**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Nuclear Cost Recovery Clause. | DOCKET NO. 20170009-EI<br>FILED: August 31, 2017 |

## CITIZENS' POST-HEARING BRIEF

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2017-0057-PCO-EI, issued February 20, 2017, Order No. PSC-2017-0260-PCO-EI, issued July 10, 2017, and Order No. PSC-2017-0323-PHO-EI issued August 10, 2017, hereby submit this Post-Hearing Brief.

## STATEMENT OF BASIC POSITION

Florida Power and Light Company (FPL) filed for cost recovery for 2015 and 2016 in this year's Nuclear Cost Recovery Clause (NCRC) proceeding. The filing includes an over-recovery of $1,306,211 for the 2015 true-up and an over-recovery of $5,998,991 for 2016. March 1, 2017 Petition at p. 3. In addition, FPL is seeking approval as to the reasonableness and appropriateness of obtaining and maintaining the Combined Construction and Operating License (COL) for Turkey Point Units 6 and 7 which would infer approval to incur any COL-related costs. The utility also seeks permission to defer recovery for the COL-related costs incurred in 2017 and any subsequent years. May 1, 2017 Petition at p. 6. Further, FPL is asking to "pause" its recovery of these costs for a minimum period of 4 years, while leaving the meter running on the carrying costs, including the shareholder profit. May 1, 2017 Petition at p. 6. Should the Commission decline to grant the 4 year pause, FPL has requested a single year deferral for the 2017 and 2018 costs until the 2018 NCRC proceeding. May 1, 2017 Petition at p. 7.

OPC submits that FPL's position is unreasonable and fails to comply with the intent and requirements of Section 366.93, Florida Statutes (F.S.), and Rule 25-6.0423, Florida Administrative Code (F.A.C.), which implement and allow advanced cost recovery. Section 366.93(3)(a), F.S., states that "[a]fter a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules." The Commission adopted Rule 25-6.0423, F.A.C., to address the nuclear cost recovery process. Rule 25-6.0423(6)(c)5., F.A.C., specifically states that:

> Along with the filings required by this paragraph, each year a utility **shall** submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. (Emphasis added)

FPL alleges that because it is not asking for recovery from customers now (i.e. in this year's NCRC docket), they do not need to file an annual feasibility study to show the project remains economically viable. (TR 48). Yet, FPL wants to incur these COL-related costs for recovery from customers in subsequent NCRC proceedings. May 1, 2017 Petition at p. 7. Moreover, FPL is asking for Commission approval to spend more money to obtain and maintain the COL, without having to submit the economic feasibility analysis which is required pursuant to the Commission rule. May 1, 2017 Petition at p. 7. However, this rule is not discretionary, and FPL has not filed a feasibility study for the Turkey Point Units 6 and 7 proposed project for the past 2 years – neither in 2016 nor 2017. (TR 79, 189)

In addition, FPL wants to pause its recovery for a minimum of at least 4 years (and possibly up to 10 years) of the COL-related costs it has incurred and will incur, due to the uncertainty related

to construction of the first wave of AP 1000 nuclear projects. (TR 79, 166-167). This proposed pause calls into question both the practicality and the reality of the Turkey Point Units 6 and 7 being built. Rule 25-6.0423(6)(a), F.A.C., provides a party may ask for a deferral of costs, but not for a period greater than 2 years. However, FPL is clearly asking in this docket for a deferral period longer than 2 years. In fact, FPL has asked for a minimum deferral period of 4 years. May 1, 2017 Petition at p. 6-7. On its face, this request is unauthorized and improper.

FPL is also seeking a ruling that it is reasonable for it to continue to obtain the COL and then to maintain it. If the Commission agrees with FPL that continuing to pursue obtaining the COL is reasonable, then customers and other parties will be foreclosed from arguing later that all these COL-related costs should be disallowed because the project was not feasible today.

Not surprisingly, FPL also wants the ability to earn a shareholder profit on the COL-related costs through Allowance for Funds Used During Construction (AFUDC) carrying charges during the pause period, however long that would end up being. However, Section 366.93, F.S., specifically contemplates that cost recovery of carrying charges will take place annually during the project's development so that customers will not have large costs plus compounding carrying charges to include either (1) in Construction Work in Progress (CWIP) balance for when a project is cancelled and recovered or (2) in rate base when a plant goes into service and is recovered in base rates. Approving a "pause" period defeats this statutory intent by allowing the COL-related costs to accumulate with carrying charges compounding until some unknown time in the future.

The Commission should (1) deny FPL's request for a finding that "obtaining the COL" is reasonable given FPL's failure to submit economic feasibility information in accordance with Rule 25-6.0423, F.A.C.; and (2) deny the proposal to increase potential costs for customers through deferring a decision on the recovery of these costs for 4 or more years since this would be contrary

to the same rule and intent of Section 366.93, F.S. In addition, the Commission should order FPL to file a feasibility study for 2017, so that the Commission can have the appropriate information it needs to make an informed decision on whether to allow recovery of any pending COL-related costs and other future costs for the Turkey Point Units 6 and 7 projects.[1]

## ISSUES

**FPL**

**Issue 1:** **Should the Commission find that FPL's 2015 and 2016 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?**

POSITION: *No position.*

**Issue 2:** **What jurisdictional amounts should the Commission approve as FPL's actual 2015 and 2016 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 Project?**

POSITION: *The Commission should approve FPL's actual 2015 prudently incurred costs and final over-recovery of $1,306,211 as the true-up amount and approve returning to ratepayers the amount identified as an over-recovery of $5,998,991 for 2016. Since FPL has failed to file the required feasibility study or obtain a rule waiver, the Commission should not approve any new

[1] FPL has requested that a decision on all aspects of the costs incurred after December 31, 2016 be deferred. Included in this amount is an approximately $7.4 million annual return on the Deferred Tax Asset created by tax timing differences associated with costs that have been previously incurred and approved for recovery. The OPC does not object to the Commission allowing this return component and any associated carrying cost associated with it to be recovered currently. The recoverability of these costs is not related to the forward-looking determination about incurring new costs that the OPC contends is tied to the (failed) filing of a feasibility analysis in 2016 and 2017. Accordingly, there is no reason for these undisputed costs to be deferred and to build up a compounded carrying charge perhaps for up to ten years. As such, and as a practical matter, the OPC does not object to the Commission including these costs in the 2018 factor, notwithstanding the arguments made elsewhere in the brief regarding cost recovery in general.

costs associated with the Turkey Point Units 6 and 7 project in this year's NCRC proceeding.*

**ARGUMENT:**

Section 366.93(3)(a), F.S., states that "[a]fter a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules." Pursuant to this statute, the Commission adopted Rule 25-6.0423, F.A.C., to address the nuclear cost recovery process. Rule 25-6.0423(6)(c)5., F.A.C., specifically states that:

> Along with the filings required by this paragraph, each year a utility **shall** submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. (Emphasis added)

This rule mandates a detailed annual filing demonstrating the long-term economic feasibility of completing the plant.

As noted in Order No. PSC-16-0266-PCO-EI, issued July 12, 2016, in Docket No. 160009-EI, Order Granting Florida Power & Light Company's Motion to Defer Consideration of Issues and Cost Recovery, FPL filed for cost recovery of its estimated 2016 costs on April 27, 2016. Id. at p. 1. However, FPL did not file a long-term feasibility analysis with its testimony and exhibits. Id. Instead, FPL filed a Petition for Waiver of Rule 25-6.0423(6) (c)5., F.A.C. Id. The Interveners in the docket filed comments opposing the waiver request. Id. at p. 2. Based on this opposition, FPL withdrew its petition for rule wavier. The company then requested, and the Commission granted, deferral of recovery for its 2016 and 2017 costs into this year's NCRC proceeding. Id. at pp. 2, 3. In its Order granting the deferred consideration (and increased carrying costs), the Commission specifically noted, in apparent reliance thereon, that "FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket." Id. at p. 2.

FPL Witness Scroggs testified that in this 2017 NCRC proceeding FPL failed to file a long-term feasibility analysis for 2016. (TR79). Mr. Scroggs attempted to argue that it was not necessary to perform an economic feasibility analysis in or for 2016 because FPL had determined it would "pause" before moving from the licensing to preconstruction phase. (TR 79) He further asserted that FPL determined the results of a 2016 feasibility analysis would have no bearing on the logic of finishing the near-term, relatively low-cost activities required to complete the licensing phase of the Project. (TR 79) Yet, in 2015 FPL filed an economic feasibility study, using updated economic assumptions. (TR 78).

In this year's NCRC docket, without an economic feasibility study, the Commission lacks any evidence or information about the reasonableness of the costs to complete the project to make prudence and reasonableness decisions. Contrary to FPL's assertion that a feasibility study serves no purpose at this point in the project, such an analysis is absolutely necessary for the Commission to render a reasoned decision of whether the project should move forward. Why else would the Commission promulgate a rule requiring such information be filed annually? Without this economic feasibility analysis, the Commission cannot make an informed and reasoned decision that FPL should continue to expend additional monies for a project whose likelihood of completion is rapidly evaporating.

When FPL filed its request for a rule waiver in last year's NCRC docket, in order to obtain the waiver, FPL would have had to establish the purpose of the statute was being met by other means. However, apparently realizing the significant challenge to meet that burden, FPL withdrew its request and stated it would file a feasibility study in the 2017 NCRC proceeding – which it has failed to do. Without a waiver of the Commission's rule, FPL has an obligation to submit an

economic feasibility study in order to seek prudence or cost recovery determinations of pending and future costs.

As a result, the Commission should approve FPL's actual 2015 prudently incurred costs and final over-recovery of $1,306,211 as the true-up amount for the Turkey Point Units 6 and 7 Project. The Commission should further approve returning to ratepayers the amount identified as an over-recovery of $5,998,991 for 2016. For the reasons discussed above, since FPL has failed to file the required feasibility study or obtain a rules waiver, the Commission should not approve any new costs associated with the Turkey Point Units 6 and 7 project in this year's NCRC proceeding.

**Issue 3:** **Should the Commission approve FPL's request to defer recovery of costs for the Turkey Point Units 6 & 7 Project incurred after December 31, 2016, pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C.? If so, what type of information should FPL report on an annual basis in the Nuclear Cost Recovery docket?**

POSITION: *No. Section 366.93(3)(f)3., F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. Based on FPL's lack of compliance with Rule 25-6.0423, F.A.C., requiring a feasibility analysis, costs incurred in 2016, 2017 and any subsequent years should not be permitted to be deferred for later recovery through the NCRC. *

**ARGUMENT:**

On May 1, 2017, FPL filed its Petition requesting the Commission: (1) to approve its 2018 NCRC over-recovery amount of $7,305,202 for the final true-ups of the 2015 and 2016 Project costs; (2) to find its decision to complete licensing is appropriate and reasonable; (3) and to approve

the deferral of its NCRC costs incurred in 2017 and subsequent years until such time as FPL makes a decision regarding initiation of preconstruction work. May 1, 2017 Petition at pp. 7-8. Section 366.93(3)(f)3., F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. Further, Section 366.93(3)(a), F.S., states that "[a]fter a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules," which FPL has done in 2017 as discussed above. Rule 25-6.0423, F.A.C., further requires FPL to submit each year for Commission review and approval, as part of its cost recovery filing "a detailed analysis of the long-term feasibility of completing the power plant." FPL has failed to make this filing in 2017. (TR 79, 189)

The NCRC process is structured to allow for annual recovery of preconstruction costs and discourage the year after year build-up of high costs with carrying charges to construct a nuclear power plant. Section 366.93(2)(a), F.S., encourages cost recovery of all prudently incurred costs through the annual capacity cost recovery clause of any preconstruction costs. Section 366.93(2)(b), F.S., provides for recovery through incremental increases in the capacity cost recovery clause rates of the carrying costs on the projected construction cost balance at a rate equal to AFUDC at the time an increment of cost recovery is sought.

While FPL is not required to seek cost recovery through the NCRC process, FPL has as a matter of fact sought recovery of costs for 2016 in this year's docket and permission to incur costs for 2017 and beyond. This seeking of permission to incur costs projected for 2017 and subsequent years for later recovery in the NCRC process invokes all of the requirements of Section 366.93, F.S., and Rule 25-6.0423, F.A.C. While the Commission has general rate making authority under

Section 366.06, F.S., FPL is seeking permission for deferral and later recovery through the NCRC process; thus, the Commission must look to the requirements of Section 366.93, F.S., and Rule 25-6.0423, F.A.C.

Rule 25-6.0423(6)(c)1. and 2., in pertinent part, F.A.C., establishes the cost recovery process and states:

> (c) Cost Recovery for Nuclear or Integrated Gasification Combined Cycle Power Plant Costs.
>
> 1. Each year, pursuant to the order establishing procedure in the annual cost recovery proceeding, a utility shall submit for Commission review and approval, as part of its cost recovery filings:
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> a. True-Up for Previous Years. A utility shall submit its final true-up of pre-construction expenditures, based on actual preconstruction expenditures for the prior year and previously filed expenditures for such prior year and a description of the pre-construction work actually performed during such year; or, once construction begins, its final true-up of carrying costs on its construction expenditures, based on actual carrying costs on construction expenditures for the prior year and previously filed carrying costs on construction expenditures for such prior year and a description of the construction work actually performed during such year.
>
> b. True-Up and Projections for Current Year. A utility shall submit for Commission review and approval its actual/estimated true-up of projected pre-construction expenditures based on a comparison of current year actual/estimated expenditures and the previously-filed estimated expenditures for such current year and a description of the pre-construction work projected to be performed during such year; or, once construction begins, its actual/estimated true-up of projected carrying costs on construction expenditures based on a comparison of current year actual/estimated carrying costs on construction expenditures and the previously filed estimated carrying costs on construction expenditures for such current year and a description of the construction work projected to be performed during such year.
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> c. Projected Costs for Subsequent Years. A utility shall submit, for Commission review and approval, its projected pre-construction expenditures for the subsequent year and a description of the pre-construction work projected to be performed during such year; or, once construction begins, its projected construction expenditures for the subsequent year and a description of the construction work projected to be performed during such year.

2. The Commission shall conduct an annual hearing to determine the **reasonableness** of **projected pre-construction expenditures** and prudence of actual pre-construction expenditures expended by the utility;

(Emphasis added)

In this year's NCRC docket, FPL is asking, in part, for a determination of reasonableness as to its projected COL-related, pre-construction expenditures for 2017 and subsequent years. See, May 1, 2017 Petition at pp. 7-8. Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs (which include COL-related costs) "will be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, **not to exceed 2 years**." (Emphasis added). Contrary to the requirements of this rule, which protects customers from the very build-up of carrying costs (by capping them at two years) that the advanced recovery statute was intended to eliminate, FPL is proposing to defer the COL-related costs incurred in 2017 and later years for an indefinite period, but at a minimum of 4 years.

Notwithstanding FPL's obligation to file the long-term feasibility analysis in this proceeding pursuant to the Commission's rule, there have also been significant changes in circumstances regarding the AP 1000 design which further compel the need to file a feasibility analysis. As Witness Scroggs testified, these challenges include the bankruptcy of Westinghouse (the owner of the AP 1000 design), the decision by South Carolina Electric and Gas Company (SCANA) to terminate the construction of the Summer project, and the known (as well as unknown) substantial cost overruns of Southern Company's Vogtle project. (TR 146, 147, 153, HE 42) Moreover, Westinghouse has announced that it will no longer be building nuclear power plants. (TR 148) Each of these issues has significantly impacted the first wave AP 1000 projects. Even if the Vogtle plant is completed, the combined factors of cost escalation of the project, along with decreased natural gas prices and no federal carbon emission plan for the next 4 years (TR 140-144), intuitively adversely impact the economic viability and cost-effectiveness of the Turkey

Point Units 6 and 7 project. However, since FPL did not file an economic feasibility analysis in this year's docket, the Commission is left to "guess" at the answer as to of how these circumstances will affect the viability of the Turkey Point Units 6 & 7 project. FPL's ratepayers should not have to bear the compounded carrying cost risk of FPL's failure to submit the required information – which is exactly what will result if the Commission grants FPL's request to continue spending money to pursue a COL and to defer these costs for later recovery plus carrying charges (including a shareholder profit) to an unknown point in the future.

As discussed in Issue 5, FPL has requested a finding that moving forwarded with the project and incurring COL-related costs is appropriate and reasonable. FPL Witness Grant-Keene stated FPL wants the Commission to grant it a "reasonableness determination" of its projected costs based on information that is available at this point in time, which may or may not be final. (TR 351) Should the Commission approve this request and determine that moving forward is reasonable without reviewing the economic feasibility of the project now, such a stamp of approval along with the deferral of the cost recovery of COL-related costs, will allow the needless build-up of wasted future costs resulting in throwing customers' good money after bad.

Witness Scroggs also testified that FPL estimates it will incur $25 million in 2017 to pursue the COL, and then another $10 million to $15 million annually thereafter to maintain the license should FPL get it. (TR 134) In addition, he testified that the pause period could last at a minimum 4 to 6 years. (TR 164) While Rule 25-6.0423(6)(a), F.A.C., provides preconstruction costs and COL costs are to be recovered within 1 year and that a party may propose a longer recovery period not to exceed two years, FPL is seeking to delay recovery of the money over a 4 to 6 year "pause" period – which would amount to somewhere between $55 million to $75 million plus AFUDC

(including shareholder profit). (TR 134) This is in direct contradiction to the rule and the intent of the advance cost recovery statute.

In summary, without an economic feasibility study, the Commission lacks the necessary information as to the reasonableness of costs to complete the project related to the break-even point of the next available generation. (TR 78-79) Witness Scroggs testified that FPL did not have the "best information available" to prepare an accurate feasibility study for this year's docket; therefore, the analysis would necessarily be flawed. (TR 282) However, FPL was able to submit a feasibility analysis in every NCRC proceeding from 2008 to 2015, and never alleged that it did not possess the relevant information to prepare those analyses. Moreover, when asked if FPL considered providing a feasibility analysis in this proceeding using the best available information (identifying the information that was available and the information not available), Witness Scroggs said no. (TR 283-284)

Furthermore, Witness Scroggs continued to assert that a feasibility analysis was not necessary for the Commission to make a decision regarding the pause. (TR 282-283) Contrary to FPL's assertion that a feasibility study serves no purpose at this point in the project, such a feasibility analysis is absolutely necessary for the Commission to make an informed and reasoned decision as to whether the project should move forward. Without the information to determine if the project should move forward, it is inappropriate to find that incurring, and then deferring for later recovery, any additional costs related to the COL is reasonable.

The Commission should order FPL to comply with the annual filing requirements of Rule 25-6.0423, F.A.C. Based on FPL's lack of compliance with this rule, costs incurred in 2016, 2017 and any subsequent years should not be approved or permitted to be deferred for later recovery through the NCRC.

**Issue 4:** **If FPL continues to seek its combined operating license and defers the associated costs, are these costs eligible for cost recovery in a future time period pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C.?**

POSITION: *No. Section 366.93(3)(f)3., F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. FPL proposes to defer these costs for an indefinite period, but at a minimum of 4 years. This request is contrary to the Rule 25-6.0423(6)(a), F.A.C., and should be denied.*

**ARGUMENT:**

For the reasons discussed in Issue 3, the Commission should deny FPL's request for deferral of COL-related costs for later recovery in the NCRC process. Section 366.93(3)(f)3., F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. Further, Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs which include COL costs "will be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, not to exceed 2 years." FPL proposes to defer these costs for an indefinite period, but at a minimum of 4 years. This request is contrary to the Commission's rule and should be denied.

**Issue 5:** **A) Is FPL's decision to continue pursuing a combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable?**

POSITION: *No. Section 366.93(3)(f)3., F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. Until and unless a feasibility analysis is filed by FPL, it is not realistic or practical for FPL to incur any additional costs that its ratepayers must bear for the COL.*

**ARGUMENT:**

On May 1, 2017, FPL filed its Petition requesting the Commission to: (1) approve a 2018 NCRC over-recovery amount of $7,305,202 for the final true-up of the 2015 and 2016 Project costs; (2) find its decision to complete licensing is appropriate and reasonable; and (3) approve the deferral of NCRC costs incurred in 2017 amd subsequent years until such time as FPL makes a decision regarding initiation of preconstruction work. May 1, 2017 Petition at pp. 7-8.

FPL is asking the Commission to find it reasonable for it to continue seeking the COL and then to maintain the COL. In the event it is able to obtain the COL, FPL is also asking to "pause" after receipt of the COL before proceeding to the preparation phase. (TR 119) FPL would continue to incur costs if the Commission finds it is reasonable and appropriate for FPL to obtain and maintain the COL. In addition, FPL wants to defer recovery of these costs through the NCRC until a later unknown time in the future. While the Commission's management report appears to indicate that the process by which FPL made its decision to "pause" was reasonable, it was clarified during the hearing that the report was not opining on the reasonableness of completing and maintaining the COL. (HE 24, TR 454)

Witness Scroggs testified that FPL intends to incur $25 million in COL-related costs in 2017 and $10 million to $15 million annually thereafter. (TR 134) Preapproval by this Commission in this year's NCRC proceeding to incur costs in 2017 and in subsequent years would preclude future Commissions and Interveners from challenging the appropriateness and reasonableness of incurring these costs (not just the amount of such costs) associated with obtaining and maintaining the COL even though there would have been no demonstration that the project is economically viable when the decision was made. Despite the fact that there has been no feasibility analysis filed since 2015 by FPL (TR 79, 179), the Commission's annual

management report indicates significant escalations in the total costs of the project have occurred since that time. (HE 24) In 2014, FPL's cost estimate range had a high of $18.4 billion and a low of $12.6 billion. (HE 24) By 2017, FPL's cost estimate range had increased to a high of $21.9 billion to a low of $15 billion, a 9.5% increase due to a year-over-year escalation of 2.5% and extension of the project's in-service dates. (HE 24, TR 452)

FPL Witness Scroggs further admitted there are "challenges" experienced by Westinghouse in the first wave of AP 1000 projects currently under construction. (TR 130) He acknowledged these include the bankruptcy of Westinghouse, the termination of SCANA's Summer project, and the significant cost overruns of Southern Company's Vogtle project. (TR 146, 147, 153, HE 42) Witness Scroggs alleged that the bankruptcy of Westinghouse did not make the FPL project infeasible, such that it could not be built in the future. (TR 148-149) However, the facts are that Westinghouse will no longer be building nuclear power plants in the future, and, while he testified Westinghouse is still currently supporting the AP 1000 design while FPL seeks a COL, Witness Scroggs could not confirm that Westinghouse would support the AP 1000 design beyond the licensing phase. (TR 148-150) These issues related to the first wave AP 1000 projects severely reduce the likelihood that these projects will ever be completed. Even if the Vogtle plant is completed, the cost escalation of this project, along with decreased natural gas prices and no federal carbon emission plan for the next 4 years (TR 140-144), significantly reduce the economic viability of the Turkey Point Units 6 and 7 project. More importantly, it further demonstrates just how important it is for the Commission to review a feasibility analysis before rendering any further decisions on FPL's project. Until and unless a feasibility analysis is filed by FPL, it is not realistic or practical for FPL to incur any additional costs that its ratepayers must bear for the COL.

**Issue 6:** **B) Was FPL required to file an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 project, pursuant to Rule 25-6.0423(6)(c)5., F.A.C.,? If so, has FPL complied with that requirement?**

POSITION: *Rule 25-6.0423, F.A.C., specifically requires FPL to submit each year for Commission review and approval, as part of its cost recovery filing "a detailed analysis of the long-term feasibility of completing the power plant." FPL has not made this filing. Based on FPL's lack of compliance with the Commission's requirements, the Commission should order FPL to file a feasibility analysis before approving any new costs for recovery or deferral of any costs for later recovery.*

**ARGUMENT:**

Section 366.93(3)(a), F.S., states that "[a]fter a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules." Pursuant to this statute, the Commission adopted Rule 25-6.0423, F.A.C., to address the nuclear cost recovery process. Rule 25-6.0423(6)(c)5., F.A.C., states:

> Along with the filings required by this paragraph, each year a utility **shall** submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. (Emphasis added)

This rule requires the mandatory detailed annual filing of a long-term economic feasibility of completing the plant. In addition, the rule does not make this filing discretionary.

There is no question that FPL did not file a long-term feasibility analysis in this year's NCRC proceeding. (TR 79, 179) FPL Witness Scroggs attempted to argue it was not necessary to perform an economic feasibility analysis in 2016 or 2017 because FPL determined it would "pause" before moving from the licensing to preconstruction phase and not seek cost recovery during this pause period. (TR 79, 144) FPL asserted that it determined the results of a feasibility

analysis would have no bearing on the logic of finishing the activities required to complete the licensing phase of the Project. (TR 48, 79) Finally, FPL claimed the Intervener's "clamor" for a feasibility analysis is premature because it is only relevant to the issue of whether Turkey Point Units 6 and 7 should move forward into preconstruction and construction and be built. (TR 48) These assertions in no way support FPL being allowed to ignore and avoid compliance with Rule 25-6.0423(6), F.A.C.

Assuming, arguendo, that the rule requiring an annual feasibility analysis did not apply (which it does), FPL's first assertion that no economic feasibility analysis is necessary due to the "pause" is still meritless. Witness Scroggs testified that a pause would allow the first wave projects to be completed and help FPL assess how those experiences could translate to the Turkey Point Units 6 and 7 project before moving forward with preconstruction work. (TR 80) Although FPL argues no feasibility analysis is needed due to the pause, Witness Scroggs discussed the non-economic factors affecting long-term feasibility such as obtaining necessary approvals, the feasibility of an EPC contractor or EP and C contractors to complete the project, the ability to obtain financing for the project at reasonable cost, and supportive state and federal energy policy. (TR 130) He then acknowledged that the bankruptcy of Westinghouse, the termination of SCANA's Summer project, and the cost overruns of Southern Company's Vogtle project present additional concerns that must be addressed. (TR 146, 147, 153, HE 42) These issues reduce the likelihood that the first wave projects will be completed. Moreover, even if the Vogtle nuclear plant is completed, the cost escalation of the project, along with decreased natural gas prices and no federal carbon emission plan for the next 4 years (TR 140-144), severely diminish the economic viability of the Turkey Point Units 6 and 7 project. Thus, contrary to Witness Scroggs' assertion that there is no need for the feasibility analysis, these changes in circumstances strongly suggest

that an economic long-term analysis is required now more than ever to determine if it is realistic and practical to complete the Turkey Point project.

Moreover, FPL's argument that Rule 25-6.0423(6), F.A.C., does not apply because it is asking to defer costs incurred in 2017 for later recovery is also without merit. On May 1, 2017, FPL filed its request for the Commission: (1) to approve a 2018 NCRC over-recovery of $7,305,202 for the final true-up of 2015 and 2016 Project costs; (2) to find FPL's decision to complete licensing is appropriate and reasonable; and (3) to approve the deferral of NCRC costs incurred in 2017 and subsequent years until such time as FPL makes a decision regarding initiation of preconstruction work. May 1, 2017 Petition at pp. 7-8.

Rule 25-6.0423(6)(c)2., in pertinent part, and 5., F.A.C., state that:

> (c) Cost Recovery for Nuclear or Integrated Gasification Combined Cycle Power Plant Costs.
>
> 2. The Commission shall conduct an annual hearing to determine the **reasonableness** of **projected pre-construction expenditures** and prudence of actual pre-construction expenditures expended by the utility;
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> 5. Along with the filings required by this paragraph, each year a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. (Emphasis added)

It is clear from the May 1st Petition that FPL is asking the Commission to take multiple actions in this year's 2017 NCRC proceeding. In fact, the relevant Commission action that FPL is requesting related to 2017 and subsequent years results in the Commission essentially preapproving some future level of recovery. Witness Scroggs testified that FPL intends to incur

$25 million in COL-related costs in 2017 and $10 million to $15 million annually thereafter. (TR 134) Thus, preapproval in this year's NCRC proceeding to incur costs in 2017 and in subsequent years would preclude future Commissions and Interveners from contesting the appropriateness and reasonableness of incurring such costs (not just the amount) that are associated with obtaining and maintaining the COL even though there has been no evidence filed in this proceeding to demonstrate that the project remains economically feasible today. FPL will continue to incur costs based on the "blessing" of the Commission if the Commission renders a decision finding it reasonable and appropriate to obtain and maintain the COL. Yet, FPL also wants to defer the recovery through the NCRC of these costs until a later time to avoid the scrutiny that would undoubtably come with the filing of a long-term economic feasibility analysis. While FPL is attempting to parse the Commission's rule in such a way that would not require the feasibility analysis, the straight-forward language of the rule demonstrates that it is required. Nothing in Subsection 25-6.0423(6)(c)5., F.A.C., makes the filing of a feasibility analysis filing contingent upon when costs are recovered once FPL has sought to invoke the action it wants the Commission to take in this year's docket. Moreover, the plain reading of this rule does not allow FPL's attempt to thwart the NCRC statute and rule which require building the plant to remain realistic and practical.

In conclusion, Rule 25-6.0423, F.A.C., specifically requires FPL to submit annually for Commission review and approval, as part of its cost recovery filing, a detailed analysis of the long-term feasibility of completing the power plant. Simply put, FPL has not made this filing, nor sought a waiver of this requirement. Based on FPL's lack of compliance with the Commission's requirements, the Commission should order FPL to file a feasibility analysis before approving any new costs for recovery or approving the deferral of any costs for later recovery.

**Issue 7:** **Has FPL complied with Order No. PSC-16-0266-PCO-EI? If not, what action should the Commission take, if any?**

POSITION: *No. In Order No. PSC-16-0266-PCO-EI, issued July 12, 2016, in Docket No. 160009-EI (20160009-EI) at page 2, the Commission states "FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket." FPL failed to file in this year's docket a long-term feasibility study in accordance with Rule 25-6.0423(6)(c)5., F.A.C.; therefore, FPL has not complied with the Commission's Order and rule.*

**ARGUMENT:**

As noted in Order No. PSC-16-0266-PCO-EI, issued July 12, 2016, in Docket No. 160009-EI, Order Granting Florida Power & Light Company's Motion to Defer Consideration of Issues and Cost Recovery, FPL filed for cost recovery of its estimated 2016 costs on April 27, 2016. Id. at p. 1. However, FPL did not file its long-term feasibility testimony and exhibits. Id. Instead, FPL filed a Petition for Waiver of Rule 25-6.0423(6)(c)5., F.A.C., that requires the annual feasibility analysis. Id. The Interveners to that docket opposed FPL's requested waiver. Id. at p. 2. Based on this opposition, FPL withdrew its petition for rule wavier. The company then requested, and the Commission granted, deferral of recovery for its 2016 and 2017 costs into this year's NCRC proceeding. Id. at pp. 2, 3. In its Order granting the deferred consideration (and increased carrying costs), the Commission specifically noted, in apparent reliance thereon, that "FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket." Id. at p. 2.

While FPL represented that it planned to file a feasibility analysis in 2017 as noted in the Commission's Order, FPL Witness Scroggs testified in this year's proceeding that it was unnecessary to perform such an analysis. (TR 79) He argued that the results of a 2016 feasibility analysis would have no bearing on whether to finish the activities required to complete the licensing phase of the Project. (TR 79) However, contrary to FPL's assertion that a feasibility

study currently serves no purpose, such a feasibility analysis is absolutely necessary for the Commission to make a reasoned decision of whether the project should move forward and allow additional costs to be incurred.

In its Motion to Defer Consideration of Issues and Cost Recovery, filed June 17, 2016, in Docket No. 160009-EI, FPL represented that "[u]pon approval of this motion, FPL will withdraw its Petition for Waiver and will plan to file a feasibility analysis in the ordinary course of the 2017 NCR cycle." Motion at p. 2. Thus, when it granted the deferral of costs until this year's proceeding, the Commission did so with the understanding, and reliance thereon, that FPL would file a long-term feasibility study in 2017. Order No. PSC-16-0266-PCO-EI stated "that Florida Power & Light Company's Motion to Defer Consideration of Issues and Cost Recovery is hereby granted." Id. at p. 3. By granting FPL's motion, the Commission's Order incorporated FPL's representation that it would file a feasibility study. The Commission did not grant the deferral of the costs based on a conditional representation that FPL "might" file a long-term study in this year's proceeding. Moreover, FPL did not ask for a waiver of the annual requirement to file a long-term feasibility analysis in 2017 pursuant to Rule 25-6.0423(6)(c)5., F.A.C.

The bottom line is that FPL failed to file in this year's docket a long-term feasibility study in accordance with Rule 25-6.0423(6)(c)5., F.A.C.; therefore, it has not complied with the Commission's Order or the rule. The Commission should find FPL did not comply with its Order No. PSC-16-0266-PCO-EI and order FPL to file a long-term feasibility analysis demonstrating the intent to complete Turkey Point 6 and 7 is realistic and practical before making any decision (1) as to the reasonableness and appropriateness of FPL obtaining and maintaining the COL; and (2) approving any additional costs for recovery or later recovery.

**Issue 8:** **What is the total jurisdictional amount to be included in establishing FPL's 2018 Capacity Cost Recovery Clause factor?**

POSITION: * The jurisdictional amount to be included in the 2018 Capacity Cost Recovery Clause factor should be limited to the over-recovery of $1,306,211 for 2015 true-up amount and the over-recovery of $5,998,991 for 2016.*

**ARGUEMENT**

The jurisdictional amount to be included in the 2018 Capacity Cost Recovery Clause factor should be limited to the 2015 true-up amount which is an over-recovery of $1,306,211. In addition, the over-recovery of $5,998,991 for 2016 should also be included in the 2018 Capacity Recovery Clause factor. However, any costs associated with 2017 should not be included in the factor.

**Issue 9:** **What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?**

POSITION: * The current total estimated all-inclusive costs are unknown.*

**ARGUEMENT**

The current all-inclusive costs are unknown due to several factors. First, cost projections have risen and continue to rise. In the Review of Florida Power & Light Company's Project Management Internal Controls for Turkey Point 6 & 7 Construction (Management Review), Staff documented that FPL's estimated project high/low cost range had significantly increased over the last two years, specifically from 2016 to 2017. (HE 24) The low end of the range increased from $13.67 billion to $14.96 billion, and the high end of the range increased from $19.96 billion to $21.87 billion. (HE 24) While FPL assumed a 2.5 percent year-to-year escalator, the high/low range increased by 9.5% from 2016 to 2017, driven in large part by delaying the estimated in service date for four years. (HE 24) Witness Scroggs' True-up to Original Schedule 7 (TOR-7) shows a comparison between FPL's cost estimate from its 2008 Petition for Need Determination to its 2017 high/low cost range. (HE 10) In its need determination, FPL expected the units to be

in service by 2018 and 2020 with a low cost of $12.06 billion and a high cost of $17.76 billion. (HE 10, HE 24) In 2017, FPL estimated that the low cost is now $14.96 billion and the high cost is $21.88 billion, with an in service date of 2032. Thus, FPL's in service schedule has slipped by 12 years and the high-end of the range of "all in" costs has increased by over $4 billion. (HE 10, HE 24) Whether it receives the COL or not, this schedule slippage and increase in completion costs continue to add more uncertainty as to whether FPL will ever construct Turkey Point Units 6 and 7.

Second, the high/low cost range has been impacted by the "pause" in the project which FPL has implemented due to the uncertainties with the first wave AP 1000 projects. (TR 146, 147, 153, HE 42) Witness Scroggs first testified that "[t]he work necessary to undertake such a [Project Schedule] revision will be informed by the observations and lessons learned from the completion of first wave AP1000 construction projects." (TR 87) Witness Scroggs then testified the delays forecasted for the first wave projects have resulted in incomplete data which is necessary to inform the construction schedule and capital cost requirements for Turkey Point Units 6 and 7. (TR 86) At the time of Witness Scroggs' March 1, 2017 testimony, Southern Company's Vogtle project and SCANA's Summer project were the last two remaining first wave AP 1000 construction projects underway (TR 79-80) Due to the enormous costs to complete the Summer project, Santee Cooper, one of the co-owners, subsequently voted to abandon and terminate that project. (HE 41) With the abandonment of the Summer project, Southern Company's Vogtle AP 1000 project is the last remaining first wave project under construction. (HE 41) And there are no assurances that Vogtle will ever be completed. According to eenews.com, the future of the Vogtle project remains uncertain, with Georgia utility regulators scheduled to make a decision on that project's future in February 2018. (HE 42)

At this time, the estimated all-inclusive costs for Turkey Point Units 6 and 7 are unknown, and FPL has failed to meet its burden under the applicable statute and rule to submit an undated feasibility analysis. As a result, if the Commission approves FPL's request to obtain and maintain the COL as reasonable and then allow a "pause" in the recovery of the costs incurred over an indefinite period, the final amount that FPL ratepayers will have to bear will be unknown. Therefore, the Commission should reject what FPL has supplied as estimated all-inclusive costs and require FPL to file an updated feasibility analysis before making any further decisions or authorizing any additional expenditures.

**Issue 10: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?**

POSITION: * The current estimated planned commercial operation date is unknown.*

**ARGUEMENT**

The current estimated planned commercial operations are unknown at this time and FPL cannot answer this question with any clarity. The 2016 and 2017 Management Reviews both contain a Commercial Operation Date (or in service date) timeline for Turkey Point Units 6 and 7. (HE 24, 25) The 2016 Review shows a "potential delay" in the construction phase. (HE 25) The 2017 Review now shows the Construction phase is "to-be-determined" at a later date. (HE 24) According to the 2017 Review, FPL intends to engage in activities necessary to defend and maintain COL-related permits, licenses, certifications, and approvals and that its licensing engineers will oversee the incorporation of license amendments approved for other AP 1000 projects. (HE 24) FPL now suggests Turkey Point's in service schedule has slipped by 12 years and provides a guesstimated "in service" date of 2032. (HE 10, HE 24) What FPL clearly establishes with its testimony and evidence is that it has no idea when, or if, Turkey Point Units 6

and 7 will ever be built; moreover, what is also clear is that FPL wants to continue spending its ratepayers' money.

At this time, the estimated in service dates for Turkey Point Units 6 and 7 are unknown. FPL cannot provide any supportable "in service" dates for its proposed project and its current projected dates are no more than a guess. Therefore, the Commission should reject what FPL has provided as estimated commercial operation dates.

Respectfully submitted,

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of the State of Florida

**CERTIFICATE OF SERVICE**
**Docket No. 20170009-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 31st day of August, 2017, to the following:

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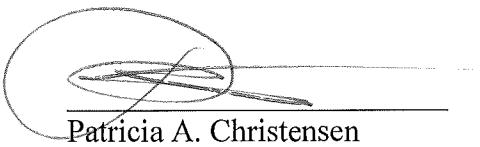

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