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September 9, 2016

VIA ELECTRONIC FILING

Ms. Carlotta S. Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: **Docket 160154-EI**
FPL's 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

Dear Ms. Stauffer:

Attached for filing in the above docket is Florida Power & Light Company's ("FPL") Prehearing Statement. This letter, Prehearing Statement, and certificate of service are being submitted via the Florida Public Service Commission's Electronic Filing Web Form as a single PDF file.

If there are any questions regarding this transmittal, please contact me at (561) 304-5662.

Sincerely,

By: /s/ William P. Cox
William P. Cox
Fla. Bar No. 00093531

Enclosure

cc: Counsel for Parties of Record (w/encl.)

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 Purchase Power Agreement

Docket No. 160154-EI

Filed: September 9, 2016

**FLORIDA POWER & LIGHT COMPANY'S
PREHEARING STATEMENT**

Pursuant to Florida Public Service Commission (“FPSC” or the “Commission”) Order No. PSC-16-0332-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 October 3-4, 2016.

1) WITNESSES

Direct

<u>WITNESS</u>	<u>SUBJECT MATTER</u>	<u>ISSUES</u>
Robert E. Barrett	Overview, economic and strategic benefits to customers, appropriate rate of return on investment	1, 2, 3, 5, 7, 8
David Herr	Fair value analysis	2, 4A
Liz Fuentes	Accounting treatment, regulatory reporting and ratemaking treatment	6, 8, 9
Thomas L. Hartman	Details of the ICL Transaction, benefits and cost savings	1, 2, 3, 4, 5

2) **EXHIBITS**

Witness	Subject Matter	Prefiled Exhibit No.
David W. Herr	Curriculum Vitae	DH-1
David W. Herr	Summary Report prepared by Duff & Phelps entitled “Valuation of Certain Assets of Indiantown Cogeneration LP”	DH-2
David W. Herr	More Detailed Form of “Valuation of Certain Assets of Indiantown Cogeneration LP” Report (CONFIDENTIAL)	DH-3
Liz Fuentes	Proposed Journal Entries	LF-1
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	ICL Corporate Structure	TLH-3
Thomas L. Hartman	Projected Customer Savings Calculation	TLH-4

3) **STATEMENT OF BASIC POSITION**

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.

4) STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: **Is FPL's proposal to acquire the ICL Facility as proposed in its Petition (the "ICL Transaction") cost effective?**

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)

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

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)

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?

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)

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?

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)

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

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)

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

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)

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

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)

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

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)

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

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)

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?

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

ISSUE 10: Should the Docket be closed?

FPL: Yes.

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 (Exhibit TLH-2) and David Herr (Exhibit DH-3), dated June 20, 2016. [DN 03886-16]

8) OBJECTIONS TO A WITNESS' QUALIFICATION AS AN EXPERT

All of FPL's witnesses are fact and expert witnesses with respect to the subject matter contained in their pre-filed testimony and exhibits. No other party has submitted testimony of any witness; accordingly, FPL has no objection to any witness's qualifications.

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 9th day of September, 2016.

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By: /s/ William P. Cox
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CERTIFICATE OF SERVICE

Docket No. 160154-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 9th day of September, 2016 to the following:

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