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090172-EI

From: Ann Bassett [abassett@lawfla.com]
Sent: Monday, August 10, 2009 4:47 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 090172-EI
Attachments: 2009-08-10, 090172, FGT's Post-Hearing Brief.pdf

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The Docket No. is 090172-EI - Petition to determine need for Florida EnergySecure Pipeline by Florida Power & Light Company

This is being filed on behalf of Florida Gas Transmission Company, LLC.

Total Number of Pages is 11

Post-Hearing Brief and Statement of Issues and Positions of Florida Gas Transmission Company, LLC

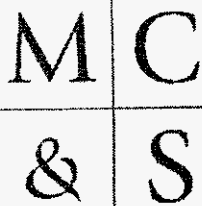
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August 10, 2009

VIA ELECTRONIC FILING

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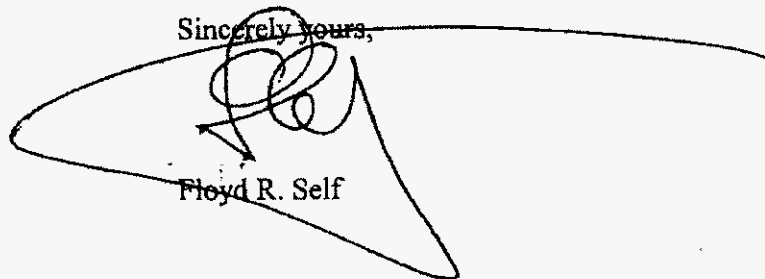
Re: Docket No. 090172-EI

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Gas Transmission Company, LLC is the Post-Hearing Brief and Statement of Issues and Positions of Florida Gas Transmission Company, LLC in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosure

cc: Mr. Michael T. Langston
Parties of Record

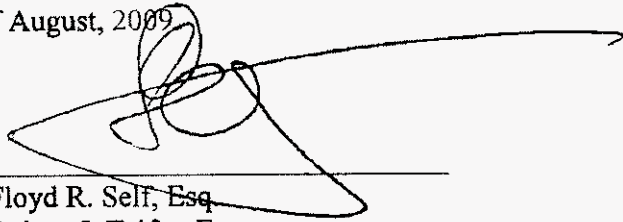
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Respectfully submitted this 10th day of August, 2009

A handwritten signature in black ink, appearing to be "Robert J. Telfer", written over a horizontal line. The signature is stylized and extends to the right.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Florida)
EnergySecure Pipeline by Florida Power &)
Light Company.)
_____)

Docket No. 090172-EI
Dated: August 10, 2009

**POST-HEARING BRIEF AND STATEMENT
OF ISSUES AND POSITIONS OF
FLORIDA GAS TRANSMISSION COMPANY, LLC**

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PRELIMINARY STATEMENT

Pursuant to Rule 28-106.307, Florida Administrative Code, Florida Gas Transmission Company, LLC ("FGT") files its Joint Post-Hearing Brief and Statement of Issues and Positions.¹

INTRODUCTION

Florida consumers have everything to pay and nothing to gain from FPL's proposed multibillion dollar pipeline. As is more fully discussed below, FPL's proposed pipeline unfairly burdens customers with excessive costs because the pipeline would initially have 50 percent more capacity than even FPL admits is needed. Moreover, FPL admits that customers will not reap any economic benefit from the pipeline until at least 2021, and the pipeline will not provide a net cumulative economic benefit for customers until 2041. Even if there were a need for a pipeline of this size, there is no basis in Florida law, in the precedents of any other state, or at the federal level for including the construction and operating costs of the pipeline in the electric utility ratebase. FPL has failed to meet its burden of proof in this case, and, accordingly, FPL's proposed pipeline should be denied.

ISSUES, POSITIONS AND ARGUMENT

ISSUE 1: Is FPL's forecast of future natural gas pipeline transmission capacity requirements reasonable for planning purposes?

FGT's Summary: **No. FPL's need for 600 MMcf/d is unreasonable because the Riviera Beach and Cape Canaveral plants have a combined certified need of 400

¹ For purposes of this brief, references to the hearing transcript shall be noted as "Tr. ____" and references to hearing exhibits shall be noted as "Exh. ____."

MMcf/d, with FPL not needing any of the excess capacity until at least 2021. FPL's data is inconsistent and its adjustments to population demand data are overstated.**

FGT's Analysis and Argument: Customers do not need a multibillion dollar two-pipeline (intrastate-interstate) system that even FPL admits is overbuilt and will not be fully utilized until 2021-2023. FPL wishes to build a \$1.6 billion intrastate pipeline that will be capable of transporting 1.25 Bcf/d of natural gas, but initially will only transport 600 MMcf/d. Tr. 15-16, 158. However, the admitted, unmet, not-already-under-contract need for all currently approved FPL gas fired power plants is only 400 MMcf/d. Company E refused to build the upstream pipeline that feeds the proposed FPL pipeline unless FPL agreed to pay for 600 MMcf/d of transportation capacity. As a result, FPL will be under contract for 200 MMcf/d of excess capacity from Day 1 until sometime in 2021 or later, assuming FPL even needs additional capacity at that time. Tr. 80-81, 83. There are no new power plants in the current FPL Ten Year Site Plan. See Tr. 81, 299-300; Exh. 4 (Stubblefield Deposition Tr. 13-14). Accepting for argument's sake that the Cape Canaveral and Riviera Beach plants will need 400 MMcf/d, the proposed FPL pipeline will have 50 percent more capacity than is actually needed for these two plants, and ultimately will be capable of supplying 300 percent more capacity than is needed.

The only way FPL can attempt to justify this gross overbuilding is to develop a fuel capacity needs analysis that stretches out for the next *forty years*. While the Commission has recognized that it may be appropriate to "grow into" the full utilization of a power plant's capacity, that is a completely different issue than building pipeline capacity that does not provide a net cumulative economic benefit for customers until

2041. Tr. 58-59; Docket No. 961512-EM, Order No. PSC-97-0659-FOF-EM, at 4 (June 9, 1997). The long-range forecasts FPL offers in support of its 40 year analysis are unreasonable for several reasons: (1) FPL's adjustments to the University of Florida's population projections are unreasonable and self-serving; (2) FPL's Ten Year Site Plans do not indicate any need for additional natural gas; and (3) FPL's request to build now to suit its projections after 2021 ignores the reality of pipeline construction, in which pipeline companies expand based on actual need.

FPL's Population Adjustments are Self-Serving and Unreasonable.

FPL petitioned this Commission for need to convert its Cape Canaveral Plant in Brevard County and Riviera Beach Plant in Palm Beach County last year.² Each of those plants certified a need for 200 MMcf/d of natural gas, or a combined need of 400 MMcf/d. The Commission approved this need. In fact, in FPL's Petition, FPL admits these two plants will require a total of approximately 400 MMcf/d.³

If FPL had stopped at this point and simply proposed a pipeline with sufficient capacity to serve the needs of the Cape Canaveral and Riviera Beach plants, this would be a very different case. But FPL did not stop there. As is more fully discussed at Issue 10 below, FPL was determined to build its own pipeline to increase capital investment in its rate base to earn a higher rate of return. But the successful upstream pipeline bidder demanded a minimum of 600 MMcf/d to build a line that would "feed" the proposed intrastate line. Tr. 83. As a result, FPL changed its position and claimed a need for 600

² See *In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Co.*, Docket No. 080246-EI; and *In re: Petition for need for conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Co.*, Docket No. 08-245-EI. See also Order No. PSC-08-0591-FOF-EI, issued September 12, 2008.

³ See Petition, ¶ 3.

MMcf/d in order to justify its intrastate pipeline. While FPL now tries to construct a scenario indicating that additional capacity might be needed, FPL's own Ten Year Site Plan filed in April 2009 eliminated several power plants and does not show the next new gas power plant coming into service until at least 2021. Tr. 81, 299-300, 338.

FPL has traditionally utilized the University of Florida's Bureau of Economic and Business Research ("UF Bureau") data for population forecasts that are then used to prepare its load forecast. However here, FPL took the October 2008 UF Bureau base line forecast and adjusted these numbers upward. Tr. 188. FPL's witness Morley testified that this upward adjustment is "based on the more robust population growth which has historically occurred after recessions." Tr. 191-192. But the result is a population increase of some 335,000 new residents each year through 2018, which is at least an additional 80,000 more residents per year over the UF Bureau data. Tr. 191-193; Exh. 17 (RM-5). Dr. Morley attempts to justify her "adjustment" by stating that it falls within the UF Bureau's "banded projections." Tr. 787. But this argument ignores the cumulative effect of the adjustment – which by 2018 results in a population difference of approximately 500,000 people. Tr. 585. In essence, in an attempt to justify the need for its pipeline, and in the face of all other indications to the contrary, FPL is projecting that, within two years, Florida will "bounce back" and once again grow at its historic growth levels. Exh. 4 (Morley Deposition Tr. 41-42).

Dr. Morley has admitted that long term forecasts become less reliable the farther out in the future one looks. Tr. 185; Exh. 4 (Morley Deposition Tr. 43). Even short term forecasts can have reliability issues. For example, the UF Bureau has issued four short term forecasts in a row where the short term projections on each successive forecast have

been lower than the prior forecast. Tr. 189-190; Exh. 4 (Morley Deposition Tr. 40). The difficulty of the current economic situation certainly counsels caution – both in considering the short term consequences as well as the long term consequences. This is particularly true where FPL is insisting that its customers pay the entire cost of overbuilding based on unreasonable population growth forecasts, and FPL’s shareholders assume none of the risk. While prior to the run-up to the current economic crisis the UF Bureau may have under-forecasted Florida’s population, FPL has not offered any evidence that the conditions present during that time are still true today or will be true in the future. Exh. 4 (Morley Deposition Tr. 25-26, 35-36). The current recession certainly is different from those in recent memory, and as a consequence structural changes have been made in the economy and in regulation that are designed to correct some of the conditions that led us up this mountain and then off the cliff.

Even with FPL’s own inflated population forecast, it has elected to eliminate two new plants, and is projecting less than one-tenth of one percent of its generating capacity coming from renewable energy sources over the life of its generating forecast. Tr. 299-300; Exh. 41 (JEE-5). Mr. Enjamio dismissed renewable energy as contributing relatively nothing to FPL’s peak load. Exh. 4 (Enjamio Deposition Tr. 15, 17). But there is simply no way to predict the impact of new technologies, and especially new legislation that might create the demand for new technologies, which could significantly increase the percentage of renewable energy sources within FPL’s portfolio.

Given the evidence and all of the variables, FPL’s pipeline capacity forecast is not reasonable. Accordingly, the Commission should deny FPL’s request and direct FPL to address only approved unmet power plant needs for additional pipeline transmission – the

400 MMcf/d for the Cape Canaveral and Riviera Beach plants – and utilize the pipeline transmission proposal that FPL found most effective for meeting that need – the FGT proposal.

FPL's Ten-Year Site Plans Show No New Gas Need.

As shown on Exhibit 62 (MTL-4), on an average daily basis, FPL does not have a need for any additional firm capacity for the term of the 2009 Ten Year forecast. Notably, for the period from 2014 through the end of the forecast period, there is a minimum *excess* capacity of between 271,041 Mcf/d and 520,641 Mcf/d.

FPL's response to FGT's Interrogatory No. 53 shows that, over the last three years, the peak capacity requirements for FPL have not exceeded 1,716,604 Mcf/d. Exh. 2 (FPL's Response to FGT Interrogatory No. 53). With the addition of the maximum projected load of 400 MMcf/d at the Cape Canaveral and Riviera Beach plants, the estimate of the total peak would be 2,116,604 Mcf/d. Tr. 552-553. With this estimate, and FPL's existing contracts for 1,911,852 Mcf/d of capacity following completion of the FGT Phase VIII expansion, the remaining need for additional capacity in 2014 is approximately 200 MMcf/d, not the 600 MMcf/d planned under FPL's proposal.

There are other inconsistencies in FPL's data. In response to Staff Interrogatory No. 23-1, FPL's forecasted natural gas requirements are higher than the forecast in the 2009 Ten Year Site Plan requirements. Exh. 2 (FPL's Response to Staff Interrogatory No. 23-1). For example, in 2014, FPL indicates a requirement of 2.312 Bcf/d, while in the 2009 Ten Year Site Plan, the natural gas requirements would average 1.391 Bcf/d – a huge difference of approximately one billion cubic feet of gas per day. Tr. 553. The expected loads of the Cape Canaveral and Riviera Beach plants, which were included in

the 2009 Ten Year Site Plan, do not account for this difference. The 2009 Ten Year Site Plan indicates a capacity need in 2011 of 1.920 Bcf/d, which is nearly the amount of transport capacity that FPL will have under contract. Tr. 554. Yet, FPL provides no reconciliation as to the peak day usage and the total capacity numbers. Thus, FPL has provided an incomplete analysis of demand and certainly failed to address the huge differences in its various forecasts. But whether FPL does not have any immediate need, or only a need for 200 MMcf/d, FPL absolutely has not justified a need for the 600 MMcf/d that it is asking this Commission to approve.

Natural Gas Companies Expand Based on Need.

Finally, FPL's request to overbuild a pipeline based on a forecasted distant future *potential need ignores* a reality of the natural gas transmission pipeline industry: growth occurs incrementally, based on *actual* need. This is primarily because a natural gas pipeline company designs a transportation rate based on the total capacity of the pipeline. If total capacity is not sold or subscribed by contract, then the pipeline company and its shareholders are at risk for the recovery of those dollars as part of its investment. Tr. 572. As is discussed more fully at Issues Nos. 11 and 12 below, FPL is improperly seeking ratebase treatment of the pipeline project, which will insulate it from the risk that the pipeline will not be fully subscribed, and place the entire multi-billion dollar burden on its customers. The fact that FPL has blatantly admitted that it will not build the pipeline unless it gets ratebase treatment for the entire construction cost, including the excess capacity, clearly demonstrates both a lack of need as well as a project that is not in the best interests of consumers.

Conclusion

FPL has manipulated population projections from the University of Florida, ignored its own Ten Year Site Plans, and presented inconsistent data regarding its actual need and its admitted excess capacity in an attempt to demonstrate a *future* need for its 280-mile proposed pipeline. But the natural gas pipeline transmission industry doesn't work that way – rather, the industry builds incremental pipeline expansions based upon actual, demonstrated need. FPL's forecasts are unreasonable for planning purposes, and this Commission should deny FPL's petition.

ISSUE 2: Do existing transmission pipelines in Florida have sufficient excess capacity to meet the forecasted need for transmission capacity?

FGT's Summary: **FGT would be able to serve both the Riviera Beach and Cape Canaveral plants with existing and incremental additions to its system in a timely and cost effective manner and at a total cost significantly less than FPL's multibillion dollar pipeline.**

FGT's Analysis and Argument: At most, FPL needs only 400 MMcf/d in order to supply the Cape Canaveral and Riviera Beach plants. With the completion of the Phase VIII expansion, FGT will have up to approximately 214 MMcf/d in available capacity it could use for the Cape Canaveral and Riviera Beach projects. The additional necessary capacity to serve Riviera Beach can be met by timely, incremental additions to the FGT system

FGT held an open season from January 14, 2008 through February 15, 2008, to solicit interest in an expansion of the FGT system. As a result of the open season, FGT

filed a certificate application with the FERC on October 31, 2008 to construct an expansion to increase its natural gas capacity into Florida by approximately 820 MMcf/d. This expansion – known as the Phase VIII Expansion – includes construction of additional pipeline and installation of additional compression. Pending FERC approval, which FGT expects in the latter half of 2009, FGT anticipates an in-service date for Phase VIII of April 1, 2011. To date, FGT has entered into precedent agreements or amended precedent agreements with shippers for transportation services for 25-year terms accounting for approximately 74% to 83% of the capacity being added. Prior to the conclusion of the open season, FGT issued an announcement that FPL had agreed to become the anchor shipper of the Phase VIII Expansion, with a 25-year service agreement of 400 MMcf/d. Tr. 544.

Once the Phase VIII Expansion is completed, and depending on the election of one shipper, FGT will have excess capacity of between 139 MMcf/d and 214 MMcf/d. The excess Phase VIII capacity could be utilized to serve the certified needs of the Cape Canaveral and Riviera Beach plants with additional FGT facility expansions to add capacity to those delivery points by the January 1, 2014 date for these plants come on-line. Regarding the Riviera Beach plant, with the addition of one compressor station at an estimated cost of less than \$50 million, FGT could provide additional Phase VIII capacity to the existing FPL oil/gas line, which would deliver this capacity to the Riviera Beach plant. Regarding the Cape Canaveral plant, FGT would need to construct a new lateral and other facilities to deliver the gas. Tr. 547.

What is especially disturbing about FPL's present application before this Commission is that FPL could have easily and cost-effectively taken advantage of the

FGT open season to solicit capacity to serve the Cape Canaveral and Riviera Beach plants. Tr. 544-545. FPL was certainly aware of the Phase VIII expansion because FPL contracted for capacity to serve the West County Unit 3 plant as part of Phase VIII. The timing of the Phase VIII open season overlapped the determination of need cases for Cape Canaveral and Riviera Beach. See Order No. PSC-08-0591-FOF-E1, at 2 (September 12, 2008) (indicating that FPL filed the petitions for the determination of need April 30, 2008). As Mr. Langston testified, FPL could have discussed an expansion of the Phase VIII project to include an additional 400 MMcf/d of capacity after approval of the Cape Canaveral and Riviera Beach conversions by the Commission and prior to FGT's filing of the certificate application regarding Phase VIII. Tr. 593.

FGT would have negotiated with FPL regarding the capacity necessary to meet the forecasted need for transmission capacity at the Cape Canaveral and Riviera Beach plants during its Phase VIII open season. This would have been much more cost-effective than FPL's plan to build a combined 600+ mile long interstate-intrastate mainline pipe with Company E. The excess capacity currently remaining from the Phase VIII expansion could serve these plants in a cost-effective manner as well. FPL's decision to forgo these more economical opportunities is unreasonable.

ISSUE 3: Is the proposed Florida EnergySecure Line needed to improve or maintain natural gas delivery reliability and integrity within Florida?

FGT's Summary: **No. Existing natural gas pipelines provide sufficient capacity to meet reasonable projected demand for approximately 8 to 10 years. If there is additional demand requiring additional pipeline capacity, the option that is more cost effective for

consumers is to expand existing pipelines through minimal laterals, looping or additional compression.**

FGT's Analysis and Argument: FPL's proposed intrastate mainline pipeline would essentially run parallel to the FGT system and consist of a single 30-inch pipeline. It would offer nothing new in terms of physical path reliability. However, by being a single pipeline, FPL's pipeline would lack the looping, interconnects, and other redundancies found on the FGT system, making it less reliable than FGT's system in the event of system failures – either pipeline breaches or compression failures – because there would be no alternative pipeline pathway. Indeed, FGT's extensive, redundant network provides FPL with greater reliability than it ever can hope to achieve from its own pipeline.

In an effort to dismiss FGT's advantages, FPL argues that its proposed pipeline is needed because offshore gas is unreliable, and that it was required to pay significantly higher prices following the hurricanes of 2005. Tr. 734. However, FPL misses the point regarding the effect of storms on natural gas prices and supply for two reasons. First, Exhibit 77 (BSA-3) demonstrates that onshore gas supplies largely replaced missing offshore supplies after the 2005 hurricanes.⁴ Thus, there is no supply issue associated with storms.

Second, and upon closer examination, FPL's real issue is one of gas price, not gas supply, and this really is a function of where and how FPL chooses to purchase its gas supply, not the reliability of the pipeline capacity infrastructure. The supply purchasing practices of FPL are what change the risk dynamics of hurricane impacts. As hurricanes

⁴ In fact, FPL did not declare a *force majeure* during the 2005 hurricanes. Tr. 699-700. See also Exh. 4 (Schlesinger Deposition Tr. 21).

Katrina and Rita demonstrated, loss of supply, rather than curtailment of pipeline capacity, is the most likely outcome of hurricane damage in the Gulf of Mexico. But while a Gulf storm may impact a Gulf well's ability to produce gas for a period of time, the interconnected pipeline networks are able to deliver alternative gas supplies to make up for the losses. Moreover, based upon those lessons learned, the pipeline industry and FPL have taken steps to minimize these impacts. For example, the construction of the Southeast Supply Header ("SESH") system, and FPL's agreement to contract for some of that capacity, further enhanced the deliverability and reliability of shale and other midcontinent supplies reaching the FGT system. Other expansions and interconnects also have been constructed to provide greater supply alternatives. Tr. 594-595, 596. It is interesting to note that notwithstanding the various storm impacts FPL identified, FPL never said there was a pipeline capacity problem and never said that it lacked gas transportation services or gas supply, only that FPL had to pay more for such supply. The irony is that the gas FPL obtained during that time on the FGT system was likely from the very sources it now claims are not currently available on the FGT system.

Major supply disruptions affect the price of natural gas. Any gas purchaser attempting to buy gas on the spot market during a supply disruption will pay prices that are higher than those that can be negotiated in long-term supply contracts. Tr. 595. The more liquid the supply point, the better chance to obtain lower-priced gas. In the event of a disruption of FPL's gas supply, it is important to have access to as many liquid supply points as possible to ensure access to the greatest number of alternative suppliers at the most favorable prices available. Tr. 595. Again, the newly constructed SESH system, and FPL's existing contract for transportation from SESH into the FGT system, will help

minimize price impacts. Tr. 594-595. As is further discussed at length with regard to Issue No. 10, FGT's existing supply points offer more liquid and diverse supplies of gas, including on-shore shale supplies, than FPL's proposed pipeline's supply at Transco Station 85.

In the final analysis, there is no hurricane or storm-related reliability problem with the transportation of gas on FGT's 5,000 mile pipeline network. There also is no problem with multiple shale and other midcontinent suppliers being able to deliver gas to the FGT system, generally in FGT Zone 3, if Gulf supplies are temporarily interrupted. FPL's problem, to the extent there is one, can be solved by FPL buying gas from more diverse producers through the continually expanding national networks already available via interconnects on the FGT system.

ISSUE 4: Does the planned construction and operation of the proposed Florida EnergySecure Line meet government and industry standards for safety?

FGT's Summary: ****No.** FPL's general assertions regarding design, operation, and maintenance procedures combined with its lack of any previous experience in safely and efficiently operating a long haul, multicounty, high pressure mainline natural gas pipeline does not demonstrate FPL's ability to construct or operate the pipeline in compliance with applicable standards.**

FGT's Analysis and Argument: FPL offers very little detail on whether the planned construction and operation of the proposed pipeline will meet government and industry standards for safety. FPL has cited its operation of small, lateral pipelines, but admits that it has not operated a large diameter, high pressure, mainline pipeline system that is

approximately 280 miles long. Exh. 4 (Collins Deposition Tr. 11) FPL has also stated that it is considering contracting with a third-party pipeline operator, but again it offers nothing concrete regarding who that third party might be, what experience that party might have, or the cost involved. Tr. 255. Given this lack of detail, which is further discussed in relation to Issue No. 7, the Commission has no ability to assess the capability of FPL or a third party to construct or operate the proposed pipeline safely and reliably. Accordingly, the Commission should find that FPL has not met its burden of proof and conclude that the proposed pipeline will not meet government or industry standards for safety.

ISSUE 5: Will the proposed Florida EnergySecure Line improve the economics of natural gas transmission within Florida to assure the economic well-being of the public?

FGT's Summary: **No. FPL's proposal is significantly more expensive than the most cost effective proposal to supply the approved demand of 400 MMcf/d provided by FGT, and FPL's pipeline would lack redundancy, looping, and interconnection, causing economic inefficiency. Existing pipeline operations with incremental expansion could reliably serve existing and projected needs.**

FGT's Analysis and Argument: There are two fundamental reasons why FPL's proposed pipeline will not improve the economics of natural gas transmission and will not assure the economic well being of the public, as discussed below in this Issue. First, the physical boundaries of the proposed FPL line prevent it from providing any real competition because the line would interconnect with only three FPL plants and

essentially operate as a “private driveway” for FPL. Second, any benefit to the Florida economy would not be unique to the FPL/Company E proposal, and under the structure proposed by FPL, those benefits would be unfairly paid for by FPL’s customers in the short-term. Additional arguments regarding the economics of FPL’s proposal are discussed at Issues Nos. 8 and 10. On the basis of these combined points, the Commission should find that FPL’s proposed pipeline will not provide the economic benefits it claims and will be an unfair economic burden on consumers.

FPL's Pipeline is a “Private Driveway” Without Competitive Effect.

The first problem with FPL's transmission economics argument is the fact that FPL's proposed pipeline is essentially a “private driveway” to only three existing plants. FPL's proposed pipeline therefore will not serve to reduce prices on the FGT and Gulfstream systems because it offers no true competition.

The primary problem with FPL’s competitive third pipeline argument is that FPL offers no empirical evidence to support its claims. Tr. 687. The lack of evidence is not surprising given the success of the Federal Energy Regulatory Commission’s (“FERC”) open access system. Tr. 674, 687-688. FPL's attempt to undermine the success of this system by claiming that FERC open access results in negotiated prices in excess of the “competitive rate” is also baseless. As FGT's witness Dr. Schlesinger explained, “FERC Order 636 *et seq.* has fostered the most reliably competitive gas transportation market in the world, one whose rules FPL is seeking to circumvent in this proceeding by claiming it has a need for a new \$1.6 billion pipeline that must be operated as a ‘private driveway’ in order to succeed economically.” Tr. 688.

The "private driveway" analogy is especially appropriate because the proposed pipeline will serve only FPL's three plants, only two of which presently lack gas to operate, and be paid for entirely by the ratepayers as a part of the electric ratebase. Tr.

59. As Dr. Schlesinger described it:

The riskless electric rate base compensation scheme for which FPL is seeking the Commission's approval in this proceeding would make the FES pipeline essentially just that, a "private driveway" operated for the merchant benefit of its owner, FPL. Because under FPL's proposal FES would be entirely absorbed into FPL's electric rate base, no public facility rules [open access] would apply to it, or at best a different set of rules would apply. Financial risks of incomplete capacity utilization, cost overruns during construction, and other capital and operating costs would fall entirely upon Florida's electricity ratepayers, who would have absolutely no control over the pipeline that they are paying for in full. Competition is stifled at best, or non-existent, under such a scheme, much as my neighbors cannot compete to use my own driveway.

Tr. 688.

As a last ditch effort, FPL tried to argue that the California experience proves the competitive benefits of a new pipeline, and FPL's witness Ogur tried to use some of Dr. Schlesinger's FERC testimony to prove the point. However, Mr. Ogur failed to advise the Commission that intrastate pipelines in California are regulated as open access entities separate from their utility owners, which is the opposite of what FPL wants this Commission to do. Tr. 689. Moreover, a complete read of Dr. Schlesinger's FERC testimony reveals that it was not the new California pipeline that had an impact on gas prices but rather it was the introduction of "hitherto unavailable gas from a new source (in that case, Rockies gas and Alberta gas in 1991 and 1992, respectively)" which resulted in significant cost savings to gas consumers in California. Tr. 690-691, 701-702. As is discussed more fully at Issue No. 10, the shale gas FPL seeks to obtain at Transco Station 85 is already flowing to FPL through its SESH contract into the FGT pipeline (Tr.

609), so FPL is not proposing to access any new gas supply area as occurred in California. Tr. 690-691. Dr. Schlesinger summed it up best by distinguishing the FERC system of open access, non-merchant, stockholder financed pipelines with what FPL is proposing in this docket: "Simply placing steel in the ground is no guaranty that gas prices will go down, as Europeans are painfully aware." Tr. 692, 703-704, 715.

FPL's claim that the possibility of a third pipeline has already provided competitive benefits through FGT's updated pricing proposals (Tr. 738) is also wrong. The fact that FGT updated its pricing proposal to FPL was unrelated to pipeline competition or the prices that will be charged for transportation in the future. As Mr. Langston explained, at the time of the initial FPL solicitation during the late summer and early fall of 2008, steel prices were spiraling upward. As prices began to come down in early 2009, FGT revised its proposed rate to simply flow through the benefit of those steel price reductions. Tr. 608-609, 614-615. This was especially appropriate because the pricing proposal had a steel tracker, and FGT wanted FPL to have the current steel price information. Exh. 4 (Langston Deposition Tr. 19-20).

Any Economic Benefits Are Unreasonably Paid By Monopoly Ratepayers

The second problem with FPL's transmission economics argument is that the jobs, taxes, and economic development benefits discussed by FPL would be unfairly accomplished on the backs of the monopoly ratepayers with no offsetting short term benefit or long term benefit to those customers *until 2041* or later.⁵

⁵ Moreover, this argument is meaningless because the FGT proposal would provide similar benefits to the Florida economy.

Certainly spending \$1.6 billion will result in the creation of some short term jobs, the purchase of certain materials⁶ and services, and over time an increase in the tax base. But under FPL's proposal, all of these "benefits" come directly out of the pockets of consumers by charging every penny of the pipeline's construction costs and ongoing operational costs, including the 200 MMcf/d of excess capacity, to FPL's electric rate base which would then be recovered through higher electric base rates.⁷

Nowhere in the Natural Gas Transmission Pipeline Siting Act is an expansion of the tax base, the purchase of goods and services, or the creation of jobs listed as criteria for the determination of need for an intrastate pipeline. *See* Fla. Stat. § 403.9422. The "and other matters within its jurisdiction deemed relevant to the determination of need" language in Section 403.9422(1)(b), Florida Statutes, certainly does not authorize the Commission to consider the creation of jobs, the purchase of materials and services, or increasing the tax base since these are nowhere enumerated in Chapters 366 or 368 as matters within the Commission's jurisdiction.

Finally, as is more fully discussed at Issues Nos. 9 and 10, the \$1.6 billion to construct the pipeline would be paid for by the ratepayers for 27 years or more before any cumulative net economic benefit accrues to these customers, assuming they are still customers in the 2040s. Many customers will never live long enough to reap the alleged "benefits" of this pipeline.

⁶ Some of FPL's economic stimulus argument seems a bit exaggerated – of the nearly \$1.6 billion in cost, the single largest cost is the steel for the pipe, which according to FPL will not be purchased in Florida, and thus provides *no* "economic stimulus" to Floridians through its purchase. *See* Exh. 2 (FPL's Response to Staff Interrogatory No. 86).

⁷ In addition, in response to Interrogatories from Staff, FPL is unable to commit to hiring any residents of Florida for the construction and operation of the proposed pipeline. *See* Exh. 2 (FPL's Responses to Staff Interrogatories Nos. 162, 164).

The alternative to FPL's proposal is the only pro-consumer alternative – have the stockholders of FGT make the capital investment to build only the pipeline that is necessary. Such incremental costs would then be passed along to FPL's customers only when the pipeline capacity is used and then only for what is actually used through the fuel charge. Certainly a \$1 billion expenditure is less than the combined \$1.6 billion expenditure and confidential upstream costs that will apply to the combined FPL/Company E pipeline. *See* Exh. 95.

Conclusion

In the final analysis, FPL's proposed pipeline is merely a “private driveway” that will do nothing to improve pipeline competition in Florida. Indeed, placing this merchant pipeline in the electric ratebase will do nothing to increase or improve natural gas transmission for those who depend upon the highly successful open access system regulated by the FERC. FPL's promise to spread dollars across Florida and help to grow the economy and the tax base comes only by first taking the money from FPL's customers – and not just what is needed to serve the Cape Canaveral and Riviera Beach plants, but the hard earned money of today that will build a pipeline to serve plants that have not yet been approved and under FPL's own data will not be needed until 2021 and beyond – if at all.

The Commission has a duty to approve only prudent costs. Given the history and success of incremental pipeline additions over time to serve approved power plant needs, FPL's pipeline will not improve the economics of natural gas transmission. More importantly, waiting more than 27 years for FPL's pipeline to become economic absolutely is not prudent for consumers. This pipeline will only benefit FPL's

stockholders and not the economies of natural gas transmission and, most importantly, not the economic well being of Florida consumers.

ISSUE 6: Are the commencement and terminus of FPL's proposed facilities and laterals appropriate to serve the need identified in Issue 1?

FGT's Summary: **No. The commencement point does not offer new, unique or significant supply diversity to Florida. FGT's pipeline already provides supply diversity, including the on-shore shale supply and "east coast LNG" requested by FPL, at significantly less cost.**

FGT's Analysis and Argument: FPL's proposed \$1.6 billion intrastate pipeline, by itself, will not supply any natural gas to its Cape Canaveral and Riviera Beach plants. Instead, to supply gas to these two plants also requires the multibillion dollar construction of an expensive upstream pipeline that will interconnect with the FPL intrastate line. Exh. 95 (FPL's Response to FGT's Interrogatory No. 20) (confidential response shows the construction cost of the Company E pipeline). As argued in more detail in Issue No. 10, Transco Station 85, which would be the commencement point for the Company E pipeline upstream provider, does not offer new, unique, or significant supply diversity to Florida as compared to FGT's Zone 3. FPL already receives gas supplies from many onshore and offshore gas-producing basins through SESH and other interconnect points on the FGT system. Tr. 684-685. The only stated purpose for the proposed FPL pipeline is to establish a "third" pipeline that would provide access to new gas supplies. Transco Station 85, however, does not provide access to any new or alternative sources of supply and therefore does not provide anything that is not already available. Accordingly,

commencing the proposed pipeline at Transco Station 85 is not necessary or appropriate to serve the needs of FPL's customers.

ISSUE 7: Are FPL's construction cost estimates reasonable for planning purposes?

FGT's Summary: **No. FPL does not consider all upstream pipeline costs that are necessary, fails to provide detail in its gross cost information and relies on inconsistent gas price forecasts to skew the economics to make its proposal appear reasonable.**

FGT's Analysis and Argument: FPL's construction cost estimates are not reasonable for planning purposes because of a lack of detail. By contrast, in the *Application for a Determination of Need for an Intrastate Natural Gas Pipeline by SunShine Pipeline Partners*, the applicant submitted 569 pages of detailed cost data for the proposed SunShine Pipeline. The cost data included estimates of mainline, meters, laterals, transformers, gate stations, compressor stations, rights-of-way, communications equipment, labor, tools, spare parts, electronic measurement devices and other component equipment.⁸

FPL has not provided the Commission with anything close to this level of cost data. For example, FPL has stated that it is considering contracting with a pipeline construction company, but could not state who that company would be or what that would cost.⁹ In addition, FPL's proposal does not discuss the cost detail of the upstream pipeline, which is obviously a huge dollar component of this project. As another

⁸ *In re: Application for a Determination of Need for an Intrastate Natural Gas Pipeline by SunShine Pipeline Partners*, Docket No. 920807-GP, Order No. PSC-93-0987-FOF-GP, p. 17 (July 2, 1993).

⁹ *See* Exh. 4 (Collins Deposition Tr. 15). In fact, FPL has stated that it will not even begin the process for construction contractor prequalification and RFPs until 2011. *See* Exh. 2 (FPL's Response to Staff Interrogatory No. 163).

example, the Exhibits to the testimony of witness Collins (the primary witness who testified about the construction of the proposed FPL pipeline) are comprised of: (a) a map of the proposed pipeline; (b) a one-page diagram of a “Typical Temporary Workspace for Pipeline Construction”; and (c) a one-page, two-column, five-row chart entitled “Summary of Florida EnergySecure Line Projected Costs.” Exhs. 10 through 12 (CMC-1, CMC-2 and CMC-3). These exhibits lack detail and specificity.

The appendices to FPL’s Petition also provide no detail as to the construction of the proposed pipeline. No one could build a pipeline, let alone a 280-mile mainline transmission pipeline, from the information FPL has provided in this docket. In sum, FPL has not provided this Commission with an appropriate level of detail on its construction costs, and the data provided is insufficient to substantiate the pipeline’s cost, let alone a need to build it.

As discussed in Issues Nos. 1, 8, 9 and 10, FPL’s forecasts are unreasonable and skewed in an attempt to make this entire proposal appear reasonable. FPL’s inability to provide this Commission with an appropriate level of detail on the construction cost estimates for its proposed pipeline only further reinforces FPL’s failure to substantiate its very high burden of proof for the combined intrastate and interstate pipeline.

ISSUE 8: Are FPL’s economic assumptions reasonable for planning purposes?

FGT’s Summary: **No. FPL’s data supporting the pipeline is inconsistent and lacks specificity. Its assumptions regarding population growth and demand are overstated and disregard accepted projections from the University of Florida.**

FGT's Analysis and Argument: FPL's economic assumptions are not reasonable. As FPL's witness Mr. Enjamio made very clear, on a total rate impact basis the benefits of FPL's proposal "do not overcome the cost" to consumers until after 2021. Tr. 891; Exh. 4 (Enjamio Deposition Tr. 26). More importantly, there is no cumulative net benefit to customers until at least 2041, and that is under FPL's own base case analysis. Tr. 891; Exh. 4 (Enjamio Deposition Tr. 26). On this basis alone FPL's economic assumptions are unreasonable. However, a comprehensive analysis of all of the evidence shows that FPL's proposal will never be net positive for customers even over 40 years.

Consumers Should Not Have To Wait 27 Years To See a Benefit.

A pipeline that lacks positive customer benefits in the short term might be acceptable if the duration of that negative impact was relatively short and if over a reasonable period of time the positive benefits significantly outweighed the adverse consequences of the early years. But FPL believes it is appropriate for consumers to wait for TWENTY-SEVEN YEARS before they will see a net cumulative benefit from their pipeline. FPL's total disregard for customers so that it can pad its rate base would be the worst kind of regulatory rate making, especially given what is actually needed and the cheaper and more cost effective alternatives that FPL has agreed are available to serve that need.

FPL's base case analysis is set forth in Mr. Enjamio's direct testimony and in his Exhibits JEE-7 and JEE-8 (Hearing Exhs. 43 and 44). Essentially, Mr. Enjamio has undertaken a life-cycle cost analysis that determined the difference in the cumulative present value of revenue requirements ("CPVRR") under the combined FPL pipeline/Company E proposal versus the FGT proposal. Tr. 314. Because FPL did not

request proposals that match the final combined FPL/Company E proposal (Tr. 76-77), Mr. Enjamio made certain adjustments and assumptions with respect to both the Company E proposal and the FGT proposal in order to attempt to show the multibillion dollar FPL/Company E pipeline to be cheaper than the less expensive FGT pipeline proposal. Tr. 327-328.

Notwithstanding FPL's conclusion that over 40 years the CPVRR benefit of the FPL/Company E combined pipeline is more positive than the FGT adjusted pipeline, Mr. Enjamio admits that customers would pay more under the FPL/Company E proposal through 2021. Tr. 344-345, 891; Exh. 4 (Enjamio Deposition Tr. 26). Moreover, Mr. Enjamio agrees that there is no net cumulative benefit to customers until at least 2041. Tr. 346-347, 891; Exh. 4 (Enjamio Deposition Tr. 26). As the record demonstrates, there are numerous problems with even this analysis, as well as each of the several revised analyses that were subsequently prepared by FPL.¹⁰

Problems with FPL's Preferred Analysis

The lynchpin to FPL's case is that the higher rates customers must pay do not matter in either the short term or the long term. Tr. 630. Rather, as Mr. Enjamio argued on cross examination, the only proper economic analysis is to look at the entire 40 year life cycle of the project. Tr. 345. But the problem is that the pipeline is front loaded to build capacity that is three times bigger than will be needed for the next 14 years or more, all at ratepayer cost under FPL's plan. In addition, FPL initially will be obligated to pay

¹⁰ Mr. Enjamio tried to argue at the hearing that 34 of the 36 different analyses show that the FPL/Company E pipeline are positive over the FGT proposal, and that this proves the superiority of the FPL/Company E proposal. Tr. 364-365. However, as is discussed above, FPL included consistently wrong assumptions or calculations in each of those analyses, with many reflecting multiple problems, all of which inappropriately skew the analysis in FPL's favor. Even the two analyses that show the FGT proposal to be better than the FPL/Company E proposal have problems as is discussed further in this Argument and Analysis section. A hundred different analyses that continued to make the same errors in assumptions and calculations would still not rescue FPL's proposal.

50 percent more for transportation, and FPL wants the ratepayers to pay. The ratepayers will continue to pay for that excess capacity until it is fully utilized, if ever. Tr. 84, 562-563, 635-636. Together, FPL's economic analyses contain numerous errors that exacerbate the adverse consequences of FPL's calculations for consumers.

The first problem with FPL's economic analysis is that its comparison point, FGT's rate proposal, is not actually FGT's rate proposal. Accepting for argument's sake FPL's other assumptions, Mr. Enjamio based his JEE-7 and JEE-8 exhibits (Hearing Exhs. 43 and 44) on the January 2009 FGT rate proposal and not the lower March 2009 FGT rate proposal. Tr. 343. In discovery, the Commission Staff asked FPL to rerun Exhibits JEE-7 and JEE-8 using FGT's March rate proposal. The result dramatically dropped the FPL CPVRR base case advantage from \$208 million to \$26 million. Exh. 2 (FPL's Response to Staff Interrogatory No. 27). FGT does not accept the results of this analysis, however, because it also incorporates all of the other unreasonable and improper assumptions and adjustments made by FPL, which are refuted below. However, the fact that the CPVRR analysis drops by \$182 million with just this one change is significant and calls into question the entire analysis.

The second problem with Mr. Enjamio's analysis is that he adds 20 cents to the FGT rate proposal to address transportation from Transco Station 85 to Citronelle – the commencement point of the FGT proposal. Tr. 286, 493, 808. As Mr. Langston testified, there is no reason to increase FGT's rate to get to Transco Station 85 given the diversity of supply already available at Citronelle and in FGT Zone 3 in general. Tr. 609-611, 642-643. However, even if it were appropriate to add a transport cost from Transco Station 85 to FGT at Citronelle, the more appropriate rate would be no more than 9 cents.

Tr. 615-616, 642-643. Mr. Langston explained that Transco recently conducted an open season to offer transportation capacity on its line with a tariff rate of 9 cents. FPL's addition of a hypothetical 20 cent rate is therefore clearly unreasonable and inappropriate. The removal of the 11 cent rate differential would reduce FPL's CPVRR advantage by \$175 million. Tr. 598-599.

The third problem with every one of FPL's economic analyses is that Mr. Enjamio depreciates the FPL pipeline costs over 40 years, but fails to depreciate the Company E or FGT rate proposals. The effect of not depreciating the FGT proposal is to make the FGT pipeline more expensive over time. Tr. 587-589. Even if the Company E and FGT proposals were both depreciated, there would be a greater reduction in the FGT rates. Tr. 587-589. This means that the FGT proposal would be more cost effective than represented by Mr. Enjamio, and that the CPVRR benefit of the combined FPL/Company E proposal would be reduced or even eliminated. Exh. 95 (the confidential cost and rates of the Company E proposal are identified in this exhibit). As Mr. Langston testified, this reduction would have a net present value of \$70 to \$98 million depending on the value of the rate reduction utilized. Tr. 587-588.

The fourth problem with Mr. Enjamio's analysis is that he escalates the FGT rate 2.5% each year in order to establish a future price for additional expansions of the FGT system that may be needed to provide transportation to the new gas power plants Mr. Enjamio forecasts in the 2020s and beyond. Tr. 794, 808. Mr. Enjamio also inflates the Company E rates as well, but the effect of this escalation in rates is to further make the FGT proposal much more expensive over time than the FPL/Company E price. Finally,

Mr. Enjamio tries to create an FGT rate for future expansions that were not bid, and the result is a rate that has no relationship to anything.

The fifth problem with every one of the various analyses performed by Mr. Enjamio is that he assumes instantaneous rate adjustments each year so that the alleged benefits of his depreciation of the FPL pipeline are immediately reflected in rates. Tr. 341-342; Exh. 44 (JEE-8). As FPL admitted, however, yearly rate reductions would require yearly rate cases, which FPL does not anticipate and which would certainly be impractical. Tr. 342; Exh. 4 (Forrest Deposition Tr. 56). Thus, Mr. Enjamio consistently overstates the benefits of the FPL pipeline.

The sixth and most serious problem with all of the analyses done by Mr. Enjamio is that he assumes a 100% load factor for the FPL pipeline, even though FPL admits that it has excess capacity through at least 2021. Tr. 567, 573-574. Based upon FPL's own data, the excess capacity *might* be used between 2021 and 2023, with the next increment in pipeline capacity *maybe* needed in 2023. Tr. 84. If the analysis were run on the basis of the actual 400 MMcf/d capacity being used by the Cape Canaveral and Riviera Beach plants, the effect would be to increase FPL's rate by approximately 50% for the first eight years. As Mr. Langston testified, "This is an annual incremental additional cost of \$137.24 million, or 50% higher than the annual cost of the FGT proposal. Since under the most favorable of circumstances the additional 200,000 Mcf/day of capacity will not be needed until at least 8 years after the system begins operation, this would leave the customers paying an additional incremental \$1.1 billion in only 8 years." Tr. 569; 636.

These changes are significant and completely skew the analysis in FPL's favor. Even making only a few of these changes, for example using the correct FGT rate, or

using the 9 cent Transco rate, would eliminate the FPL/Company E CPVRR advantage. Factoring in all of these corrections to the economic analysis would eliminate *any* advantage claimed by FPL for its combined pipeline, and demonstrates once again that FGT's proposal is not just the most cost effective proposal but the only cost effective proposal that is in the best interests of consumers. This is just common sense given the significantly reduced cost of the FGT pipeline vis a vis the multi-billion dollar combined Company E/FPL proposal.

The Better Analysis

One of the underlying problems with all of the FPL economic analyses is that they are predicated on an overly aggressive long term population forecast. Use of the base line population forecasts prepared by the UF Bureau is the only appropriate forecast to use in this proceeding.

FPL's witness Morley acknowledges that she applied her subjective judgment and increased the base line UF Bureau data for 2012 and beyond. Tr. 185; Exh. 4 (Morley Deposition Tr. 13). On cross examination, Dr. Morley admitted that she had not done any investigation as to why the UF Bureau was forecasting less growth in its long term forecast than Florida experienced in the run up to the current recession. Exh. 4 (Morley Deposition Tr. 25).

Dr. Morley also "assumed away" any long term consequences of the current economic recession, even though she agreed that this recession is more severe and the recovery will take longer. Exh. 4 (Morley Deposition Tr. 22-23). Dr. Morley has no dispute with the short term forecasts. Indeed, Dr. Morley acknowledged that the March 2009 UF Bureau forecasts show even less growth than the prior three forecasts, each of

which were successively lower than the one before. Tr. 781; Exh. 4 (Morley Deposition Tr. 40). She further testified that the March 2009 UF Bureau forecast is now projecting zero population growth for 2009, which is consistent with the fact that FPL is actually in a net customer loss situation for 2009. Tr. 781; Exh. 4 (Morley Deposition Tr. 40-42).

Notwithstanding FPL's agreement with the ever worsening short term forecasts, Dr. Morley believes in her "sound judgment" that the UF Bureau long term forecasts should be ignored. None of her justifications are reasonable.

First, Dr. Morley argues that the numbers used in this case are consistent with the 2009 Ten Year Site Plan and the documentation in the rate case in Docket No. 080677-El. Tr. 734. However, the fact that the numbers she prepared and filed in one case do not conflict with the numbers she prepared and filed in another case doesn't prove that any of the numbers are proper. Moreover, the 2009 Ten Year Site Plan *eliminates* several planned power plant additions that were included in the 2008 Ten Year Site Plan. Tr. 299-300; Exh. 4 (Stubblefield Deposition Tr. 13-14).

Second, she claims that her inflated population numbers are supported by the forecasts prepared by Global Insight and the University of Central Florida ("UCF"). Exh. 4 (Morley Deposition Tr. 26). But these sources are economic forecasts and not population forecasts. Exh. 4 (Morley Deposition Tr. 25-29 and Morley Late Filed Deposition Exh. No. 1). Moreover, she never establishes an empirical link between the Global Insight and UCF economic forecasts and her population forecasts ~ her justification is only that her population forecasts are appropriate because Global Insights and UCF forecast "better economic times." Exh. 4 (Morley Deposition Tr. 26). Interestingly, and as yet another example of FPL's unreliable positions, in the current

FPL rate case, Dr. Morley rejects the short term Global Insights information as being too optimistic. Docket No. 080677-EI, Morley Prefiled Direct Testimony, at 18-19.

Finally, the fact that Dr. Morley's population projections are within the high end of the UF Bureau's projections does not validate her big bounce numbers – again, she never offered any evidence that the conditions the UF Bureau found appropriate for its “high end” analysis were applicable to her numbers.

During Dr. Morley's deposition, the Staff asked for a late filed deposition exhibit to rerun her population forecast using only the UF Bureau base line data. See Exh. 4 (Morley Deposition Tr. 52 and Morley Late Filed Deposition Exh. No. 2). Then, during Mr. Enjamio's deposition, the Commission Staff asked Mr. Enjamio to rerun his JEE-7 and JEE-8 direct testimony analysis (Hearing Exhs. 43 and 44) using Dr. Morley's Late Filed Deposition Exhibit No. 2. Exh. 4 (Enjamio Deposition Tr. 29-30).

The results of just this one change – using the more reasonable base line population data – resulted in the *FGT proposal being the more economic proposal*, both under the base case analysis and the RPF Scenario. Exh. 4 (Enjamio Late Filed Deposition Exh. No. 1, at 5-8). More importantly, the FGT proposal was more economic even using the higher FGT January rate proposal and not the lower March 2009 rate proposal. Tr. 811-812. It is reasonable and appropriate to conclude that the impact of recalculating this analysis to account for the lower FGT rate would only further demonstrate the greater cost effectiveness of the FGT proposal.

There Is Sufficient Time to Address Real Need.

As discussed previously under Issue No. 1, the UF Bureau has concluded that more moderate growth projections for Florida are reasonable. The prudent conclusion to

draw from the depth, duration, and structural changes associated with the current recession is that the growth conditions that fueled the run up to this recession are not going to be present, or will be more constrained, in the future. To the extent the Commission is concerned about FPL's ability to timely meet future growth needs, it is important to note that FPL has admitted that new gas transmission pipelines, as well as gas fired power plants, can be built in *three to five years*. Tr. 83-84; Exh. 4 (Forrest Deposition Tr. 49-50). The traditional and accepted model of natural gas transmission pipeline construction is to efficiently and economically add incremental capacity as needed – not to overbuild and require customers to foot the bill. FGT has met the needs of FPL in this way over the past 30 years and can continue to do so without the addition of a new FPL pipeline that is excessive and would cost consumers billions of dollars.

FPL's economic assumptions are also unreasonable because the Commission has increased FPL's reserve margin to 20%, and in fact FPL has even greater reserve margins for the next 10 years once all of the currently approved power plants come on line. Tr. 315; Exh. 37 (JEE-1). Indeed, Mr. Enjamio testified that this summer FPL experienced a peak day demand of 22,000 MW, a load not expected until 2014 under FPL's high end forecast, due to an uncharacteristically hot June. Tr. 354-355. Mr. Enjamio admitted that the FPL system delivered the necessary power and met that demand with *existing capacity* – even before the West County Unit 3, Cape Canaveral, Riviera Beach, nuclear uprates and other planned generation capacity have come on-line.

The prudent course of action is to build incremental capacity that is actually needed and approved *when it is actually needed* – just as FGT has successfully done for FPL for decades. Given current economic conditions, the prudent course is to utilize the

FGT proposal, which FPL admitted is the best proposal for meeting the actual, approved need at the Cape Canaveral and Riviera Beach plants. Tr. 56, 289, 292; Exh. 4 (Enjamio Deposition Tr. 10-11). Even under FPL's 2009 Ten Year Site Plans there are no additional new gas power plants projected. If things dramatically change during the 2012 to 2016 period, there is reasonable and sufficient time to plan and build the necessary gas power plants and pipelines to meet any such need. But there is no justification, economic or otherwise, to commit consumers to paying for billions of dollars for excess capacity when a more cost effective alternative is available that best meets the actual need.

Conclusion.

There are significant problems with the economic analysis advocated by FPL and the Commission should find it unreliable. Making only a single adjustment – for example using the baseline population forecast and not FPL's inflated forecast – turns FPL's analysis on its head and demonstrates the cost effectiveness of the FGT proposal. Similarly, utilizing FGT's March rate proposal instead of the January proposal also nearly eliminates any advantage to the combined FPL/Company E proposal. While no one exhibit calculates the net effect of the many problems with the economic forecasts presented by FPL in this case, each individually is enough to warrant denial of FPL's Petition. There simply is no competent, substantial evidence to support a decision to build FPL's requested pipeline on the basis of the economic analysis offered by FPL, or any other economic analysis.

ISSUE 9: Are the fuel supply and transport costs used by FPL reasonable for planning purposes?

FGT's Summary: **No. Because FPL provides flawed demand analysis, its resulting assumptions are unreliable. FPL's conclusions about supply and transportation costs fail to account for the risks of supply or the lack of redundancy on its pipeline. FPL's proposal fails to account for the full range of gas supply and pricing risks.**

FGT's Analysis and Argument: FPL wants to build a \$1.6 billion intrastate pipeline capable of transporting 1.25 Bcf/d of natural gas that will initially transport 600 MMcf/d. Tr. 15-16, 158. But FPL admits the only approved, unmet need is 400 MMcf/d, resulting in 200 MMcf/d of excess capacity on Day 1. Tr. 80-81.

In an attempt to justify this project economically, FPL has had to stretch projections over a forty year forecast. FPL claims that its methodology is consistent with prior Commission proceedings. Tr. 58-59. But the reality is that the Commission has never previously authorized construction based upon a 40 year analysis that takes 27 years to become economically beneficial to consumers.

The Commission should only approve a project where the short term economics of the project are positive for consumers, or at least where the cross over point at which the net cumulative benefits begin to accrue for customers is reasonably timely so that the people who pay for the asset derive some of the economic value of their investment. On this basis, FPL's pipeline is a complete failure. As is more fully discussed at Issues Nos. 5 and 8, even using FPL's skewed data, FPL's proposed pipeline provides no net economic benefit to consumers until at least 2021 and there is no net cumulative benefit

until 2041. On the basis of this record, and the fuller discussions at Issues Nos. 5 and 8, the fuel supply and transport costs are not reasonable and should be rejected.

ISSUE 10: Will the proposed Florida EnergySecure Line, including its connection with the upstream pipeline, provide the most cost-effective and reliable source of natural gas supply, transport, and delivery?

FGT's Summary: ****No.** The costs of the FPL pipeline combined with the upstream pipeline impose an excessive burden on ratepayers without any real benefits. This combined pipeline proposal offers no new, unique or significant supply diversity compared to the FGT pipeline. Ratepayers are better served by incremental additions to existing pipeline systems.**

FGT's Analysis and Argument: FPL claims that the intrastate pipeline, combined with the Company E interstate pipeline, will provide the more cost effective and reliable delivery of diverse gas supply. This premise fails because (1) FPL has admitted that FGT's proposal would be more cost-effective, and (2) FPL's economic analysis is flawed. In addition, FPL erroneously states that Transco Station 85, the receipt point for the Company E interstate pipeline, provides the best and most diverse source of natural gas. In reality, FGT's existing pipeline system already provides the same diversity and reliability at a significantly lower cost.

FPL witness Stubblefield testified that FPL requested proposals for three different quantity scenarios: 1.0 Bcf/d; 800 MMcf/d; and 400 MMcf/d. Tr. 283. FGT submitted a proposal (referred to at various points in the record as the "Company B proposal") for 400 MMcf/d, which was based on FPL's actual, approved need for the Cape Canaveral

and Riviera Beach Plants. FGT proposed to interconnect at multiple points in its Zone 3 (Tr. 609), and offered to transport supplies from other interconnects offering greater supply diversity than available at Transco Station 85. Tr. 556. Ms. Stubblefield testified that FGT's proposal was the most economic for the 400 MMcf/d of capacity that FPL actually needed through 2021. Tr. 289, 292.

In an attempt to exaggerate the importance of interconnecting at Transco Station 85 in order to justify its own project, FPL tried to compare FGT's proposal (for 400 MMcf/d) with FPL's proposed pipeline and upstream interstate pipeline (for 600 MMcf/d), as discussed more fully under Issue No. 8. FPL's over-reliance on Transco Station 85 as an interconnect point, for the purported reasons of diversity and reliability, exposes a major flaw in its request. The majority of supplies FPL plans to access at Transco Station 85 can also presently be accessed via FPL's existing capacity on the SESH system through purchases in the Perryville, Louisiana area. Further, FGT's system already has greater supply (including shale) diversity and reliability. As Dr. Schlesinger testified:

FPL's claims of supply diversity arise out of its belief that it would be able to purchase shale gas supplies at Transco Station 85 that it cannot purchase elsewhere, i.e., that it can uniquely access new supplies at Transco Station 85. However, FPL has not evidently considered the purchase possibilities that a northern Louisiana receipt point would offer it, e.g., in the vicinity of Perryville, Louisiana. The U.S. Energy Information Administration (EIA) reported in April 2009 that pipeline receipt capacity at the Perryville Hub has now reached 6.6Bcf/day, making Perryville at this point the largest gas hub in the U.S., with twice the transit capacity of Henry Hub (see Exhibit MTL-12 [Exh. 70], Table 2, page 4). Both of the new gas pipelines to Station 85 that FPL is counting on – Kinder Morgan's MidContinent Express and GulfSouth's Boardwalk pipeline – pass first through Perryville, where they interconnect with other systems. Conversely, several other new pipelines to Perryville are not slated to continue onward to Transco Station 85. Consequently, Perryville is arguably a more important source of shale gas than Transco Station 85,

and at a lower cost. However, a Perryville receipt point would logically feed into FGT, e.g., on an expansion of the Southeast Supply Header (SESH), a possibility that FPL appeared not to consider in any of the economic cost comparisons that are in this record.

Tr. 667. As noted previously, FGT's proposal included interconnect points in its Zone 3, including Perryville.

Further, the Perryville area is a more liquid supply point than Transco Station 85. As is detailed in Exhibit 70 (MTL-12), which is a report prepared by the EIA, Perryville had the largest increase in total interconnect capacity between 2003 and 2008, compared to any other natural gas market center in the United States. In contrast, there is currently no market center identified at Transco Station 85. While supply access may be increasing at Transco Station 85, there will not be the liquidity that is available at Perryville, and greater liquidity means more competitive gas prices.¹¹

FPL predetermined that Transco Station 85 would be the commencement of its proposed pipeline system, and then exaggerated its relative importance in an attempt to justify FPL's decision to reject FGT's admittedly more economic proposal. FGT's proposal was not only the most economical, but it also provided the most reliable and diverse source of gas supply, transport and delivery. For these reasons, as well as those discussed in Issue No. 3, the Commission should find that FPL's proposal does not provide the most cost-effective and reliable source of natural gas supply, transport and delivery.

¹¹ This lack of liquidity at Transco Station 85, compared to Perryville, is compounded when looking at the growth of natural gas dependency in the Northeastern United States. According to EIA data, gas dependency among power generators in the Northeast is growing rapidly – up 31% and 51% from 2003 to 2008 in New Jersey and New York, respectively. See Tr. 680. These markets are directly served by pipelines that interconnect with Transco Station 85. Thus, it is highly likely that future price relationships will change in a way that will result in Transco Station 85 prices rising well above Perryville prices.

ISSUE 11: Is it appropriate for Florida Power & Light Company to recover the costs associated with its proposed EnergySecure Natural Gas Transmission Pipeline through its electric utility ratebase?

FGT's Summary: **No. There is no legal, policy or economic basis for including the EnergySecure line in the electric rate base where the entire cost will be borne by ratepayers, with no financial risk to FPL or its shareholders, providing FPL with an unfair competitive advantage in the natural gas transmission market.**

FGT's Analysis and Argument: FPL is proposing a ground breaking, first-in-the-nation, new Florida legal and regulatory precedent by asking that its pipeline be included in the electric utility plant rate base. Adoption of FPL's request would reverse decades of regulatory law in Florida and establish a new policy with dangerous and far reaching consequences that would be contrary to the public interest. The fact that FPL will not proceed with its pipeline unless the Commission grants it ratebase treatment should alone demonstrate that FPL's ratebase proposal, indeed, the entire pipeline, is not in the best interests of consumers.

FPL's argument for including the pipeline in electric utility plant ratebase is simple: anything used in the generation of electricity should be included in the electric utility plant. Tr. 375, 387. But in taking this remarkable position, FPL's witnesses were unable to cite to a single long distance, high pressure, multicounty mainline natural gas mainline transmission system that Florida or any other jurisdiction has allowed to be included in rate base. Tr. 99-100, 391-393.

Aside from theory, the only example FPL could identify of a pipeline receiving ratebase treatment was the Kelso Beaver Pipeline – a 17-mile pipeline that FERC allowed

Portland General Electric to be included in an electric utility plant ratebase. Tr. 378, 389-390, 393. The problem with this example is that it is clearly a *lateral* segment and not a *mainline* transmission pipeline.

The FERC has said that “[i]n distinguishing a mainline from a lateral, the primary focus is on how the facilities operate. Mainlines of pipeline systems are the principal transmission facilities extending from supply areas to market areas. . . . This is typical, as the purpose of a mainline is to transport large volumes for ultimate delivery to the many downstream markets served by the system as a whole.” Docket No. CP01-404-001, *Tennessee Gas Pipeline Company*, 98 F.E.R.C. P61, 166, at **9; 2002 FERC LEXIS 293 (Feb. 15, 2002); see also, Docket No. CP95-177-001, *McDaniel v. East Tennessee Natural Gas Company*, 74 F.E.R.C. P61, 185, at **6; 1996 FERC LEXIS 213 (Feb. 21, 1996). In comparison, laterals remove gas from the stream of the mainline and deliver it to the customer, whether that customer is a local gas distribution company or an electric power plant. *Id.*

FPL understands the distinction between mainlines and laterals. As FPL witness Shara testified, FPL's proposed pipeline project consists of “approximately 280 miles of mainline pipe, [and] approximately 23 miles of laterals.” Tr. 144, 160. Again, FPL could not cite to a single mainline fuel transportation system that is in a utility's ratebase – not in Florida and not in any other state or under the FERC's jurisdiction. Tr. 99-100, 391-392.

FPL cited to the various pipeline segments that it presently owns, in total less than 70 miles, to try to bolster its claim that this Commission has in fact placed pipeline in the ratebase, including specifically the 18” pipeline that would be converted under FPL's

proposal. Tr. 392; Exh. 4 (Collins Deposition Tr. 11-12); Exh. 96. However, during cross examination FPL's witness Collins testified, "They are pipelines that were built to support the infrastructure of their plants." Tr. 263. In other words, these lines are laterals, not mainlines. FPL offered no evidence that any of these laterals crossed county boundaries or that any segment was longer than 50 miles.¹² Given FPL's testimony, and the fact that these are such short segments all within a single county, these existing FPL pipelines clearly are not "principal transmission facilities extending from supply areas to market areas."¹³

While FPL does not currently own any mainline gas transportation system, there are other existing precedents in Florida for such natural gas mainlines being operated through a separate affiliate and not as a part of the electric plant ratebase.

In the Florida PSC proceeding to certify the need for the first proposed intrastate natural gas transmission pipeline, the proposed pipeline was to be established in a separate corporate entity that was not a part of the regulated electric utility making the proposal. While the electric utility involved in that case was not the sole partner in the project, the fact of the matter is that there was no intent to include that pipeline in the regulated electric ratebase. Florida PSC Docket No. 920807-GP, Order No. PSC-93-0987-FOF-GP at 42-45.

Outside of natural gas transmission, there are other relevant Florida PSC precedents. As the Commission is aware, coal transportation systems and even coal

¹² Crossing a county line is critical, as pipelines that cross a county line are subject to the Pipeline Siting Act absent some other exclusion, none of which are applicable here. *See* Fla. Stat. § 403.9405(2).

¹³ FPL claims that building and operating a large natural gas mainline pipeline is just like building and operating a high power electric transmission line. Tr. 42. This is like asking the podiatrist that just removed a tumor from your foot to remove a tumor from your brain – certain techniques and processes may be the same or similar, but they are very different procedures.

mines have been owned and operated through separate corporate entities by both Tampa Electric and Progress Energy for decades without any problem. See, e.g., Docket No. 870001-EI-A, *In re: Investigation into affiliated cost-plus fuel supply relationships of Tampa Electric Company*, Order No. 20298 (Nov. 10, 1988) (order discusses the history of the coal transportation and coal mine separate affiliates in an order determining the appropriate cost recovery of such affiliates); Docket No. 860001-EI-G, *In re: Investigation into affiliated cost-plus fuel supply relationships of Florida Power Corporation*, Order No. 20604 (Jan. 13, 1989) (order discusses the history of the coal transportation and coal mine separate affiliates in an order determining the appropriate cost recovery of such affiliates).

Clearly unaware of the Florida precedent, FPL's witness Guest on cross examination asserted that not only would a coal barge transportation system be appropriate for inclusion in a coal fired electric plant rate base but even the coal mine itself. Tr. 393-395. Mr. Guest's standard – anything used and useful for the generation of electricity – is simply too broad. Under his theory, mainline transportation systems, gas fields, mining equipment, pipeline manufacturers, tool companies, and just about anything else would be fair game for ratebase treatment. Except for short distance laterals, this Commission has drawn a line at the boundary of the utility plant perimeter and declared anything beyond that boundary to be outside of ratebase. FPL has not provided any evidentiary, legal, or policy reasons for changing current, well-established precedent. Indeed, FPL's claims that it would be burdensome to have the pipeline in a separate subsidiary were offered without any analysis, and without any support for the

alleged costs of such a separate subsidiary. Tr. 728-729; Exh. 4 (Forrest Deposition Tr. 54).

Inclusion of FPL's proposed natural gas transmission pipeline in the electric utility plant would reverse long standing regulatory and legal policy. Moreover, given the fact that FPL is proposing to build extensive excess capacity that would all be charged to the ratepayers even though it would be decades until actually needed, FPL's proposed pipeline is wasteful and not in the public interest.¹⁴ There is simply no basis in Florida law, or in the precedents of any other state or at FERC, for approving this request.

ISSUE 12: Should FPL be required to file a construction report that details the final cost of the EnergySecure Line within 90 days of completion?

FGT's Summary: **Stipulated.**

ISSUE 13: Should a separate entity be established to own and operate the pipeline?

FGT's Summary: **Yes. Assuming FPL establishes need (which FGT does not concede), the only proper ratepayer treatment is for the entire cost and operation of the asset to be placed in a separate subsidiary and regulated under Chapter 368, Florida Statutes.**

¹⁴ Ironically, NextEra Energy Resources, LLC ("NextEra"), a subsidiary of FPL Group (FPL's ultimate parent), is taking the opposite approach in a proceeding currently pending before the Iowa Utilities Board. In a case entitled, *In re: Application of MidAmerican Energy Company for the Determination of Rate-making Principles*, Docket No. RPU-09-0003, Michael O'Sullivan, Senior Vice President of Development for NextEra, has submitted testimony arguing that MidAmerican's proposal to construct over 1,000 megawatts of new wind facilities should not be placed in the electric ratebase. While the issue in the Iowa case involves wholesale electric generation, which is more closely related to electric generation than a gas pipeline, this FPL affiliate certainly appears to believe that stockholders, and not ratepayers, should be responsible for investments outside of an electric utility's core business. Testimony of O'Sullivan, see especially page 11, at lines 6-22, which can be accessed at: <<https://efs.iowa.gov/eFiling/groups/external-documents/docket/013955.pdf>>

FGT's Analysis and Argument: As discussed at length in regard to Issue No. 11 above, FPL is seeking to include the entire cost of its pipeline proposal in its electric utility ratebase, meaning its customers will pay for the entire project regardless of usage, rather than its shareholders assuming the risk for the overbuilt and excess capacity. Under this proposal, FPL will have no financial risk as to its recovery of investment with a Commission-allowed return, even if the system never moved any gas. By contrast, FGT's shareholders are at risk for any unsubscribed capacity on the FGT system, not FGT's customers.

If FPL establishes need for this pipeline – a point that FGT contests – the Commission should require FPL to separate the entire cost and operation of the pipeline and place it in a separate subsidiary that would be subject to Commission regulation under Chapter 368, Florida Statutes. By doing so, the Commission would require that FPL utilize a cost of service rate authorized under Chapter 368, so that the capacity actually utilized by FPL could be recovered under the fuel cost recovery mechanism, which is exactly how other natural gas transportation costs are recovered by FPL and every other electric utility in Florida, and exactly how other natural gas transmission pipeline companies conduct business in Florida. If FPL's proposed pipeline is in a separate subsidiary subject to Chapter 368 and to cost of service rate, FPL's ratepayers will *only pay for capacity actually needed* for the operation of the system, and FPL's shareholders will be at risk for underutilization should the forecast loads not match its 40-year forecast.

The structural separation of the transportation of fuel to the electric plant from the regulated electric generation ratebase is a principle that is well established before this

Commission. For example, mining and barge transportation systems used for the delivery of coal to Florida power plants for the generation of electricity have been held in fully separated companies by both Tampa Electric Company and Progress Energy.¹⁵ The Commission should not ignore past precedent and allow FPL to include a pipeline – which will be transporting fuel to its electric plants – in its electric ratebase.¹⁶

As is more fully discussed in Issue No. 11 above, the only “precedent” identified by FPL was a lateral pipeline and not a mainline system as is at issue here. To allow FPL to include its proposed mainline pipeline in the ratebase would be unprecedented and improper. It would be especially egregious given the fact that the revenue requirement for the first year of the \$1.6 billion pipeline is \$288 million, of which approximately \$137 million is associated with the excess capacity. Tr. 569, 636. Even if the Commission were to determine there is a need for this proposed pipeline, FGT respectfully urges the Commission to require FPL to place the pipeline – including all the construction costs

¹⁵ *In re: Investigation into Affiliated Cost-Plus Fuel Supply Relationships of Tampa Electric Co.*, Docket No. 870001-EI-A, Order No. 20298 (Fla. PSC Nov. 10, 1988), and in *In re: Investigation into Affiliated Cost-Plus Fuel Supply Relationships of Florida Power Corporation*, Docket No. 860001-EI-G, Order No. 22401 (Fla. PSC Jan. 10, 1990). In these orders the Commission analyzed, among other things, the use by Tampa Electric Company and Florida Power Corporation of affiliated companies who provided barge and water transportation of coal, and those utilities’ attempt to recapture the cost of that transportation. The Commission ultimately decided that the recoverable cost (through the utilities’ fuel adjustment clause) was to utilize a standard that attempted to measure what a given product or service would cost had it been obtained in the competitive market through an arm’s length contract with an unaffiliated third party. See also *In re: Review of Tampa Electric Company’s 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark*, No. 031033-EI, Order No. PSC-04-0999 (Fla. PSC Oct. 12, 2004) (affirming market rate approach but disapproving of previous benchmarks).

¹⁶ For example, in the SunShine Pipeline docket, the applicant was SunShine Pipeline Partners, which included Power Energy Services Corporation, a special purpose subsidiary of Florida Power Corporation. See Docket No. 920807-GP. In other words, SunShine Pipeline Partners was an entity distinct and separate from the regulated utilities that were its members. In another matter, Peninsula Pipeline Company, Inc. (“Peninsula”) sought a declaratory statement that it was a natural gas transmission company under Section 368.103(4), Florida Statutes. Peninsula was a wholly-owned subsidiary of Chesapeake Utilities Corporation. See Docket No. 050584-GP. These dockets illustrate this Commission’s past practices in approving natural gas pipelines in subsidiaries separate from the regulated utility parent

and ongoing operation – in a separate subsidiary, fully within the Commission’s jurisdiction pursuant to Chapter 368.

ISSUE 14: If FPL owns and operates the Florida EnergySecure Line as proposed, will it be subject to the Commission’s jurisdiction as an intrastate pipeline company pursuant to Chapter 368, Florida Statutes?

FGT’s Summary: **Yes. If approved, the entire pipeline is subject to regulation under Chapter 368 and should be placed in a separate entity, regardless of whether FPL sells excess capacity. The Legislature intended Chapters 368 and 403 to operate in tandem for the approval and regulation of natural gas transmission pipelines.**

FGT’s Analysis and Argument: It is undisputed that FPL is a “public utility” engaged in the supply of electricity to the public pursuant to Chapter 366 Florida Statutes. However, by seeking authority to construct and operate an intrastate natural gas transmission pipeline as a part of its regulated electric utility operations and to potentially sell excess capacity on that pipeline to third parties, FPL has impermissibly sought to impose on its electric ratepayers the costs and risks of an intrastate natural gas transportation pipeline, while escaping this Commission’s jurisdiction under Chapter 368, Florida Statutes.

FPL has not taken a clear position on its intentions with the excess capacity on its pipeline. For example, in its rebuttal testimony, FPL takes the position that it will make available for sale the excess capacity on its intrastate pipeline. Tr. 725, 727. However, in subsequent filings, it has stated that it does not intend to sell excess capacity, but it may do so. See FPL’s Amended Position on Issue 14; Tr. 59-60, 63. In addition, the

pipeline, as proposed, does not have any interconnects other than the three plants, thus calling into question FPL's ability to sell excess capacity.

Nevertheless, FPL's admission that it intends, at some point, to sell excess capacity places it squarely within the jurisdiction of Chapter 368, which defines a "natural gas transmission company" as "any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas."¹⁷ Clearly, by offering for sale its excess transportation capacity, FPL will be receiving "compensation" for the sale of such transportation services over its pipeline.

In fact, regardless of whether FPL ultimately sells natural gas on its proposed pipeline, the Legislature intended that all intrastate gas pipelines be regulated under Chapter 368, and this Commission should require it to be subject to Chapter 368.

While at different points in its case FPL has gone to great pains to state at various times either that it does not believe it would be subject to Chapter 368, or that it might "voluntarily" comply with the Commission's regulatory authority over intrastate pipelines, this Commission's jurisdiction is not optional. Tr. 62. As the Florida Supreme Court has made clear many times, the Commission's authority with respect to utilities subject to its jurisdiction is complete. *See Florida Public Service Comm'n v. Bryson*, 569 So. 2d 1253, 154-55 (Fla. 1990). Thus, if the proposed pipeline meets the statutory definition of a natural gas transportation company, then it is a pipeline subject to the Commission's jurisdiction under Chapter 368.

¹⁷ See Section 368.103(4), Florida Statutes. There are certain exclusions to the definition, which do not apply: "but shall not include any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof or a special district created by special act to distribute natural gas."

As a matter of law, this Commission has already determined that Chapters 368 and 403 are part of the same statutory structure that governs the approval for and the regulation of intrastate natural gas transportation pipelines in Florida. In discussing the interrelationship of these two statutes, this Commission in 2007 stated:

The Natural Gas Transmission Pipeline Intrastate Regulatory Act (the Act), Sections 368.101 – 368.112, F.S., was adopted by the Florida Legislature in 1992 in conjunction with Sections 403.9401-.9425, F.S., the Natural Gas Transmission Pipeline Siting Act (Pipeline Siting Act). At the time they were enacted, these laws contemplated the filing of a proposal for a major gas pipeline (SunShine Pipeline Partners) that would serve local distribution companies and major electric power generators in Florida and would be regulated by this Commission rather than FERC. The statute enables an intrastate pipeline company to be exempt from FERC jurisdiction under what is known as “the Hinshaw Amendment.” The Hinshaw Amendment, contained in section 1(c) of the Natural Gas Act, 15 U.S.C. § 717(c), “exempts from FERC regulation intrastate pipelines that operate exclusively in one State and with rates and services regulated by the State.” Payment of regulatory assessment fees to cover the cost of regulation and jurisdiction over pipeline safety is also provided in Chapter 368, F.S.

In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Co., Inc., Docket No. 070570-GP, Order No. PSC-07-1012-TRF-GP, at 3-4 (Fla. PSC Dec. 21, 2007). The Commission further went on to state that Chapter 368:

[P]rovides for a different level of regulation than that afforded LDCs or investor-owned electric utilities under Chapter 366, F.S. Section 368.105(3), F.S., allows rates charged by a natural gas transmission company to be deemed just and reasonable without explicit Commission approval if the rates meet certain conditions as listed [in the statute] Section 368.105(3), F.S., thus, contemplates that gas transportation service provided by an intrastate pipeline is based on negotiated agreements that reflect market conditions and the specific needs of the customer.

Id. at 7-8. The determination that this Commission made less than two years ago of the interrelationship between Chapters 368 and 403 is consistent with the findings of the

Florida Supreme Court in its review of the very first pipeline siting case filed under Chapter 403.

In *Florida Gas Transmission Co. v. Public Service Comm'n*, 635 So. 2d 941, 943-44 (Fla. 1994), the Florida Supreme Court rejected a challenge to the constitutionality of the Natural Gas Pipeline Siting Act, and provided context to the Siting Act. The Florida Supreme Court stated:

To understand the authority granted to the Commission, it is helpful to examine the history of section 403.9422. The origins of that statute can be traced back to 1978. See 15 U.S.C.A. §§ 3301-3432 (1988) (the Act). The Act's fundamental purpose was to protect interstate gas consumers from the monopoly of the pipeline industry. The Act clearly was intended to improve the competitive structure of the natural gas industry and was a means to ensure that the consumer has "access to an adequate supply of gas at a reasonable price."

Since the Act's passage, the Federal Energy Regulatory Commission (FERC) has continued its attempt to reform various practices in the natural gas industry by issuing a series of policy orders. Pertinent here is FERC's issuance of Order No. 636, 57 Fed. Reg. 13, 267 (1992) (codified at 18 C.F.R. pt. 284), which, among other things, has as its purpose increased competition in the natural gas industry by creating open access transportation and unbundled pipeline services. Under this order, pipeline operators are required to provide capacity to natural gas shippers on a non-discriminatory basis, which has improved access to gas supplies but has done nothing to increase existing pipeline capacity. Consequently, after issuance of Order No. 636, the major problem in states where natural gas usage levels are predicted to rise is no longer the allocation of the existing pipeline space but the lack of total pipeline capacity.

In recognizing that natural gas usage levels would continue to rise in Florida and that a need existed to ensure the reliable and safe delivery of natural gas in Florida, the legislature enacted the Natural Gas Transmission Pipeline Siting Act in 1992.¹⁸

The history of the Regulatory and Siting Acts demonstrates that the Legislature intended for these two provisions to work in tandem to govern all intrastate gas

¹⁸ Citations and quotations omitted.

transmission pipelines in Florida. As such, a pipeline company petitions the Commission for a determination of need under Chapter 403, and if that need is certified by the Commission and later authorized by the Governor and Cabinet sitting as the Siting Board, the resulting pipeline is regulated by the Commission under Chapter 368.¹⁹

Further supporting this analysis is 15 U.S.C. § 717(c) (Exh. 2, Item 26), which is part of the Hinshaw Amendment to the Natural Gas Act. That section provides:

The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, *provided that the rates and service of such person and facilities be subject to regulation by a State commission.*

(emphasis added). Congress thus intended to exempt intrastate pipelines from FERC jurisdiction, provided that the rates and service of the pipeline are subject to regulation by a State commission. FPL's proposed pipeline therefore must be subject to Chapter 368 and this Commission's jurisdiction.

As recognized by this Commission, Chapter 368 provides for a different level of regulation than for investor-owned electric utilities, such as FPL.²⁰ FPL should not be permitted to subvert the intent of the Legislature, and this Commission's jurisdiction under Chapter 368, by proposing to construct an intrastate gas transmission pipeline to serve its native load while recovering all of its costs through its rate base. For this

¹⁹ See also "Final Bill Analysis of Florida House of Representatives Bill 171-H, which created the Natural Gas Transmission Pipeline Siting Act, June 24, 1992," Staff's Non-Confidential Composite Exhibit #2 (Stipulated), exhibit # 25.

²⁰ See *In re: Petition for approval of a natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.*, Docket No. 070570-GP, Order No. PSC-07-1012-TRF-GP. at p.6 (Dec. 21, 2007) ("The Act [Chapter 368] provides for a different level of regulation than that afforded to LDCs or investor-owned utilities under Chapter 366, F.S.").

fundamental reason, this Commission, if it finds need, must require FPL to place the pipeline in a separate subsidiary that is governed under Chapter 368.

ISSUE 15: If FPL owns and operates the Florida EnergySecure Line as proposed, will it “. . . provide transmission access, subject to available capacity, on a basis that is not unreasonably preferential, prejudicial, or unduly discriminatory . . .”, as section 368.105(6) requires?

FGT’s Summary: **No. By including the proposed pipeline in its ratebase, FPL will force ratepayers to pay unnecessary expenses for excess capacity, which would be unreasonably preferential, prejudicial and discriminatory. The only way for FPL to meet these objectives is to place the pipeline in a separate subsidiary, subject to Chapter 368.**

FGT’s Analysis and Argument: Under FPL’s proposal, ratepayers will be forced to unfairly bear the burden of excessive and unnecessary expenses for capacity that is not needed or utilized. This means that FPL will be providing capacity in a prejudicial and unfairly discriminatory way to its ratepayers. In addition, to the extent FPL will sell transmission capacity to others free and clear of the requirements of Chapter 368, there would be no requirements in place to ensure that the services FPL would provide are not unreasonably preferential, prejudicial or unduly discriminatory to those customers or competitor pipelines. As argued more fully above in Issues Nos. 11, 12, 13 and 14, if the Commission were to find need for this pipeline, it should require FPL to place it in a separate subsidiary, subject to the Commission’s jurisdiction under Chapter 368, to avoid this situation.

ISSUE 16: Based on the resolution of the previous issues, should FPL's petition for determination of need for the EnergySecure Line, a natural gas transmission pipeline as defined in Section 403.9403(16), Florida Statutes be approved?

FGT's Summary: **No. The proposed pipeline is not in the best interests of ratepayers or the State of Florida. FPL has failed to demonstrate: (a) need for the pipeline; (b) demand to support its construction and expense; and (c) that the pipeline, coupled with the cost of the upstream pipeline, is the best economic alternative.**

FGT's Analysis and Argument: The Commission is considering this multibillion dollar pipeline proposal only because FPL obtained a certificate of need for additional gas supplies in order to fuel two new upgraded gas fired power plants that come on line in 2013 and 2014. The total need for these two plants – as approved by this Commission – is 400 MMcf/d. Instead of prudently contracting for capacity to meet that need, FPL wants to build not one but actually two separate pipelines with an initial minimum capacity requirement of 600 MMcf/d. A pipeline with 50 percent more capacity than will be needed until at least 2021 is, as admitted by even FPL, excessive.

It is undisputed that:

- New gas generating power plants can be built in three to five years.
- New gas transmission pipelines can also be built in 3 to five years.
- The next new gas fired power plant FPL anticipates needing will not go into service until at best 2021, using FPL's overstated growth forecasts.

- The next new gas fired power plant won't need to be permitted until sometime in the 2016 to 2019 time frame, using FPL's overstated growth forecasts.
- In the past, the natural gas pipeline transportation industry has consistently and timely provided incremental transportation capacity to FPL on a cost effective basis.
- FPL has admitted that FGT's proposal is the most cost effective to meet the approved need of the Cape Canaveral and Riviera Beach plants.

Given these facts, FPL's proposed pipeline is not only excessive but completely unnecessary.

FPL's own case in chief is that FPL's pipeline will not provide any economic benefit to customers through at best 2021 and no net cumulative economic benefit to customers until at least 2041. It would be irresponsible for the Commission to authorize this pipeline under these facts. This kind of excess capacity constructed this far in advance has never before been approved by the Commission and it is not in the best interests of customers.

The record demonstrates numerous problems with FPL's population forecasts and economic analyses. In fact, FPL's entire economic analysis is built upon incorrect and unreasonable assumptions: FPL uses the wrong FGT rate proposal; FPL imputes 20 additional cents on the FGT rate for transportation from Transco Station 85 that is unnecessary and at the very least available for only 9 cents; FPL fails to depreciate FGT's rate proposal; FPL escalates rates at the time of future additions; FPL assumes instantaneous rate reductions each year; FPL uses a 100% load factor when the actual

need is only 400 MMcf/d; and, finally, FPL uses greatly inflated population forecasts. Not only is the FPL economic analysis completely unreliable, but when it is adjusted for just one of these errors, the swing in the results can be significant. The combined effect of all of the necessary corrections would unquestionably demonstrate that FPL's proposed pipeline is not cost effective or prudent.

Finally, FPL's request that the entire cost of the proposed intrastate pipeline be put in its electric ratebase is not in the best interest of the ratepayers. Even accepting the FPL case at face value, the fact that FPL's proposed pipeline does not provide any net benefit until at best 2021, and no cumulative net benefit until at least 2041, shows that generations of FPL ratepayers will never see any benefit from this pipeline.

While FPL claims it is not trying to be in the pipeline business, building a pipeline under Chapter 403 can only mean that FPL is in the pipeline business subject to regulation under Chapter 368. These two statutory provisions must be read together – they originate in the same statutory enactment and they were created to fill an opportunity created by the Congress to allow intrastate pipeline companies to be subject to state, rather than FERC, regulation. Exh. 2, Items 25 and 26. The cornerstone of any such regulatory structure is an independent, non-merchant pipeline operator that (1) bears the burden of the financial risk of the pipeline as constructed, and (2) charges rates to its customers that are fully regulated by this Commission. Under FPL's "everything rolled into ratebase" approach, none of these federal or state statutory rules can be met.

Approval of ratebase treatment for FPL's pipeline would be a true "first in the nation" decision that is without precedent. Indeed, this Commission's own precedents

clearly establish that fuel transportation assets are to be in a structurally separate legal entity.

In the final analysis, FPL's proposed pipeline would be merely a risk-free "private driveway" that would allow FPL to charge more to its customers. The proposed line offers none of the benefits but imposes all of the costs, and especially all of the excess costs, on ratepayers. This pipeline is not in the public interest and should not be approved.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Electronic Mail and/or U. S. Mail this 10th day of August, 2009 upon the following:

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Floyd R. Self

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line.