BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.	DOCKET NO. 120015-EI ORDER NO. PSC-12-0617-PHO-EI ISSUED: November 16, 2012

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on November 15, 2012, in Tallahassee, Florida, before Chairman Ronald A. Brisé, as Prehearing Officer.

APPEARANCES:

R. WADE LITCHFIELD, JOHN T. BUTLER, JORDAN A. WHITE, and MARIA J. MONCADA, ESQUIRES, Florida Power and Light Company, 700 Universe Boulevard, Juno Beach, Florida, 33408;
On behalf of Florida Power & Light Company (FPL).

JON C. MOYLE, JR., and SERENA MOYLE, ESQUIRES, Moyle Law Firm, P.A., The Perkins House, 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Industrial Power Users Group (FIPUG).

KENNETH L. WISEMAN, MARK F. SUNDBACK, LISA M. PURDY, WILLIAM M. RAPPOLT, J. PETER RIPLEY, and BLAKE R. URBAN, ESQUIRES, Andrews Kurth LLP, 1350 I Street, NW, Suite 110, Washington, DC 20005
On behalf of South Florida Hospital and Healthcare Association (SFHHA).

LT. COL. GREGORY FIKE, CHIEF, and KAREN WHITE, ESQUIRE, USAF Utility Law Field Support Center, Air Force Legal Operations Agency, 139 Barnes Drive, Suite 1, Tyndall Air Force Base, Florida 32403
On behalf of Federal Executive Agencies (FEA).

JOSEPH A. MCGLOTHLIN, CHARLES J. REHWINKEL, and PATRICIA A. CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A., 1300 Thomaswood Drive, Tallahassee, Florida 32308
On behalf of the Florida Retail Federation (FRF).

WILLIAM C. GARNER, and BRIAN P. ARMSTRONG, ESQUIRES, Nabors, Giblin & Nickerson, P.A., 1500 Mahan Drive, Suite 200, Tallahassee, Florida 32308
On behalf of the Village of Pinecrest (Village).

THOMAS SAPORITO, *pro se,* 6701 Mallards Cove Road, Apartment 28H, Jupiter, Florida 33458
On behalf of Thomas Saporito.

JOHN W. HENDRICKS, *pro se,* 367 South Shore Drive, Sarasota, Florida 34234
On behalf of John W. Hendricks.

KEINO YOUNG, MARTHA C. BROWN, LARRY D. HARRIS, and CAROLINE M. KLANCKE, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

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

PREHEARING ORDER

I. CASE BACKGROUND

This docket was opened to consider Florida Power & Light Company's (FPL) petition for a base rate increase. Eleven parties were granted intervention in the docket. By the Order Establishing Procedure, Order No. PSC-12-0143-PCO-EI, issued March 26, 2012, the hearing was set to commence on August 20, 2012. On August 15, 2012, FPL and three of the eleven intervening parties filed a Motion to Approve Settlement Agreement (Settlement Agreement) and a Motion to Suspend the Procedural Schedule.[1] The Motion to Suspend the Procedural Schedule was denied by Order No. PSC-12-0430-PCO-EI, issued August 17, 2012. The hearing commenced as scheduled in the Order Establishing Procedure.

On August 27, 2012, the Second Order Revising Order Establishing Procedure Setting Procedural Schedule for Commission Consideration of the Settlement Agreement was issued. The Order stated that upon conclusion of the evidentiary portion of the hearing, the Commission would announce the date and time set for the sole purpose of taking up the Settlement Agreement. On August 31, 2012, it was announced that the Commission would reconvene the hearing in the FPL Rate Case on September 27, 2012, at 1:00 p.m. and September 28, 2012, if necessary, to consider the Settlement Agreement. On September 27, 2012, the Commission

[1] FPL, FIPUG, FEA, and SFHHA are the signatories to the Settlement Agreement. While party Algenol did not execute the Settlement Agreement or join in the motion, it did express its support for the Settlement Agreement. However, Algenol subsequently filed a notice of withdrawal from these proceedings on October 25, 2012.

voted to take additional testimony limited to specific issues that are part of the proposed settlement agreement, but supplemental to the issues in the rate case. Accordingly, in compliance with Sections 120.569 and 120.57, Florida Statutes (F.S.), the administrative hearing will be continued on November 19-21, 2012, to take supplemental testimony on the specific issues that are a part of the Settlement Agreement.

On October 3, 2012, Order No. PSC-12-0529-PCO-EI, the Third Order Revising Order Establishing Procedure (Third Revised OEP), was issued pursuant to Rule 28-106.211, Florida Administrative Code (F.A.C.). Rule 28-106.211, F.A.C., provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Pursuant to the Third Revised OEP, the scope of the proceeding is limited to specific issues that are part of the proposed Settlement Agreement but supplemental to the issues set out in the Prehearing Order, Order No. PSC-12-0428-PHO-EI, issued August 17, 2012, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, F.S., and all administrative rules applicable to this Commission.

On October 16 and 19, 2012, Mrs. Alexandria Larson and Mr. Larry Nelson filed Petitions to Re-Intervene and Intervene, respectively. Both Petitions were denied.[2]

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall

[2] *See* Order Nos. PSC-12-0588-PCO-EI and PSC-12-0592-PCO-EI, denying the petition to re-intervene filed by Mrs. Alexandria Larson and the petition to intervene filed by Mr. Larry Nelson, respectively.

be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes per witness. If a witness has filed both direct and rebuttal testimonies, he or she shall receive five minutes for direct and five minutes for rebuttal. If both

direct and rebuttal testimonies are taken together, the witness(es) shall be given ten minutes total to summarize his or her testimonies.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness whose name is preceded by a plus sign (+) will present direct and rebuttal testimony together.

Witness	Proffered By	Issues #
Direct		
Terry Deason	FPL	5
Ryan M. Allen	FEA	1, 5
Renae Deaton	FPL	5
Jeffry Pollock (+)[3]	FIPUG	5
Sam Forrest	FPL	4
Lane Kollen (+)	SFHHA	1, 2, 3, 4, 5
Robert E. Barrett	FPL	1, 2, 3

[3] Witness Pollock may appear later in the direct portion of the signatories' case based upon his availability.

Witness	Proffered By	Issues #
Moray Dewhurst	FPL	5
James W. Daniel	OPC	4, 5
Kevin W. O'Donnell	OPC	5
Jacob Pous	OPC	2, 3, 5
Donna Ramas	OPC	1, 5
John W. Hendricks	Hendricks	1, 4, 5
Rebuttal		
Jeffry Pollock (+)	FIPUG	5
Lane Kollen (+)	SFHHA	1, 2, 3, 4, 5
Terry Deason	FPL	5
Sam Forrest	FPL	4
Robert E. Barrett	FPL	1, 2, 3
Moray Dewhurst	FPL	5

VII. BASIC POSITIONS

FPL: **Background**

On March 19, 2012, FPL filed a petition requesting a permanent increase in base rates (the "March 2012 Petition"). After all testimony had been prefiled and following months of discovery, including numerous depositions and responses to several hundred interrogatories and requests for production the Signatories reached an agreement that, if approved, will resolve the March 2012 Petition (the "Proposed Settlement Agreement"). Approval of the Proposed Settlement Agreement also would obviate the need to litigate at least one, and as many as three, prospective base rate cases that FPL would file in the next year or two when it brings the Canaveral, Riviera Beach and/or Port Everglades Modernization Projects to commercial operation. The voluminous information available to the Signatories in the MFRs, the prefiled testimony and the discovery responses facilitated thoughtful and careful negotiations that appropriately considered all

relevant facts necessary to achieve a balanced outcome. On August 15, 2012, the Signatories filed a Joint Motion for Approval of Settlement Agreement.

The Signatories' efforts to reach an agreement and their pending request for approval are consistent with Florida's public policy favoring settlements. The FPSC has a long history of encouraging settlements, giving them great deference and "enforcing them in the spirit in which they were reached by the parties." Order No. PSC-05-0902-S-EI. As with all negotiated solutions, the Proposed Settlement Agreement represents a series of interrelated compromises reached by independent parties with varied interests, which differ from their litigation positions. Settlement negotiations also offer an opportunity to innovate. The Proposed Settlement Agreement is no exception. While none of the terms breaks new substantive ground, the parties resourcefully assembled various elements in a way that strikes a fair balance. And as with any settlement, the merits of the Proposed Settlement Agreement should be considered as a whole, rather than focusing on any individual provision or subset of provisions in isolation.

The standard for approval of a settlement agreement presented to the Commission is whether the agreement is in the public interest. As explained below, and in greater detail in the prefiled testimony of FPL and the other Signatories, the Proposed Settlement Agreement, considered as a whole, fairly and reasonably balances the interests of FPL's customers, its shareholders, and the state of Florida. Accordingly, the Proposed Settlement Agreement is in the public interest and should be approved.

Principal Terms
The principal terms of the Proposed Settlement Agreement provide as follows:

- There would be a four-year term beginning January 1, 2013 and ending December 31, 2016. Other than as expressly provided in the Proposed Settlement Agreement, FPL could not seek another base rate increase during the term of the Proposed Settlement Agreement.
- There would be two forms of base rate adjustments:
  - A $378 million increase, effective January 1, 2013. This is a $139 million reduction from FPL's request.
  - GBRAs upon the commercial operation date ("COD") for the Canaveral Modernization Project (COD projected for June 2013), the Riviera Beach Modernization Project (COD projected for June 2014), and the Port Everglades Modernization Project (COD projected for June 2016). For the Canaveral Modernization Project, the GBRA would be based upon the revenue requirement reflected in the March 2012 Petition in this docket and accompanying MFRs, including the revised costs and expenses included in the Appendix to FPL's posthearing brief; for the Riviera and Port Everglades Modernization Projects, the GBRA would be based upon the costs presented in the need determinations for those projects. For all

three modernization projects, the GBRA calculation incorporates the Proposed Settlement Agreement 10.70 % ROE, the revised long term debt rate set forth in FPL's posthearing brief, and the incremental, revised capital structure from the Canaveral Step Increase MFRs.

- FPL's ROE would be 10.70 percent for all purposes (range of 9.70 percent - 11.70 percent).
- FPL would continue its current recovery of West County Unit 3 revenue requirements through the capacity cost recovery clause, but the recovery would not be limited by the unit's projected fuel savings.
- FPL would be given continued flexibility during the term of the Proposed Settlement Agreement to amortize the remaining depreciation reserve surplus after 2012 (a minimum of $191 million) and up to $209 million of fossil dismantlement reserve, with the obligation to use that flexibility to endeavor to maintain FPL's earned ROE within the range of 9.70 percent to 11.70 percent.
- New depreciation or dismantlement studies would not be required to be filed during the term of the Proposed Settlement Agreement.
- The storm cost recovery mechanism provided in the 2010 settlement agreement would remain in effect.
- The regulatory framework for recovery of gains on the purchase and sale of wholesale power as well as other forms of asset optimization would be revised to enhance FPL's incentives to maximize economic opportunities while flowing the substantial majority of realized benefits back to customers.
  - Retail customers would receive $36 million in gains/savings as a baseline amount, plus 100 percent of the first incremental $10 million in gains/savings above the initial $36 million threshold;
  - From $46 to $75 million, gains/savings would be shared 70/30 between FPL and customers;
  - From $75 to $100 million, gains/savings would be shared 60/40 between FPL and customers; and,
  - Over $100 million, gains/savings would be shared 50/50 between FPL and customers.

The Proposed Settlement is in the Public Interest

The Commission has generally applied a public interest standard to determine whether a proposed settlement agreement should be approved. The determination of what constitutes the public interest is left to the discretion of the Commission, which in turn is guided by its regulatory responsibility to set rates that are just, reasonable and compensatory. The specific factors that the Commission considers in evaluating a proposed settlement depends on the facts of each case.[4]

[4] There is no dispositive list of public interest factors. Based on review of prior FPSC orders, the Commission has, at various times given the following reasons: the overall reasonableness of the resulting rates; rate stability and predictability; the resulting financial strength of the public utility and its ability (and encouragement) to make needed capital investments; the ability of the public utility to maintain or improve its quality of service and overall reliability; the existence of safeguards for the protection of customers and investors; the amount of information

The Proposed Settlement Agreement is consistent with the public interest. It offers ratepayers in every rate class the benefits of reasonable rates with stability and predictability and provides FPL with the required financial integrity that will allow FPL to continue to make the investments necessary to ensure high quality, reliable service. The Proposed Settlement Agreement, considered as a whole, balances the interests of FPL's customers, its shareholders and the state of Florida.

Reasonable Base Rate Increase
The Proposed Settlement Agreement provides a reasonable base rate increase. FPL's overall revenue request under the Proposed Settlement Agreement is reduced to $378 million. This represents a $139 million reduction from FPL's original request of $517 million, or roughly 25 percent.

Additionally, the base rate increase under the Proposed Settlement Agreement is reasonable when compared to recent increases approved by the Commission for other electric utilities. Expressed as a percentage increase of base rates, FPL's increase of 8.6 percent is less than the increase granted to Gulf Power on April 3, 2012 of 13.3 percent, and the increase approved on March 8, 2012 for Progress Energy Florida's ("PEF") settlement agreement of 9.7 percent. To provide further context for the reasonableness of the increase, both Gulf Power's and PEF's base rates and total bills were *higher* than FPL's before their respective increases. Thus, by comparison, a smaller percentage increase on lower base rates should not be deemed unreasonable.

The reasonableness of the proposed revenue increase is also apparent when one considers the depletion of non-cash accounting credits that FPL will experience in 2013 and 2014. FPL's 2010 base rate order and settlement agreement required FPL to amortize flexibly its theoretical depreciation reserve surplus. The difference in amounts to be amortized in 2013 compared to 2012 represents an increase in revenue requirements of $367 million, and thus requires a corresponding revenue increase.

Stability and Low Bills for Customers
The Proposed Settlement Agreement limits future increases and will continue to provide FPL residential customers the lowest typical bills in Florida. As demonstrated during the August technical hearings, FPL's typical residential bill is the lowest among Florida's 55 electric providers. Under the Proposed Settlement Agreement, the 2013 typical residential bill is expected to remain the lowest in the state based on the current rates of the other companies. The projected net increase, based on fuel efficiency savings, current fuel price

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provided to make a reasoned decision; regulatory efficiency; the minimization of regulatory costs and burdens; and the minimization of risk and uncertainty.

projections, and other components, would only be about $1.54 a month or 5 cents per day, which is an increase of less than 2 percent. For commercial and industrial classes, the net bill impact for 2013 is expected to range from flat to a 3 percent decrease. Compared to the rates proposed in FPL's March 2012 Petition, the Proposed Settlement Agreement results in bills that are flat or lower for all major rate classes. And, because of GBRA, customers can be assured that the inclusion of Cape Canaveral, Riviera Beach and Port Everglades (at no cost higher than contemplated by this Commission's need orders) will be positive for long term bill affordability. In short, all customers will benefit from the rates in the Proposed Settlement Agreement.

The Proposed Settlement Agreement also strictly limits the opportunities to adjust base rates during the four-year term, which provides rate stability and offers customers a high degree of confidence that their bills will remain among the lowest over that time frame. FPL, on the other hand, would remain exposed to the risks associated with rising interest rates and increased inflation, both of which are widely anticipated at some point within the term of the Proposed Settlement Agreement. Indeed, investors believe that today's interest rate environment is distorted by Federal Reserve Bank actions designed to stimulate the economy. Under the Proposed Settlement Agreement, customers are protected against these risks, as FPL will have no right to recover for such increases unless its ROE falls below 9.7 percent.

Promotes Economic Development

The Proposed Settlement Agreement will promote economic development in Florida by implementing more competitive commercial and industrial rates at a critical time for Florida's economy. Such competitive rates are targeted to stimulate job growth and investment both by the business community in Florida and those outside of Florida who are considering investment in our State. Indeed, FPL's own investments are a significant part of that equation. In 2010, FPL was the largest private investor in the state. Currently, FPL is in the midst of the largest capital investment program in its history, with investments amounting to roughly $9 billion over three years. That capital investment, made possible by the Company's financial strength and integrity, translates into a positive impact on the Florida economy and the creation of new employment.

The Proposed Settlement Agreement will further stimulate economic development in Florida through rates that make business and industry in FPL's territory more competitive. It is well understood that Florida competes with other states for industry, and therefore must be competitive on a regional or national level. To that end, the Proposed Settlement Agreement increases Commercial and Industrial Load Control ("CILC") and Commercial and Industrial Demand Reduction rider ("CDR") credits to customers over those reflected in the March 2012 Petition, which results in base rate reductions and reasonable, competitive rates for many of Florida's businesses as the state continues to recover from the recession. The

CILC and CDR credits are made available in exchange for the ability to interrupt customers during periods of extreme demand, capacity shortages or system emergencies. All other things equal, this will help commercial and industrial businesses in a way that benefits Florida over other southeastern states. In turn, this will not only support employment in Florida, but will also enhance efficiency in the state by incentivizing participation in demand reduction programs which benefits all customers.

Reduced Uncertainty for All Parties
The Proposed Settlement Agreement reduces uncertainty, which benefits FPL's customers and its shareholders. As previously stated, FPL would not be permitted to seek another base rate increase during the four-year term, except under the limited circumstances expressly provided. For customers, four years of rate stability provides a clearer view of what their electric bills will be over the term and allows them to plan accordingly. For shareholders, the four-year term offers a greater degree of predictability around the level and variability of FPL's earned ROE, and it reduces regulatory uncertainty. This is especially beneficial for investors with a long-term outlook.

Promotes Administrative Efficiency
The Proposed Settlement Agreement includes two features that promote administrative efficiency. First, the use of the GBRA for FPL's Cape Canaveral, Riviera Beach and Port Everglades Modernization Projects will help avoid lengthy, costly and disruptive rate proceedings during the four-year term. Absent rate relief, each project alone would cause a drop of more than 100 basis points of return, thus in all likelihood requiring a subsequent base rate proceeding. While all base rate proceedings tax resources of customers and this Commission, initiating separate rate cases to recover the costs of each of these projects would be particularly wasteful because it would consist of revisiting – on three separate occasions – issues that were already addressed in the underlying need determination proceedings.

Likewise, the Proposed Settlement Agreement provides for the continuation of the current mechanism for recovery of prudently incurred storm restoration costs. This mechanism supports administrative efficiency without sacrificing any Commission oversight regarding the prudence of storm restoration efforts. Additionally, this provision offers risk mitigation to investors.

Stable Financial Position for FPL
The Proposed Settlement Agreement helps to ensure that FPL will be able to maintain financial stability and will have access to the financial resources necessary to sustain FPL's continued investment. Taken in the aggregate, the Proposed Settlement Agreement is likely to be broadly viewed by investors as balanced and constructive. Consequently, capital is likely to be available to FPL on competitive terms, a quality that has long benefitted customers.

The Company's excellent track record of superior reliability and strong customer service is made possible only with the help of sustained investment. FPL is currently investing for the long term benefit of its customers in amounts substantially in excess of internally generated cash flow. FPL must sustain its investment to complete the three major modernization projects, to strengthen its core infrastructure and to enhance the reliability of its transmission and distribution network as well as its generation fleet. The Proposed Settlement Agreement ensures a stable framework that will support FPL's capital raising activities and thereby enable it to sustain the superior level of customer service and reliability that it offers today.

The Proposed Settlement Agreement supports investor interests by offering the prospect of earned ROEs in the range of 9.7 percent to 11.7 percent. Although the proposed ROE is lower than originally requested in FPL's March 2012 Petition and even though it will likely be supported in part by the amortization of non-cash credits to expense, the Proposed Settlement Agreement will nevertheless make FPL more competitive with other utilities in the broader southeast region to which it is commonly compared by investors.

Conclusion
The Proposed Settlement Agreement is in the public interest. It will help continue the benefits that FPL's customers currently enjoy: the lowest typical residential bills in the state, the best service reliability among the Florida Investor Owned Utilities, and excellent, award winning customer service. This is made possible through the Proposed Settlement Agreement's combination of a moderate impact on base rates and a predictable level of support for sustained investment. The Proposed Settlement Agreement also provides, when considered in the aggregate, an opportunity for investors to earn a reasonable rate of return. Further, it will have a positive impact on the Florida economy by increasing infrastructure investment in the state and promoting job growth opportunities. Finally, the Proposed Settlement Agreement advances administrative efficiency. For all of these reasons, the Proposed Settlement Agreement should be approved.

FIPUG: Put simply, FIPUG, SFHHA and FEA support the Proposed Settlement Agreement and urge the Commission to approve it.

Evidence adduced during the August hearing in this case, coupled with the additional evidence that will be considered during the November 19, 20 and 21 hearing, establishes that the Proposed Settlement Agreement is in the public interest and should be approved, consistent with this Commission's long history of encouraging and approving settlement agreements. As FIPUG witness Pollock makes clear, the Proposed Settlement Agreement under review provides ratepayers with important benefits such as freezing base rates for four years, moving rates closer to parity and shifting risk to FPL to absorb higher operating

expenses from 2013 through 2016, future infrastructure investment and additional post-test year expenses in order to earn a 10.7 return on equity. The 10.7 return on equity is the same return on equity that this Commission approved earlier this year for PEF should it repair and return to service its sole nuclear power plant. Furthermore, the Proposed Settlement Agreement eliminates the double digit base rate increases that would have been imposed on many Florida business as detailed in FPL's original rate case filing and replaces those double digit increases with either no increase or a slight reduction for most Florida businesses in FPL's service territory, something that will help these businesses as the State strives to emerge from the economic doldrums caused by the Great Recession. The evidence in this case clearly establishes that the Proposed Settlement Agreement is in the public interest and should be approved.

SFHHA: Put simply, FIPUG, SFHHA and FEA support the Proposed Settlement Agreement and urge the Commission to approve it.

Evidence adduced during the August hearing in this case, coupled with the additional evidence that will be considered during the November 19, 20 and 21 hearing, establishes that the Proposed Settlement Agreement is in the public interest and should be approved, consistent with this Commission's long history of encouraging and approving settlement agreements. As FIPUG witness Pollock makes clear, the Proposed Settlement Agreement under review provides ratepayers with important benefits such as freezing base rates for four years, moving rates closer to parity and shifting risk to FPL to absorb higher operating expenses from 2013 through 2016, future infrastructure investment and additional post-test year expenses in order to earn a 10.7 return on equity. The 10.7 return on equity is the same return on equity that this Commission approved earlier this year for PEF should it repair and return to service its sole nuclear power plant. Furthermore, the Proposed Settlement Agreement eliminates the double digit base rate increases that would have been imposed on many Florida business as detailed in FPL's original rate case filing and replaces those double digit increases with either no increase or a slight reduction for most Florida businesses in FPL's service territory, something that will help these businesses as the State strives to emerge from the economic doldrums caused by the Great Recession. The evidence in this case clearly establishes that the Proposed Settlement Agreement is in the public interest and should be approved.

FEA: Put simply, FIPUG, SFHHA and FEA support the Proposed Settlement Agreement and urge the Commission to approve it.

Evidence adduced during the August hearing in this case, coupled with the additional evidence that will be considered during the November 19, 20 and 21 hearing, establishes that the Proposed Settlement Agreement is in the public interest and should be approved, consistent with this Commission's long history of encouraging and approving settlement agreements. As FIPUG witness Pollock

makes clear, the Proposed Settlement Agreement under review provides ratepayers with important benefits such as freezing base rates for four years, moving rates closer to parity and shifting risk to FPL to absorb higher operating expenses from 2013 through 2016, future infrastructure investment and additional post-test year expenses in order to earn a 10.7 return on equity. The 10.7 return on equity is the same return on equity that this Commission approved earlier this year for PEF should it repair and return to service its sole nuclear power plant. Furthermore, the Proposed Settlement Agreement eliminates the double digit base rate increases that would have been imposed on many Florida business as detailed in FPL's original rate case filing and replaces those double digit increases with either no increase or a slight reduction for most Florida businesses in FPL's service territory, something that will help these businesses as the State strives to emerge from the economic doldrums caused by the Great Recession. The evidence in this case clearly establishes that the Proposed Settlement Agreement is in the public interest and should be approved.

OPC: OPC renews its objection to what Order No. PSC-12-0529-PCO-EI labels "Settlement Issues" on the grounds that the purported settlement contained in the signatories' August 15, 2012 document ("August 15 document") is legally invalid. OPC is participating in the proceedings announced in Order No. PSC-12-0529-PCO-EI, including the evidentiary hearing scheduled for November 19-21, 2012, under protest, and subject to its legal objections.

Anticipating that the Commission will reject the purported settlement (whether in recognition of the legal invalidity of the August 15 document or of its avaricious one-sidedness), OPC also registers a continuing objection to the use of any evidence to be adduced during the November 19-21 hearing for any purpose related to the decision on FPL's March 2012 petition. Necessarily, in the course of demonstrating the deficiencies and conspicuous excesses of the August 15 document, OPC's witnesses will allude to the record of the August 2012 hearing during the November 19-21 hearing. However, the evidence received as part of the (legally impermissible) consideration of the August 15 document cannot be used to "supplement" either the issues identified in Prehearing Order No. PSC-12-0428-PHO-EI, dated August 17, 2012, or the evidence received during the August 2012 hearing on those issues.

Putting aside the legal infirmities of the purported settlement for the purpose of addressing the contents of the August 15 document, OPC submits that determining the appropriate disposition of the "deal" struck by and among FPL, FIPUG, FEA, and SFHHA is an easy call. The August 15 document is overwhelmingly skewed toward the interests of FPL, to the detriment of customers (except those who would benefit from the shifting of revenue requirements among customer classes that FPL employed to induce them to sign the document). Rates that would result from the implementation of the August 15

document would be unfair, unjust, and unreasonable, and therefore not in the public interest. Consider:

Excessive return on equity — The 10.7% return on equity (ROE) specified in the August 15 document is far higher than current economic conditions and capital costs warrant. This ROE is higher than any other for a regulated utility established anywhere in the United States during 2012 of which OPC is aware. (Prehearing Order No. PSC-12-0428-PHO-EI reflects that the positions of OPC, FRF, SFHHA, FEA, and FIPUG on the appropriate ROE for FPL range from 8.5% to 9.25%. Without adjusting the equity ratio, and assuming that a change of 100 basis points in ROE translates to $160 million of revenues for FPL, reducing the ROE from 10.7% to even FPL's currently authorized midpoint of 10% would reduce FPL's revenue requirement by another $112 million annually.) The 10.7% ROE is rendered even more excessive by the extravagant 59.62% equity ratio that the August 15 document retains. Like the 10.7% ROE, to the best of OPC's knowledge, the 59.62% equity ratio is richer than any other that has been approved in 2012. Further, the appropriate ROE for FPL is a function of its investment risk. The provisions of the August 15 document that would authorize FPL to (a) increase base rates in 2014 and 2016 by the full amount of the revenue requirements of its Riviera Beach and Port Everglades generation modernization projects, and (b) manage its earnings by amortizing $400 million of depreciation and dismantlement reserve over four years, would lower FPL's risk profile below that which was considered during the August 2012 hearing. In other words, the August 15 document rewards FPL with a premium ROE for developing a four-year plan that exposes it to less risk. This is not in the public interest and would not result in fair, just, and reasonable rates.

Unreasonable and unrealistic $378 million increase in revenues — In addition to the impact of the excessive 10.7% ROE, the $378 million increase associated with the August 15 proposal implicitly assumes that, of the tens of millions of dollars of adjustments to rate base and expenses that OPC and other parties (including FIPUG, SFHHA, and FEA) have identified and supported in evidence and argument, the adjustments ultimately adopted by the Commission would total *zero*. The assumption is unreasonable and untenable on its face.

Unreasonable and prejudicial (to customers) piecemeal ratemaking, in the form of base rate increases in 2014 and 2016 of $243,043,000 and $217,862,000, respectively — The "generation base rate adjustments" that are proposed for 2014 and 2016 (increases that would occur beyond the projected test year and that were not requested in FPL's March 2012 petition) would ensure that FPL would receive more revenues during 2013-2016 under the "compromise" of the August 15 document than it would be authorized to receive under FPL's March 2012 petition during the same period — even if the Commission were to agree to FPL's originally requested 11.5% ROE *and* adopt FPL's positions on all other disputed issues! The "generation base rate adjustments" are a form of "piecemeal

ratemaking." This means that FPL seeks authority to tack the entire revenue requirements associated with a future asset onto base rates when it enters service, without any consideration at that time of whether the utility's earnings may be sufficient to absorb the asset into rate base with either no increase or a smaller rate increase. The proposal would turn a fundamental precept of ratemaking on its head: while a rate case is designed to produce *fixed* rates that will produce an *overall* rate of return which will vary within a prescribed *range*, FPL would vary (increase) *base rates* in order to receive a guaranteed, *point-specific* return on a *single* asset — whether or not FPL's overall return would remain in the prescribed range without the increase. The "benefits" claimed for the "generation base rate adjustments" include the claim that these rate increases would obviate the costs of protracted base rate proceedings. Even those purported benefits would inure to FPL, and not the vast majority of its customers, because the Commission, Staff, and parties would have fewer opportunities to scrutinize its operations. Besides, in view of the predictable propensity of FPL and other regulated utilities to overstate their needs, a one-time rate case expenditure that frequently results in downward adjustments (relative to the utility's request) of tens of millions of dollars or more in *annual* revenue requirements is money very well spent.

Amortization of dismantlement reserve for the express purpose of enhancing FPL's earnings — The objective of capital recovery accounting is to collect the costs of plant in a way that, based on the analysis of available information, will allow the recovery of capital costs over the life of the capital asset and is fair to both the company and each generation of customers. The amortization of a reserve imbalance is intended to eliminate significant levels of intergenerational inequity, and any impact of such an adjustment on earnings is a by-product of the pursuit of that objective. The purpose of the provision in the August 15 document that would enable FPL to amortize $209 million of dismantlement reserve is to enhance FPL's earnings. The impact on customers would be a by-product of the earnings enhancement mechanism, and the document would *require* (through the postponement of studies mandated by Commission rule) that supporting information be *unavailable*. Thus, the August 15 document would stand the purpose of capital recovery accounting on its head. Further: if a utility is authorized to amortize a reserve surplus to enhance its earnings, customers should receive a corresponding benefit in the form of a commensurate reduction in base rates. Tellingly, FPL has timed the introduction of this proposal in a way that is designed to avoid having to reflect an annual amortization in the calculation of revenue requirements in the test year of a base rate proceeding. If the August 15 document is adopted, FPL will have increased future rate base by $209 million while customers will have received nothing in return. This is not in the public interest and would not result in fair, just, and reasonable rates.

The "asset optimization" provision would expand the existing, narrowly defined wholesale incentive program into inappropriate areas with inadequate safeguards for customers — Regulated utilities have an obligation to provide

reliable and economical service. One of the primary tools that a utility employs to adhere to this standard is to meet the demand on its system by calling on its resources in ascending order of their costs. This concept is called "economic dispatch." Purchasing power when it is available at a price lower than the utility's cost of generating it is part of the economic dispatch rationale. By proposing to include savings from power *purchases* in an expanded incentive program, FPL is audaciously seeking "bonuses" for carrying out the most fundamental aspect of its obligation to serve. The Commission should also be mindful of the potential for unintended consequences. The "asset optimization" categories, which include high dollar transactions, would produce an incentive for FPL to employ its low-cost resources for off-system transactions (and incentive dollars) instead of retail service in a way that would be difficult for the Commission to monitor or police.

The purported "settlement" of the August 15 document bears no resemblance to the public interest — The concept of a settlement involves a compromise that provides benefits to all of the interests represented in the case. The bottom line of any settlement presented to the Commission must be fair and reasonable terms that translate into fair, just, and reasonable rates. Among other things, the August 15 document provides for: (1) an ROE that is excessive in view of the conditions of capital markets and FPL's risk profile; (2) an unvetted increase in revenues that would give FPL a "pass" on the myriad of adjustments to rate base and expenses that OPC and other parties advocated during the case; (3) future base rate increases that would occur far beyond the projected test year, and would not be mitigated by strong earnings, no matter how high; (4) amortization of dismantlement reserve that will increase FPL's earnings, but not reduce customers' rates; and (5) an expansion of the existing wholesale sales incentive mechanism that would "reward" FPL for adhering to the most fundamental of economic obligations, and perversely incentivize FPL to seek off-system opportunities at the expense of retail customers. These egregious terms, individually and collectively, would produce rates that would be unfair, unreasonable, and unjust, and would not be offset by any countervailing benefits to customers. The Commission should see the Joint Motion For Approval for what it is — a "joint" Christmas wish list.

FRF: The FRF renews its objection to this proceeding and FRF is participating under protest. FRF's basic position in this matter is set forth in "The Florida Retail Federation's Response in Opposition to Joint Motion for Approval of Settlement" filed on August 22, 2012.

Village: The Village adopts the basic position of the Office of Public Counsel, and in addition, asserts that the Commission should not approve the purported Stipulation and Settlement Agreement for the following reasons.

First, the Village agrees with the Office of Public Counsel that approval of an agreement to which the Public Counsel was not a party and opposes, and which is

intended to settle all issues in a fully litigated file-and-suspend rate case, is beyond the authority of the Commission as a matter of law. The legal basis for the Village's conclusion has been thoroughly and expertly set forth by Public Counsel in his petition for a writ of quo warranto now pending before the Florida Supreme Court.

Second, even if it is determined that the Commission has the authority to approve the purported Stipulation and Settlement Agreement it should nevertheless reject it as not in the public interest. The Agreement is intended to resolve all outstanding issues in the proceeding despite the fact that every significant issue in the proceeding is being vigorously contested by the Office of Public Counsel on behalf of the vast majority of FPL customers. The case has been fully litigated, and all that remains is a decision by the Commission. In fact, nothing in the case is settled among the adversarial parties, even in the remotest sense of the term. Approval of such a "settlement" would serve only to undermine and marginalize the role of the public's advocate, and would eliminate any meaningful participation by the vast majority of customers in the process. Generally, residential customers have no other voice before the Commission. Furthermore, acceptance by the Commission of a settlement agreement such as this, which is not only opposed by the Office of Public Counsel but by others interested in the proceedings, such as the Florida Retail Federation and the Village, would have a chilling effect inhibiting representation of interested customer groups in the rate setting process. Therefore, the Commission should adopt the bedrock policy principle that it will reject as not in the public interest any comprehensive settlement agreement in a file-and-suspend rate case that is opposed by the Office of Public Counsel.

Third, the purported Stipulation and Settlement Agreement is not in the public interest because it enables FPL to benefit from multiple back-to-back general rate increases without ensuring for customers that such increases are necessary given that changing circumstances in the intervening period could avoid the need for any increase. Under the proposal, FPL's customer rates would increase at the beginning of 2013 by $378 million, and then again six months later by an additional $165.3 million. One year after that, customer rates would automatically increase by another $236 million. And, following on another two years later in June 2016, rates would again increase by another $217.9 million. The Commission is asked to authorize revenue requirements in 2012 that FPL says it will not need until 2016. Such a decision by the Commission, to approve back-to-back-to-back-to-back general rate increases, is unprecedented and is flatly at odds with the Commission's position articulated only two years ago that "back-to-back rate increases should be allowed only in extraordinary circumstances." Order No. PSC-10-0153-FOF-EI, p. 9. If such extraordinary circumstances existed, FPL would have addressed its need in its general rate case and not as part of an eleventh-hour settlement agreement excluding the Office of Public Counsel.

Finally, the Village believes that the Commission, by addressing to each of the issues identified in the case the question whether a particular aspect of the Stipulation and Settlement Agreement is "in the public interest," is applying the incorrect standard for each issue. While the Commission may not approve a settlement agreement unless it determines such agreement to be "in the public interest," that is the incorrect standard to apply in determining the separate issues. Rather, the Commission should ask whether approval of the individual elements will result in fair, just and reasonable rates. The answer to that question being "no," the Commission should then find that the purported Stipulation and Settlement agreement is **not** in the public interest.

Hendricks: The proposed settlement package has some desirable features, such as the GBRA's administrative efficiency and the Incentive Mechanism's focus on optimizing power and fuel assets that are in the rate base. Unfortunately, the proposed settlement also has critical flaws which disqualify it from being in the public interest. It is inefficient, unbalanced in favor of the utility over its ratepayers, and unbalanced in favor of large ratepayers over small ones. The most obvious symptom of the imbalance is that the Office of Public Council, representing the citizens of Florida, opposes the proposed settlement, while the three parties joining FPL in support represent large institutional power users, who would benefit disproportionately as the settlement shifts costs to residential and other small ratepayers.

The four issues posed about specific terms of the proposed settlement and the summary issue about the settlement proposal as a whole are all answered in the negative - - they are not in the public interest.

The GBRA would unnecessarily raise the ratepayer costs for financing about $3billion of new generation. It includes very large tax gross-up costs and an equity ratio above that used in the determination of need. The provisions concerning amortization of reserve accounts will increase the likelihood of ROEs above the mid-point and are an inappropriate use of these reserve accounts. The proposed incentive mechanism's rewards are unbalanced and have the potential to create windfall profits and blowback. Approving them as proposed would ignore much of what we know about the role of asymmetric information in regulation.

Please consider the potential for the Commission to accept some of the terms of the proposed settlement and the original FPL proposal, to modify some of them to achieve a more balanced outcome and to reject those that are clearly not in the public interest. All of the parties need to get beyond "take it or leave it" attitudes. We are fortunate to be in a very promising position today. Thanks to the good work of the Commission, FPL, OPC and the U.S. gas industry we are well positioned to have reliable and relatively low cost electricity that many other locations will envy. Let's try to rebalance the GBRA and Incentive Mechanism proposals, and move forward with an agreement that fairly rewards FPL investors

and provides reasonable incentives for optimizing asset management, but is also fairer to ratepayers. The new facilities that FPL is building should be a very good investment for ratepayers, but the proposed GBRA financing and incentives call that into question that value.

Saporito: Saporito maintains that Florida Power & Light Company's (FPL's) proposed settlement agreement in this matter is "illegal" and violates the due-process rights of Saporito and the due-process rights of other Intervenors in this docket. Saporito further maintains that the Commission lacks requisite jurisdiction and authority to hold further hearing for the purpose of considering FPL's proposed settlement agreement at the expense of the ratepayers—and that any decision rendered by the Commission would be invalidated by the Florida Supreme Court on appeal.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Are the generation base rate adjustments for the Canaveral Modernization Project, Riviera Beach Modernization Project, and Port Everglades Modernization Project, contained in paragraph 8 of the Stipulation and Settlement, in the public interest?

POSITIONS

FPL: Yes. GBRA has worked successfully in the past. Here, in the context of the Proposed Settlement Agreement, it will streamline recovery of revenue requirements for three generating units previously approved in FPSC need determinations, thus eliminating the need for serial, costly rate cases. It is one of the essential elements that makes the four year settlement term feasible. Mathematically, GBRA *cannot* increase FPL's ROE beyond the mid-point. Additionally, it does not eliminate the Commission's oversight.

FIPUG: Yes. GBRA has worked successfully in the past. Here, in the context of the Proposed Settlement Agreement, it will streamline recovery of revenue requirements for three generating units previously approved in FPSC need determinations, thus eliminating the need for serial, costly rate cases. It is one of the essential elements that makes the four year settlement term feasible. Mathematically, GBRA *cannot* increase FPL's ROE beyond the mid-point. Additionally, it does not eliminate the Commission's oversight.

SFHHA: Yes. GBRA has worked successfully in the past. Here, in the context of the Proposed Settlement Agreement, it will streamline recovery of revenue requirements for three generating units previously approved in FPSC need determinations, thus eliminating the need for serial, costly rate cases. It is one of the essential elements that makes the four year settlement term feasible. Mathematically, GBRA *cannot* increase FPL's ROE beyond the mid-point. Additionally, it does not eliminate the Commission's oversight.

FEA: Yes. GBRA has worked successfully in the past. Here, in the context of the Proposed Settlement Agreement, it will streamline recovery of revenue requirements for three generating units previously approved in FPSC need determinations, thus eliminating the need for serial, costly rate cases. It is one of the essential elements that makes the four year settlement term feasible. Mathematically, GBRA *cannot* increase FPL's ROE beyond the mid-point. Additionally, it does not eliminate the Commission's oversight.

OPC: No. FPL's generation base rate adjustment proposal should be rejected for the reasons stated in the testimony of Donna Ramas and in Order No. PSC-10-0153-FOF-EI (the Commission's final order in FPL's last rate case, Docket No. 080677-EI, in which the Commission cited the testimony of SFHHA witness Lane Kollen when rejecting FPL's proposed generation base rate adjustment mechanism). The in-service dates of the Riviera Beach and Port Everglades generation modernization projects are well beyond the projected test year on which the Commission has based its consideration of FPL's March 2012 filing. On that basis alone, the Commission should refuse to entertain the proposal, just as it refused FPL's proposal for a "subsequent step increase" in the year beyond its projected test year in Docket No. 080677-EI. (In that instance, FPL had provided information regarding its future overall operations that the Commission deemed to be unreliable. In the instant case, FPL proposes to eliminate "overall information" completely.) More importantly, FPL seeks to add the full revenue requirements of each generation project to base rates incrementally, without any obligation to demonstrate that its earnings in the future could not absorb all or part of the additional costs without an increase in rates. (In the past, FPL has added several power plants to rate base without increasing customers' rates.) This proposal would allow FPL to increase base rates even if FPL is earning above its range during the period in which the projects are placed into service. The proposal is tantamount to a "power plant cost recovery clause" within base rates. FPL's argument that a generation base rate adjustment could not cause it to overearn is an exercise in misdirection. Base rates are designed to produce a return that will vary within a reasonable range while rates remain constant. FPL hopes to "flip" that concept and increase rates so that its earnings will remain whole. This "piecemeal," "incremental" approach to ratemaking would inappropriately shift the burden of demonstrating the need for a change in rates from the utility to the Commission and the utility's customers.

In Docket No. 080677-EI, FPL included its proposed generation base rate adjustment mechanism in its petition. The Commission rejected it emphatically. In the instant case, FPL waited until five days before the beginning of the August 2012 hearing before injecting a similar generation base rate adjustment proposal into this proceeding. One must assume that FPL believes that its chances for success (following the rejection in its last case) may be better if it is presented as part of a "settlement" package. However, the purported settlement is not properly before the Commission, and the terms of the August 15 document provide no offsetting or countervailing benefits to customers that would justify the self-serving generation base rate adjustment proposal.

FRF: No.

Village: The adjustments will not result in fair just and reasonable rates, and are therefore not in the public interest.

Hendricks: No. The GBRA as specified in this settlement proposal "short circuits" the expected rate case scrutiny for over $3Billion of new generation, enshrines a costly and tax-inefficient equity ratio that exceeds the determination of need value, could block ratepayers receiving the benefit of corporate income tax reductions, and cost ratepayers over $300 million by eliminating the typical rate case regulatory lag.

Saporito: No.

STAFF: No position pending evidence adduced at the hearing.

ISSUE 2: Is the provision contained in paragraph 10(b) of the Stipulation and Settlement, which allows the amortization of a portion of FPL's Fossil Dismantlement Reserve during the Term, in the public interest?

POSITIONS

FPL: Yes. The ability to amortize $400 million of depreciation and dismantlement reserve provides FPL the flexibility necessary to achieve reasonable financial results during the extended settlement period. Without this flexibility, base rates could not be held constant for such a long time due to the risk of weather, inflation, mandated cost increases and other factors affecting FPL's earnings that are beyond the Company's control.

FIPUG: Yes. The ability to amortize $400 million of depreciation and dismantlement reserve provides FPL the flexibility necessary to achieve reasonable financial results during the extended settlement period. Without this flexibility, base rates could not be held constant for such a long time due to the risk of weather,

inflation, mandated cost increases and other factors affecting FPL's earnings that are beyond the Company's control.

SFHHA: Yes. The ability to amortize $400 million of depreciation and dismantlement reserve provides FPL the flexibility necessary to achieve reasonable financial results during the extended settlement period. Without this flexibility, base rates could not be held constant for such a long time due to the risk of weather, inflation, mandated cost increases and other factors affecting FPL's earnings that are beyond the Company's control.

FEA: Yes. The ability to amortize $400 million of depreciation and dismantlement reserve provides FPL the flexibility necessary to achieve reasonable financial results during the extended settlement period. Without this flexibility, base rates could not be held constant for such a long time due to the risk of weather, inflation, mandated cost increases and other factors affecting FPL's earnings that are beyond the Company's control.

OPC: No. The provision is intended – not to accomplish intergenerational fairness – but to enhance FPL's earnings. It is structured – not to aid in establishing fair and reasonable rates – but to avoid providing customers with a commensurate reduction in base rates. Moreover, the provision is dependent – not on a supporting study of the status of the current expectation and related collection of dismantlement costs – but on the proposed postponement of such a study. The provision, in short, is severely skewed to only benefit FPL, as the amortization that produces increased earnings will also increase future rate base, without customers having received any corresponding monetary benefit. Rates based on the provision would not be fair, just, and reasonable. Accordingly, the provision is not in the public interest, either individually or as part of the August 15 document.

FRF: No.

Village: The Village adopts the position of OPC.

Hendricks: No. This provision and the one covered by Issue 3 below facilitate the use of reserve account amortization as a tool to manage the level of ROE. This will enable FPL to achieve a higher average level of ROE and could be manipulated to reduce the chance of crossing the ROE threshold that would enable a new rate case, while pursuing the highest possible average ROE. This is an inappropriate use of a reserve account. It would not be in the public interest to treat a reserve account as a slush fund to top-up utility earnings.

Saporito: No.

STAFF: No position pending evidence adduced at the hearing.

ISSUE 3: Is the provision contained in paragraph 11 of the Stipulation and Settlement, which relieves FPL of the requirement to file any depreciation or dismantlement study during the Term, in the public interest?

POSITIONS

FPL: Yes. Four years of rate stability and predictability is not possible without deferring the filing of FPL's depreciation and dismantlement studies during the term. Neither FPL nor customers could commit to a settlement with fixed base rates, while assuming the risk of depreciation and dismantlement accrual changes during the four-year term.

FIPUG: Yes. Four years of rate stability and predictability is not possible without deferring the filing of FPL's depreciation and dismantlement studies during the term. Neither FPL nor customers could commit to a settlement with fixed base rates, while assuming the risk of depreciation and dismantlement accrual changes during the four-year term.

SFHHA: Yes. Four years of rate stability and predictability is not possible without deferring the filing of FPL's depreciation and dismantlement studies during the term. Neither FPL nor customers could commit to a settlement with fixed base rates, while assuming the risk of depreciation and dismantlement accrual changes during the four-year term.

FEA: Yes. Four years of rate stability and predictability is not possible without deferring the filing of FPL's depreciation and dismantlement studies during the term. Neither FPL nor customers could commit to a settlement with fixed base rates, while assuming the risk of depreciation and dismantlement accrual changes during the four-year term.

OPC: No. The purpose of the depreciation and dismantlement studies that the Commission requires FPL and other regulated utilities to file periodically is to enable the Commission to gauge whether a utility is "on course" with respect to collecting the appropriate amount of capital costs from customers over time (the "matching principle"), and to take remedial action to achieve fairness between generations of customers if an imbalance is identified. As demonstrated in FPL's last rate case, establishing the degree to which FPL is "on course" or "off course" at a given point in time can involve a variance of more than a billion dollars, depending on the reasonableness of the assumptions contained in a study. Variances of such magnitudes demand timely studies to support any necessary reactions to correct intergenerational inequities. By contrast, the transparent objective of this provision of the August 15 document is to ensure that the amortization of fossil dismantlement reserve sought by FPL, the stated purpose of which is to enhance and stabilize FPL's earnings, is not contradicted or

undermined by a study that would show whether (and the extent to which) amortization is or is not warranted by adherence to the matching principle. The proposed amortization will have the effect of increasing future rate base, which is appropriate if future customers otherwise will have paid too little of their fair share for the use of the assets; however, a study is needed to establish whether (and to what degree) that is the case. Acting to authorize amortization of a reserve without first performing a study that would establish whether or not an amortization is warranted would be inimical to the establishment of fair, just, and reasonable rates, and therefore would not be in the public interest. In addition, FPL proposes that such studies occur after the end of the four-year period prescribed in the August 15 document. If one assumes that FPL will file a base rate request during the fourth year and base it on a projected test year, the proposed timing of the next studies would enable FPL to avoid reflecting the amortization in its revenue requirements and in its customers' rates, both in this docket and in the next base rate proceeding. Rates that do not reflect the reduction in revenue requirements occasioned by an amortization of reserve, the purpose of which is to increase earnings, would not be fair, just, or reasonable. Accordingly, for this reason, too, the provision is not in the public interest.

FRF: No.

Village: The Village adopts the position of OPC.

Hendricks: No. This provision would block creating or revising any depreciation or dismantlement accounts to protect the ROE management capability described above. It would not be in the public interest because it would put ratepayers at risk of future rate shocks by blocking all studies, including those currently mandated, until after the 4 year term of the proposed agreement. It also contributes to a lack of transparency. Also see position statement on Issue 2 above.

Saporito: No.

STAFF: No position pending evidence adduced at the hearing.

ISSUE 4: Is the provision contained in paragraph 12 of the Stipulation and Settlement, which creates the "Incentive Mechanism" including the gain sharing thresholds established between customers and FPL, in the public interest?

POSITIONS

FPL: Yes. The Incentive Mechanism is designed to create additional value for FPL's customers while also providing an incentive to FPL if it achieves certain customer-value thresholds. It would encourage FPL to pursue forms of asset optimization beyond short-term power sales and purchases. It would update the

sharing threshold to provide a more meaningful opportunity for FPL to share in the benefits generated for customers, but only if FPL delivers additional value to customers.

FIPUG: Yes. The Incentive Mechanism is designed to create additional value for FPL's customers while also providing an incentive to FPL if it achieves certain customer-value thresholds. It would encourage FPL to pursue forms of asset optimization beyond short-term power sales and purchases. It would update the sharing threshold to provide a more meaningful opportunity for FPL to share in the benefits generated for customers, but only if FPL delivers additional value to customers.

SFHHA: Yes. The Incentive Mechanism is designed to create additional value for FPL's customers while also providing an incentive to FPL if it achieves certain customer-value thresholds. It would encourage FPL to pursue forms of asset optimization beyond short-term power sales and purchases. It would update the sharing threshold to provide a more meaningful opportunity for FPL to share in the benefits generated for customers, but only if FPL delivers additional value to customers.

FEA: Yes. The Incentive Mechanism is designed to create additional value for FPL's customers while also providing an incentive to FPL if it achieves certain customer-value thresholds. It would encourage FPL to pursue forms of asset optimization beyond short-term power sales and purchases. It would update the sharing threshold to provide a more meaningful opportunity for FPL to share in the benefits generated for customers, but only if FPL delivers additional value to customers.

OPC: No. The "incentive mechanism" set forth in paragraph 12 of the August 15 document is neither fair nor reasonable, and does not provide benefits to FPL's ratepayers. On the contrary, the expanded incentive mechanism produces significant additional margin-sharing opportunities for FPL's shareholders, to the detriment of ratepayers.

Under the current wholesale incentive mechanism, approved by Order No. PSC-00-1744-PAA-EI, issued on September 26, 2000, the ratepayers are credited with 100% of the gains associated with short-term power sales below a three-year rolling average and 80% of the gains associated with gains above that threshold. Under the paragraph 12 expansion of the wholesale mechanism, additional types of wholesale power sales would be included and the "savings" from short-term power *purchases* would be used in calculating the eligible gains. Had FPL's expanded incentive mechanism been in effect during the period from 2001 to the present, the fuel costs for ratepayers would have been $47.65 million more than the amount FPL actually incurred, because the $47.65 million would have been paid to FPL for actions it would have undertaken anyway.

The inclusion of power purchases in the proposed incentive program is inappropriate, because buying power when it is available at prices lower than FPL's cost of generating it is part of FPL's fundamental obligation to provide service at the lowest reasonable cost.

Further, the higher incentives in the proposed expansion could encourage FPL to pursue such margins at the expense of undermining electric service for its native load customers. Moreover, due to the complexity of the transactions, it would be difficult to reconstruct the transactions and ascertain whether or not the lowest cost generation was used for the benefit of the native load customers.

In addition, it is likely that other utilities will seek to adopt a similar expanded incentive mechanism. Thus, if the proposed modifications to the current wholesale incentive mechanism are to be considered at all, it would be better to consider any modification in a generic rulemaking proceeding rather than in an expedited proceeding on a company-specific proposal.

FRF: No.

Village: The Village adopts the position of OPC.

Hendricks: No. It is highly desirable to financially optimize the efficient use of FPL's valuable generation, fuel supply, power and transmission resources and to exploit all reasonable sources of net revenue. However, this specific incentive proposal defines threshold values, allocation percentages, a scope of activities covered, and contracting/outsourcing provisions that appear to be overly generous to the utility and have the potential to create windfall profits. The large quantity of new highly efficient natgas generation coming online, combined with relatively low gas prices and other circumstances, may provide valuable opportunities heretofore unavailable. The incentive mechanism as proposed is not in the public interest, but with substantial modifications to improve balance while still providing effective incentives, it could become very valuable and serve the interest of the public and the utility.

Saporito: No.

STAFF: No position pending evidence adduced at the hearing.

ISSUE 5: Is the Settlement Agreement in the public interest?

POSITIONS:

FPL: Yes. The Proposed Settlement balances the interests that customers have in receiving low rates, high reliability and excellent customer service with the

opportunity for investors to have the potential to earn a rate of return commensurate with returns available from other opportunities open to them. It offers reduced uncertainty to both customers and investors. The Proposed Settlement Agreement promotes administrative efficiency. It also supports continued investment in Florida, thus promoting economic growth in the state.

FIPUG: Yes. The Proposed Settlement balances the interests that customers have in receiving low rates, high reliability and excellent customer service with the opportunity for investors to have the potential to earn a rate of return commensurate with returns available from other opportunities open to them. It offers reduced uncertainty to both customers and investors. The Proposed Settlement Agreement promotes administrative efficiency. It also supports continued investment in Florida, thus promoting economic growth in the state.

SFHHA: Yes. The Proposed Settlement balances the interests that customers have in receiving low rates, high reliability and excellent customer service with the opportunity for investors to have the potential to earn a rate of return commensurate with returns available from other opportunities open to them. It offers reduced uncertainty to both customers and investors. The Proposed Settlement Agreement promotes administrative efficiency. It also supports continued investment in Florida, thus promoting economic growth in the state.

FEA: Yes. The Proposed Settlement balances the interests that customers have in receiving low rates, high reliability and excellent customer service with the opportunity for investors to have the potential to earn a rate of return commensurate with returns available from other opportunities open to them. It offers reduced uncertainty to both customers and investors. The Proposed Settlement Agreement promotes administrative efficiency. It also supports continued investment in Florida, thus promoting economic growth in the state.

OPC: No. Adopting the August 15 document would not be in the public interest, because the provisions, individually and collectively, would not result in rates that meet the fair, just, and reasonable criteria of Chapter 366, Florida Statutes. Further, implementing the August 15 document would require departures from sound regulatory policy. The August 15 document does not reflect a fair and reasonable compromise of the interests of all parties. Instead, the August 15 document is asymmetric in the extreme. It is designed and structured to lavish inordinate and expensive benefits and advantages on FPL, to the detriment of the vast majority of FPL's customers. The exorbitant ROE and the foregone opportunity to resolve numerous rate base and O&M expense issues associated with the August 15 document would produce unreasonably high rates. The proposal to amortize fossil dismantlement reserve while postponing related depreciation and dismantlement studies would distort the objective of accounting for capital costs, and deny customers any monetary benefits that would be commensurate with the earnings enhancement that FPL would derive. The

proposed generation base rate increases and the proposed expansion of the current wholesale incentive program would involve potentially costly sacrifices of future regulatory oversight and scrutiny. Overall, the August 15 document would present an enormous gift to FPL; it would be an atrocious deal for the vast majority of FPL's customers.

FRF: No.

Village: No.

Hendricks: No. The combination of the provisions described above with the other elements of the settlement is not in the public interest. It is both inefficient and unbalanced, but with appropriate modifications this could be remedied, and deliver a better long term solution for both the utility and the ratepayers.

The GBRA would unnecessarily raise the ratepayer costs for financing about $3billion of new generation and includes very large tax gross-up costs. The provisions concerning amortization of reserve accounts will increase the likelihood of ROEs above the mid-point and are an inappropriate use of these reserve accounts. The proposed incentive mechanism's rewards are unbalanced and have the potential to create windfall profits and blowback.

Saporito: No.

STAFF: No position pending evidence adduced at the hearing.

IX. EXHIBIT LIST

Witness	Proffered By		Description
Direct			
Ryan M. Allen	FEA	RMA-1	2011 Economic Impact Analysis Patrick Air Force Base and Cape Canaveral Air Force Station
Renae B. Deaton	FPL	RBD-12	FPL Bill Comparisons Under Settlement Rates—January 2012 to January 2012, June 2013

Witness	Proffered By		Description
Renae B. Deaton	FPL	RBD-13	FPL Bill Comparisons Under Settlement Rates vs. Rates Proposed in March 2012 MFRs—June 2013
		RBD-14	Parity of Major Rate Classes: Current and Proposed Settlement Agreement
		RBD-15	EEI Industrial Bill Comparison—January 2012
		RBD-16	Late Payment Charge Survey
Jeffry Pollock	FIPUG	JP-15	Incremental Infrastructure Cost
		JP-16	Return on Equity
		JP-17	2013 Class Revenue Allocation
		JP-18	Cost Effectiveness
Sam A. Forrest	FPL	SF-1	Historical Performance of Existing Incentive Mechanism
		SF-2	Historical Performance of Power Sales Gains and Purchased Power Savings
		SF-3	Example—"Total Gains Schedule"
Robert E. Barrett, Jr.	FPL	REB-9	GBRA ROE Midpoint Illustrative Example
		REB-10	MFR A-1 Canaveral, Riviera, and Port Everglades
		REB-11	Dismantlement Reserve—Illustrative Example of Impact of Amortization on Future Accruals

Witness	Proffered By		Description
Robert E. Barrett, Jr.	FPL	REB-12	Depreciation Accrual—Illustrative Example of Effect of Nuclear Plant Additions on Accrual
James W. Daniel	OPC	JWD-1	List of Regulatory Proceedings
James W. Daniel		JWD-2	Incentive Mechanism Comparison
Kevin W. O'Donnell	OPC	KWO-11	Dow Jones Utility Index
		KWO-12	Federal Reserve Article
		KWO-13	ROE Comparison
Kevin W. O'Donnell		KWO-14	Equity Ratio Comparison
		KWO-15	30-Year US Treasury Yields
Donna Ramas	OPC	DR-7	Per FPL Original Revenue Requirement, Modified for Revised ROR
		DR-8	Per FPL Post-Hrg Revenue Requirement, Modified for Revised ROR
John W. Hendricks	Hendricks	JWH-7	Tax Efficiency in the GBRA Process
Rebuttal			
Jeffry Pollock	FIPUG	JP-19	Incremental Infrastructure Costs
		JP-20	Return on Equity
		JP-21	Incremental Infrastructure Cost (Errata to JP-15)
		JP-22	Return on Equity (Errata to JP-16)
Sam A. Forrest	FPL	SF-4	Incentive Mechanism Comparison

Witness	Proffered By		Description
Sam A. Forrest	FPL	SF-5	FPL responses to Staff's Twenty-Second Set of Interrogatories, Nos. 608 through 611
		SF-6	FPL's Natural Gas Assets
Robert E. Barrett, Jr.	FPL	REB-13	Expanded OPC Witness Ramas Exhibit DR-8-Adjusted Earned ROE
		REB-14	Projected Capital Expenditures (2014-2016) Excluding New Generation
.		REB-15	FPL's response to OPC's Sixteenth Set of Interrogatories, Question No. 275
		REB-16	Total Project Construction Costs for TP5 and WCEC 1&2—Need vs. Actual
Moray P. Dewhurst	FPL	MD-11	Proposed Settlement Agreement (Note: Exhibits A and B to Proposed Settlement Agreement co-sponsored by FPL witness Renae Deaton)

X. PROPOSED STIPULATIONS

No issues have been stipulated at this time.

XI. PENDING MOTIONS

FPL's Motion for Temporary Protective Order for Certain Confidential Information Provided in Response to Staff's Fifteenth Request for Production (No. 92), filed November 5, 2012. [DN 07465-12]

FPL's Motion for Temporary Protective Order for Certain Confidential Information Provided in Response to Staff's Amended Twenty-Second Set of Interrogatories (Nos. 614 and 615), filed November 1, 2012. [DN 07413-12]

XII. PENDING CONFIDENTIALITY MATTERS

FPL's Request for Confidential Classification of Documents Produced, filed September 27, 2012; [DN 06493-12]

FPL's Request for Confidential Classification of Documents Produced in Response to Staff's Sixth Request for Production No. 50, filed September 19, 2012; and [DN 06288-12]

FPL's Request for Confidential Classification of Documents Produced, filed September 6, 2012. [DN 06039-12]

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 180 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 180 words, it must be reduced to no more than 180 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding. Also, failure of a party to adhere to the word limitation will result in elimination of all words after the first 180.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed twenty minutes per side to be divided amongst the parties as they deem appropriate.

Witnesses' summaries shall be limited to five minutes per witness. If a witness has filed both direct and rebuttal testimonies, he or she shall receive five minutes for direct and five minutes for rebuttal. If both direct and rebuttal testimonies are taken together, the witness(es) shall be given ten minutes total to summarize his or her testimonies.

Also, unless otherwise agreed upon by the parties and approved by Commission, witnesses must be presented at the hearing as stated in Section VI (Order of Witnesses) of this Prehearing Order. Due to the size and complexity of this case each party will be held responsible for fully adhering to the Order of Witnesses.

Mr. Saporito's request to include a new issue "Is the Settlement Agreement which increases the customer late fee amount in the public interest?" is denied.

Based on the foregoing, it is therefore

ORDERED by Commissioner RONALD A. BRISÉ, as Presiding Officer in Docket No. 120015-EI, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 16th day of November, 2012.

RONALD A. BRISÉ
Chairman and Presiding Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KY

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case

of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.