

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
ORDER NO. PSC-16-0418-PHO-EI
ISSUED: September 29, 2016

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on September 20, 2016, in Tallahassee, Florida, before Commissioner Ronald A. Brisé, as Prehearing Officer.

APPEARANCES:

BRYAN S. ANDERSON, WILLIAM P. COX, and JOEL BAKER, ESQUIRES,
700 Universe Boulevard, Juno Beach, Florida 33408
On behalf of Florida Power & Light Company.

DANIELLE M. ROTH, Associate Public Counsel, PATRICIA A. CHRISTENSEN, Associate Public Counsel, and CHARLES J. REHWINKLE, ESQUIRES, Deputy Public Counsel, on behalf of Office of Public Counsel, c/o the Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida

JON C. MOYLE, JR. and KAREN A. PUTNAM, ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Industrial Power Users Groups

WALT TRIERWEILER, ESQUIRE, Senior Attorney, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission.

Keith Hetrick, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission.

PREHEARING ORDER

I. CASE BACKGROUND

On June 20, 2016, Florida Power & Light Company (FPL) filed a petition for approval of a purchase and sale agreement between FPL and Calypso Energy Holdings, LLC, for the ownership of the Indiantown Cogeneration LP and related power purchase agreement. Accordingly, an administrative hearing will be held in this matter on October 3-4, 2016.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S. This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093(4), F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not

subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

The witnesses have been excused.

VI. ORDER OF WITNESSES

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|--------------------|---------------------|---|
| <u>Direct</u> | | |
| Robert E. Barrett* | FPL | Overview, economic and strategic benefits to customers, appropriate rate of return on investment. Issues 1, 2, 3, 5, 7, 8 |
| David Herr* | FPL | Fair value analysis. Issues 2, 4A |
| Liz Fuentes* | FPL | Accounting treatment, regulatory reporting and ratemaking treatment. Issues 6, 8, 9 |
| Thomas L. Hartman* | FPL | Details of the ICL Transaction, benefits and cost savings. Issues 1, 2, 3, 4, 5 |

* These witnesses have been excused.

VII. BASIC POSITIONS

FPL: Indiantown Cogeneration L.P. (“ICL”) holds an approximately 330 megawatt coal-fired, cogeneration facility (the “ICL Facility” or “Facility”) located on a 215 acre site in Indiantown, Florida. The Facility is a qualifying facility (“QF”) under the Public Utilities Regulatory Policy Act of 1978 (“PURPA”) and applicable state and federal regulations and began commercial operation in 1995. FPL’s payments to ICL for the purchase of electricity are made pursuant to a long-term power purchase agreement (“PPA”), which the parties originally executed on May 21, 1990, and the FPSC approved under its QF rules in 1991. The PPA expires in December 2025.

FPL seeks Commission approval of a Purchase and Sale Agreement (“Agreement”) that will allow FPL to mitigate the impact of the existing PPA with ICL, which presently requires FPL to continue making above-market payments through the end of 2025. In May 2016, FPL entered into the Agreement to assume ownership of the ICL Facility through a transaction (“the ICL Transaction”) with ICL’s upstream owner, Calypso Energy Holdings, LLC (“Calypso”).

Approving the ICL Transaction is projected to produce an estimated \$129 million in savings for FPL customers on a cumulative present value revenue requirements (“CPVRR”) basis (\$205 million nominal savings). This CPVRR estimated customer savings amount is nearly \$60 million greater than that projected by FPL in the Cedar Bay Transaction (Docket No. 150075), a similar transaction that the Commission approved in 2015.

Payments due under the existing PPA. The pricing structure under the existing PPA provides for both capacity and energy payments. Annual capacity payments are fixed under the contract and gradually reduce each year until the end of 2025. If the Facility’s availability performance meets the contractual threshold, the Facility is eligible for a bonus capacity payment of up to an additional 10%. FPL’s energy prices under the PPA are based on the unit cost for coal, priced at a published index cost times a fixed heat rate. In contrast, pursuant to the Commission’s rules governing QFs, FPL’s fixed operations and maintenance (“O&M”) expense and capacity payments to ICL were determined based on the approved “avoided unit” (an integrated coal gasifier combined cycle unit) at the time the parties entered into the PPA. As a consequence, the fixed O&M and capacity payments are above today’s current and projected market prices and well above FPL’s current avoided costs, which negatively impacts customers. To illustrate, in 2015 the “all in” price of energy from the ICL Facility was over \$264/MWh, compared to an average FPL avoided energy cost of \$18/MWh in that same year.

The ICL Transaction. In order to mitigate the high customer costs associated with the PPA, FPL succeeded in negotiating the Agreement underlying the ICL Transaction. Under the Agreement, FPL would purchase 100% of the ownership interests of ICL from Calypso at a price of \$451 million (including assumption of existing debt), thereby making FPL sole owner of the ICL Facility. Upon closing on the Agreement, FPL would acquire the existing PPA and become both the ICL Facility owner and the PPA counterparty. As owner of the Facility, FPL would

continue to be entitled to economically dispatch the Facility as needed to meet its system needs. FPL anticipates that it will continue to dispatch the ICL Facility, but at a substantially lower capacity factor, through the end of 2018 to meet FPL's capacity needs.

Benefits of the ICL Transaction. Three primary benefits result from approving the ICL Transaction. First, the purchase of the ICL Facility, together with the termination of the PPA, is projected to produce \$129 million in savings for customers on a CPVRR basis (\$205 million nominal savings) as discussed above. In the long term, the ICL Transaction also avoids \$594 million (Net Present Value) in above-market payments under the PPA, which FPL customers would otherwise pay through the Capacity Cost Recovery Clause ("CCR Clause"). FPL also analyzed the economic benefits of the ICL Transaction under alternate scenarios in which the anticipated fuel and emissions costs were 20% greater than and 20% less than forecasted. Under each of these scenarios, the ICL Transaction is expected to produce customer savings, in amounts ranging from \$100 million to \$151 million CPVRR.

Second, approving the ICL Transaction enables FPL to maintain for its customers the option of continued fuel supply reliability and diversity by keeping the ICL Facility in service. The Facility is well-run and dependable, and there is every reason to believe it will remain operable into the foreseeable future. Having the ability to dispatch this existing coal-fired unit provides FPL an important near-term alternative to natural gas, which is particularly important in the years before Florida's third natural gas pipeline system's anticipated 2017 commercial operation date and the addition of the Okeechobee Clean Energy Center in 2019. Third, approving the ICL Transaction is expected to yield environmental benefits. The ICL Facility is a very high emitter of carbon dioxide ("CO₂"). FPL anticipates that it will decrease the annual capacity factor from 24% (in 2015) to 5% once it assumes control of the Facility, thereby reducing CO₂ emissions in Florida by over 657,000 tons per year. Further, should the Facility be retired before the PPA's end date, it may be years in advance of when it could be retired under the current PPA structure. This may be a particularly important benefit depending on the scope and timing of implementing the EPA's Clean Power Plan regarding CO₂ emissions.

Proposed regulatory accounting treatment. FPL proposes to record all acquired assets and liabilities on the Indiantown subsidiary's books at fair value at the date of acquisition. FPL proposes to treat the investment required to effectuate the ICL Transaction as a regulatory asset recovered through the CCR Clause that would be amortized over the remaining term of the PPA, approximately nine years, with a return on the unamortized balance of the regulatory asset at the Company's overall weighted average cost of capital ("WACC") that is used for clause investments. This methodology is also consistent with Order No. PSC-12-0425-PAA-EU, in which the Commission approved a stipulation and settlement agreement entered into by the Florida investor-owned utilities, the Office of Public Counsel, and the Florida Industrial Power Users Group to specify the methodology for calculating the WACC applicable to clause-recoverable

investments. Furthermore, the Commission approved this treatment for the Cedar Bay Transaction, a recent transaction substantially similar to the ICL Transaction, in Order No. PSC-15-0401-AS-EI.

Recovery through the CCR Clause is appropriate because that is how FPL currently recovers the cost of the PPA giving rise to the regulatory asset, and this approach is consistent with the 2012 Stipulation and Settlement Agreement's provision, as approved by the Commission in Order No. PSC-13-0023-S-EI.

FPL proposes to collect the costs of the ICL Facility that are traditionally base revenue requirements through the capacity clause on an interim basis. Because these base revenue requirement increases were not contemplated in FPL's current base rate filing (Docket No. 160021-EI) and since the cost recovery clause savings are projected to be greater than the base revenue requirements, FPL seeks interim CCR Clause recovery of these traditional base rate components. FPL proposes to file forecasted base revenue requirements for the Indiantown subsidiary for each subsequent year on an annual basis for recovery in its projection filing for FPL's CCR Clause. All amounts recovered through FPL's capacity clause for base revenue requirements would be reclassified from capacity clause revenues to base revenues on FPL's books and records. The treatment described above would continue until FPL's next base rate proceeding when FPL would request to discontinue recovery of the base revenue requirements through the CCR Clause and instead, request recovery through base rates.

FPL proposes to recover the fuel costs associated with the ICL Facility through FPL's Fuel Cost Recovery ("FCR") Clause, including rail car lease payment and fuel transportation costs. This treatment is consistent with the Commission's decision in Order No. 14546, issued July 8, 1985, in Docket No. 850001-EI-B.

FPL will include all Indiantown subsidiary amounts in retail base ratemaking and FPL's earnings surveillance reporting including the reclassified revenues collected through CCR Clause but excluding fuel expense, fuel transportation, and rail car lease costs discussed above.

OPC: 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.

FIPUG: As the burden of proof rests with FPL in this matter, it must affirmatively prove that the acquisition of the Indiantown coal-fired generating facility is in the best interests of consumers, including FIPUG members. Coal-fired generating plants are currently facing many challenges, including market, environmental, regulatory and economic pressures. The risks associated with these challenges should not be shifted to FPL’s ratepayers, and if done so, FPL should ensure that ratepayers risk is limited in a meaningful and measureable way.

STAFF: Staff’s positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff’s final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

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

POSITIONS:

FPL: Yes. FPL projects that the ICL Transaction will result in customer savings estimated at \$129 million on a CPVRR basis (\$205 million nominal savings). Fuel and environmental cost sensitivity analyses were conducted showing substantial customer savings across a broad range of sensitivities. (Barrett, Hartman)

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.

FIPUG: No.

STAFF: Staff has no position pending evidence adduced at the hearing.

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

POSITIONS:

FPL: Yes. The purchase price was determined as a result of arm's-length negotiations between independent, unrelated parties. The fairness and reasonableness of the purchase price is further supported by qualified expert analysis of the fair value pursuant to U.S. Generally Accepted Accounting Principles of the assets to be acquired and liabilities to be assumed in the ICL Transaction. (Barrett, Herr, Hartman)

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.

FIPUG: No.

STAFF: Staff has no position pending evidence adduced at the hearing.

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?

POSITIONS:

FPL: FPL has appropriately accounted for operational and regulatory risks in evaluating the ICL Transaction. Through the ICL Transaction FPL will be able to control all operational, economic and environmental decisions regarding the Facility. FPL has thoroughly explored the condition and viability of the Facility and has determined that the Facility is very well run and dependable. (Barrett, Hartman)

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.

FIPUG: Owning and operating a coal-fired generating facility presents a host of regulatory, market and operational risks. Such risks should not be shifted to ratepayers.

STAFF: Staff has no position pending evidence adduced at the hearing.

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?

POSITIONS:

FPL: Yes. FPL took into account several alternative reasonable measures to mitigate the PPA's future unfavorable impacts in order to achieve cost savings for FPL's customers, including the possibility of burning additional natural gas at the Facility to lower the energy cost of the unit, buying out the PPA, and acquiring the Facility itself. FPL determined that the best available option for customers is the present ICL Transaction. (Hartman)

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.

FIPUG: No.

STAFF: Staff has no position pending evidence adduced at the hearing.

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

POSITIONS:

FPL: Yes. FPL retained Duff & Phelps to perform an independent expert evaluation of the fair value of the PPA between FPL and ICL. Duff & Phelps's evaluation, as presented by witness David Herr, determined that the fair value of the PPA was approximately \$450 million, representing the value that it could bring to an owner of the Facility who was entitled to continue selling power to FPL under the terms of the PPA for its remaining term. (Herr)

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.

FIPUG: No.

STAFF: Staff has no position pending evidence adduced at the hearing.

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

POSITIONS:

FPL: Yes. FPL evaluated several options to mitigate the customer impact of the high payments currently paid under the PPA with ICL. FPL determined that the ICL Transaction was the best available option. FPL's analysis shows that the ICL Transaction is projected to result in an estimated customer savings of \$129 million on a CPVRR basis (\$205 million nominal savings) over the term of the PPA, as well as providing other reliability and environmental benefits to customers. (Barrett, Hartman)

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.

FIPUG: No. The risks associated with owning and operating a coal-fired generation facility should remain with the contracting third party, not be assumed by ratepayers.

STAFF: Staff has no position pending evidence adduced at the hearing.

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

POSITIONS:

FPL: The proper accounting treatment for the ICL Transaction is as follows:

- (1) The non-fuel costs of operating the ICL Facility should be recorded in base rate accounts.
- (2) FPL should not record any amount as plant in service for the ICL Facility because the Facility has no economic value. However, FPL should record land for \$8.5 million, a rail car lease liability of \$9.0 million, and an asset retirement obligation of \$9.9 million for the future dismantlement of the Facility.
- (3) FPL should establish a regulatory asset for the ICL investment of \$451.5 million. (Fuentes)

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

FIPUG: The costs should be recovered in base rates.

STAFF: Staff has no position pending evidence adduced at the hearing.

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

POSITIONS:

FPL: If the Commission approves the ICL Transaction, then the proper rate of return is FPL's overall WACC approved by the Commission that is used for clause investments. The Commission approved this treatment for the Cedar Bay Transaction, a recent transaction substantially similar to the ICL Transaction, in Order No. PSC-15-0401-AS-EI. In so doing, the Commission's Order provided that FPL should be permitted to earn its current, approved WACC on clause-recoverable investments. (Barrett)

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

FIPUG: No position.

STAFF: Staff has no position pending evidence adduced at the hearing.

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

POSITIONS:

FPL: Yes. As set forth in FPL's Petition, the investment required to effectuate the ICL Transaction should be classified as a regulatory asset and recovered through the CCR Clause through amortization over the remaining term of the PPA, approximately nine years, with a return on the unamortized balance of the regulatory asset at the Company's overall WACC that is used for clause investments. In addition, the fuel costs associated with the ICL Facility, including rail car lease payment and fuel transportation costs, should be recovered through the FCR Clause, and all operating costs of the kind typically recovered through base rates should be recovered through FPL's capacity clause on an interim basis until FPL's next base rate case. (Barrett, Fuentes)

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.

FIPUG: No.

STAFF: Staff has no position pending evidence adduced at the hearing.

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?

POSITIONS:

FPL: FPL has no objection to such a requirement. (Fuentes)

OPC: Yes.

FIPUG: No position.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 10: Should the Docket be closed?

POSITIONS:

FPL: Yes.

OPC: No position.

FIPUG: Yes.

STAFF: Staff has no position pending evidence adduced at the hearing.

IX. EXHIBIT LIST

| <u>Witness</u> | <u>Proffered By</u> | | <u>Description</u> |
|----------------|---------------------|------|---|
| | <u>Direct</u> | | |
| David W. Herr | FPL | DH-1 | Curriculum Vitae |
| David W. Herr | FPL | DH-2 | Summary Report prepared by Duff & Phelps entitled "Valuation of Certain Assets of Indiantown Cogeneration LP" |

| <u>Witness</u> | <u>Proffered By</u> | | <u>Description</u> |
|-------------------|---------------------|-------|--|
| David W. Herr | FPL | DH-3 | More Detailed Form of “Valuation of Certain Assets of Indiantown Cogeneration LP” Report (Confidential) |
| Liz Fuentes | FPL | LF-1 | Proposed journal Entries |
| Thomas L. Hartman | FPL | TLH-1 | Existing Contract Capacity and Operation & Maintenance (“O&M”) Payment Obligations |
| Thomas L. Hartman | FPL | TLH-2 | Purchase & Sale Agreement (Confidential) |
| Thomas L. Hartman | FPL | TLH-3 | ICL Corporate Structure |
| Thomas L. Hartman | FPL | TLH-4 | Projected Customer Savings Calculation |

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There is a proposed Joint Partial Stipulation concerning procedural matters and substantive issues:

- (1) The parties have waived Cross Examination.
- (2) FIPUG was waived appearance at the hearing without objection by the parties.
- (3) The parties have waived opening statements.
- (4) There are proposed stipulations on Issues 6, 7 and 9 between OPC and FPL.
- (5) FIPUG does not join the proposed stipulations as to Issues 6, 7 and 9.
- (6) FIPUG has not taken a position on Issues 7 and 9.
- (7) The Parties have waived briefs and desire to submit this docket to a bench decision.
- (8) All witnesses have been excused.

- (9) OPC has offered to stipulate to the language contained in FPL's Issue 6 of its Prehearing Statement.
- (10) OPC and FPL have offered to stipulate to the following language as their position on Issue 7: *If the Commission approves the ICL Transaction, then the proper rate of return is FPL's overall WACC approved by the Commission that is used for clause investments. The Commission approved this treatment for the Cedar Bay Transaction, a recent transaction substantially similar to the ICL Transaction, in Order No. PSC-15-0401-AS-EI.*
- (11) OPC and FPL have offered to stipulate to the following language as their position on Issue 9: *Yes. Such a requirement is reasonable and appropriate.*

XI. PENDING MOTIONS

There is a Joint Motion for Approval of Partial Stipulation between the parties as described in section X.

XII. PENDING CONFIDENTIALITY MATTERS

Florida Power & Light Company's has submitted two (2) Requests for Confidential Classification:

- (1) For certain information contained in the testimony of witness Tom L. and David Herr (Exhibit DH-3), dated June 20, 2016 (DN 03886-16), and
- (2) For the FPL Responses to Staff's First Request for Production of Documents which concern certain Bond Covenants referred to in testimony of witness Hartman (Staff's Comprehensive Exhibit List, Exhibit 12), dated September 16, 2016 (DN 07584-16).

XIII. POST-HEARING PROCEDURES

If the Joint Partial Stipulation between the parties, which includes the waiver of briefs, is not accepted by the Commissioners and if no bench decision is made, each party shall file a post-hearing statement of issues and positions, the parameters for which will be set at hearing.

XIV. RULINGS

FIPUG is excused from this Hearing.

As requested by one of the Parties to the Joint Stipulation and in consideration of the waiver of procedural rights to participate in the Hearing and to file post-hearing briefs, the portion of the Order Establishing Procedure, paragraph VII, that states: *If a post-hearing*

statement is required and a party fails to file in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding, shall not be enforced.

It is therefore,

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 29th day of September, 2016.

/s/ Ronald A. Brisé

RONALD A. BRISÉ

Commissioner and Prehearing Officer

Florida Public Service Commission

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

WLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.