BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental Cost Recovery Clause	Docket No. 20170007-EI Filed: November 13, 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 Environmental Cost Recovery Clause ("ECRC") docket, pursuant to Order No. PSC-2017-0400-PHO-EI,[1] and states as follows:

I. INTRODUCTION

Section 366.8255(2), Florida Statutes, permits a utility to seek cost recovery for "environmental compliance costs." Such costs are defined as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including but not limited to in-service capital investments, including the electric utility's last authorized rate of return on equity thereon, and operation and maintenance expenses. §366.8255(1)(d), Fla. Stat.[2] Section 366.8255(2) continues by explaining as follows:

> If approved, the commission shall allow recovery of the utility's prudently incurred environmental compliance costs . . . through an environmental compliance cost-recovery factor that is separate and apart from the utility's base rates.

Over the years, this Commission has approved a broad range of environmental compliance activities and costs, including those incurred for universally-applicable federal and state rules

[1] At the conclusion of the hearing, the deadline for filing post-hearing briefs was extended from November 8, 2017 to November 13, 2017. Tr. 967.

[2] All statutory references are to the 2017 Florida Statutes.

(such as the Clean Air Interstate Rule, *see* Ex. 2), costs incurred to maintain compliance with site-specific permits or conditions (such as the Manatee Temporary Heating System project approved at FPL's Riviera Plant, Cape Canaveral Plant, and Port Everglades Plant, *see* Tr. 312-13 (Sole)), and costs incurred for required corrective actions (such as the Resource Conservation and Recovery Act Corrective Action O&M Project, *see In re: Environmental Cost Recovery Clause,* Docket No. 950007-EI, Order No. PSC-95-0384-FOF-EI, p. 4).

In 2009, the Commission approved FPL's Turkey Point Cooling Canal Monitoring Plan ("TPCCMP") project for recovery through the ECRC. The "environmental law or regulation" that required FPL to implement this project was the Florida Department of Environmental Protection's ("FDEP") Conditions of Certification ("COCs") IX and X for the site certification of the Turkey Point Extended Power Uprate ("EPU") project.

The disputed FPL ECRC Issues 10A through 10E in this year's docket all relate to the TPCCMP project. All other 2017 ECRC issues have been stipulated, with the understanding that Issue 2 (2017 ECRC costs), Issue 3 (2018 ECRC costs), and Issue 4 (total 2018 ECRC recovery amount) may be affected by the Commission's determinations on Issues 10A-10E. Accordingly, this brief is limited to the disputed TPCCMP issues.

II. SUMMARY OF ARGUMENT

Since the FDEP issued COCs IX and X in 2008 and the Commission approved the corresponding TPCCMP project in 2009, a seven-year process has ensued to (i) collect and analyze the expanded monitoring plan data; (ii) conclude there was a need for corrective actions; (iii) consult with the South Florida Water Management District ("SFWMD"), FDEP, and Miami-Dade County Department of Environmental Resources Management ("MDC DERM") to

determine what actions to take and develop the FDEP's Administrative Order ("AO"); (iv) defend litigation challenging the AO (followed by two Notices of Violation ("NOVs")); and ultimately, (v) achieve legally-final and actionable plans for corrective action.

The history of the CCS and the procedural history associated with FPL's implementation of COC IX and X was discussed at length during the hearing. FPL's and the Office of Public Counsel's ("OPC") witnesses also presented highly technical evidence regarding the hydrogeology of the area and the modeled impacts of FPL's required corrective actions. However, this proceeding was highly technical for one reason only – because OPC and other intervenors have chosen to collaterally attack in this forum the judgment of the environmental agencies charged with oversight of the CCS. Specifically, OPC challenges (1) the historic judgment of the SFWMD concerning if and when additional measures to limit the movement of saline water were required for the CCS; and (2) the current judgment of the FDEP and MDC DERM as to how the hypersaline plume extending westward from the CCS should be addressed. OPC hired a hydrogeologist as an expert witness for the purpose of challenging those agency decisions.

OPC challenges the historic judgment of the SFWMD by asserting that, based upon *OPC's* present-day review of the data collected, analyzed, and reported in the 1970s and 1990s, FPL should have recognized a need for corrective actions concerning the movement of saline water sooner. Tr. 618 (Panday). But OPC conveniently ignores the fact that the SFWMD reviewed all the same data that OPC's witness reviewed, and yet reached the opposite conclusion. *See* Tr. 712 (Sole) (stating "these reports and their conclusions were reviewed by the appropriate regulatory agencies without comment or direction for further action"). OPC is

asking this Commission to override the judgment of an agency that has the expertise and mandate to protect Florida's water resources.

OPC also challenges the judgement of the FDEP and MDC DERM by asserting that a Recovery Well System ("RWS") is not needed to achieve the goals of hypersaline plume remediation and that, if implemented, the RWS will not be effective. [3] *See* Tr. 614, 640-41 (Panday) (stating the RWS will be "ineffective" and that impacts of its use are "minor"). In so doing, OPC disregards the work of these agencies that led to the orders to construct the RWS, the approval of the specific design of the RWS, and the acceptance of the modeled effects of the RWS. *See* Ex. 10; Ex. 13. Once again, OPC is asking this Commission to override informed decisions of the very agencies that are statutorily charged with protecting Florida's water resources.

As discussed below in response to Issues 10A and 10B, FPL has complied with all operational requirements for the CCS. Nonetheless, after review and analysis of the expanded pre-uprate monitoring plan data in 2013, the SFWMD determined that, in its judgment, FPL needed to begin to consult with the SFWMD to identify measures to "mitigate, abate or remediate" the effects of the CCS. Ex. 7. Working with FPL and the SFWMD, the FDEP issued an AO to initiate corrective actions. After litigation was brought against that AO, MDC DERM and the FDEP issued NOVs to FPL. Regardless of the procedural history, FPL is now in the position it explained could occur when it described the TPCCMP project to the Commission and all parties in 2009: As a result of information learned from the expanded monitoring data

[3] OPC witness Panday also challenged FPL's approved plan to use 14 million gallons per day of Floridan Aquifer water to freshen the CCS, but based such opinion on a presumption that FPL used a steady-state water and salt balance model, as opposed to the far more sophisticated transient water and salt balance model that FPL actually used. Tr. 853-54 (Andersen).

required by COCs IX and X, it is now obligated by environmental agencies to implement corrective actions.

As discussed by FPL's witnesses, the Company now has received approval for plans to address the issues identified in 2013 by the SFWMD based on the data collected through the TPCCMP project. The requirements for FPL's corrective actions are delineated in a Consent Agreement with the MDC DERM ("2015 CA") as amended in 2016 ("2016 CAA"), and in a Consent Order with the FDEP ("2016 CO"). FPL is prudently undertaking measures to satisfy those requirements. OPC's attempts to challenge the decisions, requirements, and approvals of the environmental agencies charged with the oversight of the CCS should be rejected, and the costs for FPL to continue to comply with the mandates of these agencies should be approved for cost recovery.

III. ISSUES AND POSITIONS

ISSUE 10A: **Should FPL be allowed to recover, through the ECRC, prudently incurred costs, if any, associated with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection and the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management (as amended by the August 15, 2016 Consent Agreement Addendum)?**

FPL: ******Yes. FPL is required to comply with the 2015 CA, 2016 CO, and 2016 CAA and costs that FPL has prudently incurred as a result of these requirements are recoverable pursuant to Section 366.8255. The administrative procedural history reflecting other parties' dissatisfaction with the FDEP's AO and subsequent findings of violations fails to demonstrate that, as a policy matter, FPL's costs should be disallowed. Moreover, there is no legal basis to disallow costs determined to be prudently incurred to comply with environmental requirements.******

An understanding of the history of the CCS, the TPCCMP project, and related administrative actions is necessary to place FPL's current environmental requirements in proper

context. The key actions of the FDEP, SFWMD, MDC DERM, and this Commission can be summarized as follows:

- Throughout the last four decades, FPL operated the CCS and the interceptor ditch as required by its agreement, as amended over the years, with the SFWMD. Tr. 289, 370 (Sole). This included regular monitoring and reporting of groundwater data. *See* Tr. 292 (Sole). At no point prior to 2013 did the SFWMD determine that there was a problem that required a change to the operation of the CCS or the interceptor ditch. This issue is discussed further in response to Issue 10B.

- In 2008, The FDEP issued COCs IX and X for approval of FPL's Turkey Point EPU Application. Condition X was "a consolidated condition agreed upon by three agencies" – the FDEP, MDC DERM, and SFWMD. Ex. 6, p. 25 of 40. It recited the general understanding of FPL and the agencies that a hypersaline plume had developed beneath the CCS,[4] and directed that an expanded groundwater monitoring plan be implemented to better understand the impacts of the CCS, among other requirements. *Id.* at 26. It also directed FPL to execute a Fifth Supplemental agreement with the SFWMD "pertaining to FPL's obligation to monitor for impacts of the Turkey Point cooling canal system on the water resources of the SFWMD in general." *Id.* at 25.

- In 2009, the Commission approved the TPCCMP project to provide for ECRC recovery of costs incurred to comply with COC IX and X. Ex. 74. As discussed further in response to Issue 10C, the Commission's order approving the TPCCMP project acknowledged that the scope of the TPCCMP project (1) could extend beyond monitoring to include mitigation, and (2) did extend beyond potential impacts related specifically to the EPU project, to include potential impacts of the CCS generally.

- In 2013, after reviewing the data collected through the expanded monitoring plan, the SFWMD determined that saline water from the CCS had moved west of the L-31E

[4] SACE filed a motion to reopen the record on November 1, 2017, claiming it had just "discovered" an internal FDEP memo that, in fact, had been in SACE's possession since 2010. (The FDEP memo was attached as Exhibit 2 to a reply pleading SACE filed with the Nuclear Regulatory Commission in 2010, and is publicly available at https://www.nrc.gov/docs/ML1027/ML102740614.pdf.) Although SACE quickly withdrew its motion, there are a few points about its manifest inaccuracy that FPL feels compelled to address. The memo is an internal FDEP document reflecting the views of a particular staff member, not an expression of FDEP's positions or policy as SACE suggests. And, in any event, the memo does not support the egregious claims SACE made in its motion. First, the memo is entirely consistent with the testimony of FPL witness Sole that in the 2008-2009 timeframe it was known that the CCS may be causing a problem, but that additional monitoring and analysis was necessary. Second, the memo is consistent with, and fails to reveal anything not already stated in, the 2008 COCs that were attached to FPL's 2009 ECRC testimony and attached again to FPL's 2017 ECRC testimony. The COCs state directly that there is a hypersaline plume that originates from the CCS. Ex. 6, p. 26 of 40. Only a party who did not bother to read FPL's testimony and exhibits could arrive at the opinion that FPL was attempting to avoid disclosing such a fact. Third, as explained further in Issue 10B, identifying increased salinity or even a westward-travelling hypersaline plume, for that matter, does not answer the question of whether, in the official judgment of the relevant agencies, there was a problem that needed to be addressed. Those facts represent the beginning of the inquiry, not the end.

Levee "in excess of those amounts that would have occurred without the existence of the CCS and has moved into water resources outside the plant's property boundaries." Ex. 7. Accordingly, FPL was directed to consult with the SFWMD to "identify measures to mitigate, abate or remediate" that condition.

- Following SFWMD's request for consultation, FPL worked with the SFWMD and the FDEP to evaluate mitigation, abatement, and remediation options. Ex. 8, p. 4 of 12; Tr. 295 (Sole). MDC DERM also was involved in that process. Ex. 8, p. 4 of 12. Based on that work, the FDEP issued an AO for FPL to implement a Salinity Management Plan addressing hypersalinity associated with the CCS. Ex. 8.

- Several parties, including MDC DERM, were unsatisfied with the AO and challenged it before an administrative law judge ("ALJ"). From there, the process split into two prongs:

    1. MDC DERM decided to move forward under its own environmental ordinance to require FPL to take corrective action. To initiate that process, it issued a notice of violation to FPL. Ex. 9. FPL then entered into the 2015 CA with MDC DERM to address the conditions alleged to constitute a violation, without admitting those allegations. Ex. 10, p. 3 of 24. (It was later amended to address potential ammonia exceedances by the 2016 CAA.)

    2. The City of Miami and Atlantic Civil, Inc. continued their challenge to the AO. The ALJ issued a recommended order ("RO"). Ex. 11, p. 30 of 63; Tr. 296 (Sole). The ALJ found fault with the AO, in part, because it did not charge FPL with a violation of law. *See* Ex. 11, p. 6; Tr. 295 (Sole). In 2016, the FDEP issued a Final Order ("FO") rejecting the ALJ's legal conclusions and declining to rescind or amend the AO as recommended by the ALJ. *See* Ex. 11, p. 26 of 63.[5] Only portions of the RO were adopted into the FO. FDEP also incorporated certain findings in the FO into a Notice of Violation. Ex. 12. Ultimately, FPL and the FDEP agreed to the 2016 CO, superseding the FDEP's prior actions. Ex. 13. In the 2016 CO, the FDEP acknowledges that FPL has operated the CCS under regulatory approvals with no prior warnings or NOVs. Ex. 13, p. 5 of 27.

This history demonstrates that the 2015 CA, 2016 CO, and 2016 CAA are direct and logical consequences of COCs IX and X and the expanded monitoring program FPL was directed to undertake pursuant to them. It also demonstrates that, while certain identified "violations" have remained unchallenged by FPL, it is overly simplistic to claim, as each of the intervenors have, that FPL is undertaking corrective actions because of "violations of law."

[5] Ex. 11 contains both the FO and the RO.

FPL's Current TPCCMP Costs Do Not Result From "Violations of Law"

There are three important points about the asserted "violations of law" to keep in mind. First, as explained by FPL witness Sole, the standard prompting the SFWMD's request for consultation, the standard cited by MDC DERM, and the standard cited by the FDEP are "narrative" standards, requiring judgment on the part of the agency to conclude whether any violation had occurred. *See, e.g.,* Tr. 359, 383-84 (Sole). The SFWMD determined in 2013 that saline water from the CCS had moved west of the L-31E Levee "in excess of those amounts that would have occurred without the existence of the CCS and has moved into water resources outside the plant's property boundaries." Ex. 7. MDC DERM determined that the CCS caused "receiving waters" outside the CCS boundaries "to be of poorer quality" than the water quality standards set forth in Section 24-42(4) of the Code of Miami-Dade County. Ex. 9, p. 1. And the FDEP determined at first that there was no violation but ultimately issued an NOV finding an impairment of "the reasonable and beneficial use of adjacent G-II groundwater." Ex. 12, p. 3 of 14. Thus, there are not now and never have been bright lines defining what could constitute a "violation of law" with respect to the CCS and salinity.

Second, FPL never violated any operational criteria with respect to the CCS. *See, e.g.,* Tr. 370 (Sole). FPL operated the CCS and the related interceptor ditch in full compliance with all applicable regulations, and nonetheless an unintended consequence occurred. Tr. 414, 426 (Sole). It is not uncommon for an owner/operator to operate a facility in compliance with all applicable permits, etc., and nonetheless a conditional violation, such as those discussed above, occurs. *See* Tr. 422-23 (Sole). FPL witness Sole compared the CCS to an underground storage tank. It is possible for an entity to properly construct and maintain an underground storage tank and to monitor the area for leaks as required, and nonetheless, a leak may be discovered many

years later that constitutes a violation. *Id*. The difference here is that the "leak" is of saltwater into an already saltwater-intruded environment, making the "violation" far more difficult to discern. *See* Tr. 384-85, 437 (Sole).

Third, the identified violations are not the sole reason that FPL is incurring its current corrective action costs. Even without the administrative litigation and NOVs, FPL could have been obligated to do exactly what it is doing now as a requirement of the COCs. When asked whether the CO was a "direct result of the administrative order and NOV" FPL witness Sole responded, "[n]o…It really was initiated by the April 2013 letter to seek consultation to address what was an apparent impairment of the groundwater adjacent to Turkey Point. Since that time, FPL has continued to work with all the regulatory agencies, regardless of which format you are in, to identify the appropriate corrective actions." Tr. 374-75 (Sole). He further explained, "[t]hese actions all could have been taken pursuant to the conditions of certification." Tr. 375 (Sole).

Arguments Regarding Commission Discretion Are Unfounded

OPC has asserted as a matter of law that recovery of "even prudently incurred costs is a matter of discretion and policy." OPC Prehearing Statement, p. 2. To the extent OPC is asserting that prudently incurred costs for an approved ECRC project may, as a policy matter, be disallowed, OPC is mistaken. There is nothing in Section 366.8255 to support OPC's position. To the contrary, the statute states that "[i]f [a utility's described activities are] approved, the commission ***shall*** allow recovery of the utility's prudently incurred environmental compliance costs" (emphasis added). Nor is there anything in Commission precedent to support OPC's position. A review of past ECRC orders reveals two instances in which the Commission references its discretion that may be the purported basis for OPC's position. *See In re: Order*

granting in part and denying in part petition for cost recovery under the environmental cost recovery clause, Docket No. 000808-EI, Order No. PSC-00-2092-PAA-EI (issued Nov. 3, 2000), pp. 5-6 and *In re: Environmental cost recovery clause,* Docket No. 090007-EI, Order No. PSC-09-0759-FOF-EI (issued Nov. 18, 2009), pp. 11-13. But if OPC is relying on those references, it misses or ignores their context. In each instance, the Commission is considering whether an environmentally-mandated "project" and related costs should be considered (i) as part of an underlying base capital construction project or NCR-recoverable construction project, respectively, *or* (ii) as a separately recoverable ECRC project. The Commission's discretion was regarding *where* to allow cost recovery – not *whether* prudent costs should be disallowed.

As discussed further below in response to Issue 10B, FPL has, at all times, prudently managed the CCS and is now prudently implementing required corrective actions to address groundwater and surface water conditions caused by the CCS. No party has demonstrated otherwise. And as discussed further below in response to Issue 10C, FPL's costs are being incurred as part of FPL's approved TPCCMP project. In Section 366.8255(2), Florida Statutes, the Legislature directed the Commission to allow recovery of a utility's prudently incurred environmental compliance costs associated with an approved ECRC project, and expressly included the utility's cost of capital on prudent capital investments. §366.8255(1)(d), Fla. Stat. Accordingly, there is no legally-supportable rationale for the Commission to disallow any portion of FPL's prudently-incurred TPCCMP project costs.

ISSUE 10B: **Which costs, if any, associated with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection and the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management (as amended by the August 15, 2016 Consent Agreement Addendum) were prudently incurred?**

FPL: ******All costs associated with the 2015 CA, 2016 CO, and 2016 CAA are being prudently incurred. FPL has operated the CCS and interceptor ditch as required. No prior imprudence was demonstrated by any party. In asserting there was a knowable problem earlier, OPC is substituting its judgment for the judgement of the SFWMD which reviewed the same data as OPC and determined no action was warranted. In asserting the RWS is not needed or will be ineffective, OPC is substituting its judgement for the judgement of agencies that mandated the RWS and approved its design and modeled impacts.******

FPL is Prudently Incurring Costs to Implement the CA, CO, and CAA

Since it was constructed more than 40 years ago, FPL has operated the Turkey Point CCS in compliance with all applicable permits and regulations, working collaboratively with federal, state, and local agencies to monitor any impacts from the CCS and address issues as they were identified. Tr. 285 (Sole). When FPL proposed the Turkey Point EPU project in 2008, agencies identified potential concerns that the interceptor ditch may not be effective in restricting movement of saline water, and as a result, required the extensive monitoring that initiated the TPCCMP project.[6] *See* Ex. 6, p. 26 of 40; Tr. 326 (Sole). As a result of this expanded groundwater and surface water monitoring, it was determined that a number of corrective actions were required to address impacts resulting from hypersaline waters associated with the CCS. *Again, FPL has not violated any of the operational requirements in the environmental permits associated with the CCS.* Tr. 289, 370 (Sole). Rather, the expanded monitoring enhanced the ability of FPL and the relevant regulatory authorities to ascertain the extent to which the hypersaline water associated with the CCS was impacting the groundwater below and adjacent to the CCS and ultimately to determine there was a need for corrective action. In compliance with the directives of the various environmental agencies charged with oversight of the CCS, FPL is now in the mitigation and remediation phase. *See* Tr. 286 (Sole).

[6] It should not be surprising that FPL immediately began evaluating options that it could take in the event that such actions were determined to be necessary. *See* Tr. 500 (Sole); Ex. 75.

The costs FPL is incurring pursuant to the 2015 CA, the 2016 CO, and the 2016 CAA are all being prudently incurred. The collaboration between FPL and the SFWMD, FDEP, and MDC DERM discussed by FPL witness Sole is important because it demonstrates that the required actions reflect not only the input of FPL, but the collective judgment of these environmental agencies. OPC and other intervenors disregard the collaboration that supported the identification of the need for corrective actions, and the design and approval of the corrective actions themselves. As discussed by FPL witness Sole, even while administrative litigation was underway, FPL was working with the FDEP and the SFWMD to look at options and activities that could be taken to abate and remediate the hypersaline plume. Tr. 364. To second guess an ordered and approved corrective action is to second guess the collective wisdom of these environmental agencies – a collateral attack on decisions of the institutions with the expertise and statutory mandate to make them.

As discussed in detail by FPL witness Sole, the final reflection of FPL's obligations to the FDEP and MDC DERM are extensive and overlapping. For example, both the 2015 CA and the 2016 CO require the design, construction, and implementation of the RWS. *See* Tr. 298, 301 (Sole); *see also* Tr. 378 (Sole). Both the 2015 CA and the 2016 CO also require that FPL perform an analysis using the variable density three dimensional groundwater model to allocate relative contributions of other entities or factors to the movement of the saltwater interface.[7] Tr. 299, 302 (Sole). FPL also is required to undertake CCS freshening activities intended to reach and maintain an annual average 34 PSU salinity level, complete regional hydrologic improvement projects, implement Barge Basin and Turtle Point restoration projects (the

[7] FPL notes that this subsequent requirement calls into question certain of the factual findings made in the RO, such as the finding that the CCS is the "major contributing cause" of the westward movement of the saline water interface. Ex. 11, p. 42 of 63.

"backfill" activities discussed under Issue 10D, below), and conduct even more monitoring, to name a few. Tr. 298-304 (Sole). FPL is obligated to comply with these directives.

FPL's actions already are achieving improvements in CCS salinity and thermal efficiency. Tr. 306 (Sole). FPL has observed improvements in thermal efficiency as a result of sediment management activities, and has been able to better control CCS water salinity and algae that can result from significant drought conditions. Tr. 306 (Sole). FPL also has worked with SFWMD to allow use of existing test wells to begin successfully extracting hypersaline groundwater in advance of the full operation of the RWS in early 2018. *See* Tr. 307 (Sole). Groundwater modeling accepted by MDC DERM indicates that, with the operation of the RWS, the westward migration of the hypersaline plume will be stopped in three years of operations, with retraction of the hypersaline plume north and west of the CCS beginning in five years. Retraction of the plume back to the FPL site boundary is projected in 10 years. Tr. 307 (Sole).

OPC Failed to Demonstrate Any Imprudence on the Part of FPL

OPC argued in its prehearing statement and in its opening statement that there were "imprudent management decisions" leading to FPL's current environmental obligations. Tr. 208, OPC Prehearing Statement, p. 3. But no such decisions or actions were ever identified. There appears to be no dispute that FPL operated the CCS in compliance with its agreement with the SFWMD. There also appears to be no dispute that FPL operated the interceptor ditch in compliance with its agreement with the SFWMD. This compliance was confirmed by the SFWMD in 1983 (*see* Ex. 47, p. 1 of 29, stating "WHERAS, the obligations undertaken by FPL and the CSFFCD in the Original Agreement and the supplemental agreements have been satisfactorily performed to date") and ongoing compliance was noted by the FDEP in 2016 (*see* Ex. 13, p. 5 of 27, stating "FPL has operated the CCS under regulatory approvals, and the

Department has not previously issued FPL either a Warning Letter or a Notice of Violation concerning FPL's operation of the CCS"). Instead, OPC's argument is that FPL and the SFWMD should have reacted differently to the monitoring information that was gathered and reported at the time.

OPC's witness Panday claimed that "as early as 1978 and at least by 1990 or 1992, FPL should have known that saline water from the CCS was intruding into groundwater outside of FPL's property. Subsequent groundwater monitoring reports made available by FPL for the period between 2003 and 2010 also contained salinity data that indicated the need to consider taking corrective action." Tr. 618 (Panday). However, he bases this position on observations of increased salinity in particular groundwater monitoring wells and then jumps to the conclusion that there was a problem requiring remediation. His conclusion does not follow without the benefit of hindsight.

As discussed by FPL witness Sole, "additional salinity in an existing saltwater intruded environment is not an environment problem." Tr. 469 (Sole); *see also* 437 (Sole). As of 1972 (*i.e.*, before operation of the CCS), saltwater intrusion that pre-dated the CCS already had reached far west of the CCS boundary. Ex. 61 (Staff's Third Set of Interrogatories, No. 54, Attachment 1); Tr. 491 (Sole). Its extent also shifts from east to west over time, depending upon conditions such as droughts. Tr. 439 (Sole). Accordingly, it was reasonable for FPL's consultant, FPL and the SFWMD to see nothing actionable in the data upon which OPC witness Panday relies to reach his conclusions. The SFWMD reviewed the same data as OPC's witness, and at the time, concluded there was no need to require FPL to take any action in response thereto.[8] OPC witness Panday agreed during cross examination that from 1972 through 2009,

[8] This may reflect a material point of misunderstanding on the part of OPC. During redirect examination, OPC witness Panday was asked whether there was anything in FPL's agreements with the SFWMD "preventing FPL

pursuant to FPL's agreements with the SFWMD, the SFWMD received periodic monitoring information and had the authority to require corrective actions – such as operational or engineered changes to the interceptor ditch – but never did. Tr. 660-68 (Panday). He also confirmed that despite the authority of MDC DERM and FDEP to do so much earlier, those agencies never issued a violation against FPL for CCS impacts until 2015 and 2016, respectively. Tr. 671-74 (Panday). A claim that any of the conclusions reached 30 or 40 years ago "turned out to be" inaccurate is a textbook example of hindsight – not imprudence on the part of FPL. *See, e.g.,* Tr. 730.

In fact, the very issuance of consolidated COC X agreed to by SFWMD, FDEP, and MDC DERM undermines OPC's position that FPL should have acted differently decades ago. Ex. 6. The COCs acknowledged the existence of a hypersaline plume caused by the CCS and ordered expanded monitoring to analyze the issue further. Ex. 6, p. 26 of 40. *Accordingly, as recently as 2008, the SFWMD, FDEP, and MDC DERM still did not have enough information to properly analyze the issue or determine what actions needed to be taken*. There is no record evidence (or extraneous documentation, for that matter) indicating otherwise. This official agency action speaks for itself and is entirely consistent with the testimony of FPL witness Sole that, in 2009, it was known to FPL and the environmental agencies alike that the CCS "may have a problem." Tr. 376 (Sole).

OPC also challenges the prudence of implementing the RWS. As FPL witness Sole testified, the RWS design is based on a well-understood remediation methodology, and guided by a site-specific advanced variable density solute transport groundwater model developed for

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from alerting the Water Management District of a need for a change." OPC witness Panday responded that FPL "should have gone to the Water Management District." Tr. 702. But his opinion is based on data found in reports that were submitted to the SFWMD. *See, e.g.,* Ex. 66 (containing the 1978, 1990, and 1992 Dames & Moore reports, each of which discusses its submission to the SFWMD); *see* also Tr. 712 (Sole). So, the data that OPC claims FPL should have brought to SFWMD's attention was already in the possession of the SFWMD.

this purpose. Tr. 717 (Sole). OPC witness Panday agreed that the Tetra Tech model, used by FPL was "appropriate and a [sic] useful for decision-making." Tr. 689 (Panday). FPL selected a course of corrective action that includes the RWS only after evaluating a number of credible alternatives providing a range of outcomes and impacts. Environmental and practical constraints were considered, with an overall desire to move forward and take action. FPL and the combined reviewing agencies have assessed the RWS and concluded that it is a strong, positive step forward in addressing the need to retract the hypersaline plume. Tr. 717 (Sole). The implementing direction from the regulatory agencies anticipates the need to monitor the response of the plume to the RWS and contemplates that the system may be modified to improve its effectiveness, once actual performance data can be collected and integrated. *Id.*

OPC witness Panday claims that the impacts of the RWS will be minimal, but does so with analyses that use invalid assumptions, such as incorrect salinity concentrations. Tr. 849 (Andersen). OPC witness Panday also attempts to draw conclusions about retraction by reviewing the effects of the RWS after one year of operation, failing to recognize that the recovery wells along the western edge of the CCS boundary are not slated to begin pumping until *after* that first year. Tr. 849-50 (Andersen). Further, OPC's own exhibit demonstrates that after 10 years, the RWS will effectively retract the hypersaline plume back to the CCS boundaries in a high hydraulic conductivity zone, labeled "layer 8." Tr. 850-51 (Andersen); Ex. 50.

OPC witness Panday also claims that the effects of the RWS will be minimal on the lowest layer ("layer 11") in the model. But given the characteristics of this layer, the need to address it remains unclear and subject to further direction from the MDC DERM. Tr. 851-52 (Andersen). It would be unwise to not move forward with the RWS when the best available monitoring shows it will be effective in retracting and containing the hypersaline plume, simply

because of uncertainty over the need for and effectiveness of the RWS in one deep layer. *See* Tr. 717 (Sole) (explaining the overall desire to move forward and take action).

The potential need to make modifications to the RWS and other corrective actions was overblown and mischaracterized by OPC as "mulligans" during the hearing. *See* Tr. 408 (Sole). As explained by FPL witness Sole, an iterative approach is a reasonable and appropriate compromise between the need to begin corrective actions promptly and the desire to optimize system performance over time. Tr. 717 (Sole). He further explained as follows:

> [E]very remediation project that I have worked throughout my career, undeniably there is little bits of modification here or modification there to ensure that you are capturing and successfully remediating. That is a routine action . . . So, yes, we will continue to monitor the efficacy of the recovery well system. There may be some changes needed as we progress. It may be that instead of pumping all 10 wells evenly, we really need to pump six of the wells a little bit more than the four wells and that will be part of our analysis as we regress through this. That is a normal technique and normal technology in the world of contamination assessment and remediation.

Tr. 408-09 (Sole). The opportunity to make improvements such as these in no way undermines the prudence of moving forward.

In any event, regardless of what OPC or witness Panday thinks about the expected impact of the RWS, the bottom line is that the RWS is required by both the 2015 CA and the 2016 CO. Ex. 10, p. 5 of 24; Ex. 13, p. 8 of 27; *see also* Tr. 298, 301, 378 (Sole). Moreover, the specific design of the RWS and the models supporting that design were reviewed in detail and approved by MDC DERM. *See* Ex. 10, p. 14 of 24 (referencing MDC DERM's review of the groundwater model supporting the RWS "with technical assistance from Miami-Dade County Waste and Sewer Department and the University of Florida's School of Civil and Coastal Engineering"); *see also* Ex. 10, p. 21 of 24 (approving RWS implementation subject to detailed conditions); Tr. 677 (Panday) (acknowledging during cross examination that MDC DERM has approved the

RWS design); Tr. 888 (Andersen) (stating the model has demonstrated to the satisfaction of the regulators and their reviewers that the model will work sufficiently). Clearly, MDC DERM and the technical team it assembled do not share OPC witness Panday's concerns. FPL respectfully submits that this is not the appropriate forum to second-guess the wisdom of the orders and approvals issued by the environmental agencies with which it is required to comply.

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.*, *In re: Nuclear cost recovery clause,* Docket No. 090009-EI, 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.

Despite generic references to imprudent management decisions in its arguments, OPC failed to identify a single imprudent decision or action on the part of FPL. To the contrary, the record shows that the CCS and the interceptor ditch were designed and operated as required, all required monitoring data was collected and reported to the appropriate agencies,[9] and the conclusions that FPL, its consultant, and the SFWMD reached during the first 30-40 years of the CCS's operation were reasonable at the time. The record also demonstrates that it is prudent for FPL to implement the RWS and freshening activities as directed and approved by the relevant environmental agencies.

[9] In three instances (2005, 2006, and 2007) the monitoring data was submitted late. After SFWMD's review, it requested additional data and analysis, but did not invoke consultation for corrective actions. Tr. 714 (Sole).

ISSUE 10C: Should the costs FPL seeks to recover in this docket be considered part of its Turkey Point Cooling Canal Monitoring Plan project?

FPL: *****Yes. Requirements for the TPCCMP project have progressed from monitoring to implementing corrective actions. At the time the TPCCMP project was approved for recovery through the ECRC in 2009, FPL made clear that such a progression was a potential outcome. As demonstrated in the 2009 order, it was also clear that the scope of the projected extended to historic impacts of the CCS generally – not just those related to the EPU project. FPL provided testimony at key project expansion points and reflected incremental costs for the expansion of FPL's compliance activities each year in its ECRC filings.*****

FPL petitioned for approval of the TPCCMP project as an ECRC recoverable project in 2009, and it was approved by stipulation in Order No. PSC-09-0759-FOF-EI. The full extent of the TPCCMP project, including the potential for it ultimately to include corrective actions, was made clear in both the testimony and exhibits filed at the time. FPL described the breadth of its obligations and potential next steps in the testimony of Randall LaBauve, in which he stated that the project may include mitigation and abatement activities if deemed necessary by the relevant environmental agencies. Specifically, Mr. LaBauve quoted COC X when he testified in 2009 as follows:

> If the FDEP, in consultation with SFWMD and DERM, determines that the pre- and post-Uprate monitoring data . . . (2) indicates harm or potential harm to the waters of the State[10] including ecological resources; (3) exceeds State or County water quality standards; or (4) is inconsistent with the goals and objectives of the CERP Biscayne Bay Coastal Wetlands Project, then additional measures may be required to evaluate ***or to abate*** such impacts. The potential additional measures that might be required include but are not limited to:
>
> - the development and application of a 3-dimensional coupled surface and groundwater model (density dependent) to further assess impacts of the Uprate Project on ground and surface waters; such model shall be calibrated and verified using the data collection during the monitoring period;
>
> - ***mitigation measures*** to offset such impacts of the Uprate Project necessary to comply with State and local water quality standards, ***which may include methods and features to reduce and mitigate salinity***

[10] This is an example of a narrative standard, as described by FPL Witness Sole.

increases in groundwater including the use of highly treated reuse water for recharge of the Biscayne aquifer or wetlands rehydration;

- ***operational changes in the cooling canal system*** to reduce any such impacts; and/or

- ***other measures to abate impacts*** as may be described in the revised plan.

Composite Ex. 79, 2009 Testimony of R. LaBauve, p. 12 (emphasis added).

Furthermore, COCs IX and X themselves were attached to FPL's 2009 testimony as an exhibit. Those conditions clearly set forth the scope of FPL's obligations, which extend beyond monitoring to assess the impacts of the EPU. For example, COC X required FPL to execute a Fifth Supplemental agreement with the SFWMD "pertaining to FPL's obligation to monitor for ***impacts of the Turkey Point cooling canal system on the water resources of the SFWMD in general***". Ex. 6, p. 24-27 of 40 (emphasis added); *see also* Composite Ex. 79, 2009 Testimony of R. LaBauve, p. 1 (indicating attachment of COC IX and X); *see also* Tr. 446 (Sole).

FPL's reporting did not stop in 2009. As required, FPL has annually filed all cost data concerning the project and filed project description and progress reports to provide the Commission with information concerning project accomplishments and expenditures. Tr. 309 (Sole). In 2013, FPL filed testimony explaining that the SFWMD, FDEP and Miami Dade County had reviewed the data gathered through the expanded monitoring and determined that "saline water from FPL's CCS has moved westward of the L-31E Levee in excess of those amounts that would have occurred without the existence of the CCS, and has moved into water resources outside the plant's boundaries." Composite Ex. 79, 2013 Testimony of R. LaBauve, p. 2. That testimony also explained that, as a result, FPL was obligated to "begin consultation with

the SFWMD." *Id.* at p. 2.[11] And when estimating the costs over the next few years for the TPCCMP project, Mr. LaBauve stated:

> Beginning in 2015, FPL expects that new construction activities for compliance with the Agencies' requirements will result in an additional investment of significant capital costs for completion of the project. FPL also anticipates that implementing the plan requirements for mitigating the saline water issue will result in an annual increase of O&M cost in 2015 and beyond, although it is too early to quantify those costs.

Id. at p. 4. The status and future expectations of the project could not have been clearer in 2013. And once again, just like in 2009, the Commission approved a stipulation for recovery of FPL's ECRC costs. No party raised any issues on the TPCCMP project. *See* Docket No. 130007-EI, Order No. PSC-13-0606-FOF-EI (issued Nov. 19, 2013).

In 2015, FPL filed testimony that discussed additional salinity reduction-related activities it was required to undertake pursuant to updated regulatory requirements. These activities included, but were not limited to, water delivery projects and sediment management. Tr. 309 (Sole). At that time, FPL projected a significant increase in project costs. FPL projected that in 2016 it would incur $28 million in Operations and Maintenance ("O&M") expenses and $6.8 million in capital costs. Again, no issues were raised on the TPCCMP project and all ECRC issues were resolved by stipulation and approved by the Commission. *See* Docket No. 150007-EI, Order No. PSC-15-0536-FOF-EI (issued Nov. 19, 2015).

Importantly, the Commission acknowledged that the scope of the project was neither limited to monitoring nor limited to the effects of the EPU project in its 2009 ECRC order approving the stipulation for TPCCMP project cost recovery. The Commission recognized the potential obligation for FPL to go beyond monitoring, and undertake mitigation measures, in its

[11] It appears that page 3 of the excerpt from FPL's 2013 testimony (intended to include the entirety of the 2013 TPCCMP discussion that appears on pages 1-4 of that testimony) was inadvertently omitted from the copies of the exhibit distributed to parties and entered into the record.

quote of Mr. LaBauve's testimony discussing mitigation. Ex. 74, p. 12. And the Commission expressly concluded that the TPCCMP project was not limited to monitoring or mitigating the effects of the EPU project in its assessment of the project's recoverability through ECRC. At page 12, the stipulated language states:

> FPL has been conducting certain monitoring activities at the TP Plant for some time, and FPL indicates that the DEP and water management district have been concerned with adverse environmental impacts from the CCS ***beyond the specific impacts that may result from the nuclear uprate***.

(Emphasis added). Then, at page 13, in concluding that the TPCCMP project costs are recoverable through ECRC (as opposed to the Nuclear Cost Recovery Clause ("NCRC"), the stipulated language states:

> Because the costs for the TP-CCMP Project are predominantly O&M expenses that will continue for an uncertain duration, and ***because the water-quality issues the Project is being undertaken to address relate to operation of the Turkey Point plant as a whole and not just the TP Nuclear Uprate***, FPL should be allowed to recover the costs associated with the TP-CCMP Project through the ECRC…

(Emphasis added). Accordingly, there can be no question that the Commission and all parties were fully apprised of the current and potential future scope of the TPCCMP project when it was approved for ECRC treatment in 2009.

OPC questioned FPL witness Sole on the final sentence of the above-quoted paragraph, which states "The eligibility of ECRC recovery for any similar project will depend on individual circumstances and shall, therefore, be considered on a case-by-case basis." Tr. 457; Ex. 74, p. 13. Mr. Sole declined to interpret the Commission's intent in approving this sentence of the stipulation. *Id.* OPC mistakenly interprets this sentence as intending to say that future TPCCMP activities will be considered on a case-by-case basis. *Id.* While FPL certainly agrees that the costs for each of its activities are subject to a prudence review, it strongly disagrees with OPC's

interpretation. The quoted sentence concludes a three-page discussion of whether TPCCMP project costs should be recovered through the NCR or the ECRC. The debate arose because the costs for the TPCCMP project were related in part to a construction project recoverable through another clause – the NCRC. The debate was not recoverability, but the appropriate clause for recoverability. This sentence simply made clear that other similar environmental projects (*i.e.*, those related to nuclear construction projects) may or may not be recoverable through ECRC (as opposed to the NCRC). In any event, the Commission unequivocally and unconditionally approved the TPCCMP project, and the costs at issue today are properly recoverable as part of that project.

In sum, there is no legal or evidentiary basis for the position that FPL's current TPCCMP project activities extend beyond the scope of what was described at the time the project was presented and approved for ECRC cost recovery, or what was described in the years that followed. To the contrary, FPL's current obligations are entirely consistent with the obligations that were imposed by COCs IX and X. As discussed by FPL witness Sole, such a progression is common in environmental regulatory processes and was fully disclosed in 2009. Tr. 310, 308-09 (Sole).

ISSUE 10D: **Is FPL's proposed allocation of costs associated with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection and the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management (as amended by the August 15, 2016 Consent Agreement Addendum) between O&M and capital appropriate? If not, what is the correct allocation of costs between O&M and capital?**

FPL: *****Yes, FPL's proposed allocation between O&M and capital appropriately identifies the extent to which the RWS will achieve retraction of the hypersaline plume back to the FPL CCS boundaries (O&M) versus containment of the hypersaline plume within the FPL CCS boundaries (capital). Capitalization will appropriately spread the cost recovery of the asset over the expected life of the asset.*****

The majority of FPL's TPCCMP costs estimated to be incurred over the next 10 years are O&M. FPL estimates that it will incur about $130 million in O&M and about $46 million in capital expenditures through 2026. Ex. 15. FPL's capital expenditures include a portion of the RWS costs that are attributed to containment of hypersaline water within FPL's CCS boundaries (*i.e.*, prevention), as well as backfill activities at certain canals. Tr. 567 (Ferguson). FPL is not proposing to capitalize any costs associated with what intervenors refer to as "clean up" efforts, such as the use of the RWS to retract hypersaline water back to the FPL CCS boundaries.

In late 2016, FPL engaged Tetra Tech to conduct an analysis to help determine the proper accounting for the RWS that is required by the 2015 CA and 2016 CO. Specifically, FPL recognized that the RWS will perform both remediation *and* prevention functions. The remediation function is related to the removal of hypersaline water from areas outside the boundaries of the CCS that are in violation of groundwater standards, while the preventive function is related to the containment and removal of the hypersaline water within CCS boundaries. Tr. 561-62 (Ferguson). FPL also determined that the backfill activities are solely being performed to prevent ammonia from forming in Biscayne Bay surface water east of the CCS. As a result, their purpose is preventive and the backfill activities should be capitalized. Tr. 563 (Ferguson). The result of the reallocation of costs to capital (all costs, for purposes of FPL's estimates and projections filed last year in Docket No. 20160007-EI, were previously assumed to be O&M) contributes to FPL's over-recoveries in 2016 and 2017. *See* Tr. 262 (Deaton). Accordingly, this reallocation had the effect of reducing FPL's 2018 ECRC amount.[12]

[12] FPL notes that reversing this reclassification would have the opposite effect and increase FPL's 2018 ECRC amount.

Tetra Tech's engineering analysis to determine the apportionment of RWS costs between prevention/containment and remediation/retraction was based on the relative mass of salt removed from saline water within and beyond the CCS boundaries, respectively, over the 20-year expected operating life of the RWS. Based on its review, Tetra Tech concluded that between 83% and 74% of the salt mass will be removed from within the CCS boundaries (and hence is related to prevention), while between 17% and 26% will be removed from outside the CCS boundaries (and hence is related to remediation).[13] FPL has conservatively utilized a 74%/26% split to allocate RWS costs between capital and O&M. Tr. 562 (Ferguson); Ex. 21. In other words, FPL is capitalizing the portion of the investment that will *prevent* hypersaline water from migrating outside the CCS boundaries – not the portion of the investment related to *retracting* hypersaline water from outside those boundaries. Tr. 584 (Ferguson).

In light of this allocation approach, it is wrong to assert FPL is proposing to earn a return on "capital costs that result from a violation of an environmental law." *Id.* Rather, FPL is seeking to earn the standard, Commission-approved return on capital expenditures that are intended to prevent contamination from leaving the site and adversely impacting the surrounding environment. This is exactly the accounting treatment used for the emissions control equipment that FPL and other investor-owned utilities recover through the ECRC for their power plants. *See* Tr. 585 (Ferguson).

At the hearing, there were inquiries regarding whether a volumetric approach, as opposed to mass-based approach, would be appropriate. As discussed by FPL witness and Tetra Tech engineer Mr. Andersen, who co-authored Ex. 21, even if one were to use a volumetric approach, the result is the same. A simplistic, volumetric approach would support a 75% allocation to

[13] FPL notes that the terms abatement, mitigation, and remediation are imprecise (*see, e.g.*, Ex. 72; Tr. 548). Regardless, the purpose of this study was to assess the effect of the RWS on hypersaline water outside of versus inside of FPL's CCS boundaries. Tr. 585 (Ferguson).

capital, which is very close to the mass-based allocation of 74% that FPL used (and in fact, would allocate slightly more costs to capital). Tr. 940 (Andersen).

OPC Witness Panday devoted two pages of his testimony to attacking the 83% capital/ 17% O&M allocation that FPL has not even proposed to use. *See* Tr. 649-50 (Panday). He concluded this portion of his testimony by stating that a 74%/26% allocation – precisely the allocation FPL has proposed – was supported by the model when all model layers were considered. Tr. 650 (Panday).

Ultimately, OPC witness Panday recommended that the allocation of RWS costs between containment and retraction be revisited and adjusted as needed over the operational life of the project. Specifically, he testified that "the cost should be apportioned, if at all, on a more regular basis, as per the varying ratios." Tr. 652 (Panday). However, this proposal would not be consistent with Generally Accepted Accounting Principles ("GAAP"). As FPL witness Ferguson explained, the RWS has a 20-year expected operating life. Tr. 823 (Ferguson). GAAP requires that a long-lived asset be recorded at historical cost, which includes "the costs necessarily incurred to bring it to the condition and location necessary for its intended use." *Id.*; *see also* Tr. 830 (Ferguson). Those costs are known, and their allocation accordingly should be determined, at the time that the asset goes into service. There is no provision in GAAP for re-allocating costs already incurred for a long-lived asset between O&M and capital over time, as those relative contributions evolve.[14] *Id.*

FPL's allocation of costs between the remediation and prevention functions complies with GAAP – specifically, ASC 410-30-25-16 to 18. Tr. 560 (Ferguson). OPC witness

[14] Mr. Moyle, on behalf of FIPUG, implied while questioning Mr. Ferguson that FPL (or the Commission) need not comply with GAAP. Tr. 834. As FPL witness Ferguson explained, the Commission does apply the Uniform System of Accounts, which is consistent with GAAP (in terms of the treatment of these types of costs). Tr. 835 (Ferguson).

Panday's recommendation will not comply with GAAP. Additionally, FPL's approach has been reviewed by its external auditors, who agreed with the proposal. Tr. 593 (Ferguson). FPL has chosen the conservative allocation – in other words, the smallest allocation to capital supported by the study – to properly capitalize that portion of its investment that will prevent future water quality violations, not unlike an investment in a scrubber that would prevent emissions. Tr. 585 (Ferguson). FPL's proposal, therefore, is appropriate and should be approved.

ISSUE 10E: How should the costs associated with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection and the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management (as amended by the August 15, 2016 Consent Agreement Addendum) be allocated to the rate classes?

FPL: *****Costs associated with the 2015 CA, 2016 CO, and 2016 CAA should be allocated in the same manner as all other environmental cost recovery amounts approved for recovery under the TPCCMP project.*****

The Commission approved a stipulation in 2009 setting forth the appropriate allocation for TPCCMP costs. Ex. 74, p. 13. No party presented any evidence supporting an allocation of approved costs that is different from the manner in which FPL allocates all other approved TPCCMP costs. Accordingly, the Commission should approve an allocation consistent with the existing allocation of TPCCMP project costs. Ex. 24, Appendix I, pp. 3, 6; Ex. 24, Appendix I, p. 118.

IV. CONCLUSION

FPL is statutorily entitled to recover prudently incurred costs for an approved environmental project. As discussed in response to Issue 10C, FPL's current TPCCMP costs fall squarely within the scope of the approved TPCCMP project, as to which the Commission and ECRC parties have been kept fully apprised from day one. There is no evidence of imprudence

as to either how the need arose for corrective action or FPL's choice and implementation of corrective action. Instead, OPC and the other intervening parties have launched impermissible collateral attacks on historical and current decisions made by the very regulators who are empowered and directed to protect Florida's environment and water resources.

As a result of the data obtained from the expanded monitoring program initiated in 2009, as required by COCs IX and X, FPL is now obligated to implement a variety of remediation, abatement, and mitigation measures to address the effects of the CCS. FPL has fairly and properly considered the correct accounting treatment for the costs resulting from those obligations. This includes allocating RWS costs between capital and O&M in a manner that capitalizes the portion of the costs attributable to the prevention of future westward movement of hypersaline water from FPL's CCS boundaries.

For all of the foregoing reasons, consistent with Section 366.8255, Florida Statutes, and prior Commission orders, and based on the evidentiary record in this proceeding, FPL requests that the Commission approve its 2018 ECRC amount, including costs for the TPCCMP project, as petitioned.

Respectfully submitted this 13th day of November, 2017.

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CERTIFICATE OF SERVICE
Docket No. 20170007-EI

I HEREBY CERTIFY that a true and correct copy of FPL's Post-Hearing Brief has been furnished by electronic service this 13th day of November, 2017 to the following:

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