disallowance would violate Florida’s nuclear cost recovery statutes and the NCR rule, primarily because it would disallow all costs above some predetermined threshold (in this case a preliminary \$1.6 billion cost estimate for the Turkey Point EPU work), without regard to whether those costs were prudently incurred (for example, to respond to regulatory requirements or to accommodate increased project scope). Specifically, OPC’s cost cap would violate Section 366.93, Florida Statutes, Section 403.519, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code, as described further below. Such a cap would also be contrary to prior Commission orders rejecting similar disallowance mechanisms.⁵

For all of the foregoing reasons, and based upon Florida law and the evidentiary record in this proceeding, FPL requests that the Commission enter 2011 prudence findings, enter 2012 and 2013 reasonableness findings, accept the Company’s feasibility analyses, and approve FPL’s requested 2013 NCR amount consistent with FPL’s positions stated below.

⁵ OPC urged the imposition of a “risk sharing” mechanism in 2010 and a cap based on a “break even analysis” in 2011. The Commission rejected both. *See* Order No. PSC-11-0095, p. 9 (reconsideration denied, Order No. PSC-11-0224-FOF-EI) and Order No. PSC-11-0547-FOF-EI, p. 57. This year, OPC urges the imposition of a hard cap of \$1.6 billion on EPU work at Turkey Point. Each proposal would disallow all costs above some threshold without regard to whether those costs were prudently incurred, and accordingly, is contrary to Florida law.

ISSUES AND POSITIONS

A. Legal

ISSUE 1: Does Section 366.93, Florida Statutes, authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes?

FPL: *Only to the extent the underlying costs to which the carrying costs apply are determined to be imprudent. If the underlying costs are determined to be prudent, Section 366.93, F.S., dictates the carrying costs that shall be recoverable by the utility. The statute does not provide the Commission discretion or authority to change the carrying costs by excluding an equity component, or in any other way, for any reason. In fact, doing so would be contrary to “encouraging investment and providing certainty” which is the stated intent of the relevant statutory provision.*

Section 366.93, Florida Statutes, makes clear that the Commission, through its NCR Rule, “shall” allow for the recovery in rates of all prudently incurred costs, which “shall” include but not be limited to recovery of carrying costs. § 366.93(2) and (2)(b), Fla. Stat. Only if the Commission finds that certain costs were imprudently incurred, based on a preponderance of the evidence adduced at hearing, are those costs (and by extension their carrying costs) subject to disallowance. *See* § 403.519(4)(e), Fla. Stat.

With respect to the carrying costs on prudently incurred costs that shall be recoverable, Section 366.93(2)(b) states in relevant part as follows:

To encourage investment and provide certainty, for nuclear or integrated gasification combined cycle power plant need petitions submitted on or before December 31, 2010, associated carrying costs **shall be equal to** the pretax AFUDC in effect upon this act becoming law.

(emphasis added). The Allowance for Funds Used During Construction (“AFUDC”) rate as of the date the act became law contained both a debt and an equity component which are each an integral part of the AFUDC rate. The referenced pretax AFUDC rate is required by statute, as made clear by the Legislature’s use of the word “shall.” The word “shall” is mandatory in

nature. See *Sanders v. City of Orlando*, 997 So. 2d 1089, 1095 (Fla. 2008), citing *Fla. Bar v. Trazenfeld*, 833 So. 2d 734, 738 (Fla. 2002). As explained by the Florida Supreme Court, it is an elementary principle of statutory construction that significance and effect must be given to every word of a statute – and words in a statute should not be construed as mere surplusage. *School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009), citing *Gulfstream Park Racing Ass’n v. Tampa Bay Downs, Inc.*, 948 So. 2d 599, 606 (Fla. 2006).

The Commission, like other administrative agencies, is a creature of statute, and its powers, duties, and authority are only those that are conferred by statute. *Southern States Utilities v. Florida Public Serv. Comm’n*, 714 So. 2d 1046, 1051 (Fla. 1st DCA 1998), citing *Rolling Oaks Utils. v. Fla. Public Serv. Comm’n*, 533 So. 2d 770, 773 (Fla. 1st DCA 1988). Neither Section 366.93, Florida Statutes, nor any other Florida statute, provides the Commission discretion or authority to change the AFUDC rate or to otherwise disallow prudently incurred carrying costs. Nor can anyone convincingly argue that the Commission’s authority to fix “fair, just and reasonable rates” pursuant to Section 366.06, Florida Statutes, provides such authority. It has long been settled that when a general statute and a specific statute cover the same subject area, the specific statute controls. See *Sch. Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009), citing *Maggio v. Fla. Dep’t of Labor & Empl. Sec.*, 899 So. 2d 1074, 1079 (Fla. 2005). Section 366.93, Florida Statutes, governing nuclear power plant cost recovery and establishing the one and only AFUDC rate for this proceeding, controls the outcome of this issue – not the Commission’s general authority to fix fair, just, and reasonable rates. For the foregoing reasons, the Commission should find that it does not have the authority to disallow carrying costs on prudently incurred nuclear power plant construction costs.

ISSUE 1A: Does the term “certain costs” in Section 403.519(4)(e), Florida Statutes, include costs caused by an imprudent decision or action that are incurred in years subsequent to the year of the imprudent decision or action?

FPL: *Pursuant to Section 403.519(4)(e), F.S., based on a preponderance of the evidence, the Commission must first find that the Company imprudently incurred certain costs (i.e., that a particular act or decision was imprudent and that act or decision caused the company to incur certain costs). If the Commission finds that an act or decision was imprudent, and further finds that the imprudence caused costs to be incurred, then costs incurred in a year subsequent to the imprudent act or decision – if in fact caused by the imprudent act or decision – would be “certain costs” within the meaning of Section 403.519(4)(e), F.S.*

Section 403.519(4)(e), Florida Statutes, makes clear that a utility is entitled to recover all its prudently incurred costs in the development of nuclear generation. A disallowance is only permissible if “the commission finds, based on a preponderance of the evidence adduced at a hearing . . . that certain costs were imprudently incurred.” § 403.519(4)(e), Fla. Stat. In order to “imprudently incur” certain costs, one must (i) engage in an imprudent act or decision that (ii) results in or causes the incurrence of certain costs.

If the Commission were to find that a particular act or decision was imprudent, and the Commission were to further find that the imprudence caused certain costs to be incurred, then costs incurred in a year subsequent to the imprudent act or decision – if in fact caused by the imprudent act or decision – would be “certain costs” within the meaning of Section 403.519(4)(e), Florida Statutes.

Pursuant to Section 403.519(4)(e) and Section 366.93, only imprudently incurred costs are subject to disallowance. Pursuant to the NCR Rule, only prior year costs are reviewed for prudence, while current year and projected year costs are reviewed for reasonableness. *See* Rule 25-6.0423(5)(c)2, Fla. Admin. Code. Future year costs not yet reviewed for prudence cannot be found to be imprudent in advance of the year they are subject to prudence review.

ISSUE 3: Does the Commission have the authority to defer the determination of prudence for the Crystal River Unit 3 Uprate project for 2011 (and, thus, defer cost recovery in 2013)

until a final decision to repair or retire has been implemented? If yes, should the Commission exercise this authority?

FPL: *Not unilaterally. Pursuant to Rule 25-6.0423, Fla. Admin. Code, a utility is entitled to a prudence determination on actual, prior year costs and a reasonableness determination on current year and projected year costs. This process is a key component of the nuclear cost recovery framework that is intended to encourage nuclear investment. Absent agreement or waiver by the utility, the Commission does not have the authority to defer its requisite annual prudence and reasonableness findings.*

Rule 25-6.0423(5)(c)2, Fla. Admin. Code, is a key component to the NCR framework that is intended to encourage investment in nuclear generation in Florida. One way in which this is achieved is by providing utilities with a legal right to near-term prudence determinations, rather than waiting until substantial costs are incurred. Specifically, subsection (5)(c)2 of the Rule states as follows:

The Commission shall, prior to October 1 of each year, conduct a hearing and determine the reasonableness of projected preconstruction expenditures and the prudence of actual pre-construction expenditures expended by the utility; or, once construction begins, to determine the reasonableness of projected construction expenditures and the prudence of actual construction expenditures expended by the utility, and the associated carrying costs.

(emphasis added). An administrative agency is required to follow its own rules. *See, e.g., Collier County Bd. of County Commissioners v. Fish & Wildlife Conservation Comm'n*, 993 So. 2d 69, 72-73 (Fla. 2d DCA, 2008). As a result, the Commission does not have the authority, on its own motion, to defer a prudence or reasonableness determination until a later date.⁶

B. Turkey Point 6 & 7

ISSUE 20: Do FPL's activities since January 2011 related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

⁶ Of course, the utility that is subject to the rule and the beneficiary of the annual review process may agree to a deferral or may waive these elements of the NCR Rule. Section 120.57(4), Florida Statutes, states that "[u]nless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order." Nothing in Section 366.93 or 403.519, Fla. Stat., precludes disposition by stipulation, including a stipulation to defer certain reviews and rulings. Additionally, pursuant to Section 120.542(2), the person "subject to the rule" may request a rule waiver or variance.

FPL. *Yes. FPL is conducting activities and incurring expenses necessary to obtain the license, permits, and approvals to develop Turkey Point 6 & 7 consistent with the intent of Section 366.93, F.S., to promote investment in nuclear power plants. Because FPL has received a determination of need for Turkey Point 6 & 7 pursuant to Section 403.519(4), F.S., FPL is entitled to recover all prudently incurred costs including, but not limited to, those associated with siting, design, licensing, and construction. FPL's "intent to build" Turkey Point 6 & 7, as that phrase was used by the Commission in 2010 (it is not a statutory requirement), is evident in the actions it is taking to develop Turkey Point 6 & 7.*

Section 366.93(2), Florida Statutes, requires the Commission to establish, by rule, alternative cost recovery for costs incurred "in the siting, design, licensing, and construction of a nuclear power plant." The express purpose of this alternative cost recovery mechanism is "to promote utility investment in nuclear . . . power plants and allow for the recovery in rates of all prudently incurred costs." *Id.* In 2010, the Commission specifically evaluated what types of activities qualify as siting, design, licensing, and construction when it addressed a similar issue for Progress Energy Florida ("PEF") and determined that the licensing costs PEF was incurring for its new nuclear project were recoverable. *In Re: Nuclear Cost Recovery Clause*, Docket No. 100009-EI, Order No. PSC-11-0095-FOF-EI, p. 12 (issued Feb. 2, 2011). Intervenors in that case questioned whether PEF's new nuclear project would be built and argued that because PEF was not actively engaged in construction, its costs did not qualify for recovery. *Id.* at 10-11. The Commission stated that "the main question for us to consider is whether a utility must engage in the siting, design, licensing, and construction of nuclear power plant activities simultaneously in order to meet the statutory requirements." *Id.* at 9. It answered the question in the negative, finding that a utility need not be engaged in actual construction in order for its costs to be recoverable. *Id.* at 11.

A similar issue was also considered in 2011. *See In Re: Nuclear Cost Recovery Clause*, Docket No. 110009-EI, Order No. PSC-11-0547-FOF-EI, pp. 7-11 (issued Nov. 23, 2011). After

reviewing the activities that FPL had engaged in and the progress FPL was making on the project through 2010, the Commission found that “FPL’s costs related to its activities for the TP67 project qualify as recoverable preconstruction costs as defined in Section 366.93(1)(f), F.S., and as interpreted by Rule 25-6.0423(2)(h), F.A.C.” Order No. PSC-11-0547-FOF-EI, p. 10. The Commission noted that in its previous order, Order No. PSC-11-0095-FOF-EI, it stated that a utility must continue to demonstrate its intent to build the plant for which it seeks recovery of costs. *Id.* The Commission found that FPL’s activities related to the Turkey Point 6 & 7 project demonstrated FPL’s intent to build. *Id.* at 11.

As explained by Mr. Scroggs, FPL continues to develop Turkey Point 6 & 7 through a deliberate and careful process, navigating through the four phases of project development: Exploratory, Licensing, Preparation, and Construction. Tr. 807 (Scroggs). The Exploratory phase is complete, and FPL is currently focused on the Licensing phase. *Id.* By placing emphasis on obtaining the license, permits, and approvals and deciding not to initiate Preparation phase activities until they are absolutely necessary, FPL continues to make progress on the project and minimize costs to customers. Tr. 809 (Scroggs). Dr. Nils Diaz, former chairman of the NRC, reviewed FPL’s project approach and determined that “FPL’s strategy to pursue licensing for the Turkey Point 6 and 7 project continues to be reasonable.” Tr. 899 (Diaz). No witness or record evidence challenged this conclusion.

Specifically, in 2011, FPL continued to respond to NRC questions through the Request for Additional Information process; exchange information with the U.S. Army Corps of Engineers; continued to participate in and advance the Transmission and Plant/Non-Transmission state Site Certification Application processes; interacted with the Everglades National Park and National Park Service, in addition to other agencies, to support the federally

authorized land exchange needed for the preferred western transmission line corridor; and monitored industry and project-specific issues. Tr. 766-68, 772-73, 789-94 (Scroggs). FPL also moved forward with the drilling of an authorized underground injection control well and extended its Forging Reservation Agreement with Westinghouse. Tr. 793-94 (Scroggs). In 2011 FPL also deferred certain pre-construction activities from 2012 to 2013, but this deferral has no impact on the project's ultimate completion dates. Tr. 797 (Scroggs).

In 2012, FPL conducted a project schedule review in light of recent NRC schedule revisions and determined that the current 2022/2023 commercial operation dates remained achievable. Tr. 827 (Scroggs). Project activities in 2012 were similar to those in 2011, plus FPL budgeted for targeted planning studies related to early site preparation and logistics in 2013. Tr. 828 (Scroggs).

The continued work and expenditures to support these activities demonstrate FPL's commitment to the project. As explained by Mr. Scroggs, FPL intends to pursue completion of the Turkey Point 6 & 7 project, and the most important near term activity is creating the opportunity to do so by obtaining the licenses and approvals necessary to construct and operate the plant. Tr. 828 (Scroggs). FPL's Turkey Point 6 & 7 witnesses consistently have explained the Company's approach, each year, in the NCR proceedings. *See* Tr. 876 (Scroggs) (noting that former FPL Chief Executive Officer Mr. Olivera provided testimony that was "very frank with the Commission about the same things [Mr. Scroggs] said").

Despite two consecutive years of Commission review and consideration of this issue, and two consecutive orders supporting the utilities' approaches, SACE questioned yet again FPL's commitment to Turkey Point 6 & 7. FPL's actions, summarized above, speak for themselves. Moreover, FPL's methodical, step-wise, and risk-mitigating approach should be commended –

not used in an attempt to cast doubt on its commitment to the project. The alternative, apparently advocated by SACE, would be to commit substantial sums of money to lock down construction plans now, despite the fact that such expenditures are unnecessary at this time to maintain the current project schedule.

FPL is actively engaged in the licensing of Turkey Point 6 & 7 and is taking the enabling steps necessary to deliver reliable, cost-effective, and fuel diverse nuclear generation to FPL's customers. It is therefore engaged in the "siting, design, licensing, and construction of a nuclear power plant" as contemplated by Section 366.93 and as interpreted by the Commission in the 2010 and 2011 NCR dockets. As a result, the Commission should find that FPL's costs qualify for recovery pursuant to Section 366.93, Florida Statutes, and the NCR Rule.

ISSUE 21: Should the Commission approve what FPL has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

FPL: *Yes. FPL's analysis considers a range of fuel and environmental compliance costs to serve as possible future scenarios in which to view the economics of Turkey Point 6 & 7. FPL annually updates these fuel and environmental compliance cost projections and updates a number of other assumptions, such as the project cost and system load forecast, for its economic analysis. Based on this analysis, completion of Turkey Point 6 & 7 is projected to be solidly cost-effective for FPL's customers in five out of seven scenarios and within the break even range in the remaining two scenarios. The results of the analysis fully support the feasibility of continuing the Turkey Point 6 & 7 project.*

The 2012 Turkey Point 6 & 7 feasibility analysis was presented to satisfy the requirement of subsection 5(c)5 of the NCR Rule, which states: "By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant." Tr. 1195 (Sim).

The analytical approach that was used in the 2012 feasibility analysis for Turkey Point 6 & 7 is the same approach used in the 2007 Determination of Need filing and the 2008, 2009,

2010, and 2011 NCR feasibility analyses. Tr. 1205-06 (Sim). Using this approach, FPL calculates the “breakeven” overnight capital costs for the new nuclear units in a variety of fuel cost and environmental compliance cost scenarios.⁷ See Tr. 1206 (Sim). FPL updated key assumptions used in this analysis, including forecasted peak and annual loads, forecasted fuel costs, forecasted environmental compliance costs, and project-specific assumptions. Tr. 1210, 1213-1215, 1217-18 (Sim). Additionally, FPL incorporated updates for certain resource planning and EPU project assumption changes. Tr. 1210, 1215-18 (Sim).

The results of FPL’s 2012 analysis continue to support the feasibility of continuing the Turkey Point 6 & 7 project. In five of seven scenarios, the breakeven capital cost was above FPL’s non-binding cost estimate range for Turkey Point 6 & 7, and in the remaining two scenarios the breakeven capital cost was within FPL’s non-binding cost estimate range. Tr. 1236 (Sim); Ex. 91. Importantly, the results have remained favorable despite declining natural gas prices. In nominal terms, a resource plan that includes Turkey Point 6 & 7 is currently projected to save customers \$58 billion in fuel cost savings over the life of the new plant. Tr. 1233 (Sim); Ex. 81. Additionally, Turkey Point 6 & 7 will reduce reliance on natural gas by about 13% and reduce carbon dioxide emissions by about 255 million tons. Tr.1233-34 (Sim); Ex. 81. It is therefore clear that even with currently low natural gas price forecasts, the project remains highly beneficial for FPL’s customers.⁸

⁷ The “breakeven” cost is the amount FPL could spend on Turkey Point 6 & 7 while incurring the same costs as an alternative plan that relies on adding natural gas-fired combined cycle generation. Tr. 832-33 (Scroggs).

⁸ FPL also demonstrated the feasibility of financing the project and of obtaining all necessary approvals. Tr. 834 (Scroggs). With respect to the recent events at the Fukushima Daiichi plant in Japan, Dr. Diaz testified that “there should be no long term impacts from the Fukushima events on new nuclear plant licensing or on the licensing of the Turkey Point 6 and 7 project,” particularly in light of the significant safety enhancements already built-in to FPL’s selected AP1000 design. Tr. 898 (Diaz). With respect to the NRC’s May 4, 2012 letter, the record shows that FPL is working to provide the additional requested information to the NRC, and that there is no basis to assert that it renders the licensing of the project infeasible. Tr. 864-66, 890-91 (Scroggs).

SACE claims in its prehearing position to have “brought to the Commission’s attention” the uncertainty and risk surrounding Turkey Point 6 & 7 and claims that this uncertainty and risk renders the project infeasible. *See* Order No. PSC-12-0455-PHO-EI, p. 18-19. But it is FPL that has consistently testified that there is uncertainty and the potential for issues to arise that impact the project and its economics. *See, e.g.*, Tr. 820-21, 831 (Scroggs). In fact, this is the very basis for FPL’s deliberate, step-wise approach (with which, ironically, SACE takes issue). SACE jumps to the conclusion that this uncertainty somehow makes the project infeasible and states in its prehearing position – without any evidentiary support whatsoever – that low natural gas prices and the lack of greenhouse gas legislation “make new nuclear generation cost prohibitive.” Order No. PSC-12-0455-PHO-EI, p. 19. FPL’s analysis, which fully accounts for lower natural gas prices and lower/later environmental regulations imposing costs on carbon dioxide emissions, demonstrates otherwise. No intervenor presented evidence contradicting FPL’s feasibility analysis approach or results. FPL’s feasibility analysis should therefore be approved.

ISSUE 22: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

FPL: *FPL’s current non-binding cost estimate range for Turkey Point 6 & 7 is \$3,570/kW to \$5,190/kW in overnight costs, or \$12.8 billion to \$18.7 billion including AFUDC, as stated in the April 27, 2012 direct testimony of Steven Scroggs.*

FPL’s current non-binding cost estimate range for Turkey Point 6 & 7 is \$3,570/kW to \$5,190/kW in overnight costs, or \$12.8 billion to \$18.7 billion including carrying costs. Tr. 829-30 (Scroggs). FPL’s non-binding cost estimate range reflects the results of a review that was conducted on the previous non-binding cost estimate range to capture any potential changes and estimate the potential cost impact. Tr. 831 (Scroggs). No party presented evidence demonstrating that a different all-inclusive cost estimate is appropriate.

ISSUE 23: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

FPL: *For planning purposes, FPL's current estimated commercial operations dates for Turkey Point Units 6 & 7 are 2022 and 2023, respectively, as stated in the April 27, 2012 direct testimony of Steven Scroggs.*

For planning purposes, FPL's current estimated commercial operation dates for Turkey Point Units 6 & 7 are 2022 and 2023, respectively. Tr. 827, 829 (Scroggs). No party presented evidence demonstrating that different commercial operation dates would be appropriate.

ISSUE 24: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

FPL: *Yes. FPL's project management, contracting, accounting, and cost oversight controls are comprehensive and overlapping. They include FPL's Accounting Policies and Procedures; financial systems and related controls; annual budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. The project controls are comprised of financial systems, department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to Turkey Point 6 & 7 are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls.*

As described in detail by FPL's witnesses, FPL employs extensive accounting and cost oversight controls for the Turkey Point 6 & 7 project. FPL relies on its comprehensive corporate and overlapping business unit controls for recording and reporting transactions associated with any of its capital projects, including the Turkey Point 6 & 7 project. Tr. 934 (Powers). These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures, financial systems, FPL's annual budgeting and planning process, and Business Unit specific controls and processes. *Id.*; Tr. 936-39 (Powers). These controls are regularly assessed and audited. Tr. 934 (Powers).

At the project level, FPL routinely and methodically evaluates project risks, costs, and issues using a system of internal controls, routine project meetings and communications tools, management reports and reviews, and internal and external audits. Tr. 776, 781 (Scroggs). The project-level internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices providing governance and oversight of project cost and schedule processes. Tr. 776-77 (Scroggs). The project also generates a series of weekly or monthly reports and has standing meetings to review forward looking analyses with project managers. Tr. 777 (Scroggs); Ex. SDS-4. The project team engages in routine executive briefings, which help maintain tight controls over project progress, expenditures, and key decisions. Tr. 779-80 (Scroggs).

The record shows that FPL's Turkey Point 6 & 7 contracting controls also are reasonable. The preferred approach for the procurement of materials or services is to use competitive bidding. Tr.785 (Scroggs). However, in certain situations the use of single or sole source procurement is in the best interests of the Company and its customers. *Id.* When single or sole source procurement is used, a specific procedure requires the proper justification, documentation, and senior-level approval. It also requires validation that the costs associated with the procurement are reasonable. Tr. 786-87 (Scroggs). Pre-determined sources are also used as appropriate. *See* Tr. 787 (Scroggs). The primary contracting activities in 2012 were subject to these contracting controls as well as the project management controls and oversight described above.

FPL's Turkey Point 6 & 7 internal controls were audited by the Commission's Audit Staff. Audit Staff concluded in 2012 that "FPL employs internal controls, risk evaluation, management oversight, and regular reporting requirements that adequately address project

schedule, budget, costs, vendor performance, and risks.” Ex. 100, p. 6. FPL also engaged Concentric to perform an independent review of the internal controls utilized by the Company for the Turkey Point 6 & 7 project. After this review, Witness Reed concluded that “FPL’s management of the PTN 6 & 7 Project over the course of 2011 has resulted in prudently incurred costs.” Tr. 67 (Reed).⁹

The evidence shows that FPL’s project management, contracting, accounting, and cost oversight controls for Turkey Point 6 & 7 are reasonable and prudent. FPL’s controls consist of corporate-level and project-level processes, and are routinely tested and audited. No party has presented evidence disputing the adequacy of FPL’s internal controls for Turkey Point 6 & 7.

ISSUE 25: What system and jurisdictional amounts should the Commission approve as FPL’s final 2011 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve FPL’s final 2011 prudently incurred Turkey Point 6 & 7 Preconstruction expenditures of \$23,150,979 (system), \$22,877,378 (jurisdictional), and the final 2011 true-up amount of (\$14,629,595). The Commission should also approve Turkey Point 6 & 7 Preconstruction carrying charges of (\$1,555,615) and Site Selection carrying charges of \$171,052, as well as the final 2011 carrying charge true-up amount of (\$742,934). FPL’s 2011 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were prudent. The net amount of (\$15,372,530) should be included in FPL’s 2013 NCR amount.*

FPL incurred costs in 2011 to continue to pursue the federal, state, and local licenses, permits, and agreements needed to construct and operate Turkey Point 6 & 7. *See* Tr. 798-801 (Scroggs). These actions – which maintained progress on the project while minimizing near-term expenditures – were prudent and necessary to continue the pursuit of new nuclear for FPL’s customers. Additionally, FPL’s project management decisions and costs were subject to the robust system of internal controls found to be adequate by Commission Audit Staff and Witness Reed, as described above in Issue 24. Finally, the Turkey Point 6 & 7 project has been shown to

⁹ Mr. Reed testified that the May 4, 2012 letter from the NRC, which was the subject of some cross examination, did not change his opinion. Tr. 164 (Reed).

be feasible and cost effective for customers as discussed above in Issue 21. Accordingly, the evidence supports a finding that FPL's 2011 costs were prudently incurred.

FPL's 2011 Turkey Point 6 & 7 costs are presented in detail in the testimony of FPL Witness Scroggs (Tr. 798-801) and FPL Witness Powers (Tr. 925-27), and in the Nuclear Filing Requirements ("NFRs") filed in this docket. The relevant NFRs can be found in Exhibit 33. This evidence supports Commission approval of 2011 prudently incurred Turkey Point 6 & 7 Preconstruction expenditures of \$23,150,979 (system), \$22,877,378 (jurisdictional), and the final 2011 true-up amount of (\$14,629,595). Tr. 927 (Powers). It also supports Commission approval of Turkey Point 6 & 7 Preconstruction carrying charges of (\$1,555,615) and Site Selection carrying charges of \$171,052, as well as the final 2011 carrying charge true-up amount of (\$742,934). Tr. 926-27 (Powers); Ex. 49. The net amount of (\$15,372,530) should therefore be included in FPL's 2013 NCR amount. Tr. 926-27 (Powers); Ex. 49.

ISSUE 26: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve as reasonable FPL's 2012 actual/estimated Preconstruction expenditures of \$34,907,426 (system), \$34,279,877 (jurisdictional), and the 2012 estimated true-up amount of \$3,257,796. The Commission should also approve as reasonable FPL's 2012 actual/estimated Preconstruction carrying charges of \$3,097,000 and Site Selection carrying charges of \$180,883, as well as the 2012 carrying charge estimated true-up amount of (\$2,523,298). FPL's 2012 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. The net amount of \$734,498 should be included in FPL's 2013 NCR amount. *

In 2012, FPL has continued to focus on obtaining the necessary licenses and permits that will define the project and enable construction and operation of Turkey Point 6 & 7. Tr. 805-06, 836-41 (Scroggs). FPL continues to control the pace of the project to maintain progress without incurring unnecessary cost or schedule risks. Tr. 807-08 (Scroggs). FPL's 2012 actual/estimated

costs reflect this balanced approach. Further, as discussed above in Issue 21, the Turkey Point 6 & 7 project remains feasible and solidly cost-effective for customers.

FPL included actual costs for January and February of 2012 and developed estimates for the remainder of the year. FPL's estimates were developed in accordance with FPL's budget and accounting guidelines and policies. Tr. 835 (Scroggs). FPL also verified that rates for contracted services are consistent with FPL's experience in the broader industry and compared its estimates to other costs being incurred by the Company for similar activities, and found them to be reasonable. Tr. 835 (Scroggs).

FPL's 2012 Turkey Point 6 & 7 actual/estimated costs are presented in detail in the NFRs filed in this docket. The relevant NFRs can be found in Exhibit 40. In sum, as supported by FPL Witness Scroggs and calculated by FPL Witness Powers, the Commission should approve as reasonable FPL's 2012 actual/estimated Preconstruction expenditures of \$34,907,426 (system), \$34,279,877 (jurisdictional), and the 2012 estimated true-up amount of \$3,257,796. Tr. 960 (Powers). The Commission should also approve as reasonable FPL's 2012 actual/estimated Preconstruction carrying charges of \$3,097,000 and Site Selection carrying charges of \$180,883, as well as the 2012 carrying charge estimated true-up amount of (\$2,523,298). Tr. 960-61 (Powers); Ex. 49. The net amount of \$734,498 should therefore be included in FPL's 2013 NCR amount. Tr. 960 (Powers); Ex. 49.

ISSUE 27: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve as reasonable FPL's 2013 projected Preconstruction expenditures of \$29,211,385 (system), \$28,686,236 (jurisdictional). The Commission should also approve as reasonable FPL's 2013 projected Preconstruction carrying charges of \$6,127,036 and Site Selection carrying charges of \$180,883. FPL's 2013 projected expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. The net amount of \$34,994,155 should be included in FPL's 2013 NCR amount.*

In 2013, FPL expects to incur costs to support the continued review of the Turkey Point 6 & 7 licenses, applications, and approvals. Tr. 805-06, 836-41 (Scroggs). Additionally, FPL expects to undertake targeted planning studies related to early site preparation and logistics needed to support the project schedule. Tr. 805-06, 828 (Scroggs). FPL developed its projection of 2013 costs in accordance with FPL's budget and accounting guidelines and policies. Tr. 835 (Scroggs). FPL also verified that rates for contracted services are consistent with FPL's experience in the broader industry and compared its estimates to other costs being incurred by the Company for similar activities, and found them to be reasonable. Tr. 835 (Scroggs). And, as discussed above in Issue 21, the Turkey Point 6 & 7 project remains feasible and solidly cost-effective for customers. These facts support the reasonableness of FPL's 2013 projected costs.

FPL's projected 2013 Turkey Point 6 & 7 costs are presented in detail in the NFRs filed in this docket. The relevant NFRs can be found in Exhibit 40. In sum, as supported by FPL Witness Scroggs and calculated by FPL Witness Powers, the Commission should approve as reasonable FPL's 2013 projected Preconstruction expenditures of \$29,211,385 (system), \$28,686,236 (jurisdictional). Tr. 961 (Powers). The Commission should also approve as reasonable FPL's 2013 projected Preconstruction carrying charges of \$6,127,036 and Site Selection carrying charges of \$180,883. Tr. 961 (Powers); Ex. 49. The net amount of \$34,994,155 should be included in FPL's 2013 NCR amount. Tr. 961 (Powers); Ex. 49.

C. Extended Power Uprate

ISSUE 28: Should the Commission approve what FPL has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing FPL's Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

FPL: *Yes. FPL's analysis considers a range of fuel and environmental compliance costs to serve as possible future scenarios in which to view the economics of the EPU project. FPL

annually updates these fuel and environmental compliance cost projections and updates a number of other assumptions for its economic analysis. Based on this analysis, completion of the EPU project is projected to be solidly cost-effective for FPL's customers. There is no reason to break apart the project and examine its underlying components on a stand-alone basis, nor would it be feasible to do so. The entire project, as approved by the Commission, continues to be cost effective. The results of the analysis fully support the feasibility of completing the EPU project.*

FPL's 2012 EPU feasibility analysis demonstrates that completion of the EPU project is solidly cost-effective for customers, and should be approved. The updates of FPL's four nuclear units were approved by the Commission as one EPU project to supply more than 400 MW of needed capacity beginning in 2012. *See* Order No. PSC-08-0021-FOF-EI. FPL's feasibility analysis appropriately examines the entire EPU project, as approved. In fact, FPL's feasibility analysis uses the same method accepted in the need determination proceeding and in every NCR proceeding since. Tr. 1205-06 (Sim).

No intervenor has disputed the results of FPL's EPU feasibility analysis. Rather, once again, OPC argues that despite these results, the Commission should break the EPU project into two separate, site-specific parts in order to reach a conclusion that one piece of the whole is not cost-effective. FPL proposed and has managed the EPU project as a comprehensive project encompassing both sites since its inception, and the FPSC approved the project in its entirety in its need determination for the overall system and customer benefits that would be realized from the over 400 MW of nuclear power that would be provided by the project.¹⁰ OPC's claim (i) ignores the fact that it was approved as one project; (ii) ignores the cost savings and efficiencies that have been gained by proceeding with one, comprehensive project; and (iii) ignores the impossibility of accurately separating costs by site as if only one or the other plant was updated. OPC's alleged "changed circumstances" (which are not changed circumstances at all – one such "circumstance" relies on a document FPL provided to OPC in 2010) fail to overcome these

¹⁰ FPL expects the EPU project to provide 522-532 MWe of nuclear power. Tr. 1075 (Jones).

critical considerations. Accordingly, OPC's proposal should be rejected this year for the same reasons it was rejected last year.

a. FPL's EPU Feasibility Analysis is Robust and Should be Approved

The 2012 EPU feasibility analyses were presented to satisfy the requirement of subsection 5(c)5 of the NCR Rule, which states: "By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant." Tr. 1195 (Sim). FPL's annual analysis complies with this rule and complies with additional guidance provided by the Commission. Tr. 1204-05 (Sim).

The feasibility analysis is a complex undertaking. For each resource plan, annual projections of system fuel costs and emission profiles are developed for each scenario of fuel costs and environmental compliance costs, using a sophisticated production costing model. Tr. 1203 (Sim). The resulting fuel cost and emission profile information is then combined with projected annual capital, O&M, and other costs for each resource plan. *Id.* The competing resource plans are then analyzed over a multi-year period so that FPL can evaluate both the short-term and long-term economic impacts of the resource options being evaluated. Tr. 1203-04 (Sim).

The analytical approach that was used in the 2012 feasibility analysis for the EPU project is the same approach used in the 2007 Determination of Need filing and the 2008, 2009, 2010, and 2011 NCR feasibility analyses. Tr. 1205-06 (Sim). FPL's long-term economic feasibility analysis directly compares resource plans with and without the EPU project. Tr. 1206 (Sim). However, this year, the "without EPU" resource plan includes the 31 MW of already uprated capacity at St. Lucie Unit 2 that began serving customers in 2011. Tr. 1206-07 (Sim). FPL

updated key assumptions used in its analyses, including forecasted peak and annual loads, forecasted fuel costs, and forecasted environmental compliance costs. Tr. 1210, 1213-15 (Sim). Additionally, FPL incorporated project-specific updates, such as the additional output the EPU project was expected to provide as of early 2012. Tr. 1215-17 (Sim).

FPL's 2012 analysis continues to support the feasibility of completing the EPU project. As presented by FPL witness Sim, the Resource Plan with Nuclear Uprates was projected to have lower cumulative present value of revenue requirements ("CPVRR") costs for customers compared to the Resource Plan without Nuclear Uprates in six of seven future scenarios of fuel cost and environmental compliance cost forecasts. Tr. 1220 (Sim); Ex. SRS-8. In nominal terms, the EPU project is projected to save customers \$3.8 billion in fuel cost savings, reduce reliance on natural gas by about 3%, and reduce carbon dioxide emissions by about 32 million tons over the life of the uprated plants. Tr. 1222-23 (Sim); Ex. 81. These results indicate that the EPU project remains projected to be a solidly cost-effective capacity and energy addition for FPL's customers. *Id.*; Tr. 1220 (Sim); Ex. 88.

b. OPC's Attempt to Split the Project in Two Once Again Should Be Rejected

For the second year in a row, OPC is seeking to change the manner in which the project is viewed and evaluated for economic feasibility purposes. Through Witnesses Smith and Jacobs, OPC claims that the EPU project should be broken apart into two separate projects – one at the St. Lucie site and one at the Turkey Point site – and evaluate the economic feasibility of each piece based on a hypothetical set of assumptions. OPC claims such an analysis is justified due to "changed circumstances" from when the Commission rejected this same proposal last year. *See* Oder No. PSC-11-0547-FOF-EI, p. 40. However, OPC's position suffers from three fatal flaws:

- (i) the “changed circumstances” since last year’s rejection are not changed circumstances at all;
- (ii) OPC ignores the fact that the EPU project was approved in its entirety for the over 400 MW it was then expected to provide and ignores fundamental facts about the manner in which the project has been managed to date – facts that were true last year when the Commission rejected this argument and remain true this year; and
- (iii) important corrections to Witness Smith’s overly simplistic calculation demonstrate that OPC’s conclusion – that the Turkey Point portion of the project will result in net costs – is wrong.

OPC’s witness Jacobs contends there are four “changed circumstances” that warrant its drastic change to the feasibility analysis approach. This first is that the total EPU non-binding cost estimate has increased. Tr. 1282-83 (Jacobs). But year after year FPL has been upfront about the fact that additional cost certainty would be available as the project progressed and that the non-binding cost estimate was subject to change, particularly due to uncertainty surrounding project scope. Tr. 1323-34 (Jones). This is hardly a change in circumstances; rather it is an unsurprising development as FPL nears the end of such a large, complex project. The drivers of the revisions to FPL’s non-binding cost estimate range were explained in great detail by Witness Jones. *See* Tr. 1046-49 (Jones).

OPC’s second alleged “changed circumstance” is that a majority of the non-binding cost estimate increase is attributable to the work occurring at Turkey Point. Tr. 1283 (Jacobs). But it has been clear from the beginning of the project that the Turkey Point EPU work would be more complicated and extensive than the St. Lucie EPU work, and thus would be more costly. Tr. 1326-27 (Jones). Indeed, OPC made this same argument last year. *See* Order No. PSC-11-0547-FOF-EI, p. 40 (stating “OPC witness Jacobs suggested that the EPU project should be broken up into two separate analyses due to the higher estimated capital costs of the Turkey Point plant portion of the EPU project”). Additionally, simply due to the order in which work is performed on the four units, more of the engineering and construction discovery in 2011 and 2012 resulting

in project cost estimate increases was attributable to Turkey Point. Tr. 1327 (Jones). FPL has never claimed that the cost of the uprate work at each site would reflect 50% of the total project cost. Tr. 1327 (Jones).

OPC's third alleged "changed circumstance" is that a 2011 Bechtel report confirmed the greater scope of the Turkey Point work (more pipe, cable, valves, etc). *See* Tr. 1283, 1293 (Jacobs). Inexplicably, Witness Jacobs claims that this undermines Witness Jones's testimony related to shared strategies and the economies of scope and scale FPL is achieving by uprating all four units. The benefits Witness Jones testified to remain as true today as they did in 2011, regardless of how many feet of pipe Turkey Point requires. *See* Tr. 1328-29 (Jones).

OPC's final alleged "changed circumstance" is that the current order of magnitude of costs for the Turkey Point EPU work is similar to a draft, 2010, High Bridge estimate of the Turkey Point work. Tr. 1283 (Jacobs). As discussed below in Issue 29A, this draft report was superseded by a final version, and that final version was prudently used for its intended purposes (primarily as a tool to negotiate with FPL's EPC vendor, Bechtel). *See* Tr. 1356 (Jones). Regardless, this draft fails to reflect any "changed circumstance." FPL provided this draft report to OPC and met with OPC and a GDS representative to explain the final High Bridge report in 2010. The fact that OPC has now decided to refer to a draft 2010 High Bridge report in 2012 does not indicate that anything has changed with respect to the EPU project since this Commission's 2011 NCR order. Tr. 1330 (Jones).

FPL has consistently managed the EPU project as one comprehensive project. Witness Jones testified last year and this year that performing the EPU work on all four units at the two plants allowed the project team to share resources and lessons learned thereby increasing efficiency, that engineering and construction strategy for one unit is used to support engineering

and construction for the other units, and that FPL leverages purchasing power and realizes cost savings by purchasing multiple pieces of the same equipment. Tr. 1329 (Jones). Specific examples of the benefits of performing the St. Lucie and Turkey Point EPU work simultaneously include achieving economies of scale and cost avoidance for personnel, rental and purchase of tools, materials and equipment, volume discounts on major equipment purchases, and synergies through design engineering, work package planning, the sharing of lessons learned, best practices, and key resources. *Id.*; *see also*, Tr. 1172-73 (Ferrer). OPC's request to split the project in two would require the Commission, and all parties, to hypothesize what all the work and equipment would have cost had FPL only performed the EPU at one plant. This was recognized by the Commission in last year's NCR Order when it rejected OPC's argument to break apart the project for analysis. Order No. PSC-11-0547-FOF-EI, p. 40.

Even if one were to attempt to separate the costs and benefits of the EPU project and perform an analysis of each site, one cannot claim – as OPC does – that the Turkey Point EPU work is certain to result in net costs to customers. The analysis presented by OPC's Witness Smith is so flawed as to be unreliable for decision-making purposes. For example, OPC's "analysis" relies on sunk cost data that was already six months old when OPC filed it and is even staler now. Tr. 1387-88 (Sim). Updating Witness Smith's analysis for just this one assumption results in the Turkey Point EPU work being cost effective in all of Witness Smith's scenarios. Tr. 1388 (Sim). Additionally, Witness Smith claims he is being conservative in assigning half the expected benefits to Turkey Point. Tr. 1266 (Smith). However, the "to go" megawatts are greater at Turkey Point than at St. Lucie. Though still not the proper analysis, comparing benefits from "to go" megawatts with "to go" costs again reverses the results in a number of

Witness Smith's scenarios. Tr. 1404-05 (Sim). These are just some of the problems Witness Sim identified with Witness Smith's analysis. Tr. 1405 (Sim).

OPC argues that in Order No. PSC-09-0783-FOF-EI the Commission implicitly acknowledged that the choice of the appropriate feasibility approach is a function of the circumstances that exist at the time. Even if this were a fair interpretation of the order, it certainly did not suggest that the feasibility approach should examine a fundamentally different project than the one that was approved. FPL is not executing half of the EPU project. It is executing the entire EPU project approved by the Commission's affirmative determination of need. Order No. PSC-08-0021-FOF-EI. And that project, as approved, is solidly cost-effective for FPL's customers. *See* Ex. 88. Neither OPC, nor any other intervenor, disputes this conclusion. For all the foregoing reasons, FPL's EPU feasibility analysis should be approved.

c. OPC's Misuse of FPL's 2012 Feasibility Analysis As a Basis for a Hindsight Attack on FPL's Continuation of the EPU Project Should be Rejected

An integral part of OPC's 2012 hindsight claim for a cost cap, discussed further below in Issue 29A, is its use of FPL's 2012 EPU feasibility analysis with historically low natural gas and low environmental cost forecasts as the starting point for its simplistic "divide by two" effort to evaluate the cost-effectiveness of the St. Lucie and Turkey Point portions of the EPU project, and thereby attack continuation of the Turkey Point project work during 2011.

Using this 2012 information as a basis for a 2011 imprudence claim is incorrect for several reasons. First, all of the cost and benefit components reflected in the 2012 feasibility study were not available to FPL at the time decisions were made during 2011. In contrast, the feasibility analysis prepared by FPL during 2011 and approved by the Commission was based upon then-current cost and benefit inputs, including higher natural gas prices and environmental

costs, and projected the EPU project to be even more cost effective at that time than shown by the 2012 feasibility analysis. *Compare* Order No. PSC-11-0547-FOF-EI, p. 34 with Ex. 88.

OPC's attempt to fault FPL for having continued with the Commission-approved project during 2011 on a total project basis is also infirm in light of the fact that during November 2011 the Commission entered its order accepting FPL's 2011 feasibility analysis, confirming FPL's decision that continuing with the EPU project was in the best interest of FPL's customers. The Commission should therefore find that FPL's proceeding with the EPU project during 2011 was prudent, and in fact carried out the clear policy direction of the State of Florida to encourage investment in additional, fuel diverse, nuclear generation.

Additionally, OPC's claim overlooks the provision of Section 403.519(4) that provides that proceeding with the construction of a nuclear project after the entering of a need determination order or, by logical extension, of an annual feasibility determination is not evidence of imprudence. Section 403.519(4)(e), Fla. Stat. ("Proceeding with the construction of the nuclear . . . power plant following an order by the commission approving the need for the nuclear . . . power plant under this act shall not constitute or be evidence of imprudence.").

OPC's inappropriate use of 2012 feasibility information to mount a hindsight attack on the Commission-approved continuation of the EPU project during 2011 also highlights the inherent limitations of annual feasibility analyses. Such analyses are always based upon then-current information and forecasts – which are a useful snapshot but not a guarantee of the future economic performance of either an individual generation asset within FPL's generation portfolio as circumstances change over the life of the asset or of the entire portfolio. *See* Tr. 1196 (Sim) (noting the inability of anyone to predict with confidence future fuel and environmental compliance costs). This limitation also highlights the legal and policy incorrectness of OPC's

advocacy for punitive disallowances both in last year's case – with OPC's "break-even" analysis disallowance recommendation – as well as OPC's 2012 version of the same claim seeking a cost cap, both of which try to turn annual feasibility snapshots into permanent benchmarks for recoverability of investment in nuclear projects. Such claims are clearly not provided for and in fact are contrary to the NCR statute and rule – which focus on determining the recoverability of a utility's investment in nuclear projects solely by examination of the prudence of specific project management decisions and actions as required by Sections 366.93 and 403.519, Fla. Stat., as well as Rule 25-6.0423, Fla. Admin. Code.

ISSUE 29: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL's Extended Power Uprate project?

FPL: *Yes. FPL's project management, contracting, accounting, and cost oversight controls are comprehensive and overlapping. They include FPL's Accounting Policies and Procedures; financial systems and related controls; annual budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. The project controls are comprised of financial systems, department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to Turkey Point 6 & 7 are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls.*

As described in detail by FPL's witnesses, FPL employs extensive accounting and cost oversight controls for the Turkey Point 6 & 7 project. FPL relies on its comprehensive corporate and overlapping business unit controls for recording and reporting transactions associated with any of its capital projects, including the EPU project. Tr. 934 (Powers). These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures, financial systems, FPL's annual budgeting and planning process, and Business Unit specific controls and processes. *Id.*; Tr. 936-39 (Powers). These controls are regularly assessed and audited. Tr. 934 (Powers).

At the project level, FPL has robust project planning, management, and execution processes in place, which include the use of project guidelines and Project Instructions. Tr. 993 (Jones); Ex 53. FPL also has in place a Nuclear Business Operations group, which provides accounting oversight for the EPU project independent from the project team. Tr. 994-95 (Jones). The EPU project team holds a number of regularly scheduled meetings and produces several reports to help communicate the status of the project, scope changes, schedule and cost variances, safety performance, risks, and risk mitigation. Tr. 997-98 (Jones); Ex.54. The risk management process itself is governed by two Project Instructions in conjunction with a Project Risk Committee to ensure appropriate actions are taken to mitigate or eliminate identified risks. Tr. 999 (Jones).

FPL's contracting controls for the EPU project are also reasonable. The standard approach for the procurement of materials or services is to use competitive bidding. Tr. 1000 (Jones). However, the use of single source, sole source, and Original Equipment Manufacturer providers is also necessary in certain situations. *Id.* When single or sole source procurement is used, FPL's policies require proper documentation of justifications and senior-level management approval. *Id.*

FPL's EPU internal controls were audited by the FPSC Audit Staff. Audit Staff had one finding that resulted in a recommended disallowance – which FPL resolved through additional vendor negotiations and which was the subject of a stipulation approved by the Commission on September 11, 2012. *See* Tr. 727-28. FPL also engaged Concentric to perform an independent review of the internal controls utilized by the Company for the EPU project in 2011, and engaged Burns and Roe Enterprises, Inc. to review project management in 2011. Witnesses

Reed and Ferrer (on behalf of Burns and Roe) both concluded that FPL prudently managed the EPU project in 2011. Tr. 27, 86 (Reed); Tr. 1137 (Ferrer).

The record overwhelmingly demonstrates that FPL's project management, contracting, accounting and cost oversight controls are reasonable and prudent. FPL's controls consist of corporate-level and project-level processes, and are routinely tested and audited. These controls help ensure that costs are incurred prudently. These controls also support a finding that FPL's management of the EPU project in 2011 and in 2012 was prudent and reasonable, as discussed in detail below in Issue 29A.

ISSUE 29A: Should the Commission find that in the previous year (2011) and the current year to date (2012), FPL managed the Extended Power Uprate activities in a reasonable and prudent manner? If not, what action should the Commission take?

FPL: *Yes. During 2011 and 2012, FPL managed the work of thousands of employees and contractors, completed the EPU work on two nuclear units (one at St. Lucie and one at Turkey Point), completed the design engineering for the remaining outages, and obtained the last of its LAR approvals. FPL also revised its non-binding cost estimate range in 2011 and in 2012, each time properly reflecting the best information known to FPL at the time, including information from vendors that reflected FPL's use of information from High Bridge in its negotiations. Both the EPU project work and the process of revising FPL's non-binding cost estimate were managed in a reasonable and prudent manner.*

FPL made substantial progress on the EPU project in 2011 and 2012, including obtaining required NRC approvals, successfully and safely executing five EPU implementation outages, and managing thousands of employees and contractors in the extensive engineering design, implementation, and planning efforts. The management of the EPU activities was subject to the robust system of internal controls described in Issue 29. Additionally, FPL diligently managed its vendors to control costs, including performing its own due diligence on cost estimates, assigning certain scopes of work to other vendors when doing so would be more cost effective, and negotiating significant concessions from its vendors to lower the overall cost of the project. FPL updated its non-binding cost estimates each year to reflect new information learned about

the scope of the project, and each year the feasibility analysis showed that completion was economical and in customers' best interests. Additionally, the EPU project is expected to provide 522-532 MWe of additional nuclear power – 33% more than originally projected at the time of the need determination – further increasing the benefits provided to FPL's customers.

Despite all the foregoing, and without any evidentiary support, OPC claimed for the first time in its prehearing position that FPL should have “curtailed” the Turkey Point portion of the EPU project “early in its life.” Order No. PSC-12-0455-PHO-EI, p. 61. Notably, its witnesses do not appear to share this opinion, as such a suggestion appears nowhere in their testimony. Nor was such a claim ever asserted by OPC “early in the life” of the EPU project, emphasizing the clear hindsight nature of OPC's new claim. OPC's position relies on a draft, highly conceptual Turkey Point cost estimate prepared by High Bridge in 2010. OPC mischaracterizes the High Bridge document, its purpose, and FPL's use of it. More fundamentally, however, OPC's argument epitomizes the very type of hindsight analysis the NCR framework is intended to avoid. OPC then recommends an illegal resolution – the disallowance of all Turkey Point related costs above a threshold of \$1.6 billion. OPC's position is factually unsupported, legally impermissible, and should be rejected by the Commission as described below.

a. FPL Prudently and Reasonably Managed the EPU Project

In 2011, FPL submitted the last of its LARs to the NRC. The NRC accepted the St. Lucie Unit 1 EPU LAR, the St. Lucie Unit 2 EPU LAR, the Turkey Point Units 3 and 4 LAR, and the COLR LAR for review. Tr. 983-84 (Jones). The NRC also approved FPL's Alternative Source Term LAR and Spent Fuel Criticality LAR. Tr. 984 (Jones). FPL successfully completed two EPU outages, one at Turkey Point Unit 4 and one at St. Lucie Unit 2 that brought the first 31 MW of uprated nuclear power on-line. Tr. 983 (Jones). The St. Lucie Unit 2 outage required the management of approximately 920 additional workers at its peak; 4,000 individually

planned, scheduled, and monitored activities supporting approximately 235 work packages; and approximately 728,000 man hours of work. Tr. 1008 (Jones). The Turkey Point Unit 4 outage required the management of approximately 905 additional workers at its peak; 2,900 individually planned, scheduled, and monitored activities supporting approximately 240 work packages; and approximately 242,000 man hours of work. Tr. 1009 (Jones). FPL completed all planned EPU work during these outages. *Id.*

FPL's vendor management in 2011 was rigorous. For example, FPL directed its EPC vendor to subcontract some of its scope and to streamline the number of work packages based on lessons learned. Tr. 1010 (Jones). FPL awarded certain scopes of work to other vendors and established a target price for the St. Lucie work as part of its continuing efforts to control costs. Tr. 1011 (Jones). High Bridge was retained again, this time by Bechtel at FPL's request, to perform a different scope of work.¹¹ High Bridge performed craft implementation estimating services for the development of a Turkey Point estimate at completion ("EAC").

In 2012, the NRC approved two more of FPL's LARs. Tr. 1077 (Jones). By the time of FPL's April 27, 2012 filing, approximately 90% of the design engineering was complete; approximately 12 million man hours of work were complete; and five out of eight EPU outages were complete, and FPL was in the midst of the sixth EPU outage. Tr. 1031 (Jones). By the end of 2012, FPL will have completed its uprate work on three of the four nuclear reactors. Tr. 1027, 1031 (Jones). The final EPU implementation outage is scheduled to begin in November 2012. Tr. 1058 (Jones); Ex. 67.

Concerted efforts to manage vendor costs continued in 2012. FPL performed extensive due diligence on the EAC for the Turkey Point work. Tr. 1043 (Jones). This included enormous

¹¹ The engineering for the project had moved well beyond that which was used for the earlier, 2009-2010 High Bridge work. Tr. 1085 (Jones).

amounts of engineering, corporate staff, and executive work to analyze the estimate. *Id.* FPL worked with its vendor and High Bridge to perform a detailed review of all inputs and assumptions, and identified a number of opportunities for efficiencies and process improvements to lower costs. Tr. 1044 (Jones). In total, this process reduced the EAC by approximately \$89 million. *Id.* After exhausting all available options to optimize the EPU project work and realize potential efficiencies, FPL and Bechtel began negotiations for price reductions and concessions. Tr. 1044-45 (Jones). After numerous meetings, FPL and Bechtel agreed to a number of price reductions. Bechtel agreed to:

- forego its incentive fee - a fee typically paid based on performance, in addition to time and material payments for major construction projects such as the EPU project, and which fee had been provided for in the original contract between FPL and Bechtel;
- reduce its daily living allowance;
- reduce its billable rate for Field Non-Manual employees; and
- waive its escalation of rates.

Further, Bechtel negotiated a wage freeze with its union trade workers and agreed to obtain a reduction on its subcontractor charges. Tr. 1045 (Jones). These price reductions total approximately \$46 million. *Id.* In light of this undisputed record evidence, the rigor of FPL management's extensive work to control the ultimate cost of the EPU project cannot seriously be questioned.

In 2011, and in 2012, FPL revised its EPU non-binding cost estimate range to reflect the best information known at the time. In 2011, FPL's non-binding cost estimate range reflected the fact that approximately 36% of total engineering had been completed, and only 81 out of 209 modification packages had reached the 90% complete stage. Tr. 1041 (Jones). This year, FPL's non-binding cost estimate range reflects the fact that approximately 90% of the total engineering was complete and 206 of the 220 modification packages were at the 90% complete stage at the

time of its development. *Id.* Modification packages must reach 90% complete before detailed construction planning (and construction cost estimation) can commence. Tr. 1041-43 (Jones). The primary cost drivers of the non-binding cost estimate increase include NRC regulatory requirements and delays, design evolution, and construction implementation and logistics. Tr. 1046-47 (Jones). Exhibit 68 provides examples of EPU project complexity that drive the non-binding cost estimate range. Ultimately, it is the human effort required to complete the project and the number of people that are required to be employed for that effort that drives the project cost estimate. Tr. 1047 (Jones). In both years, completing the EPU project was projected to be solidly cost-effective for customers, supporting the continuation of the EPU project as planned.

b. OPC's Position is Factually Unsupported and its Cost Cap is Legally Prohibited

OPC's arguments center on a draft document prepared by High Bridge in 2010. In 2009, FPL hired High Bridge to develop a cost estimate "specific to Turkey Point Unit 3 modifications for which some engineering progress had been made." Tr. 1330 (Jones). In performing this work, High Bridge initially included a highly conceptual estimate for Turkey Point Unit 4. *Id.* However, this conceptual estimate did not have sufficient detail to be used for challenging Bechtel's modification estimates, which was the primary purpose of the High Bridge engagement. Tr. 1330-31 (Jones). Accordingly, the report was revised to include only the Unit 3 EPU scope directly estimated. Tr. 1331 (Jones). This final Unit 3 estimate was successfully used for its intended purpose of challenging Bechtel's estimates for specific Unit 3 scope.¹² *Id.* Use of the High Bridge data caused Bechtel to re-evaluate and in many circumstances lower its modification estimates. Tr. 1330 (Jones).

¹² The use of the 2010 High Bridge data consistently has been explained by Witness Jones in prior NCR proceedings. Tr. 1084 (Jones), *see also*, Order No. PSC-11-0547-FOF-EI, p. 52 (stating that "FPL also initiated a third-party assessment and independent budget estimate for uprate activities at Turkey Point Unit 3 to validate necessary work scope, modifications, implementation strategy, and range of costs." (emphasis added)).

FPL provided OPC with both the draft High Bridge report and the final Turkey Point Unit 3 report upon completion in 2010. Tr. 1330 (Jones). It is only now, in 2012, with new non-binding cost estimates in hand, that OPC claims FPL should have done something differently with the draft report. According to Witness Jacobs, had FPL incorporated the draft 2010 document “during the 2011 proceeding,” the cost information “would have led to a materially different feasibility calculation.” Tr. 1294 (Jacobs). His conclusion is simply wrong. FPL Witness Sim re-ran the 2011 feasibility analysis using the draft 2010 High Bridge information *and the EPU project remained cost effective in six of seven scenarios.* Tr. 1388-89 (Sim). Accordingly, even in hindsight, there is no evidence that FPL would have or should have done anything differently in the continuation of the EPU project.

In addition to the EPU project being shown as solidly cost effective to continue in 2011, there is no evidence supporting OPC’s assertion that it would have been appropriate to “curtail” the Turkey Point portion in 2011. OPC’s claim is cavalier and unsupported at best. For example, OPC and its witnesses fail to note the elementary distinction between to-go costs and *avoidable* to go costs for a project. Witness Reed explained that to seriously consider cancelling the Turkey Point portion of the project, one would have to account for the unavoidable cancellation costs such as demobilization and contract cancellation costs. Tr. 120-22 (Reed). Yet OPC failed to offer any such analysis in either 2011 or 2012. OPC also failed to recognize that cancellation of the Turkey Point EPU work would have deprived customers of about half of the fuel-diverse megawatts from the EPU project, while leaving customers burdened with both substantial unavoidable cancellation costs that would have produced zero megawatts from the Turkey Point portion of the project. *See Id.* OPC’s claims are thus demonstrably unfounded and should be rejected by the Commission.

OPC plucked a preliminary 2012 cost estimate for the Turkey Point EPU work of \$1.6 billion from an early 2012 internal presentation, and is requesting that the Commission disallow all Turkey Point EPU costs above that threshold.¹³ *See* Tr. 1297 (Jacobs); Ex. 99. This request violates Section 366.93, Florida Statutes, Section 403.519(4)(e), Florida Statutes, Rule 25-6.0423, Florida Administrative Code, and prior Commission orders, and therefore should be rejected.

Section 366.93 requires that the Commission “promote utility investment in nuclear ... power plants *and allow for the recovery in rates of all prudently incurred costs...*” § 366.93(2), Florida Statutes. OPC’s request to disallow all Turkey Point costs in excess of a hard cap of \$1.6 billion is without regard to whether the costs were prudently incurred. Neither of OPC’s witnesses identified any imprudent FPL activities that caused the cost of the Turkey Point uprate work to increase. Mr. Jones’s testimony as to the reasons for the project-wide, non-binding cost estimate increases (project discovery related to construction scope, regulatory delays, etc.), is un rebutted in the record. *See* Tr. 1017, 1046-1049 (Jones). Accordingly, the request would disallow prudently incurred costs contrary to Section 366.93.

OPC’s request also violates Section 403.519(4)(e), Florida Statutes. Pursuant to that statute, a disallowance is only permissible if “the commission finds, based on a preponderance of the evidence adduced at a hearing . . . that certain costs were imprudently incurred.” § 403.519(4)(e), Fla. Stat. By making a sweeping claim all that Turkey Point EPU costs above a dollar threshold should be disallowed, the request: (i) fails to meet the statute’s requirement of alleging that “certain costs were imprudently incurred”; (ii) seeks disallowances of amounts not yet spent or subject to prudence review; and (iii) fails to separate out amounts already found

¹³ This figure is not from FPL’s 2011 or 2012 fully vetted, non-binding cost estimate range presented to the Commission.

prudent in past NCR cases. Witness Jacobs's claim for a disallowance based on a cap rather than on the prudence of costs clearly violates Section 403.519(4).

Similarly, the relief OPC seeks is not permitted by the nuclear cost recovery rule. Rule 25-6.0423(5)(c)(2) provides:

The Commission shall, prior to October 1 of each year, conduct a hearing and determine the ... prudence of actual construction expenditures expended by the utility . . . Annually, the Commission shall make a prudence determination of the prior year's actual construction costs . . . In making its determination of reasonableness and prudence the Commission shall apply the standard provided pursuant to Section 403.519(4)(e), F.S.

The Commission's NCR governing this proceeding clearly limits prudence reviews to the *prior year's* decisions and costs. In this year's docket, 2011 decisions and costs are subject to prudence review. OPC is seeking an order in the 2012 docket that would disallow amounts to be expended in the future which are not yet subject to prudence review, based on a total that includes costs found prudent in prior years' cases. Similar to FPL's points concerning Section 403.519(4)(e) above, OPC's request does not bear any relation to the NCR prudence review process established by statute and rule.

OPC would also have this Commission turn an estimate into a "hard cap" for cost recovery purposes in violation of the NCR Rule and nuclear cost recovery law. Section 403.519(4)(a)3, Florida Statutes, requires FPL to include a "nonbinding estimate" of the cost of the nuclear plant in its need determination petition. Section 366.93(5) requires FPL to annually report to the Commission the budgeted and actual costs of developing the nuclear power plant as compared to the estimated nonbinding cost estimate provided during the need determination, "with the understanding that some costs may be higher than estimated and other costs may be lower." The annual reporting requirement, along with the express recognition that some costs may be higher and some costs may be lower, was adopted by the Commission in Rule 25-

6.0423(8)(f), Fla. Admin. Code. OPC's "hard cap" in contrast, violates this law by asking the Commission to order a binding cost threshold to be applied to a subset of EPU costs as a basis for ordering a disallowance. OPC is asking for the opposite of the non-binding cost estimate process provided for in the NCR statute and rule.

Finally, OPC's request is contrary to three prior Commission orders, rejecting similar requests for relief. By Order No. PSC 11-0095-FOF-EI, the Commission determined it did not have the authority to establish a risk sharing mechanism that set a cost "threshold" and would preclude the utility from recovering prudently incurred costs. Order No. PSC 11-0095-FOF-E, p. 9. On reconsideration, this decision was affirmed. *Order Denying Motion for Reconsideration*, Docket No. 100009-EI, Order No. PSC-11-0224-FOF-EI, pp. 9-10 (issued May 16, 2011). In 2011, the Commission rejected a similar OPC request for a disallowance threshold. That time, the threshold was to be based on a "break even analysis." Order No. PSC-11-0547-FOF-EI, p. 56-57. OPC's latest iteration imposing a hard cap as its threshold should similarly be rejected as contrary to Florida's NCR statutes and rule, and these prior decisions of the Commission.¹⁴

ISSUE 30: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for FPL's Extended Power Uprate project?

FPL: *The Commission should approve FPL's final 2011 EPU expenditures of \$667,493,187 (system), \$640,855,812 (jurisdictional, net of participants); O&M costs, including interest, of \$12,172,529 (system), \$11,584,442 (jurisdictional, net of participants); and carrying charges of \$78,251,442. The final true-up of O&M costs including interest is (\$679,375); and final true-up of carrying charges is \$7,964,134. In addition, the Commission should approve FPL's final 2011 EPU base rate revenue requirements, including carrying charges, of \$9,138,883; and the final true-up of revenue requirements, including carrying charges, of (\$7,014,702). FPL's EPU expenditures are supported by comprehensive procedures, processes and controls that help ensure they were the result of prudent decision making. The net amount of \$270,057 should be included in FPL's 2013 NCR amount.*

¹⁴ OPC's recommendation also constitutes poor policy for the many reasons discussed by Witness Deason, including that it may lead to utility consideration of only lower-risk generation investments and an even greater reliance on natural gas. Tr. 1416, 1427-33 (Deason).

FPL prudently incurred costs in 2011 to successfully complete two EPU implementation outages, one at Turkey Point Unit 4 and one at St. Lucie Unit 2 that resulted in increased electrical output from St. Lucie Unit 2 of 31 MWe. Tr. 983, 991 (Jones). Additionally, FPL incurred costs to substantially complete the licensing engineering, perform design modification engineering, and procure necessary equipment and materials. Tr. 983, 991-92, 1018-23 (Jones). The progress made in 2011 on the EPU project was explained in detail in the testimony of Mr. Jones. *See, e.g.*, Tr. 984-984 (Jones). This progress included NRC approval of the Turkey Point Alternative Source Term LAR and the Spent Fuel Criticality LAR, continued work toward completing the engineering design of approximately 220 plant design modification packages, and continued intensive management of major vendors including the EPC vendor, just to name a few. *Id.*

FPL's project management decisions and costs were subject to the robust system of internal processes, procedures and controls described above in Issue 29. Additionally, FPL's management of the EPU project was prudent, as described above in Issue 29A. OPC's claim that FPL misused draft High Bridge information and OPC's unlawful request for relief should be rejected, for the reasons also stated above in Issue 29A. No intervenor has identified a single imprudent act or decision that caused any of FPL's 2011 costs to be incurred. Accordingly, the record clearly supports a finding that all of FPL's 2011 EPU costs were prudently incurred and should be approved.

FPL's 2011 EPU costs are presented in detail in the testimony of FPL Witnesses Jones and Powers, and in the NFRs filed in this docket. The relevant NFRs can be found in Exhibit 51. These NFRs support Commission approval of final 2011 EPU expenditures of \$667,493,187 (system), \$640,855,812 (jurisdictional, net of participants); O&M costs, including interest, of

\$12,172,529 (system), \$11,584,442 (jurisdictional, net of participants); and carrying charges of \$78,251,442. Tr. 917, 929 (Powers). The final true-up of O&M costs including interest is (\$679,375); and final true-up of carrying charges is \$7,964,134. Tr. 917, 930 (Powers); Ex. 49. In addition, the Commission should approve FPL's final 2011 EPU base rate revenue requirements, including carrying charges, of \$9,138,883; and the final true-up of revenue requirements, including carrying charges, of (\$7,014,702). Tr. 917, 929-30 (Powers); Ex. 49. The net amount of \$270,057 should be included in FPL's 2013 NCR amount. Tr. 917 (Powers); Ex. 49.

ISSUE 31: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Extended Power Uprate project?

FPL: *The Commission should approve FPL's 2012 actual/estimated EPU expenditures of \$1,058,854,365 (system), \$1,017,306,408 (jurisdictional, net of participants); FPL's 2012 actual/estimated O&M costs, including interest, of \$15,000,523 (system), \$14,546,749 (jurisdictional, net of participants); and carrying charges of \$104,909,726. The estimated true-up of O&M costs including interest is \$9,085,552 and the estimated true up of carrying charges is \$37,645,274. Additionally the Commission should approve FPL's 2012 actual/estimated EPU base rate revenue requirements, including carrying charges, of \$79,075,219; and the 2012 estimated true-up of revenue requirements, including carrying charges, of (\$1,115,554). FPL's 2012 actual/estimated EPU costs are supported by comprehensive procedures, processes and controls which help ensure they are reasonable. The net amount of \$45,615,272 should be included in FPL's 2013 NCR amount.*

By the end of 2012, FPL will have successfully completed another three EPU implementation outages, plus a mid-cycle outage at St. Lucie Unit 1, bringing on-line 336 MW of nuclear power in addition to the 31 MW that were added in 2011. Tr. 1027, 1030 (Jones). FPL incurred and is incurring costs necessary to successfully complete these implementation activities, and to prepare for and begin implementing the final EPU outage that begins in November of this year. See Tr. 1039 (Jones); Ex. TOJ-17. Additionally, FPL is incurring costs

related to final long lead equipment milestone payments, completion of engineering design, and the NRC's final review and approval of the necessary LARs. Tr. 1055 (Jones).

FPL included actual costs for January and February of 2012, and developed estimates for the remainder of the year. FPL's estimates were developed from Project Controls forecasts derived from the best available information for all known project activities, including scheduled milestone payments for long lead material contracts. Tr. 1059 (Jones). Careful vendor oversight, use of competitive bidding when appropriate, and the application of the robust internal schedule and cost controls and internal management processes discussed above in Issue 29 all helped ensure that FPL's 2012 actual/estimated expenditures are reasonable. Tr. 1067 (Jones). Additionally, FPL's management of the EPU project was prudent, as described above in Issue 29A.

FPL's 2012 EPU actual/estimated costs are presented in detail in the NFRs filed in this docket. The relevant NFR can be found in Exhibit 64. In sum, the Commission should approve FPL's 2012 actual/estimated EPU expenditures of \$1,058,854,365 (system), \$1,017,306,408 (jurisdictional, net of participants); FPL's 2012 actual/estimated O&M costs, including interest, of \$15,000,523 (system), \$14,546,749 (jurisdictional, net of participants); and carrying charges of \$104,909,726. Tr. 950, 962-63, 965 (Powers). The estimated true-up of O&M costs including interest is \$9,085,552 and the estimated true up of carrying charges is \$37,645,274. Tr. 950, 964 (Powers); Ex. 49. Additionally the Commission should approve FPL's 2012 actual/estimated EPU base rate revenue requirements, including carrying charges, of \$79,075,219; and the 2012 estimated true-up of revenue requirements, including carrying charges, of (\$1,115,554). Tr. 964-65 (Powers); Ex. 49. The net amount of \$45,615,272 should be included in FPL's 2013 NCR amount. Tr. 950, 963 (Powers); Ex. 49.

ISSUE 32: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Extended Power Uprate project?

FPL: *The Commission should approve 2013 projected EPU expenditures of \$163,996,072 (system), \$161,047,828 (jurisdictional, net of participants); projected O&M costs, including interest, of \$5,170,770 (system), \$5,077,869 (jurisdictional, net of participants); and \$15,433,878 in carrying charges. In addition, the Commission should approve as reasonable EPU base rate revenue requirements of \$64,738,202. The total amount of \$85,249,950 should be included in setting FPL's 2013 NCR amount. FPL's 2013 projected construction expenditures are supported by comprehensive procedures, processes and controls which help ensure that these projected costs are reasonable.*

In 2013 FPL will incur costs necessary to complete the EPU project, including related project close-out tasks. Tr. 1067-71 (Jones). The long lead procurement will be complete, including receipt of equipment for the final modifications in the 2012-2013 Turkey Point Unit 4 EPU outage. FPL will complete execution of this outage, including extensive testing and systematic turnover to operations. Tr. 1067 (Jones).

FPL's 2013 projections were developed from Project Controls forecasts, similar to how FPL's 2012 estimates were developed. Tr. 1067 (Jones). The development of FPL's 2013 cost projections was subject to the robust system of internal processes, procedures and controls described above in Issue 29. *See* 1071 (Jones).

OPC's request that the Commission disallow all Turkey Point related EPU costs above \$1.6 billion could presumably disallow some unstated amount of FPL's projected 2013 costs. However, OPC's claim that FPL misused draft High Bridge information and OPC's unlawful request for relief should be rejected, for the reasons stated above in Issue 29A. Accordingly, the record clearly supports a finding that all of FPL's 2013 EPU costs are reasonable and should be approved.

FPL's 2013 projected EPU costs are presented in detail in the NFRs filed in this docket. The relevant NFR can be found in Exhibit 64. That exhibit, along with the testimony of FPL's

Witnesses Powers and Jones, support Commission approval of \$163,996,072 (system), \$161,047,828 (jurisdictional, net of participants); projected O&M costs, including interest, of \$5,170,770 (system), \$5,077,869 (jurisdictional, net of participants); and \$15,433,878 in carrying charges. Tr. 950, 967 (Powers). In addition, the Commission should approve as reasonable EPU base rate revenue requirements of \$64,738,202. Tr. 968 (Powers); Ex. 49. The total amount of \$85,249,950 should therefore be included in setting FPL's 2013 NCR amount. Tr. 950, 969 (Powers); Ex. 49.

D. Total Recovery Amount

ISSUE 33: What is the total jurisdictional amount to be included in establishing FPL's 2013 Capacity Cost Recovery Clause factor?

FPL: *The total jurisdictional amount of \$151,491,402 should be included in establishing FPL's 2013 Capacity Cost Recovery Clause factor. This amount consists of carrying charges on site selection costs, pre-construction costs, and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, O&M costs, and base rate revenue requirements for the EPU project, all as provided for in Section 366.93 and the Nuclear Cost Recovery Rule.*

The record shows that FPL's actual 2011 Turkey Point 6 & 7 costs and actual 2011 EPU costs were prudently incurred. Additionally, the record shows that FPL's actual/estimated 2012 costs and projected 2013 costs for both projects are reasonable. Accordingly, the Commission should approve a Nuclear Power Plant Cost Recovery amount of \$151,491,402 to be included in establishing FPL's 2013 Capacity Cost Recovery Clause factor. Tr. 950, 953 (Powers); Ex. 49. This amount consists of carrying charges on site selection costs, pre-construction costs, and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, O&M costs, and base rate revenue requirements for the EPU project, all as provided for in Section 366.93 and the NCR Rule.

CONCLUSION

For all of the foregoing reasons, based upon Florida law, the evidentiary record in this proceeding, and prior Commission orders, FPL requests that the Commission enter 2011 prudence findings, 2012 and 2013 reasonableness findings, approve the Company's feasibility analyses, and approve FPL's requested 2013 NCR amount consistent with FPL's positions stated in this Post-Hearing Brief.

Respectfully submitted this 1st day of October, 2012.

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