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FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company	Docket No. 150075-EI Filed: June 23, 2015

FLORIDA POWER & LIGHT COMPANY'S
PREHEARING STATEMENT

Pursuant to Florida Public Service Commission ("FPSC" or the "Commission") Order No. PSC-15-0143-PCO-EI, Florida Power & Light Company ("FPL" or the "Company") hereby submits its Prehearing Statement regarding the issues to be addressed at the hearing scheduled for July 28-29, 2015.

1) WITNESSES

Direct

WITNESS	SUBJECT MATTER	ISSUES
Robert E. Barrett	Overview, economic and strategic benefits to customers, appropriate rate of return on investment	2, 3 6, 7, 8, 9
David Herr	Fair value analysis	1, 2,
K. Ousdahl	Accounting treatment, regulatory reporting and ratemaking treatment	7, 9
T. L. Hartman	Details of Cedar Bay Transaction, benefits and cost savings	2, 3, 3A, 4, 5, 6

Rebuttal

WITNESS	SUBJECT MATTER	ISSUES
Robert E. Barrett	Clarifies purpose of the Cedar Bay Transaction and explains basis for return on investment at FPL's weighted average cost of capital	8, 9
David Herr	Appropriate discount rate and inputs for calculation of fair value estimate	1
K. Ousdahl	Accounting treatment, tax treatment	7, 9
T. L. Hartman	Bonus capacity payments, SJRPP coal price forecast, Cedar Bay Facility improvements and operations, inputs to economic analysis	3, 4
Ray Butts	FPL's environmental liability assessment	5
T. L. Patterson	Operational improvements made to the Cedar Bay Facility, ability to earn and calculation of bonus capacity payments, RockTenn/Cedar Bay Facility Ground Lease	5

2) EXHIBITS

Witness	Subject Matter	Prefiled Exhibit No.
David W. Herr	Curriculum Vitae	DH-1
David W. Herr	"Valuation of Certain Tangible and Intangible Assets of CBAS Power Inc." Report	DH-2
David W. Herr	More Detailed Form of "Valuation of Certain Tangible and Intangible Assets of CBAS Power Inc." Report (CONFIDENTIAL)	DH-3
David W. Herr	Major Factors Impact FV of Cedar Bay PPA (CONFIDENTIAL)	DH-4
Kim Ousdahl	Proposed Journal Entries	KO-1
Kim Ousdahl	FERC Accounting Decisions on Qualifying Facility ("QF") Acquisitions	KO-2
Kim Ousdahl	Cedar Bay Journal Entries Under Original Cost Accounting	KO-3
Thomas L. Hartman	Existing Contract Capacity and Operation & Maintenance ("O&M") Payment Obligations	TLH-1
Thomas L. Hartman	Purchase & Sale Agreement (CONFIDENTIAL)	TLH-2
Thomas L. Hartman	Cedar Bay Ownership Structure	TLH-3

Witness	Subject Matter	Prefiled Exhibit No.
Thomas L. Hartman	Results of FPL’s Economic Evaluation	TLH-4
Thomas L. Hartman	Historical operating performance of the Cedar Bay Facility	TLH-5
Thomas L. Hartman	Graph of Monthly Capacity Factor from January 2010 through December 2014	TLH-6
Thomas L. Hartman	Economics of operating the Cedar Bay Facility through 2024	TLH-7
Tracy L. Patterson	Cedar Bay: Chronology of Plant Engineering Improvements (CONFIDENTIAL)	TLP-1
Tracy L. Patterson	Performance Statistics for Cedar Bay Generating Facility (CONFIDENTIAL)	TLP-2
Tracy L. Patterson	The Ground Lease Between Cedar Bay Generating Company and RockTenn (CONFIDENTIAL)	TLP-3

3) STATEMENT OF BASIC POSITION

FPL seeks Commission approval of a purchase and sale agreement that will allow FPL to mitigate the impact of its existing power purchase agreement (“PPA”) with Cedar Bay Generating Company, Limited Partnership (“Cedar Bay Genco”), which requires FPL to continue making above-market capacity payments through the end of 2024. In December 2014, FPL entered into a Purchase and Sale Agreement (“Agreement”) to assume ownership of the Cedar Bay generating facility (“Cedar Bay Facility” or the “Facility”) through a stock purchase and terminate its existing PPA with Cedar Bay Genco. The Cedar Bay Transaction, which is contingent on FPSC approval, is projected to produce $70 million in savings for FPL customers on a cumulative present value revenue requirements (“CPVRR”) basis ($156 million nominal savings).

Background. The Cedar Bay Facility is a 250 megawatt circulating fluidized bed coal-fired unit that has been selling all of its capacity and energy to FPL since 1988. CBAS Power, Inc. (“CBAS”) owns the Facility; Cedar Bay Operating Services, LLC operates and manages the

Facility; and Cedar Bay Genco, also wholly owned by CBAS, sells the electricity produced by the Facility to FPL pursuant to a long-term PPA that expires December 31, 2024.

Payments due under the PPA. Capacity and energy payments are treated differently under the PPA. Energy payments are tied to the St. Johns River Power Park coal prices, which are lower than the Cedar Bay Facility's actual energy costs and are based on FPL's dispatch of the Facility. Capacity and O&M payments are fixed and were determined based on Florida's avoided unit at the time the parties entered the PPA. In contrast to the energy pricing, the capacity and fixed O&M payments are above today's current and projected market prices and well above FPL's current avoided cost. Moreover, FPL must make the fixed monthly capacity and O&M payments irrespective of whether or how often FPL dispatches the Facility. To illustrate the unfavorable nature of the pricing structure, FPL's 2014 average avoided cost was $27 per MWh compared to Cedar Bay Genco's "all in" price under the PPA of more than $178 per MWh.

The Cedar Bay Transaction. In an effort to mitigate the impact of the above-market payment obligations, FPL recently entered into an Agreement with CBAS Power Holdings LLC pursuant to which FPL would purchase 100 percent of the equity ownership interest in CBAS. For a purchase price of $520.5 million, FPL will become the sole ultimate owner of the Cedar Bay Facility and, upon closing, would consensually cancel the existing PPA, thus terminating the obligation to make any additional out-of-market payments. As sole owner, FPL would thereafter be entitled to continue to economically dispatch the Facility to meet its system needs. While in recent years FPL has dispatched the Cedar Bay Facility at an annual capacity factor of about 50 percent due to competitive energy charges under the PPA, FPL anticipates that, based on true energy costs, it will dispatch the Facility at a substantially lower capacity factor of about 5 percent. Based on current projections, FPL anticipates that it will retire the Cedar Bay Facility at the end of 2016 due to the availability of the new interstate natural gas pipeline system to fuel its natural gas-fired units in early 2017. FPL retains the option to continue operating the Facility if economic changes dictate that further dispatch of the unit is the best option for customers.

Benefits of the Cedar Bay Transaction. At least three benefits result from the Cedar Bay Transaction. First, the purchase of the Cedar Bay Facility, together with the termination of the PPA, is projected to produce $70 million in savings for customers on a CPVRR basis ($156 million nominal savings). Under alternate economic scenarios in which the anticipated fuel and emissions costs were 20 percent greater than and 20 percent less than forecasted, the Cedar Bay Transaction is expected to produce customer savings, in amounts ranging from $3 million to $106 million (CPVRR). Indeed, the intervenor testimony acknowledges that the Cedar Bay Transaction will result in savings even if the intervenor's extreme assumptions[1] were used to evaluate the economics.

Second, by structuring the Cedar Transaction in a manner that gives FPL ownership of the Facility, FPL maintains for its customers the option of continued fuel supply reliability and diversity by keeping the Cedar Bay Facility in service. Having the ability to dispatch a 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. Again, if economic conditions change, the Company can continue to operate the Facility, thereby producing even greater customer savings than currently estimated.

Third, the Cedar Bay Transaction is expected to provide environmental benefits. FPL anticipates that reducing the annual capacity factor from 50 percent to 5 percent once it assumes control of the Facility will, in turn, reduce carbon dioxide ("CO_2") emissions in Florida by over a million tons per year. Further, FPL's anticipated retirement of the Facility at the end of 2016 might be a particularly important benefit to the State depending on the scope and timing of

[1] FPL's rebuttal testimony filed on June 17, 2015 explains why the intervenors' assumptions are erroneous.

implementing the Environmental Protection Agency's Clean Power Plan regarding CO_2 emissions.

Proposed regulatory accounting treatment. FPL proposes to record the costs associated with the Cedar Bay Transaction in the Capacity Cost Recovery Clause ("CCR Clause"), the Fuel Cost Recovery Clause ("FCR Clause") and base rates, as described below. To avoid double recovery, FPL will not include the items recovered in the FCR and CCR Clauses in retail base ratemaking or FPL's earnings surveillance report.

<u>Base rates</u>. FPL proposes to record the operation and maintenance costs of the Facility in base O&M as they are incurred. Consistent with FPL's Settlement Agreement approved by Order No. PSC-13-0023-S-EI, FPL will not seek an increase in base rates until base rates are reset in FPL's next base rate proceeding.

<u>Capacity Clause</u>. FPL proposes to establish a regulatory asset in the CCR Clause for the CBAS purchase price in the amount of $520.5 million, essentially equivalent to the fair value of the loss on the PPA. Since the loss is not deductible for income tax purposes, FPL must also recover the associated income taxes. Accordingly, FPL proposes also to establish a regulatory asset and an offsetting deferred tax liability for $326.9 million, which represents the income tax gross up associated with the purchase price.

FPL proposes to amortize approximately $90.3 million per year comprised of the net regulatory assets for the CBAS purchase price and associated income tax gross up. FPL requests recovery of the net regulatory assets through the CCR Clause over the remaining PPA period, which is roughly 10 years. Recovery through the CCR Clause is appropriate because that is where FPL currently is recovering the cost of the PPA whose termination results in the regulatory assets.

FPL also seeks to recover an appropriate return on the $520.5 million regulatory asset established for the CBAS purchase price through the CCR Clause. Because the payment to

CBAS Power Holdings, LLC in exchange for terminating the PPA represents a long-term investment, FPL anticipates financing it using the Commission-approved regulatory adjusted mix of debt and equity. To fairly recognize the investment made by its equity and debt investors, FPL requests a return on the unamortized balance of this regulatory asset calculated based on FPL's weighted average cost of capital ("WACC") used for clause recovery. This treatment is consistent with Order No. PSC-12-0425-PAA-EU, in which the Commission confirmed that utilities should be permitted to earn their current, approved WACC on clause-recoverable investments.

FCR Clause. FPL proposes to recover the fuel costs associated with the Cedar Bay Facility through FPL's FCR Clause, including the rail car lease payments and fuel transportation costs associated with delivering coal to the Facility. This treatment is consistent with the Commission's decision in Order No. 14546, issued July 8, 1985, in Docket No. 850001-EI-B.

4) STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: What is the fair value of the existing purchase power agreement with Cedar Bay Genco that FPL is acquiring?

FPL: The Fair Value of the existing purchase power agreement ("PPA") with Cedar Bay Genco that FPL is acquiring is $520 million, representing the value that the PPA 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)

ISSUE 2: Is FPL's purchase price for the equity ownership interest of CBAS Power, Inc. fair and reasonable?

FPL: Yes. FPL's purchase price was determined as a result of arm's-length negotiations between independent, unrelated parties. FPL's purchase of the equity ownership interest in CBAS Power, Inc. ("CBAS") will enable FPL to terminate the out-of-market PPA payments that FPL would otherwise be obligated to pay through 2024. Using appropriate assumptions and modeling, FPL determined that the purchase of CBAS Power, Inc. at $520.5 million will result in customer savings of $70 million (CPVRR) compared to continuing to make the contractually required PPA payments. (Barrett, Herr, Hartman)

ISSUE 3: **Is FPL's purchase and sale agreement between FPL and CBAS Power Holdings, LLC and termination of the existing purchase power agreement with Cedar Bay Genco cost-effective?**

FPL: Yes. As stated in Issue No. 2, FPL's purchase of the equity ownership interest in CBAS will enable FPL to terminate the out-of-market PPA payments, which will result in customer savings of $70 million (CPVRR) compared to continuing to make the contractually required PPA payments. (Barrett, Hartman)

ISSUE 3A: **In its economic evaluation of and selection of the proposed transaction, did FPL take into account all reasonable measures to mitigate future PPA impacts to ratepayers?**

FPL: Yes. FPL has reasonably and realistically modeled the payments that it would be obligated to make under the terms of the PPA. FPL seeks the lowest practical cost of coal for SJRPP, which automatically results in the lowest energy cost for Cedar Bay under the PPA. This practice is reflected in the energy price forecast that was used to calculate the $70 million CPVRR in customer savings from the Cedar Bay Transaction. The ability to make short term sales of Cedar Bay output to which FPL would be entitled under the PPA is purely speculative, and FPL does not attempt to project such sales as part of its regular planning purposes. Any short term sales of energy and capacity would be recallable by FPL to meet its own customer requirements, and any potential sales would be expected to reflect that contingency in price that buyers would be willing to pay. (Hartman)

ISSUE 4: **If the Commission approves FPL's proposed Cedar Bay transaction, how will existing contracts between third party providers and CBAS Power, Inc. or subsidiaries be handled, what are the projected costs of fulfilling or terminating such contracts, and how should these costs be recovered?**

FPL: If the Commission approves the Cedar Bay Transaction, Cedar Bay Genco will continue as the counterparty to, and will handle, contracts with third parties, including the land lease and steam sales agreement. Because FPL will have upstream ownership interest in Cedar Bay Genco, the economic evaluation FPL performed to determine the cost-effectiveness of the Cedar Bay Transaction and the resulting customer savings accounts for the costs that Cedar Bay Genco will incur associated with these contracts. The appropriate recovery for the Cedar Bay Transaction is described in FPL's position on Issue 7. (Hartman)

ISSUE 5: **What are the operational and regulatory risks associated with FPL's proposed Cedar Bay transaction and has FPL appropriately accounted for these risks under the transaction?**

FPL: FPL has appropriately accounted for operational and regulatory risks in evaluating the Cedar Bay Transaction. FPL has thoroughly assessed the environmental liability based on recent independent, comprehensive evaluations as well as years of monitoring reports submitted to environmental agencies and an on-site visit. The indemnifications included in the ground lease for the Cedar Bay Facility protect the Company from any future liability associated with the historical contamination. Additionally, FPL will maintain a $20 million insurance policy, which based on FPL's considerable experience, appropriately protects the Company against past, present and future environmental liabilities, known or unknown. Operationally, Cedar Bay Genco has implemented significant and sustainable improvements and ongoing maintenance practices that will ensure the Facility operates with high reliability. (Hartman, Butts, Patterson)

ISSUE 6: **Should the Commission approve as prudent FPL's request to approve the purchase and sale agreement between FPL and CBAS Power Holdings, LLC and terminate the existing purchase power agreement with Cedar Bay Genco?**

FPL: Yes. Under the existing PPA, the capacity payments between FPL and Cedar Bay Genco are out-of-market. The purchase and sale agreement ("Agreement") between FPL and CBAS Power Holdings, LLC allows FPL to terminate the obligation to make those out-of-market payments and will result in customer savings of $70 million (CPVRR). In addition, pursuant to the Agreement, FPL will take ownership of the Cedar Bay Facility, which will allow FPL to run the Facility for reliability and fuel diversity purposes. Finally, approval of the Agreement makes possible early retirement of the Facility, thus producing environmental benefits for the state of Florida by substantially reducing the unit's carbon dioxide emissions. (Barrett, Hartman)

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

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

(1) The non-fuel costs of operating the Cedar Bay Facility will be recorded in base rate accounts.

(2) FPL will not record any amount as plant in service for the Cedar Bay Facility because the Facility has no economic value.

(3) FPL will establish regulatory assets for the purchase price of $520.5 million and associated income tax gross up of $326.9 million. FPL will establish a regulatory liability for the tax effect of the book/tax difference on the acquired Cedar Bay Facility of approximately $4.9 million.

(4) FPL will recover through the Capacity Cost Recovery Clause (a) amortization of the net regulatory assets over the remaining PPA period, roughly 10 years and (b) a return on the unamortized balance of regulatory asset for the purchase price.

(5) FPL will recover the fuel costs associated with the Cedar Bay Facility through the FCR Clause, including the rail car lease payments and fuel transportation costs associated with delivering coal to the Facility. (Ousdahl, Barrett)

ISSUE 8: **If the Commission approves FPL's proposed Cedar Bay transaction, what is the proper rate of return?**

FPL: The proper rate of return for the Cedar Bay Transaction is FPL's overall weighted average costs of capital ("WACC") that is used for clause investments. This is consistent with the Commission's Order No. PSC-12-0425-PAA-EU, which provides that utilities should be permitted to earn their current, approved WACC on clause-recoverable investments. (Barrett)

ISSUE 9: **If FPL's petition is approved, how should the Cedar Bay Generating Facility acquisition costs be recovered?**

FPL: The appropriate recovery for the Cedar Bay Generating Facility is described in FPL's position on Issue 7.

Disputed Issue:

Are payments under the existing PPA in the public interest?

FPL: This is not an appropriate issue for this docket. The Commission already has approved the PPA between FPL and Cedar Bay Genco. Order No. 21468; Order No. PSC-03-0157-PAA-EI. Revisiting recovery of contractually required payments under the PPA would violate the doctrine of administrative finality. *See* Order No. 25668.

5) STIPULATED ISSUES

FPL: None at this time.

6) PENDING MOTIONS

FPL: None at this time.

7) PENDING REQUESTS FOR CONFIDENTIALITY

1. Florida Power & Light Company's request for confidential classification of certain information contained in the testimony of witness Tom L. Hartman (Exh TLH-2) and David Herr (Exh DH-3), dated March 6, 2015. [DN 01323-15]

2. Florida Power & Light Company's request for confidential classification of certain responses to staff's 1st set of interrogatories (Nos. 1, 2, and 19) and 1st request for PODs (Nos. 3-4); and OPC's 1st set of interrogatories (No. 4) and 1st request for PODs (Nos. 2, 4, 5, and 10), dated April 27, 2015. [DN 02345-15]

3. Florida Power & Light Company's request for confidential classification of response to FIPUG's request for PODs (No. 13), dated May 19, 2015. [DN 02969-15]

4. Florida Power & Light Company's request for confidential classification of certain responses to OPC's 2nd request for PODs (Nos. 12, 14, 15(c), 18, 21, and 34), dated May 21, 2015. [DN 03044-15]

5. Cedar Bay's First request for confidential classification of documents produced in initial response to FIPUG's request for PODs (Nos. 1-12), dated May 21, 2015. [DN 03048-15]

6. Florida Power & Light Company's request for confidential classification of certain responses to OPC's 4th request for PODs (Nos. 45, 48, and 49), dated May 28, 2015. [DN 03156-15]

7. Cedar Bay's second request for confidential classification of documents produced in first supplemental response to FIPUG's request for PODs (Nos. 1-12), Bates Nos. CB0009579 through CB0055321, dated May 28, 2015. [DN 03158-15]

8. Cedar Bay's third request for confidential classification of documents produced in second supplemental response to FIPUG's request for PODs (Nos. 1-12), Bates Nos. CB0055322 through CB0060139, dated May 29, 2015. [DN 03205-15]

9. Cedar Bay's fourth request for confidential classification of documents produced in third supplemental response to FIPUG's request for PODs (Nos. 1-12), Bates Nos. CB 0060140 through CB 0095863, dated May 29, 2015. [DN 03207-15]

10. Florida Power & Light Company's request for confidential classification of certain responses to OPC's 5th set of interrogatories (Nos. 49 and 51), dated June 1, 2015. [DN 03270-15]

11. Florida Power & Light Company's request for confidential classification of supplemental response to FIPUG's 2nd request for PODs (No. 13), dated June 2, 2015. [DN 03304-15]

12. Florida Power & Light Company's request for confidential classification of response to staff's 4th set of interrogatories (No. 34(a)), dated June 4, 2015. [DN 03369-15]

13. Cedar Bay's fifth request for confidential classification of exhibits to depositions of Tracy Patterson, Rick Neff and Mark Rudolph, dated June 19, 2015. [DN 03740-15]

8) OBJECTIONS TO A WITNESS' QUALIFICATION AS AN EXPERT

None at this time.

9) STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

There are no requirements of the Order Establishing Procedure with which FPL cannot comply.

Respectfully submitted this 23rd day of June, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery on the 23rd day of June, 2015, to the following:

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