

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a purchase and sale agreement between Florida Power & Light Company and Calypso Energy Holdings, LLC, for the ownership of the Indiantown Cogeneration LP and related Power purchase agreement.

DOCKET NO. 160154-EI

FILED: September 16, 2016

**FIRST AMENDED PREHEARING STATEMENT
OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel, ("OPC"), pursuant to the Order Establishing Procedure in this docket, Order PSC-16-0276-PCO-EI, issued July 19, 2016, hereby submit this Amended Prehearing Statement.

APPEARANCES:

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c/o The Florida Legislature
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On behalf of the Citizens of the State of Florida

1. **WITNESSES:**

None at this time.

2. **EXHIBITS:**

None at this time.

3. STATEMENT OF BASIC POSITION

OPC acknowledges that the proposal before the Commission appears to provide material incremental benefit to customers above and beyond the level of total payments that would have been made under the Indiantown PPA. Nevertheless, the process under which the proposed buyout (or its equivalent) has occurred in this case and in the previous similar transaction with the Cedar Bay coal plant is lacking in several areas.

The utilities regulated by this Commission – including Florida Power & Light (“FPL”) – receive the certainty of the cost recovery for approved Purchased Power Agreements (“PPA”) of all contracted payments to the independent power provider. This certainty of recovery is important for project financing and the availability of the resources that are deemed cost effective when originally contracted for and approved. There is an unbroken line of Commission policy decisions in this area that all avoid the application of hindsight to the transactions like the one at issue here that are not evaluated anew in light of changed circumstances. In transactions like the one at issue here, there is no corresponding obligation imposed upon the utility to seek and negotiate the lowest possible buyout price because they are provided with the incentive to maximize shareholder return by converting a portion of the capacity clause pass-through cost stream into a shareholder return that is increased by paying the seller the highest possible price that manages to come in under the “business-as-usual” PPA revenue requirement. FPL’s burden in this case should be to demonstrate that the buyout is not only “better” for the customers but that it is the best deal that FPL can achieve.

OPC does not believe that FPL has met its burden to prove that the method used to eliminate the PPA is the most cost effective one available, that the proposed buyout price is the lowest possible buyout price, and that this transaction is in the best interest of FPL’s customers,

and thus is prudent. However, OPC does not object to the Commission making a 120.57(2), F.S., determination based on the record developed up to the date of the hearing and brief(s), if any, filed by parties at their option. To the extent briefs are waived by all parties, OPC does not object to the Commission making a bench decision on the day of the hearing with an oral recommendation from Staff.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: Is FPL’s proposal to acquire the ICL Facility as proposed in its Petition (the “ICL Transaction”) cost effective?

OPC: FPL has not met its burden to prove that the method used to eliminate the PPA is the most cost effective one available, that the proposed buyout price is the lowest possible buyout price, and that this transaction is in the best interest of FPL’s customers, and thus is prudent. Nevertheless, OPC does not object to the Commission making a 120.57(2), F.S., determination based on the record developed up to the date of the hearing and brief(s), if any, filed by parties at their option.

ISSUE 2: Is the purchase price for the ICL Facility in the proposed ICL Transaction fair and reasonable?

OPC: FPL has not met its burden to prove that the method used to eliminate the PPA is the most cost effective one available, that the proposed buyout price is the lowest possible buyout price, and that this transaction is in the best interest of FPL’s customers, and thus is prudent. Nevertheless, OPC does not object to the Commission making a 120.57(2), F.S., determination based on the record developed up to the date of the hearing and brief(s), if any, filed by parties at their option.

ISSUE 3: What are the operational and regulatory risks associated with FPL’s proposed ICL Transaction and has FPL appropriately accounted for these risks under the transaction?

OPC: The operational and regulatory risks are those stated by FPL's witnesses Barrett, Herr, and Hartman. FPL bears the risk of its analysis being incorrect. Further, FPL has not met its burden to prove, given its assessment of risks, that the method used to eliminate the PPA is the most cost effective one available, that the proposed buyout price is the lowest possible buyout price, and that this transaction is in the best interest of FPL's customers, and thus is prudent. Nevertheless, OPC does not object to the Commission making a 120.57(2), F.S., determination based on the record developed up to the date of the hearing and brief(s), if any, filed by parties at their option.

ISSUE 4: In its economic evaluation of and selection of the proposed transaction, did FPL take into account all reasonable measures to mitigate future purchase power agreement (“PPA”) impacts to ratepayers?

OPC: FPL has not met its burden of demonstrating that it took into account all reasonable measures to mitigate future PPA impacts to ratepayers. Nevertheless, OPC does not object to the Commission making a 120.57(2), F.S., determination based on the record developed up to the date of the hearing and brief(s), if any, filed by parties at their option.

ISSUE 4A: Is FPL's assessment of the fair value of the existing PPA with Indiantown Cogeneration, L.P. reasonable?

OPC: FPL has not met its burden of demonstrating that the assessment of the fair value of the existing PPA with Indiantown Cogeneration, L.P. is reasonable. Further FPL has the burden to prove, given its valuation of the existing PPA, that the method used to eliminate the PPA is the most cost effective one available, that the proposed buyout price is the lowest possible buyout price, and that this transaction is in the best interest of FPL's customers, and thus is prudent. Nevertheless, OPC does not object to the Commission making a 120.57(2), F.S., determination based on the record developed up to the date of the hearing and brief(s), if any, filed by parties at their option.

ISSUE 5: Is FPL's proposal to acquire the ICL Facility through its proposed ICL Transaction prudent?

OPC: FPL has not met its burden to prove that the method used to eliminate the PPA is the most cost effective one available, that the proposed buyout price is the lowest possible buyout price, and that this transaction is in the best interest of FPL's customers and thus is prudent. Nevertheless, OPC does not object to the Commission making a 120.57(2), F.S., determination based on the record developed up to the date of the hearing and brief(s), if any, filed by parties at their option.

ISSUE 6: If the Commission approves FPL's proposed ICL Transaction, what is the proper accounting treatment for the transaction?

OPC: The appropriate accounting treatment is as outlined in witness Fuentes testimony.

ISSUE 7: If the Commission approves FPL's proposed ICL Transaction, what is the proper rate of return?

OPC: The appropriate rate of return is the one to be approved by the Commission in Docket No. 160021-EI.

ISSUE 8: Should FPL be permitted to recover the costs associated with the ICL Transaction as set forth in FPL's Petition?

OPC: FPL should not be permitted to recover the ICL transaction costs unless the Commission finds that FPL has met its burden to prove that the method used to eliminate the PPA is the most cost effective one available, that the proposed buyout price is the lowest possible buyout price, and that this transaction is in the best interest of FPL's customers, and thus is prudent. Nevertheless, OPC does not object to the Commission making a 120.57(2), F.S., determination based on the record developed up to the date of the hearing and brief(s), if any, filed by parties at their option.

ISSUE 9: Should FPL be required to file, with the Commission, the actual accounting entries to record the ICL transaction for both FPL and the subsidiary Indiantown within six months of the ICL transaction being consummated?

OPC: Yes.

ISSUE 10: Should the docket be closed?

OPC: OPC takes no position.

LEGAL ISSUES

5. **STIPULATED ISSUES:**

None at this time.

6. **PENDING MOTIONS:**

None.

7. **STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:**

None.

8. **OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:**

None at this time.

9. **STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:**

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 16th day of September, 2016.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 16th day of September, 2016, to the following:

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