

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Power & Light Company.

DOCKET NO. 20250011-EI

FILED: June 26, 2025

CITIZENS' SECOND MOTION TO ENLARGE DISCOVERY

The Citizens of the State of Florida, by and through the Office of Public Counsel (“Citizens” or “OPC”), pursuant to Rule 28-106.204, Florida Administrative Code (“F.A.C.”), hereby file this Second Motion to Enlarge Discovery in this docket. OPC requests that this Second Motion be granted and in support of the motion states:

1. On December 30, 2024, Florida Power & Light Company (“FPL”) filed a test year notification letter informing the Florida Public Service Commission (“Commission”) that FPL would be filing a request for a rate increase on or about February 28, 2025.
2. On January 7, 2025, OPC filed a notice of intervention in this docket.
3. On February 28, 2025, FPL filed a Petition for Base Rate Increase, two sets of minimum filing requirements, and 17 sets of witness testimony in support of its requested rate increase.
4. FPL’s requested rate increase is vast, complex, and ever evolving.
5. When filed, it included a \$1.545 billion base rate increase starting January 1, 2026, an additional \$927 million base rate increase starting January 1, 2027, and Solar and Battery Base Rate Adjustments in both 2028 and 2029.¹
6. In total, FPL seeks authorization to collect approximately \$10 billion of increased revenues from customers between 2026-2029.²

¹ Document No. 01170-2025, Docket No. 20250011-EI, p. 1.

² *Id.*; Document No. 01942-2025, Docket No. 20250011-EI, pp. 1-2. [(\$1.545 billion per year x 4 years) + (\$927 million per year x 3 years) + (\$296 million per year x 2 years) + (\$266 million per year x 1 year) = \$9.819 billion].

7. On March 14, 2025, the prehearing officer issued the Order Establishing Procedure, which, in part, specified written discovery limits and controlling dates.
8. On April 1, 2025, OPC filed a Motion to Enlarge Discovery, which the prehearing officer granted, in part, and increased OPC's interrogatory limit from 750 to 850.³
9. The prehearing officer also indicated that OPC could file, "a subsequent motion to expand the limit on interrogatories based on a particularized demonstration of good cause as to one or more specific issues."
10. OPC has been judicious and efficient with its written discovery requests served in this case.
11. Multiple other parties and Commission staff have used FPL's responses to many of OPC's written discovery requests in both preparing intervenor testimony and/or during depositions.
12. Including subparts, OPC has asked 770 interrogatories of FPL to date.
13. Good cause exists for granting an additional 100 interrogatories to OPC.
14. First, FPL is expected to file rebuttal testimony on or before July 9, 2025. Until then, OPC has no way of knowing the amount of investigation that will be necessary to attempt to fully investigate them.
15. Since there is only two weeks between when rebuttal testimony is filed on July 9th and the current July 23rd discovery deadline, OPC is concerned that, if necessary, it will not have enough time to draft a motion, confer with the other intervenors, file the motion, and wait for a ruling, all while simultaneously trying to review the rebuttal testimony and exhibits itself.
16. This motion reflects OPC's proactive attempt to address a foreseeable issue in a timely manner. There is a possibility that OPC may not need any or all of the additional interrogatories,

³ PSC Order No. PSC-2025-0133-PCO-EI, Docket No. 20250011-EI, p. 2, *In re: Petition for rate increase by Florida Power & Light Company*.

but OPC feels compelled to seek permission to increase the limit now rather than taking a “wait and see” approach.

17. Second, FPL indicated on May 23, 2025, that it will file a Notice of Identified Adjustments at some point that, “will reflect any final requested adjustments to account for any further adjustments that may be identified before that time.”

18. OPC does not know when that will be filed or if those adjustments will need to be investigated further. If further investigation is necessary, OPC also does not know the extent of written discovery that would be required.

19. Third, on June 9, 2025, OPC filed expert witness testimony on the subject of FPL’s resource adequacy planning, an aspect of FPL’s case which had been heavily investigated by many intervenors and Commission staff through both written discovery and extensive depositions.

20. One day later, FPL filed an application with the Federal Energy Regulatory Commission (“FERC”) seeking permission: 1) to acquire Vandolah Power (“Vandolah”) and its 660 MW natural gas/oil fired generating facility; and 2) to merge Vandolah into FPL. (Exhibit A)

21. On its face, the application details that, “acquiring Vandolah will displace 400 MW of four-hour batteries scheduled to enter service by January 1, 2028, and 475 MW of gas combustion turbines scheduled to enter service by January 1, 2032.” (Exhibit A, p. 2.)

22. This development subsequent to the intervenor testimony deadline represents a significant change in circumstances that could require extensive further investigation above and beyond what is required to investigate FPL’s rebuttal case.

23. Just as it was true when OPC filed its original motion to enlarge discovery, at least 12 million Floridians and businesses across 43 counties will be directly impacted by the Commission’s decisions in this docket. OPC must be allowed to continue to thoroughly investigate

and analyze FPL's requested rate increase, especially given the magnitude and complexity of the request. FPL's customers could be irreparably harmed if OPC is not allowed the opportunity to ask more interrogatories than are currently allowed.

24. OPC appreciates the Commission's consideration of OPC's previous request to enlarge discovery, and OPC hopes that the Commission will agree that good cause exists to grant and OPC's request to increase OPC's 850 interrogatory limit to 950.

25. OPC has conferred with the other parties in this matter regarding their position on this motion. FPL opposes this motion. The League of United Latin American Citizens, Florida Rising, the Environmental Confederation of Southwest Florida, the Florida Retail Federation, Floridians Against Increased Rates, and the Federal Executive Agencies support this motion. The Florida Industrial Power Users Group, the Southern Alliance for Clean Energy, Walmart, the Fuel Retailers, Electrify America, EVgo, and the Florida Energy for Innovation Association take no position on this motion.

WHEREFORE, the OPC hereby requests that the Commission grant Citizen's Second Motion to Enlarge Discovery for the reasons outlined in the body of this motion above.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 20250011-EI

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CONTAINS REQUEST FOR PRIVILEGED TREATMENT

June 10, 2025

Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *Vandolah Power Company L.L.C. and Florida Power & Light Company*
Docket No. EC25-____-000
Application Pursuant to Federal Power Act Section 203

Dear Secretary Reese:

Enclosed, please find the Application for Approval Pursuant to Section 203 of the Federal Power Act by Vandolah Power Company L.L.C. and Florida Power & Light Company (“Applicants”). As noted therein, Applicants respectfully request: (i) a 30-day notice period and (ii) an order approving the subject transaction by December 8, 2025.

Thank you for your assistance in this matter. Please contact the undersigned with any questions.

Yours truly,

/s/ Jeffrey M. Jakubiak

Jeffrey M. Jakubiak
Ankush J. Joshi

*Attorneys for Florida Power & Light Company
on Behalf of Applicants*

Enclosure

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Vandolah Power Company L.L.C.) Docket No. EC25-__-000
Florida Power & Light Company)

**APPLICATION FOR APPROVAL PURSUANT TO
SECTION 203 OF THE FEDERAL POWER ACT**

Pursuant to section 203(a)(1) of the Federal Power Act (“FPA”)¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),² Vandolah Power Company L.L.C. (“Vandolah Power”) and Florida Power & Light Company (“FPL” and, jointly with Vandolah Power, “Applicants”) hereby submit this application (“Application”) seeking all authorizations necessary to permit FPL: (i) to acquire Vandolah Power, the owner of the natural gas/oil-fired 660 MW (summer) Vandolah Generating Facility (“Vandolah”) and, immediately thereafter, (ii) to merge Vandolah Power into FPL, resulting in FPL becoming the direct and sole owner of Vandolah (collectively, the “Transaction”). Applicants respectfully request: (a) a 30-day notice period and (b) an order approving the Transaction by December 8, 2025.

As demonstrated herein, the Transaction will not have any adverse effect on competition, rates, or regulation, nor will it result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.³

¹ 16 U.S.C. § 824b(a)(1) (2025).

² 18 C.F.R. Part 33 (2024).

³ See 18 C.F.R. §§ 2.26(b) & (f). See also *Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (“Order No. 592”), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008).

First, FPL is acquiring Vandolah to meet forecasted increases in load in the FPL balancing authority area (“BAA”). Any Competitive Analysis Screen failures are thus the result of FPL’s Available Economic Capacity (“AEC”) increasing, and are not the result of the elimination of any competitor of FPL.

Second, the Transaction will be advantageous to FPL’s customers because it will displace an equivalent amount of higher-cost capacity resources that FPL would otherwise need to add to its system to meet growing demand. More particularly, acquiring Vandolah will displace 400 MW of four-hour batteries scheduled to enter service by January 1, 2028, and 475 MW of gas combustion turbines scheduled to enter service by January 1, 2032 (collectively, the “Avoided Capacity”). Absent the Transaction, both these batteries and combustion turbines would otherwise be built by FPL pursuant to its current Ten Year Site Plan filed with the Florida Public Service Commission (“Florida PSC”) on April 1, 2025 (the “2025 TYSP”).⁴ FPL has estimated that acquiring Vandolah results in approximately \$32 million in customer savings compared to constructing the Avoided Capacity.⁵

Third, as detailed below, FPL is willing, if required by the Commission, to commit to behavioral mitigation in the form of a day-ahead “must-offer” requirement of up to 330 MW of output from Vandolah in order to mitigate any temporary increase in market concentration above the Commission’s thresholds that may arise as a result of the Transaction.

For these reasons, the Commission should approve the Transaction as consistent with the public interest.

⁴ A copy of the 2025 TYSP is provided as Exhibit AWW-1 (“Exh. AWW-1”) to the attached Prepared Direct Testimony and Exhibits of Andrew W. Whitley, Appendix 2 hereto (“Whitley Testimony”).

⁵ Whitley Testimony at 3, 16-17. This figure represents cumulative present value of revenue requirements (“CPVRR”), as discussed further in the Whitley Testimony.

I. DESCRIPTION OF PARTIES TO THE TRANSACTION

A. FPL and Relevant Affiliates

FPL is a vertically-integrated utility that provides regulated electric service to more than six million retail customers. FPL's retail service territory consists of an approximately 35,000 square mile area and a population of approximately 12 million people in peninsular Florida and the Florida panhandle. In addition, FPL sells wholesale power to other utilities and power marketers at locations in the southeastern United States.

FPL owns or controls approximately 35,531 MW of nameplate generating capacity, all but 215 MW of which are located in Florida. FPL's transmission facilities in peninsular Florida and the Florida panhandle are operated and administered pursuant to the FPL Open Access Transmission Tariff ("OATT"), which is on file with the Commission.⁶ The Commission has granted FPL market-based rate authority in certain BAAs.⁷ FPL is subject to regulation by the Florida PSC with respect to retail electric rates, the issuance of securities, affiliate transactions, the maintenance of books and records, and other matters.

FPL is a wholly-owned subsidiary of NextEra Energy, Inc. ("NextEra"), a Florida corporation and electric utility holding company, whose shares are publicly traded on the New York Stock Exchange.⁸ In addition to FPL, NextEra owns NextEra Energy Resources, LLC

⁶ FPL FERC Electric Tariff, 2nd Revised Volume No. 6.

⁷ *Florida Power & Light Co.*, 81 FERC ¶ 61,107 (1997).

⁸ On April 30, 2025, The Vanguard Group, Inc. ("Vanguard") reported to the Commission on behalf of its subsidiaries and affiliated investment companies and funds that as of the end of the fourth quarter of 2024, Vanguard held 10.55 percent of the outstanding shares of NextEra Energy, Inc. See *The Vanguard Group Inc. et al.*, Docket No. EC19-57-002, Quarterly Compliance Filing for Q1 of 2025 (filed Apr. 30, 2025). As a result, as of the end of the first quarter of 2025, Vanguard is an Ultimate Upstream Affiliate of NextEra under the Commission's regulations. Applicants do not have knowledge of the actual number of outstanding shares currently held by Vanguard. To the best of Applicants' knowledge, there is no other entity that holds 10 percent or more of the outstanding voting securities of NextEra. *FESI 12, LLC*, 186 FERC ¶ 61,137 at P 16 (2024). Vanguard and its affiliates are a leading mutual fund complex and provider of low-cost index funds which seek to track the performance of a specified referenced index. Vanguard represents that it has no outside owners, and it is wholly and jointly owned by 37 affiliated investment companies in the Vanguard funds complex. See *The Vanguard Group, Inc.*, Docket No. EC19-57-000, Request for Blanket

(“NEER”), whose subsidiaries own or operate merchant generating facilities in 38 states and Canada, with a combined net generating capacity of approximately 33,000 MW, including interests in some facilities co-owned by XPLR Infrastructure Operating Partners, LP (“XPLR”).⁹ As relevant to this transaction, NEER owns certain generation resources in the Southeast, including in Florida, which are described in Exhibit B.

NextEra also owns NextEra Energy Transmission, LLC, which, through its subsidiaries, owns New Hampshire Transmission, LLC (“NHT”), Trans Bay Cable LLC (“Trans Bay”), Horizon West Transmission, LLC (“Horizon West”), NextEra Energy Transmission MidAtlantic, Inc. (“NEET MidAtlantic”), GridLiance High Plains LLC (“GridLiance HP”), NextEra Energy Transmission Southwest, LLC; (“NEET SW”), NextEra Energy Transmission New York, Inc. (“NEET NY”), GridLiance West, LLC (“GridLiance West”), and GridLiance Heartland LLC (“GridLiance Heartland”).¹⁰

- NHT is an electric utility that owns a single transmission asset, the Seabrook Substation, located in Seabrook, New Hampshire. NHT provides wholesale transmission service to its affiliate, NextEra Energy Seabrook, LLC, through a Local Network Service Tariff on file with the Commission.¹¹ ISO New England has operational control of the regional transmission facilities associated with the Seabrook Substation.¹²

Authorizations to Acquire Securities Under Section 203(a)(2) of the Federal Power Act, at 5-6 (filed Feb. 15, 2019). The Commission has granted Vanguard blanket authorization under FPA section 203(a)(2) to acquire the securities of any individual publicly traded U.S. utility, either up to 20 percent ownership in aggregate or up to 10 percent ownership by any individual Vanguard fund. *The Vanguard Group, Inc.*, 168 FERC ¶ 62,081 at 64,221 (2019). To receive such blanket authorization, Vanguard committed not to exercise any control over the day-to-day management or operations of any such publicly traded U.S. utility whose securities are acquired pursuant to the blanket authorization (except pursuant to a separate FPA section 203 authorization).

⁹ XPLR was formerly known as NextEra Energy Partners, LP and is a publicly traded limited partnership whose common units are traded on the New York Stock Exchange.

¹⁰ NextEra Energy Transmission Midwest, LLC has submitted a formula rate template with the Commission; however, it does not currently own, control, or operate transmission facilities.

¹¹ New Hampshire Transmission, LLC, FERC Electric Tariff No. 3.

¹² ISO New England Inc., FERC Electric Tariff No. 3, Schedule 21 NHT, Original Sheet No. 4200.

- Trans Bay is a public utility that owns and operates a 53-mile, approximately 400 MW high-voltage direct current submarine transmission line buried beneath the San Francisco Bay (“Trans Bay Cable”).¹³ The Trans Bay Cable is under the California Independent System Operator’s (“CAISO”) operational control, and service is provided pursuant to the CAISO OATT.
- Horizon West is a public utility that owns and operates the Suncrest project, a 230 kV +300/-100 MVar Dynamic Reactive Power Support Project in southern California. The Suncrest project is under the CAISO’s operational control, and service is provided pursuant to the CAISO OATT.
- NEET MidAtlantic owns approximately 20 miles of 345 kV transmission lines, and related equipment, which is under PJM’s operational control, and service is provided pursuant to the PJM OATT.
- GridLiance HP owns and operates transmission assets in Oklahoma and Kansas. In Oklahoma, GridLiance HP owns approximately 424 miles of transmission lines and other facilities operated at 115 kV and 69 kV which are subject to GridLiance HP’s OATT and a Wholesale Distribution Service Agreement and Wholesale Distribution Operating Agreement between GridLiance HP and Tri-County. In Kansas, GridLiance HP owns a 65 percent interest in the City of Winfield, Kansas’ 69 kV transmission system and related substation equipment, which are under the Southwest Power Pool’s (“SPP”) control and subject to the SPP OATT as part of Zone 14.
- NEET SW owns and operates the Minco-Pleasant Valley-Draper project, a 48-mile, 345 kV transmission facility in Oklahoma, which is under the functional control of SPP.
- NEET NY owns the Empire State Line, a 20-mile, 345 kV transmission line, and related equipment, which is under the New York Independent System Operator’s (“NYISO”) operational control, and service is provided pursuant to the NYISO OATT.
- GridLiance West owns and operates a High Voltage Transmission System (“HVTS”) consisting of approximately 165 miles of 230-kV transmission lines and related substation infrastructure that runs through rural southern Nevada. The HVTS has been incorporated into the CAISO-controlled grid and is subject to the terms of the CAISO OATT.
- GridLiance Heartland owns and operates six 161 kV transmission lines ranging from eight to 10 miles in length, two 161 kV substations, and associated auxiliary equipment in Kentucky and Illinois, which are under Midcontinent Independent System Operator, Inc.’s functional control.

¹³ *NextEra Energy Transmission, LLC*, 166 FERC ¶ 61,188 at P 7 (2019).

Finally, NextEra and XPLR, through their subsidiaries, hold interests in several Commission-regulated interstate natural gas pipelines.¹⁴ NextEra indirectly owns 42.5 percent of Sabal Trail Transmission, LLC (“Sabal Trail”). Sabal Trail is an approximately 515-mile-long interstate natural gas pipeline that begins in Alabama and terminates in central Florida. In addition, NextEra indirectly owns 100 percent of Florida Southeast Connection, LLC (“FSC”). FSC is an approximately 169-mile-long interstate natural gas pipeline that interconnects with Sabal Trail in central Florida and terminates in Riviera Beach, Florida. NextEra also indirectly owns 33.2 percent of Mountain Valley Pipeline, LLC (“Mountain Valley”). Mountain Valley is an approximately 303-mile-long interstate natural gas pipeline that begins in West Virginia and terminates in Virginia at Transcontinental Gas Pipe Line Company, LLC’s (“Transco”) Station 165. Finally, NextEra and XPLR indirectly own a 39.2 percent undivided interest in Meade Pipeline Co. LLC (“Meade”), which comprises approximately 185 miles of interstate natural gas pipeline facilities in Pennsylvania. Meade leases 100 percent of its facilities to Transco, which operates the pipeline facilities.

Additional relevant energy subsidiaries and energy affiliates of FPL are described greater detail in Exhibit B.

B. Vandolah Power

Vandolah Power owns the four unit, natural gas/oil-fired Vandolah electric generation facility in Wauchula, Florida with a summer net capacity of approximately 660 MW.¹⁵ Vandolah is an exempt wholesale generator (“EWG”) under the Public Utility Holding Company Act of

¹⁴ *Florida Se. Connection, LLC*, 154 FERC ¶ 61,080 (2016), *order on reh’g*, 156 FERC ¶ 61,160 (2016).

¹⁵ Vandolah Power and Vandolah are reported in the Commission’s market-based rate database as Utility ID 39125 and Plant Code 55415.

2005¹⁶ that holds market-based rate (“MBR”) authority,¹⁷ and that is presently interconnected only to the transmission facilities of Duke Energy Florida, Inc. (“DEF”).¹⁸ All of Vandolah Power’s capacity and energy are fully committed for sale exclusively to DEF under a long-term tolling agreement that remains in effect, under its own terms, to and through May 31, 2027. Vandolah Power does not own, manage, or control transmission facilities, but for its own limited and discrete interconnection facilities that link Vandolah to DEF’s transmission system.

Vandolah Power does not own or control any transmission facilities other than the interconnection facilities necessary to interconnect Vandolah to DEF’s transmission system. The generator interconnection facilities that Vandolah Power owns and controls are limited and discrete radial facilities that do not form an integrated transmission grid and that are used solely to interconnect Vandolah to the grid. Vandolah Power holds the priority rights and waivers set forth in Order No. 807,¹⁹ such that Vandolah and its affiliates are immune from the Open Access Requirements to the extent set forth under Order No. 807.

Vandolah Power is a limited liability company formed under the laws of Delaware. Vandolah Power is a wholly-owned subsidiary of Vandolah Holding Company, L.L.C. (“Vandolah Holding”), which is a special-purpose holding company, the sole purpose of which is ownership of interests in Vandolah Power. NSG Vandolah Holdings LLC holds 100 percent of the interests

¹⁶ See *Vandolah Power Co., L.L.C.*, 99 FERC ¶ 62,098 (2002) (finding Vandolah to be an EWG).

¹⁷ See *Vandolah Power Co., L.L.C.*, Docket No. ER10-2211-000, unpublished order dated Sept. 15, 2010 (accepting baseline filing of MBR tariff); *Vandolah Power Co., L.L.C.*, Docket No. ER10-2211-009, unpublished order dated May 15, 2025 (accepting for filing 2023 triennial market power update).

¹⁸ See DEF S.A. No. 135, FERC Docket No. ER20-397-000 (amending and restating prior large generator interconnection agreement previously filed in Docket No. ER08-48); *Duke Energy Florida, LLC*, Docket No. ER20-397-000, unpublished letter order dated Jan. 10, 2020 (accepting for filing amended and restated large generator interconnection agreement). As discussed herein, on or about the date of consummation of the Transaction, FPL will directly interconnect Vandolah with its transmission system.

¹⁹ *Open Access and Priority Rights on Interconnection Customer’s Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211 (2015).

in Vandolah Holding. NSG Vandolah Holdings LLC is a wholly-owned subsidiary of NSG Holdings II LLC, which is a wholly-owned subsidiary of NSG Holdings LLC, which is a wholly-owned subsidiary of NSG Power Holdings LLC, which is a wholly-owned subsidiary of Northern Star Generation LLC (“NSG”).

1. NSG

NSG is an owner of electric power generation facilities in the United States, and NSG’s affiliate, Northern Star Generation Services Company LLC, provides certain administrative and management services to certain NSG-owned facilities. NSG is not a “holding company” of any “electric utility” (as that term is defined under section 3 of the FPA) or any “public utility” which has a franchised retail service territory, has any “captive customers” (as that term is defined under Order No. 697), or which is engaged in the state-regulated sale of electricity at retail. NSG is not a “holding company” of any “electric utility” or any “public utility” which owns, operates, or controls electric transmission rights or electric transmission facilities (other than limited facilities used solely for the interconnection of generating facilities to the transmission grid). NSG does not own or control any electric facilities or essential inputs to electric generation²⁰ located in the United States. NSG is a holding company solely of EWGs and qualifying facilities (“QFs”).

Vandolah Power, through NSG, is affiliated with one qualifying facility in the relevant BAA, Orange Cogeneration Limited Partnership (“Orange”). Orange is the owner of a gas-fired qualifying cogeneration facility with a maximum installed capacity of approximately 110.6 MWac, which is fully committed for sale at wholesale to DEF under a firm,

²⁰ See 18 C.F.R. §33.4(a). In addition, pursuant to section 35.36 of the Commission’s regulations, essential inputs to generation include intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, sites for generation capacity development, or sources and the transportation of coal supplies.

long-term, exclusive power sale agreement.²¹ Orange is 100 percent owned and controlled by NSG. Through NSG, Vandolah Power has no affiliates (apart from Vandolah Power) that are reportable under Order No. 816-A at P 23 and that are located and/or operate within or first tier to the DEF BAA.

NSG is a limited liability company organized under the laws of the State of Delaware and headquartered in Houston, Texas. Fifty percent of the outstanding ownership interest in NSG is held by wholly-owned subsidiaries of the AIIF (“Archmore International Infrastructure Fund”) I Purpose Trust under the control of Maurant Corporate Trustee (Jersey) Limited.²² The remaining 50 percent ownership interest in NSG is held, through intermediate holding company subsidiaries, (i) 75 percent by a fund controlled by Harbert Management Corporation (“HMC”), approximately 98.75 percent of which is controlled by the California Public Employees Retirement System, and (ii) 25 percent by a separate fund, also controlled by HMC.

2. HPF V and Affiliates

Harbert Power Fund V, LLC (“HPF V”)²³ is the 25 percent owner of GulfSun Power Holdings, LLC (“GulfSun Power”), which owns 50 percent of the issued and outstanding membership interests in NSG. GulfSun Power is a Delaware limited liability company organized as an investment fund and managed by Harbert Gulf MM, LLC (“Harbert Gulf MM”), which is a subsidiary of HMC. As stated above, GulfSun Power is owned and controlled by HPF V (25 percent) and Gulf Pacific Power, LLC (“Gulf Pacific”) (75 percent). HPF V is a Delaware limited

²¹ See generally, Docket No. QF93-164.

²² See *Vandolah Power Co., L.L.C.*, 179 FERC ¶ 62,169 (2022).

²³ Investors in HPF V that hold, directly or indirectly, greater than 10 percent of the voting securities of HPF V are California Public Employees Retirement System (“CalPERS”) and investment vehicles managed and controlled by Pantheon Ventures (US) LP (“Pantheon US”). Pantheon US does not hold other interests in Commission jurisdictional assets and is not affiliated with a public utility with a franchised electric service territory in the United States or inputs to power production.

liability company organized as an investment fund and managed by Harbert Power MM V, LLC (“Harbert Power MM V”), also a subsidiary of HMC. HPF V was formed to acquire, hold, operate, manage, and dispose of securities of EWGs, QFs, and related power assets and is a holding company solely with respect to such interests. Certain institutional investors, including pension funds, insurance companies, family offices, foundations, and affiliates’ partners, have committed capital to HPF V in exchange for membership interests.²⁴ HMC is an Alabama corporation and an institutional investment manager subject to regulation by the Securities and Exchange Commission. HMC is largely owned and controlled by Mr. Raymond J. Harbert and members of his immediate family, with no one person or entity (but for Mr. Harbert and his immediate family members) owning or controlling, with power to vote, 10 percent or more of the voting securities of HMC.²⁵

Gulf Pacific is a Delaware limited liability company organized as an investment fund and managed by Harbert Gulf MM, a subsidiary of HMC. Gulf Pacific was formed to acquire, hold, operate, manage and dispose of securities of EWGs, QFs (none of which are in the relevant market but for Vandolah Power), and related power assets on behalf of its investor members, and is a holding company solely with respect to ownership of EWGs and QFs.²⁶

The California Public Employees Retirement System (“CalPERS”) owns an approximately 98.75 percent interest in Gulf Pacific, and no other member owns or holds 10 percent or more of the

²⁴ See *Data Collection for Analytics & Surveillance and Market-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039 at P 138 (2019) (“Order No. 860”), order on reh’g and clarification, Order No. 860-A, 170 FERC ¶ 61,129 at P 15 (2020) (“Order No. 860-A”).

²⁵ See Order No. 860 at P 5 n.10; Order No. 860-A at n.9.

²⁶ Neither Gulf Pacific nor any affiliates thereof is a “holding company” of any “electric utility” (as that term is defined under section 3 of the FPA) or any “public utility” that has a franchised retail service territory, has any “captive customers” (as that term is defined by the Commission), or is engaged in the state-regulated sale of electricity at retail. Neither Gulf Pacific nor any affiliates thereof is a “holding company” of any “electric utility” or any “public utility” that owns, operates or controls electric transmission rights or electric transmission facilities (other than limited facilities used solely for interconnection).

voting or equivalent interests in Gulf Pacific. Gulf Pacific may not take certain actions without the prior approval of CalPERS, but Harbert Gulf MM otherwise manages, controls, and administers the operations of Gulf Pacific. CalPERS also holds more than 10 percent of the investment interests in HPF V. Neither Gulf Pacific nor any affiliates thereof owns or controls any electric generation, transmission, or distribution facilities (other than QFs and EWGs) or essential inputs to electric generation.

CalPERS is administered by the State of California and is the nation's largest public pension fund with a current total fund market value of approximately \$514.5 billion.²⁷ CalPERS' investments span domestic and international markets. From time to time CalPERS may, as part of its investment strategies, directly or indirectly hold passive debt and/or equity investments in energy related assets. CalPERS holds such investments in its capacity as a passive limited partner in various third-party investment funds. CalPERS owns a non-managing interest in Gulf Pacific and has veto rights on major decisions to protect its economic interest.

CalPERS holds no equity interests in any other generating facility within or first-tier to the relevant BAA. Neither CalPERS nor any of its affiliates owns or controls 10 percent or more of the voting securities in entities that own or control electric generation or transmission facilities, or inputs to electric power production, including in the relevant geographic market. In addition, neither CalPERS nor any of its affiliates is a franchised public utility.

3. Mourant Corporate Trustee (Jersey) Limited and AIF I Purpose Trust

Mourant Corporate Trustee (Jersey) Limited, the ("Trustee") is regulated by the Jersey Financial Services Commission and is licensed to act as or fulfill the function of a trustee of a trust.

²⁷ See <https://www.calpers.ca.gov/investments>. As stated above, CalPERS owns a non-managing interest in Gulf Pacific and has limited veto rights on major decisions to protect its economic interest. Nonetheless, Applicants have included information on CalPERS out of an abundance of caution.

It is controlled by its managing director (from time to time) who has responsibility for the day-to-day management of the Trustee, and is owned by a law firm in Jersey, Channel Islands, a Crown Dependency of the United Kingdom. The Trustee controls the AIIF I Purpose Trust, and the AIIF I Purpose Trust will itself own and hold nothing except the interests in the sole general partner that in turn controls Archmore, which holds 50 percent of the interests in NSG (and hence in Vandolah Power). The AIIF I Purpose Trustee is regularly engaged in acting as a trustee of trusts that own and hold securities, such as Archmore. The Trustee is not primarily engaged in the ownership or control of United States energy businesses or assets, and does not own, hold, or control generation, wholesale power agreements, transmission, or distribution facilities into or within the United States, or other vertical inputs to generation. The Trustee is owned by a law firm that practices in Jersey, Channel Islands, and no one person or entity ultimately owns or controls any interest of 10 percent or greater in the Trustee. The AIIF I Purpose Trust (via its ownership of the general partner of Archmore) ultimately manages and controls Archmore.

II. DESCRIPTION OF THE TRANSACTION

A. Background

The context and reasons for the Transaction are detailed in the Testimony of Andrew Whitley, Integrated Resource Planning Manager at FPL, attached at Appendix 2 hereto.

As explained by Mr. Whitley, the Transaction is a central part of FPL's effort to expand its generation portfolio to meet its forecasted increase in load in a manner that benefits its customers in terms of both reliability and cost.²⁸ As detailed in the 2025 TYSP, FPL's peak summer demand increased by 2,905 MW between 2015 and 2024, and is expected to increase by another 3,411 MW

²⁸ Whitley Testimony at 13.

over the next 10 years.²⁹ This projected increase is driven primarily by new Floridians and traditional businesses that are moving into FPL's service territory, and will lead to capacity shortfalls if additional resources are not added.³⁰ Something must be done by FPL to meet its resource needs.

The 2025 TYSP outlines a viable plan to satisfy the forecasted increase in load between 2025 and 2034 through a combination of: (i) new solar generation (17,433 MW), (ii) new battery storage (7,603 MW), (iii) new combustion turbines (475 MW), and (iv) upgrades to existing combined cycle generating facilities (80 MW).³¹ FPL has determined, however, that Vandolah could substitute for certain of these new resources at a lower overall cost, while supplying an equivalent amount of capacity, thereby benefiting ratepayers.

Indeed, as explained by Mr. Whitley, ownership and operation of Vandolah will supplant the need for the Avoided Capacity—*i.e.*, 400 MW of new four-hour batteries scheduled to enter service by January 1, 2028, and two combustion turbines totaling 475 MW that are scheduled to enter service by January 1, 2032, at FPL's Manatee Station.³² The substitution of Vandolah for the Avoided Capacity will result in approximately \$32 million in savings over the life of these assets compared to the 2025 TYSP.³³

In addition, acquiring Vandolah as of the date the DEF Tolling Agreement expires (June 1, 2027) will provide FPL with generating capacity faster than pursuing the Avoided

²⁹ 2025 TYSP at 61-62, Schedule 3.1 (Forecast of Summer Peak Demand (MW)) (Exh. AWW-1 at 74-75). More particularly, FPL forecasts that summer peak load will increase to 31,677 MW in 2034, a 3,411 MW increase from actual peak load of 28,266 in 2024.

³⁰ Whitley Testimony at 5.

³¹ 2025 TYSP at 5, 16 (Exh. AWW-1 at 18, 29).

³² Whitley Testimony at 14-15; Oliver Testimony at 12-13.

³³ Whitley Testimony at 3, 16-17.

Capacity given current supply chain limitations and insulate customers from the risk of pricing volatility, tariffs, permitting delays, changes in tax policy, and other risk factors inherent to the development of new utility infrastructure.³⁴

The present Transaction will thus inure directly to the benefit of FPL's customers. FPL respectfully asks the Commission to consider the Transaction now, in 2025, even though the Transaction will not close until June 1, 2027, to allow sufficient time for FPL to develop the Avoided Capacity that its customers will need if for some reason the Transaction is not approved.

B. The Transaction

The Transaction will be consummated in accordance with the Purchase and Sale Agreement by and between Vandolah Holding and FPL dated as of April 9, 2025 (the "PSA"). More particularly, FPL will: (i) acquire Vandolah Power from Vandolah Holding and then immediately (ii) merge Vandolah Power into FPL, resulting in FPL becoming the direct and sole owner of the Vandolah facility. Upon consummation, Vandolah Holding, NSG, and their owners will cease to control or be affiliated with Vandolah and Vandolah's jurisdictional facilities. Applicants currently anticipate the Transaction being consummated on June 1, 2027 (the day after the DEF Tolling Agreement expires).

In order to integrate Vandolah directly into the FPL BAA, FPL will build a new transmission substation (the Bickett Substation) and construct an approximately 14.5-mile, 230 kV transmission line to directly interconnect Vandolah to the FPL transmission system (the "Vandolah Interconnection Line").³⁵ Once energized, which FPL expects to occur on or before the date of consummation of the Transaction, this line will serve as a direct interconnection of the FPL grid

³⁴ *Id.* at 17.

³⁵ *See* Oliver Testimony at 13-14.

to Vandolah, and FPL will re-register Vandolah with the North American Electric Reliability Commission (“NERC”) as a generating resource in FPL’s BAA.

III. REQUEST FOR AUTHORIZATION UNDER FPA SECTION 203

FPL respectfully requests that the Commission grant all authorizations necessary under FPA section 203 to effectuate the Transaction.³⁶

Under FPA section 203(a), the Commission will approve a proposed transaction if it determines that it: (i) is consistent with the public interest; (ii) does not effect a cross-subsidization of a non-utility associate company that is not in the public interest; and (iii) does not pledge or encumber utility assets for the benefit of an associate company.³⁷

With regard to whether a transaction is consistent with the public interest, the Commission applies a three-part test set forth in the Merger Policy Statement³⁸ and in Order No. 642.³⁹ Specifically, the Commission examines the effect of a proposed transaction on: (i) competition, (ii) rates, and (iii) regulation.⁴⁰ Applicants need not show that a transaction positively benefits the public interest, but rather simply that it is consistent with the public interest.⁴¹

As demonstrated in this Application, the Transaction will have no adverse effect in any of these areas and therefore is consistent with the public interest. Additionally, the Transaction will

³⁶ FPL believes that certain aspects of the Transaction may not require prior approval under FPA section 203 but nonetheless seeks, out of an abundance of caution, authorization for the Transaction as a whole, without asking the Commission to resolve any threshold jurisdictional issues. *See, e.g., Ocean State Power*, 47 FERC ¶ 61,321 at 62,130 (1989) (assuming jurisdiction without resolving threshold question).

³⁷ 16 U.S.C. § 824b(a)(4).

³⁸ Order No. 592, FERC Stats. & Regs. ¶ 31,044 at 30,111.

³⁹ *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,874-78 (2000) (“Order No. 642”), *on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001); 18 C.F.R. § 33.2(g).

⁴⁰ 18 C.F.R. § 2.26(b).

⁴¹ *See, e.g., Texas-New Mexico Power Co.*, 105 FERC ¶ 61,028 at P 23 & n.14 (2003) (citing *Pacific Power & Light Co. v. FPC*, 111 F.2d 1014, 1016-17 (9th Cir. 1940)).

not result in cross-subsidization of a non-utility associate company or a pledge or encumbrance of utility assets for the benefit of an associate company.⁴² Accordingly, the Transaction should be approved.

A. The Transaction is Consistent with the Public Interest

1. The Transaction Will Have No Adverse Effect on Competition

In Order No. 642, the Commission stated that its objective in analyzing a proposed transaction's effect on competition is to determine whether such disposition "will result in higher prices or reduced output in electricity markets."⁴³ The Commission has ruled that higher prices and reduced output in electricity markets may occur if FPA section 203 applicants are able to exercise market power, either alone or in coordination with other firms.⁴⁴ As demonstrated herein, the Transaction will have no adverse effect on competition.

a. The Transaction Will Have No Adverse Effect on Horizontal Competition in Generation

FPL's acquisition of Vandolah and its subsequent transfer from the DEF BAA to the FPL BAA will have no adverse effect on horizontal competition in generation. FPL is the primary generator in the highly-concentrated FPL BAA, so virtually any increase in generation would create the appearance of anti-competitive effects indicated by increases in the Herfindahl-Hirschman Index ("HHI") in excess of the Commission's Competitive Analysis Screen thresholds.⁴⁵ However, the mere presence of screen failures does not indicate there are adverse horizontal competitive effects, particularly where, as here, the screen failures result from the addition of AEC rather than the elimination of a competitor or competitive supply.

⁴² See 18 C.F.R. § 2.26(f).

⁴³ Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,879.

⁴⁴ *Id.*

⁴⁵ See 18 C.F.R. § 33.3(c)(5) (requiring calculation of HHI statistics as part of Competitive Analysis Screen).

Osprey Energy Center, LLC (“*Osprey*”)⁴⁶ and *Nevada Power Company* (“*Nevada Power*”)⁴⁷ presented to the Commission transactions that are very similar to the one proposed here. Both of those transactions, like the present one, involved a vertically-integrated utility operating in a highly-concentrated, non-RTO market (*Osprey*, in fact, was in Florida), acquiring an existing generator in order meet capacity needs (either as a result of growing load or near-term generation retirements) as an alternative to constructing new generation. Notwithstanding Competitive Analysis Screen failures in the buyer utility’s home market, the Commission held in *Osprey* that the proposed transaction “present[ed] a situation in which the change in HHI may overstate the effect on competition” and required no market-power mitigation measures.⁴⁸ In *Nevada Power*, the Commission recognized the temporary nature of the market power issues that were, in that transaction, comparable to those that are present here, and so only required behavioral, and not structural, mitigation.⁴⁹

Tenaska Alabama Partners, L.P. (“*Tenaska*”)⁵⁰ presented similar circumstances as well. Like *Osprey* and *Nevada Power*, that transaction, involved a vertically-integrated utility operating in a non-RTO market seeking to acquire an existing generator in order meet load growth in a more cost-effective manner than building generation or entering into a power purchase agreement.⁵¹

⁴⁶ *Osprey Energy Ctr., LLC*, 152 FERC ¶ 61,066 at PP 17-18, 33 (2015) (“*Osprey*”) (Commission finding that DEF’s acquisition of the 590 MW Osprey Energy Center “does not raise horizontal market power concerns” notwithstanding a screen failure during summer off-peak period in a highly concentrated market, as well as additional screen failures in price sensitivity analyses).

⁴⁷ *Nevada Power Co.*, 157 FERC ¶ 61,094 (2016) (“*Nevada Power*”).

⁴⁸ *Osprey* at P 34.

⁴⁹ *Nevada Power* at P 26.

⁵⁰ *Tenaska Alabama Partners, L.P.*, 191 FERC ¶ 61,190 (2025).

⁵¹ *Id.* at P 41. *Tenaska Alabama Partners, L.P.*, Docket No. EC25-27-001, Supplemental Affidavit of Matthew E. Arenchild at 4 (Mar. 17, 2025) (“The acquisition of the Lindsay Hill Facility will provide a cost-effective means to contribute toward meeting these resource adequacy requirements, ensuring APC can continue to serve its customers reliably while avoiding higher-cost alternatives such as new-build generation or long-term power purchase agreements.”)

And while market concentration was lower there than in *Osprey* or *Nevada Power*, still there were Competitive Analysis Screen failures. Nonetheless, the Commission approved the transaction without requiring mitigation measures,⁵² noting, among other things, “evidence that [the utility buyer’s] need for capacity is driven by load growth in its retail service territory” and applicants’ argument that the proposed transaction “represents the most cost-effective alternative for customers as determined through [the utility’s] competitive bidding process.”⁵³

Osprey, *Nevada Power*, and *Tenaska* can all be read for the proposition that, when a vertically-integrated utility in a non-RTO market acquires existing generation as cost-effective alternative to constructing new capacity needed to supply growing load or replace retiring generation, any Competitive Analysis Screen failures are, at worst, temporary and, to the extent necessary, can be addressed with behavioral, rather than structural, mitigation. It would therefore be fully consistent with this precedent for the Commission not to require any market power mitigation measures here or, if any are deemed necessary, limit such mitigation to a behavioral must-offer remedy.

While no mitigation was required in *Osprey* or *Tenaska*, if the Commission deems it necessary based on the particulars of this Transaction, FPL is willing to commit to certain behavioral mitigation after acquiring Vandolah. As detailed below, FPL is willing to commit to a day-ahead “must-offer” of at least 330 MW from Vandolah at cost-capped rates during all Summer and Shoulder season hours through at least May 31, 2030, or, if necessary, December 31, 2031. Just as in *Nevada Power*, any market power issues brought about by the present Transaction will only be temporary and will expire prior to the beginning of the Summer 2030 season, when new

⁵² *Id.* at 40.

⁵³ *Id.* at 41.

solar and battery storage could enter the market if development started on the date of closing of the Transaction, or new gas fired generation could enter the market if development started today. Further, any market power issues would expire, at the very latest, prior to January 1, 2032, when FPL would have placed the last of the Avoided Capacity in service but for the proposed Transaction. Thus, consistent with Commission precedent, a must-offer of this duration is appropriate mitigation, should any mitigation be needed at all.

Applicants thus respectfully submit that the Commission should approve the present Transaction promptly and without any condition of market power mitigation measures. However, if and to the extent necessary to obtain approval of the Transaction, FPL is willing to commit to the market power mitigation measures detailed below.

i. Competitive Analysis Screens Conducted

The Commission's regulations provide that a Competitive Analysis Screen should be conducted for "each wholesale power sales customer or set of customers (destination market) affected by the proposed transaction."⁵⁴ This rule is generally applied in the context of FPA section 203 applications by conducting the Competitive Analysis Screen for the BAA in which merging entities own or control electric generating capacity, as well as any other BAAs that may be materially impacted by the proposed transaction.

FPL retained Dr. John Morris to conduct Competitive Analysis Screens relevant to, and in support of, the present Application. The analyses conducted, and the results thereof, are described fully in Dr. Morris' Report and Affidavit, attached at Appendix 3 hereto. As noted above, Applicants anticipate consummating the Transaction on June 1, 2027, the day after the expiration

⁵⁴ 18 C.F.R. § 33.3(c)(2).

of the DEF Tolling Agreement. As a result, Dr. Morris conducted his analyses using a June 1, 2027, through May 31, 2028, test year.

Consistent with Commission precedent, Dr. Morris conducted Competitive Analysis Screens of the FPL BAA and all first tier BAAs showing the impact of the Transaction assuming that: (i) Vandolah moves from the DEF BAA in the pre-Transaction scenario to the FPL BAA in the post-Transaction scenario, and (ii) the output of Vandolah goes from being attributed to DEF to FPL. Dr. Morris refers to this set of Competitive Analysis Screens as the “Base Case.”

In addition, in order to address the possibility that the new Vandolah Interconnection Line, directly connecting Vandolah to the FPL BAA, is not energized by time the Transaction closes, Dr. Morris also conducted Competitive Analysis Screens of the DEF BAA and all first tier BAAs showing the impact of the Transaction assuming that: (i) Vandolah remains in the DEF BAA in the pre- and post-Transaction scenarios, but (ii) the output of Vandolah goes from being attributed to DEF to FPL. Dr. Morris refers to this set of Competitive Analysis Screens as the “Alternate Case.”

Further, in order to analyze the changes in market concentration that would occur if the Transaction did not occur and FPL instead constructed the Avoided Capacity, as contemplated in the 2025 TYSP, Dr. Morris conducted an analysis that he refers to as his “But-for” case—*i.e.*, what would be the change in market concentration “but for” the Transaction.

The results of these analyses are addressed separately below.

ii. Competitive Analysis Screen Results — Base Case

As detailed in his Affidavit and associated attachments, Dr. Morris’ Base Case analysis (in which Vandolah moves from the DEF BAA to the FPL BAA) shows Competitive Analysis Screen

failures for AEC⁵⁵ in the FPL BAA under base prices in only two periods—namely the Summer Top 10%, and Summer Top 1% periods.⁵⁶ Additional failures are observed in the Shoulder season and the Summer Peak and Off-Peak periods when assumed prices are increased by 10 percent.⁵⁷ In markets first tier to the FPL BAA, his analysis shows certain screen failures in the DEF, Florida Municipal Power Pool (“FMPP”), Gainesville Regional Utilities (“GVL”), Jacksonville (“JEA”), and Tallahassee (“TAL”) BAAs.⁵⁸

a) The Base Case Screen Failures Overstate Competitive Effects; the Transaction Should Be Approved Without Mitigation

The screen failures under the Base Case analysis should not cause the Commission concern. Indeed, the Commission stated in *Tenaska* that “when a proposed transaction has screen failures, applicants may provide factors specific to the proposed transaction that indicate that there will not be an ability and incentive to withhold output, and therefore the proposed transaction will not have an adverse impact on competition.”⁵⁹ Such specific factors are present in the current proposed Transaction.

As explained by Dr. Morris, competitive supply does not decline because of the Transaction during the Summer Top 10% or Summer Top 1% periods.⁶⁰ “In fact, in the FPL BAA, which is the most relevant destination market for this analysis, competitive supply remains the

⁵⁵ Insofar as Florida lacks retail competition, measures of Economic Capacity are not informative in assessing market power effects of the Transaction. *See, e.g., Duke Energy Corp.*, 136 FERC ¶ 61,245 at P 124 (2011) (“the AEC measure is more appropriate for markets where there is no retail competition and no indication that retail competition will be implemented in the near future”); *Nevada Power Co.*, 113 FERC ¶ 61,265 at P 15 (2005) (AEC is a more accurate measure for markets where utilities have significant native load obligations).

⁵⁶ *See* Morris Aff., Exh. JM-8 at 10. Dr. Morris sometimes refers to the Summer Top 10% and Summer Top 1% periods as SUM_T10 and SUM_T1, respectively.

⁵⁷ *Id.* at 29-31, Tables 8-10; *see also id.* Exh. JM-8 at 13. When prices are decreased by 10 percent, there are failures only in Summer Top 10% and Summer Top 1% periods. *Id.* at 30-31; Exh. JM-8 at 16.

⁵⁸ *Id.* at 36-37; *see also id.* Exh. JM-8.

⁵⁹ *Tenaska* at P 41.

⁶⁰ *Id.* at 9, 31.

same during the time periods in which the DPT screen fails.... In other words, the DPT results indicate that wholesale buyers within the FPL BAA are not adversely affected; they have access to the same levels of competitive supply post-Transaction.”⁶¹ Thus, these screen failures are “best understood as false positives.”⁶²

Osprey presented facts similar to those present here and, in that case, the Commission found that no market power mitigation measures were necessary. The same finding should be made here—that market power mitigation measures are unnecessary.

First, like Duke Energy in *Osprey*,⁶³ FPL is a vertically integrated utility that operates in a “thin,” concentrated, non-RTO market where virtually any increase in generation capacity would result in screen failures. Indeed, in the Summer Top 1% period, the approximately 584 MW of additional AEC supply resulting from the Transaction increases FPL’s market share from 78.2 percent to 81.4 percent, with a corresponding HHI increase of 481 points.⁶⁴ Importantly, competitive supply—defined as AEC not affiliated with FPL from internal sources or imports—does not decline. Still, this change results in a screen failure. In this regard, as explained by Dr. Morris, the screen failures constitute “false positives.”⁶⁵

⁶¹ *Id.* at 9-10.

⁶² *Id.* See also *id.* at Table 12.

⁶³ See *Osprey* at P 17 (discussing screen failure during summer off-peak timer period with HHI increase of 100 in a highly concentrated market) and P 36 (noting “thin[ness]” of wholesale market). In *Osprey*, pre-transaction AEC HHIs in the DEF BAA ranged from 1,501 to 7,110 in the Summer and Winter seasons, indicating a concentrated or highly-concentrated market (although HHIs were considerably lower in the Shoulder season). *Osprey Energy Center, LLC et al.*, Docket No. EC15-96-000, Joint Application for Approval Under Section 203 of the Federal Power Act and Request for Shortened Comment Period of Osprey Energy Center, LLC and Duke Energy Florida, Inc., Testimony of Julie R. Solomon at 8, Table 3 (Mar. 13, 2015) (“*Osprey* Application”).

⁶⁴ Morris Aff. at Table 2. Similarly, in the Summer Top 10% period, the pre-Transaction HHI exceeds 6,400 points and the Transaction would increase FPL’s market share from 79.2 percent to 82.5 percent. *Id.*

⁶⁵ See *id.* at 9, 31-32.

Second, as also in *Osprey*,⁶⁶ no competitor in the FPL BAA would be eliminated by the Transaction. For one, Vandolah does not compete with FPL. Rather, the output of Vandolah is fully committed to DEF which, on information and belief, uses the output to serve native load in the DEF BAA. In addition, DEF does not compete with FPL in the FPL BAA in more than a *de minimis* respect. More particularly, in 2023-2024, DEF sold only 1,323 MWh in the FPL BAA. By contrast, 3.24 million MWh of energy were sold at wholesale in the FPL BAA in 2024.⁶⁷ The sales by DEF thus represented merely 0.04 percent of the total wholesale market—a truly *de minimis* amount.⁶⁸ In any event, DEF will not be eliminated but rather will continue to exist after the Transaction. FPL purchasing Vandolah therefore does not eliminate a competitor in the FPL BAA, nor does it eliminate a meaningful amount of competitive supply.

Third, as in *Osprey*,⁶⁹ the observed increases in HHIs resulting from the Transaction are attributable solely to an increase in AEC in the FPL BAA—which is decidedly *pro-competitive*.⁷⁰ The observed increases are not related to the elimination of a competitor or reduction in a competitor’s wholesale market share. In *Osprey*, the Commission recognized that the effect of the proposed transaction on the market was not substantially different than Duke Florida’s alternative of building the Suwannee Combustion Turbines, among other factors.⁷¹ Here, as explained by Dr.

⁶⁶ See *Osprey* at P 21 (noting applicants’ discussion that the proposed transaction does not eliminate a competitor in the DEF BAA) and P 34 (Commission stating “a competitor in the market is not being eliminated”).

⁶⁷ See *Morris Aff.* at 41; Exh. JM-13.

⁶⁸ See *Nw. Corp.*, 136 FERC ¶ 62,088 (2011) (approving a section 203 application without a Competitive Analysis Screen, based on the applicants’ representation that the generating plant being acquired represented less than two percent of installed capacity in the relevant market, and was therefore *de minimis*).

⁶⁹ *Osprey* at P 34 (“As Applicants note, the increase in Duke Florida’s market share is driven largely by the increase in its available economic capacity that is entering the market. There is no corresponding reduction in available economic capacity in the market because a competitor in the market is not being eliminated.”).

⁷⁰ See *Morris Aff.* at 11 (“an increase in HHI may overstate the transaction’s competitive impact if the merging party’s gain in market share is primarily due to the addition of new available economic capacity, rather than the elimination of a competitor”).

⁷¹ *Osprey* at P 34, 35.

Morris in his discussion of his “But-for” analysis, the effect of the proposed Transaction on the market is not substantially different from FPL following its current plan of constructing the Avoided Capacity.⁷²

Fourth, in both *Osprey* and this Transaction (as well as in *Tenaska*), the buyer is acquiring a moderately sized gas-fired, merchant generating facility in order to meet the needs of growing load and as a cost-effective alternative to constructing new generation, which otherwise would have been needed to meet the growing load.⁷³ In the present case, as explained by Mr. Whitley, purchasing Vandolah will result in savings to FPL’s customers of approximately \$32 million (on a net present value basis) as compared to the alternative of constructing the Avoided Capacity contemplated in FPL’s 2025 TYSP.⁷⁴

Fifth, like Duke Energy in *Osprey*,⁷⁵ FPL lacks market-based rate authority in the FPL BAA. In the Supplemental Policy Statement, the Commission stated that “in horizontal mergers, if an applicant fails the Competitive Analysis Screen..., the Commission’s analysis focuses on the merger’s effect on the merged firm’s *ability* and *incentive* to withhold output in order to drive up the market price.”⁷⁶ Thus, even if the Transaction did increase FPL’s generation market power in

⁷² See Morris Aff. at 11 (“the competitive effect of the proposed transaction may be similar to that of an alternative scenario—for example, where the merging party meets its future load obligations by building new supply rather than acquiring existing assets”).

⁷³ In its application, Duke Energy Florida’s experts stated that acquiring Osprey Energy Center is \$61 million more cost-effective based on a Cumulative Present Value Revenue Requirements analysis than constructing the Suwannee Combustion Turbines. See *Osprey* Application at 35. See also *Tenaska Alabama* at P 41.

⁷⁴ Whitley Testimony at 3, 16-17.

⁷⁵ *Osprey* at P 19.

⁷⁶ *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 60 (2007) (emphasis in original).

some regard, FPL lacks any ability to raise prices as a result of any such increase (or to capitalize on any price increases that might otherwise occur).⁷⁷

Sixth, the additional screen failures when prices are increased by 10 percent should not cause the Commission concern. The Commission has in the past indicated that it focuses its analysis on “persistent” screen failures.⁷⁸ The screen failures in the Shoulder season and the Summer Peak and Off-Peak periods only occur when assumed prices are increased by 10 percent. They do not occur with base prices, or when prices are decreased by 10 percent. These screen failures are thus not persistent, and the Commission should look past them.

Seventh, the screen failures in markets other than the FPL BAA should not cause concern because, in the words of Dr. Morris, they are “false positives” driven in large part by changes in Simultaneous Import Limits (“SILs”).⁷⁹ As explained by Dr. Morris, some of these screen failures are a result of SIL increases, which increase the FPL AEC in the destination market, but also increases the AEC of competing generation. “These are false positives because the supplies of others are not diminished.”⁸⁰ Other screen violations are the result of the SIL decreasing, resulting in less first tier generation reaching the destination market, and so the market share of the “home” utility increases. But, again, these are false positives because they “do not indicate the potential for FPL to raise prices anticompetitively from the Transaction.”⁸¹ Thus, these screen failures in markets other than the FPL BAA should not cause the Commission concern.

⁷⁷ See Morris Aff. at 14 (“[B]oth federal and state regulations significantly constrain any potential [by FPL] to raise market prices. FPL lacks authority to make wholesale sales at market-based rates within the FPL, Homestead, FMPP, and Gainesville BAAs.”). See, however, *Nevada Power Co.* at P 22 (“While the lack of market-based rates is a mitigating factor, it does not overcome the competitive concerns raised by the increase in market concentration as a result of the Proposed Transaction.”).

⁷⁸ See, e.g., *Nevada Power* at P 26.

⁷⁹ Morris Aff. at 32.

⁸⁰ *Id.*

⁸¹ *Id.*

The Commission held in Order No. 642 that it has the right to look beyond the HHI screen failures and focus its analysis on the “merger’s effect on the merged firm’s ability and incentive to withhold output in order to drive up market price” instead.⁸² In *Osprey*, the Commission did exactly that and held that the transaction did not raise horizontal market concerns because the increase in DEF’s market share was driven by the increase in AEC entering the market, and there is no corresponding reduction in AEC because a market competitor is not being eliminated. Based on the similarities between *Osprey* and the present case, a similar finding that no mitigation is necessary here would be entirely appropriate.

b) Even if the Screen Failures Indicate Some Adverse Competitive Impact, Any Such Effects Are Temporary in Nature, Such that Behavioral Mitigation Would Be an Appropriate Remedy Under Commission Precedent

As discussed above and in the Whitley Testimony, FPL needs to increase its generating capacity in order to meet growing system load. FPL’s latest ten-year site plan, filed with the Florida PSC on April 1, 2025, outlines a plan to satisfy the forecasted increase in load between 2025 and 2034 through a combination of: (i) new solar generation (17,433 MW), (ii) new battery storage (7,603 MW), (iii) new combustion turbines (475 MW), and (iv) upgrades to existing combined cycle generating facilities (80 MW).⁸³ With or without the present Transaction, FPL’s generation fleet will need to increase.

The present Transaction merely results in FPL acquiring generation instead of constructing it. Indeed, the Transaction will substitute in FPL’s resource plan an existing, newly-acquired generating facility for an equivalent amount of capacity that would otherwise be constructed by FPL. More particularly, as explained in the Whitley Testimony, if FPL acquires

⁸² *Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 60 (2008).

⁸³ 2025 TYSP at 5, 16 (Exh. AWW-1 at 18, 29).

Vandolah, the acquisition would replace the Avoided Capacity in FPL’s 2025 TYSP—*i.e.* (i) 400 MW of four-hour batteries that would otherwise enter service by January 1, 2028, and (ii) 475 MW in new combustion turbines that would otherwise enter service by January 1, 2032.

In this regard, any perceived competitive harm from the Transaction indicated by the modeled increases in FPL’s AEC (and associated HHI values) is temporary in nature because, absent the Transaction, FPL’s AEC would have increased anyway through the construction of the batteries and combustion turbines that will no longer be needed following the Transaction. Indeed, as explained by Dr. Morris, post-Transaction HHI levels in the FPL BAA will be similar to or lower than what would result if FPL were to construct the Avoided Capacity rather than purchasing Vandolah, all else being equal.⁸⁴

The ability of new, competing generation to enter the FPL market further ensures that any adverse competitive impact of the Transaction will be temporary. The Commission has recognized that market power concerns are not present in long-term capacity markets unless participants possess the ability to create barriers to entry.⁸⁵ And neither FPL nor any other market participant

⁸⁴ Morris Aff. at 15 (“These results suggest that the Vandolah acquisition results in changes in market concentration that are similar to (or in fact less) than those that would be observed in the scenario in which the Transaction does not occur.”). See also *Osprey* at P 21 (“Applicants assert that the results of the screens will not be materially different for a transaction in which Duke Florida builds a plant comparable to the Osprey Energy Center and Osprey continues to own and operate the Osprey Energy Center.”).

⁸⁵ *NextEra Energy Inc.*, 165 FERC ¶ 61,199 at P 26 (2018) (“Generation Applicants state that the duration of the GE Lease is sufficient to address any horizontal market power concerns associated with the Generation Transaction because the potential for new market entry ensures that the long-term capacity market is competitive.”); *Puget Sound Energy, Inc.*, 107 FERC ¶ 61,082 at P 18 (2004) (“Analysis of the long-term capacity market focuses on barriers to entry by new generators through an applicant’s control of key inputs, principally sites for new capacity development and transportation systems for fuel supplies. While, as a result of the Transaction, PSE will be able to construct additional generating units at the Frederickson site, Applicants note that other generating facilities are also under construction or proposed at sites in or near the PSE control area.”); *Delmarva Power & Light Co.*, 71 FERC ¶ 61,160 at 61,609 (1995) (“the applicants’ summary of the results of recent new capacity solicitations by nearby utilities and their showing that the merged company will not be able to raise barriers to entry provide a sufficient basis to conclude that the merger will have no adverse competitive effects on long run generation markets”). See also *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 31,649, n.86 (1996) (“after examining generation dominance in many different cases over the years, we have yet to find an instance of generation dominance in long-run bulk power markets”).

can erect barriers to entry.⁸⁶ Since 2015, approximately 7,900 MW of generating capacity owned by non-affiliates of FPL has entered service in Florida.⁸⁷ Thus, any concerns about market power need not extend to the long-term because competing generation can, and does, enter the marketplace. Specifically, as discussed below and in the attached testimony of Timothy Oliver, Vice President of Development for FPL, new solar generation paired with storage can enter the market in three years or less, while new combustion turbines can enter the market in three to five years.

In *Nevada Power*, the Commission confirmed that where adverse competitive effects are merely temporary, behavioral remedies are an appropriate form of mitigation. In that proceeding, the Commission reviewed a proposed purchase of a 550 MW generating facility by affiliates of Nevada Power Company and Sierra Pacific Power Company (jointly “NV Energy”).⁸⁸ The applicants there explained that the Competitive Analysis Screen failures were the result of Nevada Power acquiring generation to replace capacity that would soon retire, and would continue until that generation did in fact retire. The applicants argued that behavioral mitigation—namely a “must-offer requirement”—need only continue until such retirements, because it “effectively maintains the status quo until such a time as specific resources leave the NV Energy fleet.”⁸⁹ In

⁸⁶ See *Bell Ridge Solar, LLC, et al.*, Docket Nos. ER23-883-001, *et al.*, Southeast Region Triennial Market Power Update, Filing Letter at 25-26 (June 30, 2023) (demonstrating inability of FPL and its affiliates to erect barriers to entry in the Southeast).

⁸⁷ See Energy Information Administration, Preliminary Monthly Electric Generator Inventory, EIA-860M for April 2025, https://www.eia.gov/electricity/data/eia860m/xls/april_generator2025.xlsx (culled for generating facilities in Florida entering service since 2015 by entities other than FPL and its affiliates).

⁸⁸ See generally *Nevada Power*, cited *supra*. See also *Nevada Power Co.* Order Accepting Compliance Filing, 158 FERC ¶ 62,077 (2017) (“*Nevada Power II*”).

⁸⁹ *Nevada Power Co.*, Docket No. EC16-130-000; Application at 36 (June 7, 2016).

its order, the Commission agreed that, insofar as any “market power concern [was] temporary,” it could be addressed with behavioral, as opposed to structural, mitigation measures.⁹⁰

In the present matter, the Competitive Analysis Screen failures will, similarly, be temporary and, similarly, can be addressed with behavioral mitigation, as discussed above.

Moreover, similar to the transactions considered by the Commission in *Nevada Power* and *Osprey*, and more recently in *Tenaska Alabama*, imposing virtual or permanent divestiture would frustrate the purpose and intent of the Transaction for FPL. FPL seeks to acquire Vandolah in order to serve forecasted increases in load. Any mitigation that requires divestiture of generating capacity by FPL will leave FPL in the same position it started in—needing to acquire more generating capacity to serve load. Virtual or structural divestiture is thus not feasible here and, in fact, could prevent FPL from complying with its duties as a franchised retail utility under Florida law. And, when faced with similar facts by other utilities that needed generation to meet capacity needs to serve load,⁹¹ the Commission did not require virtual or structural divestiture, and so should not require it here either.

c) FPL’s “Must-Offer” Commitment is an Appropriate Behavioral Remedy to Any Temporary Adverse Competitive Effects That Result from the Transaction.

In view of these facts, and notwithstanding the reasons why it would be appropriate and consistent with precedent for the Commission not to require any mitigation in the first instance, in order to mitigate any temporary increase in market concentration that might arise from the Transaction, FPL is willing to undertake the below-described market-power mitigation measures,

⁹⁰*Nevada Power* at P 26 (“The Commission has generally considered structural remedies when a market power concern arises that is persistent over time and behavioral remedies or virtual divestitures when the market power concern is temporary, either due to short overlap before a facility retires or in the period after closing but prior to divestiture.”) *See also id.* (describing and distinguishing structural, behavioral, and virtual mitigation).

⁹¹ *See Osprey* and *Nevada Power*, cited *supra*; *Alabama Tenaska* at P 39.

should the Commission deem them necessary (the “Must-Offer Commitment”). As explained by Dr. Morris, behavioral mitigation in the form of the two-unit Must-Offer Commitment cures all screen failures in the FPL BAA in all price scenarios that otherwise result from the proposed Transaction.⁹²

(1) The Mechanics of FPL’s Must Offer Mitigation Proposal Are Consistent with Nevada Power

The specifics of the Must-Offer Commitment are set forth below, while the duration of the Must-Offer Commitment is discussed in the next section.

- **Quantity.** FPL will offer to the market, on a day-ahead basis, the energy output of at least two of the four Vandolah units (equivalent to 330 MW in the summer) during all Summer and Shoulder season hours (*i.e.*, “24/7”, during peak and off-peak hours, March through November), to the extent this energy has not already been committed to a third party, such as through a bilateral forward sale.⁹³
- **Product/Delivery Point.** The product offered would be unit-contingent “firm” energy delivered to the point of interconnection between Vandolah and FPL’s transmission system, and would be recallable or cancellable only if there is an event of *force majeure* or other event that curtails the ability of FPL to generate and deliver such energy (such as a forced or unforced outage of one or more Vandolah units, fuel constraints, or a transmission constraint that results in dispatch curtailment).⁹⁴
- **Pricing.** The offered price will not exceed the caps in FPL’s cost-based wholesale power tariffs on file with the Commission.⁹⁵

⁹² Morris Aff. at 33-34.

⁹³ Insofar as each Vandolah unit has certain operational limits (such as minimum loadings, minimum run, and minimum down times), FPL may impose certain conditions on the offers (such as minimum MW purchased or minimum hours purchased) consistent with such operational limits. Thus, to the extent that the sum of the requests for all prospective buyers the offered energy requires a unit to deliver energy below its minimum load capability, the buyers must increase or decrease their bid to a quantity that would satisfy the minimum load capability of the units, or else FPL would be permitted to deny the purchase request.

⁹⁴ No ancillary services such as Generation Control, Regulation, Frequency Response, or Voltage Support would be offered. The ancillary services associated with Vandolah must remain at the discretionary use of the FPL BAA operator in order to ensure system reliability.

⁹⁵ See *Florida Power & Light Co.*, 177 FERC ¶ 61,057 (2021) (accepting for filing eTariff submission of Tariff No. 1); *Florida Power & Light Co.*, Docket No. ER22-1805-000, Letter Order issued July 1, 2022 (accepting for filing transfer of tariffs from Gulf Power Company to FPL eTariff database).

- **Availability.** The Vandolah energy will not be offered if unavailable due to outage or the unavailability of fuel.⁹⁶ In addition, the Vandolah energy will not be offered if FPL reasonably anticipates that it will be needed to serve any native or wholesale load requirements (excluding any day-ahead and intraday non-firm sales), or to provide necessary reserve requirements. In this regard, FPL will not be required to sell Vandolah energy if doing so would require FPL to purchase energy from a third party to meet its needs or would trigger NERC Energy Emergency Alerts.⁹⁷ After it is lifted, a sale of energy from Vandolah pursuant to this Must-Offer Commitment will not be recalled absent a *force majeure* event.⁹⁸

The Vandolah energy will be marketed and offered through the following process.

- **Bilateral Offer for Forward Term Sales.** To the extent that FPL determined that there will be periods for which Vandolah has a low likelihood of being needed to serve FPL system load, FPL will make Vandolah unit-contingent energy available on a bilateral basis for forward terms of less than one-year. Such offers and any subsequent sales will be made through normal bilateral channels (power purchase agreement, executed confirmation, recorded telephone, recorded instant message, or email) at or below the caps in FPL’s cost-based wholesale power tariffs on file with the Commission.
- **Posted Offer for Day-Ahead Sales.** To the extent FPL has not forward-sold all of the Vandolah energy on a unit contingent basis and it is otherwise available (per above), FPL will offer the higher of 330 MW or the remaining unsold capacity according to the following process (and subject to the minimum load cap).
 - FPL will post, on a website, available Vandolah energy and the corresponding energy offer price on a business day-ahead basis (prior to 8:00 AM Eastern Prevailing Time (“EPT”)), in two blocks depending on the time period:
 - a. 16-hour On-Peak (7:00 AM to 11:00 PM EPT) and
 - b. 8-hour Off-Peak (11:00 PM to 7:00 AM EPT).
 - In the event that any of the Must-Offer Capacity is not purchased in the market by 10:00 AM of each prior Business Day, the Vandolah energy will be released back to FPL for use at its discretion.

As explained by Dr. Morris, behavioral mitigation in the form of the two-unit Must-Offer

Commitment cures all screen failures in the FPL BAA in all price scenarios that otherwise result

⁹⁶ Vandolah lacks firm gas transportation and, although it can also operate on oil, on-site oil storage is limited.

⁹⁷ See *Nevada Power Co.*, Docket No. EC16-130-001, Section 203 Market Power Mitigation Compliance Filing and Alternative Mitigation Proposal at 7-8 (Dec. 15, 2016).

⁹⁸ *Id.*

from the proposed Transaction.⁹⁹ More specifically, when 330 MW, the summer capacity of two of the four Vandolah units, are removed from FPL’s “bucket” in the analysis, the HHI change resulting from the Transaction is zero points or less in each Summer and Shoulder period.¹⁰⁰

The mitigation, however, does not cure the screen failures in the first-tier markets. But, as explained by Dr. Morris, “in these thinly traded markets, the DPT may produce misleading results.”¹⁰¹ In addition, “[b]ecause the transaction does not result in a reduction in competition in these markets, there is no competitive concern even in the absence of mitigation measures.”¹⁰² Thus, if and to the extent the Commission believes that horizontal market-power mitigation measures are needed, this proposed mitigation should alleviate any concerns the Commission may have.

The Must-Offer Commitment here is the same in all fundamental respects as that accepted by the Commission in *Nevada Power*—a unit-specific, must-offer commitment posted on an electronic bulletin board system¹⁰³ in sufficient quantity to mitigate any screen failures and until such time as HHIs are at the same level as they otherwise would have been absent the proposed transaction. The Commission should thus find it sufficient to mitigate any market power concerns resulting from the present proposed Transaction.

FPL also notes that it should suffice that the Must-Offer Commitment is only for the Summer and Shoulder seasons and not, in this regard, for the Winter season. As detailed by Dr. Morris, the Transaction results in screen failures in the FPL BAA under base prices only during

⁹⁹ Morris Aff. at 31-32.

¹⁰⁰ *Id.* at 32-33, Table 12; *see also id.* at Exh. JM-9.

¹⁰¹ *Id.* at 33.

¹⁰² *Id.* at 33.

¹⁰³ Whereas NV Energy proposed using an existing platform, if this Application is approved and conditioned on the Must-Offer Commitment, FPL will create a website.

the Summer Top 10% and Summer Top 1% periods and in the Shoulder season and other Summer periods when prices are increased 10 percent.¹⁰⁴ Mitigation is therefore only necessary during these periods, and is notably, not necessary in any winter periods.¹⁰⁵ The Commission has in the past found it sufficient for an entity that fails the Competitive Analysis Screens in only some periods to engage in mitigation measures only in those periods, and not in periods in which no screen failures occurred.¹⁰⁶ The same approach should be taken by the Commission here and, in this regard, the Commission should find that FPL need only adopt market power mitigation measures in the Summer and Shoulder seasons.

(2) FPL Proposes Must-Offer Commitment for a Duration Sufficient to Mitigate Any Temporary Competitive Effects

FPL offers this Must-Offer Commitment from the date of closing of the Transaction through May 31, 2030, which is a period that is three years from the expected closing date of the transaction and nearly five years from the date of this application. This duration is appropriate and has been established to continue as long as necessary to alleviate any market power concerns. As noted, the Commission has recognized that long-term capacity markets are competitive, provided that there are no barriers to entry (and there are no such barriers here).¹⁰⁷ And as explained in the Oliver Testimony, the time to construct a new solar paired with battery storage facilities in Florida is presently two to three years.

¹⁰⁴ Morris Aff. at 8-9, Table 2.

¹⁰⁵ In fact, there is a strong argument that no mitigation is necessary in Summer Peak or Off-Peak or the Shoulder season because, insofar as these screen failures only occur when prices are increased by 10 percent they are not “persistent,” and should therefore not be a cause for concern. *See supra* n. 79 and associated text. Still, if mitigation is necessary, FPL is willing to mitigate all Summer and Shoulder season periods.

¹⁰⁶ *See, e.g., Nevada Power II* at 2 (mitigation in the form of must-offer requirement not to include summer 2018 and 2019); *Tucson Elec. Power Co.*, 156 FERC ¶ 61,170 at 19 (2016) (requiring mitigation during only winter peak period hours).

¹⁰⁷ *See supra* n. 86 and associated text.

Three years of behavioral mitigation should thus suffice here. Because competing solar generation and battery storage could, in response to the Transaction closing on June 1, 2027, come online prior to the summer of 2030,¹⁰⁸ there is no need to extend any behavioral mitigation measures past May 31, 2030.

In addition, market participants have an even longer “runway” because the present Application is being filed approximately two years before the closing of the Transaction. Thus, from the date of filing of this Application to the end of the proposed Must-Offer Commitment is nearly five years—well more than the time needed for competing solar and battery facilities to be constructed and reach commercial operation, and likely long enough for competing combustion turbines to be constructed.¹⁰⁹

Notwithstanding the foregoing, should the Commission find it necessary, FPL is willing to extend its Must-Offer Commitment through December 31, 2031.¹¹⁰ Extending mitigation through this date gives competitive entities more than enough time to construct solar facilities paired with batteries (or stand-alone batteries)—indeed, considerably more than the two to three years needed. It also gives such entities sufficient time to construct new combustion turbines which, as explained in the Oliver Testimony, presently takes three to five years to complete.¹¹¹

In addition, as noted above, “but for” the proposed Transaction, FPL would have installed the Avoided Capacity by January 1, 2032. FPL will thus, with or without the present Transaction, have added to its system as of January 1, 2032, an amount of capacity roughly equivalent to that

¹⁰⁸ See Oliver Testimony at 7-8 (stating that the average time from initiation to in-service date for a solar project is 32 months and BESS project is 22 months).

¹⁰⁹ *Id.* at 3.

¹¹⁰ Insofar as the Must-Offer Commitment applies only to Summer and Shoulder periods, the commitment through December 31, 2031, will for all intents and purposes expire November 30, 2031, the end of the Shoulder season prior to December 31, 2031.

¹¹¹ Oliver Testimony at 11-12.

of Vandolah, making December 31, 2031, a logical outside date for any mitigation requirement as it represents a point in time when market concentrations would be expected, all else being equal, to approximate “but for” Transaction levels. In this case, the result is even better than that. Dr. Morris’ analysis of the But-for Case, as noted above, confirms that adding the Avoided Capacity would result in market HHIs that are similar to or higher than those that result from the Transaction, as modeled in the Base Case.¹¹² It is thus entirely appropriate to allow any mitigation associated with the Transaction to sunset no later than December 31, 2031.

* * *

In all, while the proposed Transaction results in Competitive Analysis Screen failures under base prices in two summer periods, these failures are false positives that should not cause the Commission concern because they are a result of FPL’s AEC increasing in an effort to meet the needs of growing load in a more cost-effective manner than constructing new generation. Nevertheless, if the Commission deems it necessary, FPL is willing to abide by the Must-Offer Commitment set forth above.

iii. Competitive Analysis Screen Results — Alternate Case

Dr. Morris’ Alternate Case analysis shows no Competitive Analysis Screen failures in the DEF BAA but for a failure in the Shoulder Top 10% Period under Base Prices and +10% Prices.¹¹³ In the FPL BAA, his Alternate Case analysis shows no screen failures, either under Base Prices or price sensitivity scenarios.¹¹⁴ In markets first tier to the DEF BAA, his analysis shows isolated screen failures in the FMPP, GVL, and Tampa Electric Company (“TEC”) BAAs.¹¹⁵

¹¹² Morris Aff. at 15.

¹¹³ *Id.* at 35-36.

¹¹⁴ *Id.* at 37; *see also id.* Exh. JM-11 at 1, 3, 7.

¹¹⁵ *Id.* at 34-37; *see also id.* Exh. JM-11.

In order to mitigate any horizontal market power concerns that might arise under this scenario (should the Vandolah Interconnection Line not be energized and capable of full-rating operation by June 1, 2027), FPL is willing to commit to the same mitigation as under the Base Case—a day-ahead, must-offer of the energy output of at least two of the four Vandolah units (equivalent to 330 MW in the summer) during at least all Summer and Shoulder season hours (to the extent this energy is not committed to a third party, such as through a monthly sale) from: (i) the later of the date of closing of the Transaction or June 1, 2027, until (ii) the date the new line is energized and Vandolah thus moves from the DEF BAA to the FPL BAA. The same terms and conditions of the Must-Offer Commitment detailed above, including the cost-based limitation on pricing, would apply here as well, except that the output of Vandolah would be offered at the generation bus in the DEF BAA instead of in the FPL BAA.

As explained by Dr. Morris, this transitory Must-Offer Commitment for the DEF BAA (should it be needed) would cure the screen failures, but for Summer Peak in TEC for the +10% price case and the Winter Top 10% in FMPP.¹¹⁶ But, as with the Base Case analysis, this is a thinly traded market and the Transaction does not eliminate a competitor, and the screen failures after mitigation are isolated rather than systemic across markets and pricing scenarios. Thus, these isolated screen failures should not cause the Commission concern.

b. The Transaction Will Have No Adverse Effect on Horizontal Competition in Transmission

The Transaction will have no adverse effect on horizontal competition in transmission. As described above, FPL owns and controls electric transmission assets in Florida, but they are all subject to open access commitments and FPL's OATT on file with the Commission.¹¹⁷ The

¹¹⁶ *Id.* at 16, 36-37; *see also id.* Exh. JM-12 at 1-3.

¹¹⁷ The Vandolah Interconnection Line will be similarly subject to the FPL OATT.

Vandolah assets to be acquired by FPL, however, consist of no electric transmission assets, except for limited generator leads and step-up transformers that interconnect Vandolah to the DEF transmission system. The combination of FPL's transmission assets, with these limited generator interconnection facilities, should not give rise to concerns about the impact of the Transaction on horizontal competition in transmission. Thus, the Transaction will have no adverse effect on horizontal competition in transmission.

c. The Transaction Will Have No Adverse Effect on Vertical Competition

The Transaction will have no adverse effect on vertical competition. In Order No. 642, the Commission set forth guidelines to be used in determining whether a proposed transaction will have an adverse effect on vertical competition.¹¹⁸ The Commission's concern with regard to vertical market power generally arises in circumstances, not present here, in which the combined entity may restrict potential downstream competitors' access to upstream supply markets or increase potential competitors' costs.

The consolidation of FPL's electric transmission assets with Vandolah will not enhance vertical market power because it will not enhance any ability of FPL or any of its affiliates to restrict potential downstream competitors' access to upstream supply. Indeed, as described above, access to FPL's transmission system is subject to the FPL OATT, and ownership of Vandolah will not provide FPL any enhanced ability to restrict potential downstream competitors' access to upstream supply. In prior proceedings, the Commission has found that open-access to transmission facilities provided sufficient assurance that the applicants could not use their control of

¹¹⁸ Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,904-07.

transmission facilities in a manner that could harm competition.¹¹⁹ The same conclusion should be reached here.

Accordingly, the Transaction will have no adverse effect on vertical competition.

d. The Transaction Will Not Create Barriers To Market Entry

In prior proceedings under FPA section 203, the Commission has considered whether a proposed transaction could enhance the applicants' ability to erect barriers to market entry in determining whether a proposed transaction may adversely impact competition.¹²⁰ The present Transaction will not provide FPL with any ability to erect barriers to market entry because it will not result in FPL acquiring any assets that could be used for such purposes. More specifically, Vandolah does not own or control, and FPL will not through the Transaction acquire, any vertical inputs to electric production, and Vandolah's limited and discrete interconnection facilities are not considered transmission assets subject to open-access requirements.¹²¹ For example, the Transaction will not convey to FPL any control over upstream fuel assets that could be used to restrict electrical output of its competitors. Nor will it convey to FPL any sites for generation development, other than the limited land on which Vandolah presently sits. Further, FPL's transmission assets are subject to open access pursuant to FPL's OATT, as will be the new Vandolah Interconnection Line connecting Vandolah with FPL's grid. Accordingly, the Transaction will not create any barriers to market entry.

¹¹⁹ See, e.g., *TECO Wholesale Generation, Inc.*, 107 FERC ¶ 62,208 (2004).

¹²⁰ See, e.g., *Texas-New Mexico Power Co.*, 105 FERC ¶ 61,028 at PP 13-14 (2003); *PECO Energy Co.*, 90 FERC ¶ 61,269 at 61,903 (2000); *Boston Edison Co.*, 80 FERC ¶ 61,274 at 61,994 (1997).

¹²¹ See *Vandolah Power Company, L.L.C.*, Docket No. ER10-2211-009, Triennial Market Power Analysis filed Dec. 22, 2023 (accepted by letter order dated May 15, 2025).

2. The Transaction Will Have No Adverse Effect on Rates

Under Order No. 642, the Commission must determine whether a proposed transaction will have any adverse impact on the rates charged to wholesale power and transmission customers.¹²² The Commission focuses on whether a proposed transaction will have an effect on Commission-jurisdictional rates, whether the effect is adverse, and whether the adverse effect will be offset or mitigated by the proposed transaction's potential benefits.¹²³ The Commission has held that an acquiring utility's commitment to hold customers harmless from costs related to a proposed transaction over a five-year period of time after the transaction was sufficient to show that the proposed transaction would not have adverse effects on rates.¹²⁴ An applicant can alternatively recover transaction-related costs if they demonstrate offsetting benefits at the time they apply to recover the costs.¹²⁵

The proposed Transaction will have no adverse effect on jurisdictional rates.¹²⁶

Vandolah's Rates

Vandolah's entire power output is committed to DEF under the DEF Tolling Agreement through May 31, 2027. If and to the extent the Transaction closes before June 1, 2027, FPL will continue to honor this agreement through its stated termination date. The Transaction will thus have no adverse affect on the jurisdictional rates charged by Vandolah.

¹²² Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,914-15; Order No. 592, FERC Stats. & Regs. ¶ 31,044 at 30,123.

¹²³ See, e.g., *Osprey* at P 43.

¹²⁴ *Id.* at P 44.

¹²⁵ *Id.* at P 45.

¹²⁶ Indeed, the Transaction will have a beneficial effect on rates. As explained above and by Mr. Whitley, if FPL cannot acquire Vandolah, it will need to construct the Avoided Capacity. This will cost more than the present Transaction. The present Transaction will thus not only have no adverse effect on rates, it will have beneficial effect as compared to the alternatives available to FPL (that are otherwise unavoidable in view of the need for more generation to meet growing load).

FPL's Rates

FPL sells its wholesale energy under a variety of market-based and cost-based rates. The Commission has held that a transaction will not have an adverse effect on the wholesale rate of electricity when the wholesale customers' existing contracts were entered into under market-based rate authority.¹²⁷ The Commission has also held that when there are market-based rates, the effect of rates is not of concern "because market-based rates will not be affected by the seller's cost of service, and thus, will not be affected by the [transaction]."¹²⁸ Thus, there are no concerns about the Transaction having an adverse effect on FPL's market-based rate customers, none of which is within FPL's franchised service territory.

FPL also sells wholesale energy at cost-based rates through a combination of stated- and formula-rate agreements. Its customers under stated-rate agreements will not experience any adverse effect on their rates because, as a result of the stated-rate nature of their agreements, FPL has no ability to charge those customers any costs related to the Transaction or the costs of Vandolah itself, absent an FPA section 205 filing. The Commission has previously found that cost-based rate schedules provide no mechanism through which a transaction can be passed through to the rates absent a separate FPA section 205 filing, and thus, will be unaffected by the transaction.¹²⁹

FPL sells wholesale energy to two customers at cost-based, formula rates—Florida Keys Electric Cooperative Association, Inc. ("Florida Keys") and Lee County Electric Cooperative, Inc.

¹²⁷ See, e.g., *Tucson Elec. Power Co.*, 169 FERC ¶ 61,204 at P 39 (2019) citing *Union Elec. Co.*, 114 FERC ¶ 61,255 at P 45 (2006); *NorAm Energy Servs., Inc.*, 80 FERC ¶ 61,120 at 61,382–83 (1997).

¹²⁸ *Cinergy Corp.*, 140 FERC ¶ 61,180 at P 41 (2012).

¹²⁹ See, e.g., *Calpine Corp.*, 162 FERC ¶ 61,148 at P 32 (2018).

(“Lee County”).¹³⁰ Absent a commitment otherwise by FPL, the costs of Vandolah would automatically flow through these formula rates into the costs charged under these agreements. And although the Commission has indicated that such cost inclusion may be permissible under the circumstances present here,¹³¹ FPL commits not to include any costs of Vandolah in charges to Florida Keys and Lee County under these agreements absent Commission authorization to do so in response to a future FPA section 205 filing.

In addition, the Transaction will have no adverse effect on FPL’s transmission service rates. The Transaction does not involve acquisition of any transmission assets, other than limited assets such as lead lines and step-up transformers, the value of which are not included in unbundled transmission rates.

Nonetheless, consistent with Commission policy and practice, FPL pledges generally to hold harmless all current unbundled electric transmission and wholesale energy customers from any costs associated with the Transaction (*i.e.*, transaction and transition costs) for a period of five years to the extent that such costs exceed savings related to the Transaction. Consistent with Commission precedent, “transaction costs” in this context includes all transaction-related costs, not only costs related to consummating the Transaction.¹³² The Commission has found similar

¹³⁰ See FPL Rate Schedule FERC No. 317, filed Oct. 20, 2021 in Docket No. ER22-158-000 (Lee County); FPL Rate Schedule FERC No. 322, filed Oct. 20, 2021 in Docket No. ER22-158-000 (Florida Keys).

¹³¹ More particularly, the Commission has indicated that including such costs of an acquired, existing generating facility may be permissible where, as here, the plant is needed to “serve the acquiring company’s customers or forecasted load within a public utility’s existing footprint, in compliance with a resource planning process, or to meet specified NERC standards.” *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 at PP 5, 97 (2016).

¹³² See, e.g., *ITC Midwest LLC*, 142 FERC ¶ 62,106 at 64,243 (2013) (citing *PPL Corp. & E.ON U.S. LLC*, 133 FERC ¶ 61,083 at P 26 (2010)). This hold harmless commitment, however, is not a rate freeze and would not preclude changes in jurisdictional rates attributable to non-Transaction costs or to the costs or value of Vandolah itself as established in a proceeding under FPA section 205 or 206. The Commission has accepted similar limitations on this “hold harmless” commitment. See *ITC Midwest LLC*, Docket No. EC13-60-000, Application at n.14, filed Jan. 9, 2013. See also *PNM Res., Inc.*, 110 FERC ¶ 61,204 at P 43 (2005); *Ameren Corp.*, 108 FERC ¶ 61,094 at P 62 (2004); *Tucson Elec. Power Co.*, 103 FERC ¶ 62,100 at 64,163, n.3 (2003).

commitments by applicants under FPA section 203 sufficient to alleviate any concerns regarding the impact of a proposed transaction on FERC-jurisdictional transmission rates and, to the extent necessary, should do the same here.¹³³

3. The Transaction Will Have No Adverse Effect on Regulation

Pursuant to Order No. 642, the Commission requires applicants to evaluate the effect of a merger or other proposed transaction on regulation both at federal and state levels. The Commission has indicated that it may set an FPA section 203 application for hearing if the affected state commission does not have authority to act on the proposed transaction and raises concerns about the effect on regulation.¹³⁴ In addition, while section 1263 of the Energy Policy Act of 2005 (“EPAct 2005”) eliminated the need for the Commission to review the effect on regulation related to changes in control over a registered holding company under the Public Utility Holding Company Act of 1935, the Commission has stated that “applicants are still required to address whether the transaction will have any other effect on the Commission’s regulation.”¹³⁵ Neither of these concerns is raised by the Transaction, which will have no adverse effect on regulation.

The Transaction will not diminish federal regulatory authority over FPL or Vandolah. Following the Transaction, FPL (and its jurisdictional assets and wholesale power sales from Vandolah) will remain subject to the Commission’s jurisdiction under the FPA. Accordingly, the Transaction will have no adverse effect on federal regulation.

¹³³ See, e.g., *Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261 at P 68 (2013); *Florida Power & Light Co.*, 145 FERC ¶ 61,018 at P 59 (2013).

¹³⁴ Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,914-15.

¹³⁵ *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 196 n. 140 (2005) (“Order No. 669”), *order on reh’g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh’g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

Order No. 642 reflects the Commission's concern that state regulators should not be divested of authority to act on mergers of traditional, vertically-integrated utilities with captive retail (as well as wholesale) customers.¹³⁶ This concern is not applicable to the instant case because the Florida PSC's approval will be required prior to FPL including Vandolah in retail customer rates (although it is not required for consummation of the Transaction). Accordingly, the Transaction will have no adverse effect on state regulation.

B. The Transaction Will Not Result in Proscribed Cross-Subsidization or the Pledge or Encumbrance of Utility Assets

Under FPA section 203, as amended by EAct 2005, the Commission will approve a proposed transaction:

if it finds that the proposed transaction will be consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.¹³⁷

As explained in Exhibit M, the Transaction satisfies this standard.

IV. THE COMMISSION'S PART 33 FILING REQUIREMENTS

In compliance with section 33.2 of the Commission's regulations, 18 C.F.R. § 33.2, Applicants submit the following information.

A. Section 33.2(a) — Exact Name of Applicant and its Principal Business Address

FPL's exact name is Florida Power & Light Company, and its principal place of business is 700 Universe Boulevard, Juno Beach, Florida 33408.

¹³⁶ Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,914-15.

¹³⁷ 16 U.S.C. § 824b(a)(4).

Vandolah Power's exact name is Vandolah Power Company LLC, and its principal place of business is 2394 Vandolah Road, Wauchula, Florida 33873.

B. Section 33.2(b) — The Names and Addresses of Persons Authorized to Receive Notices and Communications Regarding the Application

Applicants request that all notices, correspondence, and other communications concerning this Application be directed to the following persons.¹³⁸

Jeffrey M. Jakubiak
Ankush J. Joshi
Vinson & Elkins LLP
1114 Avenue of the Americas, 32nd Floor
New York, NY 10036
(212) 237-0082
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Justin Moeller
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Florida Power & Light Company
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mwilliams@daypitney.com

C. Section 33.2(c) — Description of FPL (Exhibits A-F)

1. Business Activities (Exhibit A)

A description of Applicants and their business activities is included in Part I of this Application. In view of the foregoing, Applicants respectfully request waiver of the need to submit an Exhibit A.

2. Energy Subsidiaries and Energy Affiliates (Exhibit B)

FPL is an indirect, wholly owned subsidiary of NextEra, a multinational energy holding company with assets located throughout the United States as well as in various foreign countries.

¹³⁸ Applicants respectfully request waiver of the Commission's regulations in order to place more than two persons on the official service list for this proceeding.

It would be unduly burdensome to provide information here on all of FPL's affiliates. In addition, such information is by and large not relevant to the Commission's consideration of this Application. A description of FPL's energy affiliates operating in the Commission's Southeast MBR Region¹³⁹ is included in Exhibit B of this Application. (FPL has no energy subsidiaries.) FPL respectfully requests waiver of the need to provide additional information on its affiliates, as such information is not relevant to the Commission's consideration of this Application.

Vandolah Power has no energy subsidiaries and respectfully requests waiver of the need to provide any information regarding its affiliates. Insofar as these affiliates will not be acquired by FPL as part of the Transaction, information regarding them is not relevant to the Commission's consideration of this Application. Accordingly, Vandolah Power respectfully requests waiver of the need to provide any information in Exhibit B.

3. Organizational Charts (Exhibit C)

The organizational structures of FPL and its affiliates will not change as a result of the Transaction. Similarly, the only change to the organizational structure of Vandolah Power and its affiliates is that Vandolah Power will, as a result of the Transaction, cease to exist (after merging into FPL). In view of the foregoing, Applicants respectfully request waiver of the need to submit an Exhibit C.

4. Joint Ventures, Strategic Alliances, Tolling Arrangements or Other Business Arrangements (Exhibit D)

The Transaction will not create or result in any joint ventures, strategic alliances, tolling arrangements, or other business arrangements. With the exception of the Large Generator Interconnection Agreement between DEF and Vandolah Power (the "Vandolah LGIA"),¹⁴⁰ all

¹³⁹ See <https://www.ferc.gov/power-sales-and-markets/electric-market-based-rates/triennial>.

¹⁴⁰ The Vandolah LGIA, dated as of September 9, 2007, as amended and restated and entered into on November 1, 2019, was filed with the Commission on November 18, 2019 in Docket No. ER20-397-000 and accepted

Commission-jurisdictional contracts, joint ventures, or strategic alliances entered into by FPL will be honored after consummation of the Transaction, in accordance with their terms.¹⁴¹ As regards the Vandolah LGIA, insofar as Vandolah Power will cease to exist as a result of the Transaction, the Vandolah LGIA will be assumed by FPL, stepping into the role of Vandolah as the interconnection customer.

In view of the foregoing, FPL respectfully requests waiver of the need to submit an Exhibit D.

5. Common Officers or Directors (Exhibit E)

FPL and Vandolah Power have no officers or directors in common. In view of the foregoing, Applicants respectfully request waiver of the need to submit an Exhibit E.

6. Wholesale Power Sales Customers and Unbundled Transmission Services Customers (Exhibit F)

The Transaction will not affect any service provided by FPL or by any affiliate to any wholesale power sales or unbundled transmission service customer. In addition, FPL reports all sales of wholesale power and unbundled transmission service in its Electric Quarterly Reports filed with the Commission.

Similarly, the Transaction will not affect any service provided by Vandolah or by any affiliate to any wholesale power sales customer. The DEF Tolling Agreement will expire on May 31, 2027, the day prior to the anticipated closing date of the Transaction. But this expiration would have occurred regardless of the Transaction and, thus, DEF, the customer under this agreement, is unaffected by the Transaction. If, however the Transaction closes before the DEF

for filing, effective November 1, 2019, by Letter Order issued January 10, 2020. The Vandolah LGIA has a term that runs through October 1, 2032.

¹⁴¹ See *Orion Power Holdings, Inc.* 98 FERC ¶ 61,136 at 61,396 (2002) (granting a waiver of the requirement to file Exhibit D based on the explanation that all contracts, joint ventures, and strategic alliances entered into before the Transaction will be honored after the merger).

Tolling Agreement expires by its terms on May 31, 2027, FPL will continue to honor the terms of the agreement through its stated expiration date.

In view of the foregoing, Applicants respectfully request waiver of the need to submit an Exhibit F.

D. Section 33.2(d) — Jurisdictional Facilities Owned, Operated, or Controlled by Applicant or Its Affiliates (Exhibit G)

The jurisdictional facilities owned, operated, or controlled by Applicants and their energy affiliates are described in Part I and Exhibit B. Additional information regarding jurisdictional facilities owned, operated, or controlled by FPL is set forth in its FERC Form 1s, the most recent of which was filed with the Commission on April 14, 2025. In view of the foregoing, Applicants respectfully request waiver of the need to submit an Exhibit G.

E. Section 33.2(e) — Jurisdictional Facilities and Securities Associated with or Affected by the Transaction, Consideration for the Transaction (Exhibit H)

The jurisdictional facilities, as that term is used in FPA section 203(a)(1), associated with or affected by the Transaction is the Vandolah facility (including associated transmission facilities such as generator lead lines and step-up transformers), its market-based rate tariff (which will be cancelled after the Transaction as a result of Vandolah Power ceasing to exist), the DEF Tolling Agreement (to the extent the Transaction closes before the agreement expires by its terms on May 31, 2027), and associated books and records. The consideration for the Transaction is set forth in the PSA (which is being filed confidentially). In view of the foregoing, Applicants respectfully request waiver of the need to submit an Exhibit H.

F. Section 33.2(f) — Contracts Related to the Transaction (Exhibit I)

Enclosed as Exhibit I is the PSA, for which Applicants request privileged treatment as set forth in Section VII, below. To the extent necessary, Applicants respectfully request waiver of the requirements of Section 33.2(f) of the Commission's regulations to the extent that they would

require the filing of the exhibits and schedules to the PSA¹⁴² and other incidental contracts and written instruments that may be entered into by the parties, none of which will be inconsistent with the PSA or the description of the Transaction set forth in this Application.

G. Section 33.2(g) — Facts Relied Upon to Show that the Transaction is Consistent with the Public Interest (Exhibit J)

A discussion of the facts relied upon to show that the Transaction is consistent with the public interest is provided above in Part III.A. In view of the foregoing, Applicants respectfully request waiver of the need to submit an Exhibit J.

H. Section 33.2(h) — Key Map Showing Properties of Each Party to the Transaction (Exhibit K)

Attached as Exhibit K is a map showing FPL and Vandolah Power's major energy assets.

I. Section 33.2(i) — Other Regulatory Approvals (Exhibit L)

Other than Commission acceptance of certain amended agreements, no other regulatory approvals are required for consummation of the Transaction. Appropriate notice will be provided, however, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. In view of the foregoing information, Applicants respectfully request waiver of the need to submit an Exhibit L.

J. Section 33.2(j) — Cross-Subsidizations, Pledges or Encumbrances of Utility Assets (Exhibit M)

A discussion of cross-subsidization and related issues is set forth in Exhibit M hereto. In addition, a verification on behalf of FPL consistent with 18 C.F.R. § 33.2(j) and the guidance provided in Order No. 669 is attached as Appendix 1 hereto.¹⁴³

¹⁴² See, e.g., *Montenay Montgomery Ltd. P'ship*, 128 FERC ¶ 62,111 (2009) (granting FPA section 203 application based on application containing a copy of the transaction document from which the schedules and exhibits were omitted).

¹⁴³ See Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 169.

V. ADDITIONAL MATERIALS PROVIDED

A. Verifications

Verifications executed by Applicants' authorized representatives in accordance with 18 C.F.R. section 33.7 are provided in Appendix 1.

B. Proposed Accounting Entries

Pursuant to 18 C.F.R. section 33.5, proposed accounting entries for FPL related to the Transaction are provided in Appendix 5 hereto. As explained therein, FPL has included in these proposed accounting entries placeholders for the to-be-determined values and respectfully requests waiver of any need to provide actual values at this time. Rather, actual values will be submitted, in accordance with Commission precedent, within six months of consummation of the Transaction. The Commission has in the past found this approach sufficient and should make the same finding here.¹⁴⁴

FPL notes that, consistent with Commission policy and precedent,¹⁴⁵ these proposed accounting entries reflect the recordation of any acquisition premium resulting from application of Electric Plant Instruction No. 5 to Account 114.

VI. REQUEST FOR ORDER BY DECEMBER 8, 2025

Applicants respectfully request that the Commission approve the Transaction no later than December 8, 2025. As discussed herein, FPL needs to add significant amounts of new capacity to meet forecasted increases in peak demand, and must know well in advance of the Transaction's

¹⁴⁴ See, e.g., *Tucson Elec. Power Co.*, Docket No. EC19-100-000, Application Pursuant to Federal Power Act Section 203 at 24, Appx. 3 (dated June 5, 2019) (providing proposed accounting entries with only placeholders rather than values).

¹⁴⁵ See, e.g., *Ameren Corp.*, 140 FERC ¶ 61, 034 at P 30 (2012) ("The Commission has a long-standing policy related to the recovery of acquisition premiums, including goodwill, through rates. Under Commission policy, rate recovery of an existing facility is generally limited to the original cost of the facility and recovery of acquisition premiums including goodwill in cost-based rates is allowed only if the acquisition is prudent and provides measurable, demonstrable benefits to ratepayers.") (footnotes omitted).

June 1, 2027 closing date whether the Transaction will be approved or whether FPL should instead pursue development activities with respect to the Avoided Capacity.

VII. REQUEST FOR PRIVILEGED TREATMENT

Applicants respectfully request privileged treatment, in accordance with 18 C.F.R. section 388.112, for the PSA, submitted as Exhibit I. This agreement contains “[t]rade secrets and commercial or financial information obtained from a person [that are] privileged or confidential.”¹⁴⁶ The information contained in this document is thus commercially sensitive and not publicly available. Accordingly, good cause exists for the Commission to grant this request for privileged treatment of this information.

As required by 18 C.F.R. sections 33.9 and 388.112(b), FPL has included as Appendix 6 hereto a proposed protective agreement based on the Commission’s model protective order. Any questions regarding this request for confidential treatment should be directed to the following person:

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¹⁴⁶ 18 C.F.R. § 388.107(d) & (f).

VIII. CONCLUSION

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission:

approve the Transaction under FPA section 203 no later than December 8, 2025, without modification, condition, or a trial-type hearing.

Respectfully submitted,

/s/ Mark C. Williams

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Dated: June 10, 2025