BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause	Docket No. 20170009-EI Filed: August 31, 2017

POST-HEARING BRIEF OF FLORIDA POWER & LIGHT COMPANY

Florida Power & Light Company ("FPL" or the "Company") hereby files with the Florida Public Service Commission (the "FPSC" or "Commission") its Post-Hearing Brief in the above-referenced Nuclear Cost Recovery ("NCR") docket, pursuant to Order No. PSC-2017-0323-PHO-EI, and states as follows:

I. INTRODUCTION

FPL's NCR filing this year consists of three components:

1. A request to find that FPL's 2015 and 2016 costs were prudently incurred and to reflect the final true-up of those costs in its 2018 Capacity Cost Recovery factors;
2. A request to suspend the annual NCR proceeding and defer the review and recovery of FPL's costs beginning with those incurred in 2017 for up to five years – a procedural request that aligns with FPL's plan to take a project "pause" and preserves all parties' opportunities to challenge, and the Commission's opportunity to review, FPL's costs at a future time; and
3. A request to find that FPL's decision to complete the final steps of its 10-year licensing effort is reasonable.

FPL recognizes the dynamic set of circumstances that has developed with respect to the prospects for new nuclear construction projects over the last several years. In fact, it underscores the appropriateness of FPL's decision to "pause" the Turkey Point 6 & 7 project ("the Project").

But the rapid pace at which future circumstances may change is precisely why it makes sense to get the combined license ("COL") from the Nuclear Regulatory Commission ("NRC"). During the hearing, FPL witness Scroggs described how the 2004 and 2005 storm seasons shut down gas production in the Gulf of Mexico and put FPL's customers at risk of not having sufficient generation. He continued:

> [T]he factors that brought this Nuclear Cost Recovery and the whole support for new nuclear generation about happened rapidly and were dramatic and offered a real threat to our customers. The factors that have occurred in the last several years that have seen the demise of one U.S. AP-1000 project and severely threatens the other one are [ ] equally dramatic and quick-returning. Is it possible that, in the next ten years, factors change just as dramatically to the other side? We think yes. And we think that, at the brink of obtaining an option that would give you another choice in that future decade or decades, abandoning that at this point is not the right thing to do.

Tr. 281-82. FPL is at the "two yard line" and believes it to be self-evident that getting the COL is the right thing to do, regardless of whether current economic conditions would support a decision to build Turkey Point 6 & 7 at this time. Tr. 214, 255 (Scroggs). Nonetheless, in recognition of the unique nature of the role the Commission plays in the oversight of new nuclear projects pursuant to Section 366.93, Florida Statutes ("the NCR Statute") and Rule 25-6.0423, Florida Administrative Code ("the NCR Rule"), FPL is seeking the Commission's determination that FPL's decision to complete licensing is reasonable.[1]

I. SUMMARY OF ARGUMENT

Pursuant to Section 403.519(4), Fla. Stat., FPL sought and was granted a determination of need for the Turkey Point 6 & 7 project. *See, In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company*, Docket No. 070650-EI, Order No. PSC-08-0237-FOF-EI (issued April 11, 2008) (making an affirmative

[1] All statutory references are to the Florida Statutes (2017).

determination of need for Turkey Point 6 & 7). FPL's approach to the construction of new nuclear has been markedly different from others in the industry. From the beginning, FPL stated that it would employ a step-wise approach. It has done so. *See* Tr. 117, 137-38 (Scroggs). FPL is now on the verge of obtaining a COL; however, nothing has changed with regard to FPL's approach to this Project. Specifically, FPL has determined that completing the licensing process is the right thing to do. At the same time, FPL also has concluded that given the unprecedented changes currently occurring in the marketplace, it will "pause" prior to entering into the preconstruction phase of the Project, a point at which FPL would be required in any event to return to this Commission for further review and approval to proceed. *See* §366.93(3)(c), Fla. Stat. FPL's posture with respect to Turkey Point 6 & 7 stands in sharp contrast to other new nuclear power projects in the U.S.[2]

Because of FPL's current posture with respect to the Project, rather than seeking recovery of FPL's 2017 and 2018 Turkey Point 6 & 7 costs pursuant to the NCR Statute and the NCR Rule at this time, FPL has requested to defer cost recovery and the Commission's related reviews for up to five years. Tr. 319-20, 417 (Grant-Keene). Seeking cost recovery is optional. Section 366.93(3)(a), Fla. Stat., as well as Rule 25-6.0423(6), Fla. Admin. Code, both state that a utility "may" petition for cost recovery. *See also, In re: Nuclear cost recovery clause,* Docket No. 160009-EI, Order No. PSC-16-0266-PCO-EI, p. 3 (issued July 12, 2016) (noting that "neither Section 366.93 F.S., nor Rule 25-6.0423, F.A.C., require a utility to seek recovery of nuclear project costs in any given year"). [3] Thus, only when a utility petitions for cost recovery under the

[2] FPL has maintained its step-wise approach despite prior calls to advance the Project further. *See, In re: Nuclear cost recovery clause,* Docket No. 150009-EI, Order No. PSC-15-0521-FOF-EI, pp. 12-13 (issued Nov. 3, 2015) (rejecting OPC's witnesses' recommendation that FPL pursue "actual, binding" EPC bids prior to FPL commencing other preconstruction work).

[3] The argument put forth by the Southern Alliance for Clean Energy ("SACE") that a utility must seek cost recovery every year (*see* Tr. 61, lines 15-16) is contrary to the plain language of both the statute and the rule.

NCR Statute and NCR Rule do the filings required by Rule 25-6.0423(6) and its subordinate parts apply. This is evident on the face of the Rule itself ("a utility may petition the Commission *for recovery* of preconstruction costs and carrying costs of construction cost balance *as follows:*" Rule 25-6.0423(6), Fla. Admin. Code (emphasis added)).

Granting FPL's request would have the effect of suspending the NCR-related charges to customers as well as obviating the need for the FPL portion of the annual NCR proceeding during the time of the deferral. This opportunity to enhance administrative efficiency is particularly appropriate given the stage of the Project: FPL is nearly finished with its licensing activities and will be entering a period of reduced spending while FPL "pauses" to maintain the approvals it has received and observe the progress being made, and issues being faced, at other new nuclear construction projects. Tr. 79-80 (Scroggs). A feasibility analysis is not required for these purposes.

In the initial years after 2017, FPL estimates it will incur about $10-$15 million per year on the Project. Tr. 134 (Scroggs). Primarily, this is made up of (i) project expenditures for activities necessary to keep the combined license current and maintain compliance with approvals received (*see* Tr. 133-34, 292-93 Scroggs)), and (ii) carrying costs on FPL's Deferred Tax Asset ("DTA"), which is associated with Project costs recovered through the NCR process through 2016 (*see* Tr. 415-16 (Grant-Keene)). The return on the DTA is about $7 million annually. Tr. 414 (Grant-Keene); *see also,* Exs. 12, 13 (presenting the return on the DTA component of FPL's 2015 and 2016 costs, which is about $7 million annually). Absent the deferral, these Project costs and the carrying costs on the DTA would be sought for recovery

annually. Tr. 414-16 (Grant-Keene). The amount of incremental carrying costs that will accumulate due to the deferral is far less than this annually-recoverable amount.[4]

FPL's deferral request is consistent with the Commission's prior decisions allowing for the deferral of cost recovery as well as its prior determination that it has "the authority to address options relating to the timing of recovery…" pursuant to its "broad ratemaking powers" so long as the Commission does not run afoul of the statutory mandate to allow a utility to recover all prudently incurred costs. *See, In re: Nuclear cost recovery clause,* Docket No. 100009-EI, Order No. PSC-11-0095-FOF-EI, pp. 8-9 (explaining that the Commission had the authority to approve a rate management plan for Progress Energy Florida, but did not have the authority to require a risk sharing mechanism that could result in the disallowance of prudently incurred costs). FPL's deferral request invokes the Commission's broad ratemaking authority to suspend the annual cost recovery docket for FPL while preserving the Commission's ability to allow for the recovery of costs in the future, if found to be prudently incurred, as directed by Section 403.519(4)(e), Fla. Stat. and Section 366.93, Fla. Stat. Contrary to misguided arguments regarding particular provisions of the NCR Statute and NCR Rule, nothing in Section 366.93, Fla. Stat., or Rule 25-6.0423 precludes the Commission from granting FPL's request.[5]

[4]A more detailed discussion of the components of the costs and carrying costs recognized during the deferral is included in Section III.B, below.

[5]FPL agrees that "the rule of law applies," as argued by Mr. Moyle in his opening statement for the Florida Industrial Power Users Group ("FIPUG"). *See* Tr. 52-53. But in order to *apply* the law, one must first *read* the law. The language of the governing Statute and Rule matters. Intervenors' legal arguments reflect the decision to ignore certain words or phrases that appear in the Statue or Rule because they do not support the arguments they wish to advance. For example, one cannot take a statutory provision that expressly applies to "this paragraph" and choose instead to apply it to an entire statutory "section." Similarly, one cannot presume a "recovery period" is the same as a "deferral period" without changing the meaning. Lastly, one cannot read the obligation to file a feasibility analysis per Rule 25-6.0423(6)(c)5 while ignoring the preceding language in part (6) and part (6)(c), as each of the intervenors would have the Commission do. Each of these points is discussed further in Section III.B below. FPL agrees the rule of law applies, has complied with the law of this case (*i.e.*, both the NCR Statute and NCR Rule, and applicable orders), and urges the Commission to review all the intervenors' legal arguments against this purported interest.

The final true-up of FPL's 2015 and 2016 costs, which have been the subject of prior cost recovery requests, is unaffected by FPL's proposed deferral. FPL complied with all filing requirements related to these historical years. As demonstrated in the testimony, exhibits, and detailed Nuclear Filing Requirements ("NFRs") filed in this docket, FPL's expenditures in 2015 and 2016 were prudently incurred. *See, e.g.,* Tr. 105-06 (Scroggs); Tr. 305 (Grant-Keene); Exs. 2, 3, 12, 13, 22, 23, 24, 25. No party has presented testimony disputing the prudence of any particular 2015 or 2016 cost or the calculation of the $7.3 million over-recovery that FPL proposes to return to customers through the Capacity Cost Recovery Clause ("CCRC") in 2018.

Intervenors argued that because FPL did not file a feasibility analysis in 2016 and/or 2017, the Commission could not consider the prudence of these 2015 and 2016 costs. But to the extent a feasibility analysis has any bearing on the Commission's review of those 2015 and 2016 costs, whether as a legal matter or as a substantive matter, FPL *did* provide such analyses – in 2014 and 2015, when each year was presented as a projection, respectively. *See, In re: Nuclear cost recovery clause*, Docket No. 140009-EI, Order No. PSC-14-0617-FOF-EI, p. 31 (issued Oct. 27, 2014) (approving FPL's 2014 feasibility analysis) and *In re: Nuclear cost recovery clause*, Docket No. 150009-EI, Order No. PSC-15-0521-FOF-EI, p. 21 (issued Nov. 3, 2015) (approving FPL's 2015 feasibility analysis). Thus, FPL (i) met its legal obligation to file a feasibility analysis when it sought cost recovery for each of those years, and (ii) provided substantive economic feasibility information at the only time when it was arguably useful and relevant – *i.e.*, before those costs were incurred. As discussed further in Section III.A below, use of a 2017 feasibility analysis to assess the prudence of historic costs would violate this Commission's principle against hindsight review and therefore cannot support an interpretation

of the Rule that such a filing is necessary to allow the Commission to assess the prudence of FPL's 2015 and 2016 costs.

Lastly, FPL has requested the Commission to determine that FPL's decision to complete the final licensing steps underway for Turkey Point 6 & 7 is reasonable and appropriate. This issue is similar to issues considered by the Commission in prior NCR dockets, in which the Commission was asked to review whether a company decision or action was reasonable. *See, e.g.,* Order No. PSC-11-0095-FOF-EI, p. 35 (finding that Progress Energy Florida's ("PEF") decision to continue pursuing COL was reasonable) and *In re: Nuclear cost recovery clause*, Docket No. 110009-EI, Order No. PSC-11-0547-FOF-EI, p. 22 (finding FPL's decision to continue pursuing a COL was reasonable). There is no indication in the Commission's subsequent NCR orders that it felt its "hands were tied" to allow all requested cost recovery based on those prior determinations that the utility's decision was reasonable. In fact, in a similar situation the Commission made clear that such a determination would *not* have the consequences that intervenors claim. *See*, *In re: Nuclear cost recovery clause,* Docket No. 090009-EI, Order No. PSC-09-0783-FOF-EI, p. 13 (issued Nov. 19, 2009) (finding that FPL's decision to pursue an alternative to an EPC contract for the Turkey Point 6 & 7 project was "prudent and reasonable" but also stating: "When and if FPL requests recovery of prudently incurred costs resulting from such contracts, then the terms and conditions that give rise to those costs can be reviewed…FPL's actions are, and will continue to be reviewed pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C."). Further, there is no evidence in the record that FPL's request this year will have the binding effect that intervenors claim. FPL will be obligated to defend its future costs in the same manner they would have been defended each year in the

ordinary course of the NCR docket. Tr. 156 (Scroggs). As a result, intervenors' arguments are both legally and factually unsupported.

As further explained by FPL witness Scroggs, completing the licensing phase would secure the opportunity to add nuclear generation for at least the next 20 years, but halting the licensing work at this stage could permanently prevent FPL's customers from being able to attain any value from the licensing investment made thus far. *See* Tr. 214 (Scroggs) (describing the decision to stop licensing work as "irreversible"). Given the potential for major energy market changes over the next 20 years, it is more than reasonable for FPL to have a COL in hand so that it is ready to respond, if appropriate, by moving forward with the Turkey Point 6 & 7 project.

It also is important to recognize what FPL has *not* requested. FPL has not sought approval to move forward into preconstruction work. Such a request would only be presented after extensive review and analysis within FPL, including a feasibility analysis, and with the expectation of extensive review and analysis by the parties to such a docket and the Commission. *See* Tr. 84 (Scroggs) (explaining that such a filing would include a feasibility analysis). FPL urges the Commission to resist unsupported and unnecessary calls for it to reach the ultimate construction decision now, and instead approve FPL's conservative approach to secure the opportunity for new nuclear generation in the future.

II. ISSUES AND POSITIONS

A. Prudence of 2015 and 2016 Costs[6]

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?**

FPL: Yes. Regarding intervenors' feasibility arguments, FPL notes that it filed feasibility analyses when it sought recovery of its 2015 and 2016 cost projections.

[6] Issues 1, 2, and 8 are briefed together.

Those costs were recovered but remained subject to a prudence review. A 2017 feasibility analysis is irrelevant to the prudence of costs previously incurred, and there is no record evidence disputing the prudence of FPL's 2015-2016 Project costs. Accordingly, there is no factual or legal support for any disallowance.

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?

FPL: The Commission should approve FPL's final true-up of 2015 and 2016 costs as filed:

2015 Preconstruction expenditures: $17,309,494
Preconstruction carrying charges: $6,668,729
Site Selection carrying charges: $160,088
The net 2015 jurisdictional true-up amount is ($1,306,211).

2016 Preconstruction expenditures: $15,673,982
Preconstruction carrying charges: $7,007,051
Site Selection carrying charges: $159,395
The net 2016 jurisdictional true-up amount is ($5,998,991).

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

FPL: The total jurisdictional amount of ($7,305,202) should be included in establishing FPL's 2018 CCRC factor. There is no testimony to the contrary, and no legal argument supporting a disallowance that withstands even cursory scrutiny.

Section 403.519(4)(e), Florida Statutes, states that the "right of a utility to recover any costs incurred prior to commercial operation . . . shall not be subject to challenge unless and only to the extent the Commission finds based on a preponderance of the evidence . . . that certain costs were imprudently incurred." The record overwhelmingly supports a finding that FPL's 2015 and 2016 costs were prudently incurred.[7] In fact, no intervenor presented any evidence that any particular cost was imprudently incurred. Instead, intervenors claimed that FPL's lack of a feasibility analysis in 2016 and/or 2017 somehow limits the Commission's ability to review the

[7] FPL presented the testimony of Steven Scroggs and Jennifer Grant-Keene, each of whom supported the prudence of FPL's Turkey Point 6 & 7 project management, project decisions, project and accounting controls, and the costs resulting therefrom. Additionally, FPL provided detailed cost information in its NFR schedules. Exs. 2 and 3. Accordingly, it cannot reasonably be argued that FPL failed to meet its burden of proof.

prudence of FPL's historical costs. Those arguments overlook the filings that FPL has made and that the Commission has reviewed in approving cost recovery for 2015 and 2016, as well as the substantive, legal and procedural inapplicability of a 2017 feasibility analysis to the Commission's review of FPL's historic costs.

During 2015 and 2016, FPL continued to make progress on the licensing and permitting activities required for the Turkey Point 6 & 7 project, and maintained costs within the annual budget. Tr. 74 (Scroggs); *see also,* Exs. 2, 3, 8, 9 (providing 2015 and 2016 Project cost details). FPL achieved important milestones in all aspects of the licensing process. Notably, FPL received a final recommendation letter from the Advisory Committee on Reactor Safeguards, and the Final Safety Evaluation Report and the Final Environmental Impact Statement from the NRC, all supporting NRC approval of the Project on FPL's anticipated timeline. Tr. 74 (Scroggs). FPL also completed a land exchange with the National Park Service, resulting in completion of a key step in finalizing the western transmission lines associated with the Project, and continued to work with the U.S. Army Corp of Engineers ("ACOE") to obtain necessary authorizations. Tr. 81, 84 (Scroggs).

All costs were incurred as a result of a deliberately managed process at the direction of a well-informed, properly qualified management team. Tr. 105 (Scroggs). Project staff continued to monitor industry events and participate in technical reviews to identify potential impacts to the overall Turkey Point 6 & 7 project cost and schedule. For example, FPL continued to participate in industry groups and visited the Vogtle project and Summer project sites. Tr. 85 (Scroggs). This industry involvement provided lessons learned as well as cost savings during the licensing process, as the cost for standard design change submittals to the NRC are shared among all AP1000 licensees. Tr. 85, 198 (Scroggs).

Additionally, FPL's Project management decisions and costs were subject to a robust system of internal controls. As described in detail by FPL's witnesses, FPL employs extensive accounting and cost oversight controls for the Project. These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures, financial systems, and Business Unit specific controls and processes. Tr. 310-13 (Grant-Keene). These controls are regularly assessed and audited. Tr. 97 (Scroggs); Tr. 311-12, 314 (Grant-Keene). The Commission's Office of Auditing and Performance Analysis audited FPL's costs and found no exceptions. Exs. 22 and 23.

At the Project level, FPL routinely and methodically evaluates Project risks, costs, and issues using a system of internal controls, routine Project meetings and communications tools, management reports and reviews, and internal and external audits. Tr. 89, 92-93 (Scroggs). FPL also engaged Concentric Energy Advisors ("CEA") to perform an independent review of the internal controls utilized by the Company for the Turkey Point 6 & 7 project. For 2015 and 2016, CEA concluded that FPL's decision making and management actions as they related to Project costs were prudent, and thus FPL's 2015 and 2016 expenditures on the Turkey Point 6 & 7 project were prudently incurred. Tr. 97 (Scroggs). FPL's Turkey Point 6 & 7 internal controls also were audited by the Commission's Office of Auditing and Performance Analysis. Those auditors concluded in both 2015 and 2016 that the "[p]roject internal controls, risk evaluation, and management oversight are adequate and responsive to current project requirements." Ex. 25, p. 9; Ex. 24, p. 8.

No intervening party presented any testimony or elicited any evidence supporting the imprudence of any Project management decision or action in 2015 or 2016, or that any resulting cost was imprudently incurred. Instead, intervenors rely solely on legal arguments based on the

perceived need for FPL to file a feasibility analysis in an attempt to persuade the Commission that it should disallow costs.

As an initial matter, it must be noted that there is no basis in the Rule for the position that a favorable feasibility analysis is necessary to determine that current or projected costs are reasonable or that historical costs were prudently incurred. There is no language in the rule linking that filing requirement to either of those determinations, and its placement within the structure of the Rule indicates it is informational in nature. Nonetheless, the Commission has in the past discussed feasibility-related information in its consideration of current year estimates and projected year costs. *See, e.g.,* Order No. PSC-09-0783-FOF-EI, pp. 36-37 (acknowledging "[t]he concerns of SACE and PCS Phosphate related to PEF's long-term feasibility analysis" within the context of considering PEF's projected 2010 costs, but finding that denial of recovery "is an extreme measure that is not warranted."). The Commission also has properly identified the feasibility analysis as a "forward-looking issue." *See,* Order No. PSC-11-0547-FOF-EI, p. 31.

Any claim that FPL's 2015 or 2016 costs were not supported by a feasibility analysis at the time such analyses were legally required or substantively useful is false. Assuming *arguendo* that the results of a feasibility analysis could assist the evaluation of the reasonableness of future costs, FPL's 2015 and 2016 costs were fully supported with feasibility analyses at the time those costs were presented as projections. When FPL sought cost recovery of its projected 2015 costs in 2014, it filed a feasibility analysis. Order No. PSC-14-0617-FOF-EI, p. 31 (approving FPL's 2014 feasibility analysis). And when FPL sought cost recovery of its projected 2016 costs in 2015, it filed a feasibility analysis. Order No. PSC-15-0521-FOF-EI, p. 21 (approving FPL's

2015 feasibility analysis).[8] FPL's specific 2015 and 2016 cost projections were also found to be reasonable and recoverable in each of those orders. *Id.,* each at page 36.

Clearly a 2017 feasibility analysis cannot be used to challenge, retroactively, the prudence of historical year costs. In Florida, a management decision is "prudent" if it is within the range of reasonable decisions that a utility manager could make based upon information known or reasonably available to management at the time the decision was made. *See, e.g.*, Order No. PSC-09-0783-FOF-EI, p. 13 (citing *In re: Petition on Behalf of Citizens of the State of Fla. to Require Progress Energy Florida to Refund Customers $143 Million*, Docket No. 060658-EI, Order No. PSC-07-0816-FOF-EI, p. 4 (issued Oct. 10, 2007)); *see also, Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013). Hindsight review is prohibited. *See* Order No. PSC-07-0816-FOF-EI at pp. 13-14. To use a 2017 feasibility analysis to assess the prudence of costs incurred in 2015 or 2016 would require the application of a hindsight review (*i.e.*, based on this year's feasibility analysis results, were last year's costs prudently incurred?) That is precisely the type of review prohibited by Florida law. This Commission has refused to use a forward-looking feasibility analysis to judge the prudence of historic costs in NCR dockets in the past. *See, e.g., In re: Nuclear cost recovery clause,* Docket No. 130009-EI, Order No. PSC-13-0493-FOF-EI, p. 28 (issued Oct. 18, 2013).

The fact that a current year's feasibility analysis is unrelated to the assessment of historic costs is further supported by the annual filing schedule set forth in each year's Order Establishing Procedure in the NCR docket. Each year, the utility's final true-up and prudence support is due to be filed around March 1st. Separately, the utility's current year cost estimates and subsequent year cost projections, and the feasibility analysis, are due to be filed around May

[8] A collateral attack on the Commission's approval of FPL's 2015 feasibility analysis, such as that argued by SACE in its Prehearing Statement filed July 20, 2017, at page 7, should be summarily rejected.

1st. *See, e.g., In re: Nuclear cost recovery clause,* Docket No. 170009-EI, Order No. PSC-17-0057-PCO-EI, p. 10 (issued Feb. 20, 2017). This procedural bifurcation is logical. It recognizes the forward-looking nature of the feasibility analysis and undermines intervenors' claims that FPL was required to file a feasibility analysis in May, to obtain a prudence determination on its final 2015 and 2016 costs that were filed in March. Intervenors' attempts to commingle all of the elements of the Commission's review into one, "do not file feasibility, do not pass go" argument is inconsistent with the law of prudence and the process by which the NCR Rule's annual filing requirements are made each year in this docket.

FPL has complied with all filing requirements related to demonstrating the prudence and final true-up of its 2015 and 2016 costs. FPL submitted its testimony, detailed NFR schedules, and other exhibits on March 1, 2017. *See* Tr. 72-106 (Scroggs); Tr. 301-15 (Grant-Keene); Exs. 2, 3, 8, 9. FPL also submitted feasibility analyses in 2014 and 2015, when it sought cost recovery for its 2015 and 2016 projections, and when a feasibility analysis would have any substantive value for the Commission's review of those years. As supported by the only record evidence in this case, FPL's 2015 and 2016 costs should be approved as prudently incurred and its final true-up amount of ($7,305,202) should be included in establishing FPL's 2018 CCRC factors.

B. Proposal to Suspend Annual Cost Recovery Process[9]

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?**

FPL: Yes. The proposed deferral aligns with the Project "pause" and lower spending. Of the annual costs estimated, about half is carrying costs on the DTA associated

[9] Issues 3 and 4 are briefed together.

with historical costs. All parties will have the opportunity to review and challenge cost recovery in the future, when it is requested. Neither the Statute nor Rule precludes the Commission from granting FPL's request. FPL will continue to file its TOR-2 as required by Section 366.93(5) and Rule 25-6.0423(9)(f).

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.?**

FPL: Yes. Nothing in Section 366.93 or Rule 25-6.0423 precludes the deferral and later recovery of NCR eligible costs. Such costs would be "eligible" but not "guaranteed" for future recovery. Intervenor claims to the contrary, such as arguments comparing the requested deferral to a credit card, either wholly misunderstand FPL's request or are intentionally misrepresenting FPL's request to the public and this Commission.

Summary of Requested Deferral

FPL has proposed to suspend the annual NCR process for up to five years. Annual Project expenditures and carrying costs on FPL's DTA – costs that otherwise would be recovered each year through the NCR clause – would remain eligible for recovery at a later time, along with incremental carrying costs on its expenditures and the deferred return on the DTA.[10] FPL will continue to track and account for its Project costs in the same manner and with the same level of detail as before (Tr. 324, 337 (Grant-Keene)), and intervening parties will have the same opportunity to challenge FPL's Project expenditures that is afforded by the Rule at that later time. Intervenors claiming otherwise are at best confused and at worst misrepresenting FPL's request to portray a situation in which the Commission is supposedly forfeiting its right to substantive review of FPL's costs.[11]

[10] It will be FPL's burden to demonstrate the prudence of its costs, without having performed a feasibility analysis in 2017, when it seeks cost recovery in the future.

[11] For example, Mr. Moyle's claim in his opening statement that FPL's customers will be "on the hook for unknown costs" is an emotional plea divorced from the facts of FPL's request. *See* Tr. 58. Similarly, the credit card analogy put forth by Mr. Cavros only holds water if the cardholder can later challenge each and every cost charged, and based on those challenges, decide not to pay for particular purchases. *See* Tr. 60.

FPL's proposal aligns with its plan to "pause" the Turkey Point 6 & 7 project. Mr. Scroggs explained FPL's decision to refrain from moving immediately into preconstruction work upon receipt of the license. As he testified, delays in the first wave of new nuclear construction projects prompted FPL's decision in 2016. Tr. 79-80 (Scroggs). Of course, FPL also was cognizant of the historically low natural gas price forecasts and delays in emission compliance cost implementation, the combination of which reduce the financial imperative for beginning deployment of large new nuclear projects. Tr. 86-87 (Scroggs). Recent events such as Westinghouse's bankruptcy and significant cost increases have underscored the appropriateness of FPL's plans. *See, e.g.,* Tr. 226 (Scroggs) (responding to whether the cost experience of the other new nuclear projects gave him "pause" with, "Absolutely. That's why we have paused our project.")

FPL anticipates that it will have the information it needs to perform a feasibility analysis and make related decisions on the appropriate next steps for the Project in about four to six years. Tr. 276-77 (Scroggs). There is no record evidence that FPL intended to defer seeking cost recovery for the durations hypothesized by intervenors. Nonetheless, at the hearing, FPL committed to return within five years for the Commission to review the costs it has incurred during the deferral period. Specifically, FPL committed to return within five years of an order in this docket to present to the Commission the costs incurred for a prudence review, and to consider at that time what the path forward may be. The specific filing that would be made could take a number of forms. For example, if FPL were to seek to initiate preconstruction work and/or seek to recover costs, that filing would be accompanied by a feasibility analysis. Tr. 362-63.

Explanation of Anticipated Costs

FPL is incurring costs now to complete obtaining its COL and other approvals. Tr. 126-28 (Scroggs). The types of costs that FPL expects to incur after it receives its COL include payment of fees to the NRC that are required of all licensees and costs to process license amendment requests to keep FPL's license current. There also will be costs associated with completion of the ACOE process, complying with Site Certification Conditions of Certification, and finalizing the Site Certification through that approval's remand to the Siting Board. *See* Tr. 128-29, 292-93 (Scroggs).

The amount of costs that are estimated to be incurred requires careful clarification. As testified by Ms. Grant-Keene, FPL estimates the total amount that could be incurred over the maximum five-year deferral period is about $90 million. Tr. 409 (Grant-Keene).[12] About half of this (or about $45 million) is carrying costs. Tr. 407 (Grant-Keene). However, it is important to understand the components of this carrying cost estimate: About $7 million per year represents FPL's return on its DTA that is associated with historical costs incurred and recovered through 2016 only. Tr. 414-16 (Grant-Keene), *see also,* Tr. 320 (Grant-Keene). In other words, $7 million per year in carrying costs is unrelated to the money FPL will spend on the Project for obtaining and maintaining its approvals in the years that follow 2016. **Accordingly, about $35 million of the "total" estimated carrying costs, in this five-year scenario, is unrelated to the deferral.** These carrying costs would otherwise be recovered annually in each year's NCR docket. *See* Exs. 12, 13 (presenting the 2015 and 2016 return on the DTA, respectively).

The *incremental* carrying costs that would result from the deferral over a five-year period (*i.e.*, something far less than $45 million and, based on the above figures, closer to $10 million)

[12] Using the low end of FPL's estimated range of costs and a four-year deferral period would lower the total estimate substantially, to about $54 million. Tr. 166-67 (Scroggs).

include an allowance for funds used during construction ("AFUDC") on the incremental Project expenditures (*see* Tr. 324, 329 (Grant-Keene) as well as carrying costs on the deferred return on the DTA (*see* Tr. 422 (Grant-Keene)). Intervenors focused heavily on the propriety of these charges, asking FPL witness Grant-Keene to identify which portion is related to the cost of equity (or "profit") versus the cost of debt (*see, e.g.*, Tr. 381).

It would be inappropriate to record AFUDC related to the Project expenditures, which is accumulated in Construction Work in Progress ("CWIP"), below-the-line. Turkey Point 6 & 7 is a project that meets the requirements under the AFUDC Rule (Rule 25-6.0141, Fla. Admin. Code). The AFUDC rate applied to eligible large capital projects is comprised of both a debt and equity portion, recognizing the fact that both types of costs are incurred when financing large capital projects. Tr. 337 (Grant-Keene). That is exactly what FPL is proposing to do for the incremental Project expenditures for the Turkey Point 6 & 7 project during the deferral period. *Id.* Requiring FPL to record any AFUDC below-the-line is the equivalent of disallowing financing costs at this time – before the costs have even been presented and reviewed for potential recovery.

During the deferral period, FPL will continue to file the information required by Section 366.93(5), Fla. Stat. and Rule 25-6.0423(9)(f), Fla. Admin. Code, each of which establishes the same requirement, as a filing that is separate from the cost recovery process. FPL is required to file the budgeted and actual costs of a nuclear power plant project as compared to the estimated in-service costs of the power plant as it was provided in the need determination. Because actual costs are included, the Commission and other interested parties will see the actual amount that FPL spends each year during the deferral. Tr. 418-19 (Grant-Keene). Rule 25-6.0423(9)(f) requires FPL to file this information each year with its annual report (which, in turn, is filed

pursuant to Rule 25-6.135, Fla. Admin. Code). FPL also offered to include a brief update on the status of the Project and factors influencing FPL's review with that filing. Ex. 39, p. 15.

Legal Support for Proposed Deferral

It is clear that annual cost recovery allowed by the NCR Statute and Rule is optional. This is stated in Section 366.93(3)(a) as well as Rule 25-6.0423(6) (a utility "may" petition for cost recovery). On one end of the spectrum of legally-available paths forward, FPL could exit the NCR process entirely and continue with Turkey Point 6 & 7 as a base rate project, accruing AFUDC on preconstruction and construction charges until the Project is placed into service.[13] Alternatively, FPL could continue seeking cost recovery every year, despite the significant uncertainty in the industry in the near term and without meaningful updates to its total non-binding cost estimate range or feasibility analysis. *See* Tr. 213-14 (Scroggs). Ultimately, FPL is proposing to maintain all the protections and oversight afforded the Commission, intervening parties, and the Company under the NCR Statute and Rule while simply deferring review and recovery of costs for up to five years.

Deferred accounting treatment for preconstruction costs is expressly contemplated in the NCR Rule. Rule 25-6.0423(4) states that site selection and pre-construction costs "shall be afforded deferred accounting treatment . . . and shall accrue carrying costs until recovered in rates." This would typically apply in a situation where a utility has under-recovered its projected costs for a particular year, and the additional costs are "deferred" until the true-up is approved and reflected in rates. In any case, the language confirms that deferred accounting treatment is

[13] This option would not necessarily preclude future cost recovery if the Project were to be cancelled and costs found to be prudently incurred. *See, In re: Petition for authority to use deferral accounting and for creation of a regulatory asset for prudently incurred preconstruction costs associated with development of clean coal project, by Florida Power & Light Company,* Docket No. 070432-EI, Order No. PSC-09-0013-PAA-EI (issued Jan. 5, 2009).

contemplated under the Rule and should be considered by the Commission in evaluating FPL's deferral request.

Deferral requests, in varying forms, have become somewhat common in the NCR docket. The following deferral requests have been presented to and approved by the Commission:

- In 2010, the Commission approved a motion to defer all the FPL issues (except one legal issue), including the prudence of 2009 costs, the reasonableness of 2010 costs, and the reasonableness of 2011 costs to the following year's NCR docket. Order No. PSC-11-0095-FOF-EI, p. 5. Then in 2011, the Commission approved the prudence of FPL's 2009 and 2010 costs and the reasonableness of FPL's estimated 2011 and projected 2012 costs, and approved FPL's requested recovery amount. Order No. PSC-11-0547-FOF-EI.

- In 2012, the Commission approved PEF's motion to defer the Commission's review of its 2012 feasibility analysis for its Crystal River 3 ("CR3") project and to defer the Commission's review of the reasonableness of the estimated 2012 and projected 2013 CR3 costs. *In re: Nuclear cost recovery clause,* Docket No. 120009-EI, Order No. PSC-12-0650-FOF-EI, p. 5 (issued Dec. 11, 2012). PEF also chose not to seek recovery of those 2012 and 2013 costs at that time. *Id.*

- In 2013, the PEF issues were again deferred for resolution in the 2014 NCR docket, or for resolution through a broad settlement agreement. *In re: Nuclear cost recovery clause,* Docket No. 130009-EI, Order No. PSC-2013-0493-FOF-EI, p. 5 (issued Oct. 18, 2013).

- In 2015, the Commission approved FPL's request to defer for later recovery costs for performing Initial Assessment studies. The specific costs were presented to the Commission for review, and the Commission approved FPL's proposal to defer seeking recovery until FPL petitions to begin preconstruction work. Order No. PSC-15-0521-FOF-EI, p. 31-32.

- In 2016, the Commission approved FPL's motion to defer recovery of its projected 2017 costs and defer its NCR issues to 2017. Order No. PSC-16-0266-PCO-EI, p. 3 (approving FPL's motion to defer and noting that "neither Section 366.93 F.S., nor Rule 25-6.0423, F.A.C., require a utility to seek recovery of nuclear project costs in any given year").

Clearly, deferral is not a novel concept within the context of Nuclear Cost Recovery. Even FPL's proposed duration of deferral (initially proposed to extend through a decision regarding preconstruction work, just like the approved proposal for the Initial Assessment costs, but later capped at five years) is not without precedent.

The Commission's authority to grant these prior deferral requests was not challenged, nor can intervenors reasonably challenge the Commission's authority this time around. As the Commission has previously observed, it has "the authority to address options relating to the timing of recovery…" pursuant to its "broad ratemaking powers," so long as the Commission does not run afoul of the statutory mandate to allow a utility to recover all prudently incurred costs. *See* Order No. PSC-11-0095-FOF-EI, pp. 8-9 (explaining that the Commission had the authority to approve a rate management plan for Progress Energy Florida, but did not have the authority to require a risk sharing mechanism).[14] In that order, the Commission was addressing the timing of the recovery of approved costs. FPL's deferral request invokes this same broad authority to consider FPL's proposed timing of when it will seek cost recovery.

Four specific legal arguments have been advanced in opposition to FPL's filing. First, the Office of Public Counsel ("OPC") and others have argued that Rule 25-6.0423(6)(a) limits a deferral period to two years. *See* Tr. 51-52. This is a misreading of the rule. Part (6) addresses the manner in which a utility may petition for cost recovery, and as we have made clear, FPL is not currently seeking cost recovery. Even more directly, by its very terms, part (6)(a) addresses a proposed "recovery period" or "period of recovery." In other words, when FPL returns and seeks cost recovery, that rule section will apply to the time frame over which *recovery* is sought (*e.g.*, will the costs incurred during the deferral period be recovered over one year or two?). This part of the rule has nothing to do with FPL's proposal to defer review and defer seeking cost recovery. FPL's position is further supported by the Commission's recent approval of FPL's proposed treatment of Initial Assessment costs. Order No. PSC-15-0521-FOF-EI, pp. 31-32

[14] In that 2009 docket, PEF requested to recover its approved costs over a 5 year period. It does not appear that any party challenged PEF's ability to recover those project costs over a period that exceeds two years under part (6)(a) (then, part (5)(a)) of the NCR Rule. *See* Order No. PSC-2009-0783-FOF-EI, p. 38 (stating PCS Phosphate supported approval of a rate management plan and that no other party took a position on this issue in their post-hearing briefs.)

(approving the deferral of the recovery of costs associated with FPL's Initial Assessments until FPL petitions for approval to proceed with preconstruction work. The deferral time frame clearly exceeds two years, but the recovery period may not.).

Second, OPC claims that FPL has not made a sufficient showing pursuant to Section 366.93(3)(f)3 that FPL "has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical."[15] This argument also is misplaced. The entirety of 366.93(3)(f)3 reads as follows:

> Beginning January 1, 2014, in making its determination for any cost recovery *under this paragraph*, the commission may find that a utility intends to construct a nuclear or integrated gasification combined cycle power plant only if the utility proves 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. (emphasis added)

"This paragraph" is paragraph (f). (See Manual for Drafting Legislation, The Florida Senate, Sixth Edition, p. 6, explaining the designation of chapters, sections, subsections, paragraphs, subparagraphs, etc.). Paragraph (f) addresses two scenarios: one in which a utility has not begun construction 10 years after receiving a license from the NRC and one in which a utility has not begun construction 20 years after receiving a license from the NRC. Accordingly "this paragraph" (f) cannot apply until, at the earliest, 10 years after FPL has received its combined license. If in 10 years FPL has not begun construction but is still seeking annual cost recovery, it makes sense that the NCR statute would require this heightened showing of intent. Until then, this paragraph has no application to FPL or its filings.

Third, intervenors have claimed that the Commission legally cannot allow deferral of cost recovery without a feasibility analysis, but such claims are not supported by statute, rule, or

[15] *See* the Prehearing Statement of the Office of Public Counsel, filed July 20, 2017, in Docket No. 170009-EI. Based on Ms. Christensen's opening statement, it is possible that OPC dropped this argument after it filed its pre-hearing statement. Given that it is a legal argument that has been put forth in this docket, FPL is briefing its position in response.

logic. There is certainly no basis for this argument in Section 366.93, Fla. Stat. In fact, Section 366.93 first requires a feasibility analysis to be filed at the time a utility seeks to begin preconstruction work – not before, during the licensing phase. *See* §366.93(3)(c)2.a, Fla. Stat. Nor can any basis be found in Rule 25-6.0423, Fla. Admin. Code. A feasibility analysis is only required within the context of part (6) (specifically, the feasibility analysis filing requirement is found in Rule 25-6.0423(6)(c)5.), addressing the manner in which a utility may petition for cost recovery – and FPL has not petitioned for cost recovery. And there is no logical basis for requiring such an analysis at this juncture, without both ignoring the facts that render such an analysis meaningless at this time (as discussed below in Section III.D) and twisting FPL's request into something it is not.

Fourth, intervenors argue that FPL's request and the incremental AFUDC that will result therefrom is generally inconsistent with the intent of the NCR Statute and NCR Rule and attempted to question FPL's accounting witness to elicit support for that position. Tr. 386 (Grant-Keene). FPL agrees that one of the purposes of the Rule is to avoid the accumulation of AFUDC over an extended preconstruction and construction period, which otherwise would be included in the base rate increase sought when the new units go into service. However, FPL is not seeking to forego annual cost recovery during preconstruction work and construction. FPL is only seeking to suspend cost recovery during the Project "pause" – anticipated to last four to six years, but in any event capped at five years. Tr. 417 (Grant-Keene). There will be no large preconstruction work expenditures or construction expenditures during this time to which the AFUDC rate would be applied. Tr. 128-29, 134 (Scroggs) (describing the limited nature and amount of costs that will be incurred during the Project "pause").

In sum, nothing in Section 366.93, Fla. Stat., or Rule 25-6.0423, Fla. Admin. Code, precludes the Commission from granting FPL's request. Annual cost recovery is optional, and FPL has proposed to defer seeking cost recovery for up to five years. During this time, Project expenditures and the incremental AFUDC associated with those expenditures will be limited. The ability for parties to challenge, and for the Commission to review, the costs FPL incurs in the interim is preserved for a later date.

C. FPL's Decision to Complete Licensing

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

FPL: Yes, FPL's decision to secure the license for Turkey Point 6 & 7 is eminently reasonable. The license may be acted upon for a period of at least 20 years, during which time economic and other factors influencing a decision to move forward may change. The alternative – halting licensing work at this time – could permanently preclude FPL's customers from ever attaining value from the licensing investment made thus far.

Uncertainty emerged as a theme during the hearing. The path forward for the first wave new nuclear construction projects is uncertain. The duration of FPL's deferral request, as initially envisioned, was also unspecified given that it relied upon the completion of the first wave projects. (FPL later indicated it would return for Commission review within five years.) But the intervenors in their questioning systematically ignored that uncertainty works both ways: As quickly as events have unfolded that challenge new nuclear deployment, events that support new nuclear projects could just as quickly emerge. For this fundamental reason, it is reasonable for FPL to obtain its combined license.

All parties appear to be in agreement that the first wave AP1000 new nuclear construction projects have experienced significant challenges in the past two years. Tr. 110 (Scroggs). These challenges reduce the certainty of prior cost estimates and schedules for those

projects, and reinforce FPL's cautious, fiscally conservative, stepwise approach overall and its decision to "pause" after completing licensing. *Id.* The pause period will allow FPL to better observe and understand the challenges faced by those projects, and to continue to monitor broader changes to the nuclear power plant construction industry. *Id.* It is during this time of uncertainty that FPL has proposed to defer the annual NCR docket. None of these recent events, however, cast any doubt on FPL's decision to preserve the potential for customer benefits offered by completing the final licensing steps that remain.

Several attorneys for intervening parties posed questions to Mr. Scroggs based on media coverage of issues faced at Westinghouse and Santee Cooper, and regarding the Summer and Vogtle new nuclear construction projects, perhaps in an attempt to undermine the reasonableness of FPL's decision to obtain its combined license. In response to these observations, Mr. Scroggs testified as follows:

- Westinghouse continues to support FPL's COL application ("COLA") (Tr. 204, 257 (Scroggs));
- Westinghouse's bankruptcy filing is not expected to impact the issuance of the COL (Tr. 257 (Scroggs), Ex. 38, p. 2);
- Westinghouse or its successor can be expected to continue to fill the traditional Engineering and Procurement ("EP") role (Tr. 124 (Scroggs));[16]
- Another company or consortium of companies could provide Construction services (Tr. 125, 196 (Scroggs));
- It is incorrect to assume that the all-in cost of first wave construction projects will be the all-in cost of second wave construction projects, as this assumes no incremental improvements and no lessons learned (*see* Tr. 224-25 (Scroggs)); and
- The cost experience at other projects also fails to reflect the Turkey Point 6 & 7-specific items, transmission lines, and water infrastructure (see Tr. 274 (Scroggs)).

[16] Specific conversations between FPL and Westinghouse as to Westinghouse's potential future role are not necessary to support this conclusion. *See* Tr. 149 (Scroggs) (stating no such conversations have occurred).

While intervenor attorneys were not hesitant to speculate on the future of the other new nuclear power plants and their potential relevance to Turkey Point 6 & 7, the only sworn testimony in this docket regarding those issues is that of FPL's witness, Mr. Scroggs.[17]

There is no uncertainty regarding the extensive licensing effort that has occurred thus far. Through 2016, FPL has spent $260 million (excluding carrying costs) pursuing the COL and other approvals. Tr. 132 (Scroggs). FPL is now less than two months away from the NRC's mandatory hearing on FPL's COLA – the penultimate step in the NRC's administrative process. Tr. 157 (Scroggs). In FPL's view, it would be short-sighted if FPL did not complete the licensing phase to secure the potential benefits of new nuclear generation for customers. A decision to stop at this point would be a decision to abandon the amount incurred, and already recovered, on this Turkey Point 6 & 7 project. Tr. 263 (Scroggs); Ex. 38, p. 7.

Moreover, possession of a valid COL and associated approvals will be a valuable option for FPL's customers to enable FPL to move forward in a timely manner with preconstruction at the right time. Tr. 132 (Scroggs). The license may be acted upon for a period of at least 20 years once issued, providing a significant window of time during which factors influencing a decision to move to construction may change. *Id.* This was best explained by Mr. Scroggs when he observed:

> [T]he factors that brought this Nuclear Cost Recovery and the whole support for new nuclear generation about happened rapidly and were dramatic and offered a real threat to our customers. The factors that have occurred in the last several years that have seen the demise of one U.S. AP-1000 project and severely threatens the other one are [ ] equally dramatic and quick-returning. Is it possible that, in the next ten years, factors change just as dramatically to the other side? We think yes. And we think that, at the brink of obtaining an option that would

[17] In fact, there is at least one example of an attorney getting it completely wrong. Mr. Cavros stated in his opening statement, "Westinghouse has filed for bankruptcy. They were [sic] the company that was going to build this". The fact is, FPL never presumed that Westinghouse would be its constructor. *See* Tr. 225 (explaining that several years ago FPL pushed back on the idea of an EPC arrangement, where Westinghouse would be the Constructor as well as the Engineering and Procurement contractor). There is no basis in this record, or in any previous NCR record for that matter, that FPL planned for Westinghouse to be its constructor.

> give you another choice in that future decade or decades, abandoning that at this point is not the right thing to do. So, that's the nature of our request.

Tr. 281-82. This uncertainty about the future is precisely why FPL wants to have the license in hand.

A feasibility analysis is not required to reach the conclusion that it is reasonable to obtain the COL for Turkey Point 6 & 7, because the results from such an analysis – whether favorable or not – would not change the conclusion that obtaining the COL is the right thing to do. For example, as Mr. Scroggs explained:

> If you were to conduct a feasibility analysis and it told you that the project was wildly economic and beneficial, under today's circumstances, we still would not recommend going forward. We would recommend pausing at this critical point in time. If that analysis came out negative, we would still be making our recommendation that it's the right thing to do to complete the licensing process, obtain that option for potential future use.

Tr. 162-63 (Scroggs).

FPL does not dispute that a favorable Commission determination on FPL's decision to obtain the license will be relevant to a future cost recovery request. However, this finding will not have the binding effect or guarantee that intervenors suggest. As explained by Mr. Scroggs, "[FPL] would come back and have the responsibility to itemize those costs and defend the reasonableness of those costs at that point in time." Tr. 156 (Scroggs). In fact, a finding that a utility's decision is reasonable followed by a detailed review of costs incurred in a subsequent year is common in the annual NCR docket. For example, in 2011 the Commission determined that FPL's continued pursuit of the COL was reasonable. Order No. PSC-11-0547-FOF-EI, p. 22. In 2012 and 2013, the Commission examined FPL's annual costs and approved cost recovery for the years 2011, 2012, 2013, and 2014, collectively, without any indication that its "hands were tied" by that prior decision or that it was otherwise obligated to approve all

requested cost recovery. *See* Order No. PSC-12-0650-FOF-EI, pp. 59-63; Order No. PSC-13-0493-FOF-EI, pp. 27-31. *See also*, Order No. PSC-09-0783-FOF-EI, p. 13 (finding that FPL's decision to pursue an alternative to an EPC contract for the Turkey Point 6 & 7 project was "prudent and reasonable" but also noting that a decision regarding the prudence of FPL's possible contracts and subsequent management is "premature," and stating: "When and if FPL requests recovery of prudently incurred costs resulting from such contracts, then the terms and conditions that give rise to those costs can be reviewed . . . FPL's actions are, and will continue to be reviewed pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C.") Just as it was in these prior examples, a full review of FPL's costs will remain available to all parties at such time as FPL proposes to recover the costs it has incurred.

D. Feasibility Analysis[18]

ISSUE 6: **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?**

FPL: No, FPL was not required to file an annual detailed analysis of the long term feasibility of completing Turkey Point 6 & 7. The rule requires a utility to file a feasibility analysis only in a proceeding to seek cost recovery. FPL is not seeking cost recovery at this time, nor is it seeking a guarantee of future cost recovery.

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

FPL: Yes, because there was no particular action that FPL was ordered to take. That order granted FPL's Motion to Defer and in doing so recited two representations made by FPL, including that FPL planned to file a feasibility analysis in 2017. FPL's subsequent decision to not seek cost recovery in the 2017 NCR docket reflected a material change in FPL's filing plans that rendered the obligation to file a feasibility analysis moot.

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?**

[18] Issues 6, 7, 9, and 10 are briefed together.

FPL: When time-related costs such as inflation and carrying costs are included, and in-service dates of 2031 and 2032 are assumed, the total non-binding cost estimate range is $14.96 to $21.87 billion for the 2,200 MW Project. FPL expects to revise its cost estimate after completion of the first wave of new nuclear construction projects.

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

FPL: FPL has assumed in-service dates of 2031 and 2032 for purposes of updating its non-binding cost estimate range. FPL intends to review its Project schedule when the first wave new nuclear construction projects are complete.

A 2017 feasibility analysis was neither legally required nor substantively useful in this year's docket. This is supported by the language of the NCR statute, the language of the NCR rule, the language of Order No. PSC-16-0266-PCO-EI, and the inability for FPL to meaningfully revise its cost estimate and feasibility analysis until it can assess the lessons learned from the first wave construction projects.

To begin with, cost recovery is optional. Section 366.93(3) and Rule 25-6.0423(6) make this clear in using the permissive term "may" – a utility "may" seek cost recovery. To the extent a utility seeks cost recovery, part (6)(c) of the rule provides the process. In this docket, FPL is not seeking cost recovery for its 2017 or 2018 Turkey Point 6 & 7 project costs. Accordingly, parts (6)(c)1.b (True-Up and Projections for Current Year) and (6)(c)1.c (Projected Costs for Subsequent Years); portions of (6)(c)2 and (6)(c)4 (what the Commission's hearing shall cover and what shall be reflected in the CCRC); and (6)(c)5 (requiring the annual feasibility analysis) do not apply in this proceeding. Intervenors cannot force a utility to seek cost recovery, as Mr. Cavros on behalf of SACE indicated. Tr. 61.

In questioning at the hearing, intervenors emphasized the language of part (6)(c)5 in isolation, pointing out the directive that a utility "shall" file a feasibility analysis. Tr. 51, 54, 238

(Scroggs); Tr. 388 (Grant-Keene). FPL readily agrees that if cost recovery is sought, that filing requirement is not discretionary. But focusing on this language misses the equally important language that appears in Rule 25-6.0423(6) and (6)(c), each of which limit part (6)(c)5 to the context of seeking cost recovery. Because FPL is not seeking cost recovery, it simply does not apply.

Consider, for example, Rule 25-17.015, the Energy Conservation Cost Recovery ("ECCR") rule. Part (5) requires the Commission to consider whether the costs of an advertising campaign sought for recovery through the ECCR clause meet certain criteria. In other words, *if* advertising costs are sought for cost recovery, *then* a utility must provide the necessary information for the Commission to review and assess whether to allow cost recovery. However, if an advertising campaign is not sought for recovery through the ECCR clause, the utility would have no reason to file the required information and the Commission would have no reason to consider these criteria. A utility also would not seek a rule waiver to avoid submitting that information. *It simply does not apply.*

In 2016, FPL did seek a waiver of Rule 25-6.0423(6)(c)5. Tr. 178-79 (Scroggs). At that time, FPL had determined a feasibility analysis would be meaningless but was continuing to seek cost recovery, and as noted above, FPL agrees that if cost recovery is sought the feasibility filing requirement is not discretionary. Specifically, FPL was seeking recovery of projected 2017 costs. *See* Order No. PSC-16-0266-FOF-EI, p. 1. Because FPL was seeking cost recovery, a

petition for rule waiver was necessary. In contrast, FPL is not seeking cost recovery for 2017 or any projected year in this docket, so the filing elements are not applicable.[19]

Intervenors made arguments and questioned FPL's witnesses regarding FPL's previous commitments to file a feasibility analysis in 2017. Arguments also were presented that FPL violated Order No. PSC-16-0266-PCO-EI. However, that order did not require FPL to take any particular actions – its legal effect was to grant FPL's Motion to Defer Consideration of Issues and Cost Recovery. Specifically, the order held:

> Based on the foregoing, it is
>
> ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Motion to Defer Consideration of Issues and Cost Recovery is hereby granted.

The body of the order summarizes the procedural history and also summarizes FPL's Motion. In its summary of FPL's Motion, the order recited two representations made by FPL in that Motion. Those representations were that (1) FPL would withdraw its Petition for Waiver of Rule 25-6.0423(6)(c)5; and (2) FPL planned to file a long-term feasibility analysis during the ordinary course of the 2017 NCR cycle. Order No. PSC-16-0266-PCO-EI, p. 2. FPL also restated these intentions at the agenda conference considering FPL's Motion. *See* Tr. 179 (Scroggs). FPL takes the representations it makes to this Commission seriously. However, FPL's subsequent decision to not seek cost recovery in the 2017 NCR docket reflected a material change in FPL's filing plans. As a result of FPL's decision to not seek contemporaneous cost recovery, the requirement found in Rule 25-6.0423(6)(c)5 does not apply, and FPL's plan to file a feasibility analysis pursuant to that rule provision became moot.

[19] Of course, FPL acknowledges that it is seeking a final prudence determination on its 2015 and 2016 costs, and is seeking to reflect the final true-up of those costs in the 2018 CCRC factors. As discussed in Section III.A, the results of a current feasibility analysis can have no impact on an assessment of the prudence of those years' costs, undermining any argument that a feasibility analysis is an applicable or necessary filing requirement for FPL's prudence and true-up request.

Lastly, there appears to be some misunderstanding that a feasibility analysis would provide information helpful to the consideration of some issue in this docket. It would not. A feasibility analysis, by its very nature, is an examination of whether it makes economic sense to build the Project. Ex. 49 (Order p. 27). It is logical, then, that it is required by Section 366.93 before a utility initiates preconstruction work (*see* 366.93(3)(c)2.a) and before a utility initiates construction work (*see* 366.93(3)(e)2.a) – each of which is a project milestone that moves toward plant construction and initiates significant project spending. Neither of these circumstances is presented in this docket.

At this time, a feasibility analysis would be meaningless. Key inputs include the total Project non-binding cost estimate range, in-service dates, current fuel cost projections, environmental compliance cost projections, cost projections for alternatives, etc. Tr. 78, 141 (Scroggs). FPL has reported an estimated, non-binding total Project cost estimate range as well as projected in-service dates, as presented in response to Issues 9 and 10 (*see* Ex. 10, p. 14), but fully recognizes those costs and dates may change. *See* Tr. 123 (Scroggs). In fact, Mr. Scroggs testified that FPL currently does not have the information it needs to prepare a revised cost estimate or construction execution schedule. As he explained, "[w]e have unfinished first wave projects. We have no insight specifically into the actual causes of cost increases in those first wave projects or how that experience translates to a potential future Turkey Point 6 and 7 project." Tr. 193, *see also,* Tr. 123, 213-14 (Scroggs). As a result, any feasibility analysis put forth today would not be reliable.

It appears that the intervenors would like FPL to use the current cost estimates for *other* new nuclear construction projects in a Turkey Point 6 & 7 feasibility analysis. *See, e.g.,* 213-14. As Mr. Scroggs has repeatedly explained, such an approach is completely inappropriate. While

FPL monitors the upper end of its cost estimate range against the best cost estimates for the first wave construction projects, the costs of those other projects fail to account for transmission-specific and project-specific infrastructure differences. Tr. 145, 227 (Scroggs). Using those costs as a proxy for FPL's costs also would necessarily imply that no lessons will be learned from these projects, and no cost improvements can be made for FPL's Project. The better approach was described by Mr. Scroggs:

> [W]e would need a good understanding of what were the issues in the first-wave projects that caused them to exceed their initial cost estimates. Are those issues manageable or mitigate-able by other actions or other contract arrangements[?] What is the updated material, labor, and costs, schedule, construction estimates put together and specialized for Turkey Point's unique project, specific items, transmission lines, water infrastructure[?] Putting all that together, we then say, let's put that into the economic analysis.

Tr. 274 (Scroggs). Even if FPL were to assume that the current cost estimates for other projects is an acceptable cost estimate to use in a Turkey Point 6 & 7 feasibility analysis, those cost estimates are highly speculative at this time. *See* Tr. 287 (Scroggs) (pointing out that the Westinghouse bankruptcy and increased costs for the Summer and Vogtle projects are major changes since last year's NCR filing). It is doubtful any party would dispute that the other projects' current cost estimates are speculative, given recent events.

Intervenors argue on the one hand that FPL's cost estimate and Project schedule presented in response to Issues 9 and 10, respectively, are certain to change – but then also argue that FPL must perform and submit a feasibility analysis at this time. These positions cannot be reconciled. What use would the other parties have for a feasibility analysis that is based on inputs they dispute are accurate, other than to create a new issue to litigate? FPL's deferral request would end this cycle of meaningless analyses and litigation while the Turkey Point 6 & 7 project is on "pause."

III. CONCLUSION

For all of the foregoing reasons, based upon the express language of the NCR Statute, the NCR Rule, and applicable orders, and based on the evidentiary record in this proceeding, FPL requests that the Commission (i) find that FPL's 2015 and 2016 Turkey Point 6 & 7 costs were prudently incurred and allow the final net true-up of ($7,305,202) to be reflected in FPL's 2018 CCRC; (ii) approve the deferral of NCR cost recovery beginning with the costs incurred in 2017 for up to five years; and (iii) find that FPL's decision to continue work to complete licensing is reasonable.

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CERTIFICATE OF SERVICE
DOCKET NO. 20170009-EI

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