FILED JAN 12, 2015
DOCUMENT NO. 00217-15
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor ____________________/	DOCKET NOS. 140001-EI / 150001-EI FILED: January 12, 2015

CITIZENS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF

Pursuant to Order Nos. PSC-14-0084-PCO-EI and PSC-14-0667-PHO-EI, the Citizens of the State of Florida, by and through the Office of Public Counsel ("OPC" or "Citizens"), hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief.

SUMMARY OF ARGUMENT

The Commission should reject FPL's Proposed Gas Reserves Transactional Guidelines ("Guidelines") entered into the record as Exhibit 10 for the following reasons:

- The Commission lacks subject matter jurisdiction, and any order requiring customers to pay for a utility's investment in the non-regulated natural gas exploration, drilling, and production industry or the utility's expansion beyond "generation, transmission, and distribution" is *ultra vires*;
- Approval of the Guidelines violates agency decisions of general, industry-wide policy that are de facto rules regarding prudence review, cost recovery, and profit on the commodity of fuel itself;
- Approval of the Guidelines impermissibly restricts the Commission's statutorily mandated prudence review associated with cost recovery;
- If the Commission approves the Guidelines, FPL would be virtually assured of the recovery of all of its costs, plus a fixed return and a guaranteed shareholder profit on every dollar invested in gas reserves per its Guidelines;
- Approval of the Guidelines and the associated cost recovery of gas reserves investments are barred by the express terms of Order No. PSC-13-0023-S-EI; and
- The Guidelines impermissibly shift investment risks from FPL's shareholders to its ratepayers.

BASIC POSITION

Florida Power & Light Company's ("FPL's") June 25, 2014 Petition ("Petition") is a new way to eliminate shareholder risks and ensure shareholder profits. FPL's proposal will shift all risks of investing in gas reserves to its customers in exchange for promises of potential fuel savings for customers and guaranteed trued-up profits (or returns) for shareholders. While OPC is not opposed to **guaranteed** fuel cost savings to customers, FPL simply cannot guarantee those savings to its customers over the expected life of future gas reserves investment projects made pursuant to FPL's Guidelines.

FPL requests approval of something which the Commission has never previously approved for any regulated electric utility in Florida. FPL proposes to acquire a portion of its future natural gas supplies by investing in natural gas reserves projects instead of purchasing gas from the competitive natural gas supply market. These proposed gas reserves projects have not traditionally been recovered in the rates of any regulated electric utility.

FPL requests the recovery of capital investments and guaranteed shareholder profits on those investments in the natural gas exploration, drilling, and production industry; a highly competitive market that is not regulated by the Commission or subject to the Commission's jurisdiction. FPL proposes to recover all of its natural gas investment related costs through the Fuel Cost Recovery Clause ("Fuel Clause") (TR 84-85), including all the costs to develop its proposed gas reserves investments and all ongoing operating expenses associated with developing and recovering these gas reserves investments, as well as a guaranteed, trued-up shareholder return (or profit) on these proposed investments.

FPL is also requesting presumptive pre-approval (including a presumption of the absence of imprudence) of and eligibility for recovery in the Fuel Clause (TR 84-85) of all costs and shareholder profits associated with any future gas reserves investments that satisfy the Guidelines and that FPL

projects would result in customer fuel savings. However, these projects do not actually have to comply with the Guidelines so long as FPL asserts that they will "benefit FPL customers."[1] There are many problems with FPL's gas reserves project proposals.

First, FPL's proposal is anathema to the traditional role of the Fuel Clause. The Fuel Clause is a rate mechanism that authorizes periodic adjustments to a fuel factor designed to allow utilities to collect volatile costs associated with fuel. The fuel factor is subject to periodic reconciliation of prior estimates through refunds or surcharges. Utilities do not earn a shareholder profit or return on the costs of fuel itself that are recovered through the Fuel Clause. Although capital expenditures that are traditionally recovered through base rates are not normally recovered through the Fuel Clause, there have been special exceptions for specific fossil fuel savings projects which will result in customer fuel savings. However, FPL's proposal does not comport with these exceptions because, among other deficiencies, FPL cannot guarantee that these gas reserves investments will result in any customer fuel savings.

Second, FPL proposes to shift all risks associated with its gas reserves investments from FPL and its shareholders to its customers. There are many risks involved with this proposal; however, two key risks are: (1) the production cost for gas exceeding the market price of gas, resulting in negative fuels savings (or losses); and (2) the gas reserves investments failing to produce the projected quantities of gas, whereby requiring FPL to acquire replacement gas from the market.

Third, FPL proposes to transform the function of the Fuel Clause into a risk-free profit center, with guaranteed returns on non-utility and non-regulated gas reserves investments of up to $750 million annually. An annual outlay of $750 million would yield approximately $47 million of after-

[1] See Exhibit 10, page 4 of 4, ". . . [I]t is understood that FPL may . . . (ii) seek Fuel Clause recovery for a project that deviates from one or more of the guidelines upon a showing that the project nonetheless is expected to benefit FPL customers."

tax profits to FPL's shareholders.[2] Within ten years, FPL shareholders could earn hundreds of millions of dollars in profits annually from its gas exploration joint ventures while requiring its customers to shoulder 100% of the risk of those ventures—and FPL's excursions into the gas exploration industry under its Guidelines would be pre-approved.

For any gas reserves project under the Guidelines to generate fuel savings, FPL must accurately predict that the production cost of gas will be less than the market price for gas over the extended life of the project, which could be as long as 50 years. FPL made this speculative assumption for its Woodford Project. However, in discovery, FPL provided recent historical data regarding the relationship between the cost of production in the Woodford area and the market price of gas. This discovery undermined FPL's critical assumption that the production costs of gas will be less than the market price for gas. For 2010–2013, the production cost of Woodford gas exceeded the market price of gas—and the difference was material. EX 44 at 66.

Not surprisingly, given this relationship, the major players (including drillers who control far more acreage than PetroQuest) have virtually ceased new drilling activity in the Woodford area.[3] Thus, FPL's claim that the market price of gas will be higher than the costs of production plus FPL's return on investment bears no relationship to recent past experience or current reality as evidenced by the actions of competitive oil and gas exploration and drilling firms. Given that the Woodford Project's recent production costs have exceeded the market price for gas, future investments made pursuant to the Guidelines in other shale formations would obviously face the same risk. There is no requirement in the Guidelines that any gas reserves investment project must generate actual fuel savings in any year over the life of the project – only that FPL **predicts** some level of minimum savings **might** occur.

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[2] Calculated using a 10.5% equity return and a 59.6% equity ratio or (10.5%*59.6%) equals 6.258% weighted cost of equity times $750 million annual investment cap per Guidelines.

[3] EX 39, "NGI'S North American Shale & Resource Plays Factbook", (2014) at 2-3 of 3. *See also* Natural Gas Intelligence, available at www.natgasintel.com/shaledaily.

Furthermore, FPL's conclusions of benefits to customers would always remain highly vulnerable to sensitivity analyses. Under reasonable and conservative changes in the assumptions of production from future gas reserves investments and the rate of change of market prices, customers could realize either the loss of the majority of FPL's estimated savings or even negative project savings (in the form of higher fuel cost recovery charges) relative to the market price of gas or net benefits that would not be realized for decades. This sensitivity to changing fuel forecasts was evident when FPL updated its projected fuel savings one month after filing the Petition and nearly half of the projected fuel savings for the Woodford Project evaporated, which could also occur in projects under the Guidelines.

Because FPL is proposing front-end prudence determination for investments made according to the Guidelines, FPL faces very little risk (i.e., disallowance of any costs for imprudence) even if future gas reserves investments fail to produce any savings or if the investments fail to mitigate against fuel price volatility to the benefit of its customers. FPL would bear zero risk because all risks of FPL's participation in the gas exploration and production business would be shifted to its customers. Commission approval of the Guidelines would force FPL's customers to become involuntary investors in a risky, non-regulated natural gas exploration and drilling industry that includes fracking. This would alter the fundamental role of the Commission in setting fuel cost recovery rates.

This fundamental role is to protect customers from monopolistic excesses by serving as a substitute for competition, yet FPL's Petition will invert that role. However, if the Commission approves FPL's Guidelines, customers will not be protected from monopolistic excesses. Instead, customers will serve as FPL's insurance policy (against any losses) and underwrite FPL's desire to diversify into a risky, competitive business subject to market forces beyond FPL's control in which FPL lacks any core experience.

If the Commission approves FPL's request, the principles underlying the Fuel Clause mechanism could be fundamentally undermined. It could become a vehicle for all Florida electric utilities to expand their rate bases in non-regulated industries, thus, guaranteeing opportunities for future, guaranteed shareholder profits with no risks to the utilities. The Fuel Clause cost recovery mechanism was introduced to address fuel cost volatility not provide rate base enhancement opportunities.

Likewise, nothing within Chapter 366, F.S., countenances allowing a rate-regulated electric monopoly utility to expand beyond the "generation, transmission, and distribution" functions expressly recognized in statute. Because the Commission does not possess the express or implied statutory jurisdiction to approve FPL's Guidelines, or even the technical accounting expertise and ability to adequately review the reasonableness or prudence of FPL's proposed gas reserves costs for cost recovery, OPC submits that such a decision would be an *ultra vires* act, a clear abuse of discretion, and a radical departure from the essential requirements of law as set forth by the Legislature in Chapters 120, 350, and 366, F.S. Additionally, OPC maintains that FPL's Guidelines request is barred by the express terms of the stipulation approved by Order No. PSC-13-0023-S-EI, insofar as it would allow gas reserves rate recovery during the term of that stipulation.

In addition, FPL's gas reserves proposal under the Guidelines does not comport with the Commission's strict policy that restricts what fossil-fuel related costs may be recovered through the Fuel Clause. While the Commission may be exempt from some aspects of rulemaking pursuant to Section 120.80(13)(a), F.S., PSC Order No. 14546 and its progeny serve as *de facto* or surrogate rules. These orders are agency decisions of general, industry-wide policy which govern, among other things, the recoverability of fossil-fuel related capital costs through the Fuel Clause that **will** result in fuel savings to customers.

The Commission and FPL are also in agreement that public utilities subject to the

Commission's jurisdiction are not allowed to make any profit on the actual cost of the fuel commodity[4] that flows through the Fuel Clause. Because FPL's shareholders would receive a fixed return or guaranteed profit on every dollar invested in natural gas reserves (no matter whether any customer savings materialize), FPL's proposal would violate this *de facto* rule prohibiting regulated utilities from profiting on the commodity cost of fuel acquired for their customers.

Significantly, Order No. 14546 requires the Commission to review such projects on a "case-by-case" basis, and the Guidelines clearly violate this bright-line regulatory policy. Therefore, since FPL's Proposed Guidelines cannot satisfy the requirements of Commission policy delineated in the *de facto* rules, these Guidelines must be denied.

Furthermore, FPL's proposal to invest in gas reserves projects under the Guidelines would not be a hedge against fuel price volatility to the benefit of customers as contemplated by the Commission's 2002 and 2008 fuel hedging orders and hedging guidelines. The Commission's Hedging Guidelines Order defines "hedging activities" as "natural gas and fuel oil **fixed price** financial or physical transactions. . . ." Order No. PSC-08-0667-PAA-EI at 15 (emphasis added). A long-term physical hedge typically involves a contractual quantity of gas at a fixed price to be delivered at some agreed future period. However, FPL's Guidelines do not fix any production costs or volumes of gas for any future gas reserves investments. Instead, the production costs and volumes of gas would be projected or estimated. Further, instead of apportioning the risks between FPL and PetroQuest, as is done in financial hedging, FPL's proposal would require its customers to assume all of FPL's shareholders' risks regardless of the success or failure of its proposed natural gas reserves investments. Moreover, FPL's Witness Deason acknowledges that the gas reserves investment concept would be subject to the same market, regulatory, and political factors that impact the market delivery of gas (TR 926), and, thus, would not provide a hedge.

[4] *See* PSC Order No. 6357 ("It should be emphasized that a utility does not make a profit on its fuel costs." p. 6).

Unlike a true financial or physical hedge, nothing is fixed within FPL's request for approval of costs associated with gas reserves investments except the 10.5% (or Commission established ROE) fixed returns (guaranteed profits) that FPL's shareholders would receive on the amount invested each year in gas reserves allowed under the Guidelines. Simply put – approving FPL's Guidelines would become a backdoor way for FPL to continue to grow its rate base on a risk-free basis through the Fuel Clause, thus, violating Chapter 366, F.S., the Regulatory Compact, and the tried-and-true principles of ratemaking and cost-of-service regulation.

OPC adopts and incorporates by reference herein the remainder of its "Basic Position" as set forth in the Prehearing Order No. PSC-14-0667-PHO-EI, issued November 21, 2014, in this docket, as well as the other positions and arguments made in its brief filed with the Commission on December 12, 2014. OPC maintains that the Commission lacks subject matter jurisdiction over FPL's Petition and proposal to recover costs associated with non-regulated gas reserves investments under FPL's Guidelines and that a Commission decision approving any portion of this Petition will be *ultra vires* and thus null and void.

Therefore, for the reasons stated herein, FPL's request to approve the Proposed Guidelines should be denied.

PROCEDURAL MATTERS

OPC has combined its Post-Hearing Statement of Positions and its Post-Hearing Brief into a single document ("Brief"), and will address Issues 4 and 5 together, followed by Issue 7. OPC also renews the following objections: (1) the Commission's decision to deny OPC's Motion to Dismiss FPL's June 25, 2014, Petition for Lack of Subject Matter Jurisdiction; and (2) the Commission's decision to admit into the hearing record Exhibits 55-58, which reflect the full deposition transcripts

of FPL's witnesses, over OPC's objections.[5] To be clear, OPC asks this Commission to dismiss FPL's Guidelines for lack of subject matter jurisdiction for the reasons stated in the August 22, 2014, Motion to Dismiss and the arguments presented at the November 25, 2014, Agenda Conference.

ISSUES AND POSITIONS

ISSUE 4: Do FPL's proposed guidelines for future capital investments in natural gas exploration and drilling joint ventures satisfy the Commission's criteria for consideration in the fuel cost recovery clause proceeding?

*** No. FPL's Proposed Guidelines violate the guiding principles and policy decisions announced by the Commission in Order No. 14546 and its progeny. It further violates the "case-by-case" prudence review required by these orders by requesting presumptive eligibility for recovery and prudence of every project that purports to "satisfy" the Guidelines. FPL is attempting to increase its rate base in unregulated, non-jurisdictional investments, outside the traditional rate-regulated electric monopoly utility functions of "generation, transmission, and distribution" expressly recognized in statute. If approved, it would open the door for every other investor owned utility to seek a risk-free way to expand rate base without a determination of need and without much scrutiny. Further, FPL's proposed investments in gas reserves projects: (1) is not hedging; (2) does not satisfy the definition of hedging as established by the Commission's hedging orders and hedging policy and (3) will not reduce fuel price volatility to the *benefit* of FPL's customers. Any fuel price volatility experienced by the customers is already, and effectively, mitigated by the annual resetting of the fuel factor in the Fuel Clause. That irrefutable fact belies the truth of FPL's assertion that fuel price volatility is something that must be mitigated through speculative, and risky natural gas reserves investments. ***

ISSUE 5: If the Commission answers Issue 4 in the affirmative, should the Commission approve FPL's proposed criteria?

*** No. FPL's Proposed Guidelines are one-sided, and completely favor FPL and its shareholders at the expense of FPL's 4.5 million customers. They should be rejected outright. While OPC maintains the Commission does not have subject matter jurisdiction to approve any gas reserves investments, let alone the Proposed Guidelines, OPC believes that the Commission's staff's suggested 50/50 sharing of risk and rewards or OPC Witness Ramas' hypothetical suggestion "up to the market price of gas" are much better than what FPL has proposed. Either option would put some of FPL's "skin into the game" and would align FPL customer and shareholder incentives. FPL would be motivated under

[5] Since the Commission, at the request of staff, placed these deposition transcripts into evidence over the objection of OPC, instead of conducting cross-examination of FPL witnesses on testimony contained in OPC's and the Florida Industrial Power Users Group's ("FIPUG's") portions of the transcripts, OPC relied upon portions of some of the deposition transcripts that OPC sought to exclude from the hearing record. By relying on these portions of the deposition transcripts, OPC does not waive its objection that it was improper to admit entire deposition transcripts into the hearing record, over the objection of a party, which contained "[i]rrelevant, immaterial, or unduly repetitious evidence" that should have been excluded. Section 120.569(2)(g), F.S. Furthermore, staff moved the depositions into the record contrary to Florida Rule of Civil Procedure 1.310(f)(3), which only allows **parties** to file depositions absent a finding by the court that the deposition was necessary for the decision, and Florida Rule of Civil Procedure 1.330(a)(4), which allows any other **party** to introduce any other parts. (emphasis added). Both of these rules apply to the Commission under Rule 28-106.206, F.A.C. Whereas staff argued in this very docket that it is not a party and the Commission failed to find the depositions necessary in this case, the Commission did not comply with the rules governing the use of depositions.

those scenarios to perform a level of due diligence not currently required by the Proposed Guidelines. However, OPC maintains that the better regulatory policy decision would be to reject FPL's Proposed Guidelines. ***

Introduction

Without waiving its position that the Commission lacks subject matter jurisdiction to allow utilities to add non-regulated natural gas reserves investments to rate base and to seek recovery of such costs, OPC asserts the Proposed Guidelines are one-sided and improperly redefine the Commission's role in conducting prudence reviews of gas reserves transactions. The following analysis gives a brief overview of the Petition and then addresses how FPL's own witnesses are unclear and/or provide conflicting testimony regarding the Commission's role in reviewing these transactions. OPC summarizes key portions of FPL and OPC witness testimonies on the Guidelines, and explains how FPL's Guidelines violate the Commission's established ad hoc, after-the-fact prudence review. Also, this section highlights the risks of investing in natural gas reserves, discusses how fuel price volatility is a phantom risk to customers, and explains how drilling delays would pose no risk to FPL's shareholders.

Analysis of FPL's June 25 Petition

The following are excerpts from FPL's Petition, delineating FPL's intent for its Guidelines and FPL's intent to limit the scope of the Commission's ability to review the prudence of FPL's future gas reserves investments projects so long as the investments meet the Guidelines.

> Paragraph 55. In order to ensure that the benefits available to customers are able to be secured in a timely fashion, FPL requests that the Commission approve **guidelines for gas reserve projects, such that FPL would be eligible to recover through the Fuel Clause the revenue requirements for future projects that meet those guidelines, subject to the usual review of the prudence** of fuel related transactions that the Commission conducts in Fuel Clause proceedings. . . .

(emphasis added). The "usual review of . . . prudence" in the Fuel Clause is delineated by the Maxine Mine Order (Order No. 13452) and the PEF Coal Refund Order (Order No. PSC-07-0816-FOF-EI).

A utility seeks recovery for its reasonable costs, and, at some point in the future, a party can challenge the prudence of those costs. However, FPL is not proposing the "usual review" for its gas reserves investments.

> Paragraph 56. The adoption of guidelines would be consistent with how the Commission has administered the fuel hedging programs for FPL and Florida's other investor-owned utilities. Similar to the hedging guidelines, the **Commission could establish a framework whereby the company could enter into several transactions that are within a range of predetermined terms/guidelines**. Also similar to the hedging guidelines, the **Commission should acknowledge that there are potential drilling/production risks** with pursuing gas assets **and as long as the transaction was within the guidelines it cannot be deemed imprudent based on the results**.

(emphasis added). If the Commission approves FPL's Guidelines, then "as long as the transaction was within the guidelines it cannot be deemed imprudent based on the results." "Results" meaning the cost of production exceeds market price, volume of production is below projections, FPL's operator drills a dry hole, projected customer savings never materialize, etc. Therefore, no matter what happens, as long as FPL's investment meets the Guidelines, FPL will not face any risk of disallowance or customer refunds. FPL will have effectively mitigated virtually all of its regulatory risk.

> Paragraph 57. By allowing FPL to move forward on future projects **without the need for prior approval**, the Commission would facilitate FPL's ability to take advantage of additional opportunities to achieve lower and more gas prices [sic] for customers, while maintaining the Commission's ability to **review those projects in the same manner that it reviews other fuel related transactions**.

(emphasis added). FPL is seeking presumptive recovery of its gas reserves investments under the Guidelines and is boldly stating that it does not want any Commission regulatory oversight of its decisions to invest in gas reserves. As discussed in more detail below, this expressly violates the "case-by-case basis" review of these project required by Order No. 14546 and its progeny.

> WHEREFORE, . . . FPL. . . requests that the Commission approve FPL's proposed guidelines under which FPL could participate in future gas reserve projects and

> recover their costs through the Fuel Clause **without prior Commission approval**, subject to the Commission's established process for reviewing fuel-related transactions in Fuel Clause proceedings.

(emphasis added). FPL, in the conclusion of its Petition, reiterated its desire not to seek the Commission's prior approval before investing. Normally, a utility first invests, and then it seeks approval for recovery of the costs associated with its investment. In this case, FPL proposes to put the cost recovery "cart" before the Commission regulatory review "horse."

FPL is attempting to fundamentally and extra-jurisdictionally alter the regulatory paradigm for rate base, cost-of-service regulation, and how the Commission reviews and approves cost recovery through the Fuel Clause.

FPL's Proposed Accounting Treatment will Hamper Commission Prudence Review

The Commission's lack of jurisdiction is evidenced by the testimony regarding how it would conduct a prudence review of FPL's gas reserves projects, using the Woodford Project as an example. As OPC Witness Donna Ramas illustrated, "[i]nvestments in gas exploration, drilling and production clearly do not fall under items that would be normally recovered through base rates for regulated electric utilities." TR 562 (internal quotations omitted). Witness Ramas explained how FPL's proposed contorted and tortured accounting path for gas reserve projects fails to follow the methods required of regulated electric utilities before the Commission.[6] Witness Ramas testified that FPL's departure from the normal accounting methods is clear evidence that FPL's proposed gas investment cost recovery is inconsistent with jurisdictional, regulated monopoly operations. TR 571. Furthermore, use of these novel accounting methods would only hamper the Commission's prudence review of FPL's gas reserve projects.

[6] TR 570-582. Witness Ramas presents a thorough discussion regarding the multiple contortions FPL must perform when accounting for gas reserve projects from failing to follow the requirements mandated under Rule 25-6.014, F.A.C., to the use of ASC 932 and the successful efforts method of accounting (both of which are foreign to the Commission and its staff).

FPL Witnesses are Unclear as to the Commission's Oversight

FPL's witnesses are vague at best as to what the Commission would have access to during a prudence review. Witness Kim Ousdahl stated that Commission staff would have access to the costs recorded from the joint interest billing ("JIB") invoices that staff auditors request (TR 373); however, staff would not be able to examine the substantive transactions behind the JIB's. EX 56 at 47-50. Witness Ousdahl also stated that FPL does not intend to comply with the detailed accounting instructions provided in the Uniform System of Accounts ("USOA") (EX 56 at 70-71) and will condense the chart of accounts as it sees fit. EX 56 at 70, 77. Witness Ousdahl also clearly acknowledged that the Commission could only regulate the recovery of costs passed through FPL's subsidiary for the gas reserves project. *Id*. at 86-87. At the time of her deposition, Witness Ousdahl did not acknowledge, or even imply, that the Commission could look past the JIB's to FPL's decision-making process during the Commission's prudence determination.

At hearing, FPL's witnesses changed positions regarding what the Commission could review during a prudence determination. Witness Ousdahl testified that the Commission would have access to all information FPL utilizes in its decisions. TR 431. However, when asked about specific communications and conversations between FPL and the gas reserves project operator, Witness Ousdahl backtracked and testified that the Commission would only have access to documentation in FPL's possession regarding those decisions. TR 432. Witness Ousdahl then testified that the Commission could determine the prudence of the operator's wellhead decisions (TR 438) but did not explain how this could be accomplished or whether an operator would subject itself to Commission review. Witness Forrest testified that the Commission's prudence review would be just as thorough as those involving any "other fuel-related transactions" (TR 122), limited to the ability to obtain records from the operator, which would be governed by the contract according to Witness Ousdahl. TR 827-29. However, the Guidelines do not require FPL to obtain the relevant information.

Witness Ousdahl's position regarding Commission oversight even changed during the same cross-examination. While explaining the Commission's regulatory reach over the activities of FPL's subsidiary formed to hold the gas reserves project, she called the subsidiary a "fully regulated subsidiary." TR 393. During the same cross-examination, Witness Ousdahl impeached herself. When asked about the activities of the subsidiary for the handling of the gas reserves project, she testified the Commission "will certainly not be regulating the operations that go on." TR 428. Thus, at hearing, FPL witnesses testified that: (1) the Commission will have access to all information; (2) but that "all information" will be limited to only such documentation that FPL may have requested from the operator; and (3) that, incredibly, the Commission could still determine prudence regarding the operator's wellhead actions, all while having no regulatory authority over the activities of the subsidiary that handles the gas reserves project or the activities of the operator. However, the plain language of FPL's Petition and Guidelines contemplate something different altogether.

FPL's opening statement clearly indicates that FPL proposes a limited or scaled-back prudence review by the Commission: "The guidelines in no way preclude subsequent prudence reviews of such projects, but rather provide the context within [sic] prudence would be evaluated." TR 48. On one hand, FPL implies that the Guidelines do not preclude subsequent prudence reviews of its future gas reserves investments, but, on the other hand, FPL states the Guidelines "provide the context within [which] prudence would be evaluated." TR 48. "Providing context" can only mean that Commission prudence review would be limited to the confines of the approved Guidelines.

FPL Witness Forrest testified that the Commission would review projects under the Guidelines applying its usual level of prudence review. TR 121-22. However, Witness Forrest then testified that the "usual review" is described in and is limited to the terms of the Guidelines. He stated: "Also similar to the hedging guidelines, the Commission should acknowledge that there are potential drilling/production risks with pursuing gas assets and as long as the transaction was within

the guidelines, it cannot be deemed imprudent based on the results." TR 123. This is clearly a limitation on the Commission's ability to review these non-regulated investments for prudence.

As further demonstrated below, FPL Witnesses Forrest, Deason, and Ousdahl clearly understood that the Commission's review of gas reserves investments would be limited.

Summary of Forrest's testimony regarding the Guidelines effect on prudence review

In his direct testimony regarding the effect the Guidelines would have on the Commission's prudence review, Witness Forrest testified ". . . the Commission should acknowledge that there are potential drilling/production risks with pursuing gas assets and as long as the transaction was within the guidelines, it cannot be deemed imprudent based on the results." TR 121-22. In his deposition, Witness Forrest testified to the following: (1) he did not necessarily believe that a gas reserves project falling within the "fairway" of the Guidelines necessarily granted FPL prudence or a guarantee of return; (2) there would still be activity for FPL to demonstrate; and (3) FPL was ". . . not absolved of anything just by virtue of having the guidelines." EX 55 at 139-40. After making this statement, Witness Forrest was then asked about the clear, unambiguous statement in his direct testimony quoted above and whether prudence attaches at the time a Guidelines-satisfying investment is made. EX 55 at 140-41. Witness Forrest responded "[n]o. . . transacting within the guidelines doesn't absolve us of anything. . . . We would very much expect. . . full scrutiny through the Fuel Clause. . . for any transaction that we had executed upon, and just because we have transacted within the guidelines doesn't mean that the actions we took within those individual transactions were prudent. We would still expect to be reviewed for prudence." EX 55 at 140-41.

Contrary to that statement, during the summary of his direct testimony at hearing regarding the Guidelines, Witness Forrest stated: ". . . as for Commission approval of the framework [Guidelines] for making gas reserves investments that would provide reasonable assurance those transactions will be viewed as prudent and recoverable." TR 130. He later testified that if the Guidelines were

approved, "[i]t would allow us to earn at the midpoint of the range for, again, prudently incurred costs." TR 161. When asked specifically about Guideline II.A and whether it limited what the Commission would examine for a prudence determination, he disagreed that it limited prudence review (TR 161-63), yet he also testified that ". . . [t]o the extent that the Commission reviews the transaction and determines that they [sic] were made with flawed analysis, then it wouldn't be determined to be prudent." TR 163.

When asked "if FP&L meets the guidelines, the Commission can still go back and determine whether or not the guidelines were really met, whether or not the decisions on the guidelines were good or bad," Witness Forrest testified "I would expect that to be part of the review, yes. In terms of the guidelines themselves, the **guidelines will be what I'll call sort of the fairway and the rough**. **So as long as we're in the fairway and we transact within those bounds, then we would expect that the transaction would be considered to be prudent.** But there still is a level of review that goes well beyond that, which is to then understand for that individual transaction the decisions that we make are also prudent." TR 276-77 (emphasis added). This appears consistent with his direct testimony that "as long as the transaction was within the guidelines, it cannot be deemed imprudent based on the results." TR 123. Thus, if the Guidelines are approved, the Commission will be limited to whether the individual transaction satisfies all the Guidelines, not whether the underlying management decision to enter into such a transaction was prudent. Later, Witness Forrest testified on rebuttal that it was a two-step prudence review process: (1) was the transaction within the Guidelines; and (2) were FPL's actions within the individual transactions prudent? TR 1078.

Regarding Commission access to ". . . lease terms and everything related to a project to come before the Commission for a prudence determination," Witness Forrest testified the Commission would have access ". . . I guess to the extent that the Commission and staff, through an audit process, wanted to see that information, we **would do our best** to acquire it if it's available." TR 196-97

(emphasis added). However, he agreed that this requirement was not in the Guidelines. *Id*. Therefore, even though he testified that the Commission would be able to conduct a prudence review of individual transactions, it appears that a prudence review would be limited by and restricted to whether the information staff requested from FPL was available. Nothing in the Guidelines requires FPL's drilling partner(s) to consent to making such information available or for FPL to insure that it is provided should Commission staff request it. It is highly doubtful that the Commission possesses the legal authority to compel such a production from a drilling partner in another state.

The Commission will have to weigh the credibility of Witness Forrest's conflicting testimony regarding the scope of the Commission's ability to conduct prudence review of gas reserves transactions that satisfy the Guidelines. On the one hand, he unequivocally testified ". . . as long as the transaction was within the guidelines, it cannot be deemed imprudent based on the results" (TR 123), yet, on the other, his testimony seems to imply that the Commission can determine the prudence of individual investment decisions per the Guidelines. TR 285-86. Both statements cannot be true.

A summary of Deason's testimony on, the Scope of Commission Prudence review, the risk of non-recovery for shareholders, FPL's Guidelines, and Order No. 14546

<u>Deason on the Scope of PSC Prudence Review</u>

When asked whether the Commission would look with disfavor on any attempt to limit or restrict the Commission's ability to consider whether a particular action was prudent, Witness Deason testified: "As a general matter I would agree, I think the Commission should have the discretion to look at what the Commission considers to be relevant…." EX 58 at 137. When asked whether Guideline II.A limited what the Commission could review to determine prudence, Witness Deason answered:

> "… the answer is yes and no… a guideline does not restrict the Commission from exercising its jurisdiction the way the Commission deems appropriate.
>
> However, on the other hand, I think there is a responsibility on the Commission

> before it approves the guideline, that it's comfortable with those guidelines, and what is to be part of the prudency determination according to this guideline, the Commission should be comfortable with that and should abide by its guideline and make decisions consistent with the guideline, and if it determines that the guideline is no longer appropriate, change the guideline and put parties on notice that the guideline would no longer be appropriate, such that any future decisions made by FPL would be based upon knowing what the rules of the game are."

EX 58 at 138-39. He further testified:

> …the Commission should be cognizant of the fact … that if there are guidelines out there that are meant to provide guidance… to FPL or other parties as to what is to be expected such that there is some comfort given that if the guidelines are followed, that an investment consistent with those guidelines would not only be eligible, but likely the cost would be recovered and that the rules would not be changed in midstream.

EX 58 at 140-41. Notwithstanding Witness Deason's testimony, if the Commission approves FPL's Guidelines, the Commission's prudence review of investments made per the Guidelines would be limited to the scope of review allowed by the Guidelines. The Commission could conceivably modify the Guidelines in a future proceeding; however, investments made prior to any such modification would be assumedly subject to only the review authorized under the Guidelines in effect at the time the investments were made.

Curiously, regarding Guideline I.D, Witness Deason was unaware of the fact that FPL was seeking approval to invest up to $750 million per year. He read it to be $750 million in the aggregate at any one time. EX 58 at 148-49. That is clearly not the case.

Deason on the Risk of non-recovery

When asked if there was a risk that FPL would not recover its investment if the Commission approved FPL's Petition, Witness Deason testified:

> "…there is a risk, because FPL has a continuing obligation to monitor, manage, oversee the project and the gas that is obtained, and if there were some material error or oversight or malfeasance, well, then that could be determined by the Commission to be an imprudent action and it could result in the objection of recovery of certain costs.
>
> But having said that, I anticipate absent such a finding, that FPL would recover

> their investment over the life of the project and in that situation there would be a hundred percent recovery of costs."

EX 58 at 60. However, Witness Deason's testimony about the risk of disallowance is contradicted by the plain language of FPL's Petition. Paragraph 56 of the Petition as well as Witness Forrest's direct testimony (TR 123) unequivocally states: "…as long as the transaction was within the guidelines[,] it cannot be deemed imprudent based on the results."

When asked whether FPL would be guaranteed to earn the midpoint ROE on its investments recovered through the Fuel Clause, Witness Deason testified:

> …I don't necessarily agree with the term "guarantee". That's a very strong term. I think the likelihood is high, but there is also the annual review, and there is an annual review of the prudence of all of those decisions.
>
> So that adds some element of risk associated with fuel recovery that you don't have in base rates, but there are other elements in the fuel recovery which enhances recovery, more timely recovery. So you basically eliminate regulatory lag as a risk.

EX 58 at 70. He testified he did not believe that it was "asymmetric risk of recovery" if "…the fuel savings for FPL customers are dependent on the actual outcome of the drilling and production activities, but FPL will earn its midpoint ROE on its gas reserve investments independent of the outcome of the drilling and production activities." EX 58 at 77-78.

Deason on the Proposed Guidelines

When asked about the Guidelines and whether prudence attaches to each gas reserves investment at the time the investment decision is made, Witness Deason testified: "…[i]f [each investment] were consistent with the guidelines, I think there should be a presumption that it was correct, but not absolutely guaranteed that it was correct." EX 58 at 79. He further testified: "… If the Commission approves the guidelines, there should be some meaning and substance to that and there should not be a second-guessing of those guidelines after they are put in place." EX 58 at 80. However, essentially the Commission's review would be reduced to whether FPL's investment

decisions complied with the Guidelines. EX 58 at 79-80. In other words, if FPL's decisions abided by the Guidelines, or the loophole contained within the Guidelines, no disallowance could be made in a later period.

Witness Deason later testified that he did not think the Guidelines would bind the Commission, but "… if the Commission fully scrutinizes the guidelines and adopts those, I think there is an incumbent responsibility on the Commission to abide by those guidelines…." EX 58 at 159. While stating he did not think the Commission was bound by FPL's Guidelines, his statement contradicts both the plain language of the Guidelines and FPL's Petition.

Witness Deason also testified that FPL had an ongoing obligation to prudently manage the projects and that the Commission could review FPL's management decisions. EX 58 at 77-81. However, under the Guidelines, there is no obligation to submit the joint operating or drilling development agreements to the Commission for review and/or approval. Further, FPL is a "carry" investment partner in a gas reserves project; therefore, it is FPL's partner, not FPL, which would be making the management decisions, and the customers would be responsible for reimbursing FPL for FPL's share of the "carry" investment costs regardless of the prudence of those operator decisions. The Commission has no regulatory oversight jurisdiction over management decisions which FPL's gas reserves investment partners would make. Thus, under FPL's Guidelines, FPL's customers would be responsible for paying costs associated with imprudent and unreasonable management decisions made by FPL's gas reserves partners.

At the hearing, Witness Deason testified:

> … I think FPL is looking for some indication from the Commission that if we [FPL] abide by the guidelines, that there is the presumption that the project meets the guidelines. And, of course, that's the responsibility of FPL to prove that up. But if it meets the guidelines, that those are going -- the guidelines will be the rules of the game and that it will minimize regulatory risk, but there's still an ongoing responsibility for the Commission to review the prudence of the utility's conduct, even within those guidelines.

TR 973. Essentially, FPL is proposing that its Guidelines would be the "rules of the game" and these would minimize FPL's regulatory risk of possible disallowance.

Deason on Order No. 14546

When Witness Deason was asked about Item 10 of Order No. 14546, he testified the Commission would consider for recovery costs otherwise eligible for fuel clause consideration under Item 10 on a case-by-case basis. EX 58 at 28-30. He agreed that the recovery of these costs were **not** automatic. EX 58 at 29. He further testified: "If the investment is made and reduces fuel costs and it's fossil fuel related, it is eligible for consideration by the Commission. **Then on a case-by-case basis the Commission will judge whether that investment is prudently incurred** and whether the cost benefits, risks associated with that, the Commission will make a determination of whether that investment is in the public interest and whether it should be allowed to be recovered." EX 58 at 30 (emphasis added). FPL's Guidelines contradict this "case-by-case basis" analysis required by Order No. 14546 and its offspring.

It is worth noting that Witness Deason testified that the logical extension of FPL's interpretation of Order No. 14546 is that FPL could invest in uranium mining so long as a "…case could be shown that a greater reliance on uranium would somehow displace fossil fuels and the net result would be a more efficient system and reduced reliance and reduced costs associated with fossil fuels, perhaps environmental costs associated with fossil fuels…." He also stated it would be up to the Commission to decide whether such an investment would be in the public interest to allow Fuel Clause recovery. EX 58 at 104-06; see also TR 940-41. He further testified the same would be true if FPL decided to invest in the manufacturing of solar panels. EX 58 at 106-07; see also TR 941. There seems to be no end to the slippery slope presented by the FPL Petition and Guidelines.

At the hearing, Witness Deason testified it was a policy decision of the "…Commission to

determine whether you want to vertically integrate the utility one more step on that ladder to go and start locking down some gas reserves" (TR 968-69). This statement directly conflicts with the basic premise that the Commission's jurisdiction is set by the Legislature. The Commission should reject FPL's request to become more vertically integrated into a competitive, currently non-regulated non-utility industry outside the core, regulated electric utility activities of generation, transmission, and distribution. The Legislature should be the one to grant the Commission jurisdiction into a non-regulated area, not the Commission itself. Further, the Legislature has not expressly or impliedly provided guidance or jurisdiction to the Commission to authorize venturing forth into natural gas reserves investments.

Under Witness Deason's exceedingly broad, utility-friendly interpretation of Order No. 14546, there would be nothing to stop any utility from expanding into any non-jurisdictional, non-regulated non-utility venture so long as a case could be made it could potentially reduce fuel cost, and the Commission then agreed it would be in the public interest. This limitless expansion of what could be recovered through the Fuel Clause was surely not contemplated by the Commission when it adopted the agency statement of general applicability in Order No. 14546 and its progeny.

A summary of Witness Ousdahl's testimony concerning the Commission's review and oversight

FPL Witness Ousdahl testified in her deposition concerning the Commission's ability to review FPL's investment transactions. EX 56 at 46-50. Using the Woodford Project as an example, the Commission would have access to the JIB invoices, which are voluminous pages of item-by-item invoices that the operator provides to FPL. *Id*. at 47-48, 50. Staff would have access to what FPL has access to per the drilling development agreement ("DDA"). TR 48. Under the PetroQuest/Woodford DDA, FPL would have audit rights and would be able to go in and audit the operator every couple of years. TR 48-49. However, PSC staff auditors would only have access to the results of FPL's audit, and would not be able to audit the operator's books or activities. TR 49. While the PetroQuest DDA

allows FPL to have audit rights, the Guidelines do not require FPL to obtain audit rights in future DDAs or joint operating agreements ("JOAs"), nor do the Guidelines require FPL to require that Commission staff have access to audit the books of future operators. Essentially, the Commission and its audit staff would have to "trust" that FPL undertook an appropriate audit of the operator's books and the operator's activities, while being cognizant that FPL would also have a substantial business partnership with that operator. Florida law does not contemplate or allow the Commission to delegate its regulatory authority (which includes auditing responsibilities) to a regulated monopoly; however, this is essentially what FPL is proposing if the Commission approves the Proposed Guidelines.

FPL's proposal, using the Woodford Project as an example, further complicates the Commission's review by failing to follow the accounting methods approved by FERC and used by the Commission. There is no dispute that FPL is an electric utility under Chapter 366, F.S.; however, FPL clearly intends to ignore the plain language of Rule 25-6.014(1), F.A.C., which states "[e]ach investor-owned electric utility shall maintain its accounts and records in conformity with the Uniform System of Accounts (USOA) for Public Utilities and Licensees…." As explained by Witness Ousdahl, FPL intends to ignore the USOA accounts for electric utilities and, instead, use parts of the USOA natural gas chart of accounts. EX 56 at 62. FPL's justification for failing to follow Commission rules is simply "the rules don't contemplate an electric utility investing in a gas development production." *Id*. In addition to not using the required USOA accounts, FPL proposes that FPL's subsidiary holding the non-regulated gas investments will be considered "regulated" in order to transfer those holdings from rate base to the Fuel Clause. *Id*. at 53. One can only assume future projects under the Guidelines will follow the same convoluted accounting path as set forth in the Woodford Project.

Regarding FPL's proposal to use depletion accounting and change the depletion rate of gas reserves as needed, Commission staff's review will again be limited. Witness Ousdahl testified ". . .

[e]ach year the Commission will get to review our math and the assumptions that we've made and affirm whether or not that [depletion] rate is proper. If the Commission believes it's not, you know, we would be ordered to calculate that differently." TR 93-95. However, she does not believe that the Commission's depreciation rate Rule 25-6.0436(2)(a), is applicable to depletion accounting. TR 93-95.

At the hearing, when asked whether the Commission's ability to look at an operator's books and records would be limited, and whether the Commission would have to go through FPL or FPL's subsidiary, Witness Ousdahl testified "[t]hey [Commission] don't need to look at PetroQuest. They need to look at the transactions FPL incurs through its joint venture with PetroQuest . . . and that's fully available to the Commission." TR 827. Staff, however, could not make a request to the operator for these records. TR 827.

Witness Ousdahl testified that she **expected** FPL's access to information with PetroQuest, and by extension with other natural gas investment partners and operators, would work exactly as it does with FPL's other joint venture relationships. TR 838. She believed that staff auditors' access to FPL's information would be the same as well. *Id*. She said FPL actively audits on site with Scherer and JEA, and would do the same with gas reserves operators. TR 839. She also believes that Commission audit staff has been comfortable with FPL's oversight of those joint ventures. *Id*. By extension, FPL hopes that the Commission audit staff will become comfortable with FPL's oversight of its gas reserves contracts (TR 823-24), and the audits that FPL conducts in a new field in which FPL Witness Ousdahl admits FPL has no experience. TR 388-89. However, FPL's Guidelines do not **require** that FPL obtain the information staff would need from its gas reserves partners and operators.

Summary of Witness Ramas' testimony concerning the Commission's review and oversight

Contrary to the testimony of FPL's Witnesses Ousdahl, Deason, and Forrest, if the Commission approves the Guidelines without modification, the Commission would lack the ability to

thoroughly audit, review, and determine the reasonableness or prudence of the costs incurred by FPL in its gas reserves ventures. As testified by OPC Witness Ramas:

> . . . the PSC auditors would not have the ability to audit and confirm the costs incurred . . . in constructing, maintaining, and operating the natural gas drilling and production facilities. The fact that the Commission would have no authority to audit the entity incurring the joint venture costs that would travel through the fuel cost recovery clause is relevant to OPC's position that these investment ventures fall outside the Commission's regulatory purview.

TR at 574. Regarding FPL's position that FPL has access to audit these records, that faint promise is not enough to satisfy the Commission's independent regulatory review role. Further, under the Guidelines, there is no affirmative requirement that FPL include the right to access and audit the records of its gas reserves partners, or actually audit those records. Witness Ramas testified: ". . . while FPL's subsidiary may have the right under the agreement to audit the invoices received from the operator, the fact remains that the Commission – the agency being asked to require FPL's customers to pay those costs – would not." TR 575.

It is doubtful FPL's operator partners would be willing to allow FPL to share their confidential information with the Commission staff given Florida's public records law. Without access to the records of FPL's partners, Witness Ramas testified:

> The Commission would have no ability to directly and independently confirm the accuracy and reasonableness of the gas production and drilling costs incurred by the operator. Essentially, FPL is asking the Commission to defer to FPL's subsidiary and accept being one important step removed from monitoring, confirming, and auditing the charges from the gas project operators. The fact that FPL is basically asking the Commission to delegate the role of auditing FPL's recovery request to FPL is germane to OPC's position that the transactions fall outside the limits of the Commission's regulatory domain.

TR 575. With respect to the Commission being able to independently verify for itself the costs presented for recovery, she testified:

> The PSC audit staff would be largely dependent on FPL (or possibly third party accountants engaged by FPL) in adequately monitoring, auditing and reporting on the gas drilling and production operations and in disclosing any accounting or cost

> recovery issues that may be the result of the unique and specialized accounting provisions. By way of example, the Commission would never agree to place FPL in charge of the Commission's auditing of the costs of oil that FPL submits for recovery in the fuel cost recovery clause proceeding, or the Commission's auditing of plant additions and operating expenses that FPL claims during a base rate case. For the same reasons, the Commission should not agree in this case to effectively delegate to FPL's subsidiary its role of auditing the cost recovery issues relating to FPL's proposed ventures into the gas exploration, drilling and production industry.

TR 577. Regarding the Commission's essential, statutorily mandated role in economic regulation of monopolies, Witness Ramas testified the Commission should exercise ". . . appropriate regulatory oversight to protect customers." TR 569 (quoting the Commission's Mission Statement and Goals). When auditing and monitoring costs to be recovered through the Fuel Clause, she testified the Commission should ". . . ensure that ratepayers only pay for prudently incurred expenses." TR 569 (quoting the Commission's Statement of Agency Organization). However, under the plain terms of FPL's Guidelines, FPL is asking the Commission to abdicate these essential functions designed to protect FPL's captive customers. Moreover, as testified by Witness Ramas, FPL wants to delegate this oversight function to itself. TR 577.

When it authorized the Commission to regulate public utilities, it is doubtful that the Legislature intended for the Commission to voluntarily delegate to the utilities it regulates some of its regulatory auditing functions. Yet, this is exactly what FPL proposes if the Commission approves the Guidelines.

Summary of Witness Lawton Testimony on FPL's Proposed Guidelines

OPC Witness Lawton – both an economist and practicing attorney – reviewed and presented his opinion of FPL's Proposed Guidelines. TR 670, 734-39. This was his opinion of the so-called "Customer Savings" Guideline:

> FPL's second guideline limits project prudence challenges on future investments to whether a project showed net present value savings "… relying solely on information … available to FPL at the time the transaction was entered, including the use of an independent third party reserve engineering report and FPL's standard fuel price

> forecasting methodology." Based on this guideline, so long as FPL files testimony consistent with the approaches and general findings in this case, so long as there is just one dollar of consumer net present value savings (no matter when such savings occur in the project) the Commission must find the investment prudent.
>
> There is no balancing of the equities in these gas reserve investment proposals. FPL's no risk investments can produce hundreds of millions of dollars of added shareholder profits, but so long as FPL projects that consumers receive a single dollar of projected net present value savings the project would be deemed prudent and pass the guideline test. Such an approach or guideline is not fair, or equitable, or a consumer protection.

TR 736-37. At the hearing, FPL failed to rebut Witness Lawson's analysis or opinion of FPL's Guidelines. TR 746-774. Further, FPL filed no testimony from any attorney which provided any legal opinion of FPL's Guidelines that contradicted Witness Lawton's opinion. Further, FPL had an opportunity to cross-examine Witness Lawton concerning his opinion for the Guidelines, but failed to do so. TR 746-774. Moreover, FPL tried to undermine his credibility by questioning his use of Order No. PSC 11-0080-PAA-EI in his testimony, but failed to do so. TR 751-763.

Witness Lawton testified that Guidelines were not necessary, because the Commission should review all future gas reserves investment opportunities on a case-by-case basis. TR 738. He cautioned the Commission to question FPL's claim that Guidelines were needed to allow FPL to move quickly, stating "why would this Commission or any regulator consider the Woodford Project or any future gas reserve investment where the economic viability rests primarily on a 50-year forecast of market prices, and more than a two-month delay may change the economics of the deal?" TR 739. Further, he testified that FPL's Guidelines were not consistent with sound ratemaking or Commission precedent. TR 741.

Witness Lawton also testified it was "prudent to mitigate volatility" (TR 780); however, approving the Woodford Project (and by logical extension any future gas reserves projects) would "be giving a regulatory subsidy to the utility to drill." TR 784.

Proposed Guidelines Force the Commission to Abdicate Mandatory Prudence Review

Aside from the jurisdictional gates that FPL's Guidelines cannot negotiate, FPL is unabashedly asking this Commission to adopt a new prudence review standard whereby, "the Commission should acknowledge that there are potential drilling/production risks with pursuing gas assets and as long as the transaction was within the guidelines it cannot be deemed imprudent based on the results." (PET. at 25-26, and TR 123). FPL's proposal to use presumptive prudence review violates the prudence review standard set forth in Order No. 13452[7] and the case-by-case review set forth in Item 10 of Order No. 14546. Furthermore, where Section 366.06, F.S. contains no presumptive prudence language nor any restrictions on the timeframe the Commission may use in determining prudence, FPL cannot ask the Commission to restrict its statutory duties.

FPL unsuccessfully attempts to argue that the Proposed Guidelines do not restrict the Commission in any way;[8] however, FPL's witnesses cannot ignore the plain language of the Proposed Guidelines themselves. The word "prudence" appears only once in FPL's Proposed Guidelines, and that Guideline is quoted here in full:

> Guideline II.A: Evaluation of the prudence of FPL's having entered into a new gas reserve project will be based on a showing that the project is estimated to generate savings for customers on a net present value basis, relying solely on information relative to these Guidelines available to FPL at the time the transaction was entered, including the use of an independent third party reserve engineering report and FPL's standard fuel price forecasting methodology. EX 10 at 2.

As Witness Lawton illustrated, the plain language of Guideline II.A is clear. TR 736-37. Neither legal argument nor the interpretations offered by FPL's witnesses can obfuscate the clear language of Guideline II.A, which dictates how the Commission would evaluate the prudence of FPL's

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[7] In Order No. 13452, pages 45-51, the Commission sets forth lengthy and thorough conclusions of law that the Commission is not restricted to only a forward-looking prudence review. On page 50, the Commission accurately concludes that a company "should expect to have the Commission visit the question of prudence when it becomes aware of facts that justify an inquiry." FPL asks the Commission to arbitrarily discard this agency statement of general applicability by seeking prudence preapproval and eliminating results from prudence determination.

[8] Witness Forrest attempts to explain how the terms of the Guidelines allow for a full prudence determination (TR at 162-63); however, terms limiting the amount of investment to $750 million in the aggregate and 25% of daily burn are irrelevant to the Commission's determination of whether a gas reserve project is prudent.

investments under the Guidelines.

FPL's Guideline II.A clearly limits the Commission's prudence review to only projects where FPL projects customer savings based on: 1) information FPL had at the time the investment was made; 2) a third party engineering report; and 3) FPL's standard fuel price forecasting methodology. FPL's proposed restrictions for the Commission must be examined individually to see why denial of FPL's Guidelines is required.

As a threshold matter, Guideline II.A requires FPL to make a showing that the project is estimated to generate savings for customers. EX 10 at 2. The evidence in this docket clearly indicates that projected savings for 50-year projects are as fugacious or as fleeting as the minerals themselves. Evidence relating to the Woodford Project showed that approximately 51% of forecasted customer savings evaporated the month after FPL filed its Petition.[9] Interestingly, Order No. PSC-08-0667-PAA-EI states that a hedging program's "primary purpose is not to reduce an IOU's fuel costs paid over time, but rather to reduce the variability or volatility in fuel costs paid by customers over time." P. 16 at IV.b. The very order FPL cites in its Guidelines clearly states **savings are not the purpose of hedging**; yet, FPL is asking the Commission to restrict its prudence review in a manner where "projected savings" become the threshold question, which is clearly not the intent of hedging programs.

Furthermore, since the Commission's purpose for hedging programs is to reduce volatility in fuel prices,[10] one would assume the Guidelines would include terms to ensure price volatility reductions. Of course, that assumption would be wrong. Clearly, the hedging rationale is a sham intended to prop up a proposal that violates the Commission's *de facto* fuel-eligibility rules. There are no terms in the Guidelines that require FPL to reduce volatility in fuel prices. There are no terms in

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[9] *Compare* Exhibit 9 (which was filed with FPL's Petition) with Exhibit 63 (which was based on a July 2014 natural gas price forecast FPL prepared to support its 2015 fuel filing) showing a loss of $55 million in paper savings based on FPL's 50-year prediction of future natural gas prices.

[10] *See* Order No. PSC-08-0667-PAA-EI.

the Guidelines to ensure production costs are fixed or capped at market cost. TR 159. There are no terms in the Guidelines to ensure production levels are fixed, aside from the 25% of daily maximum burn cap. There are no terms in the Guidelines to ensure customer savings. TR at 160. Nevertheless, FPL is asking the Commission to make pre-emptive prudence determinations if a single point-in-time natural gas price forecast conjures up customer savings.[11] Perhaps FPL would like the Commission to believe that natural gas production costs for future unnamed and uncontemplated projects will remain constant or decrease over time; however, there is absolutely no evidence in the record to support such a wishful notion. Without these terms or evidence in the record showing production costs in the industry, the record does not support an argument that the Guidelines will reduce fuel price volatility.

FPL effectively demands the Commission to limit itself to three review criteria. First, FPL asks the Commission to restrict itself to the information FPL had at the time the gas reserve project was entered into. Again, FPL asks the Commission to violate its established *de facto* rule on prudence review as set forth in Order No. 13452. The Commission should, and often does, look at what a utility knew or **should have known**. Order No. 13452 at 27 (i.e., "the facts that were **known** or that **should have been known** at the time of the decision." (emphasis added)). Order No. 13452 (commonly referred to as the "Maxine Mine" case) is an agency decision of general applicability setting forth the Commission's method and timing of conducting a prudence review. Maxine Mine clearly outlines the timing disconnect for fuel cost recovery in the Fuel Clause. The Commission acknowledged that utilities transacted and paid for fuel; then the utilities attempted to recover the fuel costs through the Fuel Clause. *Id*. at 51. At the time of recovery, the Commission was able to look

[11] Interestingly, Witness Forrest encourages the Commission to rely on FPL's natural gas price forecasts (TR 1011-12), yet, Witness Forrest discourages the use of a more recent natural gas price forecast that shows a decrease in customer savings arguing that the forecasts are only a snapshot in time (TR 175-77). FPL cannot have it both ways by using only those fuel price forecasts that are most favorable to its position. The fleeting customer savings apparent in the 1 month period shown between Exhibit 9 and Exhibit 63 significantly undermine FPL's argument that projected fuel savings over 50 years is a valid restriction on the Commission's prudence review. Moreover, Witness Forrest even acknowledged it would be appropriate for the Commission to use the most current data available. EX 55 at 80-81.

back at the transaction and intervening events in making its prudence determination. FPL's Guidelines impermissibly depart from this *de facto* rule (as it is an agency decision of general, industry-wide policy) by asking for a determination of prudence before the transaction has even taken place and long before any attempt at fuel cost recovery is made. In Maxine Mines, the Commission correctly acknowledged that a prudence review necessarily requires a detailed review of the transaction terms and how the transaction was managed. FPL's Guidelines impermissibly insist that the Commission make a pre-emptive prudence determination before a transaction even exists.

Taking the Woodford Project as an example, although FPL alleges a free flow of information (TR 146-48), Witness Forrest acknowledges it is not unusual to have terms in an agreement where FPL is at the mercy of the other party and must request information (TR 147). The Guidelines contain no terms allowing the Commission to review actions of a gas reserves counter-party or operator, and since those counter-parties and operators are outside the Commission's jurisdiction, FPL is requiring the Commission to restrict its prudence review to only those records that **FPL can request**. Obviously, FPL would like to regulate itself by determining what records it will ask for, which is inapposite with the Commission's statutory jurisdiction.

Second, Guideline II.A also mentions the "use of an independent third party engineering report." However, the convoluted grammatical structure of this run-on sentence in Guideline II.A is ambiguous as to what is actually required. It implies that FPL would actually obtain and use an independent third party engineering report as part of its decision to invest in a project under the Guidelines, yet this Guideline does not expressly require that FPL obtain such an independent report. And, even if FPL obtains an independent engineering report, one must question how independent such a report would actually be. For example, the Commission can look to the kind of review performed by Forrest A. Garb and Associates on the Woodford Project. That firm used only inputs from entities with an interest in seeing the project approved (i.e., PetroQuest and FPL), as well as publicly available

information. TR 163; EX 57 at 27-28. No actual independent tests or evaluations were performed. EX 57 at 32. Witness Taylor even stated a that third party could not go on the proposed land to perform an independent analysis,[12] which clearly supports Witness Lawton's conclusion that the third party analysis is simply a verification of FPL's arithmetic. TR 769.

Third, FPL asks the Commission to restrict its review of prudence to the projected savings based solely on FPL's natural gas price forecast. As Witness Forrest acknowledged, the forecasts rely on a single point in time and will be wrong in the future. TR 175-77. Again, it must be noted that one month after the filing of the Petition, projected Woodford Project fuel savings dropped from $106.9 million to $51.9 million based on an **updated** forecast. EX 63. Thus, not only do FPL's Guidelines not contain any customer protections, such as production cost caps, but FPL impermissibly asks the Commission to solely restrict its prudence determination to projected savings based on a single-point-in-time forecast created by FPL.

FPL attempts to draw an analogy between the Proposed Guidelines and those found in Order No. PSC-08-0667-PAA-EI approving fuel hedging guidelines. However, unlike FPL's gas reserves Guidelines, the hedging guidelines approved by the Commission do not implicitly limit the Commission's prudence review. The hedging guidelines in Order No. PSC-08-0667-PAA-EI define hedging activities and set forth guiding principles. In addition, the Commission states explicitly that, "the Commission may approve a Plan notwithstanding deviations from one or more of the guiding principles." PSC-08-0667 at 16. FPL's Guidelines turn this around and prescribe that the Commission restrict its prudence review to terms dictated by FPL unless FPL wants to unilaterally change them,[13] or a future Commission chooses to revisit the issue. The Commission's enabling

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[12] Dr. Taylor testified: "Generally, if you're investing in a project you're not allowed to go into someone else's field and perform tests." EX 57 at 32.

[13] The Guidelines state that FPL may ". . . seek Fuel Clause recovery for a project that deviates from one or more of the guidelines upon a showing that the project nonetheless is expected to benefit FPL customers." EX 10 at 4. As set forth above, the Commission's hedging guidelines allow the Commission to accept proposed plans **before implementation**

statutes, specifically Section 366.06, F.S., govern the Commission's prudence review. FPL fails to cite any authority allowing the Commission to restrict its prudence review or bind a future Commissions, because that authority simply does not exist.

Finally, FPL's Guidelines ask the Commission to adopt a presumptive pre-approval process for gas reserves investments. This, however, violates the case-by-case provision set forth in Order No. 14546. Item 10 of Order No. 14546 states, "[r]ecovery of such costs should be made on a case by case basis after Commission approval." The Commission clarified the phrase "case-by-case" stating:

> A utility must obtain our approval of these fuel-related expenses before it may recover them through the Fuel Clause. If a utility seeks to recover, between hearings, fossil-fuel related costs **which result in fuel savings** and these costs were not previously addressed in determining base rates, the utility must obtain our approval before cost recovery may commence.

Order No. PSC-98-0691-FOF-PU at 9 (emphasis added). Clearly, FPL's Guidelines violate the case-by-case requirement set forth by this *de facto* rule. And, FPL again ignores the plain language of Item 10 in Order 14546, which states "will result in fuel savings," reiterated in Order No. PSC-98-0691-FOF-PU ("which result in fuel savings") requiring fuel savings, not **projected** fuel savings as FPL's Guidelines suggest. Aside from insisting that the Commission adopt a new prudence review standard, FPL also demands that the Commission ignore its own precedent and replace unequivocal savings language with estimated or projected savings language. One can only assume that since natural gas exploration, drilling, and production is a risky business, FPL would not want to impose clear, objective requirements upon itself in its own Guidelines.

Risks of Investing in Gas Reserves

As Witnesses Taylor and Forrest explained, there are many risks surrounding the exploration,

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that deviate from the guidelines, but, unbelievably, FPL's Proposed Guidelines would allow FPL to deviate from the Guidelines and get recovery **after the fact** upon a showing of projected savings based on a point-in-time fuel forecast of FPL's choosing.

drilling, and production of natural gas.[14] These risks include production risks, geologic risks, drilling risks, and operating cost risks (EX 57 at 35), as well as seismic risks, environmental risks, and regulatory risks, such as moratoria. TR 139-40, 145. Witness Lawton used PetroQuest's strategy as an example of how oil and gas drilling and production companies (i.e., operators) attempt to reduce their risk. TR 717-18. He testified that operators enter risk-shifting contracts by partnering with other entities whereby the non-operating partners provide liquidity and capital to the drilling/production company while still allowing the operator to retain significant output entitlements. TR at 717-18. Although NextEra handed over the (essentially turn-key) Woodford Project to FPL to present to this Commission (TR 136-37), nothing in FPL's Guidelines requires FPL to perform even the minimal due diligence which FPL performed for the Woodford Project. FPL is not concerned, of course, because FPL is shifting the entirety of the risks to its customers. TR 725-26. Further, since NextEra, through USG, is known to be investing in the competitive oil, natural gas liquids ("NGLs"), and dry natural gas reserves businesses, nothing in the Guidelines prohibits FPL from acquiring natural gas reserves from NextEra or its affiliates that NextEra no longer wants; or if the market price for oil, natural gas, or NGLs plummet, changing the profitability of or risks associated with such investments, nothing prevents NextEra from dumping its less profitable or underperforming investments on FPL's customers. Thus, if FPL acquires USG's "seconds" and those "seconds" somehow meet the terms of the Guidelines, then FPL's customers could essentially be bailing NextEra's shareholders out of poor investments made by FPL's affiliate, USG.

FPL's Guidelines would restrict FPL's future gas reserve projects to basins with a "well-established history of gas production" (EX 10 at 3, Guideline III.A) and in an area with an available transportation path to FPL's service territory. *Id*. at 3, Guideline III.B. FPL proposes to limit future gas reserve projects to a certain type of natural gas, specifically at least 50% methane. *Id*. at 3,

[14] *See* TR 139-145, 714-719. *See also* EX 55 at 11-15, and EX 57 at 34-36, and 77-80 for discussion regarding types of risks identified by Witnesses Forrest and Taylor, respectively.

Guideline IV.A. FPL also proposes to sell off any NGLs and oil from future projects, and to use those sales figures in the calculation of whether or not the project presents customer savings. *Id*. at 3, Guideline IV.B. Therefore, far from FPL's position that gas reserve projects are to establish "a predictable, reliable, and low cost fuel supply" (PET. at 3, ¶ 5), FPL's Guidelines ask the Commission for pre-emptive approval and cost recovery of exploration, drilling, and production ventures in any case where at least 50% of the estimated production is usable as fuel for FPL's generating facilities. There is a vacuum in the record as to the availability of gas reserves that would meet these highly specific criteria in the coming years.

Furthermore, since up to 50% of the production obtained could be oil or NGLs under FPL's asset optimization program created by the 2012 FPL settlement, FPL can resell its share of the production and make additional profits for its shareholders. Witness Ousdahl testified that, if any gas is sold or conveyed to anyone other than FPL for use in its generating plants, it would fall under FPL's asset optimization function allowed under the settlement. EX 56 at 46. Per the settlement's asset optimization feature, FPL could then earn additional "profits" by selling the production it obtains from its gas reserves investments.

Although FPL's Woodford Project was flawed in many ways,[15] it contained more detail and more due diligence than would be required under FPL's Guidelines. The Guidelines lack any semblance of customer protections, such as: a fuel savings requirement (as required by Order Nos. 14546 and PSC-98-0691-FOF-PU discussed above), a prudence determination that looks back in time if the circumstances warrant (as required by Order No. 13452), a production cost cap (which would be indicative of a true hedge), a truly independent reserve analysis, or even a showing of due diligence

[15] The significant flaws included speculative customer savings that varied by more than 50% (TR 175), a drilling partner that is 60% behind schedule on one rig (TR 187) and 100% behind schedule on the second rig since it cannot find a suitable rig (TR 187-88), and FPL failing to rely on Witness Taylor's alleged expertise in determining production levels (Witness Taylor testified that a 10% to 20% production variance would not be significant (TR 845), yet FPL's analysis included the minimum 10% variance for presentation to the Commission (*compare* TR 117 with EX 64)).

regarding property (i.e., chain of title, royalty terms, etc.). Therefore, based on this lack of customer protections, combined with impermissibly restricting the Commission's prudence review, FPL's request should be denied.

Phantom Risk of Fuel Price Volatility

The Commission should also compare the phantom risk of "fuel price volatility" with the real production cost and production volume risks, as well as the liabilities, regulatory changes, etc., that are part of drilling and producing natural gas. These risks would directly affect the cost of gas obtained by FPL. The Commission should consider the fact that these risks, like fuel price volatility, are outside of FPL's control. For example, the production cost of the gas obtained from these reserves could exceed the market price of gas. Customers are aware that FPL is trying to mitigate the phantom risk of fuel volatility; however, the cost of requiring its customers to take on all of these additional risks is just too high. When placed on a scale, side by side, the risks of these variables outside FPL's control vastly outweigh the risk of fuel price volatility, which already is effectively mitigated by the annual resetting of the fuel factor in the annual Fuel Clause.

Gas Reserves Distinguishable from Rail Cars and Pipeline Laterals

One of FPL's justifications for allowing recovery of the Woodford Project costs through the Fuel Clause (and, by extension, all future gas reserves investments under the Guidelines) was by reference to how the Commission allowed recovery of costs associated with rail cars and pipeline laterals through the Fuel Clause. TR 369. However, this is not an apples-to-apples comparisons. First, rail cars and pipeline laterals were small, discreet projects. These were rate base-type physical, tangible items that actually reduced the delivered cost of fuel to power plants. FPL's proposed gas reserves investments are not typical rate base-eligible physical, tangible items, and FPL is only forecasting customer fuel savings. Second, the level of capital costs associated with rail cars and pipeline lateral investments pales in comparison with the "up to $750 million" FPL would be allowed

to invest annually in gas reserves investments.[16]

Chasing New Gas Reserves

Under the Proposed Guidelines, FPL is seeking to obtain up to 25% of its daily burn for natural gas. "Because of the natural depletion rate of shale-based gas production, it is understood that FPL will need to continue pursuing new gas reserve project opportunities to compensate for declining production from existing projects. . . ." EX 10 at 1. In the first few years after a well is drilled, production volume drops off quickly (depletes); thus, if FPL desires to maintain a volume of 25% of the average daily burn, it is going to have to keep chasing after new gas reserves investments up to $750 million per year, and to continually search for willing drilling partners and operators to drill and provide that volume regardless of the current market price of natural gas. If the Commission approves FPL's Guidelines, FPL would be constantly chasing its tail to maintain that 25% level. The Commission should ask this policy question: First, should Florida's electric utilities become increasingly involved with non-regulated, competitive market businesses, to obtain natural gas when that market already provides natural gas much more efficiently without all the concomitant risks associated with exploration, drilling, fracking, and production of shale gas? Secondly, has the Legislature provided the Commission any policy guidance to allow electric monopoly utilities to become vertically integrated into a competitive market by placing all the costs and risks on the backs of ratepayers?

Any Drilling Delays Benefit FPL's Shareholders

Another policy question the Commission should consider is how drilling and production delays would be handled. Would FPL and its shareholders be accountable for any delays, or would

[16] On page 18 of PSC Order No. 95-0946-FOF-EI, the cost of the railcars is listed as $24,024,000, which is a one-time expense that is 3% of the $750 million annually under the Guidelines. In Docket No. 930001-EI, FPL Witness Silva testified that the Martin Pipeline lateral would cost about $13.74 million. This estimated cost is a fact that is not subject to dispute as it was factual testimony by FPL in a Commission proceeding, and OPC would like the Commission to take notice of that fact pursuant to Section 90.202(12), F.S.

customers be expected to foot the bill? Witness Ousdahl testified that FPL would continue to earn a return on its investment in gas reserves even if there were some delay in the drilling of the wells and the extraction of the gas. EX 56 at 148. Thus, any delays in the drilling or extraction of natural gas from gas reserves or voluntary shut-ins of wells already drilled would benefit FPL's shareholders at the expense of the customers because the investment would not deplete (i.e., depreciate), thus allowing FPL's shareholders to continue earning its Commission-established profit on the un-depleted higher amount of the investment.

FPL's Guidelines Loophole

The conclusion of FPL's Guidelines contains the ultimate loophole that swallows any of FPL's alleged protections afforded by the Proposed Guidelines. It states as follows:

> **Flexibility** to respond to market opportunities is in the best interest of FPL and its customers. Therefore, it is understood that FPL may (i) **propose modifications** to these guidelines in the annual update provided pursuant to Guideline I.B above, and (ii) seek Fuel Clause recovery for a **project that deviates from one or more of the guidelines upon a showing that the project** nonetheless is expected to **benefit FPL customers.**

EX 10 at 4 (emphasis added). Phrased differently, while these Guidelines would guide FPL in its investments, FPL retains the ability to be "flexible" when investing. Proposing modifications to its Guidelines in its annual update before departing from the Guidelines is not the issue. The loophole is contained in the second phrase where it expressly allows FPL to seek recovery for any ". . . project that deviates from one or more guidelines. . . " so long as there is a ". . . showing that the project. . . is expected to benefit FPL customers." In addition, many key terms and provisions within this conclusion, as well as the other guidelines, are undefined. "Showing" is undefined. "Benefit FPL customers" is likewise undefined. "Deviate from one or more guidelines" plainly means that a project could deviate from all guidelines. Under this loophole, FPL can "deviate" from Guideline I.A., the 25% of average daily burn requirement, and Guideline I.D., the $750 million annual cap on gas

reserves investments, and, thus, burn a higher percentage or invest more than the cap.

Further, if FPL can "deviate" from Guideline III.A., which **appears** to prohibit FPL from investing in gas reserves projects in Florida, then there is nothing stopping FPL from investing in gas reserves projects and fracking for natural gas in Florida under its Guidelines as currently drafted. This may sound alarmist; however, the plain language of FPL's conclusion to its Guidelines speaks for itself. The conclusion of FPL's Guidelines has effectively rendered the whole of FPL's Guidelines meaningless. For this reason alone – that there is no actual limit on FPL's ability to invest in non-regulated natural gas reserves projects – FPL's proposal should be rejected.

Conclusion

For all these reasons, FPL's request to approve the Guidelines should be rejected. While OPC maintains that the Commission lacks subject matter jurisdiction to approve gas reserves investments, any future natural gas reserves investments should be reviewed by the Commission on a case-by-case basis as required by Order No. 14546.

ISSUE 7: If the Commission concludes that FPL's petition has merit, should the Commission engage in rulemaking pursuant to section 120.54, Florida Statutes, and adopt rules addressing gas reserve guidelines and operations rather than adopting the Gas Reserves Guidelines as proposed by FPL?

** No. The Commission lacks the express statutory authority to do rulemaking. Further, even if the Commission has jurisdiction, FPL may state there is an exception to rulemaking for recovery of costs through the Fuel Clause. See Section 120.80(13)(a), F.S. First, the Commission, not FPL, must assert this exemption from rulemaking. Second, there is nothing in the exemption from rulemaking that prohibits the Commission from establishing a rule to provide guidelines for gas reserves investments that will change customer rates. Third, notwithstanding this exemption from rulemaking, Section 366.06(1), F.S., specifically mandates that all applications for changes in rates shall be made under the rules and regulations as prescribed by the Commission.[17] This specific mandate controls over Section 120.80(13)(a), F.S., general exemption from rulemaking for clause proceedings.[18] Requesting

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[17] . . . All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. . . . Section 366.06(1), F.S.

[18] Commission legal and technical staff have recognized the need for a rule when a utility applies for a change in rates, even in the Fuel Clause. See Case Background recommending approval of Rule 25-6.0424, F.A.C., Petition for Mid-Course Correction, in Docket No. 100084-EI. (http://www.psc.state.fl.us/library/FILINGS/10/03779-10/03779-10.pdf) The "Purpose and Effect" of this rule clearly recognizes that the ". . . specific language of Sec. 366.06(1), F.S., []

approval for the Guidelines is de facto a pre-application for changes in customer rates on an automatic, going-forward basis for gas projects that meet the Guidelines. Therefore, any Guidelines approved for FPL and established without rules violates the mandate of Section 366.06(1), F.S. Since there is no express authority to allow investor owned monopoly electric utilities to recover costs associated with obtaining natural gas at the "wellhead" from gas reserves investments, FPL's proposal cannot get past first base (statutory authorization) let alone second base (rulemaking). As the Regulator, the Commission should state that FPL's has struck-out with its overreaching proposal. **

Argument: See OPC's position.

ISSUE 9: Should this docket be closed?

Issue rendered moot by Order No. PSC-15-0001-PCO-EI.

CONCLUSION

For the reasons stated herein, the Commission should deny FPL's Petition for approval of the Guidelines and instruct FPL that it will not entertain any further consideration of FPL's desire to enter into the non-regulated, competitive natural gas exploration, drilling, fracking, and production industry.

Respectfully submitted,

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requires that all applications for changes in rates shall be made to the Commission in writing under prescribed rules and regulations. . . ." See Order No. PSC-10-0332-NOR-EI, issued May 25, 2010 at 2.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **CITIZENS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF** has been furnished by electronic mail and/or U.S. Mail on this 12th day of January, 2015, to the following:

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