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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Increase in Rates by Florida Power & Light Company	)	DOCKET NO. 080677-EI
In Re: 2009 Depreciation and Dismantlement Study by Florida Power & Light Company	)	DOCKET NO. 090130-EI
	)	FILED: November 16, 2009

POSTHEARING STATEMENT AND BRIEF OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation (the "FRF"),[1] pursuant to the Prehearing Order in this docket, Order No. PSC-09-0573-PHO-EI, the Order Establishing Procedure, Order No. 09-0159-PCO-EI, and Order No. PSC-09-0731-PCO-EI, and pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), hereby submits the FRF's Posthearing Statement and Brief.

SUMMARY OF THE FLORIDA RETAIL FEDERATION'S REQUESTED RELIEF

When all is said and done, Florida Power & Light Company is requesting base rate increases that, if granted, would result in its customers paying nearly $1.5 Billion per year more, by mid-2011, than they pay today. Even without regard to the present "bleak" state of Florida's economy, Olivera, TR 169, but considering only the economic and financial realities and minimal risks facing FPL, the Company's requested increase of $1.5 Billion per year in additional base rate revenues is excessive, unreasonable, and contrary to the public interest, and would, if granted, result in rates that are unfair, unjust, unreasonable, and greater than necessary to be fairly compensatory to the utility.

[1] In this Posthearing Statement and Brief, the following additional abbreviations are used: "Consumer Intervenors" or "Consumers" refers collectively to the FRF, the Office of Public Counsel, Attorney General Bill McCollum, South Florida Hospital and Healthcare Association, the Florida Association for Fairness in Rate Making, the City of South Daytona, the Florida Industrial Power Users Group, Richard Unger, and the Federal Executive Agencies. "FPL" and "Company" refer to Florida Power & Light Company. "Commission" refers to the Florida Public Service Commission. Citations to the hearing transcript are in the form "TR (page number)," with the name of the witness preceding the TR cite where appropriate. Citations to hearing exhibits are in the form "EXH (Exhibit number) (page number)."

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In fulfilling its statutory mandate to regulate public utilities in the public interest, the Commission must ensure that FPL provides safe, adequate, and reliable electric service to its customers at the lowest possible cost, and FPL agrees that this is its duty. Olivera, TR 520 Competent, substantial evidence of record demonstrates that FPL can, in fact, provide safe, adequate, reliable service, and have an opportunity to earn a reasonable return on its investment, and maintain entirely acceptable financial integrity metrics, with no rate increases at all – and in fact with a substantial decrease in its base rates. Accordingly, based on the evidence, the Commission should deny FPL's request and should instead reduce FPL's rates by roughly $342 Million per year. EXH 248 (SLB-26)

FPL touts the fact that it has had no net increase in its base rates since 1985, when its St. Lucie II nuclear power plant came into service. FPL neglects to mention, however, that during this period it has refunded hundreds of millions of dollars to customers pursuant to Commission orders and Commission-approved settlement agreements with consumer parties, that it has twice reduced its rates pursuant to such settlement agreements, and that it settled its most recent rate case, Docket No. 050045-EI, by agreeing to a base rate freeze. FPL also neglects to mention that it has earned generous returns on its common equity investment during this period: from 1996 through 2007, FPL's achieved after-tax ROEs, calculated on a FPSC-adjusted basis, ranged between 11.96% and 13.58%, declining only to 10.83% in 2008. EXH 388 In other words, FPL has reduced its rates and made refunds because it would otherwise have overearned, and even having done so, it still earned generous, enviable returns.

In determining a utility's fair, just, and reasonable rates, the Commission generally has the legal ability to choose within the range of competing reasonable values on each cost-determining factor in dispute, provided that the Commission's decisions must be supported by competent, substantial evidence of record. To fulfill its statutory duty to ensure, in protecting the public interest, that FPL provides safe, adequate, reliable service at the lowest possible cost, the Commission should – arguably must – choose the lowest value supported by competent, substantial evidence for each cost-determining factor in the case.

When the Commission follows this clear, statutorily based approach to regulating FPL in the public interest, the evidence shows that the Commission should not only deny FPL's overreaching request for an additional $1.5 Billion of its customers' money, but that the Commission should in fact reduce FPL's base rates by more than $342 Million per year (Brown, TR 2415), for the reasons summarized here, and based on the evidence set forth in the body of this Posthearing Brief.

Return on Equity. FPL's proposed base rates are based on its over-reaching, unreasonable requested rate of return on common equity ("ROE"), 12.50% after taxes, which corresponds to a return greater than 20% before taxes, see Olivera, TR 3595, while the Public Counsel's witness supports – by competent, substantial evidence – an after-tax ROE of 9.50%. Woolridge, TR 3191, 3209 Choosing the lowest value supported by competent, substantial evidence **reduces FPL's requested increase by approximately $402 Million per year**.

Capital Structure. The Company's proposed capital structure includes 59.6 percent equity from investor funds[2]; OPC's witness Prof. Randall Woolridge recommends a modestly lower value, 54.4 percent, for ratemaking purposes (TR 3209), and the SFHHA's witness Richard Baudino supports a similar equity ratio of 53.5 percent (TR 2577, 2614). The Commission should use either of the more reasonable 53.5% or 54.4% equity ratios supported by the competent, substantial evidence embodied in Dr. Woolridge's and Mr. Baudino's testimony, and set FPL's revenue requirements and rates accordingly. Using Dr. Woolridge's equity ratio incrementally reduces FPL's revenue requirements by approximately $106 Million per year, over and above the reduction of approximately $402 Million per year that results from reducing FPL's authorized ROE to 9.5%.

[2] This value represents only the percentage of equity from investor-supplied capital funds; it does not include other components of the utility's capital structure that are recognized for regulatory ratemaking purposes, such as customer deposits and deferred tax credits. See MFR Schedule D-1a and EXH 212 (JRW-5) at 2.

<u>Adjustment for Other Operating Revenues</u>. An adjustment is necessary to recognize a net increase in other operating revenues to be realized by FPL during the 2010 test year of $12.9 Million, which reduces FPL's requested increase by the same amount. <u>See</u> EXH 248 (SLB-26)

<u>Depreciation Surplus Amortization</u>. By its own calculations, FPL has an accumulated depreciation reserve surplus of $1.245 Billion. Davis, TR 6403, EXH 151, EXH 359 (The Citizens' witness, Jacob Pous, has presented competent, substantial evidence that the actual reserve surplus is $2.74 Billion (TR 1832, EXH 183), but the FRF joins the Public Counsel in only advocating the prompt amortization of FPL's estimated surplus, as this will maintain healthy financial indicators or "metrics" for FPL and will also leave FPL with a substantial reserve surplus going forward toward future rate cases.) The Commission's policy is to rectify depreciation reserve imbalances, whether positive (surpluses) or negative (deficits), as quickly as possible, so long as doing so does not jeopardize the financial integrity of the utility. This is fully consistent with the maxim that the purpose of a fully litigated rate case is to true up all regulatory accounts. Here, competent, substantial evidence of record demonstrates that the Commission can and should follow this policy, and that doing so will promote and serve the goal of enabling FPL to provide safe, adequate, reliable service at the lowest possible cost to customers. This evidence shows that the Commission should **<u>reduce FPL's rate request by a net of approximately $291 Million per year</u>** to amortize the surplus, and that it can do so while preserving FPL's financial integrity. Lawton, TR 2296, EXH 252

<u>Depreciation Expense</u>. Competent substantial evidence, particularly the testimony of Citizens' witness Jacob Pous, supports **<u>reducing FPL's depreciation expense, and thus FPL's requested revenue requirements, by $240.6 Million per year</u>**. Pous, TR 1809, EXH 182

<u>Operating & Maintenance Expense</u>. In many cases, the Company's requested O&M expenses exceed the Commission benchmarks and represent sharp spikes above prior-year O&M costs. Competent substantial evidence demonstrates that the Company's excessive rate hike request reflects overloading of unsupported costs into the test year. The Commission should

reject FPL's scheme to inflate O&M expenses in the test year and make the following adjustments to O&M expense.

O&M Expense – Incentive Pay, Excessive Pay Raises, Unfilled Positions, and Fringe Benefits. FPL's proposed rate increase includes substantial costs for positions that are unfilled and likely to remain unfilled and substantial incentive pay amounts that reward FPL's management and non-management employees primarily for growing shareholder earnings and otherwise benefiting shareholders. Competent substantial evidence supports reducing FPL's request for unfilled positions, increasing the request for offsetting additional overtime costs, and reducing FPL's proposed customer responsibility share of management and non-management incentives to reflect the fact that those incentives are driven primarily by benefits to FPL's shareholders, rather than its customers. These adjustments **reduce FPL's requested increase by roughly $42.5 Million per year**.

O&M Expense – Storm Reserve Accrual. FPL already has a storm reserve of approximately $191 Million, yet it asks the Commission to approve a storm reserve for FPL that the Commission specifically rejected in 2006. Here FPL wants the Commission to approve a storm reserve of $650 Million, which the Commission clearly and unequivocally rejected by Order No. 06-0464-FOF-EI. FPL proposes to achieve this reserve level by imposing a new storm reserve accrual of $150 Million per year. Competent, substantial evidence of record, specifically including the fact that FPL's storm reserve is already effectively at the target level approved by the Commission a mere 3 years ago, demonstrates that FPL's base rates in this case should be set using a value of $0 per year for the storm reserve accrual. The Commission should thus choose the lowest value for storm reserve accrual supported by competent, substantial evidence, and should accordingly **reduce FPL's rate increase request by $150 Million per year**.

No Subsequent Year Rate Hike in 2011. The Commission should reject FPL's request for a subsequent year increase. Forecasting revenues and costs is difficult enough under any circumstances, but now more so – and therefore more speculative – in current economic

conditions where the timing of the anticipated economic recovery could cause significant differences in results. Moreover, forecasts are inherently more uncertain the further into the future the forecast goes. See Morley TR 1040, Hanser TR 1199 FPL's request for a self-executing, automatic rate increase would improperly and unwisely shift the burden of insuring fair rates to customers and the Commission. If FPL needs additional funds, it is much sounder public policy to require FPL to come to the Commission and prove its need than to give FPL the money on the front end and leave consumers with only the daunting prospect of having to petition the Commission for a general rate case if they believe that FPL's rates are too high.

No Generation Base Rate Adjustment. If FPL needs additional funds to provide safe, adequate, reliable service in 2011 or any period thereafter, it should come to the Commission and demonstrate that it does, in fact, need a rate increase. Granting a self-executing increase now takes away the Commission's power to ensure fair, just and reasonable rates and is contrary to the public interest.

As discussed above, the Commission is statutorily charged to regulate Florida Power & Light Company in the public interest, and to ensure that FPL's rates are fair, just, and reasonable. As the Commission considers FPL's and the Consumer Intervenors' positions in light of its duty to regulate in the public interest, Olivera, TR 644-45, the Commission must also consider the current state of Florida's economy. While the facts (a) that Florida's July unemployment rate of 10.7% is much greater than the national average, Morley TR 1083-84, EXH 389, and (b) that Florida has the highest foreclosure rates in the country, EXH 390, Morley TR 1084, are not themselves determinative of whether FPL's rates should be increased or decreased, these facts obviously relate to the public interest and the Commission must therefore be mindful of them, if only as a powerful reminder that the Commission must ensure that FPL provides safe, adequate, reliable service at the lowest possible cost. See Olivera, TR 643 (agreeing that the Commission can consider the current state of the economy in making its decision in this case).

In summary, FPL wants to increase its base rates by $1.5 Billion per year, over the next year-and-a-half. FPL would thus remove $1 Billion from its customers' spending power in 2010,

and nearly $1.5 Billion from its customers' resources in 2011,[3] in the face of the worst economic downturn since the Great Depression. FPL doesn't know, because it did not attempt to study, the impact of its request on Florida's economy or employment situation. Olivera, TR 577-78; Morley, TR 1054, 1084-85 FPL doesn't know how much of what it collects from its customers would flow out of Florida. The Florida Retail Federation, joined by the other Consumer Intervenors, strongly believes that FPL's proposed increases are contrary to the public interest and not necessary to enable FPL to provide safe, adequate, reliable service at the lowest possible cost.

As discussed thoroughly in the body of this Posthearing Brief, competent, substantial evidence in the record shows that, with the adjustments summarized above, FPL can provide safe, adequate, and reliable service with rates that will produce base rate revenues approximately <u>$1.33 Billion less than the amount requested by FPL</u> in 2010, while still leaving FPL with the ability to attract capital and to maintain healthy financial integrity "metrics." Thus, the Commission should reduce FPL's rates by $342 Million per year from present levels, secure in the knowledge that FPL will still be able to provide safe, adequate, reliable service, that FPL will still be able to raise needed capital, and that FPL's financial integrity metrics will remain healthy, with the new, lower rates approved by the Commission, consistent with competent, substantial evidence of record in this proceeding.

THE STATUTORY CONTEXT AND STANDARD OF PROOF

The Commission regulates public utilities, including FPL, pursuant to several sections of Chapter 366, Florida Statutes.[4] Section 366.01 provides:

> The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state <u>for the protection of the</u>

[3] This $1.5 Billion rate incase will stay in effect indefinitely, <u>i.e.</u>, until changed by the Commission in some potentially-distant future proceeding. Accordingly, if no rate case occurs for 25 more years, the result will likely be a minimum of $40 Billion in rates being paid by FPL's customers.

[4] All citations herein to the Florida Statutes are to the 2009 edition.

> public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

(Emphasis supplied.) Section 366.03 provides in pertinent part:

> All rates and charges made, demanded, or received by any public utility for any service rendered . . . shall be fair and reasonable.

Section 366.041 provides in pertinent part:

> In fixing the just, reasonable, and compensatory rates, charges . . . .

Section 366.05 provides in pertinent part:

> In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges . . . .

Section 366.06(1) provides in pertinent part:

> . . . 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 standard of proof for the Commission's decisions in this case is a preponderance of the evidence. In Re: Petition of Florida Power & Light Co. for Authority to Increase Its Rates and Charges, FPSC Docket No. 810002-EU, Order No. 10306, 1981 WL 634490 at 7. The Commission's decisions must be supported by competent substantial evidence of record, but once thus supported, they are not subject to reversal on factual grounds. United Tel. Co. v. Mayo, 345 So. 2d 648, 654 (Fla. 1977).

Where there is competent substantial evidence of record supporting different positions, the Commission has discretion to decide on either position or, at least generally, on any position intermediate between the competing ends of a continuum. Id.; Gulf Power Co. v. Wilson, 597 So. 2d 270, 273 (Fla. 1992); In Re: Application of Gulf Power Company for Authority to Increase Its Rates and Charges, FPSC Docket No. 800001-EU, Order No. 9852, 1981 WL 634110 at 4; Gulf Power Co. v. Bevis, 296 So. 2d 482, 487 (Fla. 1974); City of Miami v. Florida Public Service Comm'n, 208 So. 2d 249, 253 (Fla. 1968).

STATEMENT OF THE CASE

These proceedings were initiated by Florida Power & Light Company when it filed its test year letter on November 17, 2008, its petition and Minimum Filing Requirements for a general base rate increase in Docket No. 080677-EI on March 18, 2009, and also its depreciation and dismantlement study in Docket No. 090130-EI, on March 17, 2009. Both dockets were consolidated for purposes of a single evidentiary hearing by Commission Order No. 09-0311-PCO-EI, issued on May 7, 2009.

FPL seeks the Commission's authority to increase its base rates by amounts sufficient to increase its total annual revenues from charging those base rates by approximately $1.04 Billion per year, effective in January 2010, by an additional $247 Million per year effective in January 2011, and by a further $182 Million per year, through FPL's proposed Generation Base Rate Adjustment ("GBRA"), effective in July 2011. All in all, FPL thus asks the Commission to approve base rates that would generate nearly $1.5 Billion per year more in base rates than its customers are currently paying. FPL asserts, among other things, that it needs these revenues in order to produce an after-tax rate of return on its common equity investment of 12.5%, and that it "needs" all of these revenue increases in order to provide safe, adequate, reliable service, and to be able to attract capital based on healthy financial indicators, commonly known as "financial metrics."

The Florida Retail Federation, the Citizens of Florida ("Citizens") represented by their Public Counsel ("OPC"), the Attorney General of Florida, the South Florida Hospital and Health Care Association ("SFHHA"), the Florida Industrial Power Users Group ("FIPUG"), and the Federal Executive Agencies, represented by counsel serving in the United States Air Force, all intervened to oppose FPL's proposed rate hikes. Collectively, all of these Consumer Intervenors believe that the Company's request should be denied, and then some. The Consumer Intervenors believe that, with minor variances in the recommended amounts, FPL can provide safe, adequate, reliable service, earn a reasonable return, raise adequate capital, and enjoy healthy financial

integrity metrics with a rate decrease of approximately $342 Million per year. EXH 248 (SLB-26 at 1)

The Commission's statutory mandate is to regulate public utilities, such as FPL, in the public interest. Fla. Stat. § 366.01 (2009). As a public utility subject to the Commission's plenary regulatory jurisdiction, FPL's rates must be fair, just, reasonable, compensatory, and not unduly discriminatory. Fla. Stat. §§ 366.03, 366.04, 366.041, 366.05(1), and 366.06(1). The Company is entitled to the opportunity to earn a reasonable return on its capital reasonably and prudently invested, and actually used and useful in providing the public utility electric service for which it has a legal monopoly within its service territory. Fla. Stat. § 366.06(1).

The ultimate issue before the Commission, then, is whether to approve part or all of FPL's proposed rate increases, to approve part or all of the Consumer Intervenors' proposed rate decreases, or to keep FPL's rates as they are. Of course, as set forth in the Prehearing Order, there are more than 100 issues that address specific components of the Company's revenue requirements,[5] and the resolution of those component issues will produce the final determination of FPL's authorized revenue requirements and rates.

Taken together, the statutes and case law recognize that it is FPL's duty to provide safe, adequate, reliable service at the lowest possible cost, and it is the Commission's statutory mandate to set FPL's rates accordingly. Exercising its discretion to choose within ranges of cost-determining factors, the Commission must therefore base FPL's rates on the lowest possible values for each factor that will enable FPL to provide safe, adequate, reliable service to its customers at the lowest possible cost, provided that doing so does not (a) prevent FPL from recovering its reasonable and prudent costs, (b) prevent FPL from attracting sufficient capital to

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[5] There are also approximately 30 issues, some of which are the subject of stipulations, relating to the allocation of costs among rate classes and the design or specific rates and charges to produce the authorized revenue requirements. The Florida Retail Federation generally takes no position on these cost allocation and rate design issues. Rather, recognizing that all customers are in the same boat, fighting back FPL's proposed tsunami of increased rates and costs, the FRF advocates that any rate decrease be allocated proportionally among all base rates.

support necessary investment, or (c) preclude FPL from having an opportunity to earn a reasonable return on its prudent, used and useful investment. To allow FPL to charge rates any higher than that would be unfair, unjust, and unreasonable to FPL's customers; to force FPL to charge less than that would be unfair, unjust, and unreasonable to FPL.

RELEVANT HISTORY OF FPL'S RATES, REVENUES, AND EARNINGS

In light of FPL's frequent recitation that its base rates are lower today than they were in 1985, see Olivera, TR 170, 185, the last time the Commission decided a full rate case for FPL, it is useful to examine what happened to FPL's rates and earnings during the intervening quarter of a century. At the outset, it is critical to note that it is not just the level of rates themselves that is at issue in a rate case, but rather it is the sufficiency of a utility's rates to enable it to provide safe, adequate, reliable service while recovering its reasonable and prudent expenses, attracting sufficient capital, and earning a reasonable rate of return, assuming sound management. In other words, the fact that FPL has lower rates today than in 1985 is irrelevant to the issue in this case, which is whether FPL needs a rate increase to provide adequate service at the lowest possible cost.

In fact, the history of FPL's rates, revenues, and profitability since its last fully litigated rate case shows that FPL had to make substantial refunds between 1988 and 1991 to reflect tax savings realized during that time, and that it did not suffer from underearnings as a result. See Orders Nos. 19158, 21143, 22334, 23349, 23727, and 24644. Additionally, FPL's authorized ROE was lowered twice during this time, first from 15.6% to 13.6%, Order No. 19158, and then from 13.6% to 12.8%, Order No. 23996. FPL's authorized ROE was further lowered to 12.0% in 1993, by Order No. PSC-93-1024-FOF-EI, and then lowered again to 11.0% by Order No. PSC-99-0519-AS-EI. FPL's base rates were also reduced by the stipulation approved by Order No. PSC-99-0519-AS-EI, by $350 Million per year. Obviously, although FPL's base rates decreased over this 15-year period, FPL was not underearning and was, presumably, providing adequate service and attracting capital.

FPL further reduced its rates by $250 Million per year in 2002, pursuant to a stipulation approved by Commission Order No. PSC-02-0501-AS-EI, and FPL further made revenue-sharing refunds pursuant to the stipulation approved by that Order. FPL sought a $430 Million per year increase in its base rates in 2005, but settled that case with a base rate freeze. During the period from 1996 through 2008, FPL's achieved ROEs ranged between 10.83% in 2008 and 13.58% in 2003. EXH 388

Thus, this evidence – the Commission's orders and FPL's earnings surveillance reports – shows that FPL was obviously providing adequate service, attracting capital, and earning healthy returns on its investment for the past quarter-century without any base rate increases, and in fact with base rate reductions. FPL's touting of the fact that it hasn't had a base rate increase since 1985 is irrelevant to the issue in this case, which is whether FPL needs any rate increase, at all, in order to provide adequate service, attract sufficient capital, and earn a reasonable return on its investment. Certainly the track record indicates that, if history were likely to repeat itself, FPL probably doesn't need as much of an increase as it is seeking, if it needs an increase at all. Of course, the Florida Retail Federation and the other Consumer Intervenors believe that FPL does not need any rate increases, and that, in fact, FPL can provide adequate service, attract sufficient capital, and earn a healthy return on equity with a rate decrease of roughly $342 Million per year. This is the issue that the Commission is called upon to decide.

FPL'S MISLEADING CLAIMS

Through its testimony and exhibits, FPL has made a number of claims about its service and rates, leadership in renewable energy, its dire earnings situation, and its self-professed concern about the plight of its customers in Florida's current "bleak economic climate." However, as discussed below, its claims do not always jibe with reality.

FPL's Attempts to Mask Its Base Rate Hike with Lower Fuel Costs. FPL's president, Armando Olivera, presented exhibits that showed that, assuming that FPL's fuel charges are reduced as projected, FPL's total residential bill would decline even with its base rate increase. TR 180-81, EXH 39. However, this misses the point of the base rate case: FPL's bills would be

significantly lower with no base rate increase, and lower still with a base rate decrease as advocated by the Consumer Intervenors. Moreover, FPL was apparently attempting to mask its base rate increase with its lower fuel charges, which necessarily result from lower fuel costs. Consider Mr. Olivera's testimony that "it is in our customers' long term best interests to implement this base rate increase now, at a time when the result will be lower overall bills for most customers." TR 3565 Although Mr. Olivera testified on cross-examination that it wasn't really his intent to declare that the base rate increase would result in lower bills, TR 3607, his testimony speaks for itself and he did not offer to amend it.

The real point with respect to FPL's bills and the relative impacts of the base rate increase and the fuel charge decrease is that FPL was apparently trying to persuade its customers that they should accept the base rate increase because fuel costs were going down. The problem with this suggestion is that FPL attempts to take credit for doing what it already must do – i.e., reduce its fuel charges to reflect current and currently projected fuel costs. Fortunately, the Commission's recent decision to postpone its decisions on FPL's rate hike request, together with the Commission's recent decision to require FPL to refund its 2009 fuel cost over-recoveries through a one-time credit to customers' bills in January 2010, will provide transparency to customers: they will actually see the fuel charge reductions, as well as the credit for 2009 overcharges, separately from the base rate changes, if any, voted by the Commission for implementation later in the year.

FPL's Claim to be a Leader In Renewable Energy. FPL's witness Christopher Bennett, FPL Group's Executive Vice President & Chief Strategy, Policy & Business Process Improvement Officer, TR 3366, testified that "FPL is a leader in renewable energy in the state of Florida." TR 3402 To paraphrase a recently popular rental-car commercial, "Not exactly." In fact, Florida presently generates a paltry 3 percent of all of its electricity using renewable energy resources; Mr. Bennett puts the value at "probably in the 2 to 3 or 4 percent range." TR 3468 FPL, a self-proclaimed "leader in renewable energy in the state of Florida," however, only generates about half that percentage from renewables. Mr. Bennett testified that, "[d]uring 2008,

FPL provided its customers with a total of 1,627,407 MWh or electricity from these renewable resources." TR 3402 EXH 396, an excerpt from FPL's 2009 Ten-Year Site Plan, shows that FPL's total sales to ultimate customers in 2008 were 102,919 gigawatt-hours, or 102,919,000 MWh. TR 3466-67, EXH 396 at 43 of the excerpt. Dividing FPL's actual renewable energy supplied to customers by its total sales shows that only about 1.6 percent of FPL's sales to customers were supplied from renewable energy resources. TR 3467 This is "not exactly" the leadership that FPL claims, rather FPL lags substantially behind the average for the state as a whole.

FPL's Claimed Concern About the Bleak State of the Economy. FPL would have the Commission, and apparently its customers, believe that it cares about their welfare in these dire economic times, when Florida's unemployment rate is pushing 11% and when Florida has the highest foreclosure rates in the country. EXH 389, 390 For example, FPL's president, Armando Olivera, testified that "We know that our customers feel the costs of everything today. This is the effect that recessions have on consumers." TR 221 He also testified that "[b]ecause of today's bleak economic climate," FPL "want[s] to ensure that we clearly explain why a rate change is the right course of action." TR 169 FPL's Vice President of Customer Service, Marlene Santos, also told customers that "[w]e understand that customers that are struggling to make ends meet need more than just low electricity prices, you need help to lower your bills," and that "we are very mindful of today's difficult economy." Plantation Service Hearing Transcript at 18-19.

FPL's claimed understanding of the plight of its customers and that its customers need low prices and low bills simply does not withstand scrutiny when the components of FPL's increase are examined, even in a cursory manner. FPL's claimed concern about the bleak economic climate is shown to be false by FPL's overreaching requests to take more than $1 Billion a year out of its customers pockets based almost entirely on its desire to achieve an unreasonable return on equity – 12.5% after taxes, equivalent to more than 20% before taxes – that is totally and completely out of line with returns being authorized by utility commissions

throughout the United States, EXH 462, on aggressive depreciation accounting proposals, and on a request for a new storm reserve accrual that is effectively the same proposal that the Commission rejected in 2006. Moreover, FPL did not even attempt to study the impact of taking this amount of spending power out of the pockets and wallets and savings accounts of Floridians before launching its request.

FPL's Claims That Its Rates Are Below the National Average and Its Service is Top Tier. FPL asserts that it provides "top tier service at a price that is below the national average." Testimony of Armando J. Olivera, TR 179 Again quoting the rental-car commercial, this is "not exactly" true, but one has to parse through FPL's claims and actually look at other data to find the truth. The truth is that FPL's bill for a residential customer using 1,000 kilowatt-hours per month is actually below the national average. However, FPL's overall average cost per kilowatt-hour for electric service isn't even close to the national average: rather, it is more than 11 percent greater than the national average. EXH 395 presents data from the U.S. Energy Information Administration that shows that the 2009 year-to-date U.S. average revenue for all customer sectors was 9.78 cents per kWh. However, dividing FPL's total revenues for 2009, $11,552,408,000 (from MFR Schedule C-2, page 1 of 3 for the 2009 prior test year) by FPL's projected or estimated sales of 101,078 gigawatt-hours (equal to 101,078,000,000 kWh) for 2009 (from Exhibit 396, an excerpt from FPL's 2009 Ten-Year Site Plan) indicates that FPL's average revenue per kWh was, in fact, 11.43 cents per kWh, which is 11.7 percent greater than the national average. Again, FPL's claims are not fully explained and are facially misleading.

Regarding its claim that it provides top tier service, FPL conducted its own customer survey that showed the results it claims, but the nationally recognized survey of residential customer satisfaction by J.D. Power Associates for 2009 shows that FPL's customer satisfaction index ranking was actually below the average for its comparison group of large utilities in the South Region. EXH 394

Additionally, FPL's claims regarding its commitment to "top tier service" and long run excellence are called into serious question by the unrebutted testimony of two FPL employees.

At the Fort Myers customer hearing, Jack Wilson testified "as an employee and customer of Florida Power & Light." Fort Myers Service Hearing Transcript at 118. Mr. Wilson testified as follows:

> Has Florida Power and Light told this Commission what its plans are for its employees in the training arena? We have five different business units. We have little or no training going on at any of those business units. In Marlene Santos' business unit, we discontinued that training program. It costs money. We have – we no longer have that in the meter department. The only existing training we have has just started in the nuclear arena. So the other business units, there is no training.
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> * * *
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> We have 3,300 - 3,500 bargaining unit employees that work out in the field. We have 1,200 of them – more than 1,200, I believe it is 1,285 that are eligible for retirement today. They are 50 years old or older. If they leave tomorrow, I don't know what we're going to do.

Id. at 119.

To the same point, Mr. Marcos Romero, a Senior Line Specialist employee of Florida Power & Light, testified at the Melbourne Service Hearing as follows:

> There's a few things that haven't been brought up here, but they relate to pass-through costs and storm restoration and how these costs are constantly increasing, and they affect the customer. One is the increased age of the workforce at Florida Power & Light. It's 50 years plus. A lot of people are close to retirement. You just do not turn linemen over overnight. It takes years of experience to be able to respond in the manner that so many people have spoken, with that kind of efficiency and professionalism. To get the lights back on quickly, you can't not just throw people into the mix and expect to get that done.
>
> And the training has not been forthcoming. We don't have the people to replace the ones that are going to be retiring. This has led to dependence on the company's part, excuse me, on foreign contractors, utilities when we have severe storms. The cost of these foreign contractors and utilities are extremely high. They're far more than FPL crews would cost.

Melbourne Service Hearing Transcript at 67.

FPL Cries "Wolf" About Its Alleged Dire Earnings Situation. FPL's claim that it will only earn 4.7% on its equity investment in 2010 without a rate increase is no more than a cry of

"wolf." This self-serving claim, obviously designed to make the Commission believe that FPL will not be able to provide adequate service without a huge rate increase, depends on several critical assumptions: (a) that the Commission accepts all of FPL's claimed and proposed expenses for the 2010 test year; (b) that the Commission accepts all of FPL's proposed investments as reasonable and prudent; (c) that the Commission accepts all of FPL's proposals relative to the accounting treatment of FPL's depreciation expenses and of its huge, $1.245 Billion to $2.74 Billion, depreciation reserve surplus; (d) that FPL actually makes all of its investments as projected and incurs all of its expenses are projected; and (e) that FPL's revenue projections are accurate.

On the Consumers' side of the case, competent substantial evidence presented by the Citizens' witnesses and other witnesses for the Consumer Intervenors demonstrates that FPL can provide safe, adequate, reliable service, attract sufficient capital, and earn a reasonable return on equity investment, with rate reductions totaling $342 Million per year. In fact, the vast majority of this result is obtained through a handful of factors that have nothing whatsoever to do with FPL's actual out-of-pocket costs of providing service: reducing FPL's authorized ROE to 9.5% ($400 Million per year); modestly reducing FPL's equity ratio (from investor-provided funds) from 59.6% to 54.4% ($106 Million per year); reducing FPL's depreciation expenses to reflect more reasonable service lives and salvage values ($241 Million per year); amortizing FPL's depreciation surplus, as estimated by FPL, over 4 years instead of 22 years ($291 Million per year, net); and eliminating FPL's proposed request for an unnecessary increase in its storm reserve accrual ($150 Million per year). (This request is unnecessary because FPL already has a $191 Million storm reserve, which is effectively the value approved by the Commission following evidentiary proceedings a mere 3 years ago.) Adopting the Consumers' positions on these factors alone would reduce FPL's revenues by nearly $1.2 Billion per year, without touching one dollar of FPL's actual out-of-pocket expenses of providing service.

THE FLORIDA RETAIL FEDERATION'S BRIEF ON SPECIFIC ISSUES

Against the backdrop of FPL's litany of misleading claims and assertions as to its performance and leadership, and against the historical backdrop of FPL's high profitability over the past 25 years, including the fact that it agreed to a base rate freeze in its 2005 rate case wherein it proposed the largest base rate increase in its history and in the history of the Florida Public Service Commission up to that time, the Commission is asked to determine whether FPL really **needs** a rate increase at all. As explained below, FPL's request is easily shown to be based on its desire to achieve unreasonably high returns ($402MM) on an over-funded amount of common equity ($106MM), on inappropriate treatment of its huge depreciation reserve surplus and depreciation expense ($531MM), and on an unreasonable request for an unnecessarily high storm reserve ($150MM). Together, correcting only these factors to reasonable levels, all of which adjustments are supported by competent substantial evidence, will reduce FPL's request by nearly $1.2 Billion per year. Additional adjustments for other operating and maintenance expenses, including labor costs that are not likely to be incurred and incentive compensation that benefits shareholders far more than customers further reduce the reasonable revenues necessary for FPL to provide safe, adequate, reliable service at the lowest possible cost. Additionally, the Commission should reject FPL's request for automatic future increases through its proposed subsequent year increase in 2011 and through its proposed Generation Base Rate Adjustment. Quite simply, implementing a GBRA is better for FPL than it is for its ratepayers. These major subjects are discussed here in the FRF's Brief on Specific Issues, and the FRF's positions on all of the issues identified in the Prehearing Order follow in the FRF's Posthearing Statement of Issues and Positions.

SUMMARY

When all is said and done, Florida Power & Light Company is requesting base rate increases that, if granted, would result in its customers paying nearly $1.5 Billion per year more, by mid-2011, than they do today. These rates will apply every year until a new rate case is

initiated. Even without regard to the present "bleak" state of Florida's economy, but considering only the economic and financial realities and minimal risks facing FPL, the Company's requested increase of $1.5 Billion per year in additional base rate revenues is excessive and contrary to the public interest, and would, if granted, result in rates that are unfair, unjust, unreasonable, and greater than necessary to be fairly compensatory to the utility.

In fulfilling its statutory mandate to regulate public utilities in the public interest, the Commission must ensure that FPL provides safe, adequate, and reliable electric service to its customers at the lowest possible cost, and FPL agrees that this is its duty. Davis, TR 6409 (stating that "a utility is under an obligation to serve its customers and to do so at the lowest possible cost."); Olivera, TR 520 Following this clear, statutorily based approach to regulating FPL's rates and service in the public interest, competent, substantial evidence of record demonstrates that FPL can, in fact, provide safe, adequate, reliable service, and have an opportunity to earn a reasonable return on its investment, and maintain entirely acceptable financial integrity metrics, with no rate increases at all – and in fact with a substantial decrease in its base rates. Accordingly, based on the evidence, the Commission should deny FPL's request and should instead reduce FPL's rates by roughly $342 Million per year.

The following sections of this posthearing brief address major issue areas, including:

I. The proper rate of return on equity to be used in setting FPL's revenue requirements and rates in this case.

II. The proper capital structure to be used in setting FPL's revenue requirements and rates

III. Ratemaking treatment of FPL's $2.7 Billion accumulated depreciation reserve surplus

IV. Depreciation expense

V. Operating and Maintenance Expense
   A. O&M Expense - Incentive Pay
   B. O&M Expense - Labor Costs

C. O&M Expense - Storm Reserve Accrual

VI. Other Operating Revenue

VII. FPL's Proposed Automatic Future Rate Increases
A. Subsequent Year Rate Increase for 2011
B. Generation Base Rate Adjustment

I. Rate of Return on Common Equity (Issue 80)

FPL's proposed base rates are based on its over-reaching, unreasonable requested rate of return on common equity ("ROE"), 12.50% after taxes, which corresponds to a return greater than 20% before taxes. See Olivera, TR 3595 The Public Counsel's witness, Professor Randall Woolridge, supports an after-tax ROE of 9.50% (TR 3191, 3209), and the SFHHA's witness, Richard Baudino, supports an after-tax ROE of 10.40% (TR 2607). Therefore, choosing the lowest value supported by competent, substantial evidence **reduces FPL's requested increase by approximately $400 Million per year**. See Olivera TR 360, Avera TR 4476 (stating that 100 basis points of FPL's requested ROE is equal to approximately $130 Million of base revenue). If the Commission were to believe that a rate greater than 9.50% would be appropriate, the Florida Retail Federation respectfully suggests that the Commission should not approve a rate any greater than 10.51%, which is the average of all ROE awards granted by public utility regulatory authorities in the United States in 2009. EXH 462

Return on common equity, or "ROE," is the measure of return or profit to the utility's shareholders. See Avera, TR 4378 It is essentially the amount "left over" as net operating income after all of the utility's expenses, including debt service, have been paid and also including recorded depreciation expense and taxes. In setting a utility's base rates, the Commission must use a value for ROE that is applied to the equity component of the utility's capital structure in order to compute the amount of return that the utility's customers will be responsible for. Once set, the base rates remain unchanged until further order of the Commission, so between rate cases, the actually achieved ROE will fluctuate. See, e.g., EXH

388 (showing that FPL's achieved ROEs ranged from 10.83% to 13.58% over the period 1996-2008).

The guiding principle that the Commission uses in determining what ROE to use in setting rates is whether it provides a fair return on investment, and whether it provides the utility with sufficient capability to attract capital. Naturally, the utility's shareholders desire higher returns, so they want the Commission to use a higher ROE in setting rates. Also naturally, customers want the Commission to use a lower ROE in setting rates, so that their rates will be less than with a higher ROE. As discussed throughout this brief, FPL's duty in operating its system, and the Commission's duty in setting FPL's rates, is to set rates at a level sufficient for FPL to provide safe, adequate, reliable service at the lowest possible cost. In the context of the ROE issue, then, the Commission must choose the lowest ROE value that enables FPL to provide safe, adequate, reliable service at the lowest possible cost, provided that that ROE value must be fair to FPL's equity investors and sufficient to enable FPL to raise capital.

FPL has earned substantial returns on common equity over the past decade, ranging from a high of 13.58% in 2003 to a low of 10.83% in 2008. EXH 388. Since its base rate increase in 1985 to reflect the commercial in-service status of the St. Lucie II nuclear unit, FPL refunded more than $180 Million to its customers to reflect tax savings between 1988 and 1991. Order Nos. 19158, 21143, 22334, 23349, 23727 and 24644. In 1999, FPL agreed to a settlement that resulted in permanent base rate reductions of $350 Million per year, Order No. PSC-99-0519-AS-EI (the "1999 Settlement"), and in 2002, FPL agreed to further permanent base rate reductions of $250 Million per year in settling an earnings review case, Order No. 02-0501-AS-EI (the "2002 Settlement"). Pursuant to the revenue-sharing provisions of the 1999 and 2002 Settlements, FPL further refunded more than $230 Million to its customers between 1999 and 2003. In 2005, FPL filed for a base rate increase of $430 Million per year, representing the second largest request in FPL's history and also the second largest request in the Commission's

history.[6] Despite its claims that it needed this huge increase to continue providing adequate service, FPL settled this case with a base rate freeze. Order No. PSC-05-0902-S-EI (the "2005 Settlement"). Even so, throughout all of the years covered by these Settlements, FPL continued to earn generous, enviable returns between 10.83% and 13.58% (EXH 388), even while refunding more than $230 Million to customers in addition to the rate decreases that it agreed to in the 1999 and 2002 Settlements.

The *Bluefield* and *Hope* Cases Only Require Reasonable Returns. Although FPL and other utilities would have the Commission believe otherwise, the decisions of the United States Supreme Court in Bluefield and Hope[7] do not require high or excessive ROEs. They simply require that rates be set at a level sufficient to cover the utility's legitimate operating costs and provide the utility with the opportunity, assuming prudent management, with sufficient funds to pay its debt service, provide a reasonable return on equity, maintain its credit at a satisfactory level and attract capital. Hope, 320 U.S. at 603. The return on equity must simply be commensurate with returns on investments in other enterprises with similar risks. Id.

The FRF and the other Consumer Intervenors are asking no more and no less than this. The FRF simply believes, based on competent substantial evidence, that FPL's risks are minimal and accordingly that its ROE does not have to be remotely close to its "ask" of 12.50% in order to attract capital. FPL competes in national capital markets; utilities operating in those national capital markets have been awarded an average ROE of 10.51% in 2009. EXH 462. The current risk-free rate of return, which is generally regarded as the rate on 20 or 30-year U.S. Treasury bonds, is between 4 and 4.5 percent (Woolridge, TR 3242); under a risk premium analysis, common sense would indicate that, where FPL recovers approximately 64% of its total revenues

[6] Before FPL's in this case, and Progress Energy Florida's request for $500 Million year in base rate increases in Docket No. 090079-EI, the largest request in the Commission's history was FPL's request for $476 Million per year in Docket No. 810002-EU; in that case, the Commission granted an increase of $255.8 Million, slightly more than half of FPL's request.

[7] Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of West Virginia, 262 U.S. 679 (1923).

through cost recovery charges, MFR, Schedule C-2; Avera, TR 4704, and other line item charges, with virtually no risk of disallowance (and no risk of disallowance for reasonable and prudent costs), the extra risk is probably not outside the range of risk premiums, 3.22% per Dr. Woolridge's "Building Blocks" analysis to 5.39% historical risk premium, reported by Dr. Woolridge. TR 3242-46, EXH 218 (JRW-11). These data in turn support an ROE for FPL in the range of roughly 7.5% to roughly 10%. See Woolridge, TR 3246. Surely no one believes that the risk of FPL not recovering its operating costs and its debt service is significant, let alone sufficient to justify a return three times the risk-free rate.

FPL Operates With Virtually No Risk of Not Recovering Its Expenses. Before proceeding with discussions of FPL's ability to attract equity and debt capital, it is important to note that, under Florida's constructive regulatory regime, FPL is blessed with a very, very high degree of certainty for recovering virtually all of its operating costs, as well as its debt service costs and its legitimately calculated "return of capital" through the recording of depreciation expense. Using the cost recovery clauses[8] and charges, and other line-item charges, provided for by Commission practice and Florida Statutes, FPL recovers 64% of its total revenues through such charges. MFR Schedule C-2, page 1, Avera, TR 4704 Correspondingly, FPL faces very, very low risks of cost disallowance for these cost items. The only actual exceptions have been minor instances where FPL has been denied recovery of expenses that the Commission found to be imprudent, e.g., certain replacement fuel costs of $6.1 Million that were denied in Order No. 09-0024-FOF-EI, and certain storm restoration costs that were either disallowed as imprudent or as being appropriately assigned to capital accounts by Order No. 06-0464-FOF-EI. The argument over depreciation expenses, discussed below, is over the timing of FPL's recovery of

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[8] The cost recovery clauses and associated charges, and line item recovery charges, include: Fuel and Purchased Power Cost Recovery Clause, Capacity Cost Recovery Clause, Energy Conservation Cost Recovery Clause, Environmental Cost Recovery Clause, Nuclear Cost Recovery Clause (charges for which are recovered within the Capacity Cost Recovery Charge), Storm Charge, Franchise Fee line item recovery, and Gross Receipts Tax line item recovery.

its capital through booking depreciation expense, not over whether FPL will actually realize the "return of" its capital investment over time. And finally, the Commission has never failed to allow FPL or any other Florida investor-owned electric utility to recover sufficient revenues to meet its debt service payments. Thus, the real issue here is what ROE FPL truly "needs" to attract equity capital and to maintain sufficient financial health to enable it to attract debt capital.

Attracting Capital – Part I: Equity. Investors want certainty. A certain after-tax return of 9.50%, in times when such a return is very attractive, and where recovery of the substantial majority of FPL's expenses is assured through cost recovery clauses, and where financial market volatility, as indicated by the Volatility Index ("VIX") published by the Chicago Board of Exchange, has stabilized greatly since FPL filed its case in March 2009 (EXH 492; Avera, TR 4496-97), is at least attractive, and probably generous. Certainly the vast majority of Florida's citizens would consider it to be generous.

FPL's requested ROE in this case, 12.50% after taxes, is unreasonable, unjustified, and not necessary for FPL to provide adequate service, to have an opportunity – with prudent management – to earn a reasonable return on its investment, or to attract capital. An abundance of competent substantial evidence supports this conclusion. Each full percentage point, or each 100 basis points, of FPL's after-tax ROE represents total revenue requirements of approximately $134 Million per year. Avera, TR 4476 Even though the after-tax ROE might be "only" 12.5%, that amount must be "grossed up" for the income taxes necessary to produce the after-tax return. This is accomplished using the Net Operating Income Multiplier (or "NOI Multiplier") of 1.63342, from FPL's MFR Schedule C-44. Thus, the pre-tax return necessary to produce the after-tax ROE of 12.5% is approximately 20.5%.

FPL's ROE should reflect the minimal risks that FPL faces, as well as the volatility and uncertainty in capital markets. Although his analyses indicate that an appropriate ROE for FPL would be in the range of 7.5% to 10.3%, based on current conditions and FPL's favorable risk profile, Dr. Woolridge recommends that an ROE of 9.5%, in the high end of his range, is appropriate for FPL. TR 3346 This is competent substantial evidence that FPL can attract

equity capital with its rates set on this basis, and the Commission should follow this evidence in setting FPL's rates in this case.

Attracting Capital – Part II: Debt. FPL also needs to attract debt capital for funding its long-term capital investments. The issue of the amounts of debt and equity that FPL uses for its capital financing is discussed below. This brief section addresses the question whether FPL can justify a higher ROE based on an asserted need to maintain a certain bond rating. The FRF believes that an ROE of 9.5% is entirely adequate, even in conjunction with all of the reductions and adjustments recommended by the Consumers' witnesses, to support FPL's ability to attract bond financing for its capital needs.

FPL's current bond rating is "single A." Olivera, TR 366, EXH 461 The Citizens' witness Daniel Lawton has presented calculations that demonstrate that with the amortization of FPL's huge depreciation surplus, FPL's "financial metrics" will remain very comfortably and favorably in the ranges for a single-A bond rating. TR 2300-01 In EXH 254 (DJL-6), the after-tax metrics of cash from operations times interest, cash from operations as a percentage of debt, cash from operations as a percentage of adjusted debt, and the debt ratio or percentage, are all shown to be well within the ranges for single-A ratings. The cushions are so substantial that, if the Commission adopts all of OPC's recommendations in these consolidated dockets, including the recommendation to amortize $1.25 Billion of FPL's reserve excess over four years and OPC's overall recommendation to reduce base rates by $342 Million annually, FPL would continue to exhibit strong financial integrity consistent with its ability to issue bonds with a single-A rating.

It is worth repeating that the Florida Public Service Commission has never failed to allow a Florida investor-owned electric utility sufficient revenues to pay its debt service.

Long-Term Overall Cost of Capital. FPL has attempted to assert that while a lower ROE in this case would result in lower rates for the near term, its witnesses claim that long-run capital costs would be higher as a result. See Pimentel, TR 4873 Using a sometimes-popular Southern term, "that dog just doesn't hunt." In the first instance, this assertion is contradicted by

Mr. Lawton's financial integrity analyses. See TR 2300-01 In the second instance, FPL's assertions are obviously speculative, based on very long-run assertions as to what might happen 8 to 15 years in the future. In the third instance, considering the very low risks that FPL and other Florida utilities face under the Commission's constructive regulatory regime, a 9.5% or similar ROE, with a high degree of certainty, can reasonably be expected to provide a sound basis for FPL to attract both equity and debt capital.

Finally, simple arithmetic readily disproves FPL's assertion. The differential in ROE between FPL's "ask" of 12.5% and Dr. Woolridge's recommendation of 9.5% is 300 basis points; and to evaluate the incremental impact on FPL's cost of capital and thus ultimately on rates, this would have to be grossed up by the NOI multiplier of 1.63342. Thus, applying the resultant equity cost value of about 4.9% to roughly half of FPL's capital costs, say $6 Billion for the sake of example, indicates additional costs of about $294 Million per year. Compared to this, even an extremely generous assumption of an additional 200 basis points in long-term debt costs applied to an assumed "debt half" of FPL's capital structure would only result in an additional cost of $120 Million. And this calculation assumes that FPL's bond rating would decline, which is by no means certain,[9] and it further assumes instantaneous re-financing of FPL's debt. In other words, when one does the math, FPL's assertion doesn't add up.

No Adverse Implications for the Turkey Point Nuclear Project. FPL's attempts to suggest that a lower ROE would jeopardize its ability to pursue its future capital expansion projects, including FPL's Turkey Point 6 and 7 nuclear projects, are a red herring. FPL knows, and investors know, that pursuant to the Nuclear Cost Recovery Charge ("NCRC") statute, Section 366.93, Florida Statutes, FPL will earn an overall return on its investment on the Turkey

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[9] FPL's own witness, Dr. Avera clearly stated that he wouldn't presume to tell the Commission what the rating agencies' reaction to an ROE of 9.5% would be. Avera, TR 4697 FPL offers only rank speculation as to the impact on its bond ratings if the Commission rejects FPL's requested rate increase. See Olivera, TR 619-21. FPL did not offer any testimony from any witnesses employed by the rating agencies; accordingly FPL has failed to meet its burden of proof on this issue.

Point units until their in-service dates that incorporates FPL's capital structure as of 2006, which includes an 11.75% ROE on its Turkey Point 6 and 7 investments. See Avera, TR 4684 This is true even if FPL were ultimately to abandon the Turkey Point Project. See Fla. Stat. § 366.93. This is because the statute provides that FPL shall earn on its nuclear investment at its Allowance for Funds Used During Construction ("AFUDC") rate that was approved in the 2005 FPL Settlement, because that was the rate in effect for FPL when the statute was enacted and because FPL submitted its need determination petition for the Turkey Point Project before December 31, 2010.

No Departure from Constructive Regulation. The FRF is not advocating that the Commission depart from constructive regulation. The Commission provides highly constructive regulation to FPL and other public utilities by providing for them to recover, with virtual certainty, the substantial majority of their operating expenses through cost recovery charges, including new cost recovery charges such as the Nuclear Cost Recovery Charge authorized by Section 366.93, Florida Statutes, and further including prompt recovery of extraordinary costs such as the storm restoration costs that FPL incurred in 2004 and 2005, as well as prompt access to a substantial storm reserve – presently $191 Million - that FPL obtained through the issuance of PSC-approved storm recovery bonds (see Order No. PSC-06-0464-FOF-EI), which are in turn being paid off by FPL's customers through FPL's PSC-approved Storm Restoration Charges.

What the Consumer Intervenors are really asking is that the Commission's ROE decision appropriately reflect the very low risks that FPL faces. The issues before the Commission are not about abandoning the Commission' s policies and practices of allowing Florida public utilities to recover the substantial majority of their total revenues through annually trued-up cost recovery charges and related line item charges (such as franchise fees and gross receipts taxes), Rather, the issues before the Commission are only about following the principles of Hope and Bluefield that utilities' returns are to reflect the risks that they actually face and to be sufficient for them to attract capital, while also resulting in rates that are fair, just, and reasonable to

customers. FPL and other Florida utilities face minimal risk in Florida's regulatory environment, and the ROE values used to set their rates should reflect those minimal risks.[10]

Rate of Return on Equity: Conclusion

Abundant competent substantial evidence supports setting FPL's rates using an ROE value far less than FPL's overreaching request of 12.50% after taxes. Dr. Woolridge concludes that an ROE of 9.50% is appropriate, and Mr. Baudino concludes that an ROE of 10.40% is appropriate for FPL in this case. Woolridge, TR 3191, 3209; Baudino, TR 2607. FPL competes for capital with other utilities in national capital markets, and the average ROE award for cases decided in 2009 has been 10.51%. EXH 462.

Much of the argument and competing testimony on the ROE issue revolves around the choice of the "comparable group," i.e., the group of utilities that the competing witnesses assert should be used as the basis for determining the appropriate ROE for FPL. FPL's witness Avera chooses one group and asserts that the average characteristics for that group support giving FPL an after-tax ROE of 12.5%, while OPC's witness Woolridge chooses a different group and correspondingly asserts that the characteristics of his comparable group support basing FPL's rates on an authorized ROE of 9.5%, and the SFHHA's witness Richard Baudino recommends an ROE of 10.4% based on his selected comparable group.

Of course, the Florida Retail Federation and the other Consumer Intervenors believe that an after-tax ROE of 9.5% in current capital market conditions, and in the context of the Commission's and Florida Legislature's regulatory regime in which FPL faces very, very little

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[10] FPL has attempted to assert that the presence of "politics" in the mix, including the Governor's request for postponement of the Commission's decision until new Commissioners take office, will have a negative impact on investors' perceptions of the risk that Florida utilities face. In this regard, it is noteworthy that no representative of any rating agency testified on this subject. Again, the FRF believes that investors want certainty, and there is no reason to believe that the Commission will depart from sound, cost-based regulatory principles in setting FPL's rates in this case. The fact is that competent substantial evidence supports substantial reductions in FPL's rates, and while the Commission may or may not weigh the evidence to reach that conclusion, the evidence is there, and the Commission should not – and the FRF believes, will not – let FPL's waving of the "politics" flag influence its decisions.

risk of recovering its costs and covering its financial integrity requirements to a very healthy degree, is more than adequate.

If the Commission were inclined to go higher than the 9.5% ROE recommended by, and supported by the analyses submitted by, Dr. Woolridge, the Commission should look no further than the comparable population of electric utility ROE awards voted by all other public utility regulatory bodies in the United States in 2009: that value, shown in EXH 462, is 10.51%. All of the utilities listed in EXH 462 compete with FPL for capital. This approach would obviate the "battle of dueling experts and models" between FPL's witnesses and the Consumers' witnesses and result in a decision based on real-world experience and decisions for other utilities with which FPL competes for capital in national capital markets.

Choosing the lowest ROE rate supported by competent substantial evidence, which is Dr. Woolridge's recommended 9.50%, will enable FPL to have an opportunity to earn a reasonable rate of return on investment while being able to access capital markets, while preserving its financial integrity, and while providing safe, adequate, reliable service to its customers. Accordingly, the Commission should use this value to determine FPL's revenue requirements and rates in this case. If the Commission is concerned that a higher rate might be appropriate, it should not authorize a rate any greater than the national average of 10.51%. Along this line, the Commission should also note that, the day following the issuance of the Staff's recommendation that Tampa Electric's rates be set on the basis of a 10.75%, on March 5, 2009, which was contemporaneous with the very bottom of the stock markets, Tampa Electric's stock price jumped by nearly 8% and the volume of shares purchased more than doubled. Avera, TR 4712; EXH 498 This at least strongly indicates that, even in uncertain capital markets, national equity investors looked very favorably on an ROE of 10.75%. This lends additional support to basing the rates of FPL, which is stronger financially than Tampa Electric, on a substantially lower ROE than requested by FPL.

II. Capital Structure (Issues 64-81)

The Company's proposed capital structure includes 59.6 percent equity from investor sources; OPC's witness Prof. Randall Woolridge recommends a modestly lower value, 54.4 percent, for ratemaking purposes, and the SFHHA's witness Richard Baudino supports a similar equity ratio of 53.5 percent. As discussed thoroughly by Dr. Woolridge, TR 3202-03, FPL's equity ratio is calculated using a non-GAAP adjustment for $950 Million in imputed debt. This capital structure is inappropriate because it is much higher than is typical for electric utility companies with which FPL competes for capital, because it improperly includes the aforementioned $950 Million in imputed debt, and because it includes more common equity than is projected by FPL. Id. The Commission should use either of the more reasonable 53.5% or 54.4% equity ratios supported by the competent, substantial evidence embodied in Dr. Woolridge's and Mr. Baudino's testimony, and set FPL's revenue requirements and rates accordingly. Using Dr. Woolridge's equity ratio incrementally reduces FPL's revenue requirements by approximately $106 Million per year, over and above the reduction of approximately $402 Million per year that results from reducing FPL's authorized ROE to 9.5%. EXH 247 (SLB-25, page 1)

Since equity costs more than debt, a higher proportion of equity (or "equity ratio") in a utility's capital structure will result in higher rates. Woolridge, TR 3205-06 There is an inherent tension between using more debt, which increases a utility's risk, and the fact that using more debt correspondingly reduces the utility's costs and thus its rates to consumers. Conversely, less debt results in less risk for the utility, and therefore, if a utility such as FPL is allowed to have a higher equity ratio in its capital structure, the authorized ROE must reflect the correspondingly lower risk.

Equity ratios for electric utilities typically range between 40% and 50%. The average amount of equity in the average capital structure for Dr. Woolridge's comparable group is about 42%. Woolridge, TR 3207 If a utility uses excessive equity financing, the regulatory authority can either impute a more reasonable capital structure or recognize the lower risk that

accompanies the higher equity percentage. Woolridge, TR 3208 Dr. Woolridge has used FPL's "real" equity ratio of 54.4% in his evaluations, and has correspondingly taken this high equity percentage into account in recommending his 9.50% ROE for FPL in this case. Wooldridge, TR 3209

The SFHHA's witness, Richard Baudino, also testified that FPL's proposed equity ratio and capital structure are unreasonable. Baudino, TR 2610 Moreover, Mr. Baudino testified unequivocally that FPL's proposed level of equity is excessive and unreasonable, and that it would accordingly result in rates that are unjust and unreasonable to customers. Id. FPL does not require such a high amount of equity to support its credit ratings. Baudino, TR 2611-12 Accordingly, Mr. Baudino recommends using an equity ratio of 53.5% for ratemaking purposes, which corresponds to an equity ratio of 50% for financial reporting purposes. Baudino, TR 2613-14, EXH 286 (RAB-8) The Commission should note well that Mr. Baudino's recommended percentage for FPL is close to FPL's historical and proposed equity percentages for 2007 through 2011, which range from 53.8% to 56.0%. Baudino, TR 2615

The average equity ratio for Mr. Baudino's group of comparable electric utilities is 47.6%. Baudino, TR 2615 This is further evidence that FPL's proposed equity percentage of 59.6% is unreasonable, and that Mr. Baudino's and Dr. Woolridge's recommended equity percentages are generous to FPL. Finally, Mr. Baudino recognizes that FPL Group, FPL's parent company, cannot maintain its single-A bond rating without the support of an excessive FPL common equity ratio; a Standard & Poor credit report cited by Mr. Baudino confirmed that S&P's single-A credit rating for FPL Group is based on the consolidated credit profile of the company, which includes both FPL and FPL Group Capital, which in turn owns FPL Energy. TR 2519, 2586 This report also noted that the higher risk operations of FPL Energy detract from FPL Group's credit. These facts demonstrate that allowing FPL to have an excessive equity ratio exposes FPL's customers to the risk of subsidizing FPL Group's unregulated activities. Baudino, TR 2619

Conclusion. FPL's proposed equity percentage is inconsistent with its duty to provide safe, adequate, reliable service at the lowest possible cost, and the Commission should accordingly reject this proposal in favor of an equity percentage in the range of 54%, as recommended by Dr. Woolridge and Mr. Baudino. FPL will still be able to attract capital, earn a reasonable return, and provide adequate service, with an equity percentage that is still higher than that of many utilities analyzed by Dr. Woolridge and Mr. Baudino.

III. Fair Amortization of Depreciation Reserve Surplus (Issues 19E & 19F)

By its own calculations, FPL has an accumulated depreciation reserve surplus of $1.245 Billion. Davis, TR 6403, EXH 151 The Citizens' witness, Jacob Pous, has presented competent, substantial evidence that the actual surplus is at least $2.7 Billion, TR 1832, EXH 183 (JP-2).[11] The Commission's policy is to rectify depreciation reserve imbalances, whether positive (surpluses) or negative (deficits), as quickly as possible, so long as doing so does not jeopardize the financial integrity of the utility. This is fully consistent with the maxim that the purpose of a fully litigated rate case is to provide an "ultimate true-up" of all regulatory accounts. This also dovetails with FPL's stated goal of having no depreciation surplus. Olivera, TR 566 Here, competent, substantial evidence of record demonstrates that the Commission can and should follow this policy to **reduce FPL's rate request by a net of approximately $291 Million per year**, and that doing so will promote and serve the goal of enabling FPL to provide safe, adequate, reliable service at the lowest possible cost to customers, while preserving FPL's financial integrity. Lawton, TR 2296; EXH 252

Context – Depreciation and General Depreciation Policy. At the outset of this discussion, it is useful to summarize the nature and purpose of the concept of depreciation in utility regulation, and to identify the policies underlying depreciation practices. If a utility purchases an item and consumes it within the same accounting period in which it was purchased, e.g., gasoline for trucks or paper for copiers, for accounting purposes the utility fully "expenses"

[11] FPL's accumulated depreciation reserve surplus, be it $1.245 Billion or $2.7 Billion, is material and significant by any reasonable measuring index. Pous, TR 1831.

the item, or the item is "expensed." The full costs are booked and netted with other expenses against revenues to derive the net operating income for the period. See Pous, TR 1801.

If, on the other hand, the item is going to be used to provide service for more than a year, the related investment is capitalized, and the investment is recovered over the service life of the asset through "depreciation expense." The depreciation expense accounting entry provides the utility with the "return of its capital" investment in the asset. For capitalized assets, the related cash expenditure has already occurred, and therefore, the annual depreciation expense relating to the asset does not reflect an additional outlay of cash, but rather the portion of the return of the utility's investment for that period. For this reason, depreciation is called a "non-cash expense." However, it is included as an item of cost in calculating the utility's total cost of service that rates are designed to recover through the revenues they generate. In that manner, a portion of revenues serves to reimburse the utility for the portion of capital costs that is "used up" during that period of the asset's service life, and thus to provide the utility with the return of its capital investment over the asset's life. See Pous, TR 1802.

Clearly, a utility cannot continue to earn a return on the portion of the capital investment that it has recovered from customers. Each annual installment of depreciation expense is recorded in a manner that offsets or reduces the amount of rate base investment on which the utility is permitted to earn a return. The annual installments are recorded as "accumulated provision for depreciation" or "depreciation reserve". In the simplest scenario, an asset having a service life of 10 years would result in annual depreciation expense equal to 1/10 of depreciable investment; the depreciation expense would be built into the overall cost of providing service recovered through base rates; the original rate base investment would be offset by an annually increasing "depreciation reserve" that reduces the amount of undepreciated investment on which a return is calculated ratably over its 10-year life; and the plant would be retired at the end of the 10 years. See Pous, TR 1804-05.

The amount of "depreciable investment" also takes into account the fact that, upon retirement, the plant asset will have a salvage value, which may be positive or negative, and, in

order to remove the plant from service and realize its salvage value, the utility will incur costs of removal. The net salvage value – that is, salvage reduced by removal costs – is an offset to (or addition to, if the net salvage value is negative) the amount of original cost the utility can recover through depreciation. See Pous, TR 1823.

The rationale underlying the practice of matching the period of time over which the utility collects depreciation expense with the service life of the asset is one of straightforward fairness: the customers who benefit from a plant asset as it is used in providing service should be the same customers who pay for the plant. This is referred to as the "matching principle." Pous, TR 1826

The matching principle directly implies, and requires as a matter of fundamental fairness, that it would be unfair for some customers to receive an undue benefit as a consequence of other customers being required to bear a disproportionate share of the costs of an item of plant. Thus, one of the basic principles of depreciation policy and practice is that, with respect to the utility's recovery of capital investments, current customers should not subsidize future customers, and future customers should not subsidize current customers. See Pous, TR 1826-29.

The appropriate depreciation rate, then, is a function of the capital investment, the net salvage (salvage minus cost of removal), and the service life of the asset. These are the depreciation parameters, or inputs, used to derive appropriate depreciation rates. See Pous, TR 1818-20. The capital investment is known. Salvage, cost of removal and service life, however, will not be established and known finally and definitively until the plant is retired. Accordingly, estimates and assumptions regarding retirement date, salvage and cost of removal are used in quantifying annual depreciation expense. These estimates are revised periodically, based upon updated information. The Commission's depreciation rules require electric utilities to prepare and file depreciation studies every four years.

Rule 25-6.0436(6)(d), F.A.C. provides that, once the revised parameters are determined, the utility must calculate the amount of depreciation expense it would have collected from customers over time, had the updated service lives and net salvage values been in effect from

"day one." This is called the theoretical reserve. Pous, TR 1825 The utility compares the theoretical reserve to the book reserve, also called the accumulated reserve for depreciation, which represents the actual amounts of depreciation expense that the utility has recorded over time. If the book (actual) reserve is larger than the theoretical reserve, the utility has collected more than it needed to collect by that point in time, and a "reserve surplus" exists. If the utility has not collected sufficient depreciation expense over time, a "reserve deficiency" exists. Id.

The exercise of comparing book and theoretical reserves to quantify any portion or negative imbalance has direct implications for ratemaking. Under the "remaining life" methodology that the Commission has adopted by rule, any reserve surplus (or reserve deficiency) is subtracted from (or added to) the undepreciated balance of an asset, and the result is divided by the remaining life of the plant to quantify the appropriate annual depreciation expense that should be collected going forward. In this manner, any reserve surplus will be returned to customers over the remaining asset lives; similarly, any reserve deficiency will be "made up" over the remaining asset lives. In this sense, the remaining life methodology can be said to be self-correcting over time. However, the "correction" using this approach takes place very gradually, over the remaining lives of the utility's plant assets. In this case, on a composite basis that works out to be about 22 years. See Pous, TR 1818-20; Davis, TR 6452.

Commission Policy Regarding Depreciation Surpluses and Deficits. The Commission's declared policy is to cure reserve imbalances as soon as possible without negatively impacting a company's fair and reasonable return on its investment. Order No. PSC-01-2270-PAA-EI at 1-2; see also Pous, TR 1828. In the face of overearnings in past years, depreciation reserve deficiencies have been targeted by the Commission in order to book additional depreciation expense dollars that would result in lower reported earnings for the companies—thereby bringing reported earnings in line with the allowed rate of return. Another alternative in these cases would have been to order a direct refund to customers. The Commission should reject, outright, any suggestion by the Company that a "theoretical" reserve deficiency or surplus is not real money. FPL is well aware that the Commission requires the

theoretical reserve calculation in every depreciation study for a specific purpose, which is to provide a basis for rectifying imbalances.

The Commission should follow its policies that were clearly articulated in the following orders. In Order No. 98-1763-FOF-GU, PSC Docket No. 980700-GU, the Commission stated:

> Our approach to reserve transfers is where significant surpluses and deficits exist, corrective reserve transfers between accounts should be considered. Significant imbalances are those that result in abnormal depreciation rates for the ongoing account.

In Order No. 01-2270-PAA-EI,[12] the Commission further stated:

> Reserve imbalances are primarily a matter of differences in current and past projections. Such deficiencies should be recovered as fast as possible, unless such recovery prohibits the company from earning a fair and reasonable return on its investment.

"Intergenerational Equity" Requires Fair Amortization of Reserve Surpluses or Deficits. Any imbalance between the book reserve and the theoretical reserve represents a violation of the matching principle, and rates set without correcting for this violation will result in intergenerational subsidies, i.e., one group of customers will be forced to bear costs that should be paid by another group. Whether the corrective feature of the remaining life calculation methodology adequately addresses the unfairness inherent in departures from the matching principle adequately depends on the severity of the imbalance and the extent of the subsidization. See Pous, TR 1826, 1829. If the surplus or deficit is $1, or even $1 Million, it is de minimis – lost in rounding error in ratemaking – and need not be addressed specifically. The extent of the intergenerational inequity – i.e., the degree of subsidization – increases with the size of the imbalance and the length of the correction period. Id.

The question for the Commission is thus what should be done, in setting FPL's rates in this case, with FPL's depreciation reserve surplus that FPL's witness Clarke (using aggressive, surplus-minimizing assumptions) quantifies to be $1.25 Billion, and that OPC's witness Pous

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[12] In Re: Request for Approval of New Depreciation Rates for Marianna Division by Florida Public Utilities Company, PSC Docket No. 010669-EI (November 19, 2001) at 1-2.

measures to be $2.75 Billion. FPL's answer is to roll $1.25 Billion into the "remaining life" calculation. This would mean reducing the total capital costs to be collected by the book reserve (which includes the surplus) and dividing the result by the 22 years of average remaining life to quantify the annual credit that current customers would see in determining FPL's 2010 revenue requirements and in setting its rates. Given the enormity of the reserve surplus, the FRF joins the Citizens in the strong belief that this approach is wholly inadequate to provide a meaningful degree of "intergenerational equity" to customers.

The Commission's policy to rectify depreciation reserve imbalances, whether positive (surpluses) or negative (deficits), "as fast as possible," so long as doing so does not jeopardize the financial integrity of the utility, is clear. Order No. PSC-01-2270-PAA-EI at 1-2.[13] Here, the magnitude of the intergenerational inequity compels an immediate and sizeable departure from the remaining life approach to mitigate the extraordinary unfairness that would be imposed on current customers by FPL's proposal. Pous, TR 1829 The decision in this docket that is fair, just, and reasonable to all customers, past, present and future, is to eliminate the material intergenerational inequity as soon as possible without unduly impairing FPL's financial integrity. The Commission can do nothing about past customers, but the Commission can and should rectify this huge inequity for recent customers, who have paid and who, under FPL's proposal, will otherwise subsidize customers more than 20 years into the future.

Far more than FPL's proposal must be done to mitigate the gross intergenerational inequity occasioned by the fact that future customers would benefit unfairly by the disproportionately larger share of capital costs that has been borne by current and past customers. Consistent with the testimony of Mr. Pous, OPC recommends and the FRF agrees that $1.25 Billion of the $2.75 Billion reserve surplus be amortized over four years. If the Commission adopts OPC's recommendation, ¼ of $1.25 Billion, or $312 Million, would appear in FPL's

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[13] This is consistent with recognized public utility depreciation practices. <u>See</u> EXH 534 (wherein NARUC recognizes that where a material imbalance exists, it may be amortized "over a short period of time").

2010 test period revenue requirements as a credit (offset or reduction) to depreciation expense. This means that FPL's overall revenue requirements for 2010 would be reduced by $311.3 Million gross, or $291 Million on a net basis after adding back the addition to rate base that results from the reduction of the reserve surplus. EXH 252 (DJL-4) The portion of the reserve surplus above $1.25 Billion, which Mr. Pous measures to be $1.5 Billion, would be left in place so as to avoid too big an impact on FPL's cash flow and to leave a cushion of excess reserves pending the completion of FPL's next depreciation docket. The Commission will have an opportunity to revisit the status of depreciation reserves and depreciation rates in four years, when FPL submits its next depreciation study.

This approach represents the best and most appropriate remedy to the huge reserve surplus that is available to the Commission. It will provide a significant first step toward eliminating the intergenerational inequity created by the enormous surplus.

Financial Integrity. As discussed throughout this Brief, FPL must provide safe, adequate, reliable service at the lowest possible cost, and the Commission must set FPL's rates at levels sufficient to enable the Company to fulfill its duty, provided that those rates must also be sufficient to provide the utility with the opportunity, assuming reasonable and prudent management, to earn a reasonable rate of return and to attract capital. Another way of saying this is that the Company's rates must be sufficient for it to pay its operating costs and maintain its financial integrity.

In this case, the adjustments proposed by the Consumer Intervenors' witnesses will, not surprisingly, reduce FPL's revenues and rates. The adjustments proposed for O&M and depreciation expenses can be expected to be a "wash" in that the Intervenors' witnesses advocate disallowing those costs because they are not reasonable and prudent, e.g., the recommended disallowances for O&M expenses, or because they are not appropriately timed, e.g., the recommended reduction in FPL's depreciation expense of $240.6 Million per year. In other words, substantial amounts of FPL's claimed O&M expenses are not reasonable, prudent, and necessary for the Company to provide adequate service, and the Company's claimed depreciation

expenses are overstated because they reflect the Company's attempt to recover the "return of" its investment over periods that are too short.

Distinguished from O&M expenses and depreciation expense, the Consumers' proposed reductions in the Company's authorized return and the proposed adjustments to amortize FPL's accumulated depreciation reserve in a more equitable way, consistent with the Commission's specifically articulated policy for such amortization, will reduce depreciation cash flows while increasing ROE. The Commission's past policies dictate that reserve imbalances should be cured as fast as possible so long as they do not impair the Company's financial integrity. The measures or "metrics" used to analyze financial integrity generally include measures of debt, cash flows, and interest requirements. According to OPC witness Daniel Lawton, the appropriate financial integrity metrics are: Cash From Operations divided by Interest (CFO/Interest, a numeric ratio); CFO as a percentage of Debt (CFO/Debt, in percent); CFO as a percentage of Adjusted Debt; and Debt Ratio (percent). Lawton, TR 2300, EXH 254 (DJL-6).

Importantly, FPL **can afford** to implement the Consumers' recommendation without adversely affecting its financial integrity. First, OPC's proposed amortization will not deny FPL recovery of any capital dollars. The amortization will affect only the timing of the collection of those dollars – by repositioning a portion of the recovery into future periods so that future customers will pay more of their fair share. Moreover, this treatment will not deny FPL recovery of even one dollar of cash expenses. Lawton, TR 2302

Moreover, OPC's proposed amortization would affect neither FPL's earnings nor FPL's earned rate of return. When total revenue requirements borne by rates are reduced by the amount that test year depreciation expense is reduced, rates are correspondingly lower; however, earnings and earned rate of return do not change.

The FRF recognizes that, just as too-high depreciation expense in past periods enhanced cash flow, a credit to depreciation expense will reduce cash flow. Like other utilities, FPL must generate enough cash to cover its expenses, including debt service. The "coverage ratios" (the number of times FPL's cash flow that it generates "covers" debt service) are an important

indication of financial integrity. When selecting the portion of the reserve surplus to be amortized and the length of the amortization period, Mr. Pous coordinated with OPC witnesses Dr. Randall Woolridge, Sheree Brown, and Daniel Lawton to ensure that the amortization he proposed would not negatively impact FPL's financial integrity. In his EXH 442 (revised DJL-6), OPC's Daniel Lawton demonstrated that, if the Commission were to adopt Mr. Pous' recommended amortization of $1.25 Billion of FPL's reserve surplus *and all other OPC rate case adjustments,* FPL's financial indicators would continue to be in the range that would warrant an "A" rating by Standard & Poor's. This conclusion holds true, regardless of whether the S&P criteria that Mr. Lawton employed or the more current S&P criteria are examined. Lawton, TR 2344-45

This point is of critical importance: In the aggregate, all of OPC's recommendations – including the recommendation to amortize $1.25 Billion of FPL's reserve surplus over four years – would lead to a base rate reduction of $342 Million annually. FPL's financial strength is such that FPL's cash flow will be sufficient, even after all of OPC's rate case adjustments are made, to amortize $1.25 Billion of the $2.75 Billion reserve excess identified by Mr. Pous and continue to show coverage ratios that warrant its current "A" rating by Standard & Poor's.

FPL's Arguments Against Prompt Amortization Are Misplaced. The arguments that FPL advanced in opposition to the Consumers' recommended four-year amortization are meritless. The first FPL argument is that the Commission should look to the remaining life methodology, basically because it is the way the Commission deals with reserve imbalances, a variant on the timeworn utility adage that "this is the way we've always done it." However, this suggestion is plainly false: the remaining life calculation is not the only way the Commission has addressed depreciation practices over time.

In many past proceedings to set depreciation rates, the Commission distinguished between the portion of the reserve imbalance attributable to past insufficient parameters, on the one hand, and the deficiencies that would occur in the future absent a change in depreciation rates, on the other. In those cases, the Commission directed the utility to recover the former

amount over a period of time far shorter than the remaining life. One example among many is Order No. 12866, issued on December 14, 1984, in Docket No. 830268-TP, In re: Petition of Indiantown Telephone System, Inc. for Revision of Depreciation Rates. During the hearing, OPC asked the Commission to take official recognition of 31 separate orders in which the Commission treated reserve imbalances by means that departed from the strict remaining life methodology. Most of the orders involved reserve deficiencies, not surpluses, but that is because – prior to recent cases involving FPL and Progress Energy Florida – those were the circumstances that utilities presented to the Commission most frequently.

In fact, Commission Rule 25-6.0436(7)(b), F.A.C., states, "The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates." The application of this rule is significant in this case because FPL's depreciation study presents a clear opportunity to address a portion of the reserve surplus in this manner — an opportunity that FPL chose not to propose. Part of FPL's overall claimed revenue deficiency is related to FPL's desire to recover some $300 Million of undepreciated costs associated with imminent retirements at its Riviera and Cape Canaveral plants, plus the undepreciated book value of the meters that are being replaced early, over four years by the application of a special capital recovery schedule. The proposal comprises about $78 Million of FPL's total revenue request for 2010. In other words, at the same time FPL proposes to return a surplus in the range of $1.5-2.7 Billion to customers over a period of 22 years — thereby hanging onto that money as long as possible — FPL wants to increase depreciation expense by $78 Million per year to recover what will be a deficiency in certain accounts when the identified retirements occur. FPL could have proposed to apply a portion of the reserve surplus to eliminate the need for a recovery schedule; however, it did not.

Interestingly, over time FPL has received the benefits of some of the Commission's significant departures from "remaining life." In the 1990s, the Commission allowed FPL to accelerate its collection of depreciation expense by approximately $1 Billion in preparation for potential deregulation and competition by applying a specified increment of revenues to write

down assets. The measure had nothing to do with the remaining life methodology. Subsequently, when the potential for deregulation had dissipated and FPL had over-depreciated its plant, the Commission approved two settlements pursuant to which FPL credited depreciation expense (thereby reducing its reserve surplus) by $125 Million per year for eight years. Order No. PSC-02-0501-AS-EI at 2; Order No. PSC-05-0902-S-EI at 3. In approving the settlements, the Commission approved and adopted measures other than the remaining life methodology to address reserve imbalances.

In almost all of its other arguments opposing OPC's proposed amortization, FPL expresses concern for its customers' well-being. The chief such argument is that, because the annual amortization would have the effect of returning past depreciation to rate base, OPC's recommendation will increase customer's rates several years from now. When supporting FPL's pending request for a Billion dollar rate increase, FPL witness Michael Davis worried aloud about future "rate shock" associated with Mr. Pous' recommendation. See Davis, TR 6470-71. Aside from the fact that, as a result of its petition FPL has no credibility when it expresses concern over rate shock, there are several things wrong with FPL's argument.

First, it overlooks that past customers have paid too much in depreciation expense, so FPL's current rate base is artificially below the level that would be associated with the matching principle. Next, while it is true that Mr. Pous' recommendation would increase rate base each year by the amount of the amortization, it is equally true that in each of those years the continued application of FPL's depreciation rates will increase the reserve for accumulated depreciation (thereby reducing rate base) in each of those years. Perhaps more significantly, to the extent that FPL adds customers and increases sales between now and the next base rate proceeding, the revenue requirements associated with the rate base "add-back" will be spread over a higher level of kilowatts of demand and more kilowatt hours of energy than are included in the 2010 test period. Spreading the increase over a higher number of these billing determinants will mitigate the impact of the "add-back" by lowering the amount of rate increase per unit of consumption, thereby lessening the impact on individual bills.

Third, whether the increased revenue requirements associated with the "add-back" would be seen as a net plus or minus by a customer would depend on that customer's individual discount rate, or time value of money. To the many customers currently financing their household circumstances with credit cards that charge as much as 25% interest, a 4-year amortization that would lower their rates and free up cash with which to pay down those credit card balances now would be economically very appealing – even if the tradeoff is an addition to rate base when rates are next calculated. When purporting to argue on behalf its customers, FPL ignored this crucial aspect of the consequences of the amortization proposed by Mr. Pous in his direct testimony, and did not challenge or dispute this point when OPC raised it during cross-examination.

Finally, FPL's reliance on its purported "rate shock" arguments is misleading because FPL has already amortized $1 Billion of its previous depreciation reserve surplus over the past 8 years, Deason, TR 6802, and still FPL has a surplus by its own calculation of $1.245 Billion. If FPL's analysis is correct, then its depreciation reserve would be in approximate balance 4 years from now, when FPL prepares and files its next depreciation study. Since even FPL seems to agree that the ideal situation is not to have either a depreciation reserve surplus or a deficit, Olivera, TR 566, it is difficult to understand FPL's opposition to this treatment as anything other than an objection to its having lower rates and less cash flow as a result of the Commission's decisions in these proceedings.

Of course, the possible result of a near-zero depreciation reserve 4 years hence depends critically on whether FPL's current surplus estimate is accurate, which is powerfully disputed by Mr. Pous, and also on the assumption that FPL does not accrue even greater surpluses over that period. If Mr. Pous's analysis is correct, however, then FPL will still have a depreciation reserve surplus of at least $1.5 Billion four years from now, again assuming that FPL doesn't accrue even greater surpluses over the next few years. Considering FPL's track record, where it has amortized $1 Billion over the past 8 years and still has at least a $1.245 Billion reserve surplus, it would seem highly likely that FPL would have an even greater surplus when it files its next

depreciation study. As a note of foreshadowing, this is why it is all the more important that the Commission scrutinize FPL's current claims regarding depreciation expenses, which are discussed in the next major section of this Brief.

Amortizing FPL's Depreciation Reserve Surplus - Conclusion. The weight of competent substantial evidence on this issue supports the position advocated by the Citizens, the FRF, and the other Consumer Intervenors. FPL itself admits to a $1.245 Billion reserve surplus, and while the Consumers believe that the real surplus is more than double that amount, they are only asking the Commission to amortize the amount calculated by FPL over the next 4 years. Amortizing FPL's depreciation surplus over four years is necessary for at least a good start toward an "ultimate true-up" of FPL's depreciation accounts and to prevent the continuing intergenerational inequity that this surplus imposes on past and current customers who have paid to create it. The inequity is that they have overpaid, thereby subsidizing future customers. The further into the future the amortization corrections are made, the greater will be the intergenerational inequity between those customers who overpaid and the future customers who will be underpaying. Pous, TR 1826, 1829

Here, an amortization period far shorter than the 22 years remaining life period is required to return the reserve excess to the same customers (to the extent possible considering customer turnover) whose rates resulted in a depreciation reserve surplus. Using the fairer, more reasonable 4-year amortization period recommended by the Citizens' witnesses and advocated by the FRF, the Citizens, and other Consumer Intervenors, this will reduce FPL's 2010 revenue requirements by a net amount of $291 Million per year. EXH 252 (DJL-4) As explained in detail above, this can be accomplished while maintaining FPL's financial integrity.

IV. Depreciation Expense (Issues 19A-19F)

Competent substantial evidence, particularly the testimony and extensive exhibits of the Citizens' witness Jacob Pous, supports **reducing FPL's depreciation expense, and thus FPL's requested revenue requirements, by $240.6 Million per year**. Pous, TR 1809; EXH 182. FPL's proposed depreciation expense, absent adjustment for amortizing FPL's huge depreciation

reserve surplus, of $1.065 Billion per year, is overstated because FPL has used unrealistically short depreciation lives, and unrealistically low net salvage values, for many of its assets. The Commission should rely instead on the exhaustive, thoroughly documented, and realistic depreciation analyses conducted by witness Pous and set FPL's base rates on the basis of total depreciation expense of $824.9 Million per year, again separate from the additional credit to depreciation expense that the Commission should apply to amortize FPL's huge depreciation surplus fairly and equitably.

As summarized above, depreciation expense accounting entries, and the inclusion of the corresponding allowance for "depreciation expense" provide the utility with the "return of" its capital investment in the asset. For capitalized assets, the related cash expenditure has already occurred, and therefore, the annual depreciation expense relating to the asset does not reflect an additional outlay of cash, but rather the portion of the return of the utility's investment for that period. For this reason, depreciation is called a "non-cash expense." However, it is included as an item of cost in calculating the utility's total cost of service that rates are designed to recover through the revenues they generate. In that manner, a portion of revenues serves to reimburse the utility for the portion of capital costs that is "used up" during that period of the asset's service life, and thus to provide the utility with the return of its capital investment over the asset's life.

The amount of "depreciable investment" also takes into account the fact that, upon retirement, the plant asset will have a salvage value, which may be positive or negative, and, in order to remove the plant from service and realize its salvage value, the utility will incur costs of removal. The net salvage value – that is, salvage reduced by removal costs – is an offset to (or addition to, if the net salvage value is negative) the amount of original cost the utility can recover through depreciation.

The rationale underlying the practice of matching the period of time over which the utility collects depreciation expense with the service life of the asset is one of straightforward fairness: the customers who benefit from a plant asset as it is used in providing service should be the same customers who pay for the plant. This is referred to as the "matching principle." Pous,

TR 1826 The matching principle directly implies, and requires as a matter of fundamental fairness, that it would be unfair for some customers to receive an undue benefit as a consequence of other customers being required to bear a disproportionate share of the costs of an item of plant. Thus, one of the basic principles of depreciation policy and practice is that, with respect to the utility's recovery of capital investments, current customers should not subsidize future customers, and future customers should not subsidize current customers. See Pous, TR 1826-29.

As discussed above, the appropriate depreciation rate is a function of the capital investment, the net salvage (salvage minus cost of removal), and the service life of the asset. These are the depreciation parameters, or inputs, used to derive appropriate depreciation rates. The capital investment is known. Salvage, cost of removal and service life, however, will not be established finally and definitively until the plant is retired. Accordingly, estimates and assumptions regarding retirement date, salvage and cost of removal are used in quantifying annual depreciation expense. These estimates are revised periodically, based upon updated information. The Commission's depreciation rules require electric utilities to prepare and file depreciation studies every four years. Rule 25-6.0436(8)(a), F.A.C.

Ideally, the utility would recover the depreciation expense associated with each asset over that asset's actual life, on a pro rata basis, because that will result in the customers who use the asset actually paying for it as it is used up in providing them service. FPL, on the other hand, wants to recover its capital through rates that include depreciation expense that is overstated in the near term, by FPL's attempts to use inappropriately short depreciation lives, which result in greater depreciation expense values, and also by FPL's attempts to use inappropriate net salvage values for its assets.

Competent substantial evidence, particularly the testimony and extensive exhibits of the Citizens' witness Jacob Pous, supports **reducing FPL's depreciation expense, and thus FPL's requested revenue requirements, by $240.6 Million per year**. Pous, TR 1809; EXH 182 FPL's proposed depreciation expense, absent adjustment for amortizing FPL's huge depreciation reserve surplus, of $1.065 Billion per year, is overstated because FPL has used unrealistically

short depreciation lives, and unrealistically low net salvage values, for many of its assets. The Commission should rely instead on the exhaustive, thoroughly documented, and realistic depreciation analyses conducted by witness Pous and set FPL's base rates on the basis of total depreciation expense of $824.9 Million per year, again separate from the additional credit to depreciation expense that the Commission should apply to amortize FPL's huge depreciation surplus fairly and equitably.

Specifically, the Commission should make the following adjustments recommended by Mr. Pous.

Coal-fired Production Units: FPL's proposed 40-year life span for coal-fired units is artificially short. Based on empirical evidence and the treatment afforded such units in other jurisdictions, as well as indications of FPL's expectations, the FRF supports a 60-year life span for coal-fired units. Pous, TR 1848-50

Large Steam Oil or Gas-fired Generating Facilities: Based on empirical evidence and the treatment afforded such units in other jurisdictions, as well as indications of FPL's own expectations, these units should be afforded a life span of 50 years for purposes of the depreciation study. Pous, TR 1848

The impact of these adjustments for coal-fired and large steam units is to decrease FPL's depreciation expense by $32 Million per year. Pous, TR 1854

Combined Cycle Generating Facilities: The 25-year life span that FPL uses for combined cycle units is unrealistically short. The FRF believes that, based on other utilities' proposals and on the characteristics of FPL's combustion turbines and steam generation units, which are the essential components of combined cycle plants, as well as on FPL's experience with its Putnam plant, the Commission should set the depreciation life for FPL's combined cycle units at 40 years. See EXH 531, 532. At a minimum, the Commission should direct FPL to evaluate available information and develop a more appropriate life span in its next depreciation study.

Level of Interim Retirements- Production Units **(Former Issue 27)**: FPL inappropriately relied on a truncated actuarial analysis to estimate interim retirements. FPL compounded this

error when it applied a life curve that was not an appropriate fit to the data. The Company's approach leads to demonstrably unrealistic results. OPC witness Pous used a standard method even used by FPL's witness for most of his career, and actual Company-specific information to develop interim retirement ratios. This better approach results in a $54,916,074 reduction in FPL's depreciation expense. Pous, TR 1855-61

Appropriate Net Salvage: Interim Retirements Estimated to Transpire Prior to the Final Termination of a Generating Station or Unit **(Former Issue 28):** Initially, FPL's request is overstated due to its approach to the quantification of interim retirements. Next, FPL has proposed excessive negative levels of overall net salvage – the beginning point of the process – which then results in excessively negative interim retirement levels of net salvage. The more appropriate results are those recommended by witness Pous, which are based on investigation of the specific data within FPL's database. The Commission should make adjustments to 2 steam production accounts, 2 nuclear accounts, and 5 other production accounts, which when combined serve to reduce depreciation expense by $74 Million annually. The individual adjustments are as follows:

a. Account 311- Structures and Improvements: Adjust FPL's proposed negative 15% interim net salvage to negative 5%.

b. Account 314 - Turbo Generator Units: Adjust FPL's proposed zero interim net salvage to 10% net salvage.

c. Account 322 – Reactor Plant Equipment: Adjust FPL's proposed negative 5% net salvage to negative 4%.

d. Account 324 – Accessory Electric – Equipment: Adjust FPL's proposed negative 20% to negative 2%.

e. Account 341 – Other Production Structures: Adjust FPL's proposed negative 25% net salvage to zero net salvage.

f. Account 342 – Other Production Fuel Holders: Adjust FPL's proposed negative 5% net salvage to zero net salvage.

g. Account 343 – Other Production Prime Moves: Adjust FPL's proposed negative 10% net salvage to zero net salvage.

h. Account 344 – Other Production Generators: Adjust FPL's proposed negative 100% net salvage to zero net salvage.

i. Account 345 – Other Production Accessory Electric Equipment: Adjust FPL's proposed negative 10% net salvage to zero net salvage.

The Commission should adopt the depreciation rates as recommended by Mr. Pous. The cumulative effect of his recommendation is to reduce annual depreciation expense from FPL's requested $1,065,623,140 to $824,950,126, or a reduction of $240,673,014.

Appropriate Life Characteristics and Net Salvage Levels for Transmission, Distribution, and General Plant **(Former Issues 30 and 31):** FPL proposes inappropriate life characteristics and excessive levels of negative net salvage, which result in excessive, unreasonable, and unjustified levels of depreciation expense, and which would, if approved, result in unfair, unjust, and unreasonable rates. FPL overstates depreciation expense by the cumulative effect of adjustments to 22 different accounts, each of which requires a discrete decision. FPL simply relies on suggestive industry data as the basis for its proposal to retain a 50-year Average Service Life ("ASL") EXH 115 at 481. The Company admits that there are not many retirements historically and thus life analyses produce poor results. Clarke, TR 2802 By contrast, OPC recognizes that easements are difficult to obtain and that transmission facilities built on such easements will be replaced while still retaining the original easement. Pous, TR 1896-97 In fact, FPL admits that it is its policy to retain such "perpetual rights" associated with such easements. TR 1897 Further, FPL admits that it has no plans to retire any easements. TR 1897 Therefore, OPC's very conservative approach of relying on the approximate maximum life of one complete life cycle of the facilities that rest upon the easements is the only appropriate recommendation in this proceeding. Given the "not in my backyard" or "NIMBY" syndrome that is prevalent throughout the country, TR 1896, the retention of existing right-of-ways is a logical conclusion. Therefore, Mr. Pous's recommended 95-year S4 life-curve combination represents a conservative approach, recognizing the specific facts and circumstances applicable to this account.

a. Account 350.2 – Transmission Easements: Adjust FPL's proposed 50 year ASL and S4 down curve to 95 S4 life-curve. This results in a $2,432,236 reduction to depreciation expense. TR 1898
b. Account 353 – Transmission Station Equipment: Adjust FPL's 38 R1.5 life-curve combination to a 43 L1 combination. This results in a reduction of $6,128,005 in depreciation expense. TR 1901 Also, Adjust FPL's proposed negative 10% net salvage

to zero net salvage. The effect of this adjustment is to reduce annual depreciation expense by $3,731,047. TR 1947

FPL's 38 R1.5 life-curve combination proposal not only relies on a poor and inappropriate interpretation of the result of its actuarial analysis, but further relies on an incorrect recognition of industry values as support for its position. As shown in EXH 187 at 1, it is easy to see that the longer 43 year ASL proposed by OPC is a better fitting curve than is FPL's proposal. Moreover, FPL witness Clarke was incorrect when he relied on a 38-year or 39-year life as being typical for the industry. The actual industry range reflected in Mr. Clarke's workpapers clearly established that the more appropriate industry range is 45-50 years, and that a 38- or 39-year ASL would be "at the low end of the industry." Pous, TR 1900 Moreover, Mr. Clarke recently recommended a 50-year ASL in his testimony in Nevada. Id. Finally, FPL's proposal fails to recognize that the actuarial analysis relied upon reflects only 15% of retirements being associated with transformers, structures and foundations, all of which are expected to have long ASLs, yet the investment in the account for these components is 33%. TR 1901 Thus the life analysis performed by the Company understates the expected ASL for the correct investment mix. In summary, from an analysis of the actuarial results to confirmation from correct industry data to recognition of the correct mix and type of investment in the account, all demonstrate the Company's proposal for a 38-year ASL is artificially short and that OPC's proposed 43-year ASL is a more appropriate value.

FPL's proposal to dramatically change from an existing positive 5% net salvage to a negative 10% net salvage is inappropriate. The Company's claim that it relied on a trend in recent years fails to recognize that the trend is artificial and only due to unusual events. TR 1944-45 Indeed FPL could not identify any given year's activity in its initial analysis, and failed to recognize that breakers and panels retired and included in the database analyzed are double their investment level, while transformers, which are anticipated to provide positive gross salvage, were retired at only one-third of their investment level. TR 1944-45 In other words, the historical data is artificially skewed towards more negative or less positive levels of net salvage than would be the case if a normalized mix of investment had retired during the database

reviewed by the Company. TR 1945-47 Finally, the Company's negative 10% net salvage, based in part on comparison with industry data, fails to recognize the significant price increase in copper that has transpired and is expected to continue as the economies of China and India continue to expand. TR 1947 At a minimum, OPC's proposal of a 0 net salvage level recognizes that a change from a positive 5% to a negative 10% is an excessively aggressive position taken by the Company and fails to recognize any form of gradualism. The Commission should adopt OPC's position of a 0% net salvage for this account.

c. Account 353.1 – Transmission Station Equipment – Step-Up Transformers: Adjust FPL's proposed 33 R2 life-curve combination to a 44 S0.5 life-curve combination. This results in a reduction of $42,281,178 in annual depreciation expense.

The Company's basis for its proposed 33-year ASL is that its study shows that 33-years "was a good average service life for this account". EXH 115 (CRC-1 at 504). The Company's simplistic approach to its analysis is flawed. First, the retirement activity for this account is relatively minor, yet the limited level of retirement activity is still relied upon by the Company without further investigation. Moreover, the Company's blind reliance on unusual activity is unacceptable. Indeed, one-fourth of the entire retirement activity was associated with a transformer that failed at age 0. EXH 115 (CRC-1 at 506) Given that this account was established to segregate step-up transformers at generating stations from other station equipment, the concept of including a major transformer that failed immediately upon installation is not indicative of future expectations. Failure to normalize such atypical activity results in an artificial shortening of the ASL. EXH 187 at 2-3 While the Company stated in rebuttal testimony that removing the transformer that failed upon installation did not impact the analysis, it failed to provide any support for such statement. Indeed, such statement clearly flies in the face of the evidence presented by OPC in EXH 187. Finally, it is illogical and inconsistent with historical practices for the industry to assume that the ASL for step-up transformers will be appreciably shorter than the realistic life expectations for the Company's generating facilities, to which such transformers are specifically tied. Pous, TR 1903 Blind reliance on an inappropriate interpretation of an actuarial analysis that incorporates atypical events does not result in credible

evidence in support of the Company's position. OPC submits that the only credible evidence is that presented by Mr. Pous, and which is reflected in the observed life tables set forth in EXH 187.

d. Account 354 – Transmission Tower and Fixtures: Adjust FPL's proposed 45 R5 life-curve combination to a 60 R4 life-curve combination. This will reduce depreciation expense by $3,192,653. TR 1906 Adjust FPL's proposed 15% negative net salvage to zero net salvage. The effect of the adjustment is to reduce depreciation expense by $1,281,044.

FPL admits that there are very few additions and retirements for this account and that its actuarial analysis produces results that were "poor." EXH 115 at 510 Moreover, the Company further admits that towers are generally retired when transmission lines are rerouted or replaced and that replacement due to foundation decay also occurs. Id. Thus, FPL effectively relies on industry data for its proposal, which "suggests a 40 -70 year life." Id. What FPL fails to state is that its 45-year life is based on Mr. Clarke's feelings that "there was not enough information to recommend a change at this time." Clarke, TR 2804 Alternatively, OPC proposed a 60-year R4 life-curve combination, which "is logically derived from Company-specific data, and is also reflective of what Mr. Clarke and his firm have recommended in other depreciation studies." Pous, TR 1905 Indeed, OPC noted that surviving plant is already approaching "the maximum life expectancy that would be derived from the Company's proposal." TR 1905 Like the Company, OPC also relied on industry data to some extent for its recommendation. However, as noted by OPC, FPL stated that industry database indicated that the "lowest ASL" was at 48 years "with most values at 65-70 years and an average of 63 years." TR 1906 In other words, FPL's presentation that the industry ranges 40-70 years is clearly wrong, but was apparently necessary in order to encompass FPL's proposed 45-year ASL. Obviously, if the lowest industry value is 48 years and the average industry value is 63 years, the Company's proposed 45-year ASL is clearly wrong on its face. OPC's recommended 60 year ASL is the only credible evidence in the record.

FPL's proposal for a negative 15% net salvage is based on its failure to properly analyze the data it relied upon. The Company's historical database was significantly affected by the value reported for 2006, which represented 79% of the entire 22-year net salvage database. Pous, TR 1948 However, only OPC analyzed the underlying data for this unusual transaction year. When the analysis was performed, unusual and unexplained data manipulations were identified. In fact, FPL's own analysis identified the retirements in 2006 as outliers and had such data been properly analyzed, would have reduced the recorded negative 192% net salvage to only negative 4%. TR 1949 Further analysis established that the 2006 retirement activity relied upon by the Company corresponded to the replacement of "12 cross braces of 500 KV structures." TR 1949 In no way has FPL established or demonstrated that the removal activity associated with 12 cross braces at a single tower, where the tower itself was not retired, is representative of future retirement activity of this account. TR 1949 Moreover, it must be noted that cross braces represent only 8% of the investment in the account while representing 33% of retirement activity, clearly distorting the database relied upon by FPL for its proposal. Further, any reliance by FPL on the concept of "trends" conflicts with the Company's admission that the data is sporadic. Clarke, TR 2817 It is difficult to establish a reliable "trend" if the database is sporadic. OPC's proposal, which discounts the significant impact of the 2006 retirement of 12 cross braces, is the only credible evidence in the record.

e. Account 355 - Transmission Poles & Fixtures: Adjust FPL's proposed negative 50% net salvage to negative 30% net salvage. The effect of the adjustment is to reduce depreciation expense by $4,329,923. TR 1954

f. Account 356 – Transmission Overhead Conductor: Adjust FPL's proposed 47 R1.5 life-curve combination to 51 SO life-curve. This results in a reduction of $1,618,285 to depreciation expense. TR 1909 Adjust FPL's proposed negative 50% net salvage to negative 40% net salvage. The effect of the adjustment is to reduce depreciation expense by $1,506,549.

While FPL recognizes the need to increase the ASL, its proposed increase is insufficient. FPL relies on its interpretation of actuarial results, yielding a 44-50-year ASL. EXH 115 at 523 FPL believes that the results of its actuarial results are consistent with industry range when, in

fact, its own witness Mr. Clarke testified in Nevada recently to a 55-year life. Pous, TR 1908 Even the Company's statements in rebuttal regarding wind loading and re-conductoring are not credible evidence, as they are unsupported, undocumented, vague and generalized statements. While the Company's proposal and OPC's 51 S0 life-curve combination are similar from an actuarial standpoint, the OPC's recommended longer life represents a better fit at the top of the survivor curve where exposures are the greatest. EXH 187 at 4 Moreover, OPC's longer life is more representative given the fact that FPL admits it has re-conductored certain transmission lines in the past, which means that the higher voltage lines have a greater probability of lasting longer than lines that were previously retired due to re-conductoring activity. Pous, TR 1907 This is especially true given that the majority of the Company's investment in this account is already at a 500KVA level. TR 1907 Finally, while the Company in rebuttal claims that industry data should not be used for this account, even though it did reference industry data in its direct case, it must be noted that the Company's witness Mr. Clarke did identify the industry average at being around 52 years in a recent proceeding in Nevada. Pous, TR 1908 Therefore industry data does confirm the need to lengthen the service life to the 51 year level proposed by OPC.

FPL's proposal to move to a more negative net salvage of negative 50% is unjustified. For this account, the Company chose to rely on historical data and industry ranges as a general basis for moving to a negative 50% net salvage. EXH 115 at 523 However, a review of FPL's actual historical database indicates significant data manipulation by FPL. In particular, FPL removed the impact of reimbursed retirements, assuming that such events were outliers. However, reimbursed retirements have occurred each and every year of FPL's database, clearly demonstrating that they are not outliers. Pous, TR 1954-55 Had FPL incorporated rather than excluded the impact of reimbursed retirements, negative net salvage would have fallen to a negative 32% level and would be more in line with the negative 40% recommended by OPC. TR 1955 In addition, FPL elected to ignore the fact that it still has 5 million linear feet of copper conduit and the fact that copper conduit does produce gross salvage. TR 1955 Finally, FPL

failed to consider the economies' of scale given that retirement levels are expected to double in the future compared to what was reflected in the last 10 years, as well as the fact that industry average was negative 27%, again more in line with a less negative net salvage as proposed by OPC. TR 1954-56

g. Account 359 – Transmission Road and Trails: Adjust FPL's proposed 50 SQ combination to 65 SQ. This reduces depreciation expense by $699,372. TR 1910

For Account 359, FPL again admits there were few retirements upon which to perform actuarial analyses and, as such, the actuarial results were not very good. EXH 115 at 547 Further, FPL identifies industry average as being between 50-70 years and concludes that the existing 50 year ASL should be retained. Alternatively, OPC actually takes into account the type of investment reflected in the account. In fact, the investment in the account consists of roads, culverts, trails, and other type of investment that logically can and will last for longer than 50 years. Pous, TR 1909 Another consideration raised by OPC is the limited level of retirement activity. This again indicates life expectancy greater than 50 years. TR 1909-10 Finally, while the Company's reliance on the fact that its proposed 50-year ASL is within the range given that the go into the range is 50 years fails to recognize that the industry range is 60 years and that Mr. Clarke, the Company's witness, proposed both 65 and 70-year ASLs in recent Nevada proceedings. TR 1910 FPL's proposal is, again, excessively aggressive and must be increased to the more realistic 65-year level proposed by OPC.

h. Account 362 – Distribution Station Equipment: Adjust FPL's proposed 41 R1.5 combination to 48 SO. This reduces depreciation expense by $5,860,004. TR 1912

The Company's initial presentation reflects the fact that there has been considerable activity and that the Company believes the results of its actuarial analysis indicates an ASL between 40-45 years. The Company identifies the industry average at 45 years, but only recommends a 41-year ASL. EXH 115 at 560 Alternatively, OPC's analysis of the data demonstrates that a longer life is justified based on more appropriate analysis of the actuarial

analysis and recognition of the type of investment and retirement activity reflected in the historical data. Pous, TR 1911 In particular, a longer ASL is warranted by a better match at the top of head of the actuarial survivor curve where the vast majority of exposure exists. FPL's proposed 41-year curve pattern only becomes a better fit when the exposure level is greatly diminished and cannot overcome the better matching point of the curve for ages 0-30 years. This is significant given that transformers normally comprise the largest investment category of this account and are anticipated to have longer lives. FPL's retirement activity that is reflected in the tail of its survivor curve and the proportion it attempts to match has not been shown to be indicative of transformer investment. TR 1911 FPL's presentation also suffers from being lower than the Company's reported industry average of 45 years, but even more underreported when the 21-year outlier reflected in the data is removed, at which point the industry data increases to 48 years, a full 7 years greater than the Company's proposal. Pous, TR 1912; Clarke, TR 2806. The Company's deviation from expected longer service lives further highlighted by the Company's witness Clarke's own recommendation of 50 years in recent Nevada cases, as well as other utilities and utility commission staff recommendations in the upper 40-50 year range. TR 1912 The Company's problem of underreporting ASLs compared to what its own depreciation witness recommends elsewhere is not overcome by the Company simple rebuttal statement that circumstances are completely different from company to company. In fact, FPL had every opportunity to justify such differences but failed to do so. TR 2806 Record information clearly establishes the need for a longer ASL as OPC has proposed at 48 years.

i. Account 364 – Distribution Poles, Towers, and Fixtures: Adjust FPL's proposed 37 R2 life-curve combination to a 41 R1.5 combination. This reduces depreciation expense by $13,188,572. Adjust FPL's proposed negative 125% negative net salvage to negative 60% net salvage. The effect of the adjustment is to reduce depreciation expense by $23,451,436. TR 1960

j. Account 365 – Distribution overhead Conductors: Adjust FPL's proposed 40 SO life-curve combination to 43 SO. This reduces depreciation expense by $5,026,679. Adjust FPL's proposed negative 100% negative net salvage to negative 50% net salvage. The effect of the adjustment is to reduce depreciation expense by $19,714,964. TR 1964

k. Account 366.6 –Underground Conduit – Duct System: Adjust FPL's proposed negative 5% net salvage to zero net salvage. The effect of the adjustment is to reduce depreciation expense by $1,073,994. TR 1966

l. Account 367.6 – Underground Conductors: Adjust FPL's proposed 38 SO combination to 40 L1. The effect is to reduce depreciation expense by $2,238,822. Adjust FPL's proposed negative 5% net salvage to zero net salvage. The effect of the adjustment is to reduce depreciation expense by $2,225,291. TR 1967

m. Account 367.7 – Distribution Underground Conductions and Devices – Direct Buried: Adjust FPL's proposed 35 R2 combination to a 43 SO.5 combination. This reduces depreciation expense by $1,613,351.

n. Account 368 – Distribution Line Transformers: Adjust FPL's proposed 32 L1.5 to a 34 L1.5 combination. This reduces depreciation expense by $3,808,140. Adjust FPL's proposed negative 25% net salvage to negative 20% net salvage. The effect of the adjustment is to reduce depreciation expense by $3,952,437. TR 1969

o. Account 369.1 - Distribution Services – Overhead: Adjust FPL's proposed negative 125% net salvage to negative 85% net salvage. The effect of the adjustment is to decrease depreciation expense by $1,968,596. TR 1972

p. Account 369.7 – Distribution Services – Underground: Adjust FPL's proposed 34 R2 life-curve combination to 41 SO.5. This reduces depreciation expenses by $4,160,079. Adjust FPL's proposed 10% net salvage to negative 5% net salvage. TR 1973

q. Account 370 – Distribution Meters: Adjust FPL's proposed 36 R2.5 combination to 38 S1.5. This reduces depreciation expense by $41,504,782. Adjust FPL's proposed negative 55% net salvage to negative 10% net salvage. The effect of the adjustment is to reduce depreciation expense by $4,306,357. TR 1977

r. Account 370.1 - Distribution Meters – AMI: Adjust FPL's proposed 55% negative net salvage to negative 10% net salvage. The effect of the adjustment is to reduce depreciation expense by $711,992. TR 1978

s. Account 373 - Distribution Street Lighting and Signal Systems: Adjust FPL's proposed 30 RO.5 combination to a 35 LO combination. This reduces depreciation expense by $751,011.

t. Account 390 – General Plant Structures: Adjust FPL's proposed 50 R1.5 combination to 56 SO. This reduces depreciation expense by $1,022,803. Adjust FPL's proposed negative 10% net salvage to positive 25% net salvage. The effect of the adjustment is to decrease depreciation expense by $3,828,186. TR 1980

u. Account 392.01 – General Plant Aircraft – Fixed Wing: Adjust FPL's proposed 7 SQ life-curve combination to 9 R5. This reduces depreciation expense by $372,741.

v. Account 392.02 – General Plant Aircraft – Rotary Wing: Adjust FPL's proposed 7 SQ life-curve combination to a 9 R5 life-curve combination. This reduces annual depreciation expense by $178,226.

Depreciation Expense- Summary and Conclusion. The net effect of the Commission's decisions on depreciation expense will be that, if the Commission were to approve FPL's depreciation expense proposals, FPL will recover more than necessary to obtain the return of its capital investment over the assets' lives. Of course, in light of the rest of the components of FPL's request for a $1.5 Billion per year rate hike, FPL's proposal is not surprising because it is the strategy that will provide FPL with more cash. This is likely how FPL came to have a depreciation reserve surplus between $1.25 Billion and $2.74 Billion today, even after amortizing $1 Billion of its prior reserve surplus over the past 8 years. FPL's track record of grossly over-depreciating its assets for ratemaking purposes demonstrates the critical importance of setting FPL's depreciation as close to "right" as possible in this case, lest FPL show up 4 years from now, with its next depreciation study, with an even greater depreciation reserve surplus than it has today, evidencing further and greater subsidization of future customers by current and recent customers. To "get the depreciation rates right now," the Commission should reduce FPL's depreciation expense amounts for ratemaking purposes in this case by $240.6 Million per year, as recommended by Mr. Pous. (FPL's track record also strongly supports the reasonableness of the Consumers' position that the Commission should set FPL's rates using the Consumers' recommended 4-year amortization of FPL's estimated surplus.)

In summary, competent substantial evidence, particularly the testimony and exhibits of witness Jacob Pous, support the conclusion that FPL's claimed depreciation expense should be reduced by $240.6 Million for the 2010 test year (in addition to the net credit to depreciation expense of $291 Million per year, which is $311.3 Million per year on a gross basis, for timely, fair amortization of the $1.245 Billion depreciation reserve surplus that FPL has itself acknowledged). Following the principle that FPL is required to provide safe, adequate, reliable service at the lowest possible cost, and that the Commission is required to set rates accordingly, the Commission should reduce FPL's authorized revenue requirements by $241 Million for the 2010 test year.

V. Operating & Maintenance Expenses

A. O&M Expense – Incentive Pay (Issue 103)

FPL has requested that its customers pay tens of millions of dollars in management and non-management incentive compensation. The Florida Retail Federation, the Citizens, and the other Consumer Intervenors oppose this request because the substantial majority of FPL's incentive compensation is determined based on employees' contributions to, and FPL's achievement of, earnings and other financial goals that benefit shareholders. The FRF would not object to the shareholders paying employees for value that they provide to shareholders, but the FRF strongly objects to its members, and all of FPL's other customers, being asked to pay for benefits to shareholders.

To appropriately allocate the costs of incentive compensation to the shareholders who benefit, the Commission should reduce jurisdictional executive salaries for ratemaking purposes by $27.509 Million in 2010 and $29.4 Million in 2011 to remove half of executive compensation, which benefits shareholders, and the portion of executive salaries which exceeds target compensation levels. Brown, TR 2468; EXH 242 Similarly, the Commission should reduce jurisdictional non-executive salaries by $5.661 Million in 2010 and $6.64 Million in 2011 to remove half of non-executive compensation, which benefits shareholders, and the portion of non-executive salaries which exceeds target compensation levels. Brown, TR 2469; EXH 243

FPL forecasts that it will have 11,111 employees in the forecasted 2010 test year. Approximately 5,000 of the employees are salaried, or "exempt," employees. Another 2,628 are hourly, or "non-exempt," and 3,540 are categorized as union employees. TR 5624 In addition to receiving a base salary, all salaried employees of FPL are entitled to participate in both a short-term incentive compensation plan and a long-term incentive compensation plan. The short-term incentive plan provides a cash bonus at the end of each year, while the long-term incentive plan provides compensation in the form of an award of equity in the company. The equity compensation is provided either as restricted stock, for which length of employment is the sole criteria for vesting, or as performance shares. TR 5626-27 Performance shares are set for employees at the beginning of a three-year period, and at the end of the three-year term, the

actual shares are paid to the employee based upon the performance of the company. The same performance factors are used in short-term and long-term incentive compensation plans. TR 5629-30 In addition to these common performance factors, individual employees have other performance factors which are also considered when determining the amount of the incentive compensation the employee will receive. These factors include individual goals and business unit goals, in addition to the corporate goals. TR 5632-33 All told, FPL projects executive compensation to account for 4.5% of total company gross pay in 2010, and this percentage grows to 4.7% in 2011. TR 2457

Incentive Compensation is Heavily Weighted To Benefit Shareholders. The fundamental objective of FPL Group's executive compensation program is to support the creation of long-term shareholder value. TR 2458; EXH 515 at 37 It is not surprising, therefore, that many of the metrics included in the executive compensation plan reflect performance criteria that benefit shareholders, such as return on equity and net income. TR 2553-54 The proxy statement lists a large number of variations on this same theme of rewarding behavior which benefits shareholders, such as adjusted earnings, earnings per share growth, base earnings per common share, diluted earnings per common share, adjusted earnings per common share, adjusted earnings before interest and taxes, earnings before interest, taxes, depreciation and amortization, total shareholder return, and operating income. EXH 515 at 12

Perhaps the best example of incentive compensation being weighted toward shareholder benefits is the inclusion of rate case performance as a factor to be considered when setting incentive compensation. Higher rates are a detriment to customers, particularly in today's economic environment, yet the company intends to reward employees for obtaining higher rates. The satisfactory outcome of the rate case accounts for 25% of the incentive compensation award. TR 5657 If the company truly wished to benefit customers through its incentive compensation plan, it should reward employees for reducing rates, not increasing them. The rate case, return on equity, and net income factors together account for 45% of the incentive compensation award. TR 5669-70 All of these factors are intended to benefit shareholders.

FPL's Highest-Ranking Employees Inappropriately Receive the Vast Majority of Long-term Incentive Compensation. Out of approximately 4,900 salaried employees eligible to participate in the long term incentive plan, approximately 700, or one-seventh of those eligible, actually receive awards of long-term incentive compensation. TR 5639-40 Even so, the vast majority of the stock compensation is slated for the 42 officers of FPL. The Company's response to the Attorney General's Interrogatory 76 provides a breakdown of the amount of incentive compensation projected to be paid to different classes of employees. Of the long-term stock compensation expected to be awarded, $43.8 Million will go to the 42 officers of FPL, while all other salaried employees will get $9.2 Million. TR 5644-45

Even the lop-sided amount of long-term incentive compensation to be paid to the 42 officers is heavily weighted toward the highest-ranking officers of the corporation. EXH 521 shows the portion of the amounts shown in the response to the Attorney General's Interrogatory 76 which are designated for the top 12 executive officers. For example, 73% of the performance equity shares allocated to the 42 officers will go to the top 12. TR 5647 A further comparison of the two exhibits shows that 60% of the cash bonuses set aside for the 42 officers will go to the top 12, and 53% of the restricted stock will go to the top 12.

FPL's Incentive Compensation Plan Provides Insufficient Incentive to Control Compensation Costs if Shareholders Are Not Partly at Risk. Commissioner Argenziano noted that the Company would have a greater incentive to control incentive compensation costs if the shareholders had something at risk, rather than being able to simply pass the entire cost through the ratepayers. TR 5824-28 In a similar vein, Commissioner Skop questioned whether it would be more appropriate for executive compensation above a certain level to be the responsibility of shareholders. TR 5785-86

The Citizens' Witness Sheree Brown proposed that shareholders bear responsibility for a portion of executive incentive compensation. Since a significant portion of executive incentive compensation is dependent on financial performance, this proposal can be viewed as a form of profit sharing. If the financial performance benefits shareholders, executives share in that benefit

through the incentive program. TR 2467 Since the determination of executive incentive compensation is tied to increasing shareholder value, it should be funded at least in part by those who benefit from attainment of that goal. TR 2461-62 This also allows the executive incentive compensation to be, in effect, self-funded. Rates are set based upon a projected level of revenue and O&M expense, among other things. If FPL attains greater earnings due to greater revenues or expense containment which exceeds forecasts, then the higher earnings have been somewhat self-funded by ratepayers. TR 2550

Other States Require Shareholders to Bear Some Responsibility for Incentive Compensation. In at least 20 cases decided since June 2007, a state regulatory commission limited the amount of executive compensation included in the development of rates. EXH 241 reflects a wide variety of decisions; however, most of the findings were based upon the conclusion that the excluded incentive compensation did not benefit ratepayers. TR 2468 Some examples are exclusion of 50% of management incentive compensation (Arizona), disallowance of all incentives tied to stock performance and 50% of incentives tied to financial performance (Arizona), exclusion of long term incentive compensation (California), exclusion of annual incentive compensation and executive officer bonuses (Massachusetts), exclusion of incentive compensation and bonuses (Michigan), limiting annual incentive compensation to 15% of base pay (Minnesota), denial of the cost of long-term incentive compensation based upon measures of financial return (Missouri), denial of 50% of annual incentive compensation and 100% of long-term incentive compensation (Oklahoma), denial of 50% of executive incentive compensation (Maryland), and disallowance of the cost of all stock awards (Vermont).

Shareholders Should be Responsible for all Payments Above the Company's Target. FPL sets targets for annual and long-term incentive compensation; however, in this rate case, the Company is asking to recover from ratepayers amounts which exceed the targets. For executives, it is asking customers to pay for payouts set at 1.4 times the target for executives and at 1.3 times the target for non-executives. TR 2465 In 2010, the portion of executive incentives

related to exceeding the targets is $12.3 Million, and in 2011 the portion is $13.2 Million. TR 2466 For non-executives, the portion is $5.7 Million in 2010 and $6.7 Million in 2011. TR 2469

Shareholders should be responsible for all amounts in excess of target levels for both executives and non-executives. This is a reasonable assumption to make for a future test period during a bad economic environment and during a time when the Company is seeking a steep increase in base rates. TR 2468

FPL's Last Minute "Concession" on Executive Compensation Does Not Adequately Address this Issue. During the hearings, FPL announced that it was reducing its O&M expense request by $17.2 Million in 2010 and $19.3 Million in 2011, which it said was equivalent to 50% of all executive incentive compensation and equivalent to eliminating all executive raises in 2010 and 2011. FPL claimed that this action accommodated the views of OPC. TR 5530 Later, it clarified this statement by stating that an "accommodation" was not the same as adopting OPC's position. TR 5609 FPL introduced an exhibit calculating the amounts of executive compensation that FPL now conceded were inappropriate. EXH 514, TR 5610

EXH 514 shows that part of the amount claimed by FPL as reductions to revenue requirement were actually amounts included in capital, and FPL witness Slattery conceded that this mistake overstated the claimed revenue requirement reduction resulting from FPL's accommodation. TR 5622, 5624 In addition, the concession does not include the reduction of allocated salaries of $7.9 Million proposed by OPC witness Dismukes, nor does it include the reduction proposed by OPC witness Brown to reduce incentive compensation for amounts above the targets related to both executive and non-executive incentive compensation. TR 5621

FPL's Executive Compensation is Excessive. The Commission should note that FPL's executive compensation is excessive by any normal person's standards. FPL has more than 400 employees who make more than $165,000 a year, and 12 who make more than $1 Million a year. TR 5654 FPL's president makes more than 4 times as much as the chief executive officer of Publix Super Markets, $3.6 Million per year vs. $795,000 per year, and the CEO of FPL Group makes about $11.5 Million per year, which is about 14 times as much as Publix's CEO (of which

FPL wants its customers to pay $7.8 Million per year, or 10 times as much as Publix's CEO), EXH 402, even though Publix is a Fortune 100 company and FPL is not. Even though FPL attempted to deflect this fact by presenting information about the stock holdings of Publix's CEO, on cross-examination, FPL's witness Kathleen Slattery had to admit that FPL's senior management receive stock as incentive compensation, but Publix's does not, so that she also had to admit that she had no information to indicate that Publix's CEO did not buy his shares, as opposed to receiving them as compensation as FPL's officers do. TR 5709 See also EXH 401, which indicates that Publix stock is "sold only to employees and board members." Additionally, although FPL introduced EXH 400 in an effort to show that other large companies also compensate their executives handsomely, FPL cannot avoid the fact that those companies – Wal Mart Stores, Target, Walt Disney, Macy's Office Depot, JC Penney Co., Yum! Brands, Inc., and Tenet Healthcare Corp. – operate in competitive markets, where customers have a choice, while FPL operates as a monopoly provider of a virtual necessity. TR 3602 It is also noteworthy that several of the other companies' CEOs, including those of Target, Macy's, and Office Depot, have taken substantial pay reductions over the past two years. EXH 400 Again, the FRF does not object to FPL's shareholders paying FPL's and FPL Group's executives as much as they want to pay them, but the FRF objects strongly to FPL's efforts, as a monopoly provider of a necessity, to force its captive customers to pay huge compensation packages that are designed to incentivize FPL's management to perform for shareholders far more than for customers.

Conclusion. The Commission should reduce FPL's revenue requirements for the 2010 test year by $33.1 Million to properly allocate the costs of FPL's incentive pay plans between shareholders and customers. The FRF strongly opposes any rate increase for FPL in 2011, but if the Commission decides to grant such an increase, it should be reduced by $36 Million to properly allocate the costs of FPL's incentive pay plans between shareholders and customers.

B. O&M Expense – Labor Costs (Issue 100)

The Commission **should reduce FPL's jurisdictional payroll expenses and revenue requirements by $12.507 Million in 2010** to recognize the historical average of unfilled

positions; correspondingly, FPL's jurisdictional payroll expenses should be increased by $3.262 Million in 2010 to recognize additional overtime requirements as a result of the unfilled positions. Thus, the net reduction in FPL's payroll expenses for the 2010 test year is $10.2 Million. The FRF strongly objects to and opposes any rate increase for FPL in 2011, but if the Commission were to decide to grant such an increase, it should be reduced by a net of approximately $9.6 Million, reflecting a reduction in jurisdictional payroll expenses of $13.068 Million, offset by an increase of $3.414 Million to recognize additional overtime costs. EXH 236 (SLB-14)

FPL forecasts positions for 11,111 employees in 2010 and 11,157 employees in 2011. However, the company typically has unfilled positions each year, as shown in EXH 234 (SLB-12). During the five years ending 2008, FPL's actual number of employees ranged from a low of 1.7% below target in 2004 to a high of 2.48% below target in 2007, with an average of 2.08% below target over a five year period. Brown, TR 2454-55 Based upon this history, FPL will not fill its targeted number of positions in the test years. TR 2498

FPL concedes that it historically does not fill its targeted number of employees, but that the lower costs from having fewer employees forecasted is offset by a variety of other factors, such as (1) employees working excessive overtime to make up for the work from unfilled positions which makes the employees less productive; and (2) employees working excessive overtime also make them less efficient, and the increased stress of increased work demands leading to increased health care and benefit costs. TR 5575 This rationale is unpersuasive, because these costs would have been incurred during all of the previous years when there were unfilled positions, and those costs should have been included in the forecasts for those categories of costs in the test years. In essence, the Company conceded that it is unlikely to fill the targeted number of positions, but then claims those costs will be offset by unspecified, unquantified costs elsewhere in the forecasts. Clearly, such vague assertions do not meet the burden of proof the Company bears to prove that it will incur the employee costs included in its forecasts. Accordingly, the Commission should adopt the adjustments proposed by Ms. Brown to adjust

downward the forecasted compensation expenses based upon the actual, historical experience of the company not filling all of its forecasted positions.

Any assertion by FPL that it will fill its entire complement of employee positions in 2010 or 2011, or any other time, is devastated by FPL's admission that it has experienced, and continues to experience, increasing employee turnover. In fact, FPL's employee turnover is projected to be approximately 7 percent in 2009, and is projected to increase to approximately 9.5 percent in 2010, and further to approximately 10.4 percent in 2011. TR 5719 Moreover, FPL is notably missing from the Fortune 100 best companies to work for. EXH 516 In conclusion, it is inconceivable that FPL, with inadequate training as testified to by its own employees, with increasing employee turnover, and that is not recognized as a "best place to work," would be able to keep its entire complement of employee positions filled.

C. O&M Expense – Storm Reserve Accrual (Issue 120)

FPL already has a storm reserve of approximately $191 Million, yet it asks the Commission to approve a new accrual to enable it to achieve exactly the same storm reserve for FPL that the Commission specifically rejected a mere three years ago. Order No. PSC-06-0464-FOF-EI at 25 ("2006 Storm Cost Order"), Findings of Fact Nos. 57 & 58. Here FPL wants the Commission to approve a storm reserve of $650 Million, which the Commission clearly and unequivocally rejected. Id. FPL proposes to achieve this reserve level by imposing a new storm reserve accrual of $150 Million per year. Competent, substantial evidence of record, specifically including the fact that FPL's storm reserve is already effectively at the target level approved by the Commission a mere three years ago, demonstrates that FPL's base rates in this case should be set using a value of $0 per year for the storm reserve accrual. Moreover, there is no evidence in the record to show that the Commission's conclusions underlying its decisions in the 2006 Storm Cost Order are untrue today. The Commission should thus choose the lowest value for storm reserve accrual supported by competent, substantial evidence, and should accordingly **reduce FPL's rate increase request by $150 Million per year**. As noted with respect to many other

issues, the FRF strenuously opposes any rate increase for the 2011 test year; if any increase for the 2011 test year is considered, the appropriate storm reserve accrual is zero.

FPL's storm reserve is already funded to a level of approximately $191 Million. Pimentel, TR 5328 The existing reserve was created through the proceeds of FPL's storm-recovery bonds pursuant to the 2006 Storm Cost Order. FPL already has the money; the bonds have been paid off by FPL's customers since 2007, when FPL's final storm charges were implemented following the issuance of the 2006 Storm Cost Order, and are continuing to be paid off by current customers. Thus, FPL's current customers are already paying for FPL's restoration costs incurred due to the storms of 2004 and 2005, as well as paying for the existing storm reserve of $191 Million. In other words, FPL's existing customers are already paying both for past storms and for future storms, and FPL now wants its customers to pay even more against the contingency of future storms. This is patently unreasonable and unfair. FPL's customers should not be further burdened by paying for additional, un-incurred and unknown future storm restoration costs.

The Citizens' witness Sheree Brown testified that the Commission should deny FPL's request to charge $150 Million a year to ratepayers to further build up the storm damage reserve. It is extremely important in this case to balance the generational ratepayer interests. TR 2470-72 Given the tough economic times that exist, it is not reasonable or feasible for FPL's customers to pay an additional $150 Million for an annual storm accrual that represents over 14% of FPL's requested 27% increase in base rates. Ratepayers are already paying a substantial amount to cover past storms, as well as replenishment of the storm reserve fund to approximately $191 Million. Ms. Brown added that pre-funding of storm costs is not necessary to provide for reasonable levels of generational sharing of costs as other recovery mechanisms such as deferred cost recovery or securitization are available for use by utilities in the event it incurs substantial storm damage. TR 2470-72

In this regard, the Commission should consider specifically its conclusion in the 2006 Storm Cost Order:

58. Given that FPL has the opportunity to seek recovery of future storm restoration costs through either a surcharge or securitization pursuant to the 2005 Settlement Agreement and applicable law, and given the preference of FPL's customers to face that risk when such costs actually materialize, we decline to approve funding of FPL's Reserve to a level of $650 million through the storm-recovery bonds authorized to be issued under the terms of this Order. We find that funding FPL's Reserve to a level of $200 million is appropriate and will (i) reduce the incidental costs associated with issuance of the storm-recovery bonds authorized to be issued under the terms of this Order, (ii) provide more critical review of FPL's charges to its Reserve, and (iii) result in lower overall storm-recovery charges at this time.

The FRF, and the other Consumer Intervenors, respectfully ask the Commission to again respect the Consumers' preferences not to be further burdened with the unknown costs of unknown future storms.

Based on past Commission policy, Ms. Brown testified that the risk associated with the level of storm damages covered by the reserve falls to the ratepayers. TR 2471 The Commission recognized this in the 2006 Storm Cost Order, at Finding of Fact No. 57, where it stated:

> FPL proposed that its Reserve be replenished to a level of $650 million to be financed through storm-recovery bonds authorized in this proceeding. Intervenors support funding the Reserve to a level of between $0 and $200 million. The record clearly establishes that the level of FPL's Reserve has no impact on FPL's exposure to storms. Further, under the current approach to the recovery of storm restoration costs, the risk associated with a lower reserve level (i.e., the possibility of storm restoration costs exceeding the Reserve, leading to subsequent customer charges) and the risk associated with a higher reserve level (i.e., paying charges now for storm restoration costs that do not materialize) is completely borne by FPL's customers. The customers represented in this proceeding have made clear that they would rather pay to fund the Reserve to a lower level now and risk future rate volatility than pay to fund the Reserve to a higher level before future storm restoration costs have been incurred.

(Emphasis supplied.) In the current case, according to Ms. Brown, and as previously found by the Commission, the risks are still borne by the ratepayers. Given the burden already placed on ratepayers to cover previous storm damages and reserve replenishment, it is reasonable to accept the risk of future storm damage. Further, denying FPL's requested storm accrual will not create unreasonable intergenerational inequities as current customers today are already paying for past

storms and should not be doubly burdened by unknown future storms. Conversely, to increase the expense to current customers for both historical and projected storms would cause an inequity to current ratepayers. Based on the above, FPL's proposed storm damage accrual increase of $148.667 Million should be denied. Brown, TR 2469-72

SFHHA witness Kollen added several other pertinent points supporting the Commission's denial of FPL's requested storm accrual in base rates. First, the surcharge approach avoids the need to speculate as to what level of storm damage expense is appropriate to include in base rates. Second, the most sophisticated models, including the model employed by FPL witness Harris, cannot possibly predict the magnitude or the timing of actual storm damage costs accurately. Finally, the surcharge approach in conjunction with securitization financing is the least cost and most economically efficient approach. Recovery by securitization removes tax penalties, allows the use of lower cost debt and minimizes ratepayer investment; whereas prefunded base rate accruals do the opposite. Kollen, TR 3147-50

Further, Mr. Kollen stated that FPL witness Harris' analysis provides a gross damages estimate (previously twice rejected[14]), not the "incremental" cost for which the Commission allows recovery, and the $650 Million storm reserve target is therefore overstated. The Commission previously rejected FPL's requested $650 Million target amount and instead found that a $200 Million reserve surplus was reasonable. Mr. Kollen concluded that there is no valid reason for the Commission to revisit the reserve target in this case. TR 3148-51

Conclusion. As previously determined by the Commission, FPL already has an adequate storm Reserve of $191 Million, i.e., virtually equal to the specific Reserve amount approved by the Commission in the 2006 Storm Cost Order, and there is no evidence in the record that would contradict the Commission's specific findings (a) that FPL's customers bear all risks associated

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[14] See Order No. PSC-06-0464-FOF-EI, in Docket No. 060038-EI, In re: Petition for Issuance of Storm Recovery Financing Order by Florida Power & Light Company; and Order No. PSC-05-0937-FOF-EI, in Docket No. 041291-EI, In re: Petition For Authority To Recover Prudently Incurred Storm Restoration Costs Related to 2004 Storm Season That Exceed Storm Reserve Balance, by Florida Power & Light Company.

with the level of storm Reserve and (b) that a $200 Million Reserve was appropriate in 2006. The Florida Retail Federation strongly believes that FPL's request for an additional $150 Million to pay for unknown future costs, when it already has a customer-funded storm Reserve of $191 Million, is further evidence of FPL's disregard for its customers' well-being, and for the health of the Florida economy. FPL's request is unreasonable, and granting any part of it would result in FPL's rates being unfair, unjust, and unreasonable. Accordingly, the Commission should deny FPL's storm reserve accrual request in its entirety, which will reduce FPL's revenue requirements for the 2010 test year by $150 Million.

VI. Other Operating Revenues

Witness Sheree Brown also identified adjustments to FPL's revenues for the 2010 test year, including adjustments for understated late payments fees and for understated sales, as well as some offsets to other operating revenues. These are summarized in EXH 248 (SLB-26), and reflect a net increase in other operating revenues to be realized by FPL during the 2010 test year of $12.9 Million, which **reduces FPL's requested rate increase by $12.9 Million for the 2010 test year**. EXH 248 (SLB-26)

VII. FPL's Proposed Automatic Future Rate Increases

In its request, FPL has not only asked for more than $1 Billion in additional payments from its customers for service in 2010, it has also asked the Commission to approve two automatic increases that, if granted, would take nearly an additional Half-Billion Dollars a year from its customers beginning in 2011. To be clear, FPL wants to collect an additional $1 Billion-plus from its customers in 2010, plus nearly $1.5 Billion from its customers in 2011, through a combination of the 2010 increase plus a "subsequent year adjustment" of nearly a quarter-billion dollars in 2011 plus an annualized Generation Base Rate Adjustment of $182 Million to be implemented in mid-2011. Moreover, these increases would remain in effect until modified by further Commission action, and would almost certainly increase as the economy recovers. The FRF believes that FPL's proposals for automatic future rate increases are FPL's attempts to set itself up to avoid Commission scrutiny for another decade, or even another

quarter-century, while earning generous returns as very-low-risk monopoly provider of a service that is a virtual necessity. **The Commission should deny both proposals**, and should instead regulate FPL in the public interest by requiring FPL to obtain the Commission's approval for future rate increases, if and when FPL can prove that it needs additional revenues in order to provide safe, adequate, reliable service, to earn a reasonable return on its prudent investment, and to attract sufficient capital to finance its necessary, reasonable, and prudent investments.

A. Subsequent Year Rate Increase for 2011

Especially in view of the uncertainties associated with the economic downturn, and specifically the uncertainties associated with the timing and degree of the anticipated recovery, the predictions offered by FPL are too speculative to form a basis on which to fix rates for 2011. The FRF agrees with the Citizens that any attempt by the Commission to authorize such automatic future increases, without contemporaneous analysis and vetting of current conditions and FPL's then-current assumptions and assertions, would be contrary to the public interest of Florida and would, at best, be a potentially unlawful abuse of the Commission's discretion to the significant detriment of FPL's customers.

The 2011 test year incorporates an unacceptable level of uncertainty and should be rejected. FPL's projections and assumptions are based on current economic conditions.[15] Even FPL's forecasting witness, Dr. Rosemary Morley, recognizes that forecasts are less accurate the further into the future they are made. Morley, TR 1040 If the economy recovers either more rapidly than, or to a greater degree than, reflected in FPL's forecast assumptions, allowing a subsequent rate increase using a 2011 test year could easily generate excess earnings at ratepayer

[15] Several of the Consumer Intervenors' witnesses have addressed the revenue impacts for the 2011 test year in the event the Commission decides to entertain the Company's proposal for a subsequent year rate adjustment. Again, the Florida Retail Federation strongly opposes any increase in 2011, unless FPL files new MFRs with new, current information that can be fully evaluated and tested in a new docket. That is, the FRF strongly believes that FPL must, in the public interest, be required to prove that it needs any rate increase, if and when it claims it needs it, based on verifiable information as of the time of such request.

expense. FPL would have no obligation to then reduce rates without customer or Commission intervention. This improperly shifts the burden to customers, or the Commission, to monitor current conditions in late 2010 and 2011 to evaluate the reasonableness of FPL's rates at the time, and to initiate proceedings on either the Commission's own motion or at the instance of a customers' petition, in order to get things right.

Allowing FPL to implement an increase in 2011, without full vetting – i.e., without a then-current "ultimate true-up" of all variables, assumptions, economic conditions, market conditions, and other factors – of the need for the increase would be contrary to the public interest. The Commission should accordingly reject FPL's proposed subsequent year rate hike for 2011.

B. Generation Base Rate Adjustment

In 2005, parties to Docket No. 050045-EI, which was a proceeding to establish FPL's revenue requirements and base rates, negotiated a global settlement. Among other things, the parties agreed to a "base rate freeze" and to limit FPL's ability to increase base rates during the four-year term of the settlement agreement. One exception to the "freeze" on base rates to which the parties agreed was FPL's ability to increase base rates to reflect the revenue requirements associated with power plants that (1) received affirmative "determinations of need" from the Commission and (2) were placed into service during the term of the settlement agreement.

Such was the origin of the "generation base rate adjustment," or "GBRA." See Barrett, TR 1410. In the context of a negotiated freeze on base rates, it made regulatory sense to allow FPL certain specified relief associated with certain known future costs over the period of the settlement, over which both FPL and the other parties had some control. However, in this case, FPL wants to break the concept loose from its moorings and use it in a manner that would abuse customers and enable it to raise its rates without adequate Commission scrutiny, of all relevant factors, in future rate cases.

FPL's proposal would be abusive to customers because the proposal would add the full revenue requirements of future plant to base rates without first considering whether existing rates

are sufficient to absorb all or a portion of the costs of the plant and continue to enable FPL to provide adequate service while earning a fair rate of return.

FPL supports its GBRA proposal with the argument that the GBRA, in and of itself, cannot lead to an overearnings situation. FPL misses the point. The critical question is not whether the GBRA will result in overearnings, but whether the GBRA will result in revenues and customer bills that are higher than necessary to enable FPL to provide adequate service, attract necessary capital, and yield a fair return. In every situation in which current rates generate earnings sufficient to absorb a portion of the incremental cost of a power plant, adding the full revenue requirements to base rates through the mechanism of the proposed GBRA (in which base rates remain and a full surcharge is added) will result in total collections that are greater than would be the case if the Commission instead folded the new unit into a full revenue requirements rate case. This statement is as much a mathematical certainty as is FPL's point about not creating an overearnings situation.

A synopsis of the base rate "ratefixing" process proves the point. In a base rate proceeding, the regulator reviews the totality of the utility's operations, including the myriad of costs, capital investments, and its revenues. A "test period" is examined; however, parties and regulators understand that the test period is a snapshot of a particular point in time. After rates are set, the "mixture" of revenues, expenses, and investments will change. Some costs will increase; others may decrease, or, in the case of retirements or specified amortization periods, go away completely. Similarly, revenues may increase or decrease.

A utility's base rates serve the function of recovering a myriad of costs. Because of the dynamic nature of the utility's operations, in which the relationships between costs, revenues, and rate base investments are constantly shifting, it is impossible to design base rates to yield a specific, "point" rate of return. For this reason traditionally regulators identify a "range of reasonableness." If the earned rate of return falls within the established range, then by definition the rates that generated the return are fair, just, and reasonable.

Assume that a regulatory agency establishes a "fair and reasonable" range for overall rate of return of 8% to 10%. A month later, the utility actually earns 9.3%. For regulatory purposes, the return is fair and reasonable. In subsequent months, the actual, earned rate of return fluctuates between 8.5% and 9.8%. Both the lower and higher earned rates of return fall within the authorized range. One is as "fair and reasonable" as the other. In fact, 8% would be as "fair and reasonable" as 10% for regulatory purposes, because the target is a fair and reasonable range, not a point.

If the utility experiences an increase in revenues or a decrease in costs, the impact on the earned rate of return will be to increase it. If the utility experiences and increase in rate base and/or an increase in costs, the impact on the earned rate of return will be to decrease it.

If the utility's earned rate of return is within the established fair and reasonable range, there is "room" for the resulting earned rate of return to grow before the "ceiling" of the range is surpassed and the earned rate of return becomes unreasonably high ("overearnings"). Similarly, if the earned rate of return is within the established range, there is "room" within which (as a result of increased investment and costs, for instance) earnings and the resulting earned rate of may decline before the lower end of the range is breached and rates become unreasonable low ("underearnings"). Said differently, in this situation earnings are sufficient to absorb additional costs and yield a fair rate of return without the necessity of a base rate increase.

Now consider FPL's proposed "generation base rate adjustment," or GBRA. Application of the GBRA would result in a base rate increase. In a situation in which existing base rates and existing earnings are sufficient to absorb some portion of the costs of the new power plant, the effect of the GBRA would be to preserve earnings at their existing level and increase total bills to a level higher than necessary to enable FPL to recover its reasonable costs of providing adequate service, support FPL's investment, and yield a fair return.

FPL's witnesses attempt to characterize the proposed "generation base rate adjustment" as "efficient." "Efficiency" is in the eye of the beholder. FPL uses the term to describe a minimum of administrative proceedings, an absence of intervenors, a similar absence of

Commission scrutiny of its costs and revenues, and a focus that excludes its total earnings picture. The more appropriate meaning of "efficiency" in this context is that degree of administrative oversight that results in the delivery of adequate service, including any plant required to provide it, for the lowest cost consistent with providing FPL an opportunity to earn a fair return. The hypothesized costs of regulation are simply the relatively nominal "transaction costs" of achieving this "efficient" result. The proposed "generation base rate adjustment" flunks this test of efficiency.

The concept of "regulatory lag" does not provide a sound or reasonable basis to approve the GBRA. "Regulatory lag" occurs when, as costs and revenues change over time, a utility's earnings and achieved returns either grow or are eroded, depending on the relationship between costs and revenues through time. FPL benefited greatly from regulatory lag, and the absence of fully litigated rate cases, from 1988 through 2008, giving back substantial refunds, agreeing to base rate decreases of $600 Million per year in 2 settlements in 1999 and 2002, and further agreeing to a "base rate freeze" in 2005, while earning generous returns. For example, FPL's returns on common equity ranged between 10.83% and 13.58% between 1996 and 2008, inclusive.

FPL now raises the specter of "regulatory lag" as a hypothetical justification for its GBRA. What FPL really wants is for "regulatory lag" with the GBRA in place to benefit FPL, by allowing it to increase its rates and its cash flows without having the discipline of full Commission scrutiny applied to all of its costs and revenues in full base rate cases, which would, FPL asserts, be more frequent without the GBRA. The FRF believes, strongly, that the public interest is and will be served far better by more frequent rate cases – thereby providing for the "ultimate true-up" of all of FPL's accounts, accounting practices, costs, and revenues, based on thorough consideration of competent substantial evidence.

FPL argues that the "generation base rate adjustment" would be fair and warranted because it would add the costs of owning and operating the plant to customers simultaneously with the timing of lower fuel costs that customers will receive due to the efficiency of new

plants. However, customers effectively begin bearing the costs of a new unit when it begins commercial operation, whether or not base rates are modified at the time. In fact, and as FPL witness Barrett acknowledged, prior to the 2005 settlement agreement FPL had absorbed the full cost of several new power plants without seeking an increase in base rates. Barrett, TR 1422 While rates remained unchanged, the recognition of costs coincided with the timing of any and all benefits, including lower fuel costs, and – because its current revenues and earnings were sufficient to absorb the costs of the new units – FPL continued to earn an adequate return. EXH 388 shows that FPL's achieved rates of return on equity between 1996 and 2008 were very healthy, ranging from 10.83% to 13.58%. Had a Commission-approved GBRA been in place at the time, base rates would have increased (by the amount of the GBRA adder), and total bills would have been increased, despite the obvious fact that FPL did not require additional revenues.

FPL witness Barrett acknowledged that FPL absorbed new power plants in the past, but said that it would no longer do so in the current economic environment. However, as he acknowledged, FPL's GBRA proposal is not limited to the next year, or the next two years. FPL wants to apply it to all future power plants that receive affirmative determinations of need. TR 1404 FPL's witness Barrett also acknowledged that the GBRA is better for FPL than it is for customers. TR 1391

As Mr. Barrett acknowledged during cross-examination, future economic circumstances may look very different when compared to the present "down" economy. Moreover, even if the likelihood of absorbing future power plants of the size of West County units in their entirety may be small, the same principles and mathematical relationships apply when FPL's earnings are sufficient to absorb a portion of a new plant.

FPL may contend that the proposed "generation base rate adjustment" is needed to overcome the disincentive to make an investment that would pull down on the utility's earned rate of return (or, said differently, to provide an incentive to spend the capital dollars). If FPL does so, the Commission should reject the argument. In other contexts, FPL (and other Florida investor-owned electric utilities) are fond of reminding the Commission that they have an

"obligation to serve." See Davis, TR 6409 FPL has such an obligation because Florida has conferred on FPL an extraordinarily valuable monopoly in the provision of an essential service to all retail customers in its service areas. That monopoly service is regulated to ensure that quality of service is good, rates are fair and reasonable, and the utility is given an opportunity – as opposed to a guarantee – to earn a fair return on its investment. The obligation entails making all of the investments, and incurring all necessary expenses, that are required to provide good service, as and when needed. A regulated utility cannot accept the incredible advantages of having 100% of the market and then hold the Commission and customers up for "incentives" to do that which it has already committed to do.

The proposed "generation base rate adjustment" also violates the principles that regulation is to provide an opportunity and not a guarantee, to earn a fair return. When power plants are rolled into a general revenue requirements determination and base rates are set accordingly, the investment in power plants shares the same financial regulatory and business risks as the rest of the utility's operation. The proposed GBRA would change that. The adder to base rates would be automatic. During the hearing FPL touted the "true-up" feature of the proposed mechanism, but the important aspect of the true-up is that it would ensure collection of 100% of the revenue requirements associated with the units including return on investment. To this point, the only items that are treated outside the base rate mechanism have been fuel, environmental costs, conservation costs, and certain preconstruction costs of nuclear units.

Set against the Commission's mandate to regulate in the public interest, and to ensure that FPL's rates are fair, just, and reasonable, FPL's argument is specious. It is specious because it would "true up" the revenues and costs associated with a particular addition to rate base, but at the same time it would avoid the "ultimate true-up" of full Commission scrutiny that is inherent in a full base rate case. In other words, FPL wants a selective true-up that benefits FPL – again, see witness Barrett's testimony that the GBRA is better for FPL than for customers, TR 1391 – that simultaneously enables FPL to avoid the discipline and scrutiny of having its total revenues and costs "trued up" through a rate case. The Commission should reject this proposal.

As with the proposed subsequent year adjustment, FPL supports its proposed "generation base rate adjustment" by arguing, purportedly on behalf of customers, that the mechanism would avoid the "costs and resources" of a rate case. The Commission must reject this argument with the others. As noted above, regulation in the public interest should be efficient from a public interest perspective; if it costs FPL, all other parties, and the Commission $5 Million to $10 Million to litigate a full rate case, that is a small price to pay for the efficient application of the Commission's discipline and regulatory oversight of rate increases in the hundreds of Millions, or as in this case, in the Billions, of dollars.

A rate case (or revenue requirements case) is the best – in fact, the sole-means available to the Commission to get its arms around a utility's overall financial condition. Based on the current case, it appears that FPL will incur somewhere in the range of $3.5-$5 Million in rate case expense. That amount will be amortized over 3-4 years, meaning that base rates will collect perhaps $1.5 Million annually, or the rate case expense. By contrast, FPL calculates the revenue requirements of its next West County unit to be $180 Million <u>annually</u>. If by protesting the GBRA and litigating FPL's overall revenue requirement needs, Intervenors could demonstrate that, when all factors are taken into account, current earnings could absorb just 10% of the plant's requirements, the rate case will have proven to be a vastly cost-effective expenditure in the public interest, because it would result in FPL's fair and reasonable rates being less than FPL would obtain through the GBRA.

Finally, FPL effectively says with respect to the proposed GBRA (as with other aspects of its request), "if we overaim, you can haul us in" for a general rate case. Again, FPL's approach would shift the burden of proof to customers or the Commission. It is FPL's burden to demonstrate, if and when it can, that on an overall basis, its then-current base rates are inadequate to enable FPL to provide safe, adequate, reliable service, to recover the reasonable and prudent costs of providing service, to yield a fair rate of return, and to attract sufficient capital to support necessary, reasonable, and prudent investment. FPL has failed to make the requisite demonstration for the 2010 test year and for the 2011 test year.

<u>Conclusion</u>. The Commission should deny FPL's attempts to burden its customers with automatic rate increases – here, the 2011 subsequent year adjustment and the proposed GBRA – in the future. Approving these measures would likely enable FPL to avoid the Commission's regulatory discipline through the "ultimate true-up" afforded by general rate cases for longer than if the Commission simply requires FPL to come to the Commission to ask for rate increases, if and when FPL believes it can prove that it needs them. In this particular context, the Florida Retail Federation asks the Commission to deny FPL's requests for the 2011 subsequent year adjustment and for the GBRA, because the FRF fears that if they are approved, FPL will be able to avoid appropriate Commission scrutiny for another decade, and perhaps for another quarter of a century. The subsequent year adjustment and the GBRA are FPL's attempts to set itself up to avoid Commission scrutiny for another quarter-century while earning generous returns as very-low-risk monopoly provider of a service that is a virtual necessity. Regulation in the public interest requires the Commission to ensure that FPL only gets rate increases when it <u>needs</u> them in order to provide adequate service at the lowest possible cost, while maintaining its ability to attract necessary capital and, with sound management, having the opportunity to earn a reasonable return on its investment. FPL has failed to prove that it needs either of these increases in these proceedings, relying instead on the "pitch" that they are somehow "reasonable" and on the scare tactic that, if they're not granted, FPL might have to come back and ask for another base rate increase sooner than otherwise. This is the point: FPL should <u>have</u> to ask the Commission for authority to increase its rates, if and when it can prove that it <u>needs</u> additional funds in order to provide adequate service, attract capital, and earn a fair rate of return. For the Commission to endeavor to make a determination today, in 2009 (or January 2010), that FPL needs rate increases in 2011, is too fraught with uncertainty to be reasonable, and it is inconsistent with the Commission's mandate under Section 366.01, Florida Statutes, to regulate public utilities in the public interest. The Commission should deny FPL's requests for both its 2011 subsequent year increase and its proposed Generation Base Rate Adjustment mechanism,

and in the public interest, the Commission should simply require FPL to prove that it needs additional revenues, if and when FPL believes it can do so.

CONCLUSION: FAIR, JUST & REASONABLE RATES

In conclusion, FPL acknowledges that it is obliged to provide safe, adequate, reliable service at the lowest possible cost, and in regulating FPL's rates and service in the public interest, the Commission must set FPL's rates accordingly. FPL's requested increases in this case are overreaching and based on unrealistic claims, assumptions, and analyses. FPL's claim that it will only earn 4.7% on its equity investment in 2010 without a rate increase is misleading at best; FPL's claim depends on several critical assumptions: (a) that the Commission accepts all of FPL's claimed and proposed expenses for the 2010 test year; (b) that the Commission accepts all of FPL's proposed investments as reasonable and prudent; (c) that the Commission accepts all of FPL's proposals relative to the accounting treatment of FPL's depreciation expenses and of its huge, $1.245 Billion to $2.74 Billion, depreciation reserve surplus; (d) that FPL actually makes all of its investments as projected and incurs all of its expenses are projected; and (e) that FPL's revenue projections are accurate.

On the Consumers' side of the case, competent substantial evidence presented by the Citizens' witnesses and other witnesses for the Consumer Intervenors demonstrates that FPL can provide safe, adequate, reliable service, attract sufficient capital, and earn a reasonable return on equity investment, with rate reductions totaling $342 Million per year. The vast majority of this result is obtained through a handful of factors: reducing FPL's authorized ROE to 9.5% ($400 Million per year); modestly reducing FPL's equity ratio (from investor-provided funds) from 59.6% to 54.4% ($106 Million per year); reducing FPL's depreciation expenses to reflect more reasonable service lives and salvage values ($241 Million per year); amortizing FPL's depreciation surplus, as estimated by FPL, over 4 years instead of 22 years ($291 Million per

year, net); and eliminating FPL's proposed request for an unnecessary increase in its storm reserve accrual ($150 Million per year).

Informed by this competent substantial evidence, the Commission must, in the public interest, reduce FPL's rates by approximately $342 Million per year. By doing so, the Commission:

a. will still allow FPL to provide safe, adequate, reliable service at the lowest possible cost,

b. will still allow FPL to recover all of its reasonable and prudent expenses, including the 64% of its total expenses that it recovers through the various cost recovery clauses and charges administered by the Commission;

c. will still allow FPL to maintain its financial integrity metrics within the ranges recognized by rating agencies as appropriate for single-A bond ratings;

d. will thus still allow FPL to attract sufficient capital to finance its necessary, reasonable, and prudent investment; and

e. will still allow FPL to earn a reasonable, even generous, return on its common equity investment of 9.5 percent.

These are precisely the results required of the Commission's regulation of public utilities in the public interest, and they are precisely the results required by the U.S. Supreme Court's precepts set forth in the Hope and Bluefield cases. They provide for fair, just, and reasonable rates, balancing the competing interests of the utility and its customers. The Commission should issue its order reducing FPL's rates accordingly.

THE FLORIDA RETAIL FEDERATION'S POSTHEARING STATEMENT OF ISSUES AND POSITIONS

2010 PROPOSED TEST PERIOD

ISSUE 1: Does the Commission have the legal authority to approve a base rate increase using a 2010 projected test year?

FRF POSITION: *Yes.*

ISSUE 2: Is FPL's projected test period of the 12 months ending December 31, 2010, appropriate?

FRF POSITION: *Yes.*

ISSUE 3: Are FPL's forecasts of customers, kWh, and kW by revenue and rate classes for the 2010 projected test year appropriate?

FRF POSITION: *No. Adjustments to FPL's forecasts are necessary to reflect the most likely conditions for 2010.*

2011 PROPOSED SUBSEQUENT YEAR TEST PERIOD

ISSUE 4: Does the Commission have the legal authority to approve a subsequent year base rate adjustment using a 2011 projected test year?

FRF POSITION: *The FRF agrees with OPC that, as matters of fact, FPL's projections and assumptions are too speculative to amount to competent substantial evidence sufficient to impose such a tremendous burden on FPL's customers. Please note that the FRF opposes granting any subsequent year adjustment in this case, and that where the FRF takes specific positions on issues for 2011, it does so only in order to preserve its rights in the event that the Commission does decide to consider granting additional rate increases in 2011.*

ISSUE 5: Should the Commission approve in this docket FPL's request to adjust base rates in January 2011?

FRF POSITION: *No.*

ISSUE 6: Is FPL's projected subsequent year test period of the 12 months ending December 31, 2011, appropriate?

FRF POSITION: *No. The FRF agrees with OPC that, as matters of fact, FPL's projections and assumptions for 2011 are too speculative and uncertain to constitute competent substantial evidence sufficient to impose such a tremendous burden on FPL's customers.*

ISSUE 7: Are FPL's forecasts of customers, kWh, and kW by revenue and rate classes for the 2011 projected test year appropriate?

FRF POSITION: *No. FPL's forecasts of, and assumptions regarding, 2011 customers and sales factors are too speculative to represent competent substantial evidence that can support such a tremendous burden on FPL's customers, and accordingly, those forecasts are not appropriate.*

GENERATION BASE RATE ADJUSTMENT

ISSUE 8: Should the Commission approve a Generation Base Rate Adjustment (GBRA) mechanism which would authorize FPL to increase base rates for revenue requirements associated with new generating additions approved under the Power Plant Siting Act, at the time they enter commercial service?

FRF POSITION: *No. The Commission should not approve a GBRA for FPL because it would provide for automatic increases in base rates regardless of current conditions – including the utility's achieved rate of return relative to then-current capital market conditions, and other factors affecting the overall reasonableness of the utility's rates – at such time that new power plants are brought into service.*

ISSUE 9: If the Commission approves a GBRA mechanism for FPL, how should the cost of qualifying generating plant additions be determined?

FRF POSITION: *Agree with OPC that, if the Commission approves a GBRA over the objections of the Consumer parties, the cost of qualifying plant additions should be based on the most current available data, not on the basis of costs submitted in need determination proceedings years in advance.*

ISSUE 10: INTENTIONALLY BLANK.

ISSUE 11: If the Commission approves a GBRA mechanism for FPL, how should the GBRA be designed?

FRF POSITION: *Any increase pursuant to a GBRA would first have to be tested to determine whether, absent the GBRA adjustment, FPL would earn below its authorized rate of return on equity. The Commission should open a docket and provide a point of entry for substantially affected parties, i.e., FPL's customers, to test the reasonableness of FPL's claimed costs and any rate changes that might result.*

ISSUE 12: If the Commission approves a GBRA mechanism for FPL, should the maximum amount of the base rate adjustment associated with a qualifying generating facility be limited by a consideration of the impact of the new generating facility on FPL's earned rate of return ("earnings test")? If so, what are the appropriate financial parameters of the test, and how should the earnings test be applied?

FRF POSITION: *Agree with OPC that any base rate increases pursuant to a GBRA should only be considered when the Company has made a prima facie showing that, absent rate increases, the Company will earn less than the floor of its authorized rate of return on equity.*

ISSUE 13: If the Commission approves a GBRA mechanism for FPL, how should FPL be required to implement the GBRA?

FRF POSITION: *Any increase pursuant to a GBRA would first have to be tested to determine whether, absent the GBRA adjustment, FPL would earn below its authorized rate of return on equity. The Commission should open a docket and provide a point of entry for substantially affected parties, i.e., FPL's customers, to test the reasonableness of FPL's claimed costs and any rate changes that might result.*

ISSUE 14: If the Commission chooses not to approve the continuation of the GBRA mechanism, but approves the use of the subsequent year adjustment, what is the appropriate adjustment to FPL's rate request to incorporate the revenue requirements reflected in the West County Unit 3 MFR Schedules?

FRF POSITION: *If the Commission does not approve the continuation of the GBRA, but does approve a subsequent year adjustment for FPL in this case, which the FRF strongly opposes for the reasons set forth above, then the revenue requirement impact of West County Unit 3 should be added into the 2011 adjusted test year.*

JURISDICTIONAL SEPARATION

ISSUE 15: Does FPL's methodology of including its transmission-related investment, costs, and revenues of its non-jurisdictional customers when calculating retail revenue requirements properly and fairly identify the retail customers appropriate revenue responsibility for transmission investment? If no, then what adjustments are necessary?

FRF POSITION: *No. The FRF agrees with OPC that FPL's jurisdictional separation methodology would force FPL's retail customers to cross-subsidize wholesale customers, and that FPL's jurisdictional cost study should be modified as recommended by Witness Sheree L. Brown.*

ISSUE 16: What is the appropriate jurisdictional separation of costs and revenues between the wholesale and retail jurisdictions?

FRF POSITION: *The appropriate jurisdictional separation of costs and revenues are as recommended by Witness Sheree L. Brown. Corresponding adjustments should be made to all accounts that are impacted by Witness Brown's recommended changes in the jurisdictional cost study.*

QUALITY OF SERVICE

ISSUE 17: Is the quality and reliability of electric service provided by FPL adequate?

FRF POSITION: *Agree with Attorney General McCollum.*

DEPRECIATION STUDY

ISSUE 18: INTENTIONALLY BLANK.

ISSUE 19A: What are the appropriate capital recovery schedules?

FRF POSITION: *Agree with OPC.*

ISSUE 19B: Is FPL's calculation of the average remaining life appropriate?

FRF POSITION: *Agree with OPC.*

ISSUE 19C: What are the appropriate depreciation parameters (remaining life, net salvage percentage and reserve percentage) and resulting rates for each production unit (including but not limited to, coal, steam, combined-cycle, etc)?

FRF POSITION: *Agree with OPC that the appropriate parameters are as set forth in the testimony and exhibits of the Citizens' witness Jacob Pous.*

ISSUE 19D: What are the appropriate depreciation parameters (remaining life, net salvage percentage and reserve percentage) and resulting rates for each transmission, distribution, and general plant account?

FRF POSITION: *Agree with OPC that the appropriate parameters are as set forth in the testimony and exhibits of the Citizens' witness Jacob Pous.*

ISSUE 19E: Based on the application of the depreciation parameters that the Commission has deemed appropriate to FPL's data, and a comparison of the theoretical reserves to the book reserves, what are the resulting imbalances?

FRF POSITION: *Agree with OPC that FPL has a depreciation reserve surplus of $2.74 Billion.*

ISSUE 19F: What, if any, corrective reserve measures should be taken with respect to the imbalances identified in Issue 19E?

FRF POSITION: *Agree with OPC that the Commission should require FPL to amortize, as a credit to depreciation expense, FPL's estimated depreciation surplus of $1.245 Billion over the next 4years. This will have the result of reducing FPL's revenue requirements by $311 Million per year (gross) and $291 Million per year (net).*

ISSUE 19G: What should be the implementation date for revised depreciation rates, capital recovery schedules, and amortization schedules?

FRF POSITION: *Agree with OPC.*

ISSUES 19- 39: INTENTIONALLY BLANK.

FOSSIL DISMANTLEMENT COST STUDY

ISSUE 40: Should the currently approved annual dismantlement provision be revised?

FRF POSITION: *Agree with OPC.*

ISSUE 41: What, if any, corrective reserve measures should be approved?

FRF POSITION: *Agree with OPC.*

ISSUE 42: What is the appropriate annual provision for dismantlement?

FRF POSITION: *Agree with OPC.*

ISSUE 43: Does FPL employ reasonable depreciation parameters and costs when it assumes that it must restore all generation sites to "greenfield" status upon their retirement?

FRF POSITION: *No.*

ISSUE 44: In future dismantlement studies filed with the Commission, should FPL consider alternative demolition approaches?

FRF POSITION: *Agree with OPC.*

RATE BASE

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 45: INTENTIONALLY BLANK.

ISSUE 46: Should the net over-recovery/under-recovery of fuel, capacity, conservation, and environmental cost recovery clause expenses be included in the calculation of working capital allowance for FPL?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC. Please note that the FRF opposes granting any subsequent year adjustment in this case, and that where the FRF takes specific positions on issues for 2011, it does so only in order to preserve its rights in the event that the Commission does decide to consider granting additional rate increases in 2011.*

ISSUE 47: Are the costs associated with Advanced Metering Infrastructure (AMI) meters appropriately included in rate base?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

[ISSUES 48-49 NOT IN PREHEARING ORDER]

ISSUE 50: Are FPL's requested levels of Plant in Service appropriate?
A. For the 2010 projected test year in the amount of $28,288,080,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $29,599,965,000?

FRF POSITION: A.: *No. The appropriate level of Plant in Service for the 2010 test year is $27,914,655,000.*

B.: *No. Noting that the FRF believes that a subsequent year adjustment for 2011 is inappropriate, if the Commission decides to consider such in

this docket, the appropriate level of Plant in Service for the 2011 test year is $29,667,845,000.*

ISSUE 51: Are FPL's requested levels of accumulated depreciation appropriate?
A. For the 2010 projected test year in the amount of $12,590,521,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $13,306,984,000?

FRF POSITION: A. *No. The appropriate amount of jurisdictional accumulated depreciation for 2010 is $12,175,597,000.*

B. *No. Noting that the FRF strongly opposes any base rate increase in 2011, the appropriate amount of jurisdictional accumulated depreciation for 2010 is $12,321,306,000.*

ISSUE 52: Is FPL's proposed adjustment to CWIP for the Florida EnergySecure Line (gas pipeline) appropriate?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: A. *No position.*
B. *The Commission should not grant a subsequent year adjustment for 2011.*

[ISSUES 53-54 NOT IN PREHEARING ORDER]

ISSUE 55: Are FPL's requested levels of Construction Work in Progress (CWIP) appropriate?
A. For the 2010 projected test year in the amount of $707,530,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $772,484,000?

FRF POSITION: A. *No. The appropriate amount of CWIP for 2010 is $692,754,000.*

B. *No. If applicable, the appropriate amount of CWIP for 2011 would be $750,081,000.*

ISSUE 56: Are FPL's requested levels of Property Held for Future Use appropriate?
A. For the 2010 projected test year in the amount of $74,502,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $71,452,000?

FRF POSITION: A. *No. The appropriate jurisdictional amount of PHFFU for 2010 is $70,432,000.*

B. *No. If applicable, the appropriate jurisdictional amount of PHFFU for 2011 would be $67,725,000.*

[ISSUE 57 NOT IN PREHEARING ORDER]

ISSUE 58: Is FPL's proposed accrual of Nuclear End of Life Material and Supplies and Last Core Nuclear Fuel appropriate?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *No. Agree with OPC that FPL's current accrual for end-of-life materials and supplies and last core nuclear fuel should be suspended and no increase should be allowed, that the nuclear amortization should be discontinued and the December 31, 2009 balance transferred to the end-of-life materials and supplies and last core reserves, and that the revenue impacts are as shown by Witness Sheree Brown.*

ISSUE 59: Should nuclear fuel be capitalized and included in rate base due to the dissolution of FPL Fuels, Inc.?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *No position.*

ISSUE 60: Are FPL's requested levels of Nuclear Fuel appropriate
A. For the 2010 projected test year in the amount of $374,733,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $408,125,000?

FRF POSITION: A. *No. The appropriate amount of Nuclear Fuel for 2010 is $374,772,000.*
B. *No. If applicable, the appropriate amount of Nuclear Fuel for 2011 would be $408,163,000.*

ISSUE 61: Should the unamortized balance of the FPL Glades Power Park (FGPP) be included in rate base?

FRF POSITION: *Agree with OPC.*

ISSUE 62: Are FPL's requested levels of Working Capital appropriate?

A. For the 2010 projected test year in the amount of $209,262,000?

B. If applicable, for the 2011 subsequent projected test year in the amount of $335,360,000?

FRF POSITION: A. *No. The appropriate amount of working capital for 2010 is $167,502,000.*

B. *No. If applicable, the appropriate amount of working capital for 2011 would be $306,905,000.*

ISSUE 63: Is FPL's requested rate base appropriate?

A. For the 2010 projected test year in the amount of $17,063,586,000?

B. If applicable, for the 2011 subsequent projected test year in the amount of $17,880,402,000?

FRF POSITION: A. *No. The appropriate rate jurisdictional rate base amount for 2010 is $17,044,518,000.*

B. *No. The appropriate rate jurisdictional rate base amount for 2011 is $18,879,413,000.*

COST OF CAPITAL

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 64: What is the appropriate amount of accumulated deferred taxes to include in the capital structure?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC as to the levels of accumulated deferred taxes. Please note that the FRF opposes granting any subsequent year adjustment in this case, and that where the FRF takes specific positions on issues for 2011, it

does so only in order to preserve its rights in the event that the Commission does decide to consider granting additional rate increases in 2011.*.

[NO ISSUE 65 IN PREHEARING ORDER]

ISSUE 66: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 67: What is the appropriate cost rate for short-term debt?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: A. *Agree with OPC: 2.27%.*

B. *Agree with OPC: 2.27%.*

ISSUE 68: What is the appropriate cost rate for long-term debt?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC: 5.14%.*

ISSUE 69: Have rate base and capital structure been reconciled appropriately?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: A. *No position.*

B. *The Commission should not grant a subsequent year adjustment for 2011.*

ISSUE 70: Has FPL appropriately described the actual 59.6% equity ratio that it proposes to use for ratemaking purposes as an "adjusted 55.8% equity ratio" on the basis of imputed debt associated with FPL's purchased power contracts?

FRF POSITION: *No. Agree with OPC.*

ISSUE 71: What is the appropriate equity ratio that should be used for FPL for ratemaking purposes in this case?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

[ISSUE 72 NOT IN THE PREHEARING ORDER]

ISSUE 73: What is the appropriate capital structure for FPL for the purpose of setting rates in this docket?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

[ISSUES 74-79 – NOT IN THE PREHEARING ORDER]

ISSUE 80: What return on common equity should the Commission authorize in this case?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: A. *9.5%.*

B. *The Commission should not grant a subsequent year adjustment for 2011. If granted, the appropriate ROE is 9.5%.*

ISSUE 81: What is the appropriate weighted average cost of capital including the proper components, amounts and cost rates associated with the capital structure?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

NET OPERATING INCOME

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 82: What are the appropriate inflation and customer growth for use in forecasting?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC. Please note that the FRF opposes granting any subsequent year adjustment in this case, and that where the FRF takes specific positions on issues for 2011, it does so only in order to preserve its rights in the event that the Commission does decide to consider granting additional rate increases in 2011.*

ISSUE 83: Should FPL's proposal to transfer capacity charges and capacity-related revenue associated with the St. John's River Power Park from base rates to the Capacity Cost Recovery Clause be approved?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 84: Has FPL made the appropriate test year adjustments to remove fuel revenues and fuel expenses recoverable through the Fuel Adjustment Clause?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 85: Has FPL made the appropriate test year adjustments to remove conservation revenues and conservation expenses recoverable through the Conservation Cost Recovery Clause?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 86: Has FPL made the appropriate test year adjustments to remove capacity revenues and capacity expenses recoverable through the Capacity Cost Recovery Clause?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 87: Has FPL made the appropriate test year adjustments to remove environmental revenues and environmental expenses recoverable through the Environmental Cost Recovery Clause?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 88: Should an adjustment be made to operating revenue to reflect the incorrect forecasting of FPL's C/I Demand Reduction Rider Incentive Credits and Offsets?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 89: Is an adjustment appropriate to FPL's Late Payment Fee Revenues if the minimum Late Payment Charge is approved in Issue?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 90: Are any adjustments necessary to FPL's Revenue Forecast?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: A. *Yes. Agree with OPC that FPL's 2010 revenues should be increased by $46,500,182.*

B. *Yes. Agree with OPC that FPL's 2011 revenues should be increased by $40,351,388.*

ISSUE 91: Are FPL's projected levels of Total Operating Revenues appropriate?
A. For the 2010 projected test year in the amount of $4,114,727,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $4,175,024,000?

FRF POSITION: A. *No. Agree with OPC.*

B. *No. Agree with OPC.*

ISSUE 92: Has FPL made the appropriate adjustments to remove charitable contributions?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 93: Should an adjustment be made to remove FPL's contributions recorded above the line for the historical museum?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: A. *Yes. Agree with OPC.*

B. *Yes. Agree with OPC.*

ISSUE 94: Should an adjustment be made for FPL's Aviation cost for the test year?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 95: Are the cost savings associated with AMI meters appropriately included in net operating income?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 96: What is the appropriate level of Bad Debt Expense?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 97: Should an adjustment be made to remove the portion of Bad Debt Expense associated with clause revenue that is currently being recovered in base rates and include them as recoverable expenses in the respective recovery clauses?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

[NO ISSUES 98-99 IN PREHEARING ORDER]

ISSUE 100: Are any adjustments necessary to FPL's payroll to reflect the historical average level of unfilled positions and jurisdictional overtime?

FRF POSITION: *Agree with OPC.*

ISSUE 101: Should FPL reduce expenses for productivity improvements given the Company's lower historical rate of growth in payroll costs?

FRF POSITION: *Agree with OPC.*

ISSUE 102: Is it appropriate for FPL to increase its forecasted Operating and Maintenance Expenses due to estimated needs for nuclear production staffing?

FRF POSITION: *No. Agree with OPC.*

ISSUE 103: Should an adjustment be made to FPL's requested level of Salaries and Employee Benefits?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 106: Should an adjustment be made to Pension Expense?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 107: Is a test year adjustment necessary to reflect FPL's receipt of an environmental insurance refund in 2008?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: A. *Yes. Agree with OPC.*
B. *Yes. Agree with OPC.*

ISSUE 108: Is a test year adjustment appropriate to reflect the expected settlement received from the Department of Energy?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *No. Agree with OPC.*

ISSUE 109: Should adjustments be made for the net operating income effects of transactions with affiliated companies for FPL?

FRF POSITION: A. *Yes. Agree with OPC.*
B. *Yes. Agree with OPC.*

ISSUE 116a: Is an adjustment necessary to reflect the gains on sale of utility assets sold to FPL's non-regulated affiliates?

FRF POSITION: *Yes. Agree with OPC.*

ISSUE 118: INTENTIONALLY BLANK.

ISSUE 119: Should the Commission order notification requirements to report the future transfer of the FPL-NED assets from FPL to a separate company under FPL Group Capital?

FRF POSITION: *Yes. Agree with OPC.*

ISSUE 120: Should an adjustment be made to FPL's requested storm damage reserve, annual accrual of $150 Million, and target level of $650 Million?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Yes. The Commission should deny, in its entirety, FPL's request for an additional $150 Million per year storm reserve accrual for both test years.*

ISSUE 121: What adjustment, if any, should be made to the fossil dismantlement accrual?

FRF POSITION: *Agree with OPC.*

ISSUE 122: What is the appropriate amount and amortization period of Rate Case Expense?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with FIPUG.*

ISSUE 124: Should FPL's request to move payroll loading associated with the Energy Conservation Cost Recovery Clause (ECCR) payroll currently recovered in base rates to the ECCR be approved?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *No. Agree with OPC.*

ISSUE 125: Should an adjustment be made to remove payroll loadings on incremental security costs that are currently included in base rates and include them in the Capacity Cost Recovery Clause?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *No. Agree with OPC.*

ISSUE 126: Should an adjustment be made to move the incremental hedging costs that are currently being recovered through the Fuel Cost Recovery Clause to base rates?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *No. Agree with OPC.*

ISSUE 128: Is FPL's requested level of O&M Expense appropriate?
A. For the 2010 projected test year in the amount of $1,694,367,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $1,781,961,000?

FRF POSITION: *No.*

ISSUE 129: Should FPL be permitted to collect depreciation expense for its new Customer Information System prior to its implementation date?

FRF POSITION: A. *Yes. Agree with OPC. 2010: $513,606,000*
B. *Yes. Agree with OPC. 2011: $570,447,000*

ISSUE 130: Should FPL's depreciation expenses be reduced for the effects of its capital expenditure reductions?

FRF POSITION: *Yes.*

ISSUE 131: Should any adjustment be made to Depreciation Expense?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Yes. Agree with OPC.*

ISSUE 132: Should an adjustment be made to Taxes Other Than Income Taxes for the 2010 and 2011 projected test years?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC.*

ISSUE 133: Should an adjustment be made to reflect any test year revenue requirement impacts of "The American Recovery and Reinvestment Act" signed into law by the President on February 17, 2009?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Yes. Agree with OPC.*

ISSUE 134: Should an adjustment be made to Income Tax expense?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Yes. Agree with OPC as to amounts.*

ISSUE 135: Is FPL's projected Net Operating Income appropriate?

A. For the 2010 projected test year in the amount of $725,883,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $662,776,000?

FRF POSITION: *Agree with OPC.*

REVENUE REQUIREMENTS

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 136: What are the appropriate revenue expansion factors and the appropriate net operating income multipliers, including the appropriate elements and rates, for FPL?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *Agree with OPC. Please note that the FRF opposes granting any subsequent year adjustment in this case, and that where the FRF takes specific positions on issues for 2011, it does so only in order to preserve its rights in the event that the Commission does decide to consider granting additional rate increases in 2011.*

ISSUE 137: Is FPL's requested annual operating revenue increase appropriate?

A. For the 2010 projected test year in the amount of $1,043,535,000?

B. If applicable, for the 2011 subsequent projected test year in the amount of $247,367,000?

FRF POSITION: *No. Agree with OPC that FPL's base rates should be decreased to produce the operating revenues supported by OPC's witnesses.*

ISSUE 138: INTENTIONALLY BLANK.

COST OF SERVICE AND RATE DESIGN ISSUES

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 139: Has FPL correctly calculated revenues at current rates for the 2010 and 2011 projected test year?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: A. *No. Agree with OPC.*

B. *The Commission should not grant a subsequent year adjustment for 2011. If the Commission does grant a subsequent year adjustment for 2011, it should make the revenue adjustments supported by OPC's witnesses.*

ISSUE 140: Should FPL use a minimum distribution cost methodology (utilizing either a "zero intercept" or a "minimum size" approach) to allocate distribution plant costs to rate classes?

FRF POSITION: *No position.*

ISSUE 141: What is the appropriate Cost of Service Methodology to be used to allocate base rate and cost recovery costs to the rate classes?

FRF POSITION: *No position.*

ISSUE 142: How should the change in revenue requirement be allocated among the customer classes?

FRF POSITION: *Any change in base rate revenue requirements should be allocated among the customer classes on the basis of an equal percentage decrease (or increase) to all base rates.*

ISSUE 144: Are FPL's proposed service charges for initial connect, field collection, reconnect for non-payment, existing connect, and returned payment charges appropriate?

FRF POSITION: *No. FPL's proposed charges are too high and should be reduced commensurately with the overall reduction in FPL's rates indicated by the evidence in this case.*

ISSUE 145: Is FPL's proposal to increase the minimum late payment charge to $10 appropriate?

FRF POSITION: *No.*

ISSUE 148: Are FPL's proposed termination factors to be applied to the total installed cost of facilities when customers terminate their Premium Lighting or Recreational Lighting agreement prior to the expiration of the contract term appropriate? (8.722 and 8.745)

FRF POSITION: *No position.*

ISSUE 150: Is FPL's proposed Present Value Revenue Requirement multiplier to be applied to the installed cost of premium lighting facilities under rate Schedule Premium Lighting (PL-1) and the installed cost of recreational lighting facilities under the rate Schedule Recreational Lighting (RL-1) to determine the lump sum advance payment amount for such facilities appropriate? (8.720 and 8.743)

FRF POSITION: *No. The Present Value Revenue Requirement multiplier should be adjusted to reflect the Commission's decisions regarding cost of capital and depreciation rates in this proceeding.*

ISSUE 152: Should FPL's proposal to close the relamping option on the Street Lighting (SL-1) and Outdoor Lighting (OL-1) tariffs for new street light installations be approved? (8.716 and 8.725)

FRF POSITION: *No position.*

[ISSUE 153 WAS NOT IN PREHEARING ORDER]

ISSUE 154: Is FPL's proposed monthly kW credit to be provided customers who own their own transformers pursuant to the Transformation Rider appropriate? (8.820)

FRF POSITION: *No position.*

ISSUE 155: Is FPL's proposed monthly fixed charge carrying rate to be applied to the installed cost of customer-requested distribution equipment for which there are no tariffed charges appropriate? (10.010)

FRF POSITION: *No. The monthly fixed charge carrying charge rate multiplier should be adjusted to reflect the Commission's decisions regarding cost of capital and depreciation rates in this proceeding.*

ISSUE 156: Is FPL's proposed Monthly Rental Factor to be applied to the in-place value of customer-rented distribution substations to determine the monthly rental fee for such facilities appropriate? (10.015)

FRF POSITION: *No. To the extent that the Monthly Rental Factor includes component factors for cost of capital and depreciation, this Factor should be adjusted to reflect the Commission's decisions regarding cost of capital and depreciation rates in this proceeding.*

ISSUE 157: Are FPL's proposed termination factors to be applied to the in-place value of customer-rented distribution substations to calculate the termination fee appropriate? (10.015)

FRF POSITION: *No position.*

ISSUE 159: What are the appropriate customer charges?

FRF POSITION: *The appropriate customer charges are those resulting from applying the percentage decrease (or increase) in FPL's authorized revenue requirements to the existing customer charges.*

ISSUE 160: What are the appropriate demand charges?

FRF POSITION: *The appropriate demand charges are those resulting from applying the percentage decrease (or increase) in FPL's authorized revenue requirements to the existing demand charges.*

ISSUE 161: What are the appropriate energy charges?

FRF POSITION: *The appropriate energy charges are those resulting from applying the percentage decrease (or increase) in FPL's authorized revenue requirements to the existing energy charges.*

ISSUE 162: What are the appropriate lighting rate charges?

FRF POSITION: *The appropriate lighting charges are those resulting from applying the percentage decrease (or increase) in FPL's authorized revenue requirements to the existing lighting charges.*

ISSUE 163: What is the appropriate level and design of the charges under the Standby and Supplemental Services (SST-1) rate schedule?

FRF POSITION: *The appropriate charges under Rate Schedule SST-1 are those resulting from applying the percentage decrease (or increase) in FPL's authorized revenue requirements to the existing SST-1 charges.*

ISSUE 164: What is the appropriate level and design of charges under the Interruptible Standby and Supplemental Services (ISST-1) rate schedule?

FRF POSITION: *The appropriate charges under Rate Schedule ISST-1 are those resulting from applying the percentage decrease (or increase) in FPL's authorized revenue requirements to the existing ISST-1 charges.*

ISSUE 165: Is FPL's design of the HLFT rates appropriate?

FRF POSITION: *No. FPL's proposed design of the HLFT rates is not appropriate.*

ISSUE 166: Is FPL's design of the CILC rate appropriate?

FRF POSITION: *No. FPL's proposed design of the CILC rate is not appropriate.*

ISSUE 167: Is FPL's CDR credit appropriate?

FRF POSITION: *No position.*

ISSUE 168: What is the appropriate method of designing time of use rates for FPL?

FRF POSITION: *No position.*

ISSUE 169: INTENTIONALLY BLANK.

ISSUE 170: Should FPL evaluate the merits of a prepayment option in lieu of monthly billing for those customers who can benefit from such an alternative? If so, how?

FRF POSITION: *No position.*

OTHER ISSUES

ISSUE 173: Should an adjustment be made in base rates to include FPL's nuclear uprates being placed into service during the projected test years if any portion of prudently incurred NCRC recovery is denied?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

FRF POSITION: *No. Agree with OPC.*

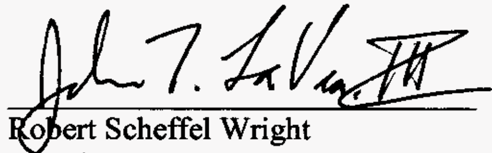
ISSUE 174: INTENTIONALLY BLANK.

[ISSUES 175-176 NOT IN PREHEARING ORDER]

ISSUE 177: Should this docket be closed?

FRF POSITION: *Yes, after the entry of a final order reducing FPL's base rate charges to reflect the reduction in FPL's revenue requirements of $342 Million per year, as established by the testimony of the Citizens' and other Consumers' witnesses, this docket should be closed.*

Respectfully submitted this 16th day of November, 2009.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by U.S. Mail, on this 16th day of November, 2009.

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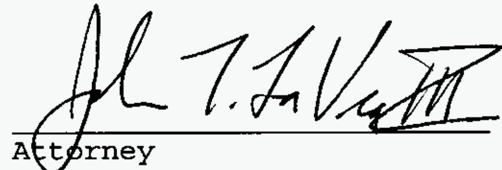

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