

Dorothy Menasco

From: Grenz, Barbara <Barbara.Grenz@fpl.com>
Sent: Monday, August 19, 2013 4:27 PM
To: Filings@psc.state.fl.us
Cc: Cano, Jessica; Grenz, Barbara
Subject: Electronic Filing - Docket No. 130009-EI / FPL's Post-Hearing Brief
Attachments: FPL's Post Hearing Brief.docx

Electronic Filing

a. Person responsible for this electronic filing:

Jessica A. Cano, Esq.
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5226
Jessica.Cano@fpl.com

b. Docket No. 130009-EI

In Re: Nuclear Power Plant Cost Recovery Clause

c. The documents is being filed on behalf of Florida Power & Light Company.

d. There are a total of forty-one (41) pages.

e. The document attached for electronic filing is: Florida Power & Light Company's Post-Hearing Brief.

Barbara A. Grenz, CP

Certified Paralegal
Senior Legal Assistant to
Bryan S. Anderson / Assistant General Counsel - Regulatory
William P. Cox / Senior Attorney
Florida Power & Light Company
700 Universe Boulevard - LAW/JB
Juno Beach, FL 33408
Direct: (561) 304-5608
Email: Barbara.Grenz@fpl.com

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Cost)
Recovery Clause)

Docket No. 130009-EI
Filed: August 19, 2013

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

Florida Power & Light Company (“FPL” or the “Company”) hereby files with the Florida Public Service Commission (the “FPSC” or “Commission”) its Post-Hearing Brief in the above-referenced docket, pursuant to Order Nos. PSC-13-0333-PHO-EI and PSC-13-0063-PCO-EI, and consistent with the Stipulations reached in this docket approved by the Commission on August 5, 2013.¹

I. 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: (i) the Turkey Point 6 & 7 new nuclear project and (ii) 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 Co.*, 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*

¹ Consistent with the Commission’s approval of the stipulations reached on Issues 1, 2, 3, 5A, 5B, 7, 14, 15, 16, and 17, and its decision that Legal Issue 1 is moot, only Issues 4, 5, 6, 8, 9, 10, and 13 are addressed in this brief. *See* Ex. 112. FPL notes that the stipulation on Issue 1 affects the dollar figures contained in Issues 8, 9, 10, 14, 15, 16, and 17. The total effect of the stipulation reduces the amount sought for cost recovery in Issue 17 to \$43,461,246.

Recovery Rule, Rule 25-6.0423, F.A.C., Docket No. 070602-EI, Order No. PSC-08-0021-FOF-EI (issued Jan. 7, 2008).

Section 403.519(4), Florida Statutes, Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code (“the NCR Rule”) establish the legal and regulatory framework for the recovery of costs in the development of nuclear generation in Florida.² Section 403.519(4)(e), Florida Statutes, makes clear that a utility is entitled to recover all its prudently incurred costs in the development of nuclear generation. Specifically, with respect to cost recovery after a determination of need is granted, it states:

the right of a utility to recover any costs incurred prior to commercial operation, including but not limited to costs associated with the siting, design, licensing, or construction of the plant . . . **shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence** adduced at a hearing before the commission under s. 120.57, **that certain costs were imprudently incurred.**

§ 403.519(4)(e), Fla. Stat. (emphasis added).

Section 366.93, Florida Statutes, establishes specific, well-defined parameters for nuclear cost recovery, and requires the Commission to establish by rule a cost recovery mechanism that promotes utility investment in nuclear power plants and “allow[s] for the recovery in rates of *all* prudently incurred costs.” § 366.93(2), Fla. Stat. (emphasis added). In response to the direction provided in Section 366.93, the Commission promulgated the NCR Rule. This rule states, among other things, that its purpose is to promote utility investment in nuclear generation and to allow for the recovery in rates of *all* such prudently incurred costs. *See* Rule 25-6.0423(1), Fla. Admin. Code (emphasis added).

Pursuant to Section 403.519(4), Section 366.93, and the NCR Rule, FPL is requesting to recover preconstruction costs related to licensing activities currently underway for the Turkey

² All Florida statutory references are to the 2013 Florida Statutes.

Point 6 and 7 project. Tr. 560 (Scroggs). FPL's careful and methodical project management approach controls cost risks while maintaining progress towards delivery of new nuclear generation on the earliest practicable deployment schedule. Tr. 561 (Scroggs). The Turkey Point 6 & 7 project is currently projected to save customers \$78 billion in fuel cost savings over the life of the new plant. Tr. 562 (Scroggs); Tr. 680 (Sim); Ex. 52. Additionally, Turkey Point 6 & 7 is projected to reduce reliance on natural gas by about 18% and reduce carbon dioxide emissions by about 265 million tons over the life of the plant. Tr. 562-63 (Scroggs); Tr. 682 (Sim); Ex. 52.

FPL has successfully completed implementation of the EPU project, the uprated nuclear units are fully in service, and the project now is in its close-out phase. *See* Tr. 880 (Jones). The EPU project has increased the nuclear generation from FPL's existing units for FPL's customers by about 522 MW, or 30% more than expected at the beginning of the project. Tr. 913 (Jones); Tr. 727 (Sim). The Uprate project is projected to save FPL's customers over \$3.4 billion in fuel cost savings over the lives of the uprated units. Tr. 689 (Sim); Ex. 60. Additionally, it is projected to reduce FPL's reliance on natural gas by more than 4% and reduce carbon dioxide emissions by about 33 million tons over the lives of the uprated units. Tr. 689-90 (Sim); Tr. 882 Jones; Ex. 60. As in prior years, FPL is requesting to recover financing costs on the amounts incurred for construction.³

FPL's cost recovery request for 2014 for both of these projects totals approximately \$43 million or \$0.46 on a typical 1,000 kilowatt-hour monthly residential bill, a more than 70% reduction from the NCR amount being collected in 2013. *See* Ex. 37 (revised Exhibit TOJ-25)

³ A portion of FPL's request is also for recoverable Operations & Maintenance ("O&M") expense, partial-year revenue requirements associated with components being placed into service in 2013, and a true-up of 2013 revenue requirements associated with the true-up of plant placed into service in 2012. *See* Tr. 361-62, 372-74, 392-95, 410-13 (Powers).

(noting a reduction to \$0.48, which does not reflect the stipulation on Issue 1, is a more than 70% reduction). Most of the costs are for the Uprate project, which is complete and providing needed baseload, emission-free power to customers. *See* Ex. 48.

II. SUMMARY OF ARGUMENT

FPL's management decisions and project costs in 2012 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 is within the range of reasonable decisions that a utility manager could make based upon information known or reasonably available to management at the time the decision was made. Hindsight review is prohibited. *See In re: Nuclear Cost Recovery Clause*, Docket No. 090009-EI, Order No. PSC-09-0783-FOF-EI, p. 13 (issued Nov. 19, 2001); *In re: Petition on Behalf of Citizens of the State of Fla. to Require Progress Energy Florida to Refund Customers \$143 Million*, Docket No. 060658-EI, Order No. PSC-07-0816-FOF-EI, p. 4 (issued Oct. 10, 2007); *see also, Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013). There is a rebuttable presumption of prudence. *See* Tr. 297 (Reed). In Florida, with respect to nuclear project cost recovery, the rebuttable presumption of prudence has been codified. Pursuant to Section 403.519(4)(e), Florida Statutes, parties arguing for a disallowance have the burden of demonstrating that certain costs were imprudently incurred by a preponderance of the evidence.

A. Turkey Point 6 & 7 Project

The record shows that FPL's 2012 management decisions with respect to Turkey Point 6 & 7 were prudent and that FPL's project costs were prudently incurred. The record contains extensive, un rebutted testimony and evidence demonstrating the prudence of FPL's management decisions and costs for the Turkey Point 6 & 7 project, including the favorable results of an

external review by Concentric Energy Advisors, Inc. (“Concentric”) and by the FPSC Division of Economic Regulation, Office of Auditing and Performance Analysis (“Audit Staff”). *See* Tr. 326, 348 (Reed); Ex. 68.

The only intervenor that opposed FPL’s Turkey Point 6 & 7 costs was the Southern Alliance for Clean Energy (“SACE”). SACE did not file any testimony claiming that any 2012 Turkey Point 6 & 7 management decision was imprudent. In fact, SACE failed to present any evidence indicating that “certain costs were imprudently incurred” as required by Section 403.519, Florida Statutes. As in prior years, the only arguments presented by SACE were that FPL was not entitled to any cost recovery because it had not demonstrated an “intent to build” Turkey Point 6 & 7, and that FPL’s feasibility analysis should not be approved. The evidence presented by FPL – the only evidence in the record – demonstrates that its costs qualify for cost recovery, that it intends to construct Turkey Point 6 & 7, and that its feasibility analysis should be approved. *See, e.g.*, Tr. 585 (Scroggs); Tr. 665-677 (Sim).

B. EPU Project

FPL’s 2012 management decisions with respect to the EPU project also were prudent, and its project costs were prudently incurred. This was shown by extensive record evidence. For example, in 2012:

- FPL successfully completed three major EPU outages plus a brief “LAR outage”, successfully bringing on-line about 400 megawatts electric (“MWe”) of additional nuclear power for FPL’s customers, meeting the EPU project goal. Tr. 840-41 (Jones);
- FPL continued to diligently manage its major vendors, including its Engineering, Procurement, and Construction (“EPC”) vendor, to ensure costs were reasonable and appropriate. This included obtaining concessions from its major vendors that resulted in \$63 million in project cost savings for customers in 2012 (growing to \$77 million in 2013). Tr. 860-62, 891 (Jones);

- FPL continuously worked to improve and implement lessons learned to keep total project costs low. These efforts were proven effective by the fact that the second EPU outage at each plant was completed in less time, and at a lower cost, than the first EPU outage at each plant. Tr. 854, 859, 886 (Jones); and
- The EPU project was audited by FPL's internal auditors, reviewed by Concentric, and audited by the FPSC Audit Staff, with good results. See Tr. 872-73 (Jones); Tr. 304, 348 (Reed); Ex. 68.

FPL's EPU efforts continued in 2013 with the conclusion of the final EPU outage, bringing the project total output to 522 MWe. See Tr. 880, 887, 913 (Jones). The EPU project is now in the closeout phase, and no project expenses are projected for 2014. Tr. 894 (Jones). As in prior years' proceedings, no intervenor has identified any specific project cost that resulted from any allegedly imprudent 2012 management decision.

The Commission should reject the Office of Public Counsel's ("OPC's") claim, raised for the third year in a row, that the project should be broken apart for analysis and viewed as two projects, rather than the single project that was approved by the Commission in its determination of need in 2008. In 2011, the Commission found that "a separate economic analysis for each of the EPU project plant is unnecessary, and would be difficult to calculate . . . [C]ompleting separate analyses would incorrectly attribute to the individual plants the benefits gained from performing uprates at both plants simultaneously." *In re: Nuclear Cost Recovery Clause*, Docket No. 110009-EI, Order No. PSC-11-0547-FOF-EI, p. 40 (issued Nov. 23, 2011), *aff'd Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742 (Fla. 2013). The Commission's decision on this point was reiterated last year. *In re: Nuclear Cost Recovery Clause*, Docket No. 120009-EI, Order No. PSC-12-0650-FOF-EI, p. 66 (issued Dec. 11, 2012). These reasons for rejecting OPC's position are equally true today, and even more compelling in light of the fact that implementation of the EPU project is now finished.

The Commission should also reject OPC's attempt, for the fourth year in a row, to radically change the fundamental principles of the NCR framework in a manner contrary to clear statutory and rule language. OPC recommends that the Commission disallow \$200 million in EPU costs. OPC does not claim these costs were caused by particular imprudent decisions or actions in 2012.⁴ Rather, according to its witness's testimony, the recommended disallowance reflects the fact that the Turkey Point portion of the EPU project costs more, on a dollars per kilowatt basis, than the breakeven cost developed for the Turkey Point 6 & 7 project for purposes of the Turkey Point 6 & 7 feasibility analysis. *See* Tr. 472 (Jacobs). OPC's recommended disallowance amount is an arbitrary portion of the total amount by which it claims the cost of the Turkey Point EPU work exceeds the Turkey Point 6 & 7 breakeven cost. This is neither an analytically sound nor lawful basis for the disallowance of costs invested in nuclear generation in Florida.

Mr. Jones's testimony explaining the reasons for EPU cost amounts is unrebutted in the record. *See, e.g.* Tr. 847-48, 852-58, 874-78, 891-92, 896-98, 910-11 (Jones); Ex. 19.⁵ And, for the third year in a row, he also explained why the EPU project is one project that cannot be broken apart for cost analysis purposes. *See* Tr. 905-08 (Jones). Dr. Sim's testimony makes clear that from a resource planning perspective, OPC witness Jacobs's "analysis" is without merit: the breakeven costs developed to analyze Turkey Point 6 & 7 are not transferrable to the EPU project, and provide no basis to render judgment on the cost-effectiveness of any portion of the EPU project. *See* Tr. 724, 734-40 (Sim). Mr. Reed testified that OPC's recommendation

⁴ The only imprudence claimed by OPC's witness was "FPL's decision to undertake the Turkey Point EPU project in the face of the levels of complexity and uncertainty of which FPL was aware at the outset" and the continuation of the project "without developing an adequate provision for contingency when the costs began to soar". Tr. 469-70 (Jacobs). Such hindsight attacks on the 2008 need determination and on project management in years prior to 2012 are outside the scope of this proceeding, and fail to meet the standard set by law to support a disallowance.

⁵ Mr. Jones also testified that the 2012 cost variance presented by OPC witness Jacobs is overstated because it fails to account for \$75 million in vendor payments that were accelerated from 2013 to 2012. Tr. 911 (Jones).

relies on the impermissible use of hindsight and fails to apply the proper prudence standard. *See, e.g.*, Tr. 351 (Reed). Finally, Mr. Deason testified that OPC's recommendation is a repackaging of arguments already rejected by the Commission and that it runs grossly afoul of Florida's policy to promote nuclear generation, the standards of nuclear cost recovery contained in statute and rule, principles of ratemaking, and sound regulatory policy. Tr. 421 (Deason).

OPC's proposed disallowance also would violate Florida's NCR statutes and the NCR rule. OPC would have the Commission disallow \$200 million in EPU project costs on the basis of some "cost-effectiveness" threshold (in this case, the breakeven cost per kilowatt developed to analyze the cost-effectiveness of Turkey Point 6 & 7), without regard to whether those costs were prudently incurred (for example, to respond to Nuclear Regulatory Commission requirements and to accommodate increased project scope). Specifically, OPC's disallowance would violate Section 366.93, Florida Statutes, Section 403.519, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code, as described further below. Such a cap also would be contrary to prior Commission orders rejecting similar disallowance mechanisms.⁶

For all of the foregoing reasons, and based upon Florida law and the evidentiary record in this proceeding, FPL requests that the Commission enter 2012 prudence findings for Turkey Point 6 & 7 and the EPU project, enter 2013 reasonableness findings for Turkey Point 6 & 7 and the EPU project; enter a 2014 reasonableness finding for the Turkey Point 6 & 7 project, accept the Company's feasibility analysis for Turkey Point 6 & 7, and approve FPL's requested 2014 NCR amount consistent with FPL's positions stated below.

⁶ OPC urged the imposition of a "risk sharing" mechanism in 2010, a cost recovery cap based on a "breakeven analysis" in 2011, and a cost recovery cap based on FPL's non-binding cost estimate in 2012. The Commission rejected each one. *See* Order No. PSC-11-0095-FOF-EI, p. 9 (*reconsideration denied*, Order No. PSC-11-0224-FOF-EI); Order No. PSC-11-0547-FOF-EI, p. 57; Order No. PSC-12-0650-FOF-EI, pp. 72-73.

III. ISSUES AND POSITIONS

A. Turkey Point 6 & 7

ISSUE 4: Do FPL's activities since January 2012 related to the proposed 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 expenses necessary to obtain the license, permits, and approvals to develop Turkey Point 6 & 7. Because FPL has received a determination of need for Turkey Point 6 & 7 pursuant to Section 403.519(4), F.S., FPL is entitled to recover all prudently incurred costs including, but not limited to, those associated with siting, design, licensing, and construction. FPL's "intent to build" Turkey Point 6 & 7 is evident in the actions it is taking to develop Turkey Point 6 & 7. The Florida Supreme Court has affirmed this Commission's prior determination that similar, licensing-only actions are sufficient to demonstrate an intent to build.*

In the three prior NCR dockets, the Commission has considered this issue and decided, each time, that the utilities' activities qualify as "siting, design, licensing, and construction." FPL activities since 2012 are similar to those found sufficient in prior dockets, and SACE has not presented any evidence that would support a different finding this year.⁷

In 2010, the Commission specifically evaluated what types of activities qualify as siting, design, licensing, and construction when it addressed a similar 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, p. 12 (issued Feb. 2, 2011). Intervenors in that case 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,

⁷ The Florida legislature amended Section 366.93, Fla. Stat., and added a subsection addressing a utility's "intent to build." See § 366.93(3)(f)3, Fla. Stat. (2013). That provision takes effect January 1, 2014, and only applies if a utility has not initiated construction activities within 10 years of receiving a license from the NRC. Regardless of whether one believes generally that the 2013 amendments apply to this year's NCR proceeding, it is clear that this provision does not. Additionally, even if it did apply, FPL's evidence supporting its "intent to build" is un rebutted in the record.

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 actual construction in order for its costs to be recoverable. *Id.* at 11.

The Commission considered the same issue in 2011. *See* Order No. PSC-11-0547-FOF-EI, pp. 7-11. After reviewing the activities that FPL had engaged in and the progress FPL was making on the Turkey Point 6 & 7 project through 2010, the Commission found that “FPL’s costs related to its activities for the TP67 project qualify as recoverable preconstruction costs as defined in Section 366.93(1)(f), F.S., and as interpreted by Rule 25-6.0423(2)(h), F.A.C.” Order No. PSC-11-0547-FOF-EI, p. 10. The Commission noted that in its previous order, Order No. PSC-11-0095-FOF-EI, it stated that a utility must continue to demonstrate its intent to build the plant for which it seeks recovery of costs. *Id.* The Commission found that FPL’s activities related to the Turkey Point 6 & 7 project demonstrated FPL’s intent to build. *Id.* at 11.

The Florida Supreme Court affirmed the Commission’s 2011 decision on this issue. *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742 (Fla. 2013). In its decision, the Court cited three separate statutory sections that all support the recovery of costs associated with licensing activities, regardless of whether a “final decision” to proceed to construction had been made, and regardless of whether the utility’s actions were characterized as an “option creation” approach. *Id.* at 751-54. The Court specifically noted that:

- Subsection (1)(f) and (2)(a) of Section 366.93 recognize “preconstruction” as a period of time and allow for the recovery of any prudent preconstruction costs;
- Subsection (1)(a) of Section 366.93 defines “cost” disjunctively as expenses related to siting, licensing, design, construction, *or* operation of the plant; and

- Pursuant to Section 403.519(4)(e), the right of a utility to recovery any costs – including but not limited to costs associated with siting, design, licensing, *or* construction – shall not be subject to challenge unless and only to the extent the commission finds based upon a preponderance of the evidence that certain costs were imprudently incurred. *Id.* at 752-53.⁸

The Court also concluded that competent, substantial evidence supported the Commission's findings supporting cost recovery. *Id.* at 753.

Again in 2012 this same issue was considered, and the Commission determined that FPL's actions since 2011 supported the Commission's requirement of demonstrating an intent to build. The Commission concluded as follows:

Based on our review, we find the FPL's Turkey Point Unit 6 and 7 project activities since January 2011 are similar and consistent with those we have reviewed in prior proceedings and found to be appropriate for nuclear cost recovery. We also find that FPL's testimony identified actions that qualify as preconstruction activities as defined in Section 366.93(1)(f), F.S., and as interpreted by Rule 25-6.0423(2)(h), F.A.C., since FPL has not entered into the actual construction phase of the project or announced termination of the project... We find that, taken as a whole, all of the noted activities are more consistent with a demonstration of intent to build[.]

Order No. PSC-12-0650-FOF-EI, p. 47 (internal citations omitted).

For the fourth year in a row, FPL has presented uncontroverted evidence that it is actively engaged in necessary licensing and permitting activities to enable the future construction of Turkey Point 6 & 7. As explained by Mr. Scroggs, FPL continues to develop Turkey Point 6 & 7 through a careful and methodical process to control cost risks while maintaining progress towards delivery of new nuclear generation. Tr. 561 (Scroggs). FPL is currently focused on

⁸ Despite this clear, controlling statute and case law, SACE is again challenging the right of FPL to recover its preconstruction costs without presenting evidence that certain costs were imprudently incurred.

obtaining all licenses, authorizations, and approvals needed for the project. Tr. 560 (Scroggs). By placing emphasis on obtaining the license, permits, and approvals and deciding not to initiate Preparation phase activities until they are absolutely necessary, FPL continues to make progress on the project and minimize costs to customers. Tr. 527 (Scroggs). No witness or record evidence challenged this conclusion.

Specifically, in 2012, FPL made measurable progress in all regulatory processes towards obtaining all necessary licenses, permits, and approvals. FPL achieved key milestones in the Site Certification Application (“SCA”) process and made significant progress in the Nuclear Regulatory Commission (“NRC”) licensing process and the U.S. Army Corps of Engineers (“USACOE”) permitting process. Tr. 523-24 (Scroggs). In 2013, more progress was made in the SCA process leading to the SCA hearing in July and August. Tr. 583 (Scroggs). Additionally, FPL worked with the NRC and USACE staff to complete outstanding information needed to support production of the Safety Evaluation Report and draft Environmental Impact Statement. Tr. 582 (Scroggs). The continued work and expenditures to support these activities demonstrate FPL’s commitment to the project. And, as stated by Mr. Scroggs, FPL intends to pursue completion of the Turkey Point 6 & 7 project. Tr. 585, 646 (Scroggs).

Despite three consecutive years of Commission review and consideration of this issue, three consecutive orders supporting the utilities’ approaches, and a Florida Supreme Court decision affirming the Commission’s determination on this issue, SACE questioned yet again FPL’s commitment to Turkey Point 6 & 7. FPL’s actions, summarized above, speak for themselves. Moreover, FPL’s methodical, step-wise, and risk-mitigating approach should be commended – not used in an attempt to cast doubt on its commitment to the project. The absurd alternative, apparently advocated by SACE, would be to require that FPL demonstrate its intent

by committing substantial sums of money to enter into contracts now, despite the fact that doing so would be premature. *See* Tr. 630 (Scroggs).

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 nuclear 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 the 2010, 2011, and 2012 NCR dockets. 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 5: Should the Commission approve what FPL has submitted as its 2013 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 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 analysis properly considers a reasonable projection of future DSM savings, and considers a reasonable 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 its projections and assumptions, such as the system load forecast that accounts for energy efficiency, for its economic analysis. Based on this analysis, completion of Turkey Point 6 & 7 is projected to be solidly cost-effective for FPL's customers in five out of seven scenarios and within the breakeven range in the remaining two scenarios, fully supporting the feasibility of continuing the project.*

The 2012 Turkey Point 6 & 7 feasibility analysis was 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."

The analytical approach that was used in the 2013 feasibility analysis for Turkey Point 6 & 7 is the same approach used in the 2007 Determination of Need filing and the 2008, 2009, 2010, 2011, and 2012 NCR feasibility analyses. Tr. 667 (Sim). Using this approach, FPL calculated the "breakeven" overnight capital costs for the new nuclear units in a variety of fuel

cost and environmental compliance cost scenarios.⁹ See Tr. 660, 666 (Sim). FPL updated key assumptions used in this analysis, including forecasted peak and annual loads, forecasted fuel costs, and project-specific assumptions. Tr. 668-77 (Sim).

The results of FPL's 2012 analysis continue to support the feasibility of continuing the Turkey Point 6 & 7 project. In five of seven scenarios, the breakeven capital cost was above FPL's non-binding cost estimate range for Turkey Point 6 & 7, and in the remaining two scenarios the breakeven capital cost was within FPL's non-binding cost estimate range. Tr. 678 (Sim); Ex. 59. In nominal terms, a resource plan that includes Turkey Point 6 & 7 is currently projected to save customers \$78 billion in fuel cost savings over the life of the new plant. Tr. 680 (Sim); Ex. 52. Additionally, Turkey Point 6 & 7 is projected to reduce reliance on natural gas by about 18% and reduce carbon dioxide emissions by about 265 million tons. Tr. 682 (Sim); Tr. 562 (Scroggs); Ex. 52. It is therefore clear that the project remains highly beneficial for FPL's customers.¹⁰

SACE questioned the reasonableness of the non-binding cost estimate and the in-service dates FPL used for purposes of its feasibility analysis. The reasonableness of FPL's non-binding cost estimate was supported by extensive testimony from Mr. Scroggs, including that FPL's estimate remains conservative when compared to other new nuclear projects much further along in the development process. Tr. 588, 622 (Scroggs). FPL also utilized in-service dates that are the "earliest practicable" in-service dates, fully acknowledging that future events could impact the project schedule. Tr. 586, 578-81 (Scroggs). In response to a FPSC Staff interrogatory, FPL

⁹ The "breakeven" cost is the amount FPL could spend on Turkey Point 6 & 7 that results in the same lifecycle costs as an alternative plan that relies on adding natural gas combined cycle units. Tr. 589-90 (Scroggs).

¹⁰ FPL also demonstrated the feasibility of financing the project and of obtaining all necessary approvals. Tr. 590-91 (Scroggs). With respect to the recent events at the Fukushima Daiichi plant in Japan, Dr. Diaz testified that "the certified AP 1000 reactor referenced in the Turkey Point 6 & 7 COLA is likely to satisfy the majority of the post-Fukushima changes under consideration by the NRC." Tr. 269 (Diaz).

demonstrated that the project would be expected to remain cost effective for FPL's customers even assuming the in-service dates are revised by five or 10 years. Ex. 76, p. 199-202.

SACE also challenged the amount of Demand Side Management ("DSM") that FPL assumed in its 2013 resource planning work, including its 2013 feasibility analysis for Turkey Point 6 & 7. FPL's DSM assumptions were shown by Dr. Sim to be reasonable. FPL assumed an amount of DSM consistent with the DSM Plan approved by the Commission for FPL. Further, FPL assumed an additional amount of DSM after the term of its current DSM Goals of 100 MW per year for six years. Tr. 672 (Sim). In total, FPL assumed roughly 300 MW of load control from FPL's DSM programs, 900 MW of energy efficiency from FPL's DSM programs, and 1800 MW of energy efficiency from federal and state standards over the next ten years. Tr. 767-68 Sim. SACE focused on energy efficiency, specifically current gigawatt hour savings, which "have absolutely no relationship to the timing or magnitude of [FPL's] resource need". Tr. 783-84 (Sim).¹¹ Moreover, there simply is not enough cost-effective DSM to be a viable alternative to Turkey Point 6 & 7 or a natural gas combined cycle power plant. Tr. 773 (Sim). Alternatives to Turkey Point 6 & 7 were properly considered during the need determination for the Turkey Point 6 & 7 project.¹²

Finally, SACE challenged the reasonableness of FPL's environmental compliance cost assumptions. FPL relies on a third party, ICF International, for the range of environmental compliance cost projections used in its feasibility analyses. SACE presented no evidence that

¹¹ Dr. Sim also explained why energy efficiency does not necessarily decrease system emissions. In fact, it has the potential to increase a utility system's emissions if it defers the addition of more efficient generating units. Tr. 784-85(Sim). The addition of incremental energy efficiency also has the potential to increase customers' fuel costs. *Id.*

¹² As FPL witness Sim testified, FPL has been implementing considerable amounts of DSM since 1980, and has been recognized for its DSM accomplishments over the years. To date, FPL has avoided the need for more than 14 generating units of 400 MW each. Tr. 825 (Sim). SACE's unsupported accusations that FPL is not committed to pursuing DSM resources are without merit.

different assumptions, such as an assumption of zero CO2 compliance costs over the 50 years in the analysis, would be reasonable. In fact, if SACE were to advocate for such an assumption, it would contradict SACE's position in another docket. Tr. 824-25(Sim). In sum, each of SACE's arguments fails. FPL utilized reasonable assumptions in its feasibility analysis, and no intervenor witness presented evidence to the contrary. FPL's Turkey Point 6 & 7 feasibility analysis should therefore be approved.

ISSUE 6: What are the jurisdictional amounts for Turkey Point 6 & 7 project activities that are related to obtaining a combined license from the Nuclear Regulatory Commission or certification during 2013 and 2014?

FPL: *FPL is only seeking recovery of Turkey Point 6 & 7 costs related to obtaining a COL from the NRC and certification in this NCR proceeding. Accordingly, FPL's jurisdictional 2013 amount is \$33,838,181 and 2014 amount is \$24,151,118, including carrying costs.*

Issue 6 presents a factual question, asking what amounts in FPL's Turkey Point 6 & 7 request are related to obtaining a combined license from the NRC or certification during 2013 and 2014. FPL witness Scroggs testified that "FPL's 2013 and 2014 cost recovery requests, as in past years, include only amounts that are associated with the licensing activities currently underway." Tr. 560 (Scroggs). He further testified that "expenses requested are related to obtaining the licenses and permits." Tr. 561 (Scroggs). Accordingly, FPL's jurisdictional 2013 amount is \$33,838,181 including carrying costs and 2014 amount is \$24,151,118 including carrying costs, each of which represents the entirety of FPL's requested recovery amounts for 2013 and 2014, respectively.

SACE argues that FPL is not entitled to recover any of these costs because FPL has failed to demonstrate an intent to build and because FPL has failed to present a reasonable feasibility analysis. SACE's arguments with respect to what FPL should or should not be permitted to recover are misplaced in this factual issue. FPL is entitled to recover these amounts for the

reasons discussed in detail in Issue 4, and its feasibility analysis should be approved by the Commission for the reasons discussed in detail in Issue 5.

ISSUE 8: What jurisdictional amounts should the Commission approve as FPL's final 2012 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve FPL's final 2012 prudently incurred Turkey Point 6 & 7 Preconstruction expenditures of \$29,034,114 (jurisdictional), and the final 2012 true-up amount of (\$5,245,763). The Commission should also approve Turkey Point 6 & 7 Preconstruction carrying charges of \$2,739,962, Site Selection carrying charges of \$180,883, and the final 2012 carrying charge true-up amount of (\$357,038). FPL's 2012 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were prudent and are properly recoverable pursuant to the NCR statute and rule. Additionally, the project is feasible and cost-effective for customers. The net 2012 true up amount of (\$5,602,800) should be included in FPL's 2014 NCR amount, subject to the stipulation on Issue 1.*

In 2012, FPL continued its disciplined pursuit of the approvals and authorizations needed to establish the opportunity to add the benefits of new nuclear generation for FPL's customers. Tr. 523 (Scroggs). Costs were incurred in the process of conducting the necessary licensing and permitting activity. Tr. 558 (Scroggs). FPL witness Diaz, former Chairman of the NRC, reviewed FPL's approach in light of industry and project-specific considerations, and concluded that "the decisions and management approaches used by FPL during 2012 were prudent and consistent with a reasonable strategy for pursuing the licensing and construction of the proposed Turkey Point 6 & 7 project." Tr. 270 (Diaz).

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 stipulated to in Issue 7; and FPL's activities qualify as "siting, design, licensing, and construction" as discussed above in Issue 4. SACE has argued that FPL did not present a reasonable feasibility analysis this year, and that therefore FPL is not entitled to cost recovery. However, SACE's arguments about FPL's 2013 feasibility analysis do not impact the prudence

or recoverability of FPL's 2012 costs. Moreover, the sufficiency of FPL's feasibility analysis was demonstrated in Issue 5. Accordingly, the evidence supports a finding that FPL's 2012 costs were prudently incurred.

FPL's 2012 Turkey Point 6 & 7 costs are presented in detail in the testimony of FPL witness Scroggs (Tr. 554-58) and FPL witness Powers (Tr. 368-371), and in the Nuclear Filing Requirements ("NFRs") filed in this docket. The relevant NFRs can be found in Exhibit 2. Subject to the Company's stipulation on Issue 1 and its agreement to reduce its total recovery amount by \$1,623,449 (some of which reflects carrying charges on Turkey Point 6 & 7 costs), the evidence supports Commission approval of 2012 prudently incurred Turkey Point 6 & 7 Preconstruction expenditures of \$29,034,114 (jurisdictional), and the final 2012 true-up amount of (\$5,245,763). Tr. 370 (Powers). It also supports Commission approval of Turkey Point 6 & 7 Preconstruction carrying charges of \$2,739,962 and Site Selection carrying charges of \$180,883, as well as the final 2012 carrying charge true-up amount of (\$357,038). Tr. 369-371 (Powers). The net amount of (\$5,602,800) therefore should be included in FPL's 2014 NCR amount. Tr. 370 (Powers).

ISSUE 9: What jurisdictional amounts should the Commission approve as reasonably estimated 2013 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve as reasonable FPL's 2013 actual/estimated Preconstruction expenditures of \$28,748,963 (jurisdictional), and the 2013 estimated true-up amount of \$62,726. The Commission should also approve FPL's 2013 actual/estimated Preconstruction carrying charges of \$4,908,335 and Site Selection carrying charges of \$180,883, as well as the 2013 carrying charge estimated true-up amount of (\$1,218,700). FPL's 2013 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable and are properly recoverable pursuant to the NCR statute and rule. Additionally, the project is feasible and cost-effective for customers. The net 2013 true up amount of (\$1,155,974) should be included in FPL's 2014 NCR amount, subject to the stipulation on Issue 1.*

In 2013, FPL continued to focus on obtaining the necessary licenses, authorizations, and approvals needed for Turkey Point 6 & 7. Tr. 560 (Scroggs). FPL's stepwise approach continues to provide FPL's customers with the best opportunity to make steady progress on the project but avoid making premature commitments to engineering and costs for materials. Tr. 562 (Scroggs). FPL's 2013 actual/estimated costs reflect this balanced approach. Further, as discussed above in Issue 4, the Turkey Point 6 & 7 project activities qualify for cost recovery. Finally, as discussed above in Issue 5, the project remains feasible and solidly cost-effective for customers.

FPL included actual costs for January and February of 2013 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. 592 (Scroggs). FPL also verified that rates for contracted services are consistent with FPL's experience in the broader industry and compared its estimates to other costs being incurred by the Company for similar activities, and found them to be reasonable. *Id.*

FPL's 2013 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 Exhibit 8. In sum, as supported by FPL witness Scroggs (*see* Tr. 593-98) and calculated by FPL witness Powers, and subject to the Company's stipulation on Issue 1 and its agreement to reduce its total recovery amount by \$1,623,449 (some of which reflects carrying charges on Turkey Point 6 & 7 preconstruction costs), the Commission should approve as reasonable FPL's 2013 actual/estimated Preconstruction expenditures of \$28,748,963 (jurisdictional), and the 2013 estimated true-up amount of \$62,726. Tr. 406 (Powers). The Commission should also approve as reasonable FPL's 2013 actual/estimated Preconstruction carrying charges of \$4,908,335 and Site Selection

carrying charges of \$180,883, as well as the 2013 carrying charge estimated true-up amount of (\$1,218,700). Tr. 406-07 (Powers). The net 2013 true up amount of (\$1,155,974) therefore should be included in FPL's 2014 NCR amount. Tr. 406 (Powers).

ISSUE 10: What jurisdictional amounts should the Commission approve as reasonably projected 2014 costs for FPL's Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve as reasonable FPL's 2014 projected Preconstruction expenditures of \$16,826,626 (jurisdictional). The Commission should also approve as reasonable FPL's 2014 projected Preconstruction carrying charges of \$7,143,609 and Site Selection carrying charges of \$180,883. FPL's 2014 projected expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable and are properly recoverable pursuant to the NCR statute and rule. Additionally, the project is feasible and cost-effective for customers. The net amount of \$24,151,118 should be included in FPL's 2014 NCR amount, subject to the stipulation on Issue 1.*

In 2014, FPL expects to incur costs to support the licensing and permit application reviews that are underway. Tr. 592 (Scroggs). FPL developed its projection of 2014 costs in accordance with FPL's budget and accounting guidelines and policies. *Id.* FPL also verified that rates for contracted services are consistent with FPL's experience in the broader industry and compared its estimates to other costs being incurred by the Company for similar activities, and found them to be reasonable. *Id.* Further, as discussed above in Issue 4, the Turkey Point 6 & 7 project activities qualify for cost recovery. Finally, as discussed above in Issue 5, the project remains feasible and solidly cost-effective for customers. These facts support the reasonableness of FPL's 2014 projected costs.

FPL's projected 2014 Turkey Point 6 & 7 costs are presented in detail in the NFRs filed in this docket. The relevant NFRs can be found in Exhibit 8. In sum, as supported by FPL witness Scroggs (*see* Tr. 593-98) and calculated by FPL witness Powers, and subject to the Company's stipulation on Issue 1 and its agreement to reduce its total recovery amount by \$1,623,449 (some of which reflects carrying charges on Turkey Point 6 & 7 preconstruction

costs), the Commission should approve as reasonable FPL's 2014 projected Preconstruction expenditures of \$16,826,626 (jurisdictional). Tr. 407 (Powers). The Commission should also approve as reasonable FPL's 2014 projected Preconstruction carrying charges of \$7,143,609 and Site Selection carrying charges of \$180,883. Tr. 407-08 (Powers). The net amount of \$24,151,118 therefore should be included in FPL's 2014 NCR amount.

C. Extended Power Uprate

ISSUE 13: Should the Commission find that, for the year 2012, FPL's project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL's Extended Power Uprate project? If not, what action, if any, should the Commission take?

FPL: *Yes. FPL's 2012 EPU project management decisions are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls. Both Concentric and Commission Staff reviewed FPL's project controls and determined they were appropriate. OPC's proposed disallowance is unrelated to the prudence of FPL's project management in 2012. Instead, OPC attempts to use breakeven costs developed for a completely different project to draw a conclusion about the cost-effectiveness of the Turkey Point portion of the EPU project. OPC's approach ignores prior Commission orders finding that the EPU project cannot be split into two projects, relies entirely on hindsight, is contrary to the NCR law, and contrary to prior Commission decisions to reject similar disallowance mechanisms.*

a. Prudence of 2012 Project Management and Controls

In 2012, FPL successfully managed the most intensive year of EPU project implementation work, which included the following:

- Implementation and completion of major modifications during the St. Lucie Unit 1 EPU outage and a brief LAR outage, completing the uprate of that unit;
- Implementation and completion of major modifications during the Turkey Point Unit 3 EPU outage, completing the uprate of that unit;
- Implementation and completion of major modifications during the St. Lucie Unit 2 EPU outage, completing the uprate of that unit; and

- Initiation and implementation of major modifications during the Turkey Point Unit 4 EPU outage, which was completed in early 2013.

Tr. 840-41 (Jones). This implementation work required substantial and iterative engineering design and construction planning, as well as continuous forward-looking project management that resulted in adjustments to outage dates and outage durations, revisions to implementation plans, and intensive contractor oversight and management. Additionally, FPL received all required NRC License Amendment Request approvals. Tr. 841 (Jones).

The experience and knowledge gained from the first EPU outage at each plant was used to improve the implementation of the second EPU outage at each plant. As a result, the St. Lucie Unit 2 outage was completed 25% faster and at an 18% lower cost than the St. Lucie Unit 1 outage. Similarly, the Turkey Point Unit 4 EPU outage was completed 15% faster and at a 21% lower cost than the Turkey Point Unit 3 outage. Tr. 886 (Jones). Such reductions in time and money are clear demonstrations of FPL's ability to capture and implement opportunities for improvement, an ability which is also considered by energy and construction industry professionals to be a hallmark of strong project management. *Id.*

FPL diligently managed its major vendors, including its EPC vendor, to ensure the costs expended for the assigned scopes of work were reasonable and appropriate. For example:

- FPL required that its vendors provide detailed schedules and detailed metrics for productivity and commodities, and diligently monitored compliance with those metrics;
- Feedback was provided through daily focus meetings during outages with major contractors to evaluate earned value and cost performance, daily work plans, and any impacts to schedule and cost;

- FPL held project integration meetings with major contractors generally weekly to discuss schedule compliance of work activities, organization and management issues, and safety issues; and
- FPL made work scope reassignments and reallocations as part of FPL's continuing efforts to control costs and ensure the successful completion of the fourth and final EPU outage. No additional or "premium" costs were incurred due to the reallocation of EPC work.

Tr. 919-20, 923 (Jones). FPL leveraged its vendors' performance in key areas to negotiate price reductions and concessions, resulting in a reduction in EPU costs in 2012 of \$63 million. Tr. 860-61, 891 (Jones). These price reductions and concessions provided additional offsets as work scope increased through 2013, for a total project cost reduction of approximately \$77 million. Tr. 891 (Jones).

As described in detail by FPL's witnesses, FPL employed extensive accounting and cost oversight controls for the EPU project. FPL relied on its comprehensive corporate and overlapping business unit controls for recording and reporting transactions associated with any of its capital projects, including the EPU project. Tr. 377 (Powers). These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures, financial systems, FPL's annual budgeting and planning process, and Business Unit specific controls and processes. *Id.*; see Tr. 382-85 (Powers) for EPU-specific accounting controls. These controls have been assessed and audited. Tr. 377-78 (Powers).

At the project level, FPL had robust project planning, management, and execution processes in place, which included the use of project guidelines and Project Instructions. Tr. 862 (Jones); Ex 22. FPL also utilized its Nuclear Business Operations group, which provided

accounting oversight for the EPU project independent from the project team. Tr. 863-64 (Jones). The EPU project team held a number of regularly scheduled meetings and produced several reports to help communicate the status of the project, scope changes, schedule and cost variances, safety performance, risks, and risk mitigation. Tr. 866-67 (Jones); Ex. 23. The risk management process itself was governed by a Project Instruction in conjunction with a Project Risk Committee to ensure appropriate actions were taken to mitigate or eliminate identified risks. Tr. 867-68 (Jones).

FPL's contracting controls for the EPU project were also reasonable. The standard approach for the procurement of materials or services with a value in excess of \$25,000 was to use competitive bidding. Tr. 869 (Jones). However, the use of single source, sole source, and Original Equipment Manufacturer providers was also necessary in certain situations. *Id.* When single or sole source procurement was used, FPL's policies required proper documentation of justifications and senior-level management approval. Tr. 869-70 (Jones).

FPL's EPU internal controls were audited by the FPSC Audit Staff. Audit Staff conducted interviews with FPL personnel and issued extensive document and data requests related to project management oversight and project implementation. Documents reviewed included management reports, contracts, vendor evaluations, invoices, quality assurance reports, and internal audits. Tr. 935 (Rich). With respect to contractor management, Audit Staff examined the additional layers of reporting that FPL added in 2012 (Tr. 937 (Rich)) and specifically reviewed FPL's management of its EPC vendor more closely (Tr. 942-43 (Fisher)). Audit Staff concluded that FPL employed an adequate system of EPU project controls, risk valuation, and management oversight. Ex. 68, p. 13 of 40.

FPL also engaged Concentric to perform an independent review of the internal controls utilized by the Company for the EPU project in 2012, and engaged Burns and Roe Enterprises, Inc. to review EPU project management in 2012. Witnesses Reed (on behalf of Concentric) and Ferrer (on behalf of Burns and Roe) both concluded that FPL prudently managed the EPU project in 2012. *See* Tr. 304, 348 (Reed); Tr. 275 (Ferrer). Witness Ferrer concluded that “FPL applied consistent management and contractor oversight approaches across the four units that make up its EPU project, and project management actively looked for ways to shorten schedules and reduce costs. FPL’s performance was comparable to, or better than, other large construction projects.” Tr. 275 (Ferrer).

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 prudently incurred.

b. OPC’s Recommended Disallowance

No intervenor, including OPC, identified a single imprudent management decision or action in 2012 that purportedly led to any imprudently incurred cost. Instead, OPC and its witness Jacobs attempted to evaluate the near-final, total cost of the Turkey Point portion of the EPU project by comparing it to the break-even cost developed for purposes of the feasibility analysis of Turkey Point 6 & 7, and then recommended a disallowance based upon that comparison. OPC’s recommendation should be rejected for at least four reasons:

- As described by FPL witness Jones and as concluded by the Commission in prior NCR proceedings, the Turkey Point and St. Lucie portions of the integrated EPU project cannot be evaluated separately;

- As explained by FPL witness Sim, OPC witness Jacobs’s approach is fundamentally flawed. One cannot use a breakeven cost developed for an entirely different project in an attempt to draw final “cost-effectiveness” conclusions about another project;
- As explained by FPL witnesses Reed and Deason, OPC’s argument relies upon hindsight and reflects poor public policy considerations; and
- The recommended disallowance would violate the NCR law and Rule, and is contrary to prior Commission rulings on similar disallowance mechanisms requested by OPC.

(i) OPC ignores prior Commission rulings that the EPU project is one project

FPL witness Jones explained that FPL has consistently managed the EPU project as one comprehensive project, and that it would be inappropriate to attempt to split the project for cost analysis purposes. As summarized by Mr. Jones:

- In 2007, FPL proposed and the Commission approved the EPU project as a single project to meet the need for 400 MWe by 2012;
- The objective of the project was to produce an additional 400 MWe using nuclear fuel, which required four reactors to be uprated at two sites;
- Efficiencies and cost savings have been realized in contract negotiations and through resource sharing by performing the uprate of all four units as a single project;
- Since the beginning, FPL has acknowledged the differences between the Turkey Point and St. Lucie portions of the EPU project – FPL has never claimed each site would represent 50% of the project cost; and
- The feasibility of the EPU project has always been based on the total cost and total benefits of the project, and not just on a portion of the project.

Tr. 905-06 (Jones); *see also* Tr. 722-23, 728-29 (Sim). Similar testimony was provided in 2011 and 2012. These undisputed facts demonstrate the incorrectness of attempting to examine pieces of the EPU project in isolation. Nonetheless, OPC repeatedly has attempted to split the EPU project into two pieces, and the Commission repeatedly has rejected such efforts.

In 2011, OPC witness Jacobs recommended, “[t]he St. Lucie and Turkey Point projects should be looked at separately in the analysis, with a break-even cost identified for each project.” Tr. 906 (Jones) (quoting witness Jacobs’s 2011 NCR testimony at Tr. 1031). His reasoning, as summarized by the Commission, was that “the project should be broken up into two separate analyses due to the higher estimated capital costs of the Turkey Point plant portion of the uprate project” (Order No. PSC-11-0547-FOF-EI, p. 40) – the same reasoning witness Jacobs presented this year. In 2012, witness Jacobs recommended, “[t]he Commission should revisit the decision to permit FPL to continue to treat the economics of the EPU projects [sic] on a consolidated basis[.]” Tr. 906-07 (Jones) (quoting witness Jacobs’s 2012 NCR testimony at Tr. 1296-97). Again in 2012, witness Jacobs used the higher cost of the Turkey Point portion of the EPU project as the basis for his recommendation. *See* Order No. PSC-12-0650-FOF-EI, p. 66.

In both cases the Commission rejected witness Jacobs’s recommendation. In 2011, the Commission concluded:

We agree with FPL that a separate economic analysis for each of the EPU project plant is unnecessary, and would be difficult to calculate. While a mathematical average of the benefits derived from lessons learned and equipment bulk orders can be developed, it is not known if these would have materialized if only one plant was upgraded. Therefore, completing separate analyses would incorrectly attribute to the individual plants the benefits gained from performing uprates at both plants simultaneously.

Order No. PSC-11-0547-FOF-EI, p. 40. In 2012, the Commission rejected witness Jacobs's attempt to split the project into two pieces for similar reasons, quoting its 2011 order.¹³ Order No. PSC-12-0650-FOF-EI, p. 66. *See also*, Tr. 907 (Jones). OPC has not presented any testimony that would compel a deviation from these prior, factual determinations.

Witness Jacobs points out that "by the end of August 2012, FPL had spent \$670 million of the \$688 million that FPL projected [for the Turkey Point EPU work] in its April 2012 filing for all of 2012." Tr. 469 (Jacobs). By focusing on the Turkey Point costs in isolation, OPC's witness is overlooking or ignoring the relevant total-project information provided during last year's NCR hearing. For example, FPL witness Jones testified in 2012 that the total project non-binding cost estimate range was still subject to change and that FPL's April 2012 cost estimates were not the "final refinement" of costs. Tr. 912 (Jones) (quoting his 2012 NCR testimony at Tr. 1078 and 1351). Moreover, Mr. Jones testified in 2012 that he expected the total installed cost per kilowatt upon completion of the EPU project to be about the same as that reflected in the Company's April 2012 filing. Tr. 912-13 (Jones). Now that the implementation work is complete FPL can report that the total installed cost per kilowatt is in fact about the same as it was estimated to be last year. *Id.*

OPC witness Jacobs claims that if FPL had provided a higher projection of Turkey Point costs last year, the Commission could have come to a different conclusion with respect to OPC's disallowance proposal. Tr. 471 (Jacobs). OPC and its witness overlook the fact that the Commission's rejection of OPC's proposal was not based on the project's costs, or the portion of the project's costs attributable to the Turkey Point EPU work. Rather, the Commission found

¹³ Also in 2012, OPC proposed an issue (Issue 28A) seeking to evaluate the economic feasibility of the Turkey Point and St. Lucie EPU activities separately. The Prehearing Officer cited the Commission's 2011 NCR decision quoted above and rejected the issue. Order No. PSC-12-0441-PCO-EI, p. 2 (issued Aug. 27, 2012).

that the separation of the EPU project's costs between Turkey Point and St. Lucie was unnecessary, would be difficult to calculate, and would incorrectly attribute to the individual plants the benefits of the single, integrated project. A higher or lower Turkey Point cost estimate in 2012 would not have remedied these fatal flaws inherent in OPC's approach; therefore, it is wrong for OPC to assert that knowledge of higher costs in 2012 would have supported a different Commission decision on this point.¹⁴

(ii) OPC's attempt to use Turkey Point 6 & 7 breakeven costs to evaluate the cost-effectiveness of a portion of the EPU project is fundamentally flawed

OPC's witness Jacobs claims that the breakeven cost calculated by FPL witness Sim "quantifies the maximum installed cost of new nuclear capacity that is cost-effective." Tr. 463 (Jacobs). However, Dr. Sim never indicated that this was generally true for all nuclear investments at any location, at any time. Instead, the breakeven cost presented by Dr. Sim is only useful in evaluating the Turkey Point 6 & 7 project. Dr. Sim testified that economic analyses of different projects or resource options simply don't have automatically applicable or transferable results in the manner OPC witness Jacobs assumes they do. Tr. 736-38 (Sim). Witness Jacobs's background and experience do not include anything remotely associated with electric utility resource planning, which may explain the misguided nature of his attempted use of this Turkey Point 6 & 7 feasibility data point. *See* Tr. 736 (Sim); *see also*, Tr. 452-53 (Jacobs) (describing his background and experience).

A comparison of resource options on a dollars per kilowatt hour basis, or on a dollars per kilowatt basis (as witness Jacobs attempts to do), is meaningless in regard to making a final

¹⁴ Additionally, if the 2012 feasibility analyses had been updated at the time of the 2012 hearing to recognize the expenditures that had already been spent in 2012 up to that point, then these expenditures would fall into the category of sunk costs and would have properly been excluded from the analyses. Consequently, the completion of EPU would have been projected to be even more cost-effective for FPL's customers in any updated analysis. *See* Tr. 749-50 (Sim).

decision about resource options unless the resource options in question are nearly identical. Tr. 737-38 (Sim). The two resource options in question, Turkey Point 6 & 7 and a subset of EPU, are not even close to being identical in regard to several of these key characteristics including in-service dates and capacity. *Id.* Differences in these key characteristics mean that the impacts the two resource options will have on the FPL system will be significantly different. *Id.* Therefore, the economics of these two resource options cannot be meaningfully evaluated based on a dollars per kilowatt comparison.

For example, consider the fact that the in-service date of Turkey Point 6 & 7 is a decade later than the already in-service EPU project. This means that the EPU project's impacts for the first 10 years will be on an FPL system (i.e., the fleet of generating units, power purchases, DSM, etc.) that is markedly different than the FPL system the Turkey Point 6 & 7 project will impact when it begins service 10 years later. Tr. 737-38 (Sim). In addition, the 10-year difference in in-service dates means that the discounting of benefits will have different impacts on determining breakeven costs for the EPU and Turkey Point 6 & 7 projects. *Id.* Consequently, the assumption that the breakeven cost in 2013 dollars for Turkey Point 6 & 7 with an in-service date of 2022/2023 is applicable and automatically transferable to the EPU project, which is already in-service, is fundamentally flawed. Tr. 738 (Sim); Ex. 81 (providing a simplified example of how different in-service dates change the breakeven cost associated with a resource option).

Even if one were to accept OPC witness Jacobs's approach, one cannot accept his conclusion that the Turkey Point portion of the EPU project is not (and cannot be) cost effective for FPL's customers. Forecasts of fuel costs, environmental costs, etc. continually change, and these changes can have significant impacts on the projected benefits of the EPU project over the

course of its operating life. *See* Tr. 732-34 (Sim). And, because the most recent forecasted values for fuel costs and environmental compliance costs are at the low end of costs forecasted since the NCR dockets began, significant changes in these costs which occur in the future are more likely to be in the direction of higher costs; i.e., towards higher benefits for EPU. Tr. 734 (Sim). Even the MWe output that witness Jacobs used to calculate the cost per kilowatt of the Turkey Point portion of the EPU project changed between the time he filed his testimony and the time FPL filed its rebuttal testimony. At the time of FPL's rebuttal, an additional 10 MWe had been recognized from Turkey Point Unit 4. Tr. 727 (Sim); Tr. 913 (Jones). Accordingly, the cost per kilowatt for the Turkey Point EPU work used by witness Jacobs is overstated.

Finally, witness Jacobs overlooks the fact that FPL's feasibility analyses present a snapshot of potential future economic performance. The breakeven costs that FPL develops each year to assess the feasibility of the Turkey Point 6 & 7 project change each year – as do the feasibility results themselves. *See* Tr. 660, 668-69 (Sim). OPC's witness Jacobs is trying to turn an annual breakeven snapshot developed for the Turkey Point 6 & 7 project's feasibility analysis into a permanent benchmark for EPU cost recoverability.¹⁵ Such disallowances are clearly not provided for and in fact are contrary to the NCR statute and rule – which focus on determining the recoverability of a utility's investment in nuclear projects solely by examination of the prudence of specific project management decisions and actions – as discussed further below. *See* Sections 366.93 and 403.519, Fla. Stat.; Rule 25-6.0423, Fla. Admin. Code.

¹⁵ OPC's witness is misusing or misunderstanding the purpose of annual cost-effectiveness evaluations and determinations. The purpose of such analyses is to determine the ongoing financial feasibility of completing a project – not to propose a disallowance of otherwise prudently incurred costs. Tr. 441 (Deason). In fact, the Commission previously has rejected the use of a breakeven feasibility analysis to disallow costs that does not distinguish between prudent and imprudent management actions and resultant costs. Order No. PSC-11-0547-FOF-EI, p. 55; *see also* Tr. 441-42 (Deason).

(iii) OPC's recommendation relies entirely on hindsight and reflects poor public policy

Despite OPC witness Jacobs's claims to the contrary, his recommendation relies entirely upon hindsight. Witness Jacobs states that "[v]iewing the economics of the project *with the benefit of near-final cost information*" reveals unreasonable EPU project cost levels. Tr. 472 (Jacobs) (emphasis added). Witness Jacobs may as well have said that viewing the economics of the project "with the benefit of hindsight" reveals unreasonable cost levels. Instead of looking at incremental, annual decisions and costs which are properly before the Commission, witness Jacobs is urging the Commission to look back over the total cost of the project and determine that – despite annual prudence and feasibility determinations – the total cost of the Turkey Point portion of the EPU project is now, somehow, unreasonable.

Witness Jacobs's use of hindsight is further demonstrated by his statement that "[s]ometimes the impact of an imprudent decision does not show up in the form of unreasonable (and even inordinate) costs until subsequent periods." Tr. 469 (Jacobs). FPL witness Reed testified that this is an incorrect and unreasonable application of the prudence standard for two reasons. First, witness Jacobs implies that the Commission does not know whether a decision is prudent or imprudent until the final cost is known. Tr. 354 (Reed). This approach clearly relies on hindsight and is a violation of the prudence standard that has been consistently applied by the Commission. Second, witness Jacobs points to and seeks to revisit decisions that happened long before 2012 (i.e., the period under review), such as FPL's decision to "undertake the Turkey Point EPU." Tr. 355 (Reed). Those decisions were evaluated and approved by the Commission in prior NCR proceedings, and witness Jacobs' implication that they should be revisited now is clearly inconsistent with the scope of this proceeding and a reasonable application of the prudence standard. *Id.*

Further, witness Jacobs' recommendation to assess the prudence of FPL's decision to undertake and complete the Turkey Point portion of the EPU project based on the final cost or cost-effectiveness of that EPU work is exactly the type of hindsight-based regulatory paradigm that was intended to be avoided by the NCR statute and rule. As summarized by FPL witness Reed:

The regulatory processes applied to the development of nuclear generation in the 1980s were characterized by significant cost disallowances, at times owing to results-oriented hindsight reviews that determined whether plants turned out to be economic a decade or more after construction had begun. The standards used by regulators at that time evolved from traditional prudence reviews to include an "economically used and useful" standard that, based on hindsight, determined what portion of a plant's prudently incurred cost was "economically" useful in providing service to customers. The recovery of prudently-incurred costs was further narrowed by the adoption of more onerous standards such as an "economic benefits test" and eventually simple "risk sharing," whereby costs were simply declared unrecoverable on the basis that the total cost was too large for customers alone to bear the burden. By recommending a disallowance based on the final cost of the EPU Project, regardless of the Commission's views on the prudence or imprudence of the actions of the utility, Witness Jacobs is essentially calling for a return to mistaken methodologies of the distant past. The Nuclear Cost Recovery rule, however, demonstrates that the Florida Legislature and the Commission wished to provide a framework within which the Commission has the opportunity to address and avoid many flawed aspects of those past regulatory processes.

Tr. 355-56 (Reed). Witness Jacobs's explanation that the \$200 million could be taken from 2012 costs still subject to the Commission's jurisdiction (Tr. 472 (Jacobs)) does not remedy the fact that the recommended disallowance is based on hindsight.

In addition to reflecting the impermissible use of hindsight, OPC witness Jacobs's recommended disallowance repackages previous recommendations rejected by the Commission. For example, this year's disallowance claim is similar to the risk sharing mechanism rejected by the Commission in 2011 because it would preclude FPL from recovering prudently incurred costs. Tr. 435-36 (Deason). Witness Jacobs also continues to take issue with FPL's decision to undertake the project on an expedited basis and FPL's historic exclusion, consistent with sound

economic principles and Commission direction, of sunk costs. *See* Tr. 436-38 (Deason). FPL witness Deason also pointed out that the Commission has previously rejected OPC's suggested use of a breakeven analysis to disallow costs. Tr. 441-42 (Deason).

To some extent it appears that OPC's recommendation to disallow costs relies upon FPL's actual 2012 EPU costs exceeding last year's estimate of 2012 EPU costs. At no place in OPC witness Jacobs's testimony does he identify any cost increases that were (i) within FPL's control and (ii) resulted from management imprudence. Tr. 433 (Deason). FPL witness Deason explained why a disallowance solely on the basis of increased costs would be incorrect. It is clearly set forth in Section 403.519(4) that the nuclear project cost estimates are non-binding. Tr. 433-34 (Deason). However, witness Jacobs' recommendation would, in essence, have the Commission make FPL's April 2012 cost estimate binding on FPL for cost recovery purposes. As Mr. Deason testified, "[t]here is nothing so magical about a particular cost estimate that would render costs incurred above that estimate unreasonable or imprudent" as OPC implies. Tr. 443 (Deason).

Finally, FPL witness Deason explained the asymmetrical nature of OPC's recommended disallowance. In sum, witness Jacobs wants to ignore actual costs for a sub-part of a project when they exceed his calculated breakeven point and reduce the amount of costs to be allowed for recovery, in this case by \$200 million. But when actual costs are lower than his calculated breakeven point, he wants to allow only the amount of actual costs. Tr. 446 (Deason). If witness Jacobs wanted to be balanced and continue to recommend a \$200 million disallowance for the Turkey Point portion of the EPU project, using his own methodology, he would also need to recommend a \$470 million bonus to be added to the recoverable cost of the St. Lucie portion of EPU project. Ex. 83. This calculation is based on the numbers presented in witness Jacobs'

testimony of the relative positions of the Turkey Point and the St. Lucie portions of the EPU project compared to his breakeven point. Tr. 446-47 (Deason); Ex. 83. Of course, FPL is not seeking such a bonus in this proceeding.

(iv) OPC's recommendation is contrary to NCR law, the NCR Rule, and Commission precedent

Section 366.93, Florida Statutes, requires that the Commission "promote utility investment in nuclear ... power plants *and allow for the recovery in rates of all prudently incurred costs...*" § 366.93(2), Fla. Stat. (emphasis added). OPC's request to disallow \$200 million in Turkey Point EPU costs on the basis that those costs exceed the breakeven cost calculated for Turkey Point 6 & 7 is without regard to whether those EPU costs were prudently incurred. OPC's witness did not identify any imprudent FPL decisions or actions that caused the cost of the Turkey Point uprate work to increase. FPL witness Jones's testimony as to the prudent management of the EPU project and reasons for the project cost increases, including those at the Turkey Point site, is un rebutted in the record. *See, e.g.*, Tr. 855-59, 874-78, 910-11 (Jones); Ex. 19. Accordingly, OPC's recommendation would disallow prudently incurred costs, contrary to Section 366.93.

OPC's request also violates Section 403.519(4)(e), Florida Statutes. Pursuant to that statute, a disallowance is only permissible if "the commission finds, based on a preponderance of the evidence adduced at a hearing . . . that certain costs were imprudently incurred." § 403.519(4)(e), Fla. Stat. OPC's recommendation fails to meet the statute's requirement of alleging that "certain costs were imprudently incurred". Witness Jacobs claims that the Commission's decision in Order No. PSC-09-0783-FOF-EI, that it has discretion to determine whether a methodology for assessing feasibility is appropriate, should also apply to the manner for measuring the reasonableness of the "final increment of costs." However, any such

methodology that results in the disallowance of costs not shown by a preponderance of the evidence to have been imprudently incurred is impermissible. Even if one were to accept witness Jacobs's conclusion that the Turkey Point portion of the EPU project is uneconomic, that result does not equate to management imprudence. Tr. 444 (Deason). Witness Jacobs's claim for a disallowance based on a comparison of a portion of project costs to the breakeven cost developed for Turkey Point 6 & 7 clearly violates Section 403.519(4).

Similarly, the relief OPC seeks is not permitted by the nuclear cost recovery rule. Rule 25-6.0423(5)(c)(2) provides:

The Commission shall, prior to October 1 of each year, conduct a hearing and determine the ... prudence of actual construction expenditures expended by the utility . . . Annually, the Commission shall make a prudence determination of the prior year's actual construction costs . . . In making its determination of reasonableness and prudence the Commission shall apply the standard provided pursuant to Section 403.519(4)(e), F.S.

The Commission's Rule governing this proceeding clearly limits prudence reviews to the prior year's decisions and costs. In this year's docket, 2012 decisions and costs are subject to prudence review. OPC has not alleged that a single 2012 decision or resulting cost was imprudent.

The only imprudence claimed by OPC's witness was "FPL's decision to undertake the Turkey Point EPU project in the face of the levels of complexity and uncertainty of which FPL was aware at the outset" and the continuation of the project "without developing an adequate provision for contingency when the costs began to soar". Tr. 469-70 (Jacobs). Such hindsight attacks on the 2008 need determination and on project management in years prior to 2012 are outside the scope of this proceeding. Although witness Jacobs uses the term "prudence" in his allegations, he is actually attempting an inappropriate and unsupported collateral attack on the Commission's 2008 need determination and the continuation of the project each year in the

manner determined to be prudent by the Commission. Additionally, witness Jacobs's attacks on FPL's use of contingency are unfounded. FPL witness Jones testified that an appropriate contingency was used to help control costs, and that a larger contingency could have diminished FPL's ability to control costs. Tr. 909 (Jones). Similar to FPL's points concerning Section 403.519(4)(e) above, OPC's request does not bear any relation to the NCR prudence review process established by the Rule.

Finally, OPC's request is contrary to three prior Commission orders rejecting similar requests for relief. By Order No. PSC 11-0095-FOF-EI, the Commission determined it did not have the authority to establish a risk sharing mechanism that set a cost "threshold" and would preclude the utility from recovering prudently incurred costs. Order No. PSC 11-0095-FOF-E, p. 9. On reconsideration, this decision was affirmed. *Order Denying Motion for Reconsideration*, Docket No. 100009-EI, Order No. PSC-11-0224-FOF-EI, pp. 9-10 (issued May 16, 2011). In 2011, the Commission rejected a similar OPC request for a disallowance threshold. That time, the threshold was to be based on a "breakeven analysis." Order No. PSC-11-0547-FOF-EI, p. 56-57. In 2012, the Commission rejected OPC's attempt to impose a hard cap of FPL's then-current non-binding cost estimate as its threshold for cost recovery. Order No. PSC-12-0650-FOF-EI, p. 73. In that order, the Commission specifically noted "we do not find the year-to-year increases in cost estimates demonstrate that FPL was imprudent." *Id.* OPC's recommended disallowance this year should similarly be rejected as contrary to Florida's NCR statutes and rule, and contrary to these prior Commission decisions.

In sum, the prudence of FPL's 2012 EPU project management is supported by extensive record evidence in this docket. No intervenor presented any evidence challenging the prudence of any particular 2012 management decision or action, or resulting project cost. OPC's

recommended disallowance relies upon the separation of the Turkey Point and St. Lucie portions of the EPU project – a concept rejected repeatedly by the Commission. It then compares the cost per kilowatt of the Turkey Point portion of the EPU project to the breakeven cost developed for purposes of examining Turkey Point 6 & 7 feasibility – a fundamentally flawed approach that fails to support any cost-effectiveness conclusions whatsoever about the EPU project. OPC’s proposed disallowance mechanism is contrary to the prudence standard, contrary to the NCR statutes and Rule, and contrary to prior Commission decisions rejecting similar disallowance proposals. Accordingly, OPC’s recommendation should be rejected and the amounts in Issues 14, 15, 16, and 17 should be approved as stated in FPL’s prehearing positions in Order No. PSC-13-0333-PHO-EI and only adjusted for the AFUDC stipulation on Issue 1. As a result of the stipulation on Issue 1, FPL’s total jurisdictional amount to be included in establishing FPL’s 2014 Capacity Cost Recovery Clause factor is \$43,461,246.

CONCLUSION

For all of the foregoing reasons, based upon Florida law, the evidentiary record in this proceeding, and prior Commission orders, FPL requests that the Commission approve FPL’s requested 2014 NCR amount consistent with FPL’s positions stated in this Post-Hearing Brief.

Respectfully submitted this 19th day of August, 2013.

By: s/ Bryan S. Anderson
Bryan S. Anderson
Fla. Auth. House Counsel No. 219511
Admitted in IL, Not Admitted in FL
Kenneth M. Rubin
Fla. Bar No. 349038
Jessica A. Cano
Fla. Bar No. 0037372
Attorneys for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
(561) 304-5253
(561) 691-7135 (fax)

CERTIFICATE OF SERVICE
DOCKET NO. 120009-EI

I HEREBY CERTIFY that a true and correct copy of FPL's Post Hearing Brief was served via electronic delivery this 19th day of August, 2013, to the following:

Michael Lawson, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
MLAWSON@PSC.STATE.FL.US

J. R. Kelly, Esq.
Charles Rehwinkel, Esq.
Joseph McGlothlin, Esq.
Erik L. Sayler, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399
Kelly.jr@leg.state.fl.us
Rehwinkel.Charles@leg.state.fl.us
mcglothlin.joseph@leg.state.fl.us
Sayler.Erik@leg.state.fl.us

J. Michael Walls, Esq.
Blaise N. Gamba, Esq.
Carlton Fields Law Firm
P.O. Box 3239
Tampa, Florida 33601-3239
mwalls@carltonfields.com
bgamba@carltonfields.com
Attorneys for Duke

John T. Burnett, Esq.
Dianne M. Triplett, Esq.
Duke Energy Florida, Inc.
P.O. Box 14042
St. Petersburg, Florida 33733-4042
john.burnett@pgnmail.com
dianne.triplett@pgnmail.com
Attorneys for Duke

Matthew Bernier, Esq.
Duke Energy Florida, Inc.
106 E. College Avenue, Suite 800
Tallahassee, Florida 32301
Matthew.bernier@duke-energy.com
Attorney for Duke

Mr. Paul Lewis, Jr.
106 East College Ave., Suite 800
Tallahassee, Florida 32301-7740
paul.lewisjr@duke-energy.com

Jon C. Moyle, Jr., Esq.
Moyle Law Firm
118 North Gadsden Street
Tallahassee, Florida 32301
jmoyle@moylslaw.com
Attorneys for FIPUG

James W. Brew, Esq.
F. Alvin Taylor, Esq.
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201
jbrew@bbrslaw.com
ataylor@bbrslaw.com
Attorneys for PCS Phosphate

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale, FL 33334
george@cavros-law.com

Robert Scheffel Wright, Esq.
John T. LaVia, III, Esq.
Gardner, Bist, Wadsworth, et al.
1300 Thomaswood Drive
Tallahassee, FL 32308
Schef@gbwlegal.com
Jlavia@gbwlegal.com

By: s/ Bryan S. Anderson
Bryan S. Anderson
Fla. Auth. House Counsel No. 219511
Admitted in IL, Not Admitted in FL