BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO. 20210015-EI ORDER NO. PSC-2024-0078-FOF-EI ISSUED: March 25, 2024

The following Commissioners participated in the disposition of this matter:

MIKE LA ROSA, Chairman
ART GRAHAM
GARY F. CLARK
ANDREW GILES FAY
GABRIELLA PASSIDOMO

APPEARANCES:

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On behalf of Florida Power & Light Company (FPL).

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On behalf of the CLEO Institute Inc. (CLEO).

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On behalf of Florida Rising, Inc., League of United Latin American Citizens of Florida, and Environmental Confederation of Southwest Florida, Inc. (Fla. Rising, LULAC, ECOSWF).

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SUPPLEMENTAL FINAL ORDER

BY THE COMMISSION:

BACKGROUND

This proceeding is before us on remand from the Florida Supreme Court.[1] Before addressing the substance of this remand, we provide the following brief synopsis of the procedural history of this matter.

This docket was opened January 11, 2021, when the Florida Power & Light Company (FPL or Company) filed a letter notifying us that it would file a request for a base rate increase. On March 12, 2021, FPL filed its petition, minimum filing requirements, and testimony for a base rate increase effective January 2022. Numerous parties intervened in this docket and undertook substantial discovery.

One week prior to the scheduled commencement of the final hearing, FPL and several intervening parties in this docket (Signatories)[2] filed a Joint Motion for Approval of Settlement Agreement, with a copy of the subject Stipulation and Settlement (2021 Settlement). Intervenors Floridians Against Increased Rates (FAIR), the Environmental Confederation of Southwest Florida (ECOSWF), Florida Rising, Inc., and League of United Latin American Citizens of Florida (LULAC) (collectively "Intervenors") did not join the Agreement and opposed the Joint Motion for Approval of Settlement Agreement.

On September 20, 2021, we conducted a final hearing on FPL's base rate petition as well as the Joint Motion for Approval of the 2021 Settlement. On December 2, 2021, we entered a Final Order Approving 2021 Stipulation and Settlement Agreement.[3] On December 9, 2021, we entered an Ordering Amending that Final Order to correct several non-substantive scrivener's

[1] *Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905 (Fla. 2023) (referred to hereafter as *FAIR*).
[2] The Office of Public Counsel, Florida Industrial Power Users Group, Florida Retail Federation, and Southern Alliance for Clean Energy joined the Stipulation and Settlement Agreement. On August 24, 2021, FPL filed notice that additional parties Vote Solar and the CLEO Institute, Inc. had joined in the Agreement. On August 27, 2021, FPL filed notice that the Federal Executive Agencies had also joined the Agreement.
[3] Order No. PSC-2021-0446-S-EI, issued December 2, 2021, in Docket No. 20210015-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

errors relating to dates and references.[4] This Order and Order No. PSC-2021-0446-S-EI will be referred to collectively as "the 2021 Final Order" in this Order. Copies of these Orders are appended hereto as Attachments A (PSC-2021-0446-S-EI) and B (PSC-2021-0446A-S-EI).

On December 28, 2021, FAIR timely filed an appeal of the 2021 Final Order. On January 3, Florida Rising, ECOSWF and LULAC (collectively "Florida Rising") timely filed their appeal of the 2021 Final Order. The Florida Supreme Court consolidated these appeals and, on September 28, 2023, remanded this matter for further proceedings.

We have jurisdiction over this matter pursuant to the Court's remand and the provisions of Chapter 120 and Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

SCOPE OF REMAND

The 2021 Final Order that was appealed and remanded addressed the numerous issues raised by the parties in three groups, described as follows:

> [1] standing – whether FAIR's request to intervene should be granted; [2] jurisdictional - whether we have the statutory authority to approve proposed rate recovery mechanisms as part of the 2021 Settlement; and [3] whether the 2021 Settlement should be approved.

As to the first issue group, no party appealed or cross-appealed the issue of FAIR's standing and, accordingly, it was not the subject of the Supreme Court's remand. We are not entering supplemental findings or conclusions regarding FAIR's standing, and that section of the 2021 Final Order remains unchanged.

Turning to the second issue group, the Court did not question our statutory authority to consider the various tools and accounting approaches set forth in the 2021 Settlement.

> Appellants raise other arguments in opposition to the Commission's approval of the settlement agreement. These arguments include challenges to the Commission's statutory authority to approve various pieces of the settlement agreement: the Storm Cost Recovery Mechanism; the Reserve Surplus Amortization Mechanism; the Asset Optimization Incentive, which includes the monetization of renewable energy credits; a corporate tax adjustment; the Solar Base Rate Adjustment mechanism (SoBRA); a construction incentive for solar generation sites constructed pursuant to SoBRA; and cost recovery related to the Green Hydrogen Pilot Program and a consummation payment FPL made to Jacksonville Electric Authority concerning the retirement of a coal-fired power generation unit. To the extent any of these challenges to the Commission's

[4] Order No. PSC-2021-0446A-S-EI, issued December 2, 2021, in Docket No. 20210015-EI, *In re: Petition for rate increase by Florida Power & Light Company*. We will refer to this Order and Order No. PSC-2021-0446-S-EI collectively as the 2021 Final Order.

> statutory authority is preserved, none gives us a reason to set aside the order under review.[5]

Because the Court found our stated bases for jurisdiction to be sufficient, we are not entering supplemental findings or conclusions regarding our jurisdiction to consider the 2021 Settlement, and that section of the 2021 Final Order remains unchanged.

The only issue the Court remanded to us is whether the 2021 Settlement should be approved as being in the public interest.[6] The Court neither affirmed nor reversed our prior conclusion that the 2021 Settlement is in the public interest. The Court did not vacate the 2021 Final Order. Instead, the Court remanded for a further explanation of our approval, directing that we specifically address certain matters:

> That includes considering [A] the competing arguments made by the parties below in light of [B] the factors relevant to the Commission's decision, and supplying, given these arguments and factors, an explanation of how the evidence presented led to its decision.[7]

A. Competing Arguments made by the Parties

The Court identified the arguments forwarded by FAIR, LULAC, and ECOSWF as follows:

1. Need for the rate increases in the settlement agreement
2. ROE range.
3. Equity-to-debt ratio.
4. RSAM.
5. Rate base investments (SoBRA).
6. Pilot programs (electric vehicle chargers, Green Hydrogen, Solar Power Facilities.
7. SolarTogether.
8. Minimum bill.
9. Extension of time for recovery of retirement costs of certain assets.[8]

We have thoroughly reviewed Intervenors' Prehearing Statements and Post Hearing Briefs to determine if there are any additional disagreements between, or arguments raised by, the parties that were not specifically identified by the Court. We found six arguments raised before us that were not expressly mentioned in the above-quoted paragraph. On November 9, 2023, Commission staff conducted an informal meeting with the parties to this docket who were also

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[5] *FAIR,* 371 So. 3d at 907.
[6] *FAIR*, 371 So. 3d at 905 ("[W]e remand this case to the Commission for an explanation of its decision consistent with the governing law as set forth in our case law and reiterated here.").
[7] *FAIR*, 371 So. 3d 912.
[8] *FAIR*, 371 So. 3d 908-09.

parties to the Supreme Court appeal – Intervenors and FPL – and presented the above list of arguments. These parties agreed to that list with the following additional issues:

10. Revenue allocation between classes.
11. FPL system overbuilt.
12. Storm cost recovery mechanism.
13. Federal tax adjustments.
14. Incentive mechanism for asset optimization.
15. Solar cap cost incentive.

B. Factors Relevant to the Commission's Decision

The Court identified certain factors that we *must* consider in this remand when we address these competing arguments:

> The Legislature has provided that the Commission, in "fixing fair, just, and reasonable rates for each customer class, ... *shall*, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures." § 366.06(1). The Commission "shall also consider the performance of each utility pursuant to [the Florida Energy Efficiency and Conservation Act] when establishing rates for those utilities over which the commission has ratesetting authority." § 366.82(10), Fla. Stat. (2021). A reasonably explained decision from the Commission *must* reflect that those factors have been considered to the extent practicable.[9]

The Court also noted additional factors that we *may* consider in appropriate circumstances at our discretion:

> [T]he Commission *can* consider "the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities; and energy conservation and the efficient use of alternative energy resources." § 366.041(1), Fla. Stat. (2021). And the Legislature has made clear that "it is in the public interest to promote the development of renewable energy resources in this state." § 366.91(1), Fla. Stat. (2021). Evidence that these factors have been considered—where they are germane to determining whether the settlement agreement is in the public interest and results in rates that are fair, just, and reasonable—permits meaningful judicial review of the Commission's conclusions.
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> The Commission *can* also consider non-statutory factors if it explains why they

[9] *Id.* at 912 (emphasis added).

> are relevant and how they relate to the Commission's "historical and statutory role." *Sierra Club*, 243 So. 3d at 911. For example, in the order under review, the Commission supported its decision by stating that "FPL's residential 1,000 kWh bill [is] projected to remain 21% below the current national average" under the settlement agreement. Assuming that it can explain the relevance of this metric in light of "the purpose of the Commission," *id.*, the Commission can permissibly consider it in making its decision.[10]

C. Procedure and the Record

Citing the Court's direction that we "shall also consider the performance of each utility pursuant to [the Florida Energy Efficiency and Conservation Act] when establishing rates for those utilities over which the commission has ratesetting authority"[11] and the discretion afforded us in conducting this remand, FAIR filed a Motion to Reopen the Evidentiary Record on February 6, 2024. In the Motion, FAIR requests that we reopen the evidentiary record for the limited and sole purpose of admitting the Annual Report of Activities Pursuant to the Florida Energy and Conservation Act for 2021 (FEECA Report). FAIR asserts that we must have the FEECA Report to comply with the Supreme Court's remand.

FPL filed its response in opposition, arguing first that the existing record on FEECA is sufficient. FPL submitted prefiled testimony on a number of areas relevant to FEECA. FPL states that all Intervenors had the opportunity to respond to this testimony, and that several did present FEECA-related testimony. FPL also notes that virtually all of the documents sought to be submitted were not in existence when we made our original decision.

The FEECA Report was prepared by us pursuant to Section 366.82(10), F.S., which provides, in pertinent part, that "[]the commission shall require periodic reports from each utility and shall provide the Legislature and the Governor with an annual report by March 1 of the goals it has adopted and its progress toward meeting those goals."[12] The FEECA Report bears an issuance date of November 2021. The final evidentiary hearing in the base rate case concluded September 20, 2021. We voted to approve the stipulation and settlement on October 26, 2021. The FEECA Report was not in existence on either of these dates.

Because we prepared the FEECA Report pursuant to a statutory duty, it may be admissible in a proceeding in which it is relevant.[13] However, the FEECA Report did not exist in this form until the record in this proceeding was closed and the decision made. We find that it

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[10] *Id.* at 912 (emphasis added).
[11] *Id.* at 912 (emphasis added).
[12] Pursuant to Section 366.82(6), F.S., we must review the conservation goals of each utility subject to FEECA at least every five years. We last established conservation goals for FPL in 2019. Order No. PSC-2018-0509-FOF-EG, issued November 26, 2019, in Docket No. 20190015-EG, *In re: Commission review of numeric conservation goals (Florida Power & Light Company)*.
[13] *See Lee v. Dep't of Health & Rehab. Servs.*, 698 So. 2d 1194, 1200 (Fla. 1997).

would not be appropriate to place documents created post-hearing, post-decision in the record for purposes of making additional findings.[14]

Additionally, FAIR's request would necessitate opening the proceeding to provide FPL due process,[15] leading to a potential procedural morass.

> If one side were permitted to produce additional evidence, as suggested . . . , then the other side would necessarily have to be given the same privilege, and each side would of necessity have to be given the right of confrontation and cross-examination of the additional witnesses, and possibly rebuttal. We do not envision the Administrative Procedures Act as permitting such a never-ending process.[16]

Because we could not have relied on this evidence when making the original decision, it would be improper to do so now and admit the FEECA Report. Moreover, granting the Motion would create numerous fundamental procedural issues. We have in this Supplemental Order complied with the Florida Supreme Court's direction that we consider FEECA performance "to the extent practical." For all of these reasons, FAIR's Motion to Reopen the Record is denied.

Citing the same provisions in the FAIR opinion discussed immediately above, Florida Rising filed a Motion for Evidentiary Hearing on February 7, 2024. While similar to FAIR's Motion, Florida Rising seeks broader relief. Florida Rising first requests that we schedule an evidentiary hearing solely on FPL's FEECA performance. Alternatively, Florida Rising seeks to submit the FEECA Reports covering the years 2020, 2021, and 2023. By comparison, FAIR only sought to submit the 2021 FEECA Report. Florida Rising also seeks to submit the Demand Side Management (DSM) Reports from FPL for this same, three-year time period. Finally, Florida Rising seeks to submit data compiled by the United States Energy Information Agency (EIA) for the years 2020, 2021, and 2022. Florida Rising contends that we must have this information in order to comply with the Supreme Court's remand and the consideration of FPL's FEECA performance. FPL filed its response in opposition, arguing first that the existing record on FEECA is sufficient. FPL submitted prefiled testimony on a number of areas relevant to FEECA. FPL states that all Intervenors had the opportunity to respond to this testimony, and that several did present FEECA-related testimony. FPL also notes that virtually all of the documents sought to be submitted were not in existence when we made our original decision.

As to the materials that were not in existence when we made our prior decision and the request for an evidentiary hearing on those materials, the same analysis applies as set forth

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[14] *Cf. Lawnwood Med. Ctr., Inc. v. Agency for Health Care Admin.*, 678 So. 2d 421, 425 (Fla. 1st DCA 1996) ("Official recognition is not a device for agencies to circumvent the hearing officer's findings of fact by building a new record on which to make new findings.").

[15] *See Citizens of State of Fla. v. Fla. Pub. Serv. Comm'n*, 383 So. 2d 901, 904 (Fla. 1980) (official recognition "guarantees parties the basic rudiments of procedural due process notice and an opportunity to be heard before permitting agency action which may affect their vital interests").

[16] *Fla. Dep't of Transp. v. J.W.C. Co.,* 396 So. 2d 778, 784 (Fla. 1st DCA 1981).

immediately above. The request by Florida Rising's that we reopen the record to consider this data suffers the same flaws as FAIR's Motion and is denied for the same reasons.

The EIA information in existence prior to October 2021 and the 2020 FEECA and DSM Reports were in existence when we made our prior decision. Accordingly, Florida Rising could have sought to submit them in 2021 when this docket was litigated. No good cause for this failure is set forth in the Motion.

Allowing Florida Rising to submit this material would necessitate some sort of evidentiary hearing to comport with due process. Again, Florida Rising has demonstrated no cause for us to take the extraordinary step of reopening a rate case to allow the presentation of evidence that could have been, but was not, introduced at the rate hearing.

The request that we conduct a limited hearing specifically on FEECA is beyond the scope of this remand. As to the request to submit additional documentary evidence, virtually all of the evidence Florida Rising seeks to submit for consideration was not in existence at the time we made the original decision. Because we could not have relied on this evidence when that decision was made, it would be improper to now admit the various reports cited by Florida Rising (or have an evidentiary hearing on them). Moreover, granting the Motion would create numerous fundamental procedural issues. These same procedural concerns apply with equal weight to the materials proffered by Florida Rising that were in existence when we made our prior decision. Reopening the record for purposes of admitting these materials would result in, essentially, a new hearing, when these materials could have been but were not admitted in the original rate case. For these reasons, we deny Florida Rising's Motion for Evidentiary Hearing.

D. Conclusion

Consistent with the Court's direction, we provide below our explanation of how the evidence presented on the parties' competing arguments, in light of the identified factors, leads to our conclusion that approving the 2021 Settlement is in the public interest. We do so based on the existing record. All aspects of Order No. PSC-2021-0446-S-EI and Order No. PSC-2021-0446A-S-EI remain unchanged.

SUPPLEMENTAL FINDINGS AND CONCLUSIONS

In reviewing a settlement agreement, we first "make[] factual findings based on the evidence presented by the parties."[17] As the finder of fact, we must "consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent substantial evidence."[18] Each of those ultimate findings of fact must be based on a preponderance of the record evidence.[19] The Florida Supreme Court defines "preponderance of the evidence" as follows:

[17] *FAIR*, 371 So. 3d at 910.
[18] *Martuccio v. Dep't of Pro. Regul., Bd. of Optometry*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993) (citation omitted).
[19] Fla. Stat. § 120.57(1)(j).

> The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.[20]

Our findings of fact regarding the competing arguments presented by the parties are set forth below.

Issue 1: The need for the rate increases in the Settlement Agreement.

In the original filing, FPL requested a comprehensive base revenue increase in 2022 of $1.108 billion, a subsequent year adjustment in 2023 of $607 million, and adjustments in 2024 and 2025 solely for solar generation (discussed below in Issue 5, Solar Base Rate Adjustment). Capital initiatives account for most of the requested increases in 2022 and 2023, with inflation, customer growth, and changes in the weighted average cost of capital also affecting to the total. The capital initiatives include improvements to reliability, upgrades and additions to the generation fleet, and hardening infrastructure. *Id.*

The 2021 Settlement lowers the rate increases originally proposed by FPL. The Agreement authorizes FPL to increase its base rates and service charges effective January 1, 2022, to generate an additional $692 million of annual revenue. The 2021 Settlement further authorizes FPL to increase its base rates and service charges effective January 1, 2023, to generate an additional $560 million of annual revenue.

FAIR asserts that the increase proposed in the 2021 Settlement – the largest (by dollar amount) in history for an investor-owned Florida utility – imposes rates that are unfair, unjust, and unreasonable because they exceed the level that FPL needs to fulfill its duty of providing safe and reliable service at the lowest possible cost. FAIR Witness Herndon testified that FPL can provide services at its current (2021) rates, and that only modest rate increases during the term of the 2021 Settlement (Settlement Term) are justified. Florida Rising argues that FPL's rate base has quadrupled in sixteen years (2010-2025) and that the current increase in base rates reflects this continuing overspending pattern.

In support of the need for the requested rate increases, FPL presented testimony that its 2022 test year jurisdictional adjusted ROE is projected to be 8.40 percent. This ROE is below the bottom of the currently-authorized ROE range. *Id.* FPL's projected 2023 jurisdictional ROE is projected to be 7.03 percent, also below the bottom of FPL's currently-authorized ranged. Accordingly, continues FPL, the rate increases are necessary to ensure a fair return within the authorized range.

FPL notes that the base rate increases in the 2021 Settlement represent a $383 million reduction from FPL's original request for 2022 base rates, and a $45 million reduction from the

[20] *S. Fla. Water Mgmt. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 n.1 (Fla. 2014).

request for 2023.[21] FPL argues that even with the rate increases set forth in the 2021 Settlement, its typical residential customer bills remain twenty percent below the national average, and will remain stable and predictable over the Settlement Term.

The common theme among Intervenors' arguments is that FPL can provide reliable service to its customers at a far lower cost than requested in the 2021 Settlement. FPL's response is that the entire financial and capital structure it has proposed – including the base rate increases – is necessary for it to continue providing current levels of service and value at a reasonable cost.

Virtually all of the operative provisions of the 2021 Settlement and the projects that are being placed into rate base are not new.[22] With the exception of the Pilot Programs discussed below under Issue 7 and the minimum bill, every mechanism in the 2021 Settlement is a continuation, expansion, or modification of a prior approval. The requested debt to equity ratio is unchanged. Because FPL is continuing an existing path, we first examine existing rates and utility operations. While we must pass on each proposal on its merits on the record before us, an examination of utility performance under prior approvals can educate our decision-making.

In making this observation, we are guided by Section 366.06(1), F.S.:

> In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

In this same statute, the Legislature has directed us to "consider the *cost* of providing service to the class, as well as . . . the *value* of service."[23] Because Chapter 366, Florida Statutes, does not define "cost" or "value," we look to dictionary definitions to ascertain the plain and ordinary meaning of "cost" and "value."[24] "Cost" is defined as "the amount or equivalent paid or charged for something."[25] "Value" is defined as "relative worth, utility, or importance."[26]

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[21] The solar adjustments in 2024 and 2025 were not changed by the 2021 Settlement.
[22] We need not discuss the prudence of every project being placed into rate base in determining whether a settlement agreement is in the public interest and results in rates that are fair, just, and reasonable. *See Sierra Club v. Brown*, 243 So. 3d 903, 911-12 (Fla. 2018).
[23] Fla. Stat. § 366.06(1) (emphasis added).
[24] *Somers v. United States*, 355 So. 3d 887, 891–92 (Fla. 2022).
[25] https://www.merriam-webster.com/dictionary/cost, last checked 01/31/24.
[26] https://www.merriam-webster.com/dictionary/value, last checked 01/19/24. Some common definitions of "value" are virtually the same as "cost." However, assigning both terms the same definition and treating them as the same would not be consistent with the legislative directive that we consider cost as well as value. Moreover, courts have cautioned against ascribing the same meaning to two different terms when the legislature uses them in the statute. "The legislative use of different terms in different portions of the same statute is strong evidence that different meanings were intended." *Department of Business Regulation v. Durrani*, 455 So. 2d 515, 518 (Fla. 1st DCA 1984). The placement of "value" in this statute between two retrospective terms – "rate history" and "experience of the public utility" – directs us to make an examination of the relative value of past service a part of our inquiry. Additionally, the Legislature's use of the phrase "the value of such service to the public" in a different statute also

The evidence in this record demonstrates that FPL has delivered value to its customers at a relatively low cost. Residential rates remain well below the national average[27] and below those charged by other Florida investor-owned-utilities. The capabilities of the FPL fleet, while characterized by Florida Rising as "overbuilt," result in lower operation and maintenance expenses and a high degree of reliability[28] while maintaining relatively low base rates. And while FAIR Witness Mac Mathuna offered an expert opinion that FPL could deliver this same reliable and safe service at lower rates than those requested in the 2021 Settlement, we find more persuasive the evidence presented by FPL that the rate increases proposed in the 2021 Settlement Agreement are needed to maintain an ROE in the authorized range, are based on a sound analysis of current and projected conditions in light of historical performance, and result in rates that are fair, just, and reasonable.[29] We also note that these amounts were reduced from the original ask and are the result of compromise among the Signatories.

Issue 2: Return on Equity Range

The 2021 Settlement sets the regulatory return on common equity (ROE) at 10.6 percent for all purposes, with an authorized ROE range of 9.7 percent to 11.7 percent. This range is 90 basis points below the request contained in FPL's original rate filing. If, at any time during the Term, but no more than once during the Term, the average 30-year United States Treasury Bond yield rate for any period of six consecutive months is at least 50 basis points greater than the yield rate on the date that the 2021 Settlement is filed with the Commission (Trigger), after filing notice with the Commission, FPL's authorized ROE shall be increased by 20 basis points to be within a range of 9.8 percent to 11.8 percent, with a mid-point of 10.8 percent. This rate shall remain in effect from the Trigger date through the remainder of the Term, for any period in which FPL's rates continue in effect after December 31, 2025, and/or until a final order is issued in a future proceeding changing FPL's rates and its authorized ROE.

Florida Rising contends that this ROE is out-of-step with national trends. Citing the testimony of OPC Witness Woolridge, Florida Rising notes that the average authorized ROE for electric companies from 2000-2020 have slowly decreased from 12.5 percent to 9.39 percent. Florida Rising also notes that we approved a 9.85 percent ROE mid-point for Duke Energy Florida[30] and 9.95 percent for Tampa Electric Company[31] in rate cases filed the same calendar year as FPL's.[32]

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addressing rates and the "efficiency" of facilities" reinforces our conclusion that our inquiry is to include overall utility performance beyond cost.

[27] FPL residential bills are 40 percent below the average of the 20 largest (by number of customers) investor-owned utilities in the country.

[28] FPL's reliability is 58 percent better than the national average.

[29] FPL Witness Bores identified the drivers of the increased revenue requirement behind the requested rate increases for 2022 and 2023. Each of these drivers that has been specifically contested by Intervenors is discussed in the section of this Order under the specific issue headings.

[30] Order No. PSC-2021-0202-AS-EI, issued June 4, 2021, in Docket No. 20210016-EI, *In re: Petition for Limited Proceeding to Approve 2021 Settlement Agreement, Including General Base Rate Increase, by Duke Energy Florida, LLC.*

FAIR argues that a fair and reasonable ROE for FPL would be between 8.50 percent and 9.55 percent, depending on the corresponding capital structure (equity to debt ratio). FAIR Witness Mac Mathuna's ultimate conclusion is "that the fair and reasonable ROE for FPL should be set at 8.56 percent and that FPL's equity ratio should be set at 55.4 percent for purposes of setting FPL's revenue requirements for 2022."[33]

FPL argues that its infrastructure risk profile is higher than most other utilities and that a higher ROE is necessary to attract investment due to this volatility. One aspect of this risk is created by Florida's geography and FPL's territory. FPL territory includes much of the west and east coasts of Florida peninsula and now encompasses the former Gulf territory in the westernmost portions of the state's panhandle. This expanse of low-lying coastline makes FPL's territory especially vulnerable in the short term to tropical storm impacts and in the long-term to the effects of sea level rise. Based on current climate predictions, this risk is expected to increase. Additionally, nearly 40 percent of FPL's customer accounts – 5.6 million – are located at the southern tip of the state in Miami-Dade and Broward Counties, the geography of which heightens transmission and reliability challenges.

Nuclear generation comprises 22 percent of FPL's energy mix. Investors perceive risk with such generation, and this increased risk perception in turn requires a higher return to encourage investment.

In support of the as-filed request, FPL Witness Coyne testified that an ROE in the range of 10.5 to 11.5 percent would be reasonable based upon his cost of equity analyses. In reaching this conclusion, Witness Coyne used four modeling methodologies "to provide a robust analytical framework for determining FPL's ROE without the undue influence of any single approach or set of assumptions."[34] Witness Coyne also testified that these models and their results should be examined in the context of current and projected market conditions. The global outbreak of coronavirus disease 2019 (COVID-19) and the measures taken to address it had an immediate and drastic effect on the 2020 economy. Higher volatility and uncertainty is expected to persist. According to Witness Coyne, actions the Federal Reserve has taken to address these market uncertainties and stimulus packages being considered by the United States Congress may increase inflation and cause interest rates to spike. Witness Coyne supports the lower ROE set forth in the 2021 Settlement Agreement, though lower than what he recommended, stating that it "is within the reasonable range" established by his comprehensive modeling methodologies.

Witness Barrett's prefiled testimony sets forth in detail FPL's ability to meet the unprecedented challenges posed by effects of the global outbreak of COVID-19 based on its financial position. Witness Barrett also testified regarding FPL's continued financial strength

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[31] Order No. PSC-2021-0423-S-EI, issued November 10, 2021, in Docket No. 20210034-EI, *In re: Petition for rate increase by Tampa Electric Company*.
[32] We have long recognized that the ROE we approve for one company does not mandate that we approve a similar ROE for a different company. *See United Telephone Co. v. Mayo*, 345 So. 2d 648, 654 (Fla. 1977).
[33] T. Vol. 12 at 2594.
[34] T. Vol. 9 at 2082.

during the recent volatility of utility investments. "FPL's successful financing contrasts with other, lower credit issuers, who attempted to raise debt but ultimately had to pull their issuances from the market or saw significant higher spreads."[35]

The Florida Supreme Court wrote as follows regarding general considerations applicable to establishing the boundaries of an appropriate ROE range:

> The rate of return which public utility companies may be allowed to earn is a question of vital importance to both rate payers and investors. An inadequate return may prevent satisfactory services to the public and concomitantly disappoint investors who will look for alternative sources of investment. The Public Service Commission is given the power to fix the return within certain limits. That return cannot be set so low as to confiscate the property of the utility, nor can it be made so high as to provide greater than a reasonable rate of return, thereby prejudicing the consumer.[36]

In fixing a reasonable rate of return within this range, we are guided by the long-established *Hope* and *Bluefield* standard.[37] Under this standard, a reasonable return is one that is commensurate with the return investors would expect from like investments of comparable risk, is reasonably sufficient to assure investor confidence that the utility is financially sound, and is adequate to attract capital on reasonable terms.[38]

Regarding comparable risk, the preponderance of the evidence demonstrates that FPL's infrastructure risk profile is different from most utilities, including those in the various proxy groups.[39] Especially with the acquisition of Gulf, FPL's territory includes appreciable expanses of low-lying coastline that bring inherent risk. The preponderance of the evidence demonstrates that this risk is likely to continue to increase over time due to storm frequency and severity as well as sea-level rise. Additionally, FPL faces investor uncertainty due to the perceived risks of nuclear-fueled energy. FPL must have an adequate ROE in order to attract capital on reasonable terms throughout a multi-year rate plan.

The preponderance of the evidence demonstrates that the Company's overall capital structure has contributed to its ability to provide customers reliable service at reasonable rates while weathering tropical and financial storms. Continuing this strong capital structure can assure investors that the utility is financially sound, which in turn benefits all customers by attracting capital on reasonable terms.

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[35] T. Vol. 10 at 2258.
[36] *United Tel. Co. of Fla. v. Mayo*, 345 So. 2d 648, 653 (Fla. 1977).
[37] *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works and Improvement Co. v. Public Service Comm'n*, 262 U.S. 679 (1923).
[38] *Hope*, 320 U.S. at 603; *Bluefield*, 262 U.S. at 692-93.
[39] The proxy groups also include both vertically integrated utilities that own generation assets, like FPL, and utilities that own no such assets (transmission and distribution utilities). Vertically integrated utilities have a higher business risk.

Based on this record, we conclude that a regulatory ROE of 10.6 percent for all purposes, with an authorized ROE range of 9.7 percent to 11.7 percent, as set forth in the 2021 Settlement, is appropriate and in the public interest. We note that if the United States Treasury Bond yield meets the specified thresholds and this ROE is increased from 9.8 percent to 11.8 percent, base rates will not increase.

FAIR, Florida Rising, and FPL presented the testimony of numerous, well-qualified experts on this issue.[40] Our ultimate determination rests in large part on the relative weight we have afforded the opinions of these experts. "[A] 'battle of the experts' has become the norm in modern trials. Courts must resolve the issues upon which the experts differ; that is their job in the absence of a jury, no matter how difficult or complex the issue becomes."[41] The finder of fact "is free to weigh the opinion testimony of expert witnesses, and either accept, reject or give that testimony such weight as it deserves considering the witnesses' qualifications, the reasons given by the witness for the opinion expressed, and all the other evidence in the case, including lay testimony."[42] In a prior case involving "a divergence of expert opinion as to the proper rate of return to be granted," the Florida Supreme Court specifically held that "[i]t is the Commission's prerogative to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems appropriate."[43]

While all witnesses on these issues are extremely qualified in their areas of expertise and provided comprehensive analyses and well-reasoned conclusions based on the facts in this record, we find the testimony of FPL Witnesses Coyne and Barrett in this record to be more persuasive. Accordingly, we afford their testimony greater weight than the testimony offered by the other experts in making our specific findings and reaching our conclusions regarding both ROE and equity to debt ratio (discussed immediately below).

Issue 3: Equity to Debt Ratio

FPL proposes an equity ratio of 59.6 percent. This equity ratio is higher than the ratios we approved for TECO (54 percent)[44] and DEF (53 percent)[45] and above the average for the operating companies in the proxy group.[46] Florida Rising argues that there is no record evidence to support a higher ratio for FPL, and argues that our approval should be in the range of 50-55

[40] We have also reviewed and weighed the testimony relied upon by FAIR and Florida Rising that had been prefiled by OPC prior to entering the 2021 Settlement.
[41] *Rossi v. Brown*, 581 So. 2d 615, 617 (Fla. 3d DCA 1991).
[42] *Wald v. Grainger*, 64 So. 3d 1201, 1205 (Fla. 2011); s*ee also Dep't of Agric. & Consumer Servs. v. Bogorff*, 35 So. 3d 84, 88 (Fla. 4th DCA 2010) ("[T]he finder of fact is free to determine the reliability and credibility of expert opinions and, if conflicting, to weigh them as the finder sees fit.").
[43] *Mayo*, 345 So.2d at 654.
[44] Order No. PSC-2021-0423-S-EI, issued November 10, 2021, in Docket No. 20210034-EI, *In re: Petition for rate increase by Tampa Electric Company*.
[45] Order No. PSC-2021-0202-AS-EI, issued June 4, 2021, in Docket No. 20210016-EI, *In re: Petition for Limited Proceeding to Approve 2021 Settlement Agreement, Including General Base Rate Increase, by Duke Energy Florida, LLC.*
[46] OPC Witness Woolridge calculated an average ratio of 44.5 percent using his proxy group and an average of 45.4 percent using FPL Witness Coyne's proxy group.

percent. FAIR Witness Mac Mathuna's ultimate conclusion is "that the fair and reasonable ROE for FPL should be set at 8.56 percent and that FPL's equity ratio should be set at 55.4 percent for purposes of setting FPL's revenue requirements for 2022."[47]

FPL's proposed equity ratio of 59.6 percent is consistent with the ratios we have approved for FPL over the past twenty years. The preponderance of the evidence in this record supports continuing this ratio. As discussed above, we find that FPL has a unique risk profile, and the equity to debt ratio is part of FPL's overall strategy to maintain financial strength and flexibility.

Many of Intervenors' factual arguments with respect to the equity to debt ratio mirror those with respect to the ROE. The remainder are variations on a common theme: that is, the combination of the equity ratio and ROE produce rates that are not fair, just, and reasonable. For the reasons discussed in this Order, we reach the contrary conclusion and find that the capital structure works as part of the 2021 Settlement Agreement as a whole to further the public interest and result in rates that are fair, just, and reasonable.

Issue 4: Reserve Surplus Amortization Mechanism (RSAM)

As part of its original filing in this docket, FPL submitted a depreciation study performed by FPL Witness Allis. Based on the application of the parameters resulting from FPL's 2021 Depreciation Study, Witness Allis concluded that FPL had a "theoretical reserve imbalance of $437 million." Put plainly, the analysis estimated that FPL had under-collected from its ratepayers, and had a $437 million theoretical reserve deficit as a result. Witness Allis explained his conclusion and its import as follows:

> The terms "correct" or "incorrect" and the precision or exactness that they imply have no application in this context; rather, the theoretical reserve is an estimate at any given point in time based on the current plant balances and current life and net salvage estimates. It can provide a benchmark of a Company's reserve position, but it should not be thought of as the "correct" reserve amount.[48]

FPL then performed an alternative depreciation analysis using increased plant lives for the St. Lucie Nuclear Plant (60 years to 80 years), all combined cycle generating plants (40 years to 50 years), and all solar generating plants (30 years to 35 years). For transmission, distribution, and general plant functions, FPL adopted the lives and/or net salvage values from "either the 2016 FPL Rate Settlement or FPL witness Allis' 2021 Depreciation Study whichever results in longer lives and/or higher net salvage."[49] Using the alternative depreciation parameters, FPL has a theoretical depreciation reserve surplus of $1.45 billion.

A preponderance of the evidence supports use of the alternative depreciation parameters. The St. Lucie Nuclear Plant extension is based on a reasonable expectation that the license

[47] T. Vol. 12 at 2594.
[48] T. Vol. 3 at 730-31.
[49] T. Vol. 4 at 751.

renewal to be filed in 2021 will be granted. The Company has a record of above-average plant performance, plant upgrades, and plans for the potential utilization of green hydrogen, all of which support extending the life of its combined cycle facilities from 40 years to 50 years. Recent data indicate that a 35-year life for solar facilities is feasible.

Whereas the theoretical reserve imbalance from the original depreciation study represented an under-collection, the reserve amount resulting from utilization of the alternative depreciation parameters represents an over-collection from the ratepayers. The RSAM is the accounting tool that governs FPL's use of this reserve amount. Under the RSAM, FPL uses the reserve amount to absorb revenues and expenses such that it maintains a return on equity within its approved range. The Company records the increases and decreases in expenses that have been addressed by the RSAM in its surveillance reports.

The RSAM operates under numerous conditions and limitations. The amount to be amortized is capped at $200 million in 2022, but is discretionary with FPL for each year thereafter. Amortization in each year of the Settlement Term is subject to the following conditions: (1) for any surveillance reports submitted by FPL in which its 12-month period ROE would otherwise fall below the bottom of the authorized range, FPL must amortize at least the amount necessary to maintain an ROE of at least the bottom of the authorized range; (2) FPL may not amortize an amount that would result in an ROE greater than the top of the authorized range for any 12-month period; and (3) FPL must debit depreciation expense and credit depreciation reserve in order not to exceed the top of its authorized range. Any unfunded storm reserve balance must be depleted prior to using the funded reserve to recover storm costs. During the Term, FPL must use all of its Reserve Amount to increase its ROE above the bottom of the ROE range before it may initiate a petition to increase base rates.

Florida Rising contends that we should not allow FPL to use the RSAM at its discretion because the Company has earned at the top of its regulatory range since the original adoption of the RSAM, and that such a return is not fair and reasonable. FAIR agrees with Florida Rising, and further argues that the RSAM provisions in the 2021 Settlement allow the transfer of a customer-created reserve to FPL investors via earnings at the top of the authorized range. FAIR argues that the RSAM should be limited in its application to those situations where FPL must utilize it to stay at the midpoint of its authorized range, and should not be available to earn above the midpoint.

FPL counters that the RSAM is essential for the Company to implement a four-year rate plan without the need to seek a change in rates. The RSAM allows the Company to address unexpected situations and changes in circumstances.

The RSAM has been in place since 2013 and has been a key to FPL implementing multi-year rate terms and avoiding multiple rate cases. During the most recent period (2017-2020) when FPL was operating under the 2016 Settlement, FPL was able to employ the RSAM to react to the 2017 Tax Reform and Jobs Act and address the unprecedented impacts related to the COVID pandemic without seeking a rate change. Even with those unexpected events, FPL was able to extend the term under its 2016 Settlement such that the rate increases sought here are

effective January 2022 instead of January 2021. The RSAM has provided this degree of rate stability since 2013. We find such rate stability, especially when accompanied by the low base rates as detailed in this Order, to be in the public interest.[50]

Intervenors also argue that the RSAM is a financial tool that is essentially a "slush fund" used by FPL to maintain earnings at the top of its range, and that such an application of this mechanism is not in the public interest. The RSAM is used to respond to events and expenses not anticipated in the normal course of business. Day-to-day utility operations are generating revenues, and the combination of any number of factors in those operations can result in higher (or lower) earnings.[51] The RSAM can (and does) serve as a tool to address the unexpected as FPL implements its plans over time. In that manner, the RSAM may indirectly contribute to higher earnings.

Issue 5: Rate base investments – SoBRA

The 2021 Settlement authorizes FPL to construct 1,788 megawatts (MW) of solar facilities projected to go into service in 2024 and 2025 or within one year following expiration of the minimum term. These projects are subject to an installed cost cap of $1,250 per kilowatt of AC power (kW_{AC}), less the cost of any land component allocated to such projects when the land is already included in rate base as Plant Held for Future Use. If leased land is used to construct a project, the lease expense will be converted to a capital cost surrogate in accordance with our precedent and used to measure performance against the $1,250 per kW_{AC} price cap.

FPL is authorized to make Solar Base Rate Adjustments (SoBRA) during the Settlement Term to recover the costs of these projects. FPL must file a request for cost recovery approval of the subject solar generation project in the Fuel and Purchased Power Cost Recovery Clause in the year before that project goes into service. In that proceeding, we will consider whether FPL's cumulative present value of revenue requirements (CPVRR)[52] is lower with the generation project than without, and will also determine the associated adjustments to rates and riders.

For each solar project that is approved for cost recovery, FPL's base rates will be increased by the incremental annualized base revenue requirement (excluding any land component that is already included in base rates as Plant Held for Future Use) for the first 12 months of operation, but such recovery will not commence before the entire solar project is in service. Battery storage can be paired with the solar projects so long as the total cost remains below the $1,250 per kW_{AC} cap and the project is cost effective.

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[50] Long-term rate stability and the resulting avoidance of the cost and expense of multiple rate cases as beneficial to ratepayers. *See, e.g.,* Order No. PSC-01-0759-FOF-SU, issued March 26, 2001, in Docket No. 9709910SU, *In re: Investigation into Rates and Charges of Florida Cities Water Co. – Lee Division (South Ft. Myers Wastewater System) for Potential Overearnings*.

[51] For instance, "FPL's non-fuel O&M expense per customer and per MWh in 2019 were best in the nation by a wide margin."

[52] CPVRR means the total amount of revenue over the relevant term needed to cover capital and other expenses, operations and maintenance, depreciation, and the regulatory return on equity, discounted to present value.

Florida Rising contends that we are without authority to approve this mechanism for two reasons. First, Florida Rising argues that to approve future rate increases based on planned construction of solar facilities violates Section 366.06, F.S. Second, Florida Rising argues that interim rate increases are allowed under Section 366.07, F.S., only upon a showing by the utility that it is not earning within its range of return. The gist of both arguments is Florida Rising's contention that we must conduct a hearing and make an appropriate determination at the time we allow interim rate hikes, and that to do so in advance violates the cited statutes and is illegal.

The Florida Supreme Court did not remand this matter for us to reconsider our authority to approve the SoBRA mechanism. Accordingly, we limit our discussion to whether approval of this mechanism is in the public interest in light of the factors identified by the Court in its remand.

The SoBRA mechanism was contained in the settlement agreements that we approved to resolve the FPL rate cases in both 2012 and 2016.[53] This mechanism allows FPL to increase cost-effective solar incrementally over a defined period, with concurrent, gradual increases to rate base. Implementation of the SoBRA-based solar program has provided savings to customers while bringing a considerable number of solar projects into service. This increase in solar generation furthers Section 366.91(6), F.S., which provides:

> The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

The opportunity for FPL to add solar generation during the Settlement Term furthers legislative intent to promote the development of renewable energy resources, to diversify the types of fuel used to generate electricity, and to improve environmental conditions. The rate increases that accompany the addition of this generation are gradual and predictable, thereby supporting rate stability over the Term.

Issue 6: SolarTogether expansion

We approved the SolarTogether program (Phase I) the year before this rate case was filed by Order No. PSC-2020-0084-S-EI.[54] This Order approved a Settlement Agreement executed by FPL, the Southern Alliance for Clean Energy, Vote Solar, and Walmart, Inc., and supported by amicus curiae Duke Energy Florida, LLC. Generally stated, SolarTogether is a voluntary program that provides FPL customers the opportunity to subscribe to a portion of new solar

[53] Order No. PSC-13-0023-S-EI, issued January 14, 2013, in *In re Petition for Increase in Rates by Florida Power & Light Co.*; Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in *In re Petition for Rate Increase by Florida Power & Light Co.*

[54] Order No. PSC-2020-0084-S-EI, issued March 20, 2020, in Docket No. 20190061-EI, *In re: Petition for approval of FPL SolarTogether program and tariff by Florida Power & Light Company.*

capacity built through the program by paying a subscription charge. This subscription charge (or fee) reflects the revenue requirement associated with constructing the solar facilities, and is recorded by FPL in base revenues as sales from electricity. Those participants will receive a subscription credit representing a portion of the system savings produced by that solar capacity. The credit will be recovered through the Fuel Clause.

The original approved size of the program (Phase I) is 1,490 MW, consisting of 20 individual solar power plants sized at 74.5 MW each. The 1,490 MW capacity is allocated 75 percent (1,117.5 MW) to commercial, industrial, and governmental customers and 25 percent (372.5 MW) to residential and small business. Customers may elect a subscription level equivalent to the capacity that would generate up to 100 percent of their previous 12 months' total kilowatt-hour usage, subject to capacity availability. Participation in the Program is voluntary. The 1,490 MW of solar generation is projected to save customers $249 million. FPL estimates that 55 percent of the projected program benefits will flow to participants and 45 percent to the general body of customers.

The 2021 Settlement[55] proposes to expand the program by an additional 1,788 MW at FPL's discretion through 2025 such that the total capacity of SolarTogether would equal 3,278 MW. The 1,788 MW of incremental capacity will be allocated 40 percent to residential and small business customers (45 MW reserved for low-income participants) and 60 percent allocated to commercial, industrial, and governmental (20 percent of this commercial, industrial, and governmental capacity is reserved for participants located in the former Gulf territory). The allocation of benefits remains the same at 55 percent to participants and 45 percent to the general body of customers. The program is designed such that participants will receive 55 percent of the program benefits ($357 million), realizing full pay-back of their subscription fees by year 7, while paying 103.26 percent of the program's revenue requirements. The general body of ratepayers will receive 45 percent ($292 million) of the program benefits and pay no subscription fee. Of this amount, $95 million is fixed.[56]

Florida Rising contends that the program allocations in the program, as modified in the 2021 Settlement' are discriminatory in that they do not match actual power consumption by FPL customers. Specifically, Florida Rising notes that residential consumption makes up 63 percent of FPL energy sales, yet residential customers are allocated less than that share in the current proposal. Another feature of the SolarTogether program contested by Florida Rising involves the calculation of credits to those who participate in the program and benefits to the general body of ratepayers. Specifically, Florida Rising contends that the benefits to participants are much greater than those realized by non-participants, and are subsidized by the general body of ratepayers. Finally, Florida Rising also argues that FPL's projections are skewed and SolarTogether is not a cost-effective way in which to construct the planned solar.

[55] We note that the Office of Public Counsel and Florida Industrial Power Users Group opposed our original approval of SolarTogether and contested the proposed settlement in 2020, but are signatories to the 2021 Settlement Agreement and do not oppose the expanded program.

[56] This amount is included in the difference between 100 percent of base revenue requirements for the program and the amount paid by participants (103.26 percent) over the life of the program.

FPL's overarching response to the specific arguments regarding the cost-effectiveness of SolarTogether is that the costs and benefits must be examined (1) over the life of the program and (2) as compared to the costs and benefits of continuing to construct non-solar power generation facilities. Over its life, the SolarTogether extension alone is projected to provide $425 million of CPVRR savings compared to the same time period without SolarTogether. Coupled with the 2020 SolarTogether (Phase I) approval, the total CPVRR for the program is projected to be $648 million. FPL estimates 55 percent of the projected benefits will flow to participants and 45 percent to the general body of customers.

Our initial approval of SolarTogether by Order No. PSC-2020-0084-S-EI expressly contemplates the possibility of FPL proposing an "FPL SolarTogether Phase II."[57] The preponderance of the evidence demonstrates that this expansion of SolarTogether is cost-effective and in the public interest.

FPL used the same cost-effectiveness analysis for this expansion as it did for the original program. This analysis basically compares the FPL fleet with and without the additional proposed solar generation, and supports the conclusion that the total CPVRR of the extended program is $648 million. Witness Bores convincingly demonstrated that the calculations offered by Florida Rising in support of their claim of an unduly discriminatory rate structure were based on a flawed assumption. We find the comprehensive analysis performed over the life of the extended SolarTogether program under the direction of FPL Witness Bores and its conclusion regarding CPVRR benefits to be more persuasive than mathematical snapshots offered by Florida Rising as impeachment of that analysis.

Further, we find the allocation of 55 percent of these projected benefits to participants and 45 percent to the general body of customers to be in the public interest and, as discussed below, to be part of a framework that results in fair, just, and reasonable rates. We also find that SolarTogether fairly distributes the new solar generation among classes, with Phase II increasing availability for residential and small business customers. Because SolarTogether fairly distributes generation and benefits among ratepayers, we reject Florida Rising's argument that the program is unduly discriminatory.

Finally, as discussed below in the Public Interest section of this Order, our approval of Phase II of SolarTogether serves "the public interest to promote the development of renewable energy resources in this state."[58]

Issue 7: Pilot programs

Approval of the 2021 Settlement Agreement authorizes several pilot programs, three of which are challenged by Intervenors as set forth below.

[57] Order at 10, Stipulation and Settlement Agreement ⁋ 4(e).
[58] Fla. Stat. § 366.91(6).

Electric vehicle chargers

The Settlement Agreement authorizes six programs related to electric vehicles (EVs): (1) *EVolution*, a program to gather data and better plan for and design future EV investments ($30 million); (2) *public fast charging program*, designed to place utility-owned public EV fast charging stations ($100 million); (3) r*esidential EV charging services pilot*, providing opportunity for residential customers to have an EV charger installed, owned, operated, and maintained by FPL ($25 million); (4) *commercial EV charging services pilot*, providing opportunity for commercial customers to pay a fixed monthly charge for EV charging services via Company-owned, operated, and maintained equipment for fleet vehicles ($25 million); (5) *new technologies and software*, designed to evaluate emerging electric technologies and enhance service and resiliency for customers ($20 million); and (6) *education and awareness*, a suite of programs including school curriculums, promotion at conferences and gathering, and providing resources about electric options ($5 million). The EVolution program was presented by FPL in its original request and direct testimony. The other five programs were added by the 2021 Settlement.

The 2021 Settlement Agreement authorizes FPL to implement and recover the costs associated with these EV programs. Pursuant to the 2021 Settlement, only the reasonableness of amounts actually expended may be challenged. The cost of the infrastructure of the EV programs, including the installation and removal costs, are included in the jurisdictional rate base until recovered from customers. This total cost is estimated at $205 million over the Term, with certain offsets expected. Customer pricing for the commercial EV pilot is designed to recover all costs and expenses over the life of the assets and to be CPVRR neutral to the general body of ratepayers over the Term. The revenue requirements of the public fast charging program will be partially offset by revenue received under FPL's tariff approved in Docket No. 20200170-EI, which establishes a rate for utility-owned public EV fast charging stations.

Florida Rising contends that these EV charging costs do not belong in rate base because they do not generate or provide electricity to the general body of customers and are not supported by any cost-benefit analysis.

Beginning in 1995 and continuing through the present, we have approved pilot EV programs for several Florida public utilities, including FPL.[59] While each program differs in detail, they all serve the same general public interest goals.

[59]Order No. PSC-95-0853-FOF-EG, issued July 17, 1995, in Docket No. 950517-EG, *In re: Petition for Approval of New Experimental Electric Vehicle Tariff by Tampa Electric Company*; Order No. PSC-17-0178-S-EI, issued May 16, 2017, in Docket No. 160170-EI, *In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company*; Order No. PSC-2017-0451-AS-EU, issued November 20, 2019, in Docket No. 20170183-EI, *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC*; Order No. PSC-2020-0512-TRF-EI, issued December 21, 2020, in Docket No. 20200170-EI, *In re: Petition for approval of optional electric vehicle public charging pilot tariffs, by Florida Power & Light Company; and* Order No. PSC-2021-0144-PAA-EI, issued April 21, 2021, in Docket No. 20200220-EI, *In re: Petition for approval of electric vehicle charging pilot program, by Tampa Electric Company*.

As we have in those prior dockets, we find that understanding the impacts EVs will have on the local grid is in the public interest. The programs proposed by FPL are an effective means of gathering this information.[60] Specifically, as EV ownership increases, utilities must increase their awareness of the impacts of EV charging on grid reliability and customer usage patterns. These programs will provide FPL with the data points needed to plan for these impacts.

Green hydrogen

FPL is authorized to implement a Green Hydrogen pilot project to evaluate how its combustion turbine units operate with a hydrogen fuel mix and learn how a hydrogen fuel production facility can be effectively used on-site with combustion turbine units. The pilot will be conducted at the existing Okeechobee Clean Energy Center and a 25 MW electrolyzer and storage facility will be built there. The estimated cost of this pilot program is $65 million with a projected in-service date of 2023. This estimated cost is included in rate base and is subject to challenge at a later date.

Florida Rising contends that the Green Hydrogen pilot is uneconomic, inefficient, and "ultimately an attempt by FPL to use its monopoly power to extract R&D rents from captive rate payers to subsidize its possible entry into wholesale sales of hydrogen." Florida Rising Witness Rabago testified that hydrogen is categorically uneconomic on the scale proposed by FPL, and that even small-scale usage will be inefficient.

FPL Witness Valle testified that the Green Hydrogen pilot is designed, in part, to address the "curtailment" problem with solar energy. As detailed by Witness Valle, there is more instantaneous solar generation available at any given time than there is instantaneous customer demand. The pilot will use these peaks of solar energy to split water molecules into hydrogen and oxygen, with the hydrogen then being used as up to 5 percent of the fuel for one combustion turbine.

The Green Hydrogen pilot serves the recognized public interest in developing renewable energy sources.[61] The dispute among the parties is whether this proposal is cost-effective. Florida Rising would have us conclude that this pilot should not be approved because separating and utilizing hydrogen as a fuel is not currently economic, *i.e.*, cost-effective. We find the testimony of Witness Valle regarding the potential short and long-term benefits flowing from this pilot compared to its relatively small costs to be more persuasive on this issue, and to demonstrate that the Green Hydrogen pilot furthers the legislative intent to develop renewable energy resources.

[60] The investments in these six pilots will be partially offset by any revenues received under the EV public charging pilot we approved for FPL in Order No. PSC-2020-0512-TRF-EI.
[61] Hydrogen "produced or resulting from sources other than fossil fuels" – *i.e.*, green hydrogen – is included in applicable statutory definition of "renewable energy."§ 366.91(2), Fla. Stat.

Solar power facilities

Under the 2021 Settlement, FPL is authorized to offer a four-year solar power facilities pilot program where commercial and industrial customers on a metered rate may elect to have FPL install and maintain a solar facility on their site for a monthly tariff charge. All project costs and expenses will be recovered from participants through a fixed monthly charge over a ten-year term.

Florida Rising argues that this program does not serve the ratepayers at large and is not in useful service and, accordingly, is not allowable for inclusion in rate base for cost recovery. Florida Rising argues that the provision of this type of solar infrastructure is and should continue to be addressed by public sector.

This pilot program serves the public interest in solar generation and energy diversification. Participation is voluntary and all costs and expenses are paid by participants.

Issue 8: $25 minimum bill

FPL's customer charge[62] for residential customers is $8.99 per month. The same charge for small commercial, non-demand customers is $12.51. The 2021 Settlement provides for the addition of a new minimum base bill of $25 for all residential and general service non-demand customers. Under this proposal, any customer whose volumetric charges and base charge combined are less than $25 for any month would receive a bill for $25. FPL data indicate that this proposal would apply to over 375,000 customers.

Florida Rising contends that the minimum base bill violates the principle of cost causation, which they describe as the principle "that customers should pay for cost they create, and not more or less, to the extent possible."[63] Florida Rising also contends that the minimum base bill discourages customer investment in energy efficiency and distributed generation.

The purpose of the minimum base bill, as stated by FPL, is to ensure that all ratepayers contribute their share to fixed system costs. FPL notes that all ratepayers receive service from the same general transmission and distribution system, with wires and poles necessarily connecting high and low usage customers alike. The base charge applicable to each customer covers only billing, metering, and customer service costs. Zero usage and low usage customers who pay only the base charge are not contributing to recovery for fixed transmission and distribution costs and are being subsidized by the remainder of the ratepayers.

We agree that low usage customers and seasonal residents rely on the same portions of the system as other customers. As the evidence shows, adding a minimum base bill ensures that those customers contribute to the costs of that system. We find that the minimum base bill more

[62] FPL is changing reference to this charge from "customer charge" to "base charge." The base charge is included in the new proposed minimum bill.
[63] T. Vol. 10 at 2701.

reasonably allocates fixed costs not covered by the base bill among all of these customers, and that recovering this amount results in rates that are fair, just, and reasonable.

Issue 9: Extension of time to recover retirement costs

FPL proposed in the filed rate case to amortize the costs of retired power plants and transmission facilities over ten years. The 2021 Settlement extends this retirement period from ten to twenty years. Florida Rising argues that this extension of the amortization period for retired assets unnecessarily increases costs to ratepayers and results in intergenerational inequities. Florida Rising Witness Rabago estimated[64] the total cost of this extension to be $1.4 billion.

FPL Witness Bores testified that the extension of the amortization period allowed for a "significant reduction" in revenue requirements over the Term. As to the intergenerational argument, Witness Bores stated that the customers who pay for the retirements over the twenty-year period will realize the benefits of retiring plants in favor of more-efficient, lower-emission generation. Witness Bores estimated the nominal cost of this extension to be $600 million, and that customers would be "relatively indifferent" to the impact of this amount on a discounted basis over the 10- to 20-year period.

Extending the amortization period from ten to twenty years reduces the revenue requirements for FPL over the Term. The customers who will pay these costs over the twenty-year period will be those who realize benefits from retiring the plants in question and replacing them with upgraded generation. We find this extension to be fair and to benefit the general body of ratepayers, while also resulting in rates that are fair, just, and reasonable.

Issue 10: Revenue allocations between classes

Intervenors argue that the revenue allocations between classes are flawed because FPL did not conduct a cost-of-service study and then base its allocations on the results of that study. Florida Rising Witness Rabago testified that the proposed rate structure is inequitable, and results in small business and residential customers subsidizing the electric bills of FPL's larger, general service customers. Witness Rabago calculated this subsidy to be $1 billion over the Term.

FPL Witness Cohen testified that the revenue allocation under the 2021 Settlement is the result of a negotiated compromise. The resulting revenue allocation to the residential classes in the 2021 Settlement (59 percent) is slightly higher than that originally proposed but lower than the allocation we approved in the 2016 Settlement (66 percent). Witness Cohen stated that this allocation is consistent with prior settlements and complies with our principle of gradualism, "which limits the revenue increase for each rate class to 1.5 times the total system average increase, including adjustment clauses, and provides that no rate class receives a decrease in

[64] Witness Rabago stated that he could not "precisely" calculate this impact.

rate."[65] Under the 2021 Settlement, the typical residential bill for customers in the former FPL service area will increase by 2.5 percent over the Settlement Term as compared to 3.4 percent under the original filing.

We find these revenue allocations to be reasonable. They are consistent with our past settlement approvals and comply with the principle of gradualism. The overall impact to the residential rate classes was reduced through the negotiation process and, as discussed below, results in rates that are fair, just, and reasonable.

Issue 11: FPL system overbuilt

Florida Rising contends that FPL's investments in power plants and transmission and distribution are excessive and result in an unjustifiable rate base expansion. Florida Rising specifically contends that the Gulf Clean Energy Center 8 that FPL is constructing is unnecessary because it increases the reserve margin and decreases the loss of load probability (LOLP)[66] far beyond currently-established thresholds. Florida Rising contends that the scenarios upon which FPL relies to justify this construction are unlikely or, in some cases, "absurdist and not worth further responding to." Florida Rising also contends the transmission and distribution system is overbuilt, pointing specifically to the North Florida Resiliency Connection (NFRC). The end result, concludes Florida Rising, is that the FPL system is greatly overbuilt and overdependent on natural gas.[67]

We find that the greater weight of the evidence supports approval of the generation, transmission, and distribution system proposed by FPL. We do not agree with Florida Rising that FPL's assumptions are unreasonable. The public interest dictates that a utility consider a wide range of possibilities in planning for a reliable system. FPL has done so. The choices the Company has made to account for contingencies are based on a thorough analysis of the available data.

We also do not agree with Florida Rising that the future of FPL is one that is overly-dependent on natural gas for generation. Natural gas is a reliable and primary means of providing base load generation. As discussed above, FPL has committed to a substantial expansion of its solar generation specifically to address climate change and generation diversity, including the pilot Green Hydrogen program.

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[65] T. Vol. 12 at 2796.

[66] The LOLP is the probability that available generation capacity will not be able to meet a peak customer demand. Reserve margin is the amount of generation constructed to account for variations in load and unit availability. *See* Order No. 24989, issued August 29, 1991, in *In re: Load Forecasts Generation Expansion Plans and Cogeneration Prices for Florida's Electric Utilities*.

[67] To the extent Florida Rising is inviting a project-by-project prudence review, we decline to do so. *See Sierra Club v. Brown*, 243 So. 3d 903, 911-12 (Fla. 2018).

Issue 12: Storm cost recovery mechanism

Under the 2021 Settlement, FPL is allowed to seek recovery of costs associated with any tropical storm or its successor without the application of any form of earnings test or measure and irrespective of previous or current base rate earnings or the remaining unamortized storm reserve.[68] FPL's recovery of storm costs on an interim basis will begin 60 days following the filing of a cost recovery petition and tariffs and will be based on a 12-month recovery period if the storm costs do not exceed $4.00/1,000 kWh on a monthly residential bill. Any additional costs exceeding $4.00/1,000 kWh may be recovered in subsequent years(s) as determined by the us. Storm related costs subject to interim recovery will be calculated and disposed of pursuant to Rule 25-6.0143, F.A.C. The storm reserve will be no less than $150 million. In the event that FPL incurs in excess of $800 million of qualifying storm costs in a given calendar year, it may petition to increase the initial recovery beyond $4.00/1,000 kWh. Storm cost recovery proceedings shall not be a vehicle for a "rate case" inquiry concerning FPL's expenses, investment, or financial results.

Florida Rising contends that the storm cost recovery mechanism violates Sections 366.06 and 366.07, F.S., because it allows new rate increases prior to us holding a public hearing and making a determination regarding "the sufficiency of current recovery structures." FPL responds that the mechanism is squarely within our rate-making authority, as evidenced by prior approvals, and serves the public interest, as demonstrated by the mechanism's successful application over time.

To the extent these arguments are directed to our jurisdiction to consider this mechanism, we need not revisit them. We find that the storm recovery mechanism serves an important public interest, especially in the context of the four-year rate plan. The ability to quickly seek approval and begin collecting a surcharge for storm recovery reduces regulatory lag and creates a more stable post-storm financial environment. This surcharge is followed by a final true-up hearing to ensure the correct amounts have been charged and collected. Finally, substantially affected parties are afforded a point-of-entry to participate in this hearing and contest the proposed recovery, ensuring that any aggrieved ratepayer has the opportunity to be heard.

Issue 13: Federal tax adjustment

If permanent federal or state tax changes are enacted effective for any of the tax years 2022 through the Term, the 2021 Settlement Agreement allows the base revenue requirement to be adjusted for the impacts of those changes within the latter of 90 days from when the tax becomes law or the effective date of the law, but in no instance prior to January 1, 2022. This adjustment will be made for all retail customers through a prospective adjustment to base rates. Any effects of a change in taxes on retail revenue requirements will be flowed back to, or collected from, customers through the Conservation Cost Recovery Clause on the same basis as used in any base rate adjustment.

[68] We have approved substantially the same mechanism in settlements of FPL's last three rate cases. *See* Order Nos. PSC-2016-0560-AS-EI, PSC-2013-0023-S-EI, and PSC-2011-0089-S-EI.

Citing Section 366.07, F.S., Florida Rising contends that this provision allows for an unlawful "unilateral" adjustment to rates without a hearing and determination that FPL is earning below its authorized allowable range of return.

To the extent these arguments are directed to our jurisdiction to consider this mechanism, we need not revisit them.

Allowing an adjustment to the revenue requirement to account for a tax change without the need for a full rate case is in the public interest. Any decrease can be quickly flowed to the ratepayers. Any upward adjustment allows FPL to keep its earnings at the level we are approving in this Order, which will in turn allow the Company to continue providing service at present-day cost and value. We review any such changes and corresponding adjustments when FPL files a petition seeking approval for its proposed treatment of tax changes. Substantially affected persons – ratepayers – would have a point-of-entry at that time to present any evidence and argument regarding the proposed treatment.

Issue 14: Incentive mechanism for asset optimization

We first approved FPL's asset optimization program as a four-year pilot as part of the 2012 Settlement in Order No. PSC-2013-0023-S-EI.[69] The program was designed to allow FPL to create gains through electric wholesale purchases and sales,[70] and asset optimization. Allowable asset optimization under the pilot included gas storage utilization, production gas sales, capacity release of gas transportation and electric transmission, and asset management agreements.[71] The overwhelming majority of the value from these activities was to be flowed to the customers through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause), thereby reducing customers' annual fuel costs. As an incentive to maximize asset optimization, FPL would be entitled to a share of this added value if certain thresholds were exceeded. The Florida Supreme Court affirmed our Order approving the 2012 Settlement, specifically upholding our approval of the pilot incentive program.[72]

At the end of the initial pilot's term, we authorized FPL to continue the program, subject to certain modifications, in Order No. PSC-2016-0560-AS-EI.[73] Under the program as modified in 2016, customers receive 100 percent of the first $40 million in savings realized from listed

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[69] Order No. PSC-2013-0023-S-EI, issued January 14, 2013, in Docket No. 120015-EI, *In re: Petition for increase in rates by Florida Power & Light Company.*

[70] Prior to the pilot program, the only allowed activity under our standard sharing mechanism was economy power sales.

[71] Order No. PSC-2013-0023-S-EI at p. 4.

[72] *Citizens of State v. Fla. Pub. Serv. Comm'n*, 146 So. 3d 1143, 1172 (Fla. 2014) ("[T]he Commission's conclusion that the asset optimization incentive program is in the public interest and part of a reasonable resolution of disputed issues is supported by competent, substantial evidence.").

[73] Order No. PSC-2016-0560-AS-EI, issued December 15, 2016, in Docket No. 160021-EI, *In re: Petition for rate increase by Florida Power & Light Company.* This Order was appealed and affirmed by the Florida Supreme Court. *Sierra Club v. Brown*, 243 So. 3d 903 (Fla. 2018). The Court's opinion makes no specific mention of the incentive program.

activities. For all savings between $40 and $100 million, customers receive 40 percent and FPL receives 60 percent. For all savings above $100 million, FPL and its customers each receive 50 percent. From 2013-2022, after netting out incremental O&M expenses, the program has resulted in a total benefit of $406.7 million. Of this total, customers received $354.5 million (87 percent). FPL received $52.2 million (13 percent).

Pursuant to the 2021 Settlement, the program is modified to apply to all fuel sources (not gas only) when it is reasonable and in the customers' best interests based on system requirements, market demand, and the current market price of fuel or capacity. This includes renewable energy credits (RECs), which may be monetized and sold. Three annual savings thresholds are set: (1) FPL customers will receive 100 percent of the incentive mechanism gain up to $42.5 million; (2) FPL customers will receive 40 percent and FPL will receive 60 percent of incremental mechanism gains between $42.5 million and $100 million; and (3) FPL and its customers will each receive 50 percent of incremental mechanism gains in excess of $100 million. The per-MWh variable power O&M rate is set at $0.48/MWh. Optimization activities, variable power plant O&M rates, and savings thresholds will be considered "adjustable parameters" that FPL can request be reviewed and adjusted every four years in the Fuel Clause docket. Expenses, including incremental O&M costs, personnel, software and association hardware costs, will be recovered from customers through the Fuel Clause.

Florida Rising contends that this program seeks recovery of costs that are not related to the generation, transmission, or distribution of electricity, that the savings from activities under the program are required to be kept in a separate account pursuant to Section 366.05, F.S., and, therefore, "the Commission does not have the legal authority to approve the mechanism."

The Supreme Court affirmed our approval of this program as a pilot,[74] and subsequently confirmed our jurisdiction to approve the current mechanism.[75] We are well within the bounds of our the legal authority in approving the amended program because the allowable activities – the purchase and sale of power, the creation and monetization of RECs, the sale of unneeded transmission rights, and the sale of gas, gas transportation, and gas storage – all involve the generation, transmission, or distribution of electricity, whether by gas or another fuel source.

We do not somehow lose the authority to approve the mechanism because FPL is not maintaining the savings in a separate account, as maintained by Florida Rising. The requirement to maintain separate accounts is found in Section 366.05(2), F.S., which provides in part:

> Every public utility, as defined in s. 366.02 which in addition to the production, transmission, delivery or furnishing of heat, light, or power also sells appliances or other merchandise shall keep separate and individual accounts for the sale and profit deriving from such sales.

[74] *Citizens*, 146 So. 3d at 1172.
[75] *FAIR,* 371 So.2d at 907 fn. 2.

The prescribed activities in the program do not involve the sale of appliances or other merchandise. We conclude that this subsection is not applicable to the incentive program.

Turning to the Settlement Agreement, the modest proposed changes to the incentive program do not change its basic structure and operation. The program is reasonably expected to continue to provide savings through the efficient use of existing assets.[76] The history of the program demonstrate that the overwhelming savings realized from Company actions have and will be flowed to the ratepayers. The amended thresholds continue to provide appropriate customer benefit and Company incentive. The inclusion of all fuel types – and renewable energy credits – in the program will allow it to evolve with the energy landscape and bring more customer benefit.

We find that the incentive program has and will continue to provide substantial benefit to the ratepayers and appropriate incentives to the Company, and is in the public interest. With the newly-approved program now applying to all fuel types, we find it appropriate for the incentive program to be administered through the Fuel Clause as set forth in the Settlement Agreement.

Issue 15: Solar cost cap incentive

The Settlement Agreement contains another incentive, this one found in the SoBRA program and referred to as "the solar cost cap incentive." Florida Rising contends that this incentive provides FPL an illegal bonus payment over the "actual legitimate" cost of the installed facility. It argues that 100 percent of any savings, not just the 75 percent under this incentive program, must be credited (or never charged) to the ratepayers.

Under the solar cost cap incentive, if the actual installed cost for any SoBRA project is less than the \$1,250 kW_{AC} cap or adjusted cap, customers and FPL will share the difference between the actual cost and \$1,250 kW_{AC} cap, or adjusted cap, with 75 percent of the difference benefiting customers and 25 percent of the difference benefiting FPL. The lower installed cost shall be the basis for the full revenue requirements and a one-time credit will be made through the Capital Cost Recovery Clause (CCRC). In order to determine the amount of this credit, a revised SoBRA factor will be computed using the same data and methodology incorporated into the initial SoBRA factor established under the terms of the 2021 Settlement. In lieu of capital expenditures on which the Annualized Base Revenue Requirement was based, the calculation of the installed cost will use the actual installed cost adjusted to reflect the incentive. Going forward, base rates will be adjusted to reflect the revised SoBRA factor. The difference between the cumulative base revenues since the implementation of the initial SoBRA factor and the cumulative base revenues that would have resulted from the revised SoBRA factor had it been in

[76] We do not find the holding in *Citizens of Fla. v. Graham*, 191 So. 3d 897 (Fla. 2016) to be applicable in this instance. The activities allowed under the program as modified all involve maximizing the use of existing utility assets presently employed for the transmission, generation, or distribution of electricity, whereas the questioned activity in *Graham* was the exploration of potential gas reserves for future applications.

place during the same period will be credited to customers through the CCRC with interest at the 30-day commercial paper rate.[77]

FPL notes that the revenue requirement related to the SoBRAs is based on "the base revenue requirements for the first twelve months of operation of the cost-effective solar projects," such that any reduction realized by virtue of the incentive will also reduce the revenue requirement. Thus, the operation of the cost cap will never cause an increase of additional revenues from the SoBRAs above the estimated $140 million annually in 2024 and 2025.

No matter if it is labeled an "illegal bonus" or "incentive," we look to the substance and operation of this provision to determine whether it should be approved. The provision is designed to encourage FPL to construct solar facilities in the most cost-efficient manner. It works in coordination with the overall efforts of FPL to ensure all equipment and contractors are subject to a competitive bidding process in order to produce the lowest cost. The ratepayers ultimately benefit by both the lower overall cost and the shared savings. The greater weight of the evidence demonstrates that providing this incentive promotes the construction of cost-efficient solar generation and is in the public interest.

THE PUBLIC INTEREST

After making factual findings, the second step in our analysis of a settlement agreement is for us to "decide[] whether the settlement agreement, in light of [our] findings of fact, is in the public interest and results in rates that are fair, just, and reasonable."[78] We review settlement agreements as a whole to determine whether to approve them as being in the public interest.[79]

We initially note that the 2021 Settlement Agreement has been executed by numerous organizations with distinct and independent interests. The Office of Public Counsel, Florida Industrial Power Users Group, Florida Retail Federation, and Southern Alliance for Clean Energy originally joined the Stipulation and Settlement Agreement. On August 24, 2021, FPL filed notice that additional parties Vote Solar and the CLEO Institute, Inc. had joined in the Agreement. On August 27, 2021, FPL filed notice that the Federal Executive Agencies had also joined the Agreement. While not every party participated in negotiations or joined in the 2021 Agreement, the organizations who did participate and reached consensus represent a broad spectrum of ratepayers and interests.

The ultimate decision of whether a proposed, comprehensive resolution to a rate case should be approved rests on a determination of whether that resolution meets the very high threshold of being in the public interest. Even though this burden is substantial, the public interest remains a threshold. It does not require that the resolution be best for every ratepayer at

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[77] If the actual capital costs for a solar generation project are higher than the $1,250 kW_{AC} cap or adjusted cap, FPL may initiate a limited proceeding on the issue of whether it has met the requirements of Rule 25-22.082(15), F.A.C. If we find that the requirements of Rule 25-22.082(15), F.A.C., have been met, FPL shall be allowed to increase the SoBRA by a corresponding incremental revenue requirement.
[78] *FAIR*, 371 So. 3d at 910.
[79] *See Sierra Club v. Brown*, 243 So.3d 903, 909 (Fla. 2018).

all times in all situations. The question is whether the agreement as a whole is in the public interest and results in rates that are fair, just, and reasonable, and the answer is gleaned from the record presented to us.

1. Mandatory factors

In *FAIR*, the Court highlighted two statutory provisions that we are to apply to our review of the 2021 Settlement Agreement on remand.

> The Legislature has provided that the Commission, in "fixing fair, just, and reasonable rates for each customer class, ... shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures." § 366.06(1). The Commission "shall also consider the performance of each utility pursuant to [the Florida Energy Efficiency and Conservation Act] when establishing rates for those utilities over which the commission has ratesetting authority." § 366.82(10), Fla. Stat. (2021). A reasonably explained decision from the Commission must reflect that those factors have been considered to the extent practicable.[80]

As to Section 366.06(1), F.S., we begin our analysis with consideration of FPL's capital structure. As previously discussed, the analyses used to support ROE and equity to debt ratio are sound. We agree with the conclusions of those analyses that FPL's geographic challenges and business risk, primary among other factors, justify the ROE and ratio established in the 2021 Settlement Agreement. Our approval of a regulatory ROE of 10.6 percent for all purposes, with an authorized ROE range of 9.7 percent to 11.7 percent, and equity ratio of 59.6 percent, as set forth in the 2021 Settlement, will ensure that FPL has adequate and timely access to capital in order to continue supplying reliable service. We do not agree with the conclusions of Intevernors' witnesses that FPL would enjoy the same or similar access to capital with a lower ROE and restructured equity to debt ratio, and find the opinions of FPL's experts supporting this capital structure to be more persuasive.

As set forth in detail above, this overall capital structure is supported by mechanisms designed to support a four-year rate plan. One of those mechanisms is the RSAM. Our approval of the alternative depreciation study and the RSAM provides FPL with a tool to address unexpected expense and revenue impacts over the Settlement Term without the need to seek a rate increase. Without the RSAM, the multiyear rate plan would not be possible, and ratepayers would not enjoy long-term bill stability. FPL's use of the RSAM in the unexpectedly challenging economic environment of the most recent rate period (2016-2020) evidences how ratepayers benefit by having this mechanism available.

[80] *FAIR*, 371 So. 3d at 912.

As our findings above demonstrate, other mechanisms in the 2021 Settlement Agreement also contribute to FPL's financial ability to operate under a multiyear rate plan. The storm cost recovery mechanism addresses unpredictable, but expected, tropical events. The process established under this mechanism allows FPL to obtain cost recovery in a timely manner and avoid regulatory lag. The subsequent true-up proceeding provides us and ratepayers with the opportunity to review incurred costs and total recovery.

The 2021 Settlement Agreement also contains provisions specifically designed to keep rates low over the Term. FPL extended the time to recover the retirement costs of certain plants and transmission facilities, thereby reducing revenue requirements and, ultimately, rates. FPL is also continuing, with slight modifications, its incentive mechanism for asset optimization. This program has already directed $354.5 million to customers. With the current modifications, these monetary benefits are expected to increase. Finally, FPL has instituted a voluntary solar cost cap initiative, whereby it self-incentivizes the construction of solar generation under the SoBRA program at a lower total cost.

Turning specifically to the cost of service, we note that the class allocations in the 2021 Settlement are the result of negotiations. Thus, as has been the case in prior settlements, these allocations are not accompanied by a separate cost-of-service study. The class allocations, however, were not cut from whole cloth and presented to us for a first-time review. The 2021 Settlement class allocations are consistent with prior, approved FPL settlements. Using those settlements and the recent rate history of FPL using those allocations as the most practical guideposts, we find that the 2021 Settlement class allocations result in fair, just, and reasonable rates. We also note that the percentage increases in rates for residential and small business customer classes are lower in the 2021 Settlement as compared to the original filing, and comply with the concept of gradualism as discussed above.

The input we received during the customer service hearings fully supports the conclusion that FPL has a history of providing excellent service to its customers. FPL also has a favorable rate history with its customers, with the typical 1000 kWh residential customer bill being about 10 percent lower than it was fifteen years ago.[81]

The expert testimony supports our conclusion that the ROE requested by FPL is reasonable. Moreover, the requested rate increase amount as well as the ROE were reduced as a result of a negotiated settlement. Those same negotiations results in a significant boost in FPL's commitment to the use and development of renewable energy resources.

Based on our consideration of all of the above, we find that the 2021 Settlement, taken as a whole, is in the public interest, and establishes rates that are fair, just, and reasonable in accordance with Section 366.06(1), F.S.

The second statute the Court directed us to consider in our determination of whether the 2021 Settlement should be approved is Section 366.82(10), F.S. This provision is found in the

[81] *See* Fla. Stat. § 366.041(1).

Florida Energy Efficiency and Conservation Act (FEECA), the entirety of which is codified in sections 366.80 through 366.83, and 403.519, F.S. When enacted in 1980, FEECA required us to adopt appropriate goals to increase the efficiency of energy consumption. In 2008, the Legislature amended FEECA to require us to adopt appropriate goals to increase the development of demand-side renewable energy systems. Pursuant to Section 366.82(6), F.S., we must review the goals of each utility subject to FEECA at least every five years. We last established goals for FPL in 2019.[82]

Section 366.82(11), F.S., establishes our ratesetting authority over utility energy conservation program costs. Rule 25-17.015, F.A.C., establishes the energy conservation cost recovery clause (ECCR) as the mechanism for electric utilities, such as FPL, to seek approval of reasonable energy conservation expenses.

Pursuant to Rule 25-17.0021(4), F.A.C., within 90 days of a final order establishing or modifying goals, each investor-owned electric utility (IOU) must submit for our approval a Demand Side Management (DSM) plan designed to meet the utility's approved goals, including information about the programs proposed within the plan. We last approved FPL's DSM plan in 2020.[83]

Intervenors[84] argue that FPL's established DSM programs should be reanalyzed and changed in this docket. We do not agree, and find that these wide-ranging arguments are more appropriately raised in FPL's 2024 goal-setting,[85] DSM plan, and the annual ECCR dockets.

While goals and DSM plans and programs are generally[86] not subject to reexamination in a base rate case, FEECA does influence some of the underlying analyses. FPL properly accounted for incremental DSM in its load forecasts. Additionally, the resource analyses conducted by FPL in this case followed and is consistent with our most recent order on conservation goals.

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[82] Order No. PSC-2018-0509-FOF-EG, issued November 26, 2019, in Docket No. 20190015-EG, *In re: Commission review of numeric conservation goals (Florida Power & Light Company)*.

[83] Order No. PSC-2020-0274-PAA-EG, issued August 3, 2020, in Docket No. 20200056-EG, *In re: Petition for approval of demand-side management plan and request for modify residential and business on call tariff, sheets, by Florida Power & Light Company.*

[84] Much of the testimony regarding DSM and FEECA was provided by witnesses for parties who entered into the 2021 Settlement (The Cleo Institute and Vote Solar).

[85] Docket No. 20240015-EG.

[86] In FPL's 2020 DSM docket, we specifically deferred consideration of two matters to this proceeding Order No. PSC-2020-0274-PAA-EG, issued August 3, 2020, in Docket No. 20200056-EG, *In re: Petition for approval of demand-side management plan and request for modify residential and business on call tariff, sheets, by Florida Power & Light Company*, at p. 4 ("Florida Power & Light Company's Commercial/Industrial Demand Reduction and Commercial/Industrial Load Control programs shall be addressed during the next Florida Power & Light Company base rate proceeding"). We find that the greater weight of the evidence in this record supports the requested revisions to those two measures. The specific testimony regarding the benefits of program revisions is more persuasive than Witness Rabago's suggestion that the preferable solution is for FPL "to aggressively pursue program enrollment growth" under existing conditions.

We have considered the record evidence presented by all parties regarding FEECA as it relates to the issues that were identified and litigated, and find that the 2021 Settlement Agreement is in the public interest and establishes rates that are fair, just, and reasonable, consistent with section 366.82(10), F.S.

2. Case-specific factors

The Court in remanding this matter also listed several statutory provisions that "may" be germane to our disposition. One of the statutes cited by the Court expresses the Legislature's intent "that it is in the public interest to promote the development of renewable energy resources in this state,"[87] and is directly relevant to our finding that the 2021 Settlement is in the public interest and results in rates that are fair, just, and reasonable.

The Legislature included both solar energy and green hydrogen in the definition of "renewable energy" resources.[88] The 2021 Settlement promotes the development of both. Using the SoBRA mechanism, FPL will construct 1,788 megawatts (MW) of solar generation through the Term. Phase II SolarTogether directly serves the purposes outlined in this statute by expanding the program by an additional 1,788 MW at FPL's discretion through 2025 such that the total capacity of SolarTogether would equal 3,278 MW. The pilot solar power program will make on-site solar available on a voluntary basis to eligible participants. These approvals are consistent with and further the legislative public interest direction on renewable energy development. To ensure resulting rates are fair, just, and reasonable, SolarTogether and the pilot solar program are funded by program participants. The benefits of SolarTogether are shared among all ratepayers to ensure that the program is not unduly discriminatory in favor of either participants or non-participants. SoBRAs are funded by incremental base rate increases that must be first approved after a hearing to address cost-effectiveness.

The pilot program for green hydrogen aligns with this same legislative direction. Intervenors argue that this pilot should be rejected as ratepayer-funded research and development. This critique is misplaced. The Legislature has specifically directed that "it is in the public interest to promote the development of renewable energy resources."[89] "Development" includes "the act, process, or result of developing."[90] The statute does not state that the public interest is served only by the generation of power with renewable energy, which would be the result of successful development. The process of developing renewable energy is part of promoting its development, and that is exactly what is accomplished by the Green Hydrogen pilot.

The Court also stated that we may consider "the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value

[87] Fla. Stat. § 366.91(1).
[88] Fla. Stat. § 366.91(2)(e).
[89] Fla. Stat. § 366.91(1) (emphasis added).
[90] https://www.merriam-webster.com/dictionary/development, last checked 01/31/24.

of such service to the public; the ability of the utility to improve such service and facilities; and energy conservation and the efficient use of alternative energy resources."[91]

FPL has delivered high value service to its customers at a relatively low cost. Residential rates are at least 20 percent lower than the national average[92] and below those charged by other Florida investor-owned-utilities. FPL has lower operation and maintenance expenses, with the best non-fuel O & M cost performance in the industry. The framework approved in the 2021 Settlement Agreement will foster continuation of these efficiencies, consistent with the legislative direction in Section 366.041(1), F.S.

CONCLUSION

> When presented with a settlement agreement . . . , the Commission's review shifts to the public interest standard: whether the agreement – as a whole – resolved all the issues, "establish rates that were just, reasonable, and fair, and that the agreement is in the public interest.[93]

Consistent with this Court's direction in *FAIR*, we have considered each of the parties' competing arguments. In the final analysis, however, we are to examine the 2021 Settlement as a whole in making our ultimate determination. Taken as a whole and as supported by the record, the 2021 Settlement Agreement addresses and provides a full resolution of all issues in this docket. That resolution involves, among other compromises, reductions in proposed rate increases and a lowered ROE as compared to the as-filed request. Based on the host of compromises, the 2021 Settlement was signed by most of the parties to this docket. These parties represent a broad cross-section of ratepayers and interests. Those Intervenors who chose to not sign the 2021 Settlement Agreement were provided a full and fair opportunity to contest that proposed resolution consistent with the requirements of due process.

The preponderance of the evidence in this record demonstrates that the 2021 Settlement Agreement supports a multi-year rate plan, which in turn benefits customers and serves the public interest by providing long-term stability and predictability with respect to base rates. FPL is bringing an appreciable amount of renewable energy online with the SoBRA mechanism and Phase II of SolarTogether, and has proposed additional programs to promote the development of future renewable energy resources consistent with legislative direction. FPL has built a system that consistently ranks near the top nationally for reliability. FPL residential customer rates remain among the lowest in the state and nation.

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[91] Fla. Stat. § 366.041(1).

[92] The Court in *FAIR* also stated that we could rely upon non-statutory metrics, if such were demonstrated to be relevant, specifically referring to the findings in our 2021 Final Order regarding the comparison of FPL's average 1000 kWh bill to the national average. As we have discussed herein, such comparisons provide a useful metric in determining the "value" of service as required by sections 366.06(1) and 366.041(1), F.S., and are within the statutory scope of our review.

[93] *Sierra Club v. Brown*, 243 So.3d 903, 909 (Fla. 2018)(*quoting Citizens of State v. Fla. Pub. Serv. Comm'n*, 146 So.3d 1143, 1164 (Fla. 2014)).

Based upon our findings and conclusions above, we conclude that the 2021 Settlement is in the public interest, and results in rates that are fair, just, and reasonable.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-2021-0446-S-EI, as amended by Order No. PSC-2021-0446A-S-EI and supplemented by this Supplemental Final Order, is affirmed. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of March, 2024.

ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

FILED 12/2/2021
DOCUMENT NO. 12919-2021
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO. 20210015-EI ORDER NO. PSC-2021-0446-S-EI ISSUED: December 2, 2021

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
ANDREW GILES FAY
MIKE LA ROSA
GABRIELLA PASSIDOMO

APPEARANCES:

R. WADE LITCHFIELD, Vice President and General Counsel; JOHN T. BURNETT, Vice President and Deputy General Counsel; MARIA J. MONCADA, Senior Attorney, and CHRISTOPHER WRIGHT, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, FL 33408
On behalf of Florida Power & Light Company (FPL).

RICHARD GENTRY, Public Counsel; PATRICIA A. CHRISTENSEN, Associate Public Counsel; ANASTACIA PIRRELLO, Associate Public Counsel; and CHARLES REHWINKEL, Deputy Public Counsel; Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of Office of the Public Counsel (OPC).

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On behalf of the CLEO Institute Inc. (CLEO).

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On behalf of Floridians Against Increased Rates, Inc. (FAIR).

SCOTT L. KIRK, MAJ, USAF, AF/JAOE-ULFSC, ESQUIRE, 139 Barnes Drive, Suite 1, Tyndall Air Force Base, FL 32403
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On behalf of the Florida Industrial Power Users Group (FIPUG).

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On behalf of Florida Retail Federation (FRF).

BRADLEY MARSHALL and JORDAN LUEBKEMANN, ESQUIRES, Earthjustice, 111 S. Martin Luther King Jr. Blvd., Tallahassee, Florida 32301 and CHRISTINA I. REICHERT, ESQUIRE, Earthjustice, 4500 Biscayne Blvd., Ste. 201, Miami, Florida 33137
On behalf of Florida Rising, Inc., League of United Latin American Citizens of Florida, and Environmental Confederation of Southwest Florida, Inc. (Fla. Rising, LULAC, ECOSWF).

NATHAN A. SKOP, ESQUIRE, 420 NW 50th Boulevard, Gainesville, FL 32607
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On behalf of Southern Alliance for Clean Energy (SACE).

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On behalf of Vote Solar.

STEPHANIE U. EATON, ESQUIRE, Spilman Thomas & Battle, PLLC, 110 Oakwood Drive, Suite 500, Winston-Salem, NC 27103
On behalf of Walmart Inc. (Walmart).

SUZANNE S. BROWNLESS, SHAW P. STILLER, and BIANCA LHERISSON, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Florida Public Service Commission General Counsel.

FINAL ORDER APPROVING 2021 STIPULATION AND SETTLEMENT AGREEMENT

BY THE COMMISSION:

BACKGROUND

On March 12, 2021, Florida Power & Light Company (FPL) filed its petition, minimum filing requirements, and testimony for a base rate increase effective January 2022. As part of its request, FPL is seeking to consolidate its rates with those of Gulf Power Company (Gulf), recently acquired by FPL's parent company. Pursuant to Order No. PSC-2021-0116-PCO-EI, issued March 24, 2021, the hearing for the FPL rate case was scheduled for August 16 through August 27, 2021.

OPC's intervention was acknowledged.[1] Florida Executive Agencies (FEA), Florida Industrial Power Users Group (FIPUG), Florida Internet & Television Association, Inc. (FIT), Florida Retail Federation (FRF), Southern Alliance for Clean Energy (SACE) and Vote Solar were granted intervention on an associational standing basis.[2] Walmart Inc. (Walmart) and Daniel and Alexandria Larson (Larsons) were granted intervention on an individual standing basis.[3] CLEO Institute Inc. (CLEO) and Florida Rising, Inc. (Fla. Rising) were granted intervention on an individual standing basis and provisional intervention on an associational standing basis.[4] Floridians Against Increased Rates, Inc. (FAIR), League of United Latin American Citizens of Florida (LULAC), and Environmental Confederation of Southwest Florida, Inc. (ECOSWF) were granted provisional intervention on an associational standing basis. The Smart Thermostat Coalition filed a petition to intervene based on associational standing on June 21, 2021, which was denied.[5]

As part of the administrative hearing in this docket, we conducted twelve customer service hearings over a two-week period in June and July of 2021. Testimony was taken from over 370 FPL and Gulf customers and public officials, with respect to the rates and service provided by the utilities.

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[1] Order No. PSC-2021-0062-PCO-EI, issued January 29, 2021.
[2] Order No. PSC-2021-0132-PCO-EI, issued April 16, 2021; Order No. PSC-2021-0133-PCO-EI, issued April 16, 2021; Order No. PSC-2021-0255-PCO-EI, issued July 13, 2021; Order No. PSC-2021-0134-PCO-EI, issued April 16, 2021; Order No. PSC-2021-0136-PCO-EI, issued April 16, 2021; and Order No. PSC-2021-0179-PCO-EI, issued May 19, 2021.
[3] Order No. PSC-2021-0189-PCO-EI, issued May 26, 2021 and Order No. PSC-2021-0135-PCO-EI, issued April 16, 2021.
[4] Order No. PSC-2021-0184-PCO-EI, issued May 20, 2021 and Order No. PSC-2021-0139-PCO-EI, issued April 20, 2021.
[5] Order No. PSC-2021-0256-PCO-EI, issued July 13, 2021.

On August 10, 2021, FPL, OPC, FRF, FIPUG, and SACE (Signatories) filed a Joint Motion for Approval of Stipulation and Settlement Agreement (2021 Settlement), attached hereto as Attachment A.[6] On August 12, 2021, the hearing scheduled to commence on August 16 was continued until Wednesday, August 18, 2021, in order to allow FPL and Gulf to appropriately respond to service issues associated with Tropical Storm Fred's landfall in its Panhandle service area.[7] At the August 18, 2021 hearing, the procedures for conducting a full hearing at a later date on the petition for rate increase and the 2021 Settlement were discussed. Order No. PSC-2021-0314-PCO-EI, issued on August 20, 2021, set 2021 Settlement testimony filing dates and a new hearing date of September 20-22, 2021, for the rate case and the 2021 Settlement.

The final hearing on FPL's base rate increase petition, as well as the 2021 Settlement, was held on September 20, 2021. The testimony of 60 witnesses and 635 exhibits were admitted into the record. On October 11, 2021, post-hearing briefs were filed by FPL, OPC, FIPUG, FRF, FEA, FAIR, FIT, Fla. Rising, LULAC, ECOSWF, Larsons, SACE, and Walmart. A Special Agenda Conference was held on October 26, 2021, to consider and vote on: jurisdictional Issues 1-6; Issue 9, FAIR's request for associational intervention, and Issue A, whether the 2021 Settlement should be approved.

The 2021 Settlement has a minimum four year term through December 31, 2026. Base rates and service charges will be increased to generate an additional $692 million of annual revenue effective January 1, 2022. Effective January 1, 2023, FPL's base rates and service charges will be increased to generate an additional $560 million in annual revenue. FPL is authorized to expand its Solar Base Rate Adjustments to construct an additional 1,788 megawatts of solar projects in 2024 and 2025. FPL's regulatory return on common equity is set at 10.6% for all purposes with a range of 9.7% to 11.7%. The 2021 Settlement continues a storm cost recovery mechanism and creates a theoretical depreciation reserve surplus of $1.45 billion which FPL may amortize up to a $200 million cap in 2022, but at its sole discretion each year thereafter. Several electrical vehicle pilot programs are included that encourage the development of the use of electric vehicles. A four-year solar power facilities pilot program is also included that allows commercial and industrial customers to elect to have FPL install and maintain a solar facility on their site for a monthly tariff charge over a ten-year term. FPL is also authorized to conduct a four-year pilot program to test residential customer smart electrical panels and to develop a Green Hydrogen pilot project. Finally, effective January 1, 2022, unified FPL rates will apply to all customers throughout the former FPL and Gulf service territories.

We have jurisdiction over this matter pursuant to the provisions of Chapter 120 and Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.)

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[6] During the discovery process, it was discovered that there were scrivener's errors contained in Exhibits A, B, and C to the 2021 Settlement filed on August 10, 2021. Exhibit A is Schedule E-5 (with RSAM). Exhibits B and C are tariff sheets for 2022 and 2023. Revised versions of Exhibits A, B, and C are included in the 2021 Settlement attached to this order.

[7] Order No. PSC-2021-0305-PCO-EI, issued August 12, 2021.

DECISION

The issues to be resolved in this case can be roughly divided into three groups: standing – whether FAIR's request to intervene should be granted; jurisdictional - whether we have the statutory authority to approve proposed rate recovery mechanisms as part of the 2021 Settlement; and whether the 2021 Settlement should be approved.

FAIR Standing

FPL opposes FAIR's standing to intervene and participate in this proceeding as a full party. The question before us is framed as Issue 9 in the Prehearing Order: Has Floridians Against Increased Rates, Inc. demonstrated individual and/or associational standing to intervene in this proceeding?

Background

By Motion to Intervene dated May 4, 2021, FAIR requested permission to intervene as a full party in this proceeding. FAIR contended in this Motion that it has associational standing and meets the three-prong test of *Florida Home Builders v. Dept. of Labor and Employment Security*.[8] On May 7, 2021, FPL filed an Amended Response to the Motion to Intervene and objected to FAIR's intervention as an association. On May 19, 2021, the Prehearing Officer issued an Order Provisionally Granting FAIR's Motion to Intervene, allowing FAIR to participate as a full party and FPL to test the allegations of standing.

On August 4, 2021, FPL filed a Motion for Summary Final Order Regarding Floridians Against Increased Rates, Inc., to which FAIR filed a Response on August 11, 2021. At the commencement of the procedural hearing conducted August 18, 2021, the Presiding Officer ordered that disposition of the Motion for Summary Order would be delayed and included as a post-hearing ruling. Accordingly, the Motion for Summary Final Order is addressed below as part of our ruling on FAIR's standing.

Standards for Intervention

Pursuant to Rule 28-106.205, F.A.C., persons other than the original parties to a pending proceeding who have a substantial interest in the proceeding and who desire to become parties may move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

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[8] 412 So. 2d 351 (Fla. 1982). FAIR has not alleged that it has individual standing.

Because it has alleged associational standing on behalf of its members, FAIR must meet the three-prong standing test set forth in *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982), and *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), as more fully discussed below.

FAIR's Evidence and Argument in Support of Standing

FAIR was incorporated on March, 16, 2021, as a Florida not-for-profit membership organization. The specific purposes of FAIR, as set forth in its Articles of Incorporation, include advancing the welfare of residential and business customers of investor-owned electric utilities by advocating against actions that "are likely to result in electric rates being greater than necessary to ensure the provision of safe and reliable electric service."[9]

After its incorporation, FAIR began to recruit members. At the time the Motion to Intervene was filed, May 4, 2021, 16 persons had either returned a paper membership form or e-mailed a PDF to FAIR. As of June 15, 2021, after the FAIR website had gone live, the number of persons who had completed the membership form had increased to 516. FAIR witness Nancy Watkins, FAIR's Treasurer, verified the June 15, 2021 membership list.[10] Four hundred and twenty of those FAIR members (82%) are customers of FPL.

Currently, FAIR does not have membership dues and does not solicit donations. FAIR receives all of its funding from one or more anonymous non-members. The rates paid by FAIR members who are FPL customers will be affected if the petition for an increase in base rates is granted or the settlement agreement is approved. FAIR seeks to prevent these rate actions by participating in this proceeding and opposing the petition and settlement as an association on behalf of its members.

FPL Arguments Against Standing

FPL raises several challenges to FAIR's standing. First, FPL argues that because FAIR has never held an in-person membership meeting and has not spoken to or become personally acquainted with the persons who completed forms online, FAIR failed to prove that the membership forms were submitted by "real" or "flesh and blood" people. FPL further asserts that injury or impact must be demonstrated at the time the intervention request is filed and maintained at all times through the proceeding for a putative intervenor to have standing, and that FAIR failed to prove that it had any members on May 4, 2021, when the Motion to Intervene was filed. FPL next contends that an individual who fills out the membership form does not become a member until admitted by a majority vote of FAIR's Board of Directors. As its final argument on standing, FPL contends that *Hunt v. Washington State Apple Advertising*

[9] Ex. 287 (NHW-2).
[10] Three persons who had filled out forms subsequently indicated that they did not wish to be members of FAIR, which reduced the membership number as of June 15th from 516 to 513.

Commission[11] outlines factors FAIR must meet to have standing as the "functional equivalent" of a traditional trade association.

Decision

The first prong of the *Florida Home Builders* associational standing test requires that an association demonstrate that a substantial number of its members may be substantially affected by the Commission's decision in a docket.[12] Of the total 513 members of FAIR as of June 15, 2021, 420 (82%) are customers of FPL. This is a substantial number of the membership of FAIR.[13] As customers of FPL, each of these persons will realize an impact to their utility bill as a result of the decision in this rate case,[14] and is "substantially affected" for purposes of standing.[15]

FAIR's membership steadily increased from the time it incorporated through the Summer of 2021. Because this is a *de novo* proceeding,[16] evidence of FAIR's growth in membership subsequent to filing its Motion to Intervene is admissible and may be considered by the Commission. The statute that governs intervention in this proceeding requires that intervention be requested more than 20 days prior to the final hearing, but contains no temporal limitation on associational membership or evidence of membership. Notably, there are examples of statutes that impose temporal standards on standing requirements for certain administrative proceedings. For example, Section 403.412(6), F.S., contains timing and membership requirements for organizational standing in certain environmental permitting proceedings.[17] Yet another statute imposes temporal limitations on relevant evidence in growth management proceedings.[18]

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[11] 432 U.S. 333 (1977).
[12] *Fla. Home Builders*, 412 So. 2d at 353-54; *Farmworker Rights Org.*, 417 So. 2d at 754.
[13] *See Hillsborough Cty. v. Fla. Rest. Ass'n, Inc.*, 603 So. 2d 587, 589 (Fla. 2d DCA 1992) (a "substantial number" of members for associational standing does not require a set percentage or specific number); *ABC Fine Wine & Spirits v. Dep't of Bus. & Pro. Regul.*, 323 So. 3d 794, 798 (Fla. 1st DCA May 19, 2021) (42% of association's members found to be a "substantial number").
[14] *See* Order No. PSC-01-1934-PCO-EI, issued September 25, 2001, in Docket No. 010949-EI, *In re: Rate Increase by Gulf Power Co.* ("The Petitioner's members are ratepayers of Gulf. In this docket, the Commission will set new retail rates for Gulf. The Petitioner's members must pay whatever rates result from this proceeding, so they have a substantial interest in this proceeding.").
[15] *See* Order No. PSC-12-0229-PCO-EI, issued May 9, 2012, in Docket No. 120015-EI, *In re: Petition for Increase in Rates by Florida Power & Light Co.* (FPL customer is substantially affected and has standing to intervene in FPL rate case).
[16] *See* Section 120.57(1)(k), F.S. ("All proceedings conducted under this subsection shall be de novo.").
[17] *See* Section 403.412(6), F.S. ("Any Florida corporation not for profit which has at least *25 current members* residing within the county where the activity is proposed, and which was formed for the purpose of the protection of the environment, fish and wildlife resources, and protection of air and water quality, may initiate a hearing pursuant to s. 120.569 or s. 120.57, provided that the Florida corporation not for profit was formed *at least 1 year prior to the date of the filing of the application* for a permit, license, or authorization that is the subject of the notice of proposed agency action" (emphasis added)). This subsection was added to the Section 403.412 in 2002 by Section 9, Chapter 2002-161, Laws of Florida. Prior to this amendment and the addition of the italicized timing requirement, an intervenor could incorporate after filing for intervention and obtain standing as a "citizen" of Florida. *See Cape Cave Corp. v. Dep't of Environmental Reg.*, 498 So. 2d 1309, 1311 (Fla. 1st DCA 1986).
[18] *See* Section 163.3177(1)(f), F.S. (relevant data in growth management administrative challenges limited to "data available on that particular subject at the time of adoption of the plan or plan amendment at issue").

However, no such requirements apply in this proceeding. Had the Legislature intended such limitations to apply in proceedings before the Commission, they could have crafted them into Chapter 120 or 366, F.S. The absence of such limitations leads to the conclusion that the Legislature intended none[19] and that the general standing inquiry for intervenors, like other disputed factual matters, is not restricted to the facts as they existed as some point in time prior to the final evidentiary hearing. Based on the record evidence, we conclude that FAIR has met its burden in demonstrating that a substantial number of its members are substantially affected by our decision in this docket.

The second prong of the *Florida Home Builders* test requires that the subject matter of the proceeding be within the association's general scope of interest and activity.[20] The subject matter of this proceeding is squarely within FAIR's scope of interest, which includes, *inter alia*, "advocating for and providing analyses to the general public concerning State of Florida governmental policies and regulatory or administrative actions that will lead to retail electric rates that are as low as possible while ensuring safe and reliable electric service." Therefore, FAIR meets the second prong.

The third and final prong of the *Florida Home Builders* test requires that the association demonstrate the relief requested is of a type appropriate for it to receive on behalf of its members.[21] The relief FAIR seeks in this case – lower rates – is appropriate relief for it to obtain on behalf of its member FPL customers. Therefore, FAIR meets the third prong.

Based on our review of the record under the applicable legal principles set forth above, we find that FAIR has demonstrated associational standing under *Florida Home Builders*. FPL's arguments against standing fall outside of existing legal requirements for standing. For these reasons, FPL's Motion for Summary Final Order is denied.

Jurisdictional Issues

We have been asked whether we have the statutory authority to approve seven regulatory rate recovery mechanisms found in the 2021 Settlement Agreement. These regulatory mechanisms are: the Storm Cost Recovery Mechanism (SCRM); the Solar Base Rate Adjustment (SoBRA); the Asset Optimization Incentive (Asset Incentive); a federal and state corporate income tax adjustment; a four-year stay-out provision; adjustments to ROE to account for performance (ROE performance adders); and the Reserve Surplus Amortization Mechanism (RSAM).

SCRM, SoBRA, Asset Incentive, Corporate Income Tax Adjustments

In the 2021 Settlement, the SCRM, SoBRA, Asset Incentive, and federal and state corporate income tax adjustment all contain the following provisions: (1) a description of the

[19] *See Cason v. Fla. Dept. of Mgmt. Servs.*, 944 So. 2d 306, 315 (Fla. 2006) ("we have pointed to language in other statutes to show that the Legislature 'knows how to' accomplish what it has omitted in the statute in question").
[20] *Fla. Home Builders*, 412 So. 2d at 353-54; *Farmworker Rights Org.*, 417 So. 2d at 754.
[21] *Id.*

activity whose costs are sought to be recovered; (2) a method for calculating those costs; (3) a description of how and when those costs will be recovered, i.e., an increase in base rates, a surcharge, etc.; and (4) a "true-up" proceeding in which the final costs for the activity are litigated and determined.

FPL argues that these types of regulatory mechanisms are authorized by our broad authority to fix "fair, just and reasonable rates" found in Sections 366.06(1), 366.06(2), and 366.05(1), F.S., and the broad grant of legislative authority conferred by these statutes as recognized by the Florida Supreme Court.[22] FPL contends that Section 366.076(2), F.S., gives us the authority to adopt rules for the determination of rates in full revenue requirement proceedings. Additionally, FPL states that Rule 25-6.0425, F.A.C., adopted pursuant to that authority, allows us in a full revenue requirements proceeding to "approve incremental adjustments in rates for periods subsequent to the initial period in which new rates will be in effect." FPL states that there is substantial Commission precedent for allowing the prompt recovery of costs subject to a subsequent post-hearing true-up.[23] Finally, FPL argues that there is no statute prohibiting the approval of these types of rate recovery mechanisms, and that these types of rate recovery mechanisms have been included in the Settlement Agreements resolving its last three rate cases over the past 10 years.[24]

Contrary to FPL's position, FAIR contends that we lack the statutory authority under Section 366.06 or 366.07, F.S., to "preapprove" rates subject to subsequent true-up to recover the costs associated with storm damage, federal and state corporate taxes, solar projects, or operational incentives. FAIR interprets Section 366.06, F.S., to require a public hearing and a finding by this Commission that a utility's rates are insufficient based on its "actual legitimate costs" *before* new compensatory rates can be set. FAIR states that the only statutory basis for "interim" rates being set prior to hearing is found in Section 366.071, F.S., which requires a finding that the utility is earning outside of its authorized range of return on investment. FAIR contends that while the parties to the 2021 Settlement can waive their right to a hearing and a determination of insufficiency before rates are changed, this Commission cannot do so.

With regard to calculating the Asset Incentive, FAIR notes that Section 366.05(2), F.S., prohibits the consideration of profits or losses from the sale of "appliances or other merchandise" in "arriving at any rate to be charged for service by any public utility." From this language, FAIR deduces that the sale of non-electric goods or services should not be included in the calculation of the Asset Incentive paid by FPL's ratepayers. Finally, with regard to the mechanism for recovery or refund of any money as a result of state or federal corporate tax rates,

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[22] *Citizens of State of Florida v. Public Service Commission,* 425 So. 2d 534, 540 (Fla. 1982).
[23] Order No. PSC-2005-0937-FOF-EI, issued September 21, 2005, in Docket No. 20041291-EI, *In re: Petition for authority to recovery prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance by Florida Power & Light Company.*
[24] Order No. PSC-2011-0089-S-EI, issued February 1, 2011, in Docket No. 20080677-EI, *In re: Petition for rate increase by Florida Power & Light Company*; Order No. PSC-2013-0023-S-EI, issued January 14, 2013, in Docket No. 20120015-EI, *In re: Petition for increase in rates by Florida Power & Light Company*; Order No. PSC-2016-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company.*

FAIR believes this issue to be at worst highly speculative and at best premature, and as such should be denied.

Fla. Rising, LULAC, and ECOSWF, hereinafter referred to collectively as Fla. Rising, agree with FAIR that there is no lawful basis for this Commission to preapprove any rate increase using these regulatory mechanisms since the Commission is required by Section 366.06(1) and (2), F.S., prior to increasing rates, to: (1) hold a public hearing; (2) "determine the actual legitimate costs" of utility property "actually used and useful in the public service"; and (3) find that existing rates are insufficient to reasonably compensate the utility. Fla. Rising also agrees with FAIR that activities that are unrelated to the generation, transmission or distribution of electricity should not be included in the Asset Optimization calculation as they are beyond our jurisdiction. With regard to the SoBRA mechanism, Fla. Rising contends that there should not be a 25% "incentive" paid to FPL if it constructs these solar projects below the $1,250/kW$_{AC}$ cost cap, as this violates setting rates based on the actual cost of assets used to provide service as required by Section 366.06, F.S. Finally, with regard to the state and federal corporate tax mechanism, Fla. Rising states that in the 2017 Gulf rate case, a similar issue regarding potential federal income tax changes was dropped from the case. There, the Prehearing Officer found that it was "premature and not ripe for consideration at this time" and ordered that it be addressed in a separate proceeding should "federal tax changes occur in the future."[25] Fla. Rising contends that we should follow our previous decision and not include the proposed state and federal income tax change mechanism in the 2021 Settlement.

Four-year Stay-out Provision, ROE Performance Adder

With regard to the four-year stay-out provision, FPL argues that we have approved six FPL multi-year rate settlements over the last 22 years. FPL contends that stay-out provisions are within the "fundamental, broad, and overriding rate-setting responsibilities" granted by the legislature to this Commission pursuant to Sections 366.05 and 366.06(1) and (2), F.S. FPL further argues that this provision does not interfere with our responsibility to monitor FPL's earned ROE to ensure that it remains within its authorized rate of return and act appropriately if it does not. OPC supports the stay-out provision as part of a settlement agreement that, when taken as a whole, establishes fair, just, and reasonable rates. FAIR reads the stay-out provision as prohibiting us from acting should FPL earn outside of its authorized range and on that basis finds that it violates Sections 366.05 and 366.06, F.S. Fla. Rising agrees with FAIR that there is no statutory authority for the four-year stay-out provision.

With regard to the ROE performance adder, FPL states that the 10.6% ROE established by the 2021 Settlement is a negotiated number and does not contain a separate performance adder. For that reason, FPL concludes that this issue is "inapplicable" to this docket. However, notwithstanding that fact, FPL argues that we have the statutory authority to award a separate performance adder based on the language of Section 366.041(1), F.S., which authorizes us to give consideration to the "efficiency, sufficiency, and adequacy of the facilities provided and the

[25] Order No. PSC-2017-0099-PHO-EI, issued on March 14, 2017, in Docket No. 20160186-EI, *In re: Petition for rate increase by Gulf Power Company.*

services rendered, cost of providing such service and the value of service to the public." This language, FPL contends, gives this Commission the ability to base utility rates not just on the cost of service but also on value-related considerations such as performance. This authority was exercised in Gulf's 2002 rate case in which we added 25 basis points to Gulf's midpoint ROE in recognition of Gulf's high level of past performance and with the expectation that a similar level of performance would continue into the future.[26] Due to the fact that the 2021 Settlement does not contain language for a performance adder, OPC did not state an opinion on whether the Commission has the jurisdiction to allow such a provision in a settlement agreement.

FAIR argues that we lack the statutory authority to adjust FPL's authorized return on equity based on its past performance. According to FAIR, the only statutory authority allowing an additional return on equity is found in Section 366.82(9), F.S., which allows an investor-owned utility an additional return on equity of up to 50 basis points for exceeding 20% of its annual load-growth through energy efficiency and conservation measures. In this case, FPL did not request a performance adder based on compliance with the provisions of Section 366.82(9), F.S. Additionally, FAIR states that a 50 basis points adder to an already exorbitant ROE would violate the United States Supreme Court's *Hope*[27] and *Bluefield*[28] decisions, that returns on utility investments be comparable to other utilities having similar risks. Fla. Rising agrees with FAIR that there is no statutory authority for ROE performance adders.

RSAM[29]

FPL argues that, like the regulatory mechanisms discussed above, the RSAM is authorized by our broad authority to fix "fair, just and reasonable rates" found in Sections 366.06(1), 366.06(2), and 366.05(1), F.S., and the broad grant of legislative authority conferred by these statutes as recognized by the Florida Supreme Court.[30] Since the RSAM can only be used to maintain FPL within its authorized ROE, FPL contends that it operates within our framework for monitoring earnings and setting fair, just, and reasonable rates. Finally, FPL states that the use of an RSAM to maintain an authorized ROE has been challenged in the Florida Supreme Court on the basis that it results in unfair rates and has been found by the Court not to do so.[31]

OPC agrees with FPL that we have the statutory authority to approve the RSAM as part of the 2021 Settlement given the provisions of Section 120.57(4), F.S., that "informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order." As stated in

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[26] Order No. PSC-2002-0787-FOF-EI, issued June 10, 2002, in Docket No. 20010949-EI, *In re: Request for rate increase by Gulf Power Company.*
[27] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).
[28] *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923)
[29] The RSAM was first approved as part of the Settlement Agreement for FPL's 2016 base rate case. Under the RSAM, FPL is permitted to amortize the Reserve Amount flexibly using debits and/or credits at its discretion.
[30] *Citizens of State of Florida v. Public Service Commission,* 425 So. 2d 534, 540 (Fla. 1982).
[31] *Citizens of the State of Florida v. Florida Public Service Commission (Citizens I)*, 146 So. 3d 1143, 1171 (Fla. 2014).

the *Sierra Club*[32] decision, OPC contends that there is nothing in this Commission's precedent or the statute that suggests that this general rule does not also apply to rate-setting cases.

Fla. Rising argues that we are required to set cost-based rates and are not free to deprive FPL's customers of the value of any surplus depreciation. Fla. Rising contends that the principle stated in Section 366.06, F.S., that a utility's rates must be based on the "net investment . . . honestly and prudently invested . . . less accrued depreciation" is based, in part, on the United States Supreme Court decision *Lindheimer v. Illinois Bell Telephone Company*, 292 U.S. 151, 168-69 (1934). In *Lindheimer*, the utility applied monies recovered through annual depreciation charges to other accounts. The Court reasoned that depreciation charges were meant to spread the "actual cost of property" in yearly increments over the service life of particular assets. Thus, the Court reasoned that because the "depreciation reserve represent[s] the consumption of capital, on a cost basis" when there are excess credits to the depreciation reserve, customers are making "capital contributions . . . to secure additional plant and equipment upon which the utility expects to earn a return" rather than paying the actual depreciation losses incurred by the utility. *Lindheimer*, 292 U.S. at 168-69. Here, the RSAM can be used to make debits and credits to the accumulated depreciation reserve for the purpose of maintaining its ROE, rather than for recording its actual depreciation. As Fla. Rising interprets *Lindheimer*, this use of the RSAM as an "ROE slush fund" violates both *Lindheimer* and Florida statutes.

FAIR opposes the inclusion of the RSAM for two reasons. First, because it also reads the *Lindheimer* decision to prohibit the use of depreciation for ratemaking purposes. Second, because it allows FPL to exceed the fair and reasonable midpoint ROE in violation of the intent of Section 366.05, F.S., to set fair, just, and reasonable rates. FAIR argues that rates are set to allow the utility to recover the midpoint, not the top of the range ROE. As support for this interpretation FAIR cites the Florida Supreme Court's decision in the *Wilson* case: "if a public utility is consistently earning a rate of return at or near the ceiling of its authorized rate of return range, the commission may find that its rates are unjust and unreasonable even though the presumption lies with the utility that the rates are reasonable and just."[33]

Decision

The legal standard to be applied to determine whether the jurisdiction for all of the regulatory mechanisms and adjustments discussed above exists is whether the statutory language of Chapter 366, F.S., gives us the authority to approve these types of mechanisms. Section 366.06(1), F.S., states, in part:

> (1) . . . All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the

[32] *Sierra Club v. Brown,* 243 So. 3d 903, 909 (2018).
[33] *Gulf Power Company v. Wilson,* 597 So. 2d 270, 273 (Fla. 1992).

> property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation . . . In fixing fair, just and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

However, there is a significant difference between the legal evaluation of these mechanisms and adjustments under Section 366.06(1), F.S., in the development of revenue requirements and rates when made in the context of a base rate case, and when made as part of a settlement agreement. In a base rate case each adjustment and mechanism is evaluated individually based on the applicable statutes, rules, case law, and our past decisions. The determination of the prudence of each issue, adjustment, or mechanism is necessary in a base rate case in order to construct the elements needed to establish the revenue requirement used to develop fair, just, and reasonable rates for each revenue class. In a settlement case, each issue, adjustment, or mechanism does not require our individual approval because the revenue requirement is the result of negotiations between the signatories that may or may not have included the individual impact of each such item.

Our ability to analyze a settlement agreement as a whole, rather than analyze and approve each individual mechanism or adjustment, is well established.[34] Indeed, the legal standard for reviewing a settlement agreement is whether the settlement agreement, *when taken as a whole*, is in the public interest.[35] Further, "in the final analysis, the public interest is the ultimate measuring stick to guide the PSC in its decisions."[36] This interpretation of our authority to analyze the whole settlement agreement to determine whether there is competent and substantial evidence to support a finding of public interest is consistent with the Court's ruling in *Sierra Club*. In that case, the Sierra Club argued that the language of Section 366.06(1), F.S., required a separate determination that the replacement of gas turbines with combustion turbine units, referred to as the Peaker Project, was cost-effective and therefore a prudent investment. The Court rejected the contention that "a prudence analysis on each core element of a settlement – such as the Peaker Project – is necessary to support an overall public interest finding."[37] The record is clear here that FPL considers the seven regulatory rate recovery mechanisms discussed above to be "core elements" of the 2021 Settlement whose inclusion is necessary to support a finding of public interest for the Agreement as a whole.

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[34] *Citizens v. Florida Public Service Commission (Citizens I),* 146 So. 3d 1143 (Fla. 2014); *Sierra Club v. Brown (Sierra Club),* 243 So. 3d 903 (Fla. 2018).
[35] *Sierra Club*, 243 So. 3d at 909; *Citizens I,* 146 So. 3d at 1164.
[36] *AmeriSteel Corporation v. Clark,* 691 So. 2d 473, 478 (Fla. 1997).
[37] *Sierra Club,* 243 So. 3d at 910.

In addition to our ability to review these mechanisms and adjustments as a whole, rather than on an individual basis, we find that our broad grant of legislative authority under Section 366.06(1), F.S., to set fair, just, and reasonable rates permits the inclusion of the seven regulatory adjustments and mechanisms discussed above in a settlement agreement. There are several reasons that support this conclusion.

First, there is no statute specifically prohibiting the inclusion of any of the mechanisms or adjustments at issue here in either a base rate case or a settlement agreement. And, in fact, as discussed above, each of these adjustments and mechanisms has been in numerous prior Commission-approved FPL settlement agreements. Second, FAIR's and Fla. Rising's argument that Sections 366.06(1) and (2), F.S., prohibit the "preapproval" of rates is flawed. Section 366.076(2), F.S., gives the Commission the authority to adopt rules for the determination of rates in full revenue requirement proceedings. Rule 25-6.0425, F.A.C., which implements Section 366.076(2), F.S., allows this Commission in a full revenue requirements proceeding to "approve incremental adjustments in rates for periods subsequent to the initial period in which new rates will be in effect." Based on the plain language of the rule, Rule 25-6.0425, F.A.C., clearly allows us to "preapprove" rates to be implemented at a later date as part of a base rate proceeding. That being the case, a settlement agreement of a base rate proceeding can likewise contain these types of provisions.

Third, FAIR and Fla. Rising argue that a hearing is required at which it is necessary for a utility to establish it is earning outside of its authorized rate of return *before* rates can be increased for any reason. FAIR and Fla. Rising cite Section 366.071(1), F.S., which requires proof of under-earning, as the only statutory basis for "interim" rate relief. As noted above, the procedures established in the 2021 Settlement for the SCRM, SoBRA, Asset Incentive, and federal and state corporate income tax adjustments all require a "true-up" proceeding in which the final costs for each activity are litigated and determined. Contrary to FAIR and Fla. Rising's assertion that there has been no opportunity by ratepayers to question these mechanisms and adjustments prior to their implementation and prescribed rate increases, ratepayers will actually have been given two opportunities to do so: once at the November 2, 2021, hearing on the base rate case/2021 Settlement, and another when the final costs are ultimately determined.

Fourth, we disagree that we only have the authority to implement rate increases when a utility is earning less than its allowed rate of return. A utility is statutorily entitled to earn within a reasonable rate of return range and is entitled to have rates set to provide revenues to ensure that it does so.[38] To deny the utility a rate increase when it is earning less than its allowed rate of return is a constitutional taking.[39] However, we have the broad authority to adjust rates at any time even when the utility is earning within its authorized rate of return to achieve rates that are reasonable and just based on competent, substantial evidence of record.[40] That is the case here.

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[38] *United Telephone Company v. Mayo*, 345 So.2d 648 (Fla. 1977).
[39] *Bluefield Waterworks & Improvement Company v. Public Service Commission of West Virginia*, 43 S. Ct. 675 (1923); *Gulf Power Company v. Bevis*, 289 So. 2d 401 (Fla. 1974).
[40] *Gulf Power Company v. Wilson*, 597 So. 2d 270, 273 (Fla. 1992), *citing United Tel. Co. v. Mann*, 403 So.2d 962, 967-968 (Fla.1981).

Fifth, with regard to the four year stay-out provision, we agree with FPL that such provisions are within the broad rate-setting responsibilities granted pursuant to Sections 366.05, 366.06(1) and (2), F.S. We also find that we continue to have the ability to monitor FPL's earnings and act to reduce rates if the utility over-earns, should that event occur. In short, while the 2021 Settlement binds FPL to the four-year stay out provision under the conditions stated, it does not affect our ability to exercise our regulatory authority.

Sixth, we have the statutory authority to impose ROE performance adders pursuant to Section 366.041(1), F.S., and have done so in the past as noted above. However, in this instance the 10.6% ROE is a negotiated number and does not contain a separate performance adder. Therefore, the question of our authority to impose such an adder is moot.

Seventh, we find that the use of the RSAM as set forth in the 2021 Settlement Agreement is within our broad statutory authority and operates within our framework for monitoring earnings and setting fair, just, and reasonable rates.

Eighth, with regard to the federal and state corporate income tax adjustments, the provision allows adjustments to be made in the event these tax changes are enacted. As has been done in the past, this procedure would require FPL to file a petition for approval of its proposed treatment of the tax impacts, thus giving a point of entry for customers to fully litigate the issue.[41] In essence, this provision simply sets the time limit for any requested adjustment at 90 days from the date the tax becomes law, or the effective date of the law, but in no instance before January 1, 2022. Setting deadlines and procedures for regulatory action is clearly within our statutory authority to conduct administratively efficient administrative proceedings.

In conclusion, for the reasons discussed above, we find that we do have the jurisdiction to approve the Storm Cost Recovery Mechanism (SCRM); the Solar Base Rate Adjustment (SoBRA); the Asset Optimization Incentive (Asset Incentive); a federal and state corporate income tax adjustment; a four-year stay-out provision; adjustments to ROE to account for performance (ROE performance adders); and the Reserve Surplus Amortization Mechanism (RSAM) as part of the 2021 Settlement.

2021 Settlement

The major elements of the Settlement Agreement are as follows:

- The 2021 Settlement term (Term) is from January 1, 2022, until the earlier of December 31, 2026, or when FPL's base rates are next reset in a general base rate proceeding. The minimum term of the Settlement Agreement is a period of four years through December 31, 2025.

[41] Docket No. 20180039-EI, *In re: Consideration of the stipulation and settlement agreement between Gulf Power Company, Office of Public Counsel, Florida Industrial Power Users Group and Southern Alliance for Clean Energy regarding Tax Cuts and Jobs Act of 2017;* Docket No. 20180045-EI, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Tampa Electric Company;* Docket No. 20180047-EI, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Duke Energy Florida, LLC.*

- Effective January 1, 2022, FPL shall be authorized to increase its base rates and service charges to generate an additional $692 million of annual revenue. Effective January 1, 2023, FPL shall be authorized to increase its base rates and service charges to generate an additional $560 million of annual revenue.

- FPL is authorized to make Solar Base Rate Adjustments (SoBRA) in connection with the commercial operation of up to 1,788 megawatts (MW) of solar projects projected to go into service in 2024 and 2025 or within one year following expiration of the minimum term. FPL may carry over to 2025 any MWs that do not enter into service in 2024. These projects are subject to an installed cost cap of $1,250 per kilowatt of AC power (kW_{AC}), less the cost of any land component allocated to such projects when the land is already included in rate base as Plant Held for Future Use. If leased land is used to construct a project, the lease expense will be converted to a capital cost surrogate in accordance with Commission precedent and used to measure performance against the $1,250 per kW_{AC} price cap. For each solar project that is approved for cost recovery, FPL's base rates will be increased by the incremental annualized base revenue requirement (excluding any land component that is already included in base rates as Plant Held for Future Use) for the first 12 months of operation, but such recovery will not commence before the entire solar project is in service. Battery storage can be paired with the solar projects so long as the total cost remains below the $1,250 per kW_{AC} cap and the project is cost effective.

  If the actual installed cost for any solar project is less than the $1,250 kW_{AC} cap or adjusted cap, customers and FPL will share the difference between the actual cost and $1,250 kW_{AC} cap, or adjusted cap, with 75% of the difference benefiting customers and 25% of the difference benefiting FPL. The lower installed cost shall be the basis for the full revenue requirements and a one-time credit will be made through the Capital Cost Recovery Clause (CCRC). In order to determine the amount of this credit, a revised SoBRA factor will be computed using the same data and methodology incorporated into the initial SoBRA factor established under the terms of the 2021 Settlement. In lieu of capital expenditures on which the Annualized Base Revenue Requirement was based, the calculation of the installed cost will use the actual installed cost adjusted to reflect the incentive. Going forward, base rates will be adjusted to reflect the revised SoBRA factor. The difference between the cumulative base revenues since the implementation of the initial SoBRA factor and the cumulative base revenues that would have resulted from the revised SoBRA factor had it been in place during the same period will be credited to customers through the CCRC with interest at the 30-day commercial paper rate.

  If the actual capital costs for a solar generation project are higher than the $1,250 kW_{AC} cap or adjusted cap, FPL may initiate a limited proceeding on the issue of whether FPL has met the requirements of Rule 25-22.082(15), F.A.C. If the Commission finds that the requirements of Rule 25-22.082(15), F.A.C., have been met, FPL shall be allowed to increase the SoBRA by a corresponding incremental revenue requirement. If FPL elects not to seek such an increase in the SoBRA, FPL may book any incremental costs for

surveillance reporting and all regulatory purposes, subject only to a finding of imprudence or disallowance by the Commission.

- The SolarTogether program approved by Order No. PSC-2020-0084-S-EI[42] shall be expanded by an additional 1,788 MW at FPL's discretion through 2025 such that the total capacity of SolarTogether would equal 3,278 MW. The 1,788 MW of incremental capacity will be allocated 40% to residential and small business customers (45 MW reserved for low-income participants) and 60% allocated to commercial, industrial, and governmental (20% of this commercial, industrial, and governmental capacity is reserved for participants located in the former Gulf territory).

- The regulatory return on common equity (ROE) is set at 10.6% for all purposes, with an authorized ROE range of 9.7% to 11.7%. If, at any time during the Term, but no more than once during the Term, the average 30-year United States Treasury Bond yield rate for any period of six consecutive months is at least 50 basis points greater than the yield rate on the date that the 2021 Settlement is filed with the Commission (Trigger), after filing notice with the Commission, FPL's authorized ROE shall be increased by 20 basis points to be within a range of 9.8% to 11.8%, with a mid-point of 10.8%. This rate shall remain in effect from the Trigger date through the remainder of the Term, for any period in which FPL's rates continue in effect after December 31, 2025, and/or until a final order is issued in a future proceeding changing FPL's rates and its authorized ROE.

- FPL can seek recovery of costs associated with any tropical storm or its successor without the application of any form of earnings test or measure and irrespective of previous or current base rate earnings or the remaining unamortized storm reserve as described in Paragraph 16 of the 2021 Settlement. FPL's recovery of storm costs on an interim basis will begin 60 days following the filing of a cost recovery petition and tariffs and will be based on a 12-month recovery period if the storm costs don't exceed $4.00/1,000 kWh on a monthly residential bill. Any additional costs exceeding $4.00/1,000 kWh may be recovered in subsequent years(s) as determined by the Commission. Storm related costs subject to interim recovery will be calculated and disposed of pursuant to Rule 25-6.0143, F.A.C. The storm reserve will be no less than $150 million. In the event that FPL incurs in excess of $800 million of qualifying storm costs in a given calendar year, it may petition to increase the initial recovery beyond $4.00/1,000 kWh. Storm cost recovery proceedings shall not be a vehicle for a "rate case" inquiry concerning FPL's expenses, investment, or financial results.

- The projected depreciation reserve surplus balance at the end of 2021 is $346 million. The positive difference between the actual remaining amount and $346 million, the Carryover Amount, will be booked 50% to offset capital recovery regulatory assets and 50% to increase the storm reserve as an unfunded amount. The alternative depreciation parameters and resulting rates set out in Exhibit KF-3(b) will be applied resulting in a

[42] Order No. PSC-2020-0084-S-EI, issued March 20, 2020, in Docket No. 20190061-EI, *In re: Petition for approval of FPL SolarTogether program and tariff by Florida Power & Light Company.*

$234.7 million reduction in the 2022 test year depreciation expenses when compared to application of the depreciation rates found in FPL's depreciation study.

- The theoretical depreciation reserve surplus (Reserve Amount) shall be $1.45 billion, including the $346 million Carryover Amount remaining at the end of 2021. Throughout the Term, or a Paragraph 16(g) one year extension, FPL may amortize this depreciation reserve surplus amount. The amount to be amortized is capped at $200 million in 2022, but discretionary with FPL for each year thereafter. Amortization in each year of the Term is subject to the following conditions: (1) for any surveillance reports submitted by FPL in which its 12-month period ROE would otherwise fall below the bottom of the authorized range, FPL must amortize at least the amount necessary to maintain an ROE of at least the bottom of the authorized range; (2) FPL may not amortize an amount that would result in an ROE greater than the top of the authorized range for any 12-month period; and (3) FPL must debit depreciation expense and credit depreciation reserve in order not to exceed the top of its authorized range. Any unfunded storm reserve balance must be depleted prior to using the funded reserve to recover storm costs. During the Term, FPL must use all of its Reserve Amount to increase its ROE above the bottom of the ROE range before it may initiate a petition to increase base rates.

  As an attachment to its December 2021 monthly earnings surveillance report, FPL shall show the Carryover Amount remaining at the end of 2021. Each subsequent monthly earnings surveillance report shall contain the amount of amortization credit or debit to the Reserve Amount on a monthly basis and year-end total basis for that calendar year. FPL may not amortize any portion of the Reserve Amount past December 31, 2025, unless it provides written notice to the signatories to the 2021 Settlement by no later than March 31, 2025, that it does not intend to seek a general base rate increase to be effective any earlier than January 1, 2027, in which event the Term of the 2021 Settlement shall be extended until December 31, 2026.

- FPL's current asset optimization program previously approved and modified by Order Nos. PSC-2013-0023-S-EI[43] and PSC-2016-0560-AS-EI,[44] is further modified to apply to all fuel sources when it is reasonable and in the customers' best interests based on system requirements, market demand, and the current market price of fuel or capacity. Renewable energy credits may be monetized. Three annual savings thresholds are set: (1) FPL customers will receive 100% of the incentive mechanism gain up to $42.5 million; (2) FPL customers will receive 40% and FPL will receive 60% of incremental mechanism gains between $42.5 million and $100 million; and (3) FPL and its customers will each receive 50% of incremental mechanism gains in excess of $100 million. The per-MWh variable power O&M rate is set at $0.48/MWh. Optimization activities, variable power plant O&M rates, and savings thresholds are considered "adjustable

[43] Order No. PSC-2013-0023-S-EI, issued January 14, 2013, in Docket No. 120015-EI, *In re: Petition for increase in rates by Florida Power & Light Company.*
[44] Order No. PSC-2016-0560-AS-EI, issued December 15, 2016, in Docket No. 160021-EI, *In re: Petition for rate increase by Florida Power & Light Company.*

parameters" that FPL can request be reviewed and adjusted every four years in the Fuel Cost Recovery Clause docket.

- If permanent federal or state tax changes are enacted effective for any of the tax years 2022 through the Term, the impacts of the tax changes on the base revenue requirement will be adjusted for retail customers within the latter of 90 days from when the tax becomes law or the effective date of the law, but in no instance prior to January 1, 2022 through a prospective adjustment to base rates. Any effects of a change in taxes on retail revenue requirements from the effective date through the date of the base rate adjustment shall be flowed back to, or collected from, customers through the CCRC on the same basis as used in any base rate adjustment.

- FPL agrees to terminate 100% of any natural gas financial hedging during the Term and any extensions. FPL will not enter into any new financial natural gas hedging contracts after execution of the 2021 Settlement except to the extent necessary to comply with its currently approved Risk Management Plan.

- FPL is authorized to implement and recover the costs associated with numerous electric vehicle pilot programs (EV programs). Only the reasonableness of amounts actually expended may be challenged. The cost of the infrastructure of the EV programs, including the installation and removal costs, are includable in the jurisdictional rate base until recovered from customers. The EV programs include: the EVolution program; public fast charging program; residential EV charging services pilot; commercial EV charging services pilot; new technologies and software designed to evaluate emerging electric technologies and enhance service and resiliency for customers; and education and awareness programs about electric options. The total cost of these programs is $205 million over the Term.

- FPL is authorized to offer a four-year solar power facilities pilot program where commercial and industrial customers on a metered rate may elect to have FPL install and maintain a solar facility on their site for a monthly tariff charge. All project costs and expenses will be recovered from participants through a fixed monthly charge over a ten-year term.

- FPL is authorized to implement a Green Hydrogen pilot project to evaluate how its combustion turbine units operate with a hydrogen fuel mix and learn how a hydrogen fuel production facility can be effectively used on-site with combustion turbine units. The pilot will be conducted at the existing Okeechobee Clean Energy Center and a 25MW electrolyzer and storage facility will be built there. The estimated cost of this pilot program is $65 million with a projected in-service date of 2023. This estimated cost has been included in rate base and is subject to challenge at a later date.

- FPL is authorized to conduct a four-year pilot program to test residential customer smart electrical panels. FPL will install, at no cost to the customers, up to 1,000 smart electrical panels to gain insights into the control of in-home electrical loads. The total investment

is estimated to be $6 million over the 2022 to 2023 time period. Parties may subsequently challenge the actual cost of the program.

- Effective January 1, 2022, unified FPL rates apply to all customers throughout the former FPL and Gulf service territories. To accommodate for the initial but declining differences in the cost to serve the two formerly separate utility systems, while recognizing that the systems have been combined and are now operating as one, customers in the former Gulf service territory will pay a transition rider and former FPL customers will receive a transition credit spread over a period of five years.

We turn now to the question of whether the entire 2021 Settlement should be approved. All parties in this case agree that the legal standard to be used in determining whether to approve this settlement is "whether the agreement – as a whole – resolved all of the issues, 'established rates that were just, reasonable, and fair, and that the agreement is in the public interest.'"[45] A determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.[46]

The weight of the evidence presented at the twelve customer service hearings held over a two-week period fully supports the conclusion that FPL is providing excellent service to its customers from a reliability standpoint. Over the last six years, FPL has received repeated national recognition for its leadership, innovation and achievement in the area of electric reliability. None of the parties to this case have questioned or presented evidence that would indicate that FPL's overall quality of service, performance, and response to outages is not exceptional. Further, the record is clear that the former Gulf customers as well as FPL customers will experience a reliability and rate benefit from the consolidation of these utility systems.

The 2021 Settlement reduces FPL's requested base rate increase by $383 million for rates effective January 1, 2022, and $45 million for rates effective January 1, 2023, for a total reduction of $428 million. With these reductions, the bills for all FPL customers will be among

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[45] *Sierra Club,* 243 So. 3d at 909, *citing Citizens I,* 146 So. 3d at 1164. *See also:* Order No. PSC-13-0023-S-EI, issued on January 14, 2013, in Docket No. 120015-EI, *In re: Petition for increase in rates by Florida Power & Light Company*; Order No. PSC-11-0089-S-EI, issued February 1, 2011, in Docket Nos. 080677-EI and 090130-EI, *In re: Petition for increase in rates by Florida Power & Light Company* and *In re: 2009 depreciation and dismantlement study by Florida Power & Light Company*; Order No. PSC-10-0398-S-EI, issued June 18, 2010, in Docket Nos. 090079-EI, 090144-EI, 090145-EI, 100136-EI, *In re: Petition for increase in rates by Progress Energy Florida, Inc., In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc., In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.*, and *In re: Petition for approval of an accounting order to record a depreciation expense credit, by Progress Energy Florida, Inc.*; Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, *In re: Petition for rate increase by Progress Energy Florida, Inc.*; Order No. PSC-2021-0423-S-EI, issued November 10, 2021, in Docket No. 20200264-EI, *In re: Petition for rate increase by Tampa Electric Company;* Order No. PSC-2021-0202-AS-EI, issued June 4, 2021, in Docket No. 20210016-EI, *In re: Petition for limited proceeding to approve 2021 settlement agreement, including general base rate increases, by Duke Energy Florida, LLC.*

[46] Order No. PSC-13-0023-S-EI, at p. 7.

the lowest in the nation with FPL's residential 1,000 kWh bill projected to remain 21% below the current national average.

FPL structured this rate case around the mechanisms and adjustments discussed at length above: SCRM, SoBRA, Asset Incentive, a federal and state corporate income tax adjustment, and the RSAM. These mechanisms, working together, support the four-year stay-out provision which provides a stable rate climate for both residential and commercial customers, while giving FPL the financial ability to operate and invest in its system. Expanding SoBRA projects and conducting EV pilot programs are part of evaluating and meeting the electric industry's changing environment as the effects of climate change become more pronounced. Each settlement is a compromise with give and take on all sides to reach the final, agreed upon settlement terms. The 2021 Settlement is no exception. Finally, the signatories to the 2021 Settlement represent a broad section of FPL's customer classes and a large majority of the parties in this case. Significantly, OPC, the entity created by the Legislature to represent Florida's utility customers before the Commission, has conducted extensive discovery in this case and negotiated the terms contained in the 2021 Settlement. In short, the 2021 Settlement is the product of serious bargaining among capable, knowledgeable signatories representing virtually every customer class.

Having reviewed all the briefs filed and the evidence presented, we find that when taken as a whole, the 2021 Settlement provides a reasonable resolution of all issues raised, establishes rates that are fair, just, and reasonable, and is in the public interest. The 2021 Settlement is therefore approved.

We further find that on January 30 of each year starting in 2023, for the reporting period January through December 2022, FPL shall provide an annual report with regard to Residential and Commercial EV Charging Services that provides: total program capital and O&M costs, revenue requirements, and revenues collected; average cost per port; total number of installed ports and participants; monthly total charging sessions, energy consumption and monthly average 24 hour load profile; and a demonstration of any participating customer energy cost savings compared to a traditional Time of Use tariff. The annual reports shall be filed in Docket 20200170-EI, *In re: Petition for approval of optional electric vehicle public charging pilot tariffs, by Florida Power & Light Company.*

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion for Approval of Settlement Agreement is hereby granted and that the 2021 Stipulation and Settlement Agreement filed on August 10, 2021, attached hereto as Attachment A, and incorporated herein by reference, is approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of December, 2021.

ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr/SS/BL

DISSENT:

Commissioner La Rosa dissents from the Commission decision to grant FAIR's Motion to Intervene.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for Base Rate Increase and Rate Unification	Docket No. 20210015-EI

STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, Florida Power & Light Company ("FPL" or the "Company"), Citizens through the Office of Public Counsel ("OPC"), Florida Retail Federation ("FRF"), Florida Industrial Power Users Group ("FIPUG") and Southern Alliance for Clean Energy ("SACE") have signed this 2021 Stipulation and Settlement Agreement (the "Agreement") (unless the context clearly requires otherwise, the term "Party" or "Parties" means a signatory to this Agreement); and

WHEREAS, on December 15, 2016, the Florida Public Service Commission ("FPSC" or "Commission") entered Final Order PSC-16-0560-AS-EI approving a stipulation and settlement of FPL's rate case in Docket No. 160021-EI, consolidated with Docket Nos. 160061-EI (Storm Hardening), 160062-EI (Depreciation and Dismantlement), and 160088-EI (Incentive Mechanism) ("2016 Settlement Agreement"), which continues in effect (except for Paragraphs 10 and 11) until base rates are next reset; and

WHEREAS, on March 12, 2021, FPL, representing the merged and consolidated operations of FPL and the former Gulf Power Company ("Gulf"), petitioned the Commission for approval of: (a) base rate increases pursuant to a four-year rate plan; and (b) FPL unified rates for all customers, including those currently served pursuant to the rates and tariffs on file for Gulf, subject to a transition rider and credit intended to reflect initial but diminishing cost to serve differences as the two utility systems are combined and operated as one. As updated, FPL's four-year proposal consisted of: (i) an increase in rates and charges sufficient to generate additional total annual revenues of $1,075 million to be effective January 1, 2022; (ii) a subsequent year adjustment of $605 million to be effective January 1, 2023 ("2023 SYA"); (iii) a Solar Base Rate

Adjustment ("SoBRA") mechanism that authorizes FPL to recover costs associated with the installation and operation of up to an aggregate of 1,788 megawatts ("MW") of cost-effective solar generation in 2024 and 2025; (iv) a mechanism to address the possibility that changes to corporate tax laws might be enacted under the new presidential administration; (v) a reserve surplus amortization mechanism ("RSAM"), an element in FPL's last three multi-year rate plans; (vi) a storm cost recovery mechanism, an element in FPL's last three multi-year rate plans; and (vii) authority to accelerate amortization of unprotected excess accumulated deferred income taxes resulting from the 2017 Tax Cuts and Jobs Act ("TCJA"); and

WHEREAS, the Parties filed voluminous pre-filed testimonies with accompanying exhibits and responded to extensive discovery; and

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in Docket No. 20210015-EI so as to maintain a degree of stability and predictability with respect to FPL's base rates and charges; and

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the Agreement as provided herein and upon approval in the public interest;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. Upon approval by this Commission, this Agreement will become effective on January 1, 2022 (the "Implementation Date") and continue until the earlier of December 31, 2026 or when FPL's base rates are next reset in a general base rate proceeding (the "Term"); provided, however, that (i) all rates, charges and tariffs authorized pursuant to this Agreement and such provisions of this Agreement as may be necessary to give effect to same, shall remain in effect until FPL's base rates are next reset in a general base rate proceeding, and (ii) FPL may place interim rates into effect subject to refund pursuant to Paragraph 14 of this Agreement. The minimum term of this Agreement shall be four years, from the Implementation Date through December 31, 2025 (the "Minimum Term").

2. Except as set forth in this Agreement, the Parties agree that adjustments to rate base, net operating income and cost of capital set forth in FPL's Minimum Filing Requirements ("MFR") Schedules (with RSAM) B-2, C-1, C-3 and D1a, as revised by Exhibit LF-12, shall be deemed approved for accounting and regulatory reporting purposes and the accounting for those adjustments will not be challenged during the Term for purposes of FPL's Earnings Surveillance Reports or clause filings.

3. (a) FPL's authorized rate of return on common equity ("ROE") shall be a range of 9.7% to 11.7% and shall be used for all purposes. All rates, including those established in clause proceedings during the Term, shall be set using a 10.6% ROE.

(b) If at any time during the Term, but no more than once during the Term, the average 30-year United States Treasury Bond yield rate for any period of six (6) consecutive months is at least 50 basis points greater than the yield rate on the date this Agreement is

filed with the Commission (the "Trigger"), FPL's authorized ROE shall, after an elective filing by FPL, be increased by 20 basis points to be within a range of 9.8% to 11.8% with a mid-point of 10.8% ("Revised Authorized ROE") from the Trigger Effective Date defined below for and through the remainder of the Minimum Term, and for any period in which the Company's rates continue in effect after December 31, 2025, and then, until the Commission issues a final order in a future proceeding changing the Company's rates and its authorized ROE. Base rates shall not be increased upon implementation of the trigger mechanism. The Trigger shall be calculated by summing the reported 30-year U.S. Treasury bond rates for each day over any continuous six-month period, e.g., January 1, 2022 through July 1, 2022, or March 17, 2022 through September 17, 2022, for which rates are reported, and dividing the resulting sum by the number of reporting days in such period. The effective date of the Revised Authorized ROE ("Trigger Effective Date") shall be the first day of the month following the day in which the Trigger is reached. No later than five business days after the Commission votes to approve this 2021 Agreement, FPL shall notify the Parties of the 30-year United States Treasury Bond yield rate as of the date this Agreement is filed with the Commission by filing in this docket proof of the rate with the Commission Clerk and serving the Parties.

(c) If the Trigger is reached and the Revised Authorized ROE becomes effective, except as otherwise specifically provided in this Agreement, FPL's Revised Authorized ROE range and mid-point shall be used prospectively for all regulatory purposes, including all rates and applications pursuant to this Agreement, until the Commission issues a final order in a future general base rate proceeding changing the Company's rates and its authorized ROE.

4. Effective January 1, 2022, unified FPL rates shall apply to all customers throughout the former FPL and Gulf service areas as a result of the consolidation of FPL and Gulf operations and consistent with the consolidated cost of service reflected in FPL's MFRs. Gulf's existing tariffs shall be canceled. The rates and charges applicable to the customers located in the former Gulf service area shall be pursuant to the FPL tariffs as described herein.

(a) Effective on January 1, 2022, FPL shall be authorized to increase its base rates and service charges by an amount that is intended to generate an additional $692 million of annual revenues, based on the projected 2022 test year billing determinants set forth in Schedules E-13e (with RSAM) and E-13d (with RSAM) of FPL's 2022 MFRs filed with the 2021 Rate Petition, and in the respective amounts and manner shown on Exhibit A, attached hereto.

(b) Effective January 1, 2023, FPL shall be authorized to increase its base rates by an amount that is intended to generate an additional $560 million over the Company's then current base rates, based on the projected 2023 test year billing determinants set forth in Schedules E-13e (with RSAM) and E-13d (with RSAM) of FPL's 2023 MFRs filed with the 2021 Rate Petition, and in the respective amounts and manner shown on Exhibit A, attached hereto.

(c) Attached hereto as Exhibit B are tariff sheets for new base rates and service charges that reflect the terms of this Agreement and implement the rate increase described in Paragraph 4(a) above, which tariff sheets shall become effective on January 1, 2022.

(d) Attached hereto as Exhibit C are tariff sheets for new base rates and service charges that reflect the terms of this Agreement and implement the additional rate increase

described in Paragraph 4(b) above, which tariff sheets shall become effective on January 1, 2023.

(e) As part of the negotiated exchange of consideration among the parties to this Agreement, (i) the energy and demand charges for business and commercial rates and the utility-controlled demand rates are adjusted as shown on Exhibits B and C, and (ii) the level of utility-controlled demand credits for customers receiving service pursuant to FPL's Commercial/ Industrial Load Control ("CILC") tariff and the Commercial/Industrial Demand Reduction ("CDR") rider shall each be the same as those currently in effect. FPL shall be entitled to recover the CILC and CDR credits through the energy conservation cost recovery ("ECCR") Clause. The Parties agree that no changes in these credits shall be implemented any earlier than the effective date of new FPL base rates implemented pursuant to a general base rate proceeding, and that such new CILC and CDR credits shall only be implemented prospectively from such effective date. At such time as FPL's base rates are reset in a general base rate proceeding, the CILC and CDR credits shall be reset.

(f) The rates set forth in Exhibits B and C are calculated based on a cost of service study that applies (i) the 12 CP and 1/13 methodology for Production Plant, (ii) 12 CP for Transmission Plant and (iii) a negotiated methodology for allocating Distribution Plant, limited by the Commission's traditional gradualism test found in Order No. PSC-09-0283-FOF-EI, pp. 86-87. Under the rates set forth in Exhibits B and C, no rate or revenue class receives (nor shall receive) an increase greater than 1.5 times the system average percentage increase in total and no class receives (nor shall receive) a decrease in rates.

(g) Base rates and credits applied to customer bills in accordance with this Paragraph 4 shall not be changed during the Minimum Term except as otherwise permitted in this Agreement.

5. FPL shall be authorized to apply a transition rider to the bills of customers located in the former Gulf service area and a corresponding transition credit to the bills of customers located in FPL's peninsular service area. The transition rider and credit will step down ratably and reach zero over five years as set forth in Exhibit B.

6. The tariff changes shown in Exhibits B and C, including but not limited to those listed below, shall be implemented:

(i) Cancel all existing Gulf tariff sheets and incorporate other ministerial changes to provide a uniform tariff book; and

(ii) Rename the term Customer Charge to Base Charge; and

(iii) Implement a Fixed Rate (Flat-1) Tariff once billing system modifications are complete; and

(iv) Increase the threshold between the General Service and the General Service Demand rate classes from 21 kW to 25 kW; and

(v) Add a maximum demand charge to all commercial and industrial time of use distribution-level rate schedules; and

(vi) Extend the Supplemental Power Services Rider optional pilot through December 31, 2025; and

(vii) Increase the Commercial Industrial Service Rider cap to the greater of 1000 MW or 75 contracts; and

(viii) Implement new Economic Development Rider tariff "Large EDR"; and

(ix) Close all unmetered lighting rate schedules, except LT-1 to new customers. Customers currently taking service under unmetered rate schedules will be grandfathered, and there will be four open tariffs to serve new customers: LT-1 for company-owned LED, street, outdoor, roadway and general lights; SL-1M for customer-owned street, roadway and general lights; SL-2M for traffic signals; and GS-1 for unmetered cable amplifiers and billboard lights; and

(x) Close Gulf Outdoor Service rate schedule to new customers and grandfather existing lighting customers under their existing rate schedule. Remaining customers will be migrated to the applicable FPL tariff; and

(xi) Increase meter tampering fee; and

(xii) Expand the existing field collection charge to include all premise visits; and

(xiii) Change all service charges including temporary construction service rates to reflect the cost of performing the service.

7. FPL shall be permitted to remove the Regulatory Assessment Fee ("RAF") from base rates and include the RAF, on the same line as the Gross Receipts Tax, on customer bills. The line shall be renamed "Gross Receipts Tax and Regulatory Assessment Fee" or an appropriate variation thereof. FPL will not collect the RAF until this change is implemented on the customer's bill. FPL will not back bill for any such uncollected RAFs.

8. Clause factors also shall be unified effective January 1, 2022, and shall include unified true-ups of any then outstanding over- or under- recoveries. In the 2021 clause proceedings, FPL will calculate and file unified clause factors that take effect January 1, 2022, subject to the Commission's approval of the factor calculations. All parties maintain

their full rights in the clause dockets, but shall not oppose unification of the clause factors or the date of implementation.

9. Nothing in this Agreement shall preclude FPL from requesting the Commission to approve the recovery of costs that are recoverable through base rates under the nuclear cost recovery statute, Section 366.93, Florida Statutes, and Commission Rule 26-6.0423, F.A.C. Nothing in this Agreement prohibits parties from participating without limitation in nuclear cost recovery proceedings and proceedings related thereto and opposing FPL's requests.

10. (a) Nothing in this Agreement shall preclude FPL from petitioning the Commission to seek recovery of costs associated with any tropical systems named by the National Hurricane Center or its successor (Storm Costs) without the application of any form of earnings test or measure and irrespective of previous or current base rate earnings or the remaining unamortized Reserve Amount as defined in Paragraph 16. Consistent with the rate design method set forth in Order No. PSC-06-0464-FOF-EI, the Parties agree that recovery of storm costs from customers will begin, on an interim basis, sixty days following the filing of a cost recovery petition and tariff with the Commission and will be based on a 12-month recovery period if the storm costs do not exceed $4.00/1,000 kWh on monthly residential customer bills. In the event the storm costs exceed that level, any additional costs in excess of $4.00/1,000 kWh may be recovered in a subsequent year or years as determined by the Commission. All storm-related costs subject to interim recovery under this Paragraph 10 shall be calculated and disposed of pursuant to Commission Rule 25-6.0143, F.A.C., and will be limited to costs resulting from a tropical system named by the National Hurricane Center or its successor, and additionally will be limited to the estimate of incremental costs above the level of storm reserve prior to the storm and to the replenishment of the storm reserve to its then-current level but in no event

less than $150 million. Replenishment of the storm reserve will be fully funded through the customer charge as outlined in this paragraph 10. The Parties to this Agreement are not precluded from participating in any such proceedings and opposing the amount of FPL's claimed costs but not the mechanism agreed to herein, provided that it is applied in accordance with this Agreement.

(b) The Parties agree that the $4.00/1,000 kWh cap in this Paragraph 10 will apply in aggregate for a calendar year for the purpose of the interim recovery set forth in Paragraph 10(a) above; provided, however, that FPL may petition the Commission to allow FPL to increase the initial 12 month recovery beyond $4.00/1,000 kWh in the event FPL incurs in excess of $800 million of storm recovery costs that qualify for recovery in a given calendar year, inclusive of the amount needed to replenish the storm reserve to the level described in Paragraphs 10(a) and 16(e). All Parties reserve their right to oppose such a petition.

(c) Any proceeding to recover costs associated with any Storm Costs shall not be a vehicle for a "rate case" type inquiry concerning the expenses, investment, or financial results of operations of the Company and shall not apply any form of earnings test or measure or consider previous or current base rate earnings or the remaining unamortized Reserve Amount as defined in Paragraph 16.

11. Nothing shall preclude the Company from requesting Commission approval for recovery of costs (a) that are of a type which traditionally, historically and ordinarily would be, have been, or are presently recovered through cost recovery clauses or surcharges, or (b) that are incremental costs not currently recovered in base rates which the Legislature or Commission determines are clause recoverable subsequent to the approval of this Agreement. It is the intent of the Parties in this Paragraph 11 that FPL not be allowed to

recover through cost recovery clauses increases in the magnitude of costs of types or categories (including but not limited to, for example, investment in and maintenance of transmission assets except as expressly provided for by Section 366.96, Fla. Stat.) that have been, and traditionally, historically, and ordinarily would be, recovered through base rates. It is further the intent of the Parties to recognize that an authorized governmental entity may impose requirements on FPL involving new or atypical kinds of costs (including but not limited to, for example, requirements related to cyber security), and concurrently or in connection with the imposition of such requirements, the Legislature and/or Commission may authorize FPL to recover those related costs through a cost recovery clause.

12. (a) FPL projects that for purposes of the cost recovery set forth in this Paragraph, it will undertake construction of approximately 894 MW of solar generation reasonably projected to go into service during 2024 and 894 MW of solar generation reasonably projected to go into service during 2025 or within one year following expiration of the Minimum Term, with the ability to carry over to 2025 any megawatts that do not enter service in 2024. For each solar project, which may consist of one or more solar generation sites as filed by FPL, that is approved by the Commission for cost recovery pursuant to the process described in this Paragraph, FPL's base rates will be increased by the incremental annualized base revenue requirement (excluding any land component that is already included in base rates as Plant Held for Future Use as shown on Exhibit MV-5) for the first 12 months of operation (the "Annualized Base Revenue Requirement"), but in no event shall such recovery commence before the entire solar project is in service. Each such Solar Base Rate Adjustment ("SoBRA") shall be authorized for solar projects for which FPL files for Commission approval pursuant to this Paragraph during the Minimum Term. The Commission's approval may occur before or after expiration of the Minimum Term. The

projects constructed pursuant to this Paragraph must be reasonably scheduled to be placed into service no later than one year following the expiration of the Minimum Term. The cost of the components, engineering and construction for any solar project constructed by FPL pursuant to this Paragraph shall be reasonable and in no event shall the average cost of all such projects in any filing for Commission approval exceed a value of $1,250 per kilowatt alternating current ("kW$_{AC}$") ("$1,250 kW$_{AC}$ Cap"), less the cost (on a per kW$_{AC}$ basis) of any land component allocated to such projects when that land is already included in rate base as Plant Held for Future Use as shown on Exhibit MV-5 filed in this Docket (referred to herein as "Adjusted Cap"). The Parties contemplate that FPL does not intend to use leased land in developing and constructing the projects. However, to the extent that leased land is used to construct a project, the lease expense will be converted to a capital cost surrogate in accordance with Commission practice and precedent and will be used to measure performance against the $1,250 kW$_{AC}$ Cap under this Paragraph.

(b) For solar generation subject to the Florida Electrical Power Plant Siting Act (i.e., 75 MW or greater), FPL will file a petition for need determination pursuant to Chapter 25-22, F.A.C. If approved pursuant to the procedures described in this Paragraph and Section 403.519, Fla. Stat., FPL will calculate and submit for Commission confirmation the amount of the SoBRA for such solar generation using the Fuel and Purchased Power Cost Recovery Clause docket ("Fuel Docket") projection filing for the year that solar generation will go into service.

(c) Solar generation not subject to the Florida Electrical Power Plant Siting Act (i.e., fewer than 75 MW) also will be subject to approval by the Commission as follows: (i) FPL will file a request for approval of such solar generation at the time of its final true-up filing in the Fuel Docket; (ii) all Fuel Docket deadlines and schedules shall apply; (iii) the issues

for determination are limited to the cost effectiveness of each project (i.e., will the project lower the projected system cumulative present value revenue requirement "CPVRR" as compared to such CPVRR without the solar project) and the amount of revenue requirements and appropriate percentage increase in base rates needed to collect the estimated revenue requirements; and (iv) approval of the solar generation project will be an issue to be resolved at the regularly scheduled Fuel Docket hearing; provided, however, that the Commission on its own initiative or upon good cause shown by an intervenor (which may include any Party to this Agreement or any other entity satisfying the standing requirements of Florida law) may set FPL's request for approval of the solar generation project for a separate hearing to be held in the Fuel Docket before the end of that calendar year. FPL will calculate and submit for Commission confirmation the amount of the SoBRA for each such solar project at the time of the projection filing for the year the solar project will go into service.

(d) FPL may add battery storage to any of the solar projects subject to recovery under this Paragraph provided that the combined cost of solar plus battery storage (i) for the project does not exceed $1,250 kW_{AC} Cap (or the Adjusted Cap, as applicable under subparagraph 12(a)), (ii) satisfies the cost-effectiveness condition in this Paragraph, and (iii) is cost effective compared to solar alone.

(e) For each solar project approved pursuant to this Agreement, the base rate increase shall be based upon FPL's billing determinants for the first 12 months following such project's commercial in-service date, where such billing determinants are those used in FPL's then-most-current Capacity Clause Recovery Clause ("CCR Clause") filings with the Commission, including, to the extent necessary, projections of such billing

determinants into a subsequent calendar year so as to cover the same 12 months as the first 12 months of each such solar project's operation.

(f) FPL may not receive approval for incremental SoBRA recovery of more than 894 MW of solar projects for a calendar year; provided, however, to the extent that FPL receives approval for SoBRA recovery in 2024 of less than 894 MW in a year, the surplus capacity can be carried over for recovery in 2025. For example, if FPL receives approval for SoBRA recovery in 2024 of 794 MW of solar capacity, it would be entitled to increase its request for 2025 SoBRA recovery for an additional 100 MW.

(g) Each SoBRA is to be reflected on FPL's customer bills by increasing base charges and base non-clause recoverable credits and commercial/industrial demand reduction credits by an equal percentage contemporaneously. The calculation of the percentage change in rates is based on the ratio of the jurisdictional Annualized Base Revenue Requirement and the forecasted retail base revenues from the sales of electricity during the first twelve months of operation. FPL will begin applying the incremental base rate charges for each SoBRA to meter readings made on and after the commercial in-service date of that solar generation site.

(h) The revenue requirements for each SoBRA will be calculated using the current authorized midpoint ROE, an incremental capital structure based on investor sources that is adjusted to reflect the inclusion of applicable tax credits on a normalized basis, and the depreciation-related accumulated deferred income tax proration adjustment that is required by Treasury Regulation §1.167(1)-1(h)(6).

(i) If FPL's actual installed cost for any solar generation site is less than the $1,250 kW_{AC} Cap (or the Adjusted Cap on a per site basis for any land already included in rate

base as Plant Held for Future Use as shown on Exhibit MV-5), the customers and FPL will share in the beneficial difference with 75% of the difference inuring to the benefit of customers and 25% serving as an incentive to the Company to seek cost savings. For example, if the actual installed cost of a solar generation site is $1,150 per kW_{AC}, the cost to be used for purposes of computing the revenue requirement would be $1,175 per kW_{AC} [0.25 times ($1,250 - $1,150) + $1,150)]. Any sharing related to a solar generation site that includes land already included in rate base as Plant Held for Future Use as shown on Exhibit MV-5 would be based on the Adjusted Cap on a per site basis. Additionally, the lower installed costs shall be the basis for the full revenue requirements and a one-time credit will be made through the CCR Clause. In order to determine the amount of this credit, a revised SoBRA Factor will be computed using the same data and methodology incorporated in the initial SoBRA factor. However, in lieu of the capital expenditures on which the Annualized Base Revenue Requirement was based, the calculation will use actual installed costs adjusted to reflect the incentive described in this subpart. On a going forward basis, base rates will be adjusted to reflect the revised SoBRA factor. The difference between the cumulative base revenues since the implementation of the initial SoBRA factor and the cumulative base revenues that would have resulted if the revised SoBRA factor had been in place during the same time period will be credited to customers through the CCR Clause with interest at the 30-day commercial paper rate as specified in Rule 25-6.109, F.A.C.

(j) Subject to the maximum cost of $1,250 kW_{AC} Cap (or the Adjusted Cap) as set forth in subparagraph 12(a), in the event that actual capital costs for a solar generation project are higher than the projection on which the Annualized Base Revenue Requirement was based, FPL at its option, may initiate a limited proceeding per Section 366.076, Florida

Statutes, limited to the issue of whether FPL has met the requirements of Rule 25-22.082(15), F.A.C. Nothing in this Agreement shall prohibit a Party from participating in any such limited proceeding for the purpose of challenging whether FPL has met the requirements of Rule 25-22.082(15) or otherwise acted in accordance with this Agreement. If the Commission finds that FPL has met the requirements of Rule 25-22.082(15), then FPL shall increase the SoBRA by the corresponding incremental revenue requirement due to such additional capital costs, provided, consistent with subparagraph 12(a) above, FPL is prohibited from recovering through the SoBRA mechanism for any project any costs greater than the $1,250 kW_{AC} Cap (or the Adjusted Cap as set forth in subparagraph 12(a)) under any circumstances. However, FPL's election not to seek such an increase in the SoBRA shall not preclude FPL from booking any incremental costs for surveillance reporting and all regulatory purposes subject only to a finding of imprudence or disallowance by the Commission. Nothing in this Agreement shall preclude any Party to this Agreement or any other lawful party with standing from participating, consistent with the full rights of an intervenor, in any such limited proceeding.

(k) FPL's base rates applied to customer bills, including the effects of the SoBRAs as implemented pursuant to this Agreement (i.e., uniform percent increase for all rate classes applied to base revenues), shall continue in effect until next reset by the Commission in a general base rate proceeding.

13. (a) If federal or state permanent tax changes ("Tax Reform") are effective during the Term, FPL will quantify the impact of Tax Reform on its Florida Jurisdictional base revenue requirement as projected in its forecasted earnings surveillance report for the calendar year that includes the period in which Tax Reform is effective. If Tax Reform is enacted effective for any of the tax years 2022 through the Term of this Agreement, the

impacts of Tax Reform on base revenue requirements will be adjusted for retail customers within the later of 90 days of when the Tax Reform becomes law or the effective date of the law but in no instance prior to January 1, 2022, through a prospective adjustment to base rates upon a thorough review of the effects of the tax reform on base revenue requirements. This adjustment shall be accomplished through a uniform percentage decrease or increase to customer, demand and energy base rate charges for all retail customer classes. Any effects of tax reform on retail revenue requirements from the effective date (but no earlier than January 1, 2022) through the date of the base rate adjustment shall be flowed back to, or collected from, customers through the CCR Clause on the same basis as used in any base rate adjustment.

(b) Excess and/or Deficient Deferred Taxes created by the Tax Reform shall be deferred to a regulatory asset or liability, which shall be included in the FPSC-adjusted capital structure and flowed back to, or collected from, customers over a term consistent with law. The remaining 2017 TCJA balance of unamortized unprotected excess deferred income tax shall not be included in the regulatory asset or liability described in this Paragraph, but instead will be the subject of Paragraph 26.

The flow back or collection shall be accomplished as follows:

(i) If the Average Rate Assumption Method used in the TCJA is prescribed, then the regulatory asset or liability will be flowed back to, or collected from, customers over the remaining life of the assets associated with the Excess and/or Deficient Deferred Taxes subject to the provisions related to FPSC adjusted operating income impacts of Tax Reform noted above.

(ii) If the Tax Reform law or act is silent on the flow-back or collection period for parts or all of the Excess and/or Deficient Deferred Taxes, and there are no other statutes or rules that govern the flow-back or collection period for "unprotected" amounts, then there is a rebuttable presumption that the following flow-back or collection period(s) will apply: (1) if the cumulative "unprotected" regulatory asset/liability balance is less than $500 million, the flow-back/collection period for the cumulative balance will be five years; or (2) if the cumulative "unprotected" regulatory asset/liability balance is equal to or greater than $500 million, the flow-back/collection period for the cumulative balance will be ten years.

(c) "Protected" and "unprotected" Excess and/or Deficient Deferred Taxes will be flowed back to, or collected from, retail customers within the later of 90 days of when the Tax Reform becomes law or the effective date of the law but no earlier than January 1, 2022. As subsequent information becomes available, such as FPL's federal tax return being filed, any true-ups or adjustments will be evaluated and implemented within 90 days of that information becoming available.

(d) If the applicable federal or state income tax rate for FPL changes more than 90 days before the effective date of any of the rate increases provided for in Paragraph 4, FPL will adjust the amount of the base rate increases to reflect the new tax rate before the implementation of such increase. Any base rate adjustments or changes that are implemented before the effective date of the applicable federal or state income tax rate change will be adjusted by applying no more than an equal percentage increase or decrease to each class and pursuant to subpart (a) of this Paragraph.

14. (a) Notwithstanding Paragraph 4 above, if FPL's earned return on common equity falls below the bottom of its authorized range during the Minimum Term on an FPL monthly

earnings surveillance report stated on an FPSC actual, adjusted basis, FPL may petition the FPSC to amend its base rates, either as a general rate proceeding under Sections 366.06 and 366.07, Florida Statutes, or as a limited proceeding under Section 366.076, Florida Statutes. Throughout this Agreement, "FPSC actual, adjusted basis" and "actual adjusted earned return" shall mean results reflecting all adjustments to FPL's books required by the Commission by rule or order, but excluding pro forma, weather-related adjustments. If FPL files a petition to initiate a general rate proceeding pursuant to this provision, FPL may request an interim rate increase pursuant to the provisions of Section 366.071, Florida Statutes. Nothing in this Agreement shall preclude any Party from participating in any proceeding initiated by FPL to increase base rates pursuant to this Paragraph consistent with the full rights of an intervenor.

(b) Notwithstanding Paragraph 4 above, if during the Minimum Term of this Agreement, FPL's earned return on common equity exceeds the top of its authorized ROE range reported in an FPL monthly earnings surveillance report stated on an FPSC actual, adjusted basis, any Party shall be entitled to petition the Commission for a review of FPL's base rates. In any proceeding initiated pursuant to this Paragraph, all parties will have full rights conferred by law.

(c) Notwithstanding Paragraph 4 above, this Agreement shall terminate upon the effective date of any final order issued in any such proceeding pursuant to this Paragraph 14 that changes FPL's base rates.

(d) This Paragraph 14 shall not (i) be construed to bar or limit FPL to any recovery of costs otherwise contemplated by this Agreement nor, in any proceeding initiated after a base rate proceeding filed pursuant to this Paragraph, shall any Party be prohibited from

taking any position or asserting the application of law or any right or defense in litigation related to FPL's efforts to recover such costs; (ii) apply to any request to change FPL's base rates that would become effective after this Agreement terminates; or (iii) limit any Party's rights in proceedings concerning changes to base rates that would become effective subsequent to the termination of this Agreement to argue that FPL's authorized ROE range or any other element used in deriving its revenue requirements or rates should differ from the range set forth in this Agreement.

15. FPL shall be authorized to establish the regulatory assets identified on Exhibit D attached to this Agreement. ("Regulatory Assets"). Amortization of the Regulatory Assets shall be pursuant to Exhibit D and subject to the provisions of Paragraph 16.

16. (a) In Order No. Order PSC-16-0560-AS-EI, the Commission authorized FPL to amortize the depreciation reserve surplus remaining at the end of 2016 plus up to $1 billion of theoretical reserve surplus effected by the depreciation agreed upon by the parties. This resulted in a total reserve amount of $1.25 billion; that amount was later reduced by $5 million pursuant to the Hurricane Irma settlement, Order No. PSC-2019-0319-S-EI and further reduced by $5 million pursuant to the Hurricane Dorian settlement, Order No. PSC-2021-0188-S-EI. FPL projected that it would have $346 million remaining at the end of 2021. The Parties acknowledge that the actual remaining amount may differ from the projection. The positive difference between the actual remaining amount, if any, and the $346 million, is the "Carryover Amount."

(b) The Parties agree that FPL is authorized to apply the alternative depreciation parameters and resulting rates as set forth in Exhibit KF-3(B). The parties acknowledge that application of those rates results in a $234.7 million reduction in the 2022 test year depreciation expense (compared to application of the depreciation rates resulting from

FPL's 2021 depreciation study), and the parties agree that FPL's theoretical depreciation reserve surplus for purposes of this Agreement shall be $1.45 billion, which is inclusive of the projected $346 million balance remaining at the end of 2021, (the "Reserve Amount") on January 1, 2022.

(c) The Parties agree that until expiration of the Minimum Term of this Agreement or the extension of one (1) year pursuant to Paragraph 16(g), FPL may amortize the Reserve Amount by recording credits to depreciation expense and debits to the cost of removal component of the depreciation reserve, or debits to depreciation expense and credits to the cost of removal component of the depreciation reserve, with the amounts to be amortized by the end of 2022 not to exceed a year-end total credit of $200 million and the amounts to be amortized in each remaining year of the Term left to FPL's discretion. Additionally, amortization in each year of the Term is subject to the following conditions: (i) for any surveillance reports submitted by FPL during the Minimum Term on which its ROE (measured on an FPSC actual, adjusted basis) would otherwise fall below the bottom of its authorized range, FPL must amortize at least the amount of the available Reserve Amount necessary to maintain in each such 12-month period an ROE at a level that does not fall below the bottom of its authorized range (measured on an FPSC actual, adjusted basis); (ii) FPL may not amortize the Reserve Amount in an amount that results in FPL achieving an ROE that exceeds the top of its authorized range (measured on an FPSC actual, adjusted basis) in any such 12-month period as measured by surveillance reports submitted by FPL; and (iii) FPL must debit depreciation expense and credit the depreciation reserve in an amount to cause FPL to not exceed the top of its authorized ROE range, provided, however, that if such credit would result in FPL exceeding the Reserve Amount of $1.45 billion, the provisions of subpart (e) of this Paragraph shall apply.

(d) The Parties agree that the Carryover Amount as described in subpart (a) of this Paragraph shall be used as follows: (i) fifty percent of the Carryover Amount would be applied to credit (decrease) the Regulatory Assets as shown on Exhibit D, page 1 attached hereto; and (ii) fifty percent of the Carryover Amount would be applied to credit (increase) the storm reserve as an unfunded amount, on a transitional basis subject to being replaced on a funded basis after depletion subsequent to a storm event.

(e) If a debit to depreciation expense is required to keep FPL from exceeding a Regulatory ROE that exceeds the top of its authorized range and such debit would result in the Reserve Amount exceeding $1.45 billion during any monthly reported period on an earnings surveillance report: (i) FPL will first record a debit to depreciation expense and a credit to depreciation reserve such that the Reserve Amount is $1.45 billion; (ii) whatever debit remains necessary to not exceed the top of its authorized ROE range will be recorded on the Company's books such that fifty percent of such debit amount is applied to credit (decrease) the Regulatory Assets shown on Exhibit D, page 1 and fifty percent is applied to credit (increase) the storm reserve as an unfunded amount. Any unfunded storm reserve balance must be depleted prior to using the funded reserve to recover Storm Costs. Nothing in this Paragraph shall preclude FPL from either expensing Storm Costs in accordance with Rule 25-6.0143, F.A.C. or exercising its option to seek recovery pursuant to Paragraph 10 of this Agreement for recoverable storm costs pursuant to Rule 25-6.0143, F.A.C.

(f) FPL shall not satisfy the requirement of Paragraph 14 that its actual adjusted earned ROE must fall below the bottom of its authorized range on a monthly surveillance report before it may initiate a petition to increase base rates during the Minimum Term unless FPL first uses any of the Reserve Amount that remains available for the purpose of

increasing its earned ROE to at least the bottom of its authorized range for the period in question.

(g) FPL shall file an attachment to its monthly earnings surveillance report for December 2021 that shows the final amount of the "rollover" surplus that remained at the end of 2021. Thereafter, FPL shall file an attachment to its monthly surveillance report for each month of each year during the Term that shows the amount of amortization credit or debit to the Reserve Amount on a monthly basis and year-end total basis for that calendar year. FPL may not amortize any portion of the Reserve Amount past December 31, 2025 unless it provides notice to the Parties by no later than March 31, 2025 that it does not intend to seek a general base rate increase to be effective any earlier than January 1, 2027, in which event the Minimum Term of this Agreement shall be extended by 12 months. Any amortization of the Reserve Amount after December 31, 2025 shall be in accord with this Paragraph.

17. The Parties agree that FPL's 2021 Depreciation Study, filed as Exhibit NWA-1, satisfies Rule 25-6.0436, F.A.C. and FPL's obligation to file a depreciation study pursuant to Order PSC-16-0560-AS-EI. Pursuant to this Agreement, however, FPL is authorized to apply the depreciation adjustments set forth in Exhibit KF-3(B).

18. The Parties agree that FPL's 2021 Dismantlement Study, filed as Exhibit JTK-1 (Corrected), satisfies Rule 25-6.04364, F.A.C. and FPL's obligation to file a dismantlement study pursuant to Order PSC 16-0560-AS-EI. The level of FPL's annual dismantlement accrual shall be as set forth in Exhibit E.

19. The Parties agree that the provisions of Rules 25-6.0436 and 25-6.04364, F.A.C., pursuant to which depreciation and dismantlement studies are generally filed at least every four

years will not apply to FPL until FPL files its next petition to change base rates. The depreciation rates and dismantlement accrual rates in effect as of the Implementation Date shall remain in effect until FPL's base rates are next reset in a general base rate proceeding. At such time as FPL shall next file a general base rate proceeding, it shall simultaneously file new depreciation and dismantlement studies and propose to reset depreciation rates and dismantlement accrual rates in accordance with the results of those studies. The Parties agree to support consolidation of proceedings, if needed, to reset FPL's base rates, depreciation rates and dismantlement accrual rates.

20. In Order No. PSC-2020-0084-S-EI, the Commission approved FPL's SolarTogether Tariff and Program ("SolarTogether"), a voluntary program that allows participating FPL customers ("Participants") to subscribe to a portion of cost-effective solar capacity and receive a credit for the solar production associated with their subscription. Under SolarTogether, Participants pay a monthly subscription charge designed to cover the costs associated with the capacity to which they subscribed. The Commission's Order authorized FPL to construct 1,490 MW of solar facilities. SolarTogether is fully subscribed and has a significant waiting list of customers who wish to enroll. The parties agree that (i) FPL shall be authorized to extend SolarTogether by constructing an additional 1,788 MW of cost-effective solar at its discretion through 2025, such that the total capacity of SolarTogether will amount to 3,278 MW; (ii) the incremental capacity above the original 1,490 MW shall be allocated 40% to residential and small business customers (45 MW reserved for low income participants) and 60% to commercial, industrial and governmental (20% of this capacity is reserved for participants located in the former Gulf territory); and (iii) the pricing for all participants will be as set forth in First Revised Tariff Sheet 8.932-8.934, included with Exhibit B. The projected benefits of the 3,278 MW of SolarTogether

shall be allocated 55% of the projected benefits to participants and 45% to the general body of ratepayers.

21. In Order No. PSC-130023-S-EI, the Commission authorized FPL to implement a Pilot Asset Optimization Program designed to create additional value for customers by FPL engaging in wholesale power purchases and sales, as well as all forms of asset optimization. In Order No. PSC-PSC-16-0560-AS-EI, the Commission approved modifications to the Asset Optimization Program. The Parties agree that FPL is authorized to continue the Asset Optimization Program as an ongoing program as previously approved in Order No. PSC-130023-S-EI and Order No. PSC-PSC-16-0560-AS-EI subject to the following modifications:

(i) FPL may optimize all fuel sources – beyond just natural gas supply and capacity – when it is reasonable and in the best interests of customers to do so based on the system requirements, market demand, and market price of the fuel or capacity at the time;

(ii) FPL may monetize its renewable energy credits;

(iii) The number of annual savings thresholds is reduced from four to three for reporting purposes. Threshold 1: FPL customers will receive 100% of the Incentive Mechanism gain up to a threshold of $42.5 million. Threshold 2: FPL will retain 60% and customers will receive 40% of incremental gains between $42.5 million and $100 million. Threshold 3: FPL will retain 50% and customers will receive 50% of incremental gains in excess of $100 million.

(iv) The per-MWh variable power O&M rate shall be $0.48/MWh.

(v) Optimization activities, variable power plant O&M rates, and savings thresholds shall be considered "adjustable parameters" such that FPL may request that the Commission review and adjust these mechanism parameters every four years in the Fuel Cost Recovery Docket.

Nothing in this Paragraph is intended to enlarge the jurisdiction of the Commission to approve cost recovery of investments beyond that authorized by Chapter 366, Fla. Stat.

22. FPL is authorized to recover the costs associated with the electric vehicle programs listed below ("EV Programs"). The Parties agree that FPL's decision to pursue the EV Programs described below is prudent, and they waive any right to challenge these programs, other than the reasonableness of amounts actually expended, in any proceeding addressing the recoverability of these program costs. The cost of the infrastructure of the EV programs, including the installation and removal costs, would be includable in FPL's jurisdictional rate base until recovered from customers. The EV Programs costs described herein are not incremental to the revenue requirements set forth in Paragraph 4.

(i) *EVolution* – a pilot program that supports the growth of electric vehicles. The primary objective of this pilot program for FPL is to gather data and learnings ahead of mass EV adoption to better plan for and design possible future EV investments. The FPL EVolution Pilot focuses on infrastructure build-out impacts of EV adoption rates, rate structures and demand models, and grid impacts of fast charging. The total investment in the FPL's EVolution Pilot Program is forecast to be $30 million through 2022.

(ii) *Public Fast Charging Program* – a pilot program that expands access to public fast charging, including access in underserved areas and evacuation routes. The total investment in the Public Fast Charging Program is forecast to be

$100 million over the four-year period 2022-2025, the revenue requirements of which will be partially offset by revenue received under FPL's UEV tariff approved in Docket 20200170-EI, which establishes a rate for utility-owned public EV fast charging stations.

(iii) *Residential EV Charging Services Pilot* – a voluntary tariff for residential customers who desire EV charging service, for a fixed rate, through the installation of a level 2 EV charger, owned, operated and maintained by FPL. The subscription utilizes FPL's filed Time-of-Use ("TOU") rate and includes unlimited off-peak charging and flexibility to charge during on-peak periods if needed, at on-peak TOU rate. FPL will provide full installation and equipment-only installation options pursuant to the Tariff Sheets 8.213-8.214 and 9.843-9.846, included with Exhibit B. The total investment in the Residential EV Charging Pilot is forecast to be $25 million over the four-year period 2022-2025.

(iv) *Commercial EV Charging Services Pilot* – a voluntary tariff for Commercial customers who desire EV charging services for fleet vehicles through the installation of Company owned, operated, maintained electric vehicle supply equipment on a customer's premise. Under the tariff, customer will pay a fixed monthly charge, established via a formula-based rate to allow for individual customer pricing designed to recover all costs and expenses over the life of the assets and be CPVRR neutral to the general body over applicable term. The total investment in the Fleet EV Pilot Program is forecast to be $25 million over the four-year period 2022-2025. The Commercial EV Charging Pilot Tariff is

attached as Tariff Sheet and associated customer agreement are attached as Tariff Sheets 8.942-8.943 and 9.833-9.840, included with Exhibit B.

(v) *New Technologies and Software* – limited pilot initiatives designed to evaluate emerging EV technologies and enhance service and resiliency for customers. In addition, FPL will implement software upgrades, including the FPL Evolution App and systems enhancements, to provide a streamlined customer experience in support of the EV programs. The total investment in the Technologies and Software is forecast to be $20 million over the four-year period 2022-2025.

(vi) *Education and Awareness.* FPL will complement its EV programs by adding components that increase awareness and educate customers about the choice to go electric. Such components may include but are not limited to: (a) creating school curriculums at all levels, from engaging EV awareness and education for school children to providing training programs, (b) promoting EV and infrastructure adoption at events such as sustainability conferences, earth days, home shows, and green markets; (c) establishing automaker/OEM and dealer partnerships to build EV awareness and drive sales; and (d) providing resources and tools (i.e., informational webpages and vehicle comparison tools) to inform consumers of electric vehicle benefits. The total investment in this Education and Awareness component of FPL's suite of EV projects is forecast to be $5 million over the four-year period 2022-2025.

23. FPL shall be authorized to offer a four-year voluntary pilot program pursuant to which commercial and industrial customers on a metered rate may elect to have FPL install and maintain a solar facility on their site for a monthly tariff charge (the "Solar Power Facilities Pilot Program"). Participating customers would select from a variety of options including,

but not limited to, solar trees, solar canopies and solar benches. Through a fixed monthly charge over the ten-year term of the customer agreement, all project capital costs and expenses will be recovered from program participants, such that the general body of customers will not be impacted. The Solar Power Facilities Pilot Program tariff sheet and associated customer agreement are attached as Tariff Sheets 8.939-8.940 and 9.849-9.856 included with Exhibit B. At least 60 days prior to the expiration of the Solar Power Facilities Pilot Program Tariff, FPL will submit either a petition to the Commission requesting approval to extend or modify the Tariff or close it to new customers. Regardless of whether the program continues after four years, customers already participating in the program will continue to be served under the Solar Power Facilities Pilot Program Tariff. The Solar Power Facilities Pilot Program costs described herein are not incremental to the revenue requirements set forth in Paragraph 4.

24. FPL shall be authorized to implement a Green Hydrogen pilot project that will allow FPL to evaluate how its combustion turbine units operate with a hydrogen fuel mix and to learn how a hydrogen fuel production and storage facility can be effectively used on site with combustion turbine units. The pilot would be deployed at the existing combustion turbine units at the Okeechobee Clean Energy Center where the Company would build an approximate 25 MW electrolyzer and a storage facility for the production and on-site storage of hydrogen. FPL estimates that the pilot project can be put in service in 2023 at an estimated cost of $65 million. The Parties agree that FPL's decision to pursue the Green Hydrogen pilot program is prudent, and they waive any right to challenge this pilot, other than the reasonableness of amounts actually expended, in any proceeding addressing the recoverability of the Green Hydrogen pilot program costs. The Green Hydrogen pilot

program costs described herein are not incremental to the revenue requirements set forth in Paragraph 4.

25. FPL shall be allowed to implement a new residential customer pilot program to test smart electrical panels (the "Smart Panel Pilot"). Under the Smart Panel Pilot, FPL will install at no additional cost to pilot participants up to 1,000 Company-owned smart electrical panels, which enable greater insights regarding and control of in-home electrical loads, thereby allowing advanced energy management capabilities. The Smart Panel Pilot will test the feasibility of employing command-and-control load management messaging over the existing smart meter network as well as determine customer satisfaction. Through this Pilot, FPL will gather technical, operational and financial feasibility learnings to test its ability to manage load and to enhance the Company's demand-side management load control program. A copy of the Smart Panel Pilot Tariff (customer agreement) is attached as Tariff Sheet 9.806-9.808, included with Exhibit B. The total investment in the Company's proposed Smart Panel Pilot is forecasted to be up to $6 million from 2022 through 2023. The Parties agree that FPL's decision to pursue the Smart Panel Pilot Program is prudent, and they waive any right to challenge this pilot, other than the reasonableness of amounts actually expended, in any proceeding addressing the recoverability of the Smart Panel Pilot Program costs. The cost of the equipment associated with Smart Panel Pilot Program, including the installation and removal costs, would be includable in FPL's jurisdictional rate base until recovered from customers. The Smart Panel pilot program costs described herein are not incremental to the revenue requirements set forth in Paragraph 4.

26. Pursuant to the settlement approved in Order No. PSC-2019-0225-FOF-EI, FPL is currently amortizing unprotected excess accumulated deferred income taxes generated by

the 2017 TCJA over a 10-year period which began in 2018. FPL is authorized to accelerate the amortization of the remaining amount of unprotected excess deferred income taxes that would have been amortized in 2026 and 2027 such that those amounts would instead be amortized ratably over the period from 2022-2025. This would result in the acceleration of up to $163 million of unprotected excess accumulated deferred income tax amortization, or approximately $41 million in each year from 2022-2025.

27. FPL agrees to the termination of 100% of natural gas financial hedging prospectively for the Minimum Term and any extensions thereof and will make filings to implement such termination in Docket No. 20210001-EI and subsequent fuel clause proceedings. FPL shall not be prohibited from filing a petition and proposed risk management plan with the Commission to address natural gas financial hedging following expiration of the Minimum Term. The Parties understand and intend that FPL will not enter into any new financial natural gas hedging contracts after the date on which this Agreement is executed, except as may be necessary for FPL to remain in compliance to the minimum extent practicable with the requirements of its currently approved Risk Management Plan.

28. No Party to this Agreement will request, support, or seek to impose a change in the application of any provision hereof. Except as provided in Paragraph 14, a Party to this Agreement will neither seek nor support any change in FPL's base rates or credits applied to customer bills, including limited, interim or any other rate decreases, that would take effect prior to expiration of the Minimum Term, except for any such reduction requested by FPL or as otherwise provided for in this Agreement. No party is prohibited from seeking interim, limited, or general base rate relief, or a change to credits, to be effective following latter of the expiration of the Minimum Term or any extensions thereof.

29. Nothing in this Agreement will preclude FPL from filing and the Commission from approving any new or revised tariff provisions or rate schedules requested by FPL, provided that such tariff request does not increase any existing base rate component of a tariff or rate schedule during the Term unless the application of such new or revised tariff, service or rate schedule is optional to FPL's customers.

30. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification. The Parties agree that approval of this Agreement is in the public interest. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof. No party will assert in any proceeding before the Commission or any court that this Agreement or any of the terms in the Agreement shall have any precedential value, except to enforce the provisions of this Agreement. Approval of this Agreement in its entirety will resolve all matters and issues in Docket No. 20210015-EI pursuant to and in accordance with Section 120.57(4), Florida Statutes. This docket will be closed effective on the date the Commission Order approving this Agreement is final, and no Party shall seek appellate review of any order approving this Agreement issued in this Docket and each Party shall oppose such review.

31. This Agreement is dated as of August 9, 2021. It may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature

page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.

32. All provisions of this Agreement survive the Minimum Term unless expressly stated herein.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408

By: _____
Eric E. Silagy
President & CEO

Office of Public Counsel
Richard Gentry
The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

By: Richard Gentry
Richard Gentry

Attachment A

Florida Industrial Power Users Group
Jon C. Moyle, Jr.
Moyle Law Firm
118 North Gadsden Street
Tallahassee FL 32301

By: _____ August 9, 2021
Jon C. Moyle

Florida Retail Federation
James Brew
Stone Law Firm
1025 Thomas Jefferson St., NW
Ste. 800 West
Washington, DC 20007

By: James Brew

Attachment A

Southern Alliance for Clean Energy
Stephen A. Smith
P.O. Box 1842
Knoxville, TN 37901

By: _____
Stephen A. Smith

FILED 12/9/2021
DOCUMENT NO. 13007-2021
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO. 20210015-EI ORDER NO. PSC-2021-0446A-S-EI ISSUED: December 9, 2021

AMENDATORY ORDER

BY THE COMMISSION:

On December 2, 2021, we issued Order No. PSC-2021-0446-S-EI, approving the 2021 Stipulation and Settlement Agreement entered into by Florida Power and Light Company (FPL), the Office of Public Counsel, and several intervening parties as a full resolution of the issues raised in this docket with respect to FPL's petition for rate increase. However, due to scrivener's errors, several dates and references in the Order are not correct. Therefore, Order No. PSC-2021-0446-S-EI is amended in the following respects:

Page 4, third full paragraph, first sentence:

The 2021 Settlement has a minimum four year term through December 31, 202~~6~~5.

Page 8, fourth full paragraph, first sentence:

We have been asked whether we have the statutory authority to approve seven regulatory rate recovery mechanisms ~~found in the 2021 Settlement Agreement~~.

Page 8, last sentence (continued on page 9):

In the 2021 Settlement, the SCRM, SoBRA, Asset Incentive, and federal and state corporate income tax adjustment all contain the following provisions: (1) a description of the activity whose costs are sought to be recovered; (2) a method for calculating those costs; (3) a description of how and when those costs will be recovered, i.e., an increase in base rates, a surcharge, etc.; and (4) a ~~"true-up"~~ proceeding in which the final costs for the activity are litigated and determined.

Page 11, footnote 29, first sentence:

The RSAM concept was first approved as part of ~~the~~ a Settlement Agreement for FPL~~'s~~ in 201~~6~~1 ~~base rate case~~.

Page 14, third full paragraph, third sentence:

As noted above, the procedures established in the 2021 Settlement for the SCRM, SoBRA, Asset Incentive, and federal and state corporate income tax adjustments all require a ~~"true-up"~~ proceeding in which the final costs for each activity are litigated and determined.

Page 14, third full paragraph, fourth sentence:

Contrary to FAIR and Fla. Rising's assertion that there has been no opportunity by ratepayers to question these mechanisms and adjustments prior to their implementation and prescribed rate increases, ratepayers will actually have been given two opportunities to do so: once at the ~~November 2~~ September 20, 2021, hearing on the base rate case/2021 Settlement, and another when the final costs are ultimately determined.

Page 17, third bullet, first sentence:

FPL can seek recovery of costs associated with any tropical ~~storm~~ system named by the National Hurricane Center or its successor without the application of any form of earnings test or measure and irrespective of previous or current base rate earnings or the remaining unamortized storm reserve as described in Paragraph 16 of the 2021 Settlement.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-2021-0446-S-EI is hereby amended to reflect the above corrections. It is further

ORDERED that Order No. PSC-2021-0446-S-EI is reaffirmed in all other respects.

By ORDER of the Florida Public Service Commission this 9th day of December, 2021.

ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS