

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE:

PETITION FOR RATE INCREASE BY)
FLORIDA POWER AND LIGHT) DOCKET NO. 120015-EI
COMPANY)

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REBUTTAL TESTIMONY
OF
LANE KOLLEN
(SETTLEMENT ISSUES)

ON BEHALF OF THE
SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION

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J. KENNEDY AND ASSOCIATES, INC.
ROSWELL, GEORGIA

NOVEMBER 8, 2012

DOCUMENT NUMBER-DATE

07545 NOV-8 2012

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

IN RE:

**PETITION FOR RATE INCREASE BY) DOCKET NO. 120015-EI
FLORIDA POWER & LIGHT COMPANY)**

REBUTTAL TESTIMONY OF LANE KOLLEN

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Lane Kollen. My business address is J. Kennedy and Associates,
3 Inc., 570 Colonial Park Drive, Suite 370, Roswell, GA 30075.

4 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS SETTLEMENT
5 PHASE OF THE PROCEEDING?**

6 A. Yes. I filed testimony in support of the settlement on behalf of the South Florida
7 Hospital and Healthcare Association ("SFHHA").

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 A. The purpose of my testimony is to respond to the claim by Office of Public
10 Counsel ("OPC") witness Ms. Ramas that the revenue increases set forth in the
11 August 15, 2012 Settlement Agreement are not fair, just and reasonable because
12 they exceed the test year costs recommended as reasonable by the OPC; and to
13 respond to OPC witness Mr. Daniel's opposition to paragraph 12 of the
14 Settlement Agreement, which incentivizes the Company to optimize the use of its
15 assets to improve revenues and margins for the benefit of customers.

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1 **Q. MS. RAMAS TESTIFIED THAT ALTHOUGH SHE IS NOT OFFERING A**
2 **LEGAL OPINION, SHE BELIEVES THE FLORIDA STATUTES, AND**
3 **STATUTES IN OTHER STATES, REQUIRE THAT RATES HAVE TO BE**
4 **COST-BASED. DO YOU AGREE?**

5 A. No. Although I too do not offer a legal opinion, I disagree with Ms. Ramas based
6 on my experience. State public utility commissions, including this commission,
7 often approve “black-box” settlement agreements wherein the components and
8 derivation of the rate increase are not specified except to the extent necessary for
9 various purposes, *e.g.*, return on equity, depreciation rates, regulatory assets and
10 amortization expense, etc. Each party to the settlement makes its own
11 determination of the reasonableness of the settlement compared to its litigation
12 position, which does not require that the parties or the Commission rigidly adhere
13 to cost-based rates as Ms. Ramas advocates. This was true with respect to the
14 Commission’s approval of the “black box” settlement of FPL’s 2005 rate case.

15 **Q. DO YOU AGREE WITH MS. RAMAS THAT THE REVENUE**
16 **INCREASES SET FORTH IN THE AUGUST 15, 2012 SETTLEMENT**
17 **AGREEMENT ARE NOT FAIR, JUST AND REASONABLE?**

18 A. No. The revenue increases set forth in the Settlement Agreement set rates for a
19 four year period and transcend the revenue requirement for a single test year. The
20 specified revenue increases over the four years are in fact cost-based in the sense
21 that they are derived from the cost-based filing FPL made to initiate this
22 proceeding. While OPC and I disagreed with FPL’s case in a litigated setting, as I
23 pointed out in Direct Testimony, there is no assurance the Commission will
24 accept SFHHA’s or OPC’s arguments on particular cost items. SFHHA has made

1 a judgment that a 25% reduction from the Company's request as reflected in the
2 agreed upon initial rate increase together with the other provisions of the
3 Settlement Agreement result in fair, just and reasonable rates even though the
4 initial increase is not based on a fully specified cost-based revenue requirement.
5 In addition, the revenue increases that will occur from the proposed settlement
6 were based on a careful balance among the initial increase and the increases in
7 each of the next three years rather than focusing only on the initial increase.
8 While the initial year increase is indeed more than either OPC or the SFHHA
9 recommended in the main proceeding, the tradeoff is that the four year agreement
10 limits base rate increases in each of the next three years to recovery of the costs of
11 the three modernization projects. Other than nuclear cost recovery base rate
12 adjustments, FPL cannot seek or implement additional base rate increases for any
13 other costs during the four year period.

14 Further, the Settlement Agreement provides customers a substantial and
15 continuing benefit from the amortization of the depreciation reserve surplus
16 reflected in the initial increase. The initial increase reflects a nonrecurring credit
17 of \$191 million. The four year agreement ensures that this credit is retained and
18 benefits customers for another three years, thus providing customers an additional
19 \$573 million in value that would not be available if FPL instead filed for annual
20 base rate increases.

21 Finally, the initial increase under the Settlement Agreement will not
22 achieve the 10.7% return on equity specified in the Settlement Agreement, based
23 on FPL's revised revenue requirement, as Ms. Ramas acknowledges. [Ramas
24 Direct at 6]. As Ms. Ramas notes, the initial increase of \$378 million is

1 approximately \$20 million less than the \$398 million increase that would be
2 necessary to achieve a 10.7% return on equity, all else equal. In other words, the
3 initial increase will result in a return on equity of less than 10.6%, all else equal.

4 **Q. MR. DANIEL OPPOSES THE INCENTIVE MECHANISM SET FORTH**
5 **IN PARAGRAPH 12 OF THE SETTLEMENT AGREEMENT FOR**
6 **VARIOUS REASONS, ONE OF WHICH IS THAT THIS IS A NEW**
7 **PROPOSAL NOT INCLUDED IN THE COMPANY'S FILING AND THAT**
8 **THE PARTIES HAVE NOT HAD AN OPPORTUNITY TO STUDY IT IN**
9 **DETAIL. PLEASE RESPOND.**

10 A. It is not entirely a new proposal, but even if that were true, that does not preclude
11 it from inclusion in the Settlement Agreement. The Incentive Mechanism is an
12 expansion and improvement of the existing sharing mechanism to include
13 additional transactions that otherwise would not have been flowed through to
14 customers between base rate cases, to increase the "gains" threshold before FPL
15 can share in those gains so that more savings flow through to customers upfront,
16 and to increase FPL's incentive to achieve savings and/or additional margins for
17 the benefit of customers.

18 This expansion of the existing sharing mechanism will not harm
19 customers, but has the potential to substantially benefit customers. As Mr. Daniel
20 notes, FPL has not exceeded the threshold of the existing sharing mechanism
21 since 2007. [Daniel Direct at 6]. However, the enhancements to the mechanism
22 that are part of the settlement, *i.e.*, new types of transactions to produce additional
23 revenues, and increases to the "gains" threshold before FPL can share in those
24 gains, have the potential to improve the results for ratepayers. Further, these two

1 modifications are improvements designed to incentivize FPL specifically for the
2 benefit of customers. As a result, and as Mr. Daniel also notes, the sharing
3 percentages for the Company once the threshold has been exceeded are
4 substantially greater than the 20% under the existing mechanism.

5 Even in a worst case scenario, the improved incentive mechanism will not
6 harm customers. Therefore, the proposed incentive mechanism should not be
7 viewed as a negative because customers will obtain the opportunity for greater
8 benefits than they had or would have under the existing mechanism if FPL
9 achieves "gains" that exceed the increased threshold of the Incentive Mechanism.

10 **Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

11 **A. Yes.**

CERTIFICATE OF SERVICE
DOCKET NO. 120015-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. mail to the following parties on this 8th day of November, 2012:

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/s/ Kenneth L. Wiseman
Kenneth L. Wiseman