

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power
cost recovery clause and generating
performance incentive factor.

Docket No. 140001-EI
Now Known as
Docket No. 150001-EI
Filed: January 12, 2015

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**FLORIDA INDUSTRIAL POWER USERS GROUP'S POST-HEARING STATEMENT
OF ISSUES AND POSITIONS AND POST-HEARING BRIEF RELATED TO
FPL'S PROPOSED GUIDELINES FOR FUTURE OIL AND GAS
EXPLORATION/DRILLING/PRODUCTION PROJECTS**

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, files this Post-Hearing Statement of Issues and Positions, and its Post-Hearing Brief for Issues 4, 5 and 7 related to FPL's Proposed Guidelines¹ for Future Oil and Gas Exploration/Drilling/Production Projects. This Post Hearing submission is filed in accord with the Commission Chairman's briefing schedule order announced at the conclusion of the evidentiary hearing in this case. (Tr. 1094-1095).

BASIC POSITION AND SUMMARY

Put plainly, FIPUG opposes Florida Power and Light Company's ("FPL") efforts to have ratepayers fund oil and gas exploration/drilling/production ventures in Oklahoma, Texas, Louisiana, Arkansas, Mississippi, Alabama, West Virginia, Ohio and Pennsylvania as set forth in

¹ A redacted copy of FPL's proposed guidelines is attached as Exhibit A to this filing. FPL has disclaimed confidential protection for the number in Guideline I.D. Thus, the unredacted guideline reads: "FPL will not obligate itself to invest more than \$750 million in the aggregate on gas reserve projects over the course of any one calendar year."

FPL's proposed "guidelines."² For a multitude of reasons detailed in this filing, FIPUG opposes FPL's efforts to have the Commission approve and adopt FPL's proposed oil and natural gas exploration/drilling/production "guidelines" as the Commission's own guidelines (or rules, as the effect of FPL's proposed guidelines is less than clear) without the benefit of publicly noticed Commission workshops, formal rulemaking proceedings and/or the opportunity for other interested parties to participate in a proceeding to consider Commission policy for future oil and gas exploration/drilling/production projects.

Commission policy is set by the Legislature. The Commission implements policy by rule or through reasoned orders. The Commission should not implement policy by summarily adopting "guidelines" (whatever that term means, including the legal effect thereof) proposed by FPL or other third parties without allowing all affected or interested parties the opportunity to participate in the development of the proposed guidelines at issue. If the Commission opts to adopt FPL's proposed oil and gas reserve guidelines, the precedent will be set for other interested parties to similarly propose "guidelines" on a wide variety of topics (solar renewable energy, generation mix diversity, smart meters, etc.) or oil and gas projects that arguably, like FPL contends, are only applicable to the guideline proposer. This is a slippery slope that the Commission should avoid. The Commission should not adopt FPL's "guidelines" and instead engage in rulemaking or other appropriate proceeding (if warranted) to consider how best to address future oil and gas exploration/drilling/production projects.

² On December 18, 2014, the Florida Commission voted 4-1 to grant the vast majority of FPL's Petition. By doing so, the Florida Commission became the first state in the country to allow a regulated electric utility, using ratepayer funds, to become an active participant in the competitive natural gas drilling and production business. A written order memorializing this decision has not yet been filed in the case.

Issues

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?

FIPUG: No. FIPUG joins and adopts the arguments of the Office of Public Counsel.

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

FIPUG: No. Consistent with section 120.54, Florida Statutes, the Commission should engage in rulemaking to adopt any policy statements regarding the exploration and production of oil and natural gas.

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?

FIPUG: Yes. Florida Statutes provides that statements of policy should be adopted through rulemaking. Rulemaking affords affected parties notice and the opportunity to participate in the development of any oil and gas exploration and production policy that would be applied prospectively. Such wide-ranging policy pronouncements should be put in place through rulemaking. FPL’s “guidelines” are tantamount to proposed rules and should be considered in an appropriately noticed proceeding in accord with chapter 120, Florida Statutes.

Discussion of Issues 4, 5 and 7 Related to Commission Adoption of FPL’s Proposed Guidelines Governing Future Oil and Gas Exploration/Drilling/Production Ventures

The Commission should not adopt FPL’s proposed “guidelines” for future oil and gas exploration/drilling/production as Commission guidelines for the reasons set forth below:

- i. Rules, not “guidelines”, are the preferred approach to implement legislative policy**

The Legislature sets energy policy and the Commission implements such policy. FPL’s own witness, former Commissioner Terry Deason, readily acknowledged this fact. Tr. 915, 934. Witness Deason testified that Commission policy is established through rulemaking or by Commission order. Tr. 934, 1213-1215. He never mentioned Commission “guidelines” as a tool

by which policy is established. Tr. 934, 1058, 1226.

Rulemaking is the preferred way in which to implement Commission significant statewide policies, as recognized by Supreme Court in the case of *City of Plant City v. Mayo*, 337 So. 2d 966, 973 (Fla. 1976). The *Plant City* case involved significant policy matters in a rate proceeding which prompted the Supreme Court to state:

Whenever the Commission utilizes the forum of an individual rate proceeding, for which non-specific notice is given, to effect a major change in rate-making policy, obviously some means should be provided to grant the persons directly affected an opportunity to be heard by the Commission....**Preferably, the Commission could decide issues of statewide significance in rule-making proceedings under the Administrative Procedure Act, to avoid the lightning-like effect of adopting major policy shifts in select rate proceedings....**(emphasis added).

City of Plant City at 973, footnote 15. Furthermore, while incipient policy can be developed over time, such policy is usually set forth in Commission orders resulting from litigated cases, not by referencing utility sponsored “guidelines” appended to witness testimony. An administrative agency “may implement rules through incipient rule-making, e.g., through a case-by-case adjudicatory process.” *Florida Power Corporation v. State of Florida, et al.*, 513 So.2d 1341 (Fla. 1st DCA 1987).

The case of *City of Tallahassee v. Florida Public Service Commission*, 433 So. 2d. 505 (Fla. 1983), is instructive. In *City of Tallahassee*, the Court recognized that the Commission may initially develop its policies by adjudicating cases, like was done in Phase 1 of the FPL case in which the Commission considered and voted on the specifics of the proposed Woodford project. However, when the Commission begins considering matters that will likely have industry-wide impact, rulemaking is the preferred course to implement policy.

In this case, there is little doubt that the Commission’s December 18, 2014 decision, and more pointedly, FPL’s proposed “guidelines” for future oil and gas

exploration/drilling/production projects, will have an impact throughout the state and involve a significant policy matter. For example, Exhibit 67 reveals that Duke Energy, which is the second largest investor-owned utility in Florida, is interested in the oil and gas exploration/drilling/production issue before the Commission. (“Duke Energy Corp. is interested in making its first investment in the production of shale gas as its power plants become more dependent on the fossil fuel.... The company is watching a proposal by NextEra Energy Inc. under which its Florida subsidiary would invest in Oklahoma gas production to reduce fuel costs.”). The Commission Chairman commented about the new policy ground being plowed with FPL’s Woodford project. (“ This is untouched ground that we are dealing with right now”). Tr. 37. Finally, the Commission’s Order setting the case for hearing recognized the “novel” issues raised by FPL and stated that, “FPL’s June 25 petition is a case of first impression that will impact the Commission’s consideration of gas reserves on a going forward basis;” See August 22, 2014 Order Establishing Procedure for Florida Power and Light Company’s Deferred Issues, Order No. PSC-14-0439, p. 1.

These comments and related evidence undermine FPL’s efforts to downplay and minimize the impact the Commission’s decision related to FPL’s proposed oil and gas “guidelines” for exploration/drilling/production projects. The Commission’s “guidelines” decision will impact other Florida utilities and their customers. The Commission should opt to pursue rulemaking or incipient policy on a case-by-case approach to consider the policy issues associated with FPL’s proposed “guidelines” for future oil and gas exploration/drilling/production ventures.

- ii. Consideration of “guidelines” for future oil and gas exploration/drilling/production ventures in this proceeding does not allow for all interested parties to participate**

Adopting in this docket, either in whole or part, FPL's proposed "guidelines" for future oil and gas exploration/drilling/production efforts will not allow all interested parties to participate in the implementation of an important policy.

As noted above, Duke Energy is interested in the Commission's policy permitting an investor-owned utility invest in oil and gas exploration/drilling/production projects. Duke did not participate in the evidentiary hearing at which this issue was considered. White Springs Agricultural Chemicals Inc., d/b/a PCS Phosphate, a regular participant in proceedings before this Commission, attempted to participate in this proceeding, arguing that its substantial interests were affected. The following statement contained in PCS Phosphate's Response to FPL's Motion to Deny PCS' Participation is telling:

It is inarguable that the basic subject matter of the FPL proposal, the cost recovery construct that FPL proposes, **and the FPL-proposed guidelines governing future spending on gas exploration ventures** that may or may not require Commission pre-approval **each pose policy questions carrying far-reaching ramifications for all Florida consumers.** (emphasis added).

See PCS Response to FPL Motion to Deny Participation, Document No. 06198-14, filed with Commission Clerk on November 5, 2014 at page 12-13. The Commission denied PCS Phosphate the right to participate and be heard in this case. See Order No. PSC-14-0664-PCO-EI. Additionally, scores of interested persons have written to the Commission about this case and the policy to be implemented.³

³ The docket entry of December 31, 2014 in Docket No. 140001 suggests that, to date, that the Clerk has assembled 16 filings, each containing multiple written communications. See below: Docket correspondence [Part 16]- Consumers and their representatives. [CLK note: Subsequent correspondence from consumers will be appended to this document; see DN 00392-14 for Part 1; see DN 06622-14 for Part 2; DN 06625-14 for Part 3; DN 06626-14 for Part 4; DN 06627-14 for Part 5; see DN 06628-14 for Part 6; see DN 06629-14 for Part 7; see DN 06644-14 for Part 8; see DN 06645-14 for Part 9; see ND 06646-14 for Part 10; see DN 06647-14 for Part 11; see DN 06648-14 for Part 12; see DN 06649-14 for Part 13; see DN 06651-14 for Part 14; see DN 06652-14 for Part 15.]

Having a transparent process, like a statutory rulemaking proceeding, during which interested persons identified above (and others) can share information about the oil and gas exploration/drilling/production policy of the Commission should be pursued, not avoided. Commission rulemaking is a quasi-legislative function, one that should welcome broad public participation, not shun or thwart public participation. *Gen. Tel. Co. of Fla. v. Fla. Pub. Serv. Comm'n*, 446 So.2d 1063, 1066 (Fla.1984) (“This Court has recognized that agency rulemaking pursuant to statutory authorization, such as the PSC rulemaking in this case, is a quasi-legislative function.”). Quasi-legislative proceedings permit a wider range of interested persons to provide information to the Commission or other state agency for consideration when adopting a rule. *Adam Smith Enterprises, Inc. v. State Dept. of Environmental Regulation*, 553 So.2d 1260, 1271 (Fla. 1st DCA 1989) (an informal rulemaking record includes the written submissions of any interested party). The Commission should welcome broader public participation in implementing policy related to investor-owned utilities investing ratepayer funds in future oil and gas exploration/drilling/production projects.

iii. FPL suggested at hearing that is open to workshops and further studied consideration of possible oil and gas exploration/drilling/production guidelines, (including the \$750 million dollar cap and the percentage burn rate cap) for its generating fleet for future ventures

Arguably recognizing that its proposed “guidelines” need further work, FPL witnesses testified during the evidentiary hearing that workshops or further proceedings to consider appropriate guidelines are options that the Commission could pursue. FPL witness Deason stated in part when asked about the pace at which the oil and gas exploration/drilling/production issues were being pursued:

...If the Commission feels that at some point there needs to be a workshop or even a rule making and invite more people to participate in terms of future gas reserve projects, it's certainly within their discretion to do. And if they feel that that's appropriate, I certainly would not object to that, I would encourage it...

Tr. 956 Deason. FPL witness Forrest stated that he was open to further discussion and dialogue about the \$750 million cap on oil and gas ventures and the percentages of FPL's daily "burn" of natural gas in its fleet proposed in the guidelines. Forrest stated in part:

Again, the \$750 million and the percentages that were proposed, were proposed to try and allow a fair amount of flexibility in terms of negotiating these transactions. If the Commission sees fit that something else is more appropriate, we're happy to engage in that dialogue.

Tr. 1064 Forrest.

FIPUG suggests that the "guidelines" should be considered in further proceedings, that additional dialogue is needed and the proposed guidelines should not be summarily adopted in this proceeding.

iv. Numerous questions exist about the proposed "guidelines" for future oil and gas exploration/drilling/production ventures; additional information needed

The Commission should not adopt FPL's proposed guidelines as its own without additional information and public input from other interested persons concerning the proposed oil and gas exploration/drilling/production guidelines. A host of unanswered questions about FPL's proposed guidelines remain. Some, but not all of these questions are set forth below.

1. Do FPL's guidelines limit or otherwise restrict the Commission in reviewing evidence in future proceedings? Some say yes, some say no, making it unclear based on this record. For example, FPL witness Deason testified as follows:

Question: Is it your testimony that as long as the investment is consistent with the guidelines, I guess, prudence attaches at the time of the investment?

Answer: Yes....

Tr. 1205 Deason. Guideline II.A states:

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 that the transaction was entered, including the use of an independent third party reserve engineering report and FPL's standard fuel price forecasting methodology. (emphasis added).

Thus, while FPL witness former Commissioner Deason and the pertinent guideline suggest that the FPL is tying the Commission's prudence hands with FPL's proposed guidelines, FPL witness Forrest had a different view.

Question: So you're not suggesting that by adopting these guidelines the Commission would abdicate its authority to determine the prudence of the transaction?

Answer: Not in any way....

Tr. 513 Forrest.

Question: So your testimony is that once you meet the guidelines, the Commission is precluded from looking behind and determining whether or not the following of the guidelines was prudent or not prudent?

Answer: No, I don't think that's true at all.

Tr. 276 Forrest. There is a disconnect about how the guidelines may restrict, or not, the Commission's prudence determinations in future oil and gas exploration/drilling/production projects. The confusing FPL "guidelines" and the related attempt to hamstring the Commission's prudence review should be rejected.

2. Is the \$750 million cap an annual cap or a cumulative aggregated cap? FPL witness Deason testified that he believed that the \$750 million cap could not be exceeded in the aggregate. FPL witness Forrest testified that the \$750 million cap only applied to capital expenditures. Guideline I.D. states "FPL will not obligate itself to invest more than \$750 million in the aggregate on gas reserve projects over the course of any one calendar year." The record is muddled and should not form the basis for implementing Commission policy on this important issue that will directly impact ratepayers.

Question: Let me show you the guideline. That's probably a more fair way to approach this. In guideline 1-D it says: "FPL will not obligate itself to invest more than \$750

million in the aggregate on gas reserve projects over the course of any one calendar year." I read that as saying you can't invest more than 750 in one year, but you're able in the next year to invest a fresh 750. Is that how you read it?

Answer: I don't read it that way, but obviously this would be better for Mr. Forrest. I read it that it cannot be more than \$750 million in the aggregate at any one time....

Tr. at 1273 Deason. When FPL witness Forrest was asked how he envisioned the \$750 million cap would work, he testified that the cap only applied to capital expenditures.

Question: All right. The guideline ID states that: FPL would not obligate itself to invest more than a certain amount [\$750 million] in the aggregate on gas reserve projects over the course of any one calendar year.

Answer: Right.

Question: What is the relative percentage of capital versus expense in that amount?

Answer: So if I can partially answer your question, the \$750 million is a capital amount. That is meant to be capital....

Tr. at 517 Forrest. Plainly, it is unclear how the cap would work. A workshop and/or formal rulemaking should be pursued.

3. Is the \$750 million cap the correct figure? Witness Forrest testified that he did not come up with this number, but that he received input from senior management, including key NextEra, Inc. senior executives (who did not appear at the hearing) who helped come up with the \$750 million cap figure. What these senior executives considered and how they arrived at the \$750 million cap figure remains unclear.

Question: Did you come up with that \$750 million figure?

Answer: Not directly, no. It was in discussions with senior management and --

Question: So who were the people in senior management that you discussed this number with?

Answer: By name?

Question: The 750, yeah.

Answer: That was – well, we describe it as the Florida Power and Light Operating Committee, which would have been senior members of our leadership team at the NextEra level, as well as those vice-presidents that report to Eric Silagy, as President of Florida Power & Light, would have been those that had reviewed the guidelines.

Question: So you have me Eric Silagy’s name. Anybody else that you can recall?

Answer: Jim Robo, Moray Dewhurst, Charlie Sieving. There is a long list of names.

Tr. 220-221 Forrest. The Commission should conduct rulemaking or otherwise gather additional information about the appropriate cap amount and how it can be implemented in a way that best protects ratepayers while implementing Commission policy.

4. Do the guidelines allow “wildcatting” or exploration? FPL witness Forrest said the guidelines allow “wildcatting” or exploration. Guideline III.A. suggests otherwise.

Question: Do you know, can you tell me what wildcatting is?

Answer:It’s a bit of a slang term, but it is exploring in an area that doesn’t have other production....But it’s drilling in an area where you don’t have a lot of known production data otherwise and so you are basically relying on seismic data in order to hit a particular area of hydrocarbons.

Question: And your current Woodford project does not involve wildcatting, correct?

Answer: I would agree with that, yes.

Question: Okay. And I looked at your guidelines and I didn’t see anything in your guidelines that precluded wildcatting on a go-forward basis. You would agree that the guidelines contemplate potentially that you could engage in exploration/wildcatting?

Answer: Yeah. I would describe wildcatting as a slang term for, you know, extreme exploration if you would. But our guidelines are meant to look in areas with good proven reserves. That doesn’t preclude us from being in an area that doesn’t have other production but there is known production in the area that we can rely upon.

Tr. 1056-1057 Forrest. Guideline III.A. states, “FPL will only enter into transactions for onshore gas reserve projects, located in areas with reserves that have a well-established history of gas production.” Again, another unanswered/unclear “guideline” question is presented.

5. Should Guideline IV.A be adjusted to increase the percentage of methane (natural gas) for a qualifying project? Presently, FPL is able to explore and drill wells that may produce a significant amount of oil or other liquefied natural gas. See Guideline IV.A. The Woodford project was touted as producing only “dry” natural gas, but this guideline permits FPL to explore, drill and produce a significant amount of oil. Florida ratepayers do not want to be in the volatile and risky oil production business. More information is needed to revise this particular guideline so that FPL and its ratepayers are truly in the natural gas business, not the oil business.

6. Should the guidelines require that FPL annually file a clear statement which tells the Commission and ratepayers, on a project by project basis, whether the ratepayers made money, lost money or broke even on a particular oil and gas project? Additionally, should the guidelines require that FPL annually file a clear statement which shows the profits FPL earned for its investments in oil and gas exploration/drilling/production? This telling and important information should be provided annually and the guidelines should require such information. At this point, however, many details of the annual filing requirements, such as the two points raised above, are unclear and need work.

7. Should the \$750 million cap be adjusted for inflation? This is another unanswered, unaddressed question that is ripe for further consideration in a rulemaking proceeding or in a case-by-case adjudicatory process.

8. Are the states approved for future oil and natural gas exploration/drilling/production (Oklahoma, Texas, Louisiana, Arkansas, Mississippi, Alabama, West Virginia, Ohio and Pennsylvania) the right ones? Should additional states be added or should some states be removed? Should a criterion other than a transportation path be used to screen qualifying states? Must the transportation path be a “firm” path or is an “as-available”

transportation path sufficient? Again, more information and viewpoints are needed about these and other question. Access to additional information and viewpoints can be realized through rulemaking or further Commission proceedings.

9. What is the process for the guidelines to be amended or waived? While the proposed guidelines expressly contemplate that FPL may amend the guidelines, nothing suggests how other affected parties may seek to amend FPL's proposed "guidelines" that may become Commission guidelines.

10. Should the guidelines set forth some minimum requirements for the third parties with whom FPL contracts and funds to pursue future oil and gas exploration/drilling/production ventures? To protect the ratepayers, some minimum level of financial stability should be expected from the third parties who will be finding, drilling for and processing the oil and natural gas in question. FPL's contracting partner in this case, PetroQuest Energy, Inc., is rated below investment grade by two rating services, Moody's and Fitch. Exhibits 27, 68 and 69. Having financially suspect companies serve as approved oil and gas operators for future oil and gas exploration/drilling/production projects surely warrants further Commission consideration.

These are just a handful of many questions that remain related to FPL's proposed guidelines. The Commission would be well-served by not endorsing these guidelines now, but striving the gathering additional information from FPL and interested others related to future oil and gas exploration/drilling/production projects.

v. Statutory rulemaking provides an accepted and known process to implement policy and the Commission should make use of it to address future oil and gas exploration/drilling/production ventures

FIPUG suggests that statutory rulemaking pursuant to section 120.54, Florida Statutes, provides the Commission and interested parties with a familiar and well-travelled path to address how future oil and gas exploration/drilling/production projects will be evaluated. Again, the

statutory rulemaking process is more inclusive than crafting “guidelines” in the pending adjudicatory proceeding. The statutory rulemaking process requires public notice of the proposed rule, allows for hearings on a proposed rule, provides opportunities for workshops, and ensures that interested parties can ask questions of the Commission, since the Commission, not FPL, will be applying the policies in question. See, generally, s. 120.54 F.S. Further, statutory process provides for modification of a proposed rule and a host of other consumer protections that are not present with the “guideline” approach suggested by FPL. *Id.* Rulemaking is a better approach than adopting FPL’s “guidelines” in this proceeding.

vi. Adopting FPL’s proposed “guidelines” for future oil and gas exploration/drilling/production ventures in this case will establish precedent for others to use this “guideline” approach in the future to implement policy on other subjects and oil and gas exploration/drilling/production

Should the Commission approve FPL’s proposed guidelines, others will likely seek to have the Commission approve “guidelines” to address oil and gas exploration/drilling/production projects, or other topics. FPL witness Deason acknowledged, based on the same or similar facts, that the Commission would be hard pressed to disapprove another utility’s request to have ratepayers fund oil and gas exploration/drilling/production forays. Tr. 1285. (“...I think the Commission would be hard pressed, if all the facts were the same, to treat one regulated entity different from another regulated entity.”).

Additionally, other interested parties would be encouraged to seek Commission approval of “guidelines” related to other topics. If the Commission adopts and travels down the “guideline” road, what is there to stop others from filing petitions which includes “guidelines” for Commission adoption, carefully crafted language that suggests the “guidelines” only apply to the party seeking relief, and testimony supporting the “guidelines” and their purported limited effect? The party seeking Commission approval of the “guidelines” will likely, as FPL did in

this case, fight off attempts by third parties to intervene in the proceeding. See Order No. PSC-14-0664-PCO-EI.

Surely this Commission does not want to encourage parties to avoid the transparency and procedural protections of rulemaking by approving the “guideline” approach to implementing policy. The Commission should not act on FPL’s “guidelines” and, in its discretion, pursue rulemaking or other Commission activities to further flesh out the concepts and criterion embodied in FPL’s proposed “guidelines”.

Conclusion

For the reasons set forth above, the Commission should not adopt FPL’s “guidelines” for future oil and gas exploration/drilling/production ventures. FPL or the Commission should pursue rulemaking or other Commission proceedings (if sufficient interest exists) to implement policies governing future investor-owned utility proposed and ratepayer-funded oil and gas exploration/drilling/production ventures.

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GAS RESERVES GUIDELINES

Florida Power and Light Company's ("FPL" or "the Company") goals in purchasing natural gas to supply its power plants are reliability, price stability and low cost. Participating in gas reserve projects through a joint development agreement is a form of long-term hedging that can be a valuable supplement to FPL's existing short-term hedging program.

The Florida Public Service Commission ("Commission") previously has found "that the purpose of hedging is to reduce the impact of volatility in the fuel adjustment charges paid by an IOU's customers, in the face of price volatility for the fuels (and fuel price-indexed purchased power energy costs) that the IOU must pay in order to provide electric service." Further, the Commission found the primary purpose of hedging is to "reduce the variability or volatility in fuel costs paid by customers over time." (*Order No. PSC-08-0667-PAA-EI, Attachment A, page 2*)

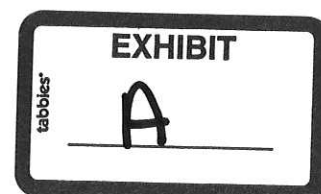
Because of the natural depletion rate of shale-based gas production, it is understood that FPL will need to continue pursuing new gas reserve project opportunities to compensate for declining production from existing projects, as well as to expand the percentage of FPL's gas requirements that are hedged long-term. Moreover, it is clear that market participants and potential counterparties expect and value the ability to respond to opportunities quickly. Accordingly, a successful market strategy requires an established framework within which FPL may negotiate and consummate transactions.

I. SCOPE OF GAS RESERVE PROJECT PARTICIPATION

- Gas reserve projects will help reduce the overall portfolio price volatility and supply risk. The transactions will lessen the impact to customers if gas prices spike or rise and stay high for an extended period of time. Even though each transaction individually will represent a very small percentage of the Company's supply portfolio, collectively these transactions would help dampen the effects of price volatility.
- Guideline I.A: Overall, the estimated aggregate output of all gas reserve projects will not exceed the following percentages of FPL's projected average daily natural gas burn:

Year	Maximum Volume as a Percentage of Average Daily Burn
2015	
2016	
2017	

- Guideline I.B: FPL will provide an annual update to the three year window presented in Guideline I.A as part of its Risk Management Plan filed in early August each year with the Estimated/Actual Testimony filing.
- Guideline I.C: Because gas reserve transactions provide a hedging benefit for FPL and its customers, the estimated aggregate volumes of natural gas from all gas reserve transactions in each calendar year will be netted against the amounts that FPL forecasts



GAS RESERVES GUIDELINES

to hedge pursuant to FPL's annual Risk Management Plan. FPL will hedge the net amount as prescribed in the Risk Management Plan.

- Guideline I.D: FPL will not obligate itself to invest more than [REDACTED] in the aggregate on gas reserve projects over the course of any one calendar year.

II. CUSTOMER SAVINGS

- Investment in gas reserve projects can offer significant price stability for the volumes produced, while also providing customer savings in a market of rising gas prices. A benefit of a well-managed gas reserves investment program is secure low-cost natural gas for our customers for years into the future that delivers an expected pricing discount relative to the forward curve. Since typical wells produce for 40 to 60 years, gas production joint ventures can provide stable pricing for decades to come, thus helping to achieve the Commission's stated goal for hedging to reduce price volatility for customers.
- Transactions of this type can result in lost opportunities for savings in the fuel costs to be paid by customers if fuel prices actually settle at lower levels than at the time the gas reserves investments were made. However, since only a portion of FPL's fuel requirements is procured through gas reserves investments, FPL maintains the ability to purchase low priced fuel when the opportunity arises. Moreover, in some projects it may be possible to delay the drilling plan and/or reduce the production volume from existing wells in the event of unexpected price declines. Conversely, when fuel prices settle at higher levels than at the time the gas reserves investments were made, increased customer savings are a direct result of the gas production joint venture.
- 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.

III. SUPPLY DIVERSITY

- Gas reserve projects will provide beneficial geographic diversity of fuel supply. Catastrophic events, such as hurricanes, affect FPL's ability to procure and deliver fuel. Investments in multiple gas reserves across various regions will reduce the impact of a single event disrupting FPL's entire fuel supply.
- Gas reserve projects also will increase the diversity of FPL's supply from a physical perspective, as well as a financial one. The longer time frame of these investments

GAS RESERVES GUIDELINES

offers diversity when compared to the current financial and physical contract lengths in the existing hedging program.

- FPL intends over time to transact with a wide range of suppliers so as to minimize concentration of supply with any one producer. This will allow FPL to transact in multiple regions and will also provide for reduced credit exposure to any one entity.
- Guideline III.A: FPL will only enter into transactions for onshore gas reserve projects, located in areas with reserves that have a well-established history of gas production. Florida does not meet these criteria.
- Guideline III.B: Because one of the primary purposes of gas reserve projects is a physical source of supply to serve its substantial gas needs, FPL will only enter into a transaction if there is a transportation path available to deliver the gas produced from that project to FPL's service territory. Texas, Louisiana, Oklahoma, Arkansas, Mississippi, Alabama, West Virginia, Ohio, and Pennsylvania currently meet this criterion. FPL will make use of its transportation portfolio, along with considering new physical paths. The costs of any new transportation needed to deliver gas from a gas reserve project will be taken into consideration when analyzing the economics of that project.

IV. CHARACTERISTICS OF GAS RESERVES

- Natural gas production consists of a combination of hydrocarbons, which can include methane, natural gas liquids ("NGLs"), and oil. The composition of natural gas production varies region by region and within individual regions.
- FPL's natural gas plants burn primarily methane and can accommodate only a very small percentage of other hydrocarbons. However, there are active third party markets for purchase and sale of NGLs and oil.
- There are a range of designations for reserves denoting the degree of certainty that the predicted quantity of gas is commercially recoverable from the well under current conditions: Proved, Probable, and Possible. FPL's gas reserve portfolio would appropriately be comprised of a wide range of projects, including reserves that fall within each of those categories.
- Guideline IV.A: Although there is significant customer value in the production and sale of NGLs and oil, the purpose of FPL's gas reserves program is to provide a source of physical supply of natural gas to serve its power plants. For that reason, FPL will only enter into a transaction for a gas reserve project if the estimated output of the wells in the project contains at least [REDACTED] from methane by volume.
- Guideline IV.B: All NGLs and oil produced from a gas reserve project will be sold at market prices and the resulting revenues will be credited to the Fuel Clause to offset the production costs for which customers are responsible, thus lowering the effective cost of natural gas. The projected revenues from NGLs and oil produced from a gas reserve project will be taken into consideration when analyzing the economics of that project.

GAS RESERVES GUIDELINES

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.