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Electronic Filing

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b. Docket No. 120001 - EI
In RE: Fuel Cost Recovery Clause

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

d. There are a total of 17 pages

e. The document attached for electronic filing is Florida Power & Light Company's Post-Hearing Brief Regarding Issues 2C, 24b, 24C and 24D with attached Exhibit 1.

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DOCUMENT NUMBER-DATE

07619 NOV 13 2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Fuel and purchase power cost recovery
clause with generating performance incentive
factor

Docket No: 120001-EI
Date: November 13, 2012

**FLORIDA POWER & LIGHT COMPANY'S
POST-HEARING BRIEF REGARDING ISSUES 2C, 24B, 24C AND 24D**

Florida Power & Light Company ("FPL"), pursuant to this Commission's Order No. PSC-12-0597-PHO-EI, hereby files its post-hearing brief, which is limited to Issues 2C, 24B, 24C and 24D and their impact on fall-out Issues 30, 31 and 33.

BACKGROUND

At the hearing held in this docket on November 5, 2012, the Commission approved stipulations for FPL on all Fuel Clause issues and on all Capacity Clause issues except for Issues 2C, 24B, 24C and 24D and the affected fall-out Issues 30, 31 and 33. Tr. 38:5-15. All of FPL's prefiled testimony and exhibits were entered into the record without objection. Tr. 37:9-15. FPL's witnesses were excused without cross-examination or questioning by the Commissioners. Tr. 14:3-15. Because no factual issues remained, FPL was excused from the hearing before the Commission began to take live testimony on the Progress Energy Florida portion of the case. Tr. 39:22-40:9 The issues that remain unresolved at this time relate to how the decision in FPL's pending rate case (Docket No. 120015-EI) will be reflected in FPL's 2013 Fuel and Capacity Clause recovery. These are Issues 2C, 24B, 24C and 24D. On November 2, 2012, Staff conducted an informal meeting of parties to this docket to determine whether stipulations could be reached on these issues. On the day before the informal meeting, Staff provided proposed stipulation language and

DOCUMENT NUMBER-DATE

07619 NOV 13 2012

FPSC-COMMISSION CLERK

FPL circulated a draft suggesting minor clarifying revisions to Staff's proposal. A copy of Staff's proposal, as revised by FPL, is attached hereto as Exhibit 1. Shortly before the meeting, the Office of Public Counsel ("OPC") then e-mailed Staff and the parties its proposed stipulation language for these issues, reproduced below:

ISSUE 2C: Should FPL's proposed fuel factors for the new RTR-1 Rider be approved?

OPC Proposal: *In its rate case, Docket No. 120015-EI, FPL proposed a new optional residential time-of-use base rate rider, RTR-1. Under the RTR-1 Rider as proposed in the rate case, the standard residential base energy and fuel factors will be adjusted by applying adders to reflect on-peak usage and credits to reflect off-peak usage. The RTR-1 Rider was approved at the commencement of the hearing by the Commissioners as stipulated Issue 146. Prior to the evidentiary hearing in Docket No. 120015-EI, FPL, FIPUG, FEA, and SFHHA entered into a proposed settlement agreement which they presented to the Commission as a proposed settlement of all issues in Docket No. 120015-EI. The RTR-1 rider is also included in the proposed settlement agreement between FPL, FEA, FIPUG and SFHHA as Tariff Sheet 8.203. OPC, FRF, and other parties have objected to and oppose the proposed settlement agreement signed by FPL, FEA, FIPUG, and SFHHA. The Commission will not have reached a decision and issued a final order in Docket No. 120015-EI prior to its decision in this Docket No. 120001-EI. However, both the stipulation and proposed settlement agreement contemplate that the RTR-1 rider will become effective after FPL's billing system has been modified to accommodate the rider, which FPL expects to be completed in mid-2013. In Docket No. 120001-EI, FPL has provided fuel factors that correspond to both the RST-1 base rate and the RTR-1 rider.*

*Accordingly, staff recommends that the Commission approve the fuel factors for both the RST-1 base rate and the RTR-1 rider subject to the following limitations. The existing residential time-of-use base rate (RST-1) will remain in effect until a final **lawful** order has been issued in Docket No. 120015-EI approving the RTR-1 Rider. Staff recommends that The Commission direct FPL to apply the fuel factors for the RST-1 base rate until the RTR-1 rider goes into effect following the issuance of the final order in Docket No. 120015-EI, and then to switch to the fuel factors for the RTR-1 rider with respect to customers who elect to take service under that rider. (boldface added)*

ISSUE 24B: Should an adjustment be made to transfer incremental security costs from the Capacity Cost Recovery Clause to base rates?

OPC Proposal: *The issue of the transfer of incremental security costs to base rates is in Issues 67 and 68 in the pending rate case in Docket 120015-EI. Since the Commission will not have reached a decision on this issue in the rate case prior to the decision in Docket 120001-EI, incremental security rates should be treated per the terms of the Stipulation and Settlement Agreement approved in the prior FPL rate case, Docket No. 080677-EI. Once the decision has been made by the Commission in Docket No. 120015-EI or in the event FPL implements a base rate increase prior to a Commission decision in 120015-EI, (as permitted by Section 366.06(3), F.S.), there is a potential for FPL to recover its incremental security costs in both base rates and in the capacity cost recovery factors. Accordingly, any over recovery resulting from the timing of the Commission's decision in Docket No. 120015-EI related to this issue will be handled through the regular true-up process or by mid-course correction.*

ISSUE 24C: What amount should be included in the capacity cost recovery clause for recovery of jurisdictional non-fuel revenue requirements associated with West County Energy Center Unit 3 (WCEC-3) for the period January 2013 through December 2013?

OPC Proposal: *The Commission will not have addressed or reached a decision in Docket 120015-EI, until after the date of the Commission's decision in Docket 120001-EI. The costs associated with the WCEC-3 should be treated in accordance with the terms of the Stipulation and Settlement approved in Docket No. 080677-EI, the prior FPL rate case, until the Commission renders a **lawful final order** in Docket No. 120015-EI. From the date the Commission renders a **lawful final order** in Docket No. 120015-EI forward, the collection of revenue requirements for WCEC-3 will be as directed by the Commission in Docket No. 120015-EI. **If the Commission grants FPL's request to collect the full amount of WCEC3 revenue requirements, that decision will not be applied retroactively.** Staff recommends that the Commission direct that any over or under recovery resulting from the timing of the Commission's decision in Docket No. 120015-EI related to this issue be handled through the regular true-up process or by mid-course correction. (boldface added)*

ISSUE 24D: If the Commission approves the Proposed FPL Rate Case Settlement Agreement that was filed in Docket No. 120015-EI on August 15, 2012 (the "Proposed Settlement Agreement"), should the Commission approve FPL's proposed GBRA factor of 3.527 percent for the Canaveral Modernization Project?

OPC Proposal: *The Commission will not have addressed or reached a decision in Docket 120015-EI, until after the date of the Commission's decision in Docket 120001-EI. Accordingly, the Commission should reserve ruling on this issue until the Commission has issued a **lawful final order** in Docket No. 120015-EI at which time the Commission should schedule a decision [in Docket No. 130001-EI] on this issue for a regular agenda conference that would permit the approved GBRA factor to be implemented when the Canaveral Modernization Project goes into service. The decision on this issue will be based on the amount, if any, that the Commission approves in Docket No. 120015-EI. (boldface added)*

While FPL prefers the Staff stipulation language with FPL's clarifying revisions as shown in Exhibit I, it is willing to accept OPC's stipulation language with three exceptions. First, the Commission should delete from the stipulation language on Issues 2C, 24C and 24D the term "lawful final order" or "final lawful order." For the reasons discussed in the next section of this brief, FPL does not believe that it is appropriate, necessary, or even meaningful to characterize orders by this Commission as "lawful." Accordingly, FPL proposes that the Commission adopt OPC's proposed stipulations on Issues 2C, 24C and 24D with the word "lawful" stricken in all instances (*i.e.*, the bolded words should be deleted). Second, the Commission should delete from the stipulation language on Issue 24C OPC's added sentence stating that retroactive application of the Commission's decision in Docket No. 120015-EI is prohibited (again, the bolded words should be deleted). That sentence is unnecessary, as Florida law and the Commission's policy on retroactive application is clear. Finally, FPL recommends inserting into the stipulation language for Issue 24D a clarifying reference to Docket No. 130001-EI as the proceeding in which the GBRA factor would be reviewed and approved. Following the Commission's docket-numbering convention, this will be the number for the 2013 Fuel and Capacity Clause proceeding.

The proposal for Issue 24B does not use the term “lawful final order” or “final lawful order.” FPL is uncertain whether OPC’s omission of those terms was intentional or inadvertent. If OPC intended to refer to “lawful final order” or “final lawful order,” the rationale set forth for Issues 2C, 24C and 24D applies equally. If OPC deliberately omitted any such reference, FPL agrees to the proposed language.

ARGUMENT

1. Commission Orders Are Presumed Lawful

It is well established that orders of this Commission are presumed lawful. As the Florida Supreme Court stated in *Legal Environmental Assistance Fund, Inc. v. Clark*, 668 So. 2d 982, 987 (Fla. 1996), “Commission orders come before this Court cloaked with a presumption of validity.” *See also Teleco Communications Co. v. Clark*, 695 So. 2d 304 (Fla. 1997); *Citizens v. Public Service Commission*, 448 So. 2d 1024 (Fla. 1984). It is axiomatic that any final order issued by the Commission will be “lawful” unless and until it is reversed or otherwise overturned by an appellate court. OPC’s proposal to insert “lawful” into the trigger for when decisions made in FPL’s rate case docket will take effect in this docket is unnecessary and irrelevant surplusage: the Commission issues nothing but “lawful” orders.

OPC has not indicated clearly why it believes that reference should be made to “lawful” orders, but apparently it has to do with OPC’s opposition to the proposed settlement agreement under consideration in the FPL rate case. OPC has filed a petition for writ of quo warranto with the Florida Supreme Court concerning the Commission’s scheduled hearing to consider the proposed settlement agreement. But it is not the *filing* of

such a petition that potentially affects the legality of the Commission's actions; it is the Court's ruling upon the substantive issues in the petition if the Court even decides that it is necessary and appropriate to do so. Unless and until the Court takes action to prohibit the Commission from proceeding in the rate case docket (which FPL strongly believes would be unwarranted), any Commission order in that docket will be cloaked with the same presumption of validity as any other of its orders. OPC does not – and should not – have the unilateral power to hogtie the Commission's actions in every proceeding involving FPL just so that it can act out its fit of pique over the proposed settlement agreement.

Thus, nothing would be served by referring to “lawful final orders” in the resolution of Issues 2C, 24C and 24D. To the contrary, the inclusion of that term could create confusion and uncertainty as to the applicability and timing of the Commission's final decision in FPL's rate case docket on the 2013 Capacity Clause recovery in this docket. For those reasons, FPL respectfully urges the Commission to refer to “final orders” rather than “lawful final orders” in the resolution of those issues. The resolution of Issues 2C, 24C and 24D would consist of the language excerpted in italics above, excluding the bold words.

2. Commission Decisions Apply Prospectively From the Date of the Commission Vote

OPC proposed to add the following sentence to the stipulated language for Issue 24C: “If the Commission grants FPL's request to collect the full amount of WCEC3 revenue requirements, that decision will not be applied retroactively.” Florida law and the Commission's policy on the application of Commission decisions are clear. Decisions are to apply prospectively from the effective date of Commission action, which is “the date on which the issues were decided and the official vote was taken.” *Gulf Power Co. v. Cresse*,

410 So. 2d 492, 494 (Fla. 1982). The quoted sentence should be deleted because it is unnecessary and, as surplusage, confusing.¹

RESOLUTION OF ISSUES 30, 31 AND 33

As noted above, Issues 30, 31 and 33 are fall-out issues related to the Capacity Clause amount to be recovered in 2013 and the Capacity Clause factors to recover it. As reflected in the OPC proposed stipulations cited above, there appears to be consensus that the amount to be recovered in 2013 initially should reflect recovery of (1) incremental security costs (Issue 24B) and the projected fuel savings for West County Energy Center Unit 3 (“WCEC-3”; Issue 24C). FPL filed schedules at Staff’s request on November 2, 2012 showing the amount to be recovered with those two items included, as well as the calculation of Capacity Clause factors to recover that amount. These schedules were stipulated into the record as Exhibit 116. A copy of Exhibit 116 is attached as Appendix 1 to this brief for convenient reference. The resolution of Issues 30, 31 and 33 consistent with Exhibit 116 is addressed below:

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2013 through December 2013?

Resolution: *\$518,848,705 jurisdictionalized capacity payments for the period January 2013 through December 2013 excluding prior period true-ups, revenue taxes, nuclear cost recovery amount, and WCEC-3 jurisdictional non-fuel revenue requirements. This amount is subject to adjustment pursuant to Issue 24B.*

This jurisdictionalized capacity cost recovery amount of \$518,848,705 appears on page 1, line 10 of Exhibit 116. There is no contrary evidence in the record.

¹ The quoted sentence is also confusing because it immediately follows one discussing Docket No. 120015-EI, such that the reference to not applying “that decision” retroactively is ambiguous: what decision, to what is it to be applied, and in what docket?

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2013 through December 2013?

Resolution: *The projected net purchased power capacity cost recovery amount to be recovered over the period January 2013 through December 2013 is \$864,438,406 including prior period true-ups, revenue taxes, the nuclear cost recovery amount, and the projected fuel savings for WCEC3. This amount is subject to adjustment pursuant to Issue 24C.*

The projected net purchased power capacity cost recovery amount of \$864,438,406 is the sum of \$731,449,406 (representing the total recoverable capacity payments excluding WCEC-3 recovery) shown on page 1, line 15 of Exhibit 116, plus \$132,989,000 (representing the projected fuel savings for WCEC-3) shown on page 4, line 27 of Exhibit 116. There is no contrary evidence in the record. FPL notes that this total includes \$151,491,402 for nuclear cost recovery (*see* page 1, line 12 of Exhibit 116), which is the amount recommended for approval in the Staff recommendation, dated November 7, 2012, in Docket No. 120009-EI (*see* page 166, Table 33-1).

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2013 through December 2013?

Resolution: *The January 2013 through December 2013 factors are as follows:*

FLORIDA POWER & LIGHT COMPANY
 CALCULATION OF CAPACITY RECOVERY FACTOR INCLUDING WEST COUNTY ENERGY CENTER UNIT 3
 JANUARY 2013 - DECEMBER 2013

Rate Schedule	Jan 2013 - Dec 2013 Capacity Recovery Factor		2013 WCEC-3 Capacity Recovery Factor		Total Capacity Recovery Factor Jan 2013-Dec 2013	
	(\$/KW)	(\$/kWh)	(\$/KW)	(\$/kWh)	(\$/KW)	(\$/kWh)
	RS1/RST1	-	0.00798	-	0.00140	-
GS1/GST1	-	0.00655	-	0.00138	-	0.00793
GSD1/GSDT1/HLFT1 (21-499 kW)	2.44	-	0.46	-	2.90	-
OS2	-	0.00673	-	0.00138	-	0.00811
GSLD1/GSLDT1/CS1/CST1/HLFT2 (500-1,999 kW)	2.53	-	0.46	-	2.99	-
GSLD2/GSLDT2/CS2/CST2/HLFT3(2,000+ kW)	2.62	-	0.43	-	3.05	-
GSLD3/GSLDT3/CS3/CST3	2.68	-	0.67	-	3.35	-
ISST1D	**	-	-	-	**	-
ISST1T	**	-	-	-	**	-
SST1T	**	-	-	-	**	-
SST1D1/SST1D2/SST1D3	**	-	-	-	**	-
CILC D/ QLC G	2.92	-	0.58	-	3.50	-
CILC T	2.80	-	0.58	-	3.38	-
MET	2.90	-	0.58	-	3.48	-
OL1/SL1/PL1	-	0.00204	-	0.00050	-	0.00254
SL2, GSCU1	-	0.00509	-	0.00082	-	0.00591

FLORIDA POWER & LIGHT COMPANY
 CALCULATION OF CAPACITY RECOVERY FACTOR INCLUDING WEST COUNTY ENERGY CENTER UNIT 3
 JANUARY 2013 - DECEMBER 2013

CAPACITY RECOVERY FACTORS FOR STANDBY RATES							
	Jan 2013 - Dec 2013 Capacity Recovery Factor		2013 WCEC-3 Capacity Recovery Factor		Total Capacity Recovery Factor Jan 2013-Dec 2013		
	RDC	SDD	RDC	SDD	RDC	SDD	
	** (\$/KW)	** (\$/KW)	** (\$/KW)	** (\$/KW)	** (\$/KW)	** (\$/KW)	
ISST1D	\$0.35	\$0.17	\$0.06	\$0.03	\$0.41	\$0.20	
ISST1T	\$0.34	\$0.16	\$0.06	\$0.03	\$0.40	\$0.19	
SST1T	\$0.34	\$0.16	\$0.06	\$0.03	\$0.40	\$0.19	
SST1D1/SST1D2/SST1D3	\$0.35	\$0.17	\$0.06	\$0.03	\$0.41	\$0.20	

Demand Charge (RDD) = (Total Capacity Costs)/(Projected Avg 12 CP @gen)(.10)(demand loss expansion factor)
 12 months

Sum of Daily Demand = (Total Capacity Costs)/(Projected Avg 12 CP @gen)(21 onpeak days)(demand loss expansion factor)
 Charge (DDC) 12 months

These factors are shown on pages 7 and 8 of Exhibit 116. There is no contrary evidence in the record. Consistent with the resolution of Issues 24B and 24C, these factors would not

be adjusted during 2013 based on the outcome of the FPL rate case decision, unless the need arose for a mid-course correction. Otherwise, any over- or under-recoveries would be addressed via true-up.

CONCLUSION

As set forth above, the Commission should approve Capacity Clause factors to be implemented on January 2, 2013 that provide for recovery, *inter alia*, of the projected incremental security costs and the projected fuel savings for WCEC-3 because this is consistent with the terms of the Stipulation and Settlement that the Commission approved for FPL in Docket No. 080677-EI. Recovery for those two elements should be adjusted as necessary based on the final order in FPL's current rate case (Docket No. 120015-EI), with any over- or under-recovery addressed via the normal Capacity Clause true-up process unless a mid-course correction is warranted under the Commission established criteria and procedure for mid-course corrections. The Commission should also approve time of use fuel ("TOU") factors appropriate for both FPL's existing RST-1 TOU rate and the new RTR-1 TOU rider that is to replace the RST-1 rate. FPL should be directed to apply the TOU factors for the RST-1 rate until the RTR-1 rider is approved and FPL's billing system has been modified to implement it; thereafter, FPL should apply the TOU factors for the RTR-1 rider with respect to any customers who elect to take service under that rider.

Respectfully submitted this 13th day of November 2012.

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By: s/ John T. Butler

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CERTIFICATE OF SERVICE

Docket No. 120001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing Post Hearing Brief has been furnished by electronic mail and United States Mail on this 13th day of November 2012, to the following:

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EXHIBIT 1

Docket No. 120001-EI
Potential Stipulated Positions on Outstanding FPL Issues

ISSUE 2C: Should FPL's proposed fuel factors for the new RTR-1 Rider be approved?

Stipulation: In its rate case, Docket No. 120015-EI, FPL proposed a new optional residential time-of-use base rate rider, RTR-1. Under the RTR-1 Rider as proposed in the rate case, the standard residential base energy and fuel factors will be adjusted by applying adders to reflect on-peak usage and credits to reflect off-peak usage. The RTR-1 Rider was approved at the commencement of the hearing by the Commissioners as stipulated Issue 146. Prior to the evidentiary hearing in Docket No. 120015-EI, FPL, FIPUG, FEA, and SFHHA entered into a proposed settlement agreement which they presented to the Commission as a proposed settlement of all issues in Docket No. 120015-EI. The RTR-1 rider is also included in the proposed settlement agreement between FPL, FEA, FIPUG and SFHHA as Tariff Sheet 8.203. The Commission will not have reached a decision and issued a final order in Docket No. 120015-EI prior to its decision in this Docket No. 120001-EI. However, both the stipulation and proposed settlement agreement contemplate that the RTR-1 rider will become effective after FPL's billing system has been modified to accommodate the rider, which FPL expects to be completed in mid-2013. In Docket No. 120001-EI, FPL has provided fuel factors that correspond to both the RST-1 base rate and the RTR-1 rider.

Accordingly, staff recommends that the Commission approve the fuel factors for both the RST-1 base rate and the RTR-1 rider subject to the following limitations. The existing residential time-of-use base rate (RST-1) will remain in effect until a final order has been issued in Docket No. 120015-EI approving the RTR-1 Rider. Staff recommends that The Commission direct FPL to apply the fuel factors for the RST-1 base rate until the RTR-1 rider goes into effect ~~upon~~ following the issuance of the final order in Docket No. 120015-EI, and then to switch to the fuel factors for the RTR-1 rider with respect to customers who elect to take service under that rider.

Comment [A1]: As noted above, the RTR-1 rider likely won't go into effect immediately upon approval because of the billing system changes that need to be made first.

ISSUE 24B: Should an adjustment be made to transfer incremental security costs from the Capacity Cost Recovery Clause to base rates?

Stipulation: The issue of the transfer of incremental security costs to base rates is in Issues 67 and 68 in the pending rate case in Docket 120015-EI. Since the Commission will not have reached a decision on this issue in the rate case prior to the decision in Docket 120001-EI, incremental security rates should be treated per the terms of the Stipulation and Settlement Agreement approved in the prior FPL rate case, Docket No. 080677-EI. ~~Once the decision has been made by the Commission in Docket No. 120015-EI or in the event FPL implements a base rate increase prior~~

~~to a Commission decision in 120015-EI, (as permitted by Section 366.06(3), F.S.), there is a potential for FPL to recover its incremental security costs in both base rates and in the capacity cost recovery factors. Accordingly, Any over recovery resulting from the timing of the Commission's decision in Docket No. 120015-EI related to this issue will be handled through the regular true-up process or by mid-course correction.~~

ISSUE 24C: What amount should be included in the capacity cost recovery clause for recovery of jurisdictional non-fuel revenue requirements associated with West County Energy Center Unit 3 (WCEC-3) for the period January 2013 through December 2013?

Stipulation: The Commission will not have addressed or reached a decision in Docket 120015-EI, until after the date of the Commission's decision in Docket 120001-EI. The costs associated with the WCEC-3 should be treated in accordance with the terms of the Stipulation and Settlement approved in Docket No. 080677-EI, the prior FPL rate case. ~~The Stipulation and Settlement Agreement approved in Docket No. 080677-EI contemplated the cost recovery of the revenue requirements associated with WCEC-3 would be limited to the fuel savings created by this plant. Staff recommends that the recovery through the fuel clause of revenue requirements for WCEC-3 limited by fuel savings continue until the Commission renders its final order decision in Docket No. 120015-EI. From the date the Commission renders its decision in Docket No. 120015-EI forward, the collection of revenue requirements for WCEC-3 will be as directed by the Commission in Docket No. 120015-EI. However, there is a potential for FPL to recover its revenue requirements for WCEC-3 in both base rates and in the capacity factors until FPL, through a mid-course correction or through the regular true-up process, changes its factors to reflect the Commission's decision in Docket No. 120015-EI. Accordingly, Staff recommends that the Commission direct that any over or under recovery resulting from the timing of the Commission's decision in Docket No. 120015-EI related to this issue be handled through the regular true-up process or by mid-course correction.~~

Comment [A2]: These two sentences seem to be referring to the same point in time, so FPL does not understand why the first refers to the "final order" while the second refers to the "decision."

ISSUE 24D: If the Commission approves the Proposed FPL Rate Case Settlement Agreement that was filed in Docket No. 120015-EI on August 15, 2012 (the "Settlement Agreement"), should the Commission approve FPL's proposed GBRA factor of 3.527 percent for the Canaveral Modernization Project?

Stipulation: The Commission will not have addressed or reached a decision in Docket 120015-EI, until after the date of the Commission's decision in Docket 120001-EI. Accordingly, the Commission should reserve ruling on this issue until the Commission has issued its final order in Docket No. 120015-EI at which time the Commission ~~may should~~ schedule a decision on this issue for a regular agenda conference that would permit the approved GBRA factor to be implemented when

the Canaveral Modernization Project goes into service. The decision on this issue will be based on the record established in this docket, Docket No. 120001-EI.

Comment [A3]: This is FPL's suggestion to provide guidance as to the need for the Commission to act in time for the GBRA factor to be implemented by the in-service date for the Project, which is anticipated to be early June 2013.