

MEMORANDUM

SEPTEMBER 11, 2012

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COMMISSION
CLERK

TO: OFFICE OF COMMISSION CLERK
FROM: CAROLINE KLANCKE, SENIOR ATTORNEY
RE: DOCKET NO. 120015-EI

Please place the attached documents containing FPL's responses to Saporito's First Data Request (Nos. 1-15) dated August 28, 2012, into the pleadings side of the above-referenced docket.

CMK
Attachment

DOCUMENT NUMBER-DATE
06134 SEP 12 2
FPSC-COMMISSION CLERK



John T. Butler
Assistant General Counsel-Regulatory
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
(561) 304-5639
(561) 691-7135 (Facsimile)
John.Butler@fpl.com

September 5, 2012

Thomas Saporito
6701 Mallards Cove Road, Apt. 28H
Jupiter, FL 33458

**Re: Docket No. 120015-EI – Thomas Saporito’s First Data Request
(Nos. 1-15)**

Dear Mr. Saporito:

Enclosed are Florida Power & Light Company’s responses to Saporito’s First Data Request (Nos. 1-15) dated August 28, 2012.

Please contact me at (561) 304-5639 if you have any questions.

Sincerely,

s/ John T. Butler
John T. Butler

Enclosure

cc: Counsel for Parties of Record (w/encl.)

DOCUMENT NUMBER-DATE

06134 SEP 12 02

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically and by U.S. Mail to the Parties, this 5th day of September 2012, to the following:

Caroline Klancke, Esquire
Keino Young, Esquire
Martha Brown, Esquire
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Florida Public Service Commission
2540 Shumard Oak Boulevard
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Healthcare Association**

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Attorneys for the Village of Pinecrest

s/ John T. Butler
John T. Butler

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 120015-EI
September 5, 2012

**NOTICE OF SERVICE OF FLORIDA POWER & LIGHT COMPANY'S
RESPONSES TO THOMAS SAPORITO'S FIRST DATA REQUEST (Nos. 1-15)**

Florida Power & Light Company gives notice of service of its Responses to Thomas Saporito's First Data Request (Nos. 1-15), to Thomas Saporito.

Respectfully submitted this 5th day of September, 2012.

R. Wade Litchfield, Esq.
Vice President and General Counsel
John T. Butler, Esq.
Assistant General Counsel-Regulatory
Jordan A. White, Esq.
Senior Attorney
Maria J. Moncada, Esq.
Principal Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
Telephone: (561) 304-5795
Facsimile: (561) 691-7135

By: *s/ Maria J. Moncada*

Maria J. Moncada
Fla. Bar No. 0773301

**CERTIFICATE OF SERVICE
DOCKET NO. 120015-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice was served electronically and by U.S. Mail this 5th day of September 2012, to the following:

Caroline Klancke, Esquire
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Martha Brown, Esquire
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Attorneys for the Village of Pinecrest

By: s/ Maria J. Moncada
Maria J. Moncada

AFFIDAVIT

Robert E. Barrett, Jr.
Robert E. Barrett, Jr.

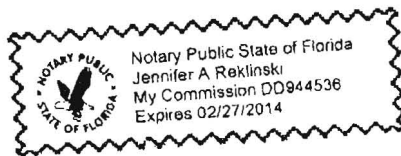
State of Florida)
County of Palm Beach)

I hereby certify that on this 4th day of September 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared **Robert E. Barrett, Jr.**, who is personally known to me, and he/she acknowledged before me that he/she sponsored the answer(s) to Interrogatory No(s). 4 from **Saporito's First** Set of Data Requests to Florida Power & Light Company in Docket No. 120015-EI, and that the response(s) is/are true and correct based on his/her personal knowledge.

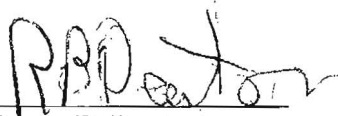
In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 4th day of September, 2012.

Jennifer A. Reklinski
Notary Public, State of Florida

Notary Stamp:



AFFIDAVIT


Renae B. Deaton

State of Florida

County of Palm Beach

I hereby certify that on this 5th day of Sep, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Renae B. Deaton, who is personally known to me, and she acknowledged before me that she sponsored the answer to Request No. 5 from Thomas Saporito's First Set of Data Requests to Florida Power & Light Company in Docket No. 120015-EI, and that the responses are true and correct based on her personal knowledge.


In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 5th day of Sep, 2012.


Notary Public, State of Florida

Notary Stamp:



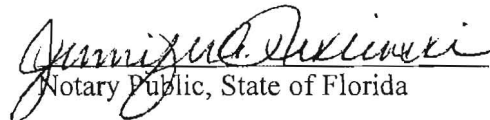
AFFIDAVIT


(Kim Ousdahl)

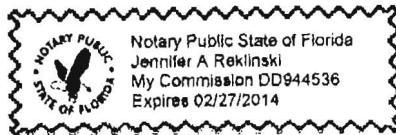
State of Florida)
County of Palm Beach)

I hereby certify that on this 5th day of September, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Kim Ousdahl, who is personally known to me, and she acknowledged before me that she sponsored the answers to Request Nos. 6 and 7 from Saporito's First Set of Data Request to Florida Power & Light Company in Docket No. 120015-EI, and that the responses are true and correct based on her personal knowledge.

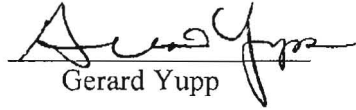
In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 5th day of September, 2012.


Notary Public, State of Florida

Notary Stamp:



AFFIDAVIT



Gerard Yupp

State of Florida)

County of Palm Beach)

I hereby certify that on this 4th day of Sept., 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Gerard Yupp, who is personally known to me, and he acknowledged before me that he sponsored the answer to **Data Request No. 8**, from Thomas Saporito's First Set of Data Requests to Florida Power & Light Company in Docket No. 120015-EI, and that the response is true and correct based on his personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 4th day of September 2012.


Notary Public, State of Florida

Notary Stamp:



Q.

Referring to the Motion for Approval of Settlement by FPL/FIPUG/SFHHA/FEA (hereinafter "Settlement"), does Florida Power and Light Company (FPL) contend that the Office of Public Counsel (OPC) support or joinder is not required for the Commission to approve a settlement? If so, please provide citations to all statutory or other authority for FPL's position.

A.

The Office of Public Counsel's ("OPC") support or joinder is not required for the Commission to approve a settlement. *See In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties*, Order No. PSC-99-1794-FOF-WS, Docket No. 950495-WS (Commission approved settlement opposed by OPC); *also In re: Petition for increase in rates by Gulf Power Company*, Docket No. 110138, Order No. PSC-12-0179-FOF-EI (OPC did not participate in portions of settlement approved by Commission). In addition, nothing in Section 350.061, Florida Statutes (the statute that created the OPC) accords any special or superior party status to OPC.

Response prepared by Counsel

Q.

In view of FPL's position with respect to the Settlement, does FPL agree that OPS's [*sic*] opposition to the Settlement - supported by some of the customers represented by OPC - in a rate proceeding (such as the Settlement Agreement proposed in this docket by FPL, FIPUG, SFHHA, and FEA) would not be a violation of Rule 4-1.7 of the Florida Bar's Rules of Professional Conduct concerning conflicts of interest? If not, please provide citations to all decisions of court and/or the Florida Bar supporting FPL's position that such representation would violate Rule 4-1.7.

A.

Substantial precedent exists for OPC taking "no position" on issues before the Commission where customers have divergent interests, however the matter of OPC's compliance with the Florida Bar's Rules of Professional Conduct rests with OPC.

Response prepared by Counsel

Q.

Regarding the Settlement, does FPL contend that settlements may be approved even if they do not benefit all customer classes equally? If so, please provide citations to all Commission orders and/or court decision supporting FPL's position.

A.

Yes. There are no statutory provisions that require settlements to benefit all customer classes equally. Indeed, there have been provisions in most, if not all, of the settlement agreements for electric utilities during the last ten years, including settlement agreements that have been supported by OPC and FRF, that provide different benefits among customer classes. The Commission may approve utility settlements upon a finding that the resulting rates are not unduly discriminatory or unreasonably preferential. *E.g., Re Florida Water Services Corporation*, Docket Nos. 040951-WS and 040952-WS, Order No. PSC-05-1242-PAA-WS (Dec. 20, 2005); *see also* Sections 366.03, F.S. and 366.06(2), F.S. Moreover, the Commission has expressly recognized that “some level of rate discrimination is inherent in all rate design.” *In re Petition for approval to implement consolidated fuel adjustment surcharge by Florida Public Utilities Company*, Docket No. 031135-EI, Order no. PSC-04-0417-PAA-EI (dated April 22, 2004), at page 3 (denying petition for consolidated fuel adjustment charge as “unduly discriminatory”). Rates proposed under the Settlement Agreement are reasonable and are not unduly discriminatory or unreasonably preferential, because they do not result in any material cost-shifting among rate classes.

Response prepared by Counsel

Q.

Regarding the Settlement, where said document would provide a GBRA for the Canaveral, Riviera and Everglades Modernization Projects, does FPL contend that GBRA cost recovery for those projects would not increase FPL's earned ROE above the authorized mid-point of 10.7%? If so, please provide a detailed calculation demonstrating how the GBRA(s) would lead to this result.

A.

That is correct; it would not increase FPL's earned ROE above the authorized mid-point of 10.7%. Because the revenue increase for each GBRA plant would be established to earn a 10.7% ROE, the inclusion of that plant would result in FPL's earned ROE moving toward 10.7% no matter what FPL was earning prior to the GBRA increase. If FPL were earning below 10.7% prior to the GBRA increase, the GBRA would move FPL's ROE up slightly but never above 10.7%. Similarly, if FPL were earning above 10.7% prior to the GBRA increase, the GBRA would move FPL's ROE toward 10.7%.

Attachment No. 1 to this request provides three illustrative examples of the GBRA impact on FPL's ROE.

	<u>Before Incremental GBRA Plant</u>			<u>Incremental GBRA Plant</u>			<u>After Incremental GBRA Plant</u>		
Rate base	\$20,000			\$1,000			\$21,000		
Capital structure									
Debt	\$6,800	5.30%	1.80%	\$404	4.10%	1.66%	\$7,204	5.23%	1.80%
Equity	9,200	10.70%	4.92%	596	10.70%	6.38%	9,796	10.70%	4.99%
Deferred taxes	<u>4,000</u>	0.00%	<u>0.00%</u>	<u>0</u>	0.00%	<u>0.00%</u>	<u>4,000</u>	0.00%	<u>0.00%</u>
	\$20,000		6.72%	\$1,000		8.03%	\$21,000		6.79%
Net operating income			\$1,345			\$80			\$1,425
Rate of return			6.72%			8.03%			6.79%
Non equity costs			<u>1.80%</u>			<u>1.66%</u>			<u>1.80%</u>
Available to equity			4.92%			6.38%			4.99%
Equity ratio			<u>46.00%</u>			<u>59.60%</u>			<u>46.65%</u>
Earned return on equity			10.70%			10.70%			10.70%

	<u>Before Incremental GBRA Plant</u>			<u>Incremental GBRA Plant</u>			<u>After Incremental GBRA Plant</u>		
Rate base	\$20,000			\$1,000			\$21,000		
Capital structure									
Debt	\$6,800	5.30%	1.80%	\$404	4.10%	1.66%	\$7,204	5.23%	1.80%
Equity	9,200	10.70%	4.92%	596	10.70%	6.38%	9,796	10.70%	4.99%
Deferred taxes	<u>4,000</u>	0.00%	<u>0.00%</u>	<u>0</u>	0.00%	<u>0.00%</u>	<u>4,000</u>	0.00%	<u>0.00%</u>
	\$20,000		6.72%	\$1,000		8.03%	\$21,000		6.79%
Net operating income @10.2% earned ROE	\$1,299			\$80			\$1,379		
Rate of return	6.49%			8.03%			6.57%		
Non equity costs	<u>1.80%</u>			<u>1.66%</u>			<u>1.80%</u>		
Available to equity	4.69%			6.38%			4.77%		
Equity ratio	<u>46.00%</u>			<u>59.60%</u>			<u>46.65%</u>		
Earned return on equity	10.20%			10.70%			10.23%		

	<u>Before Incremental GBRA Plant</u>			<u>Incremental GBRA Plant</u>			<u>After Incremental GBRA Plant</u>		
Rate base	\$20,000			\$1,000			\$21,000		
Capital structure									
Debt	\$6,800	5.30%	1.80%	\$404	4.10%	1.66%	\$7,204	5.23%	1.80%
Equity	9,200	10.70%	4.92%	596	10.70%	6.38%	9,796	10.70%	4.99%
Deferred taxes	<u>4,000</u>	0.00%	<u>0.00%</u>	<u>0</u>	0.00%	<u>0.00%</u>	<u>4,000</u>	0.00%	<u>0.00%</u>
	<u>\$20,000</u>		<u>6.72%</u>	<u>\$1,000</u>		<u>8.03%</u>	<u>\$21,000</u>		<u>6.79%</u>
Net operating income @11.2% earned ROE	\$1,391			\$80			\$1,471		
Rate of return	6.95%			8.03%			7.01%		
Non equity costs	<u>1.80%</u>			<u>1.66%</u>			<u>1.80%</u>		
Available to equity	5.15%			6.38%			5.21%		
Equity ratio	<u>46.00%</u>			<u>59.60%</u>			<u>46.65%</u>		
Earned return on equity	11.20%			10.70%			11.17%		

Q.

Regarding the Settlement, does FPL deny that allowing FPL to continue recovering the revenue requirements for WCEC-3 through the capacity clause under the proposed Settlement - would result in FPL double-recovering those revenue requirements? If so, please provide a detailed calculation - referring to any and all aspects of FPL's filed case or evidence elicited in the technical hearing - demonstrating that the proposed settlement agreement would not lead to this result.

A.

Yes. The proposed Settlement Agreement will not result in double recovery of the revenue requirements for WCEC-3.

The detailed calculation for each rate can be seen in FPL's response to Staff's First Data Requests No. 1(e). As explained in OPC's cross-examination of Witness Deaton, in order to incorporate the WCEC-3 base revenues into the forecast of revenues at present rates, revenues under the present tariff rates were increased to include the WCEC-3 capacity clause revenues, and the proposed rates were then set to recover the target revenue increase. In developing the rates appearing in Exhibit B to the proposed Settlement Agreement, FPL used the current rates, which do not include any provision for recovery of WCEC-3 revenues (as noted above, those revenues were added in separately for the purpose of calculating FPL's base rate request). FPL then determined the proposed settlement rates to recover the settlement target increase by rate class as shown in Exhibit A to the proposed Settlement Agreement, which does not include recovery of the WCEC-3 revenue requirements. See Attachment No. 1 which shows the total revenues by rate class, and that the WCEC-3 revenue requirements are not being double recovered.

Florida Power & Light Company
Docket No. 120015-EI
Saporito's First Data Request
Request No. 5
Attachment No. 1
Page 1 of 1

ESTIMATED INCREASES BY RATE CLASS UNDER THE PROPOSED SETTLEMENT AGREEMENT THROUGH 2016

		(\$000)																		
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)
Line No.	Description of Source	Total	CILC-1D	CILC-1G	CILC-1T	GS(T)-1	GSCU-1	GSD(T)-1	GSLD(T)-1	GSLD(T)-2	GSLD(T)-3	MET	OL-1	OS-2	RS(T)-1	SL-1	SL-2	SST-DST	SST-TST	
1																				
2	PRESENT REVENUES -																			
3	ELECTRICITY SALES:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4	RETAIL SALES - BASE REVENUES (EXCLUDING WC3)	4,077,968	52,955	4,170	14,317	294,804	1,615	830,146	290,057	53,502	3,695	2,793	11,429	832	2,441,561	70,358	1,215	357	4,162	
5	CILC INCENTIVES OFFSET	35,499	16,797	1,026	7,374	0	0	3,270	5,959	1,072	0	0	0	0	0	0	0	0	0	0
6	UNBILLED REVENUES - FPSC	(8,372)	(232)	(14)	(109)	(474)	(3)	(2,034)	(918)	(199)	(16)	(8)	(8)	(1)	(4,301)	(43)	(3)	(1)	(8)	
7	TOTAL ELECTRICITY SALES	4,105,094	69,520	5,182	21,582	294,330	1,612	831,382	295,098	54,376	3,678	2,785	11,421	831	2,437,259	70,315	1,212	357	4,154	
	OTHER OPERATING REVENUE:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
8	TOTAL OTHER OPERATING REVENUE	140,637	1,470	96	265	8,780	25	19,742	7,417	1,329	43	62	206	38	100,149	886	83	11	34	
9	TOTAL PRESENT REVENUES W/O WC3	4,245,731	70,991	5,278	21,848	303,109	1,638	851,123	302,516	55,704	3,721	2,848	11,626	868	2,537,408	71,200	1,295	368	4,189	
	REVENUE INCREASE																			
	<i>January 1, 2013:</i>																			
	ELECTRICITY SALES:																			
10	RETAIL BILLED SALES BASE REVENUES	302,460	(3,896)	(119)	(1,439)	0	33	60,287	20,801	4,158	0	541	1,216	122	212,937	7,762	0	57	0	
11	RETAIL UNBILLED SALES REVENUES	10,662	182	15	89	0	1	2,055	798	157	0	18	40	4	7,043	257	0	2	0	
12	INCREASE IN CILC/CDR CREDIT OFFSETS	19,879	9,407	575	4,129	0	0	1,831	3,337	601	0	0	0	0	0	0	0	0	0	
13	ELECTRICITY SALES INCREASE	333,001	5,693	471	2,779	0	34	64,172	24,936	4,916	0	559	1,257	126	219,981	8,019	0	59	0	
	OTHER OPERATING REVENUE:																			
14	OTHER OPERATING REVENUE INCREASE	44,999	138	7	12	3,106	1	5,863	1,065	160	3	0	95	0	34,234	206	91	0	17	
15	TOTAL INCREASE 1/1/2013	378,000	5,831	477	2,791	3,106	35	70,036	26,001	5,076	4	559	1,352	126	254,214	8,225	91	59	17	
16	WC3 Base Revenue Recovered through clause	166,433	3,467	223	1,532	9,577	45	36,861	16,282	3,105	244	145	42	16	94,491	223	40	8	131	
17	JAN 2013 BASE REVENUES WITH SETTLEMENT INCREASE	4,790,164	80,289	5,979	26,171	315,792	1,717	958,020	344,799	63,885	3,969	3,552	13,020	1,010	2,886,114	79,648	1,426	435	4,337	

Notes: Revenues at present rates exclude West County 3, which will continue to be recovered through the capacity clause.
CILC/CDR credits shown on line 34 are collected from all retail customers through the ECCR clause and re-classed to base revenues.

Totals may not add due to rounding

Q.

Regarding the Settlement, please explain in detail why FPL's accelerated amortization of depreciation and dismantlement reserves up to a limit of \$400-million over four years has not disadvantaged customers?

A.

FPL does not believe the proposed Settlement Agreement in any way would "disadvantage" customers. The Company is required to complete the flowback of the 2010 estimated depreciation surplus in 2013 as ordered by the Commission in FPL's 2010 settlement agreement. Any amounts of flowback above the required 2010 estimated depreciation surplus, as prescribed in the proposed Settlement Agreement, would provide rate stability over the term of the settlement.

FPL estimates annual dismantlement accruals when filing periodic dismantlement studies that are reviewed by the Commission. After reviewing all the evidence in FPL's 2009 Rate Case, the Commission authorized approximately \$18.5 million in dismantlement annual accruals effective with 2010, and FPL continues to accrue that amount annually. During the term of the settlement, these accruals will add approximately \$74 million to the dismantlement reserve. Therefore, FPL expects no more than a net \$135 million reduction in the dismantlement reserve (i.e., \$209 million maximum flow-back during the settlement term pursuant to Paragraph 10(b) of the proposed Settlement Agreement, less \$74 million of accruals). In addition, FPL's recent modernization projects have allowed for the construction of new generating plants at existing plant sites and thereby defer for 30 years or more the need to incur the full cost of green field dismantlement at those sites. Therefore, a portion of its currently accrued dismantlement reserve will not be needed until much later than previously anticipated, which would appropriately accommodate the dismantlement flow-back contemplated by the proposed Settlement Agreement. Other things equal, FPL's construction of the modernization projects will have a downward effect on the level of the accrual and any calculation of a reserve and thus mitigate the potential use of \$135 million in fossil dismantlement.

Q.

Regarding the Settlement, please explain in detail why harm to customers would not occur if FPL did not file a depreciation study or dismantlement study during the term of FPL's proposed settlement agreement.

A.

FPL does not believe that a deferral of the filing of the depreciation or dismantlement studies would create "harm" to customers. The delay is being proposed in order to provide for rate stability over the term of the settlement. See FPL's response to Saporito's First Data Request No. 6.

Q.

Regarding the Settlement, does FPL contend that it would not be against customers' interest to provide incentives to FPL to generate additional gains on power and fuel-related transactions that would flow in whole or part to customers? If so, please explain in detail why customers would not be harmed.

A.

The proposed Incentive Mechanism detailed in paragraph 12 of the proposed Settlement Agreement is designed to create additional value for FPL's customers while also providing an incentive to FPL if certain thresholds are achieved. This type of mechanism would not "harm" FPL's customers, but rather would potentially provide incremental value by allowing FPL to engage in several additional forms of asset optimization. FPL currently operates under an incentive mechanism that incorporates only gains from off-system sales. This incentive mechanism was approved by the Commission in Order No. PSC-00-1744-PAA-EI, dated September 26, 2000, in Docket No. 991779-EI. In that order, the Commission stated, "While there is no way to precisely measure the effect of a shareholder incentive on the IOU's participation in the wholesale market, we find that a properly structured incentive will result in greater management efforts to increase economy energy sales, yielding gains on those sales to the benefit of ratepayers." The Commission goes on to state, "We find that a properly structured incentive may achieve even greater benefits for ratepayers by encouraging the types of sales from which ratepayers are currently receiving the greatest benefit." FPL's expanded optimization program recognizes the fact that customers not only receive benefits from off-system sales, but also from off-system purchases. Additionally, FPL's proposal recognizes that there may be opportunities to "optimize" assets such as natural gas storage capacity and firm natural gas transportation to deliver additional value to customers. FPL's proposal to expand its optimization program strives to create additional value above the levels achieved currently. Under FPL's proposed Incentive Mechanism, customers would receive 100% of the first \$46 million in benefits. This level, if achieved, is nearly \$11 million more than FPL's 2013 projected benefits resulting from gains on sales and savings on purchases. In exchange, FPL will be entitled to recover reasonable and prudent O&M costs incurred in implementing this expanded optimization program and share in some of the benefits if threshold levels are reached.

Q.

Regarding the Settlement, please cite all prior electric utility rate cases, over the last 20- years, in which FPL has taken a position regarding the allocation of a rate increase among customer classes.

A.

FPL has taken positions on the allocation of rate increases among customer classes in all FPL rate cases in the last 20 years.

Response prepared by Counsel

Q.

Regarding the Settlement, does FPL believe that it would be consistent with FPL's obligations under Rule 4-1.7 of the Florida Bar's Rules of Professional Conduct for FPL to take a position on rate-allocation issues that do not benefit all classes of customers. If so, please explain in detail the basis for FPL's belief.

A.

Rule 4-1.7 does not apply to FPL. The results of the proposed Settlement Agreement provide important benefits for all of FPL's customers and the state of Florida, and it would not result in any significant cost shift among customer classes.

Response prepared by Counsel

Q.

Regarding the Settlement, does FPL believe that its obligations under Rule 4-1.7 of the Florida Bar's Rules of Professional Conduct do not apply, or apply differently, to large commercial and industrial customers? If so, please explain in detail the basis for FPL's belief.

A.

Rule 4-1.7 does not apply to FPL. The results of the proposed Settlement Agreement provide important benefits for all of FPL's customers and the state of Florida, and it would not result in any significant cost shift among customer classes.

Response prepared by Counsel

Q.

Regarding the Settlement, - and to the extent that the Commission prohibited solicitation of testimony and evidence in any way related to the Settlement - would FPL agree that any evidence from the parties on FPL's rate request adduced over two weeks of hearing does not provide the Commission with a robust basis to properly evaluate and make a decision on the proposed Settlement Agreement?

A.

No. The proposed Settlement Agreement arises from the case filed by FPL and must be viewed in the context of the entire case, including the positions that various parties have taken, to assess whether the terms of the agreement taken as a whole and not in isolation would represent a result that is in the public interest. To that end, evidence taken during the two weeks of hearings, the large volume of discovery and extensive review conducted over the several month process, prior decisions of the Commission and the breadth of the Commission's jurisdiction in establishing just and reasonable rates, collectively provide an ample basis for the Commission to evaluate and make a decision on the proposed Settlement Agreement.

Response prepared by Counsel

Q.

Regarding the Settlement, does FPL contend that the Commission may include elements in an approved settlement that were not pled in the original rate case petition? If so, please provide legal citation to any support for that proposition.

A.

Yes, the Commission may include elements in an approved settlement that were not pled in the original rate case petition. The Commission has approved settlement agreements that contain provisions outside the scope of the original filing in the context of both all-party settlement agreements and contested settlement agreements. *See, e.g.*, Order No. PSC-99-0519-AS-EI (March 17, 1999); Order No. PSC-05-0902-S-EI (Sept. 14, 2005); PSC-02-0501-AS-EI (April 11, 2002).

Response prepared by Counsel

Q.

Please explain in detail why FPL did not include Saporito in settlement negotiations leading up to the Proposed Settlement Agreement?

A.

Mr. Saporito was terminated for cause from Florida Power & Light (“FPL” or the “Company”) in 1988. Since that time, he has engaged in something of a vendetta against FPL, filing repeated, baseless claims in numerous proceedings before various regulatory bodies. His campaign of harassment has resulted in sanctions being imposed on him by an Administrative Law Judge (“ALJ”) for filing actions against FPL that were “frivolous, an abuse of legal and judicial process, and fraudulent The ALJ concluded that Mr. Saporito “demonstrated a pattern of malicious and frivolous filings involving [FPL]” and placed Mr. Saporito on notice that future complaints against FPL may be referred to the U.S. District Court for the Southern District of Florida for sanctions and to a U.S. Attorney for potential felony perjury. *Saporito v. Florida Power & Light Co.*, 2011-ERA-007 (ALJ Mar. 9, 2011). Mr. Saporito has filed or appeared as a witness in no less than seven cases against FPL. Mr. Saporito’s history left no room for hope of constructive negotiation. In addition, this pattern of behavior raised concerns regarding how Mr. Saporito would treat non-public information pertaining to FPL’s settlement negotiations.

FPL’s concerns proved correct. On August 15, 2012, in an effort to comply with the Commission’s pre-filing conferral requirement, FPL contacted Mr. Saporito regarding his position on the proposed Settlement Agreement. Mr. Saporito immediately posted information regarding the settlement on a blog.

Response prepared by Counsel

Q.

If FPL contends that OPC is not a necessary party to any settlement agreement, does FPL believe that it can circumvent OPC to initiate settlement negotiations in a rate case filed before the Commission? If so, why?

A.

FPL did not circumvent OPC to initiate settlement negotiations. FPL in good faith reached out to OPC several times during the process of settlement negotiations. OPC has not contended that it was excluded from such negotiations. The fact that OPC was consulted during the settlement discussions does not, however, mean that OPC possesses a veto power over the proposed Settlement Agreement or the ability of other parties to engage in constructive negotiations.

Response prepared by Counsel