BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor	DOCKET NO. 140001-EI FILED: October 27, 2014

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PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, ("OPC" or "Citizens"), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-14-0084-PCO-EI, issued February 4, 2014, and Order No. PSC-14-0439-PCO-EI, issued August 22, 2014 submit this Prehearing Statement.

APPEARANCES:

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On behalf of the Citizens of the State of Florida.

1. WITNESSES:

The Citizens intend to call the following witnesses, who will address the issues indicated:

NAME	ISSUES
Donna Ramas	1-3
Daniel J. Lawton	1-4

2. EXHIBITS:

Through Donna Ramas, and Daniel J. Lawton, the Citizens intend to introduce the following exhibits, which can be identified on a composite basis for each witness:

Witness	Exhibits	Title
D. Ramas	DMR-1	Qualifications of Donna Ramas
D. Lawton	DJL-1	Résumé of Daniel J. Lawton
D. Lawton	DJL-2	Market Price Sensitivity*
D. Lawton	DJL-3	Results, FPL's High Output/Reduced Market Price Case*
D. Lawton	DJL-4	Woodford Results, 3.7% Annual Market Price Assumption*
D. Lawton	DJL-5	NGI's 2014 North American Shale & Resource Plays Factbook (Excerpt)

* Indicates the exhibit contains information designated as Confidential by FPL,

3. STATEMENT OF BASIC POSITION

Florida Power & Light, Inc.'s ("FPL" or "Company")'s June 25, 2014 Petition ("Petition") can be summed up as a new way to decouple shareholder risks from shareholder profits. Under FPL's proposal, FPL will shift all risks of investing in gas reserves to the customers in exchange for promises of potential customer fuel savings and guaranteed trued-up profits (or returns) for shareholders. OPC is not opposed to *guarantee* fuel cost savings to customers; however, FPL cannot guarantee those savings to customers over the next 40-50 years.

Thus, for the reasons stated herein, FPL should not be permitted to spend the customers' money on the faint promises of speculative fuel savings on investments in gas reserves transactions based on faint promises of speculative fuel savings.

Regarding the threshold jurisdictional issue

On August 22, 2014, OPC filed a Motion to Dismiss FPL Petition for Lack of Subject Matter Jurisdiction on the grounds that the Florida Public Service Commission ("Commission")lacks jurisdiction to approve the following: (1) FPL's June 25, 2014 Petition (Petition) and the Woodford Gas Reserves Project ("Woodford Project"); (2) FPL's proposed gas reserves guidelines ("Guidelines"); and (3) recovery of those costs from ratepayers through the annual fuel adjustment recovery clause ("Fuel Clause").

OPC moved for an order dismissing the Petition, which describes FPL's ambition to enter the highly competitive business of exploring for, drilling, and producing natural gas in shale formations, over which enterprise the Commission has no jurisdiction. FPL's request, which is to establish capital investments in the unregulated, competitive natural gas production industry as a component of its utility rate base and to collect a guaranteed return on such investments through its fuel cost recovery clause, is therefore beyond the regulatory purview of the Commission, and the Commission has no authority to grant FPL's petition.

As evidence to support OPC's argument, the Commission has no authority to audit PetroQuest's activities or production costs for prudency or reasonableness, much less disallow any of its production costs. In addition, the Commission has no jurisdiction over PetroQuest's marketing and disposition of the gas. Inasmuch as the Commission has no jurisdiction over FPL's USG affiliate or its contractual arrangements in the joint venture with PetroQuest, and because the FPL subsidiary's posture in the joint venture following an assignment would be identical to that of USG, it follows necessarily that the Commission would also have no jurisdiction over the FPL subsidiary's participation in the joint venture with PetroQuest. Capital investments and ventures in a competitive business undertaken to make profits from the production and sales of fuel are not regulated by the Commission. Therefore, these investments in unregulated ventures do not qualify as a public utility's "property used and useful in serving

the public." Section 366.06(1), Florida Statutes ("F.S."). Further, the Commission has stated, and FPL has agreed, that public utilities subject to the Commission's jurisdiction are not allowed to make a profit on fuel costs flowed through the fuel cost recovery clause. This principle derives from, and is consistent with, the statutory definition of utility-related activities and the corresponding limits of the Commission's jurisdiction. FPL's proposal would violate this requirement that regulated utilities are not allowed to make a profit on fuel.

OPC submits that the non-jurisdictional nature of the proposed enterprise is evident on the face of FPL's request, and that Florida Statutes and applicable precedents require the Commission to dismiss the petition for lack of subject matter jurisdiction.

Furthermore, a comprehensive review of Chapters 350 and 366, F.S., reveals the Legislature has not expressly or impliedly authorized Commission jurisdiction over these proposed gas reserves transactions. Further, FPL admits *in testimony* that it also lacks the expertise to perform the specialized accounting associated with oil and gas transactions and, like OPC, FPL had to hire Dr. Taylor as well as an independent, outside third-party to review its proposed Woodford Project. This lack of core expertise related to these highly complex and complicated transactions and investments further buttresses OPC's argument that the Commission does not have jurisdiction over these proposed transactions.

For these additional reasons, FPL's request to invest in gas reserves projects and collect a guaranteed return on such investments through the Fuel Clause is beyond the regulatory purview of the Commission. This threshold question is scheduled to be addressed by the Commission on November 25, 2014.

All risks of gas reserves investments placed on ratepayers

Under FPL's proposal to partner with PetroQuest in the Woodford Project, all the extraordinary risks associated with the gas exploration, drilling (including fracking) and development activities would be placed squarely on the backs of FPL's 4.5 million customers, while FPL's shareholders would reap guaranteed, trued-up profits from these investments.

Under the Woodford Project, FPL may be less cautious when deciding whether to consent to drill whether or not it is economic to do so. While another partner with PetroQuest may decline to consent to drill when it is not economical (i.e., it is too risky for its owners), FPL bears no such risk when it gives consent (and may be encouraged to do so) because its shareholders would earn a return on every dollar invested in a well – whether or not the well produces any gas. As such, FPL would have an incentive to not withhold consent to additional wells, even when such undertaking would be uneconomic (too risky) for other partners. This same logic applies to FPL's investments in gas reserves under the proposed Guidelines.

In summary, the conclusion of net fuel savings resulting from the Woodford Project is built on speculative and unsupported assumptions regarding the future market price of gas for the next 40-50 years. Under its Petition, FPL would be assured recovery of all of its costs, plus a profit or return on the Woodford Project investment. FPL would bear zero risk; and all risks of FPL's participation in the gas exploration, drilling (including drilling in shale formations) and production business would be shifted to its customers. FPL's customers would effectively be required to become investors in a risky, unregulated industry. Because of the "true up" feature of the fuel cost recovery clause, these project investment amounts would be guaranteed recovery for FPL, ensuring that FPL's shareholders earn a guaranteed return/profit on these gas reserves investments while the customers receive no such guarantee of benefit.

Gas reserves investments are not long-term physical hedges

In its rebuttal testimony, FPL now asserts more prominently than it did in the petition and supporting direct testimony that the proposed Woodford Project is similar to a long-term physical hedge. This contention is misplaced. The proposed Woodford Project is a speculative investment in an Oklahoma gas reserve. FPL is speculating that the Woodford Project will produce an estimated annual gas quantity at a forecasted per-unit cost level (where forecasted costs are based on numerous FPL assumptions, forecasts, and estimates) that is lower than FPL's estimate of future natural gas market prices.

A long-term physical hedge typically involves a contractual quantity of gas at a fixed price to be delivered at some agreed future period. The physical hedge contract attempts to

eliminate all unknown variables in the long-term future price of gas, and to apportion the risks between the buyer and the seller. The buyer is protected from future fluctuations in natural gas prices and the seller is obligated to deliver the natural gas regardless of the current market price. If the seller defaults, the buyer has contractual remedies.

Unlike a true, long-term physical hedge, the Woodford Project estimates are not fixed, but rather estimated and subject to change. There is no hedge or assurance that these estimates will be accurate, both in terms of the amount of gas that can be delivered or the costs of the delivered gas. If one assumes that FPL's assumptions regarding expected investment levels, expected annual output levels, expected annual operating cost levels, and expected market price alternatives are correct (or if FPL was willing to make a guarantee) for the Woodford Project, then one can assume that a hedge is in place. However, this is not the case and the Woodford Project cannot be considered a physical hedge. Further, instead of apportioning risks between FPL and PetroQuest (or its other potential gas reserves partners under the Guidelines), FPL's proposal would require its customers to assume all of FPL's shareholders' risks regardless of the success or failure of its proposed natural gas reserves investments.

Likewise, FPL's proposed investments in gas reserves under the Guidelines do not fit within the definition of long-term physical hedges.

Regarding the Woodford Project

FPL's claim that the Woodford Project venture with PetroQuest will generate customer savings necessarily stems from its assumption that the price that FPL pays its subsidiary for the Woodford gas will be less than the market price of gas. However, recent historical data for the years 2010 through 2013 on the relationship between the cost of production in the Woodford area and the market price of gas shows that the cost of Woodford gas has exceeded the market price of gas – and this difference has been material.

FPL's gas industry partner/project operator, PetroQuest, admits in its public documents and Securities Exchange Commission ("SEC") filings that it does not know what will happen to the market price of natural gas over time. Yet, in support of its Petition, FPL purports to

accurately project the market price of gas over a 50-year period. FPL's assumptions of early increases in the market price of gas relative to the cost of production for Woodford gas: (1) are unreasonable; (2) bias the analysis in favor of the Woodford project; and (3) render FPL's conclusions unreliable.

Thus, FPL's claim that the market price of gas will be higher than its subsidiary's costs of production plus FPL's return on investment bears no relationship to recent past experience or current reality as evidenced by the actions of competitive oil and gas exploration and drilling firms.

FPL's conclusions of potential benefits to customers also remain highly vulnerable to sensitivity analyses. Under reasonable – and even conservative – changes in the assumptions of Woodford production and the rate of change of market prices, customers could realize either a loss of the majority of FPL's estimated savings, or even negative project savings (in the form of higher fuel cost recovery charges) relative to the market price of gas.

Regarding the proposed Guidelines

For the same reasons discussed above, the Commission should also reject FPL's proposed guidelines for future gas reserves investments. There is almost no risk of disallowance of any costs unless the investment is determined to be outside the requirements of the Guidelines.

For the foreseeable future, FPL proposes to secure up to 25% of its average daily burn for natural gas through its gas reserves investments. To achieve this goal, FPL will always be chasing its tail to continue investing in gas reserves to keep up with its proposal to secure 25% of its average daily burn through these gas reserves investments. And, with each investment, FPL would be guaranteed a trued-up return of 10.5% for its shareholders on every dollar it invests. This remains true for each investment whether (1) the investments are sound and produce the necessary volumes of natural gas expected; or (2) the gas produced is above the market price of gas over the 40-50 year horizon associated with investing in each gas reserves project.

Since under the Guidelines FPL's shareholders bears no risk whatsoever associated with investing in the oil and natural gas exploration, drilling, and development activities that its investment partners face, FPL would be free and willing to wager the ratepayers' money that the gas ventures will produce gas and that the future market price for the gas produced from those ventures will be higher than the cost to produce natural gas. Regardless of whether FPL wagers well or poorly, FPL's shareholders would be guaranteed a trued-up return on its investment – or profit – on every dollar invested in these projects, whether or not the gas wells produce one molecule of gas.

The severely skewed nature of the risk/reward aspects of FPL's Petition come clearly into focus only when FPL's proposed Guidelines are scrutinized. FPL proposes to spend as much as $750 million annually on gas reserves ventures in future years – which is equivalent to adding half of a large combined cycle unit to rate base every year. Under the Guidelines, FPL's partnerships with the gas exploration industry would be effectively pre-approved, as FPL is requesting presumptive recovery for costs associated with these future gas reserves investments. Importantly, this $750 million is only an annual spending limit, and not a total cap.[1] Therefore, in as little as ten years, FPL could earn hundreds of millions of dollars in guaranteed shareholder profits from gas exploration joint ventures while requiring its customers to shoulder 100% of the risk of those ventures.

For these reasons, along with the positions taken below and the evidence to be adduced at the hearing, FPL's request for approval of its June 25, 2014 Petition should be denied.

[1] Each year, under its proposed Guidelines, FPL could layer another $750 million of capital investments in the gas industry on top of previous years. Each such annual outlay of $750 million would yield approximately $47 million of after-tax profits annually. This amount is calculated employing a 10.5% equity return and a 59.6% equity ratio or (10.5% * 59.6%) = 6.258% weighted cost of equity. The $47 million is calculated by multiplying this weighted cost of equity times the $750 million annual investment cap per the Guidelines.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: Should the Commission approve FPL's request to recover the amounts it would pay to its subsidiary for gas obtained from the PetroQuest joint venture through the fuel cost recovery clause on the basis and in the manner proposed by FPL in the June 25 Petition?

OPC: No. The Commission should not approve the recovery of costs associated with the Woodford Project for the reasons discussed above under OPC's basic position. The Woodford Project does not satisfy the criteria for Fuel Clause recovery because its costs are not capital costs normally recovered through base rates. These proposed costs do not meet the requirements for the narrow exception allowed by Commission Order No. 14546 in Docket No. 850001-EI-B. What FPL is proposing in this docket is beyond the policy adopted by the Commission for dealing with fossil fuel-related costs normally recovered through base rates that will result in fuel savings to customers.

Further, the Commission prohibits utilities from profiting (or earning a return) on fuel purchases recovered through the Fuel Clause. Under FPL's proposal, FPL would "purchase" (or acquire) fuel from the Woodford Project at production costs, and would then allow FPL shareholders to profit (earn a return) on the gas that the Company acquires at production costs. However, the Commission neither allows utilities to profit (earn a return) on the fuel they purchase at market cost, nor does the Commission allow utilities to profit (earn a return) on the fuel acquired through their short-term hedging programs. Fuel acquired at market cost or from a financial hedge is a cost to the utility that must be expensed. The Commission should continue to protect customers by prohibiting utilities from recovering the cost of fuel with a profit or return added on to those costs. (Ramas, Lawton)

ISSUE 2: **If the Commission answers Issue 1 in the negative, what standard should the Commission apply to a request by FPL to recover the price that FPL pays to its subsidiary/affiliate for gas obtained through the joint venture with PetroQuest?**

OPC: If the Commission denies FPL's Petition and answers Issue 1 in the negative, consistent with the Commission's prior findings related to the acquisition from affiliated entities of fossil fuels for which a competitive market exists, the Commission should make it abundantly clear in this case that if FPL purchases gas from the proposed joint venture between PetroQuest and FPL's yet-unnamed subsidiary (or even if it directly enters into the joint venture with PetroQuest), and from other potential future joint ventures, the amount to be recovered from customers through the fuel cost recovery clause will be limited to, and will not exceed, the market price of gas. The market price of natural gas is readily available to the Commission and its staff. (Ramas, Lawton)

ISSUE 3: **What amount, if any, associated with the transactions proposed in FPL's June 25 Petition should be included for recovery through FPL's 2015 fuel cost recovery factor?**

OPC: No amount should be included for recovery through FPL's 2015 fuel cost recovery factor. Nevertheless, if FPL's subsidiary goes forward with the transaction, then any natural gas obtained by FPL from such subsidiary should be recovered through FPL's 2015 fuel cost recovery factor based on the market price of gas, consistent with how with fossil fuel costs obtained from affiliated entities are recovered. However, if the Commission finds that the transaction falls within its regulatory jurisdiction, despite OPC's strong contention that it does not have such authority, then the amount recovered through the 2015 fuel cost recovery factor should be based on the lower of cost or market for the gas obtained from the subsidiary. (Ramas, Lawton)

ISSUE 4: **Do FPL's proposed guidelines for future capital investments in natural gas exploration and drilling joint ventures satisfy the Commission's criteria for consideration in the fuel cost recovery clause proceeding?**

OPC: No. Similar to OPC's position on Issue 1, FPL's proposed Guidelines do not satisfy the criteria for Fuel Clause recovery because gas reserves investment costs are not capital costs normally recovered through base rates. These proposed costs do not meet the requirements for the narrow exception allowed by Commission Order No. 14546 in Docket No. 850001-EI-B. Item 10, at issue in this docket, reads as follows:

> Fossil fuel-related costs normally recovered through base rates but which were not recognized or anticipated in the cost levels used to determine current base rates and which, if expended, will result in fuel savings to customers. Recovery of such costs should be made on a case by case basis after Commission approval.

What FPL is proposing in this docket (as well as its interpretation of Item 10 in Order No. 14546) is beyond the policy adopted by the Commission for dealing with fossil fuel-related costs normally recovered through base rates that will result in fuel savings to customers.

Moreover, seeking pre-approval for the recovery of costs associated with gas reserves investment transactions consistent with the proposed Guidelines violates the spirit and the letter of the requirement in Item 10 that "Recovery of such costs should be made on a *case by case basis* after Commission approval." (emphasis added). This provision contemplated that the Commission review and approve each item on a case-by-case basis *before* a utility is allowed to recover costs associated with a project. However, in this docket FPL proposes the exact opposite, which would be to seek presumptive pre-prudence approval of any investments that satisfy FPL's Guidelines.

Further, the Commission prohibits utilities from profiting (or earning a return) on fuel purchases recovered through the Fuel Clause. The proposed

Guidelines would allow FPL to "purchase" (or acquire) fuel ostensibly at production costs, and would then allow FPL shareholders to profit (earn a return) on the gas that the Company acquires at production costs. However, the Commission neither allows utilities to profit (earn a return) on the fuel they purchase at market cost, nor does the Commission allow utilities to profit (earn a return) on the fuel acquired through their short-term hedging programs. Fuel acquired at market cost or from a financial hedge is a cost to the utility that must be expensed. There is no compelling reason to depart from this Commission practice of allowing utilities to recover the cost of fuel without any profit or return added on to those costs. (Lawton)

ISSUE 5: **If the Commission answers Issue 4 in the affirmative, should the Commission approve FPL's proposed criteria?**

OPC: No. OPC's position is that the Commission lacks jurisdiction to approve any gas reserves investments or criteria for Guidelines.

Issue 6: **Is FPL contractually precluded by paragraph 6 of the Stipulation and Settlement Agreement dated December 12, 2012 and approved by the Commission in Order No. PSC-13-0023-S-EI from seeking to increase rates as it proposes?**

OPC: Order No. PSC-13-0023-S-EI speaks for itself. OPC submits that this issue is contingent on the resolution of OPC's Motion to Dismiss. This is another threshold issue that should be addressed separately by the Commission at the November 25, 2014 Agenda, in conjunction with the Commission's decision on OPC's Motion to Dismiss. At this point in time, OPC has no position on the application of Order No. PSC-13-0023-S-EI prior to the resolution of OPC's Motion to Dismiss.

Issue 7: **If the Commission concludes that FPL's petition has merit, should the Commission engage in rulemaking pursuant to section 120.54, Florida Statutes, and adopt rules addressing gas reserve guidelines and operations rather than adopting the Gas Reserves Guidelines as proposed by FPL?**

OPC: OPC's position is that the Commission lacks jurisdiction to approve any gas reserves investments or criteria for Guidelines. Similarly, it is OPC's position that the Commission lacks any express authority to engage in rulemaking to establish guidelines for gas reserves investments by investor owned utilities.

If, however, the Commission grants FPL's Petition as it relates to the Woodford Project, then rulemaking may be appropriate to establish guidelines applicable to all utilities for investing in gas reserves. It is OPC's position that an order in this docket cannot serve as a rule of general applicability for all regulated utilities. Prior to opening a rulemaking docket, the Commission should point to its express statutory authority to engage in rulemaking for gas reserves guidelines.

Like OPC's Motion to Dismiss and Issue 6 regarding the applicability of Order No. PSC-13-0023-S-EI to bar this Petition, this is a threshold issue as it relates to FPL's proposed Guidelines, and should be decided in conjunction with the Motion to Dismiss. If the Commission decides that it has jurisdiction over allowing FPL to invest in gas reserves, rulemaking is an available remedy but the OPC submits that the record in this case is compelling for the Petition to be denied and rulemaking not pursued.

ISSUE 8: **What effect, if any, does Commission's decision on Issue 3 have on the fuel cost recovery factor and GPIF targets/ranges for the period January 2015 through December 2015?**

OPC: No position at this time.

ISSUE 9: **Should this Docket be closed?**

OPC: Depends on the outcome of other issues to be decided in this proceeding and whether or not the Commission opens another docket to address those matters.

5. STIPULATED ISSUES:

None at this time.

6. PENDING MOTIONS:

Yes. OPC's pending Motion to Dismiss FPL's June 25, 2014 Petition for Lack of Subject Matter Jurisdiction which is to be decided prior to the start of the December 1-2, 2014 hearing. OPC also reserves the right to file additional motions as necessary.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

OPC has no pending request or claims for confidentiality.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

OPC has no objection to qualifications of witnesses.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 27th day of October, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE
140001-EI

I HEREBY CERTIFY that a true and foregoing Prehearing Statement has been furnished by electronic mail on this 27th day of October, 2014, to the following:

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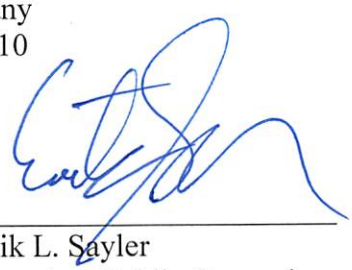

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