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FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of arrangement to mitigate unfavorable impact of St. Johns River Power Park, by Florida Power & Light Company.
______________________________________ /

DOCKET NO. 170123-EI

FILED: August 18, 2017

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, ("OPC"), and pursuant to the First Order Modifying the Order Establishing Procedure in this docket, Order PSC-2017-0270-PCO-EI, issued July 12, 2017, hereby submit this Prehearing Statement.

APPEARANCES:

Stephanie A. Morse
Associate Public Counsel

Charles J. Rehwinkel
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
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On behalf of the Citizens of the State of Florida

1. WITNESSES:

Patricia W. Merchant

2. EXHIBITS:

None at this time.

3. STATEMENT OF BASIC POSITION

While FPL's proposal appears to provide the potential for incremental savings to customers, OPC is concerned that FPL has chosen an accounting strategy that causes FPL – even if inadvertently – to violate its obligations to customers under the operative 2016 rate case settlement (Docket No. 2016-0021-EI) by indirectly circumventing the base rate freeze provision of that settlement. As part of the referenced rate case settlement, FPL agreed to freeze customer rates. The accounting scheme that FPL proposed for part of the proposed St. Johns River Power Park (SJRPP) Transaction allows FPL to defer costs that would, absent Commission approval to defer them, be recovered under the existing agreement, while base rates are frozen. By deferring the costs for inclusion in base rate cost recovery after the term of the settlement, FPL would be indirectly, and thus effectively and impermissibly, raising frozen base rates, due to a cost that would otherwise be charged to expense during the three year settlement period. This approach appears to be designed to ensure that FPL's investors get the highest possible return on the proposed transaction, rather than to provide the best outcome regarding customers' rates.

In this docket, FPL proposes to terminate its power purchase agreement with the Jacksonville Electric Authority (JEA) related to FPL's ownership share of the SJRPP. The plan also entails the early shutdown and dismantlement of the SJRPP, and the creation of various regulatory assets to account for related costs. OPC takes issue with accounting treatment proposed for the "Early Retirement Regulatory Asset" ($186.6 million). Rather than beginning the amortization of this regulatory asset on the date the retirement occurs, FPL proposes to defer amortization until FPL's base rates are next adjusted in a rate case. However, there is no requirement that FPL file a rate case on a date certain. According to the 2016 settlement, the earliest date for FPL to file a rate case is 2020, for new rates to become effective in 2021.

FPL's burden in this case should be to demonstrate that the SJRPP Transaction is clearly "better" for the customers than the PPA, in that it provides material, demonstrable savings, and the accounting methods by which FPL completes the transaction do not allow it to circumvent its obligations regarding customer's rates. Otherwise, whatever the customers purportedly gain in "savings" could easily be lost in rate increases.

OPC does not believe that FPL has met its burden to prove that the proposed deferral of amortization regarding the Early Retirement Regulatory Asset is in the best interest of FPL's customers, and thus, is prudent. Therefore, the Commission should direct FPL to begin amortization of the Shutdown Payment at the time the plant is shut down, i.e., on or about January 1, 2018.

4. STATEMENT OF ISSUES AND POSITIONS

LEGAL ISSUES

ISSUE 1A: **Contested Does the request by FPL to defer amortization of the Early Retirement Regulatory Asset and the Asset Transfer Regulatory Asset until the next time FPL's base rates are adjusted in a rate case violate the terms of the October 6, 2016 Stipulation and Settlement between FPL, OPC, the South Florida Hospital and Healthcare Association and the Florida Retail Federation, including but not limited to, paragraphs 4 and 7 of said Stipulation and Settlement? (OPC Proposed Issue)**

ISSUE 1B: **Contested Does the request by FPL to defer amortization of the Early Retirement Regulatory Asset and the Asset Transfer Regulatory Asset until the next time FPL's base rates are adjusted in a rate case violate the terms of the October 6, 2016 Stipulation and Settlement between FPL, OPC, the South Florida Hospital and Healthcare Association and the Florida Retail**

Federation, in particular paragraphs 4 and 7 of said Stipulation and Settlement? (FPL Proposed Language)

OPC: Yes. By deferring costs which would otherwise be historically and traditionally recovered in base rates during 2018 - 2020, FPL is indirectly and impermissibly bypassing the base rate freeze anti-circumvention provision of the October 6, 2016 Stipulation and Settlement.

FACTUAL ISSUES

ISSUE 2: **Did the existing JOA provide FPL with any reasonable, lower cost alternatives to the proposed SJRPP Transaction? If so, did FPL take reasonable steps to evaluate such alternatives, if any, in selecting the proposed SJRPP Transaction?**

OPC: FPL bears the burden of proving the SJRPP Transaction is in the best interest of FPL's customers, and thus is prudent. At this time, it is not clear whether FPL presented a full analysis of all options.

ISSUE 3: **If the Commission approves FPL's proposed SJRPP transaction, how will existing contracts between third party providers and the co-owners (JEA and FPL) be handled, what are the projected costs of fulfilling or terminating such contracts, and how should these costs be recovered?**

OPC: According to FPL's response to Staff's Interrogatory No. 46, FPL does not anticipate any costs related to the two outstanding third party provider contracts, and FPL further stated that "… there should be no need for FPL to seek any recovery related to these contracts. The Commission is entitled to rely on this representation in making its decision.

ISSUE 4: **What are the operational and regulatory risks associated with FPL's proposed SJRPP transaction, and has FPL appropriately accounted for these risks under the transaction?**

OPC: FPL has not met its burden of demonstrating that it took into account all reasonable measures to mitigate risks to ratepayers.

ISSUE 5: **Is the proposed SJRPP Transaction reasonably expected to be cost-effective?**

OPC: Maybe, except it would be more clearly cost-effective for FPL to begin amortization of the Early Retirement Regulatory Asset at the time the asset is retired, on or about January 1, 2018.

ISSUE 6: **Is FPL's proposal to enter into the Asset Transfer and Contract Termination Agreement and terminate the existing JOA (including the power purchase agreement with JEA) prudent? If so, should the Commission approve the proposed SJRPP transaction?**

OPC: FPL bears the burden of proving the proposed transaction is prudent.

ISSUE 7: **If the Commission approves FPL's proposed SJRPP transaction, what is the proper accounting treatment for the transaction?**

OPC: If the proposed SFRPP transaction is approved, OPC may agree that the establishment of the regulatory assets is appropriate, but OPC does not agree that the deferral of amortization for certain assets is appropriate.

ISSUE 8: **When should the amortization of the Shutdown Payment Regulatory Asset begin?**

OPC: The amortization of the Shutdown Payment Regulatory Asset should begin the month following the date the plant is retired, which is January 1, 2018.

ISSUE 9: **When should the amortization of the Early Retirement Regulatory Asset and the Asset Transfer Regulatory Asset begin?**

OPC: Consistent with the amortization commencement of the Shutdown Payment Regulatory Asset, the amortization of the Early Retirement Regulatory Asset and the Asset Transfer Regulatory Asset should begin the month following the date the plant is retired, which is on January 1, 2018.

ISSUE 10: **If the Commission approves FPL's proposed SJRPP transaction, what is the proper rate of return on the associated regulatory assets and liabilities?**

OPC: The appropriate rate of return on the regulatory assets and liabilities is the monthly weighted average overall cost of capital based on the rate of return on equity and any other capital structure adjustments approved by the Commission in Docket No. 160021-EI.

ISSUE 11: **Should this docket be closed?**

OPC: OPC takes no position.

5. STIPULATED ISSUES:

None at this time.

6. PENDING MOTIONS:

None at this time.

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 FIRST ORDER MODIFYING ORDER ESTABLISHING PROCEDURE:

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

Dated this 18th day of August, 2017.

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 18th day of August, 2017, to the following:

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