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COMMISSION
CLERK

September 8, 2011

VIA HAND DELIVERY

Ms. Ann Cole
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Boulevard, Room 110
Tallahassee, FL 32399-0850

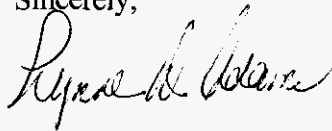
Re: Docket No. 110009-EI

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") is an original and seven copies of its Post Hearing Brief in the above referenced docket. Also enclosed is a compact disc containing FPL's Post Hearing Brief in Microsoft Word format.

Please contact me if there are any questions regarding this filing.

Sincerely,


for Jessica Cano

COM	_____	Enclosure
APA	_____	cc: Parties of record w/ enclosure
ECR	_____	4+1 CD containing post hearing brief
GCL	_____	
RAD	_____	
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FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Power Plant)
Cost Recovery Clause)

Docket No. 110009-EI
Filed: September 8, 2011

**POST-HEARING BRIEF OF
FLORIDA POWER & LIGHT COMPANY**

Florida Power & Light Company (“FPL” or the “Company”) hereby files with the Florida Public Service Commission (the “FPSC” or the “Commission”) its Post-Hearing Brief in the above-referenced docket, pursuant to Order No. PSC-11-0335-PHO-EI and Order No. PSC-11-0308-PCO-EI, and states as follows:

INTRODUCTION

In response to the State’s policy of encouraging additional nuclear generation, FPL applied for determinations of need from the Commission in 2007 for the two projects that are the subject of this annual nuclear cost recovery (“NCR”) review: the Turkey Point 6 & 7 new nuclear project and the Extended Power Uprate (“EPU” or “Uprate”) project. After thorough review, the Commission approved both projects through need determination orders issued in early 2008. *See In Re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant by Florida Power & Light Company*, Docket No. 070650-EI, Order No. PSC-08-0237-FOF-EI (issued April 11, 2008) and *In Re: Petition for determination of need for expansion of Turkey Point and St. Lucie nuclear power plants, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through the Commission's Nuclear Power Plant Cost Recovery Rule, Rule 25-6.0423, F.A.C.*, Docket No. 070602-EI, Order No. PSC-08-0021-FOF-EI (issued Jan. 7, 2008).

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Pursuant to Sections 366.93 and 403.519(4), Florida Statutes, and Rule 25-6.0423, Fla. Admin. Code (the “NCR Rule”), FPL is requesting to recover preconstruction costs necessary to obtain licenses and approvals for the Turkey Point 6 and 7 project. These licenses and approvals are needed to enable the future construction of two new nuclear units with 2200 megawatts (“MW”) of generating capacity at FPL’s Turkey Point site. Tr. 153, 219, 254 (Scroggs). In nominal terms, the Turkey Point 6 & 7 project is currently projected to save customers \$75 billion in fuel cost savings over the life of the new plant. Tr. 1108 (Olivera), 914 (Sim); Ex. 88. Additionally, Turkey Point 6 & 7 will reduce reliance on natural gas by about 13% and reduce carbon dioxide emissions by about 288 million tons over the life of the plant. Ex. 88.

For the EPU project, FPL is requesting to recover financing costs on the amounts incurred for construction.¹ Tr. 421 (Powers). The Uprate project will increase the nuclear generation from FPL’s existing units by about 450 MW – equal to installing half of a new nuclear generating unit – in the 2012 and 2013 time period. *See* Tr. 735 (Jones); Ex. 71. In nominal terms, the Uprate project is projected to save customers \$4.8 billion in fuel cost savings over the life of the uprated plants. Ex. 88. Additionally, it will reduce reliance on natural gas by about 2%, and reduce carbon dioxide emissions by about 30 million tons over the life of the uprated plants. Ex. 88.

FPL’s cost recovery request for 2012 for both of these projects totals approximately \$196 million or \$2.09 on a typical 1,000 kilowatt-hour monthly residential bill. Tr. 220 (Scroggs); Tr. 737 (Jones). A small fraction of this is for the Turkey Point 6 & 7 project. Most of the costs are for the Uprate project, which has already begun producing an additional 29 MWe of nuclear

¹ A portion of FPL’s request is also for recoverable Operations & Maintenance (“O&M”) expense and for partial-year revenue requirements associated with components being placed into service. Tr. 421 (Powers).

power for customers and is scheduled for completion in the near term. *See* Tr. 746, 775 (Jones); Ex. 71.

SUMMARY OF ARGUMENT

FPL's management decisions and project costs in 2009 and 2010 are subject to a prudence review in this proceeding. *See* Rule 25-6.0423(5)(c)a, Fla. Admin. Code. A management decision is prudent if it was within the range of reasonable decisions that a utility manager could make based upon information known or reasonably available to management at the time the decision was made. Tr. 545-47 (Reed). The prudence standard recognizes that there may be more than one prudent course of action, and that managers should be found to have acted prudently so long as they have chosen an alternative within the range of those that a reasonable manager could consider. Hindsight review is prohibited. Tr. 547 (Reed), citing FPSC Order No. PSC-07-0816-FOF-EI (issued Oct. 10, 2007).

The record shows that FPL's 2009 and 2010 management decisions with respect to Turkey Point 6 & 7 were prudent and that its project costs were prudently incurred. The record contains extensive testimony and evidence demonstrating the prudence of FPL's management decisions and costs for the Turkey Point 6 & 7 project. In summary:

- During 2009 and 2010 FPL filed and pursued its combined operating license application ("COLA") before the Nuclear Regulatory Commission ("NRC") and sought other necessary approvals. Tr. 149-51 (Scroggs);
- Based upon nuclear regulatory and market conditions during 2009 and 2010, FPL management decided to extend the project schedule and deferred incurring many costs while maintaining progress in permitting and licensing. *Id.*; and
- The Turkey Point 6 & 7 project costs have been audited and reviewed by external auditors for FPL and by the Commission's Audit Staff with good results, providing the Commission and customers with additional assurance of the correctness of FPL's charges. *See* Tr. 173-75 (Scroggs); Ex. 115; Ex. 116.

Intervenors did not file any testimony or proffer any evidence claiming that any Turkey Point 6 & 7 management decision was imprudent. Intervenors also did not identify any 2009 or 2010 cost that they claimed was imprudently incurred. Accordingly, the Commission should find that FPL's 2009 and 2010 Turkey Point 6 & 7 management decisions were prudent and its costs were prudently incurred.

FPL's 2009 and 2010 management decisions with respect to the EPU project were also prudent, and its project costs were prudently incurred. This was shown by extensive record evidence, including that:

- During 2009 and 2010, FPL management made decisions and incurred costs necessary for NRC licensing, design engineering, procuring major equipment, and both preparing for and implementing many plant modifications needed to increase nuclear generation. Tr. 664, 703 (Jones);
- In 2010, FPL successfully completed two Uprate project implementation outages at St. Lucie and Turkey Point. *Id.*;
- The EPU project has been audited by FPL's external auditors, and by the Audit Staff of the Commission, with good results. *See* Tr. 674-75, 713 (Jones); Ex. 115; Ex. 116; and
- The Office of Public Counsel's ("OPC") Witness Jacobs testified that he also believed that FPL's management actions with respect to the EPU project during 2009 and 2010 were prudent, and that there were no imprudently incurred costs in 2009 or 2010 associated with the EPU project. Tr. 1058-60, 1062-63 (Jacobs).

As with Turkey Point 6 & 7, no intervenor claimed that any specific 2009 or 2010 management decision was imprudent or identified any specific cost incurred during those years as imprudently incurred. Accordingly, the Commission should find that FPL's 2009 and 2010 management decisions with respect to the EPU project were prudent and that its costs were prudently incurred.

FPL's 2007 EPU need determination filing was supported by extensive testimony and exhibits that included detailed economic studies of the type regularly relied on by the Commission in need determination proceedings. FPL's 2007 EPU need determination filing also

made it very clear that FPL would not proceed with the EPU project on an expedited basis absent confirmation that the project would be subject to the NCR framework. Tr. 1238-39 (Stall). In its 2008 order determining need for the EPU project, the Commission accepted FPL's economic analysis, approved FPL's proposed construction of the EPU project on an expedited basis to meet customer needs beginning in 2012, and confirmed that the project is subject to the NCR framework. *In Re: Petition for determination of need for expansion of Turkey Point and St. Lucie nuclear power plants, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through the Commission's Nuclear Power Plant Cost Recovery Rule, Rule 25-6.0423, F.A.C., Docket No. 070602-EI, Order No. PSC-08-0021-FOF-EI (issued Jan. 7, 2008).*² Additionally, the Commission reviewed FPL's 2007 EPU project management decisions and costs in its 2008 NCR proceeding, Docket No. 080009-EI, and found that FPL's 2007 management of the EPU project was prudent. *In Re: Nuclear Cost Recovery Clause, Docket No. 080009-EI, Order No. PSC-08-0749-FOF-EI (issued Nov. 12, 2008), pp. 29-30.*³

In light of these clear prior Commission rulings, it is startling that OPC now claims, four years after the fact, that FPL was imprudent during 2007 in proposing to implement the EPU project on an "expedited" basis. While OPC refers to the project as being performed on a "fast track" basis, this is a distinction without a difference – the project was needed to meet FPL's customers' needs beginning in 2012 and was approved by the Commission on that basis. It is also surprising that OPC now takes issue with FPL's 2007 economic analysis, which compared the Cumulative Present Value of Revenue Requirements ("CPVRR") with and without the Uprate project, and which is the type of analysis that has traditionally been relied upon by both

² OPC did not question FPL's approach during the EPU need determination proceeding.

³ OPC did not question FPL's approach during the 2008 NCR proceeding, the purpose of which was to examine the prudence of 2007 project management decisions and costs.

FPL and this Commission when evaluating resource additions. OPC's claims should be rejected both as a matter of law and based upon the record evidence. OPC's claims should be rejected as a matter of law for five primary reasons:

- Intervenors' claims are a prohibited collateral attack on the Commission's 2008 need determination order approving FPL's 2007 EPU proposal;
- Intervenors' positions challenging FPL's continuation of the EPU project consistent with the manner it was proposed and approved in the need determination are contrary to Section 403.519(4)(e), Florida Statutes, which states that "[p]roceeding with the construction of the nuclear or integrated gasification combined cycle power plant following an order by the commission approving the need for the nuclear or integrated gasification combined cycle power plant under this act shall not constitute or be evidence of imprudence";
- Attacking the prudence of a 2007 decision is not within the scope of the present NCR proceeding, which is limited to a prudence review of 2009 and 2010 actions and costs;
- Intervenors' positions are legally barred "hindsight" claims. They use 2009, 2010 and 2011 information to determine that they disagree with a 2007 project management decision that was approved by the Commission; and
- OPC's proposed remedy is an impermissible mechanism that (i) would have the effect of disallowing future costs regardless of whether they were prudently incurred in violation of Sections 366.93 and 403.519(4)(e), and (ii) is nearly identical to the mechanism the Commission rejected last year as contrary to Florida law.

Even if OPC's untimely challenges were legally permissible, which they are not, the evidentiary record in this proceeding clearly shows that FPL's 2007 management decisions were in fact prudent. For example, had FPL constructed the Uprate project without using expedited (or "fast track") construction methods, the project capital costs would have been *higher*, not lower. Tr. 1204 (Jones). Additionally, the project would have taken six years longer, and this fact alone would have lost customers about \$840 million in fuel cost savings. Tr. 1259 (Sim). Of course, if FPL had foregone the EPU project entirely customers would not receive any of the fuel diversity, fuel cost savings, and environmental benefits of the project. See Ex. 88.

Accordingly, OPC's claims should be rejected for these reasons as well.

Turning to project feasibility, FPL filed detailed feasibility analyses using the same rigorous analytical processes well known and accepted by the Commission in past NCR and need determination proceedings. Tr. 916 (Sim). A feasibility analysis is a snapshot of how a project's long term economics may play out over a number of future scenarios, reflecting a range of fuel and environmental costs and other factors. This year's feasibility analyses show that the Turkey Point 6 & 7 project and the EPU project are both solidly cost-effective for FPL's customers. Tr. 950-51 (Sim).

The adequacy of FPL's Turkey Point 6 & 7 feasibility analysis was not contested, and the record overwhelmingly supports its approval. FPL's EPU feasibility analysis should similarly be approved, for the following reasons:

- The uprates of FPL's four nuclear units were approved by the Commission as one project to meet more than 400 MW of customer need beginning in 2012. *See In Re: Petition for determination of need for expansion of Turkey Point and St. Lucie nuclear power plants, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through the Commission's Nuclear Power Plant Cost Recovery Rule, Rule 25-6.0423, F.A.C.*, Docket No. 070602-EI, Order No. PSC-08-0021-FOF-EI (issued Jan. 7, 2008);
- The EPU project has been undertaken and managed as one project from the outset, obtaining economies of scale from using shared corporate management, corporate support, and vendors. Tr. 1207-08 (Jones);
- FPL's feasibility analysis uses the same CPVRR method as the analysis accepted in the need determination proceeding and many other Commission proceedings. *See* Docket No. 070602-EI, *see also* Docket No. 080203-EI, Docket No. 080245-EI, and Docket No. 080246-EI;
- FPL's feasibility analysis considers a wide range of different future fuel cost and environmental cost scenarios. *See* Ex. 95; and
- FPL's feasibility analysis appropriately accounts for sunk costs consistent with the Commission's NCR Rule, consistent with prior Commission orders, and consistent with commonly accepted economic principles. Tr. 1263-68 (Sim).

For these same reasons the Commission should reject OPC's claims, raised four years into the EPU project, that the project should be broken apart for analysis, that the annual feasibility analysis should take a different form, and that the analysis should include sunk costs.

OPC and other intervenors also take the position that FPL should be penalized for not providing preliminary, unapproved vendor forecasts to the Commission during the September 2009 NCR hearing. *See* Tr. 886, 892-93 (Stall). Reasonable minds may differ as to whether such an update would have been appropriate or desirable. This point was agreed to by both FPL's President and Chief Executive Officer Armando Olivera and by OPC's Witness Jacobs. *See* Tr. 514 (Olivera); Tr. 1062 (Jacobs). What is clear, however, is that such an update was not required by any statute, rule, or order. The Commission's authority under State law to assess penalties against utilities is limited to circumstances in which a utility has refused to comply with or willfully violated a lawful rule or order of the Commission, or a statute administered by the Commission. Section 366.095, Fla. Stat. (2011); Section 350.127(1), Fla. Stat. (2011). That is not the case here. FPL fully complied with the NCR Rule and its obligations related to the NCR process. OPC's claim for a penalty should therefore be rejected.

FPL's customers receive lower electricity costs, better reliability, and greater environmental benefits every day because of nuclear generation investment decisions made forty years ago. Tr. 260 (Scroggs). Those customer benefits include fuel diversity, cleaner air due to avoided emissions, and substantial fossil fuel cost savings. *See* Tr. 256 (Scroggs). The Florida NCR framework is essential to FPL's continued investment in additional nuclear generation to provide more of these benefits to FPL's customers.

For all of the foregoing reasons, and based upon Florida law and the evidentiary record in this proceeding, FPL requests that the Commission enter 2009 and 2010 prudence findings, 2011

and 2012 reasonableness findings, accept the Company's feasibility analyses, and approve FPL's requested 2012 NCR amount consistent with FPL's positions stated below.

ISSUES AND POSITIONS

A. Accounting

ISSUE 1: Should any FPL 2010 Nuclear Cost Recovery Clause rate-case type expenses be disallowed from recovery?

FPL: *No. FPL used a separate non-Nuclear Cost Recovery Clause work order to capture its reasonable and necessary regulatory expenses (i.e., "rate case type expenses") related to the 2010 Nuclear Cost Recovery hearing. Because no rate-case type expenses are included in FPL's NCR amount, no disallowance adjustment should be ordered.*

FPL takes its obligation to provide accurate information to the Commission seriously. *See* Tr. 505-06 (Olivera). FPL incurs reasonable and necessary costs to prepare its filings and submit testimony, and occasionally must submit corrections to ensure the accuracy of the information provided. *See* Ex. 129. Such corrective filings were made in 2010, as well as in this 2011 proceeding. *Id.* However, as explained by FPL Witness Powers, a separate non-NCR Clause work order is used to capture regulatory commission expenses ("rate case type expenses"). Tr. 452 (Powers). Therefore, they are not included in FPL's requested NCR amount. This is also demonstrated in Exhibit 129, which shows that 2010 regulatory expenses (such as document shipping costs, copying charges, etc.) were not included in FPL's request. Other parties have taken the position that these expenses should be disallowed, but such positions overlook the fact that there are no rate case type expenses to disallow. Accordingly, no disallowance should be ordered.

B. Turkey Point 6 & 7

ISSUE 2: Do FPL's activities through 2010 related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

FPL: *Yes. FPL is conducting activities and incurring necessary expenses in the course of actively pursuing the license, permits and approvals needed to create the option for new nuclear generation, consistent with the intent of Section 366.93. The fact that FPL is pursuing these licenses and approvals demonstrates its commitment to the project. The expenditure of significant funds for construction-related activities, such as contracting with an EPC vendor, is not necessary at this time to maintain progress on the project. Deferring such expenditures mitigates risks without affecting the applicability of Section 366.93 and the Commission's NCR Rule to FPL's Turkey Point 6 & 7 costs.*

Section 366.93(2), Florida Statutes, requires the Commission to establish, by rule, *alternative cost recovery* for costs incurred “in the siting, design, licensing, and construction of a nuclear power plant.” The express purpose of this alternative cost recovery mechanism is “to promote utility investment in nuclear . . . power plants and allow for the recovery in rates of all prudently incurred costs.” *Id.* Last year the Commission had an opportunity to evaluate what types of activities qualify as siting, design, licensing, and construction when it addressed this same issue for Progress Energy Florida (“PEF”) – and determined that the licensing costs PEF was incurring for its new nuclear project were recoverable. *In Re: Nuclear Cost Recovery Clause*, Docket No. 100009-EI, Order No. PSC-11-0095-FOF-EI (issued Feb. 2, 2011), p. 12. Intervenors questioned whether PEF's new nuclear project would be built and argued that because PEF was not actively engaged in construction, its costs did not qualify for recovery. *Id.* at 10-11. The Commission stated that “the main question for us to consider is whether a utility must engage in the siting, design, licensing, and construction of nuclear power plant activities simultaneously in order to meet the statutory requirements.” *Id.* at 9. It answered the question in the negative, finding that a utility need not be engaged in construction in order for its costs to be recoverable. *Id.* at 11.

FPL intends to pursue completion of the Turkey Point 6 & 7 project by obtaining the licenses and approvals necessary to construct and operate the plant. *See* Tr. 204 (Scroggs). Dr. Nils Diaz, former chairman of the NRC, agreed that “the primary focus of the current stage of

the project should be to obtain the necessary federal, state and local approvals for construction and operation of the Turkey point 6 & 7 project.” Tr. 351 (Diaz). In 2009 and 2010, FPL worked to achieve or support the continuing review of the many licenses and other approvals needed to construct Turkey Point 6 & 7. *See* Tr. 149-52 (Scroggs). FPL also continued negotiations for a land exchange with the Everglades National Park, approval of a Comprehensive Development Master Plan amendment for roadway improvements needed for construction activities, and approval and execution of a Joint Participation Agreement for reclaimed water from Miami-Dade County for project cooling water needs. *Id.* The continued work and expenditures to support these activities demonstrate FPL’s commitment to the project. This was confirmed by the Commission’s Audit Staff, when it stated: “Audit staff believes that FPL is committed to pursuing the option to build two new AP1000 nuclear reactors, Turkey Point 6 & 7, employing a deliberate, incremental management approach to the project.” Ex. 115 (p. 9 of 42).

Intervenors, primarily the Southern Alliance for Clean Energy (“SACE”), questioned FPL’s commitment to Turkey Point 6 & 7, focusing on FPL’s use of the term “option” in testimony before the Commission. Tr. 278 (Scroggs). This terminology appropriately describes FPL’s deliberate, stepwise approach to the project. FPL works to strike a balance between maintaining progress on the project and managing risk by managing commitments. Tr. 148 (Scroggs); *see also* Tr. 204 (Scroggs). This approach has resulted in the deferral of executing an Engineering Procurement (“EP”) or Engineering, Procurement and Construction (“EPC”) contract, deferral of long lead material procurement, and withdrawal of its Limited Work Authorization request before the NRC. Tr.149 (Scroggs). However, as explained by FPL Witness Scroggs, these activities are not necessary at this time to maintain the current project

schedule. For example, FPL need not initiate long lead procurement until 2015 to maintain the current schedule. Tr. 298 (Scroggs). As a result, FPL is maintaining the option of new nuclear in the 2022-2023 timeframe.

FPL's risk-mitigating actions should be commended – not used in an attempt to cast doubt on its commitment to the project. The alternative, apparently advocated by SACE, would be to commit substantial sums of money to lock down construction plans now, despite the regulatory, commercial, economic, and other uncertainty surrounding the project, and despite the fact that such expenditures are unnecessary at this time. FPL submits that that is not the prudent course of action for the Turkey Point 6 & 7 project.

FPL is actively engaged in the licensing of Turkey Point 6 & 7 and is taking the enabling steps necessary to deliver reliable, cost-effective and fuel diverse generation to FPL's customers. It is therefore engaged in the "siting, design, licensing, and construction of a nuclear power plant" as contemplated by Section 366.93 and as interpreted by the Commission in last year's NCR docket for PEF. As a result, the Commission should find that FPL's costs qualify for recovery pursuant to Section 366.93, Florida Statutes, and the NCR Rule.

ISSUE 3: Should the Commission approve what FPL has submitted as its 2010 and 2011 annual detailed analyses of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

FPL: *Yes. FPL's analyses consider a range of fuel and environmental compliance costs to serve as possible future scenarios in which to view the economics of Turkey Point 6 & 7. FPL annually updates these cost projections and updates a number of other assumptions, such as the load forecast, for its economic analyses. Based on these analyses, Turkey Point 6 & 7 was projected in 2010, and is projected in 2011, to be a solidly cost-effective addition for FPL's customers. The results of these robust analyses fully support the feasibility of continuing the Turkey Point 6 & 7 project.*

The 2010 and 2011 Turkey Point 6 & 7 feasibility analyses were presented to satisfy the requirement of subsection 5(c)5 of the NCR Rule, which states: "By May 1 of each year, along

with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant.” Tr. 910 (Sim).

The analytical approach that was used in the 2010 and 2011 feasibility analyses for Turkey Point 6 & 7 is the same approach used in the 2007 Determination of Need filing and the 2008 and 2009 NCR feasibility analyses. Tr. 916 (Sim). Using this approach, FPL calculates the “breakeven” overnight capital costs for the new nuclear units⁴ in a variety of fuel cost and environmental compliance cost scenarios. *See* Tr. 916-18, 937-38 (Sim). FPL updated key assumptions used in this analysis, including forecasted peak and annual loads, forecasted fuel costs, and forecasted environmental compliance costs. Tr. 919-21 (Sim). Additionally, FPL incorporated updates for certain resource planning and EPU project assumption changes. Tr. 946 (Sim).

The results of FPL’s analyses continue to support the feasibility of continuing the Turkey Point 6 & 7 project. In FPL’s 2010 analysis, in seven of seven base case scenarios and in six of seven alternative or “sensitivity” scenarios, the breakeven capital cost was above FPL’s non-binding cost estimate range for Turkey Point 6 & 7. Ex. 99 (p. 31 of 46). In FPL’s 2011 analysis, in six of seven scenarios, the breakeven capital cost is above FPL’s non-binding cost estimate range, and it is within the range in the seventh. Tr. 938 (Sim); Ex. 98.

Importantly, the results have remained favorable despite recently declining natural gas prices. In nominal terms, the Turkey Point 6 & 7 project is currently projected to save customers \$75 billion in fuel cost savings over the life of the new plant. Ex. 88; Tr. 1108 (Olivera). Additionally, Turkey Point 6 & 7 will reduce reliance on natural gas by about 13% and reduce

⁴ The “breakeven” cost is the amount FPL could spend on Turkey Point 6 & 7 while incurring the same costs as an alternative plan that relies on adding natural gas-fired combined cycle generation. Tr. 254 (Scroggs).

carbon dioxide emissions by about 287 million tons. Tr. 914-15 (Sim). It is therefore clear that even with currently low natural gas price forecasts, the project remains highly beneficial for FPL's customers.

The Turkey Point 6 & 7 project also remains feasible taking into account the recent events at the Fukushima Daiichi plant in Japan. U.S. nuclear power plant designs already include appropriate consideration of seismic events and tsunamis, and are designed to cope with station blackout events such as the one experienced in Japan. Tr. 360-61 (Diaz). Further, new nuclear power plant designs, such as the AP1000 that is referenced in the Turkey Point 6 & 7 COLA, are even more robust than existing plants in the areas that were compromised by the earthquake and tsunami in Japan. Tr. 363 (Diaz); Ex. 195 (p. 71). No intervenor challenged this information or presented evidence that questions FPL's feasibility analyses for the Turkey Point 6 & 7 project. FPL's feasibility analyses should therefore be approved.

ISSUE 3A: Was FPL's 2010 decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?

FPL: *Yes. Pursuit of a COL is reasonable because it is a prerequisite for the future construction of Turkey Point 6 & 7. Obtaining a COL is of great value to FPL's customers: FPL's feasibility analysis shows that constructing Turkey Point 6 & 7 is projected to save customers tens of billions of dollars in fuel and environmental costs in a wide range of future fuel and environmental compliance cost scenarios, in addition to reducing reliance on fossil fuels, improving fuel diversity, and reducing emissions. At the same time, continued pursuit of the COL is consistent with the deliberate, step-wise management approach that FPL has taken for Turkey Point 6 & 7 since its inception.*

Pursuit of the Combined Operating License ("COL") is reasonable in light of the high value it holds for customers and is consistent with FPL's deliberate, step-wise approach to managing the Turkey Point 6 & 7 project. As described by FPL Witness Scroggs, the benefits of new nuclear are significant:

The key benefits relate to our core mission of providing reliable electric service at reasonable rates. The fuel required for nuclear generation is not dependent on natural gas pipelines, railroad or maritime distribution systems or volatile energy markets. Therefore, nuclear generation greatly adds to the reliability of a system by increasing fuel diversity, fuel supply reliability and energy security . . . Finally, nuclear is recognized as an important component of meeting the state and national energy goals in addressing greenhouse gas reduction.

Tr. 152-53 (Scroggs). Turkey Point 6 & 7 is also expected to produce significant fuel cost savings for customers. As quantified by FPL Witness Sim, in nominal terms, Turkey Point 6 & 7 is projected to save customers \$1.07 billion in fuel costs during the first full year of operation alone, and is projected to save customers approximately \$75 billion over the life of the plant. Ex. 88. The potential for these significant savings, coupled with the feasibility of the project overall (as discussed in Issue 3), demonstrate why it is appropriate to expend comparatively moderate sums to pursue a COL.

Pursuit of the COL is consistent with FPL's step-wise approach and reflects FPL's commitment to the Turkey Point 6 & 7 project, as discussed above in Issue 2. Dr. Diaz agreed that "the primary focus of the current stage of the project should be to obtain the necessary federal, state and local approvals for construction and operation of the Turkey point 6 & 7 project." Tr. 351 (Diaz). After FPL receives a COL, uncertainty around the approval process will be reduced and the market for equipment and services will be more mature, having leveraged observations from the first wave of projects. Tr. 153 (Scroggs). Additionally, FPL will be able to take advantage of a shorter time frame between incurring preparation phase and construction costs, and the commercial operation dates. *See* Tr. 153-54 (Scroggs). This will provide the best decision basis available. *Id.* Pursuit of the COL is therefore eminently reasonable and consistent with FPL's approach to minimize near term costs for customers and mitigate long term risks for the project.

ISSUE 4: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

FPL: *FPL's current non-binding cost estimate range for Turkey Point 6 & 7 is \$3,482/kW to \$5,063/kW in overnight costs, or \$12.8 billion to \$18.7 billion including carrying costs, as stated in the May 2, 2011 direct testimony of Steven Scroggs. No party presented evidence demonstrating that a different all-inclusive cost estimate is appropriate.*

FPL's current non-binding cost estimate range for Turkey Point 6 & 7 is \$3,482/kW to \$5,063/kW in overnight costs, or \$12.8 billion to \$18.7 billion including carrying costs. Tr. 252-255 (Scroggs). No party presented evidence demonstrating that a different all-inclusive cost estimate is appropriate. Additionally, there is no basis in the record for any claim that FPL has objected or failed to provide this information, which is plainly stated in its prefiled testimony.

ISSUE 5: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

FPL: *For planning purposes, FPL's current estimated commercial operations dates for Turkey Point Units 6 & 7 are 2022 and 2023, respectively, as stated in the May 2, 2011 direct testimony of Steven Scroggs. No party presented evidence demonstrating that different commercial operation dates would be appropriate.*

For planning purposes, FPL's current estimated commercial operation dates of Turkey Point Units 6 & 7 are 2022 and 2023, respectively. Tr. 219 (Scroggs). No party presented evidence demonstrating that different commercial operation dates would be appropriate. Additionally, there is no basis in the record for any claim that FPL has objected or failed to provide this information, which is plainly stated in its prefiled testimony.

ISSUE 6: Should the Commission find that for years 2009 and 2010 FPL's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

FPL: *Yes. FPL's project management, contracting, accounting, and cost oversight controls are comprehensive and overlapping. These controls include FPL's Accounting Policies and Procedures, financial systems and related controls, FPL's annual budgeting and planning process, and Business Unit project-specific controls and processes. The project controls are comprised of various department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project

management and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to the Turkey Point 6 & 7 project are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls.*

As described in detail by FPL witnesses, FPL employs extensive accounting and cost oversight controls for the Turkey Point 6 & 7 project. FPL relies on its *comprehensive corporate* and overlapping business unit controls for recording and reporting transactions associated with any of its capital projects, including the Turkey Point 6 & 7 project. Tr. 476 (Powers). These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures, financial systems and related controls including FPL's general ledger and construction asset tracking system, FPL's annual budgeting and planning process, and Business Unit specific controls and processes. Tr. 476 (Powers). These controls are regularly assessed and audited. *Id.*

At the project level, FPL routinely and methodically evaluates project risks, costs, and issues using a system of internal controls, routine project meetings and communications tools, management reports and reviews, and internal and external audits. Tr. 159 (Scroggs). The project-level internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices providing governance and oversight of project cost and schedule processes. Tr. 159 (Scroggs). The project also generates a series of weekly or monthly reports and has standing meetings to review forward looking analyses with project managers. Tr. 160 (Scroggs); Ex. SDS-9. The project team engages in routine executive briefings, which help maintain tight controls over project progress, expenditures, and key decisions. Tr. 162 (Scroggs).

The record shows that FPL's contracting controls are also reasonable. The preferred approach for the procurement of materials or services is to use competitive bidding. Tr. 168 (Scroggs). However, in certain situations the use of single or sole source procurement is in the

best interests of the Company and its customers. *Id.* When single or sole source procurement is used, a specific procedure requires the proper justification, documentation, and senior-level approval. It also requires validation that the costs associated with the procurement are reasonable. Tr. 170 (Scroggs). Pre-determined sources are also used as appropriate. *See* Tr. 170-71 (Scroggs). The primary contracting activities in 2009 and 2010, described in detail by FPL Witness Scroggs (*see* Tr. 171-72), were subject to these contracting controls as well as the project management controls and oversight described above.

FPL's Turkey Point 6 & 7 internal controls were audited by the Commission Division of Economic Regulation, Office of Auditing and Performance Analysis. Audit Staff determined in 2010 that it had no recommendations for the project (Ex. 116, p. 10 of 56) and concluded in 2011 that "Turkey Point 6 & 7 project controls and oversight remain adequate" (Ex. 115, p. 11 of 42). FPL also engaged Concentric Energy Advisors, Inc. ("Concentric") to perform an independent review of the internal controls utilized by the Company for the Turkey Point 6 & 7 project. After this review, Witness Reed concluded that FPL prudently incurred its costs and that FPL's costs should therefore be approved for recovery. Tr. 588-89 (Reed).

The evidence shows that FPL's project management, contracting, accounting, and cost oversight controls for Turkey Point 6 & 7 are reasonable and prudent. FPL's controls consist of corporate-level and project-level processes, and are routinely tested and audited. No party has disputed the adequacy of FPL's internal controls for Turkey Point 6 & 7.

ISSUE 7: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 and 2010 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

FPL: *For 2009, the Commission should approve \$37,731,525 (system) and \$37,599,045 (jurisdictional) as FPL's final 2009 prudently incurred preconstruction costs, \$857,693 in preconstruction carrying charges, and \$373,162 in jurisdictional carrying charges on prior years' unrecovered site selection costs. The final net 2009 true up amount is (\$10,648,277), currently

included in FPL's 2011 NCR amount. For 2010, the Commission should approve \$25,593,577 (system) and \$25,291,109 (jurisdictional) as FPL's final 2010 prudently incurred preconstruction costs, (\$5,849,900) in preconstruction carrying charges, and \$145,965 in jurisdictional carrying charges on prior years' unrecovered site selection costs. The final net 2010 true up amount is (\$17,949,858), which should be approved and included in FPL's 2012 NCR amount.*

FPL prudently incurred costs in 2009 and 2010 to continue to pursue the federal, state, and local licenses, permits, and agreements needed to construct and operate Turkey Point 6 & 7. *See* 186-93, 208-13 (Scroggs). These actions – which maintained progress on the project while minimizing near-term expenditures – were prudent and necessary to maintain the option of new nuclear for FPL's customers. Additionally, FPL's project management decisions and costs were subject to the robust system of internal controls found to be adequate by Commission Audit Staff and Witness Reed, as described above in Issue 6. Finally, the Turkey Point 6 & 7 project has been shown to be feasible, and solidly cost effective as discussed above in Issue 3. Accordingly, the evidence supports a finding that FPL's 2009 and 2010 costs were prudently incurred.

FPL's 2009 and 2010 Turkey Point 6 & 7 costs are presented in detail in the testimony of FPL Witness Scroggs and FPL Witness Powers, and in the Nuclear Filing Requirements ("NFRs") filed in this docket. The relevant NFRs can be found in Exhibits 2 through 7. For 2009, these NFRs support Commission approval of \$37,731,525 (system) and \$37,599,045 (jurisdictional) as FPL's final 2009 prudently incurred preconstruction costs, \$857,693 in preconstruction carrying charges, and \$373,162 in jurisdictional carrying charges on prior years' unrecovered site selection costs. Tr. 425-26 (Powers); Ex. 31. The final net 2009 true up amount is (\$10,648,277), currently included in FPL's 2011 NCRC recovery amount. Tr. 423, 425-26 (Powers). For 2010, these NFRs support Commission approval of \$25,593,577 (system) and \$25,291,109 (jurisdictional) as FPL's final 2010 prudently incurred preconstruction costs, (\$5,849,900) in preconstruction carrying charges, and \$145,965 in jurisdictional carrying charges

on prior years' unrecovered site selection costs. Tr. 427 (Powers); Ex. 31. The final net 2010 true up amount is (\$17,949,858), which should be approved and included in FPL's 2012 NCR amount. Tr. 427-28 (Powers).

ISSUE 8: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2011 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve \$37,955,536 (system) and \$37,506,973 (jurisdictional) as FPL's reasonable 2011 actual/estimated pre-construction costs, as well as (\$812,681) in pre-construction carrying charges and \$171,052 in jurisdictional carrying charges on prior years' unrecovered site selection costs. The net 2011 true up amount of \$5,383,897 should be included in FPL's 2012 NCR amount. FPL's 2011 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.*

In 2011, FPL has continued to focus on obtaining the necessary federal, state, and local approvals that will define the project and enable construction and operation of Turkey Point 6 & 7. Tr. 219 (Scroggs). FPL continues to control the pace of the project to maintain progress without incurring unnecessary cost or schedule risks. *Id.* FPL's 2011 actual/estimated costs reflect this balanced approach. Further, as discussed above in Issue 3, the Turkey Point 6 & 7 project remains feasible and solidly cost-effective for customers.

FPL included actual costs for January and February of 2011, and developed estimates for the remainder of the year. FPL's estimates were developed in accordance with FPL's budget and accounting guidelines and policies. Tr. 243 (Scroggs). In addition to being subject to the various internal controls discussed above in Issue 6, FPL also compared its estimates to other costs being incurred by the Company for similar activities, and found them to be reasonable. Tr. 244 (Scroggs).

FPL's 2011 Turkey Point 6 & 7 actual/estimated costs are presented in detail in the NFRs filed in this docket. The relevant NFRs can be found in Exhibits 19 and 20. In sum, as

supported by FPL Witness Scroggs and calculated by FPL Witness Powers, the Commission should approve \$37,955,536 (system) and \$37,506,973 (jurisdictional) as FPL's reasonable 2011 actual/estimated pre-construction costs, as well as (\$812,681) in pre-construction carrying charges and \$171,052 in jurisdictional carrying charges on prior years' unrecovered site selection costs. Tr. 464, 467 (Powers). The net 2011 true up amount of \$5,383,897 should therefore be included in FPL's 2012 NCR amount. Tr. 463 (Powers).

ISSUE 9: What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for FPL's Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve \$31,393,088 (system) and \$31,022,080 (jurisdictional) as FPL's reasonable 2012 projected pre-construction costs, as well as \$5,620,298 in pre-construction carrying charges and \$180,883 in carrying charges on prior years' unrecovered site selection costs. The total amount of \$36,823,261 should be included in setting FPL's 2012 NCR amount. FPL's 2012 projected expenditures are supported by comprehensive procedures, processes and controls which help ensure that these projected costs are reasonable.*

In 2012, FPL expects to incur costs to support the continued review of the Turkey Point 6 & 7 applications. Tr. 244 (Scroggs). If conditions warrant, FPL may engage in some preparation phase activities and incur related costs in the latter part of 2012. However, no expenditures for those types of activities have been included in FPL's request. Tr. 245 (Scroggs). FPL developed its projection of 2012 costs in accordance with FPL's budget and accounting guidelines and policies. Tr. 243 (Scroggs). And, as discussed above in Issue 3, the Turkey Point 6 & 7 project remains feasible and solidly cost-effective for customers. These facts support the reasonableness of FPL's 2012 projected costs.

FPL's projected 2012 Turkey Point 6 & 7 costs are presented in detail in the NFRs filed in this docket. The relevant NFRs can be found in Exhibits 19 and 20. In sum, as supported by FPL Witness Scroggs and calculated by FPL Witness Powers, the Commission should approve \$31,393,088 (system) and \$31,022,080 (jurisdictional) as FPL's reasonable 2012 projected pre-

construction costs, as well as \$5,620,298 in pre-construction carrying charges and \$180,883 in carrying charges on prior years' unrecovered site selection costs. Tr. 465, 467-68 (Powers). The total amount of \$36,823,261 should therefore be included in setting FPL's 2012 NCR amount.

C. Extended Power Uprate

ISSUE 10: Should the Commission approve what FPL has submitted as its 2010 and 2011 annual detailed analyses of the long-term feasibility of completing the EPU project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

FPL: *Yes. FPL's analyses consider a range of fuel and environmental compliance costs to serve as possible future scenarios in which to view the economics of the EPU project, and FPL annually updates these cost projections and other assumptions for its analyses. FPL compares the CPVRR of competing portfolios and examines the EPU project as a whole – consistent with the manner in which the project was approved by the Commission. FPL also properly accounts for sunk costs as required by the NCR Rule and the Commission's previous orders. Based on these analyses, the EPU project was projected in 2010, and is projected in 2011, to be a solidly cost-effective addition for FPL's customers.*

The 2010 and 2011 EPU feasibility analyses were presented to satisfy the requirement of subsection 5(c)5 of the NCR Rule, which states: "By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant." Tr. 910 (Sim).

The analytical approach that was used in the 2010 and 2011 feasibility analyses for the EPU project is the same approach used in the 2007 Determination of Need filing and the 2008 and 2009 NCR feasibility analyses. Tr. 916 (Sim). FPL's long-term economic feasibility analyses directly compare resource plans with and without the EPU project. Tr. 917 (Sim). FPL updated key assumptions used in its analyses, including forecasted peak and annual loads, forecasted fuel costs, and forecasted environmental compliance costs. Tr. 919-21(Sim). Additionally, FPL incorporated updates for the incremental output currently being produced by St. Lucie Unit 2 and planned outage days for the four existing nuclear units. Tr. 946 (Sim).

FPL's analyses continue to support the feasibility of completing the EPU project. In FPL's 2010 analysis, the Resource Plan with Nuclear Uprates was projected to have lower CPVRR costs for customers compared to the Resource Plan without Nuclear Uprates in seven of seven base case scenarios, and in 20 of 21 sensitivity scenarios. Ex. 99 (p. 24-25 of 46). In FPL's 2011 analysis, the Resource Plan with Nuclear Uprates was projected to have lower CPVRR costs for customers in all seven projected fuel and environmental compliance cost scenarios. Tr. 949 (Sim). In nominal terms, the EPU project is projected to save customers \$4.8 billion in fuel cost savings, reduce reliance on natural gas by about 2%, and reduce carbon dioxide emissions by about 30 million tons over the life of the uprated plants. Ex. 88. These results indicate that the EPU project remains projected to be a solidly cost-effective capacity and energy addition for FPL's customers. *Id.*

Intervenors attack three aspects of the 2011 EPU feasibility analysis: (i) the exclusion of sunk costs; (ii) the use of the CPVRR approach; and (iii) the evaluation of the EPU project as one project. The intervenors' positions and OPC's witnesses' testimony on these issues reflect an attempt to change the manner in which the EPU project is evaluated late in the game and ignore the Commission's NCR Rule and prior orders.

a) FPL's Analyses Properly Account for Sunk Costs

The testimony sponsored by OPC claiming that sunk costs should be included in the EPU feasibility analyses ignores the plain language of the NCR Rule and specific guidance provided by the Commission regarding the treatment of sunk costs. Tr. 1263-64 (Sim). Rule 25-6.0423(5)(c)5 states that by May 1 of each year, "the utility shall submit an analysis of the long-term feasibility of **completing** the power plant" (emphasis added). It is, at its core, a requirement to examine whether to proceed with the project, in light of remaining costs,

precisely as FPL has done. *See* Tr. 1264 (Sim). The Commission itself has also provided specific guidance regarding the requirements of the long-term feasibility analyses for purposes of complying with this rule. The Commission stated in the determination of need order for Turkey Point 6 & 7 as follows:

FPL shall provide a long-term feasibility analysis as part of its annual cost recovery process which, in this case, shall also include updated fuel costs, environmental forecasts, break-even costs, and capital cost estimates. In addition, FPL should account for sunk costs.

Order No. PSC-08-0237-FOF-EI, p. 29. This passage was quoted in the Commission's 2009 NCR order and described by the Commission as "specific guidance to FPL regarding the requirements necessary to satisfy Rule 25-6.0423(5)(c)5, F.A.C." Order No. PSC-09-0783-FOF-EI, p. 14.

This guidance clearly distinguishes sunk costs from updated capital cost estimates. Consequently, FPL has separated sunk costs from its updated capital cost estimates, resulting in the use of the relevant portion of the updated capital cost estimate (i.e., the "going forward" portion) in its feasibility analysis. Tr. 1264 (Sim). FPL's approach to sunk costs complies with the NCR Rule and follows the guidance provided by the Commission.

FPL's exclusion of sunk costs is also consistent with the well-established economic principle that sunk costs play no role in evaluating *whether to proceed* with a project. This economic principle is not contingent upon any certain conditions, such as whether the total cost of a project is changing. Tr. 1265 (Sim). As explained by FPL Witness Reed, the irrelevance of sunk costs and the more appropriate consideration of to-go costs for purposes of determining the forward-looking economic feasibility of a project "are basic principles of economics and corporate finance." Tr. 1172 (Reed). Due to the fact that a sunk cost cannot be changed or removed based on decision-making today, those costs do not affect the analysis underlying a

decision as to whether it is economically advisable to complete a project or not. *Id.*

Even if the Commission were to add sunk costs back into the analysis as OPC's witnesses suggest, this would have zero net effect on the results of the analysis. OPC Witness Smith attempted to add sunk costs back into the analysis but he incorrectly added them only to the cost of the portfolio that includes the EPU project (by subtracting them from the economic advantage of the portfolio that includes the EPU project). *See* Tr. 998 (Smith). Because sunk costs will be recovered (or disallowed) in *both* resource portfolios evaluated, they would need to be added to (or excluded from) *both* portfolios, thus canceling each other out. Tr. 1267-68 (Sim). For all the above reasons, the Commission should accept FPL's treatment of sunk costs.

b) FPL's CPVRR Analysis Should Continue to be Accepted

The testimony suggesting that FPL abandon the CPVRR-based approach to evaluating the feasibility of the EPU project should similarly be rejected. The traditional and historically acceptable way in which the evaluation of two generation options is performed is to compare the total CPVRR costs of two resource plans, in which each resource plan has one of the two competing generation options. Tr. 1270 (Sim). This was the analysis FPL performed to evaluate the EPU project. Tr. 916 (Sim).

In 2007, when FPL began evaluating the Turkey Point 6 & 7 project, many key parameters of the project were unknown and could not be reasonably estimated. *Id.* For example, at that time FPL had not yet decided on a reactor technology. As a consequence, there was a wide range of potential MW that could be supplied by two new nuclear units. *Id.* In light of the significant uncertainty surrounding the Turkey Point 6 & 7 project, FPL chose to introduce a new and different approach for evaluating the Turkey Point 6 & 7 project – the breakeven analysis. Tr. 1271 (Sim). Now, with less than one and a half years remaining on the EPU

project, and more than three years after the Commission's determination of need for the EPU project, OPC and other intervenors claim that FPL should use the approach it developed for Turkey Point 6 & 7 for the EPU project – and that the breakeven approach should be used as a mechanism for disallowing costs. Use of this mechanism for potential disallowances would be illegal as discussed below in Issue 11 and Issue 12.

The breakeven approach recommended by OPC would restrict the currently-broad examination of the EPU project by focusing on a single scenario of fuel and environmental compliance costs. Tr. 1274 (Sim). FPL's long standing approach examines the feasibility of the project in a wide range of fuel cost and environmental cost scenarios.⁵ *Id.* But the recommendation of OPC's witnesses would seem to require that a single breakeven cost value be used. This significantly narrows the perspective from which the project is judged to one scenario of fuel and environmental compliance costs which will change every year. *Id.* The imposition of an arbitrarily set standard that will change from year to year is not an improvement over FPL's current, and historically accepted, CPVRR feasibility analysis approach.⁶

c) The EPU Project Should Continue to be Evaluated as One, Commission-Approved Project

Intervenors' final attack on FPL's EPU feasibility analysis is a recommendation that the EPU project should be split in half and evaluated as two distinct projects – one at each site – approximately four years after the EPU project *in its entirety* was proposed by FPL and approved

⁵ The current results of FPL's analyses show that the EPU project will be cost-effective in each of these scenarios. Tr. 949 (Sim).

⁶ OPC's position also overlooks the fact that FPL's current CPVRR analysis already provides breakeven cost information. Tr. 1273 (Sim). The projected CPVRR benefits for the EPU project in each fuel and environmental compliance cost scenario also represents the CPVRR amount of additional money that could be spent on the EPU project before reaching a breakeven point with the natural gas alternative. *See* Tr. 1273 (Sim).

by the Commission.⁷ Tr. 1276 (Sim). FPL has consistently managed the EPU project as a comprehensive project encompassing the work at both the Turkey Point site and the St. Lucie site. Moreover, the Commission approved the project *in its entirety* in its need determination for the overall system and customer benefits that would be realized from the more than 400 MW the EPU project – as a whole – was anticipated to provide. See Order No. PSC-08-0021-FOF-EI (issued Jan. 7, 2008). OPC’s recommendation that the analysis of the EPU project should, at this late point in time, be broken out into two separate, site-specific parts ignores the very basis upon which the project was proposed and approved.

As demonstrated by FPL’s witnesses, intervenors’ positions also ignore the cost savings and efficiencies that have been gained by proceeding with one, comprehensive project. Performing an EPU on all units within one fleet simultaneously allows the project team to share resources and lessons learned from performing the numerous outages with similar work scopes, thereby increasing efficiency and reducing costs. Tr. 1207-08 (Jones). Additionally, engineering and construction strategy for one unit can be used to support engineering and construction strategy for the other units. *Id.* Contracts were also negotiated on the basis that the EPU project was one project. Tr. 1207-08 (Jones); Tr. 1276 (Sim). In order to perform separate feasibility analyses, FPL would therefore have to make a number of retroactive “what if” assumptions regarding what the costs would be at each site if the project had not been undertaken in this manner. And, like costs, benefits would be equally difficult to segregate. Tr. 1277 (Sim).

The evidence shows that FPL’s 2010 and 2011 feasibility analyses for the EPU project are robust, consider a broad range of potential future fuel and environmental cost scenarios,

⁷ FPL agrees that there are differences between the sites. The Turkey Point site, for example, offers several significant benefits that are not accounted for in FPL’s feasibility analysis. The uprate of the Turkey Point units will increase capacity near FPL’s load center, reducing FPL system transmission line losses and enhancing efficiency (and increasing savings) for FPL’s customers. Tr. 1284 (Sim). Additionally, this increased capacity will help maintain balance between load and generating capacity in Southeastern Florida, helping to defer the need to build new transmission lines into the area. 1285 (Sim).

utilize annually updated assumptions, properly account for sunk costs consistent with the NCR Rule and past Commission orders, and evaluate the EPU project for what it is – one comprehensive effort to bring customers the benefits of approximately 450 MWe of additional clean, low-cost baseload capacity. FPL’s 2010 and 2011 EPU feasibility analyses, which demonstrate the cost-effectiveness of completing the EPU project, should therefore be approved.

ISSUE 10A: STRICKEN – PARTIES TO ADDRESS WITHIN ISSUE 10

ISSUE 10B: STRICKEN – PARTIES TO ADDRESS WITHIN ISSUE 10

ISSUE 11: Should the Commission find that for the years 2009 and 2010 FPL’s project management, contracting, accounting and cost oversight controls were reasonable and prudent for the EPU project?

FPL: *Yes. FPL’s 2009 and 2010 project management, contracting, accounting, and cost oversight controls are comprehensive and overlapping, and support the prudence of FPL’s decisions and costs. While outside the scope of this proceeding, FPL’s 2007 decisions to expedite the EPU project and undertake the EPU project based on the favorable results of its CPVRR analysis were also prudent. Intervenors’ attempts to litigate these matters four years later are contrary to Florida law. Furthermore, intervenors have failed to demonstrate that these disputed 2007 decisions affected FPL’s 2009 or 2010 costs in anyway, offering instead an illegal disallowance mechanism. Intervenors’ positions lack legal and factual merit and should be rejected.*

The Commission should determine that FPL’s EPU project management in 2009 and 2010 was prudent, supporting a finding that 2009 and 2010 costs were prudently incurred, for the following reasons:

- FPL has extensive corporate-level and project-level internal controls in place to govern project management, contracting, project accounting, and cost oversight, and no intervenor has disputed the adequacy of any particular internal control or the prudence of any particular 2009 or 2010 management decision regarding the EPU project.
- The only intervenor to present witnesses in this case was OPC, and OPC’s Witness Jacobs agreed that FPL’s 2009 and 2010 EPU project management and costs incurred were prudent. Tr. 1058-60, 1062-63 (Jacobs).
- Intervenors’ attacks on the prudence of FPL’s 2007 decisions to pursue the EPU project are legally impermissible, outside the scope of this proceeding, wrong as a

factual matter, and fail to meet the standard for disallowance of nuclear project costs, and therefore should be rejected.

- OPC's proposed disallowance mechanism is contrary to Florida's NCR law and this Commission's NCR Rule, and is an attempt to relitigate the "risk sharing mechanism" that was rejected by this Commission last year. Such a mechanism cannot be used to disallow costs that OPC's witness agreed were prudently incurred.

a) FPL's EPU Internal Controls Are Reasonable and Prudent

As described in detail by FPL witnesses, FPL employs extensive accounting and cost oversight controls for the EPU project. FPL relies on its comprehensive corporate and overlapping business unit controls for recording and reporting transactions associated with all of its capital projects, including the EPU project. Tr. 402, 435 (Powers). These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures, financial systems and related controls including FPL's general ledger and construction asset tracking system, FPL's annual budgeting and planning process, and Business Unit specific controls and processes. Tr. 402, 435 (Powers). These controls are regularly assessed and audited. Tr. 403, 436 (Powers).

At the project level, FPL has robust project planning, management, and execution processes in place, which include the use of project guidelines and Project Instructions. Ex 50; Ex. 62; Tr. 665, 704 (Jones). FPL also has in place a Nuclear Business Operations group, which provides accounting and regulatory oversight for the EPU project independent from the project team. Tr. 666-67, 704-05 (Jones). The EPU project team holds a number of regularly scheduled meetings and produces several reports to help communicate the status of the project, scope changes, schedule and cost variances, safety performance, risks, and risk mitigation. Ex. 52; Ex. 64; Tr. 669-70, 708-09 (Jones). The risk management process itself is governed by two Project Instructions in conjunction with a Project Risk Committee to ensure appropriate actions are taken to mitigate or eliminate identified risks. Tr. 671, 709 (Jones).

In mid-2009, FPL Witness Jones became the EPU Vice President in conjunction with broader Nuclear Division organizational changes. The EPU project was also reorganized to move more responsibility to each site where implementation would actually take place. Tr. 665-66 (Jones). As testified by FPL Witness Jones:

FPL did not incur any imprudent costs as a result of the project reorganization. To the contrary, reorganizing project management by shifting more responsibilities to the sites was the prudent course of action as the project enters its implementation stage. With respect to the Nuclear Division reorganization, this change did not affect the types or amounts of costs incurred for the EPU project.

Tr. 678 (Jones). This reorganization was also governed by Project Instructions, and in accordance therewith, a formal “Change Management Plan” was developed to support the organizational transition. Ex. 201. Commission Audit Staff specifically examined the reorganization, and found “no evidence of improper or duplicative invoicing, unnecessary work or rework, overpayments, overcharging, or other examples of mismanagement by the former EPU management team.” Ex. 115 (p. 28 of 42).

FPL’s contracting controls for the EPU project are also reasonable. The standard approach for the procurement of materials or services is to use competitive bidding. Tr. 672, 711 (Jones). However, the use of single source, sole source, and Original Equipment Manufacturer providers is also necessary in certain situations. *Id.* When single or sole source procurement is used, FPL’s policies require proper documentation of justifications and senior-level management approval. *Id.* The primary contracting activities in 2009 and 2010, described in detail by FPL Witness Jones (*see, e.g.*, Tr. 680), were subject to these controls as well as the project management controls and oversight described above.

FPL’s EPU internal controls were audited by the Commission Division of Economic Regulation, Office of Auditing and Performance Analysis. Audit Staff determined in 2010 that

the Commission should closely examine costs associated with the reorganization Ex. 116 (p. 56 of 56). This recommendation was favorably resolved in Audit Staff's 2011 report as described above. Ex. 115 (p. 28 of 42).

In 2011, Audit Staff recommended that the Commission examine costs associated with two 2010 work stoppages on the project that were caused by vendor personnel errors. Ex. 115 (p. 31 of 42). A "work stoppage" is the suspension of all work in a given physical area of a plant or project. Work is typically halted to address personnel safety or to protect plant equipment and take corrective actions. Tr. 848 (Derrickson). As explained by FPL Witness Derrickson, work stoppages in response to personnel errors "are not only appropriate, they are necessary to ensure safety and reemphasize training, and it is not out of the ordinary that such work stoppages would occur during a major construction project at a nuclear power plant." Tr. 848 (Derrickson).

When human errors occur, the prudence of the utility should be judged by examining the prudence of the management practices in place, such as whether the utility hired and provided appropriate oversight with respect to properly qualified and trained vendors or employees. *See, e.g., Florida Power Corporation v. Public Service Commission*, 424 So. 2d (Fla. 1982) (applying standard that policies, decisions, and procedures of management are the test for utility prudence); *see also, Business and Professional People for the Public Interest v. Illinois Commerce Commission*, 665 N.E. 2d 553 (Ill. App. 3d 1996) (approving commission's order allowing electric utility full recovery of its fuel costs after shutdown caused by employee error where evidence showed utility's management actions were prudent because employees were properly hired and trained). In this case, FPL has shown that it was prudent in the hiring of each particular vendor, has reasonable contract terms governing its relationships with its vendors, and has provided reasonable training and/or oversight. Tr. 1215 (Jones); Tr. 849 (Derrickson).

Because FPL's management practices were prudent, any associated project costs should be recoverable.

FPL also engaged Concentric to perform an independent review of the internal controls utilized by the Company for the EPU project in 2009, and engaged William Derrickson to review project management in 2010. Witness Reed concluded that FPL's 2009 expenditures on the EPU project were prudently incurred. Tr. 560 (Reed). Similarly, Witness Derrickson testified as follows: "[b]ased on my review of relevant controls, procedures, and business documents, my interviews with various project personnel, and site visits, my conclusion is that FPL prudently managed the EPU project in 2010." Tr. 822 (Derrickson). This testimony remains uncontroverted in the record. Any claim that FPL abandoned project controls (i.e., as a result of the expedited approach discussed below), is unsupported and should be rejected.⁸

The record overwhelmingly demonstrates that FPL's project management, contracting, accounting and cost oversight controls are reasonable and prudent. FPL's controls consist of corporate-level and project-level processes, and are routinely tested and audited. These controls help ensure that costs are incurred prudently.

b) FPL's 2007 Decisions to Expedite the EPU Project and to Undertake the Project Based on Favorable CPVRR Results Are Outside the Scope of This Proceeding and Were Prudent

As the Commission has recognized, the purpose of this proceeding is to examine the prudence of FPL's 2009 and 2010 actions and costs -- not decisions or actions that date back to 2007 which could have been raised by parties in previous proceedings. See Tr. 60 ("It's the actions that occurred during the year in question and the specific costs incurred on what is

⁸ OPC's Witness Jacobs pointed to self-critical documents detailing "lessons learned." These documents demonstrate that FPL is a learning and self-improving organization. Tr. 1239 (Stall); Tr. 646-647 (Reed). They do no indicate an absence of project controls.

prudent or imprudent.”) (Commissioner Balbis); Tr. 61 (“I think that we need to be limited to the 2009 – 2009, 2010 costs.”) (Commissioner Brown); Tr. 72 (“...we’re not talking about ’07. That decision is made and we’ve moved forward from that.”) (Chairman Graham); Tr. 1063 (“The reason I asked that question is because we’re, we’re looking at 2009 and 2010.”) (Commissioner Brisé); Tr. 1112 (“When the need determination was granted, it is my belief, and I think its clear in the order . . . was my view at the time that the additional fuel diversity was an important component of the project. I continue to believe that, but I do not believe that we are litigating that today.”) (Commissioner Edgar).

Nonetheless, the heart of OPC’s case is a claim that two 2007 decisions were imprudent: the decision to propose the EPU project as an expedited project⁹ to meet its customers’ 2012 need for new generation, and the decision to undertake the EPU project based on the favorable results of its traditional, and historically accepted, CPVRR analyses. OPC’s arguments that these 2007 decisions were imprudent should be rejected because they ignore the substantive law controlling this case, are outside the scope of this proceeding as determined by Commission rule, and rely upon impermissible hindsight. Further, because OPC has failed to identify a single 2009 or 2010 action or cost that was imprudent, OPC’s positions, similar positions of other intervenors, and the testimony filed on behalf of OPC are insufficient to support a finding that certain costs were imprudently incurred.

Intervenors’ positions on FPL’s 2007 decisions to undertake the EPU project on an expedited basis and to undertake the EPU project based on the favorable results of its CPVRR analyses fail for four primary reasons:

- Intervenors’ claims are a prohibited collateral attack on the Commission’s 2008 need determination order approving FPL’s 2007 EPU proposal;

⁹ Whether called “fast tracked” or “expedited,” the project was proposed in 2007 and approved in 2008 to meet a 2012 need.

- Intervenors' positions challenging FPL's continuation of the EPU project consistent with the manner it was proposed and approved in the need determination are contrary to Section 403.519(4)(e), Florida Statutes, which states that "[p]roceeding with the construction of the nuclear or integrated gasification combined cycle power plant following an order by the commission approving the need for the nuclear or integrated gasification combined cycle power plant under this act shall not constitute or be evidence of imprudence";
- Attacking the prudence of a 2007 decision is not within the scope of the present NCR proceeding, which is limited to a prudence review of 2009 and 2010 actions and costs. *See* Rule 25-6.0423(5)(c)a, Fla. Admin. Code, and Order No. PSC-11-0095-FOF-EI (issued Feb. 2, 2011) (deferring FPL's 2010 NCR issues including 2009 prudence determinations); and
- Intervenors' positions are legally barred "hindsight" claims. They use 2009, 2010 and 2011 information to determine that they disagree with a 2007 project management decision that was approved by the Commission.

FPL incorporates by reference herein its Motion to Strike OPC's testimony and issues filed July 21, 2011, fully presenting each of the above legal arguments.

In addition to being legally impermissible, the intervenors' criticisms regarding the prudence of FPL's 2007 decisions are unsupported and incorrect. The evidence presented in this proceeding shows that expediting the EPU project was prudent, in light of the project cost increases and lost fuel cost savings that would have resulted from the intervenors' proposed slower, sequential approach. If FPL had chosen to perform each phase of the project in sequence, the project would have taken a total of approximately eleven and half years, or six years longer than the current EPU project schedule. Tr. 1204 (Jones); Ex. 131. The total cost of an eleven and a half year project would have been significantly greater. For example, costs for project personnel would have been greater due to reduced efficiencies, lost continuity, increased turnover, and longer durations for project personnel; equipment costs would be greater due to escalation in fabrication and commodity prices; vendor pricing would be greater due to increased risk of longer time frame to implement the project; and overhead and indirect costs would be

greater. Tr. 1204 (Jones). Further, carrying charges charged to customers through the NCR Clause would be much greater due to longer time periods between expenditures and placing equipment in service. *Id.* There is simply no basis for OPC Witness Jacobs's claim that project costs are higher due to the expedited approach – the record in fact shows the contrary – and this claim should be rejected.

FPL's expedited project approach also benefits customers by providing fuel cost savings sooner. Proceeding with the EPU project on a non-expedited schedule would have deprived FPL's customers of more than \$800 million in fuel cost savings. Tr. 1259, 1279-80 (Sim). The fuel cost savings, improved fuel diversity, increased system reliability, and emission reduction benefits to FPL's customers expected from putting the EPU project into service on an expedited basis clearly support the prudence of FPL's 2007 decision to pursue the EPU project on an expedited schedule.

In contrast, OPC offers no more than speculative statements that there *may* be current or future costs that result from the expedited approach that was undertaken by FPL in 2007 – and fails to identify or quantify any such cost. *See, e.g.*, Tr. 1010 (Jacobs) (stating FPL may “potentially” be in the position of incurring unreasonable costs). In addition to representing a collateral attack on this Commission's need determination, exemplifying impermissible hindsight, drifting far outside the scope of issues properly before the Commission in this proceeding, and lacking any factual support whatsoever, such speculation does not satisfy the requirement that *certain* costs be shown to be imprudently incurred before a disallowance is appropriate. *See* Section 403.519(4)(e), Fla. Stat. (2011). For these reasons as well, OPC's claims and similar intervenor positions should be rejected.

The intervenors' position regarding FPL's decision to undertake the EPU project without a breakeven analysis can be summarized as "no good deed goes unpunished." They take an analytical approach developed by FPL for the purposes of evaluating Turkey Point 6 & 7 – with its comparatively longer and riskier schedule – and claim that this approach is so good that it was *imprudent* of FPL not to use it for the EPU project back in 2007. This position fails to recognize the specific circumstances surrounding its adoption for use in the Turkey Point 6 & 7 analysis, as well as the breadth and depth of FPL's CPVRR approach, which forms a sound basis for prudent decision-making. *See* Tr. 1274 (Sim). The CPVRR approach, which was accepted by the Commission in its affirmative determination of need order for the EPU project in 2008, is a robust analysis that has been consistently used by FPL and approved by the Commission for a variety of generation resource additions.¹⁰ *See* Docket No. 070602-EI, *see also* Docket No. 080203-EI, 080245-EI, 080246-EI. The breakeven approach recommended by OPC, on the other hand, would restrict the breadth of the view by which the EPU project is judged to a single, arbitrary, and annually-changing scenario of fuel and environmental compliance costs as described above in Issue 10. Tr. 1274-75 (Sim).

c) OPC's Proposed Disallowance Mechanism Is Contrary to Florida Law

OPC has failed to meet the requirements of the NCR Rule by failing to specify even a single dollar of costs it claims were imprudently incurred, so instead, OPC has proposed a mechanism that disallows all costs above a particular threshold – a theoretical breakeven amount. The proposed mechanism would violate the NCR statutes' mandate that utilities be permitted to recover *all* prudently incurred costs. *See* Section 403.519(4), Fla. Stat. (2011), and Section 366.93(2), Fla. Stat. (2011). Further, OPC's request for a "breakeven" disallowance mechanism

¹⁰ Use of FPL's CPVRR-based feasibility analysis to evaluate the EPU project as a whole – rather than as two separate projects – is appropriate as discussed in Issue 10.

is nothing more than a form of risk-sharing mechanism, a concept that was firmly rejected by this Commission earlier this year as contrary to the NCR statutes. *In re Nuclear Cost Recovery Clause*, Docket No. 100009-EI, Order No. 11-0095-FOF-EI (issued Feb. 2, 2011); Order No. 11-0224-FOF-EI (issued May 16, 2011) (denying reconsideration).

Section 366.93 and Section 403.519(4)(e) of the Florida Statutes each states that utilities shall be permitted to recover *all* prudently incurred costs. It is clear that “the only statutory requirement [for cost recovery] is that the utility prove that its costs in new nuclear power plant capacity were prudently incurred.” *In Re Nuclear Cost Recovery Clause*, Docket No. 100009-EI, Order No. 11-0095-FOF-EI, (issued Feb. 2, 2011). There is no requirement that the utility prove its costs “breakeven” with those costs associated with an alternate generation plan in order to qualify for recovery. Moreover, OPC’s Witness Jacobs admitted that the mechanism would have the effect of disallowing costs incurred due to factors outside of the utility’s control. Ex. 198 (p. 25). Such a mechanism is in direct conflict with the requirement in Section 403.519(4)(e) that “[i]mprudence shall not include any cost increases due to events beyond the utility’s control.”

As part of the 2010 NCR docket, OPC and other intervenors proposed a “risk sharing” mechanism for the first time in the NCR process. *In Re Nuclear Cost Recovery Clause*, Docket No. 100009-EI, Order No. 11-0095-FOF-EI, (issued Feb. 2, 2011). The exact operation of such a proposed mechanism was unclear, but the intervenors suggested that costs incurred in the development of a nuclear power plant that exceed some “appropriate, established cost threshold” may not be recovered by the utility developing the nuclear power plant, regardless of whether those costs were prudently incurred. *In Re Nuclear Cost Recovery Clause*, Docket No. 100009-EI, Order No. 11-0224-FOF-EI (issued May 16, 2011, denying reconsideration) p. 2. The Commission steadfastly maintained that Section 366.93 prohibits any recovery mechanism that

would prevent a utility from recovering all its prudently incurred costs. Order No. 11-0095-FOF-EI, (issued Feb. 2, 2011), pp. 8-9. The only difference between the mechanism proposed last year and the mechanism proposed this year is that the label has changed. OPC has now defined its “appropriate, established cost threshold” as being the breakeven cost associated with the EPU project. While OPC may be attempting to package its concept differently, the approach remains as illegal as it was last year, and should again be rejected by the Commission.

Further, as explained by FPL Witness Deason, the OPC proposal is a “mid-stream attempt to fundamentally and inappropriately change the standard for determining cost recovery through the nuclear cost recovery clause.” Tr. 1127 (Deason). This constitutes bad policy and is counter to the stated goals of the State of Florida. *Id.*; *see also* Tr. 1194-1195 (Reed). It is also unnecessary – customers are fully protected from imprudent costs through the annual prudence and reasonableness reviews, during which specific costs may be challenged and subject to disallowance if found to be imprudent.¹¹ Tr. 1128 (Deason). There is nothing magical about the break-even point that makes costs become unreasonable or imprudent, as OPC Witness Jacobs implies. Tr. 1129 (Deason). Rather, it is the nature of the costs themselves and whether the costs have been prudently incurred and managed that determines their recoverability. *Id.* Neither OPC nor any other intervenor identified any 2009 or 2010 imprudently incurred cost.

Finally, it is important to note that FPL would not have proceeded with the EPU project on an expedited basis absent the confirmation provided by the Commission in its 2008 need determination order that the EPU project is subject to Florida’s NCR regulatory framework. Tr. 1100 (Olivera). OPC’s claims attempt to undermine the very statutory and regulatory framework

¹¹ In addition to being legally barred, counter to the State’s policy to promote investment in nuclear generation, and unnecessary to protect customers against imprudent costs, the proposed mechanism is also illogical. A breakeven analysis would reveal nothing about the prudence or imprudence of the 2007 decision to expedite the project. Further, as described above in Issue 10, the mechanism would appear to require the use of one, arbitrarily selected and ever-changing fuel forecast and environmental cost scenario. Tr. 1274 Sim.

upon which FPL has relied for four years. Tr. 1195 (Reed). OPC's recommendations therefore represent poor regulatory policy, directly in conflict with Florida's legislative policy of encouraging investment in additional nuclear generation to serve customers, and would undermine regulatory certainty and stability in Florida.

ISSUE 12: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 and 2010 prudently incurred costs and final true-up amounts for the EPU project?

FPL: *For 2009, the Commission should approve \$237,677,629 in EPU expenditures and \$498,077 in O&M costs (system). The jurisdictional costs, net of joint owner and other adjustments, are \$236,605,950 in EPU expenditures, \$16,459,883 in carrying charges, and \$480,934 in O&M costs. 2009 jurisdictional base rate revenue requirements are \$12,802. The net 2009 true up amount is (\$3,971,698). For 2010, the Commission should approve \$309,982,999 in EPU expenditures and \$7,176,395 in O&M costs (system). The jurisdictional costs, net of joint owner and other adjustments, are \$289,147,514 for EPU expenditures, \$41,568,087 in carrying charges, and \$7,067,402 in O&M costs. 2010 jurisdictional base rate revenue requirements are \$414,079. The net 2010 true up amount of \$1,531,532 should be included in FPL's 2012 NCR amount.*

FPL prudently incurred costs in 2009 and 2010 to submit License Amendment Requests ("LARs") to the NRC, procure long lead equipment and vendor services, perform modification engineering, and prepare for implementation during outages in 2011 and 2012. *See* Tr. 677, 715-16 (Jones). FPL's project management decisions and costs were subject to the robust system of internal processes, procedures and controls described above in Issue 11. OPC's Witness Jacobs himself testified that there were no imprudently incurred costs in 2009 or 2010. Tr. 1059, 1063 (Jacobs). OPC's unfounded criticisms of the prudence of FPL's 2007 decisions and OPC's unlawful request for relief should be rejected for the reasons stated above in Issue 11. Accordingly, the evidence strongly supports a finding that all of FPL's 2009 and 2010 EPU costs were prudently incurred and should be approved.

FPL's 2009 and 2010 EPU costs are presented in detail in the testimony of FPL Witnesses Jones and Powers, and in the NFRs filed in this docket. The relevant NFRs can be

found in Exhibits 49 and 61. For 2009, these NFRs support Commission approval of \$237,677,629 in EPU expenditures and \$498,077 in O&M costs (system). Tr. 397 (Powers). The jurisdictional costs, net of joint owner and other adjustments, are \$236,605,950 in EPU expenditures, \$16,459,883 in carrying charges, and \$480,934 in O&M costs. *Id.*; Ex. 49 (p. 15). Jurisdictional base rate revenue requirements for 2009 are \$12,802. Tr. 400 (Powers). The net 2009 true up amount is (\$3,971,698). Tr. 397 (Powers). For 2010, these NFRs support Commission approval of \$309,982,999 in EPU expenditures and \$7,176,395 in O&M costs (system). Tr. 429-30 (Powers). The jurisdictional costs, net of joint owner and other adjustments, were \$289,147,514 for EPU expenditures, \$41,568,087 in carrying charges, and \$7,067,402 in O&M costs. Tr. 429-30. 480 (Powers); Ex. 61 (p. 15). Jurisdictional base rate revenue requirements in 2010 were \$414,079. Tr. 430 (Powers). The net 2010 true up amount of \$1,531,532 should be included in FPL's 2012 NCR amount. *Id.*; Tr. 480 (Powers).

ISSUE 13: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2011 costs and estimated true-up amounts for FPL's EPU project?

FPL: *The Commission should approve \$587,845,328 (system) in EPU expenditures and \$12,721,405 (system) in O&M costs as FPL's reasonable actual/estimated 2011 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$558,520,431 for EPU expenditures, \$70,287,307 in carrying charges, and \$12,263,818 in O&M costs. Additionally, reasonable jurisdictional base rate revenue requirements are \$16,585,797, with carrying charges of (\$432,212). The 2011 true up amount is an under recovery of \$21,157,568 in carrying costs, an under recovery of \$8,346,616 in O&M costs, and an over recovery of \$11,684,594 in base rate revenue requirements with carrying charges of (\$432,212). The net amount of \$17,387,377 should be included in FPL's 2012 NCR amount.*

In 2011, FPL incurred costs necessary to submit its final EPU LAR to the NRC, receive long lead equipment at the project sites, support and manage its EPC vendor's preparation of modification packages, successfully complete implementation activities during two outages, and prepare for a third outage in November. Tr. 746 (Jones). The work conducted during the St. Lucie Unit 2 outage, which was completed in April, has already resulted in customers benefiting

from an additional 29 MWe of nuclear generation. Tr. 775 (Jones). FPL also received NRC approval of one LAR, with three others accepted for review. Tr. 739, 775-65, 779 (Jones).

FPL included actual costs for January and February of 2011, and developed estimates for the remainder of the year. FPL's estimates were developed from Project Controls forecasts derived from the best available information for all known project activities, including scheduled milestone payments for long lead material contracts. Tr. 747 (Jones). Careful vendor oversight, use of competitive bidding when appropriate, and the application of the robust internal schedule and cost controls and internal management processes discussed above in Issue 11 all helped ensure that FPL's projected 2011 expenditures were reasonable. Tr. 748 (Jones). No intervenor presented evidence purporting to demonstrate that any particular 2011 cost is unreasonable.

As mentioned above in Issue 11, Staff recommended that the Commission examine costs associated with EPU work stoppages, including a 2011 work stoppage on the project. Ex. 115 (p. 31 of 42). That work stoppage was caused by an error of an employee of Siemens, a highly qualified vendor that was properly selected by FPL. Tr. 1215 (Jones). *Id.* When human errors occur, the prudence of the utility should be judged by examining the prudence of the management practices in place, such as whether the utility hired and provided appropriate oversight with respect to properly qualified and trained vendors or employees. *See, e.g., Florida Power Corporation v. Public Service Commission*, 424 So. 2d (Fla. 1982) (applying standard that policies, decisions, and procedures of management are the test for utility prudence); *see also, See, e.g., Business and Professional People for the Public Interest v. Illinois Commerce Commission*, 665 N.E. 2d 553 (Ill. App. 3d 1996) (approving commission's order allowing electric utility full recovery of its fuel costs after shutdown caused by employee error where evidence showed utility's management actions were prudent because employees were properly

hired and trained). FPL was prudent in both the hiring and management of Siemens. Tr. 1215 (Jones); 854-55 (Derrickson). As the Original Equipment Manufacturer of the turbine generators, Siemens both owns the intellectual property and has the skill sets necessary to perform the work for which it was hired. *Id.* FPL followed its procedures and processes to ensure proper oversight of the work. *Id.* According to Witness Jones:

We do provide oversight, and logistic support, and audits of their procedures and their training . . . to ensure quality work. But, as with any major construction project, you cannot totally eliminate human error. The standard of perfection is just not achievable.

Tr. 789 (Jones). Thus far, only a potential project cost impact has been identified by FPL, and commercial negotiations with Siemens are ongoing. Tr. 792 (Jones). Regardless, the evidence shows that FPL's management actions were prudent, and therefore any costs resulting from personnel error of its properly qualified vendor should be allowed to be recovered.

FPL's 2011 EPU actual/estimated costs are presented in detail in the NFRs filed in this docket. The relevant NFR can be found in Exhibit 70. In sum, the Commission should approve \$587,845,328 (system) in EPU expenditures and \$12,721,405 (system) in O&M costs as FPL's reasonable actual/estimated 2011 costs. Tr. 468-70 (Powers). The resultant jurisdictional costs, net of joint owner and other adjustments, are \$558,520,431 for EPU expenditures, \$70,287,307 in carrying charges, and \$12,263,818 in O&M costs. *Id.*; Tr. 481 (Powers); Ex. 70. Additionally, reasonable jurisdictional base rate revenue requirements are \$16,585,797, with carrying charges of (\$432,212). Tr. 482 (Powers). The 2011 true up amount is an under recovery of \$21,157,568 in carrying costs, an under recovery of \$8,346,616 in O&M costs, and an over recovery of \$11,684,594 in base rate revenue requirements with carrying charges of (\$432,212). Tr. 470, 481-82 (Powers). The net amount of \$17,387,377 should be included in FPL's 2012 NCR amount. Tr. 475, 481 (Powers).

ISSUE 14: What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for FPL's EPU project?

FPL: *The Commission should approve the amounts of \$736,198,427 in EPU expenditures and \$5,626,844 in O&M costs as FPL's reasonably projected 2012 (system) costs. The jurisdictional costs, net of joint owner and other adjustments, are \$701,018,839 in EPU expenditures, \$67,264,453 in carrying charges, and \$5,461,197 in O&M costs. In addition, reasonable jurisdictional base rate revenue requirements are \$80,190,773. The total amount of \$152,916,422 should be included in FPL's 2012 NCR amount. FPL's 2012 projected construction expenditures are supported by comprehensive procedures, processes and controls which help ensure that these projected costs are reasonable.*

In 2012, FPL projects to incur costs necessary to continue responding to NRC requests for additional information related to its LARs, prepare modification packages for the final outages, and implement those modification packages in the last three outages. Tr. 756 (Jones). Implementation requires planning, schedule integration, and the actual execution of the physical work, including extensive testing and systematic turnover to plant operations. *Id.* FPL's 2012 projections were developed from Project Controls forecasts, similar to how FPL's 2011 estimates were developed. Tr. 757 (Jones). FPL's projected 2012 costs reflect the significant amount of implementation work that is planned to occur in that year and the large number of systems going into service as the project nears completion. Tr. 761 (Jones). Project staffing levels, including vendor staffing, will be higher to support engineering, design, implementation, and outages. Tr. 761-62 (Jones). The majority of FPL's costs, however, will continue to flow from the contracts introduced and reviewed in prior NCR proceedings. Tr. 762 (Jones). No intervenor presented evidence purporting to demonstrate that any particular 2012 cost is unreasonable.

FPL's 2012 EPU projected costs are presented in detail in the NFRs filed in this docket. The relevant NFR can be found in Exhibit 70. That exhibit, along with the testimony of FPL's Witnesses Powers and Jones, support Commission approval of \$736,198,427 in EPU expenditures and \$5,626,844 in O&M costs as FPL's reasonably projected 2012 (system) costs.

Tr. 473-74 (Powers). The jurisdictional costs, net of joint owner and other adjustments, are \$701,018,839 in EPU expenditures, \$67,264,453 in carrying charges, and \$5,461,197 in O&M costs. *Id.*; 481 (Powers). In addition, reasonable jurisdictional base rate revenue requirements are \$80,190,773. Tr. 474, 481 (Powers). The total amount of \$152,916,422 should be included in FPL's 2012 NCR amount. Tr. 475, 481 (Powers).

ISSUE 15A: Did FPL willfully withhold information concerning the estimated capital costs of its EPU project and its related long-term study of the feasibility of the EPU project that is required by rule 25-6.0423, F.A.C., and that the Commission needed to make an informed decision at the time of the September 2009 hearing in Docket No. 090009-EI?

FPL: *No. FPL did not willfully withhold information that the Commission needed to make an informed decision. The information intervenors claim should have been provided was unreliable, preliminary, vendor information that was rejected by senior management, and which would have had no bearing on any 2009 Commission decision. The information did not affect FPL's 2008, 2009, or 2010 costs – the costs subject to Commission review that year – or the results of the feasibility analysis. (The EPU project remained cost-effective even assuming higher cost estimate information.) FPL fully complied with all applicable statutes, rules and orders in providing the Commission with information that had been subject to the Company's vetting process and represented the best information available at the time.*

FPL is required by Rule 25-6.0423, Fla. Admin. Code, to provide information related to the prior year's actual nuclear project costs in March of each year, and an estimate of the current year and next year's projected costs in May of each year. FPL is also required to provide a feasibility analysis in May of each year. FPL fully complied with these obligations; presenting the best information it had available at the time of these filings and at the September 2009 hearing.

OPC and the other intervenors in this case have asserted that FPL had an obligation to update its testimony in September 2009, at the time of the hearing. *See, e.g.*, Tr. 1038-39 (Jacobs). But the testimony of FPL's Chief Executive Officer Mr. Olivera, former Chief Nuclear Officer Mr. Stall, and EPU Vice President Mr. Jones, as well as the deposition testimony of former EPU Vice President Mr. Kundalkar, clearly show that the information OPC claims should

have been provided was preliminary, unreliable, and incomplete, and not the “best” information in any respect. *See* Tr. 508 (Olivera), Tr. 878-79, 1241-42 (Stall), Tr. 681-82 (Jones), Ex. 199.

Over the course of the year, between the time of FPL’s May filing and the Commission’s September NCR hearing, FPL continued to manage and execute the EPU project. FPL was provided with information from its EPC vendor indicating the need for staffing in the later years of the project at levels greater than had been previously estimated. Tr. 681-82 (Jones). This preliminary information was utilized by project controls personnel (not “project managers” as characterized by OPC) to create a project cost forecast (Tr. 683 (Jones)), which was used in an Executive Steering Committee (“ESC”) meeting on July 25, 2009.

The information as of July 25, 2009 only reflected FPL’s initial efforts to “push back” on these vendor estimates. Tr. 1242-43 (Stall). Neither the vendor estimates nor the resulting cost forecast were acceptable to, or approved by, senior management. Tr. 877 (Stall). To the contrary – the ESC rejected that information. Tr. 1243 (Stall). This perspective was missing from Mr. Reed’s report, in which he concluded that FPL should have updated its testimony. *See* Tr. 893 (Stall). As FPL Witness Stall (a member of the ESC at that time) explained, “Bechtel’s initial response was unacceptable to FPL senior management, and provided a strong indication that further cost reductions were possible.” Tr. 1243 (Stall). The July forecast did not capture additional reductions to the EPC vendor’s estimates that the members of the ESC were convinced could be achieved. Tr. 896 (Stall).¹²

Additionally, the July 25, 2009 forecast failed to account for other cost reduction opportunities that existed at the time – including the opportunity to reduce scope, the opportunity to self-perform some or all of the EPC work, and the opportunity to hire an additional EPC

¹² It is also important to note that disclosure of this information (whether in a confidential or non-confidential manner) could have signaled tacit approval or acceptance of the vendor’s higher estimates, and worked to the detriment of FPL’s negotiations to reduce costs for customers. Tr. 1243 (Stall).

vendor to perform a portion of the EPC work – all of which were being actively considered by senior management in the third and fourth quarters of 2009 and none of which were reflected in the July 25, 2009 project controls forecast. Tr. 798-99 (Jones); Tr. 878-79 (Stall); *see also* Ex. 125 (demonstrating that approximately \$100 million in scope reductions were in fact achieved in the Fall of 2009). In sum, major factors affecting the EPU total project cost estimate were in a state of flux in September of 2009. It is clear that FPL was not in a position to revise its non-binding cost estimate at that time. In fact, had FPL presented this information at the 2009 hearing, it would have been contrary to FPL’s process to ensure the disclosure of accurate and reliable information to external stakeholders, including the Commission. Tr. 886, 892-93 (Stall).

Moreover, this information was not needed in order to make informed decisions concerning the issues in the 2009 NCR docket. The 2009 NCR docket examined 2008 costs for prudence, 2009 and 2010 costs for reasonableness, and project feasibility. *See In Re: Nuclear Cost Recovery Clause*, Docket No. 090009-EI, Order No. PSC-09-0783-FOF-EI (issued Nov. 19, 2009). The information OPC claims should have been provided related to total project forecasts and had *no* effect on the 2008, 2009, or 2010 costs that the Commission was reviewing. This was confirmed by OPC’s Witness Jacobs when questioned at the hearing:

Commissioner Edgar: “Future estimated costs?”

The Witness: “Future, yes. Total, total costs, total estimated costs.”

Commissioner Edgar: “Not costs incurred.”

The Witness: “That’s right, not costs incurred.”

Tr. 1058 (Jacobs). With respect to project feasibility, FPL performed a sensitivity analysis in July 2009 of potential cost increases as well as potential unit output increases, and to determine whether the project would still be cost-effective for customers using these assumptions. *See* Ex. 134. The sensitivity analysis demonstrated that, even assuming higher costs *without* the potential for increased output, the EPU project remained solidly cost-effective for FPL’s customers. *Id.*;

Tr. 1282 (Sim). As a result, even if FPL had provided the unvetted vendor information as some sort of “update” to its testimony, it would not have provided any basis for a change to any of the Commission’s decisions. It is clear that this information was not needed for the Commission to make informed decisions.

ISSUE 15B: If the answer is yes, does the Commission possess statutory and regulatory authority with which to address FPL’s withholding of information?

FPL: *As explained above, the answer to 15A is “no”. FPL did not withhold information that the Commission needed to make an informed decision. Even if one were to take the position that FPL should have updated its testimony, FPL nonetheless complied with all applicable statutes, rules, and Commission orders. Therefore, no penalty is warranted as OPC contends. The Commission has other tools available to it – such as revising the Nuclear Cost Recovery Rule – should it accept intervenors’ arguments.*

As explained above in Issue 15A, the answer is “no” – FPL did not withhold information that the Commission needed to make an informed decision. The information that FPL filed in May 2009 and presented in September 2009 was the best information FPL had available at the time – and the only information that had undergone FPL’s thorough internal review and vetting process. *See* Tr. 886, 892-93 (Stall). Nonetheless, parties are in disagreement as to whether some sort of “update” should have been provided to the Commission. While reasonable minds may disagree as to whether such an update would have been appropriate or desirable, it is clear that such an update is not required by any statute, rule or order. There is simply no basis for the penalty that intervenors desire.¹³

The Commission’s authority under State law to assess penalties against utilities is expressly limited to circumstances in which a utility has refused to comply with or willfully violated a lawful rule or order of the Commission, or a statute administered by the Commission.

¹³ OPC’s proposed penalty demonstrates the unsound nature of its reasoning. OPC’s proposed quantification implies that the cost estimate filed May 3, 2010 was “withheld” from the Commission beginning September 9, 2009. But the evidence shows that FPL was still in the process of challenging, vetting, and revising its cost estimate information through early 2010. *See* Tr. 720 (Stall). The non-binding cost estimate filed on May 3, 2010, did not exist at the time of the 2009 NCR hearing.

See Section 366.095, Fla. Stat. (2011); *see also* Section 350.127(1), Fla. Stat. (2011). FPL has fully complied with all applicable rules, orders, and statutes, including the NCR Rule. That Rule requires FPL to file in May of each year a feasibility analysis as well as its nonbinding cost estimate, which FPL did. OPC should not be surprised that the information FPL provides to comply with the Rule must first be reviewed and accepted by senior management. Yet in this case, senior management reviewed and explicitly *rejected* the information that OPC contends FPL was required to disclose. *See, e.g.*, Tr. 877, 890, 1242 (Stall). FPL’s decision reflected care and deliberation in the assessment of cost information and management of the project for the benefit of its customers. FPL submits that such actions are what the Commission would expect of the Company – as opposed to unquestioning acceptance of vendor information – and is not behavior that should be penalized. Commission Audit Staff agreed that FPL was not required to update its testimony in the manner OPC and the other intervenors have suggested. In a work paper underlying this year’s audit, Audit Staff concluded that FPL “was not compelled to divulge more information than they did under current Commission orders or Florida Statutes.” Ex. 200.

Reasonable minds may differ as to whether FPL should have advised the Commission of the vendor figures that were being discussed by senior management (*see* Tr. 1062 (Jacobs) (stating “I believe reasonable people have disagreed on that...)), whether FPL missed an “opportunity” to inform the Commission about cost estimates that were not fully vetted (Ex. 115 (p. 41 of 42)), or whether, for reasons discussed by FPL witnesses Olivera, Stall, and Jones, FPL properly concluded that the numbers were not reliable (*See, e.g.*, Tr. 878-79 (Stall)). Regardless of one’s view on these points, there is no basis to conclude that FPL’s decision constituted a willful violation of Rule 25-6.0423, Fla. Admin. Code. Because there was no violation of the NCR Rule – or any other statute, rule, or order for that matter – there can be no penalty assessed

pursuant to Section 366.095 or Section 350.127(1).¹⁴

ISSUE 15C: In light of the determinations in Issues 15A and 15B, what action, if any, should the Commission take?

FPL: *Because FPL complied with all applicable statutes, rules, and orders, and because FPL did not willfully withhold information that the Commission needed to make an informed decision, no action is necessary.*

ISSUE 16: STRICKEN – PARTIES TO ADDRESS WITHIN ISSUE 11

ISSUE 17: STRICKEN – PARTIES TO ADDRESS WITHIN ISSUE 11

ISSUE 18: STRICKEN – PARTIES TO ADDRESS WITHIN ISSUE 11

D. Total Recovery Amount

ISSUE 19: What is the total jurisdictional amount to be included in establishing FPL's 2012 Capacity Cost Recovery Clause factor?

FPL: *The total jurisdictional amount of \$196,092,631 should be included in establishing FPL's 2012 Capacity Cost Recovery Clause factor. This amount consists of carrying charges on site selection costs, pre-construction costs and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, O&M costs and base rate revenue requirements for the EPU project, all as provided for in Section 366.93 and the Rule.*

The record shows that FPL's actual 2009-2010 Turkey Point 6 & 7 costs and actual 2009-2010 EPU costs were prudently incurred. With respect to the EPU project, this is supported by the testimony of OPC's own witness. Tr. 1059-69 (Jacobs). Additionally, the record shows that FPL's actual/estimated 2011 costs and projected 2012 costs for both projects are reasonable. Accordingly, the Commission should approve a Nuclear Power Plant Cost Recovery amount of

¹⁴ Nor can a penalty be assessed outside the limits of Section 366.095 or Section 350.127, for example, to "send a message" as intervenors desire. The Commission possesses no inherent power to impose penalties. Any such power must be expressly delegated by statute. See Art. 1, Section 18, Fla. Const.; see also *State Dept. of Environmental Regulation v. Puckett Oil Co., Inc.*, 577 So. 2d 988 (Fla. 1st DCA 1991). If the Commission has the authority to penalize FPL for allegedly "willfully withholding information," such authority must therefore be expressly conferred by statute. No such statute exists. The Commission itself has recognized this limit on its authority. *In re: Emergency Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. for allegedly filing false usage data numbers with Commission in Docket No. 990649A-TP*, Docket No. 030482-TP, Order No. PSC-03-1254-FOF-TP (issued Nov. 6, 2003), p. 12.

\$196,092,631 on a jurisdictional adjusted basis to be recovered through the 2012 Capacity Cost Recovery Clause. Tr. 478, 481 (Powers).

CONCLUSION

For all of the foregoing reasons, and based upon Florida law and the evidentiary record in this proceeding, FPL requests that the Commission enter 2009 and 2010 prudence findings, 2011 and 2012 reasonableness findings, accept the Company's feasibility analyses, and approve FPL's requested 2012 NCR amount consistent with FPL's positions stated in this Post-Hearing Brief.

Respectfully submitted this 8th day of September, 2011.

By: *for*



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**CERTIFICATE OF SERVICE
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I HEREBY CERTIFY that a true and correct copy of FPL's Post Hearing Brief was served via hand delivery* or by U.S. Mail this 8th day of September 2011, to the following:

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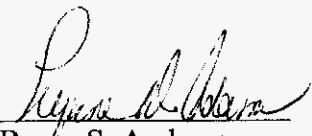
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