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From: White, Jordan [Jordan.White@fpl.com]
Sent: Friday, November 30, 2012 2:35 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing / Dkt 120015-EI / Joint Post-Hearing Brief on Settlement Issues
Attachments: Joint Post-Hearing Brief on Settlement Issues.pdf; Joint Post-Hearing Brief on Settlement Issues.docx

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b. Docket No. 120015 - EI
In re: Petition for rate increase by Florida Power & Light Company

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company	Docket No. 120015-EI November 30, 2012

JOINT POST-HEARING BRIEF ON SETTLEMENT ISSUES

Florida Power & Light Company ("FPL"), the Florida Industrial Power Users Group ("FIPUG"), the South Florida Hospital and Healthcare Association ("SFHHA") and the Federal Executive Agencies ("FEA") (collectively, the "Signatories"), pursuant to the prehearing order, hereby file with the Florida Public Service Commission ("FPSC" or the "Commission") this Joint Post-Hearing Brief in support of their Joint Motion for Approval of Settlement Agreement.

The Proposed Settlement Agreement ("PSA") provides compelling benefits for every customer group. For four years, the agreement would effectively freeze base rates for anything other than those adjustments specifically spelled out and agreed to as part of the settlement, putting the onus on FPL to manage prudently, efficiently and effectively. Based on comparisons to current rates, FPL expects that its residential and small business customers would continue over these four years to benefit from bills that are the lowest in the state and well below national averages. That means more than just certainty of low bills; it means certainty that they will have more money available to spend and invest as they see fit. That's good for them, it's good for the businesses that sell them goods and services, and it's good for the ongoing economic recovery of the state. At the same time, the PSA supports FPL's ability to make investments that will provide all of its customers with superior reliability, service that has been recognized with national awards for nine consecutive years, and an emissions profile that helps protect and preserve Florida's special environment even as we support responsible economic development. This four-year settlement agreement is clearly in the public interest. It demonstrates the

creativity and commitment of the parties who came together in the spirit of collaboration to do the right thing for all customers and for the state.

BACKGROUND AND OVERVIEW

On March 19, 2012, FPL filed a petition requesting a permanent increase in base rates (the "March 2012 Petition"). After the minimum filing requirements ("MFRs") and all testimony was pre-filed and following months of discovery, including numerous depositions and responses to more than a thousand interrogatories and requests for production, the Signatories entered into a proposed settlement agreement that resolves the major issues of the March 2012 Petition. The voluminous information available facilitated thoughtful and comprehensive negotiations. Members of the Signatories take service under eight different rate classes, which total 48% of FPL's total delivered sales. In other words, contrary to OPC's claims, the PSA was negotiated by parties who represent a wide range of customers.

On August 20-24, and 27-31, 2012, the Commission held a technical hearing on FPL's March 2012 Petition. During the technical hearing, FPL presented the direct testimony of 15 witnesses and rebuttal testimony of 17 witnesses, as well as over 175 exhibits. On August 27, 2012, the Presiding Officer issued Order No. PSC-12-0440-PCO-EI, revising the Order Establishing Procedure and setting a procedural schedule for the Commission's consideration of the PSA. The Order provided that upon the conclusion of the August hearing, the Commission would recess until a date and time to be announced for consideration of the PSA.[1]

On September 27, 2012, the Commission heard arguments concerning the PSA and voted to take additional testimony limited to specific issues arising out of the PSA that were not part of the March 2012 Petition. On October 3, 2012, the Commission established the process and timetable for additional discovery and the filing of testimony concerning those limited issues,

[1] On August 31, 2012, the Presiding Officer specified that the PSA would be addressed on September 27, 2012, where oral argument would be heard by the Commission.

culminating in continuation of the technical hearing on November 19-20, 2012. Order No. PSC-12-0529-PCO-EI. During the November hearing, the Signatories presented the direct testimony of 8 witnesses and rebuttal testimony of 6 witnesses, as well as over 70 exhibits, all in support of the PSA.

This brief will show how the evidence from the August and November hearings supports a conclusion that the PSA is in the public interest. Specifically, approval of the PSA would resolve FPL's base rate case in a fashion that balances the customers' interests in low and predictable rates, high reliability, a clean emissions profile and excellent customer service with the potential for investors to earn a rate of return commensurate with comparable and available opportunities.[2] As explained below, and in greater detail in the record evidence, the PSA, considered as a whole, fairly and reasonably balances the interests of FPL's customers, its shareholders and the state of Florida. Accordingly, the PSA is in the public interest and should be approved.

A. Principal Terms of the PSA

The principal terms of the PSA (Exh. 701) provide as follows:

- A four-year term beginning January 1, 2013, and ending December 31, 2016. Other than as expressly provided, FPL could not seek another base rate increase during its term.
- A 10.70% Return on Equity ("ROE") (range of 9.70% - 11.70%).
- A $378 million increase, effective January 1, 2013. This is a $139 million reduction from FPL's March 2012 Petition, and roughly corresponds to the difference in the amount of reserve surplus amortization in 2012 and 2013.
- Generation base rate adjustments ("GBRA") upon the commercial operation date ("COD") for the Cape Canaveral Modernization Project "Canaveral" (COD projected for June 2013),

[2] It should be noted that no party in this proceeding has ever questioned FPL's quality of service.

the Riviera Beach Modernization Project "Riviera" (COD projected for June 2014), and the Port Everglades Modernization Project "Port Everglades" (COD projected for June 2016) (collectively, the "Modernization Projects"), projects that have been extensively vetted in the need determination process. For Canaveral, the GBRA would be based upon the revenue requirement reflected in the Appendix to FPL's September 21, 2012 post-hearing brief which is $139 million dollars below the original approved costs; for Riviera and Port Everglades, 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 PSA 10.70% ROE, the revised long-term debt rate set forth in FPL's September 21, 2012, post-hearing brief and the incremental, revised capital structure from the Canaveral Step Increase Schedules. FPL would continue its 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 annual projected fuel savings.

- FPL would be given continued flexibility during the term of the PSA to amortize the depreciation reserve surplus remaining after 2012 (a minimum of $191 million) and up to $209 million of fossil dismantlement reserve, together a maximum total of $400 million Reserve Amount, an important source of flexibility over a four-year term, but less than FPL has had under the 2010 settlement agreement.
- Depreciation or dismantlement studies would not be filed during the term of the PSA.
- Continuation of the 2010 settlement agreement storm cost recovery mechanism.
- 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 providing the substantial majority of realized benefits to customers. Gains and savings would be shared based on specified thresholds.

- An adjustment to credits that are provided to certain customer groups who agree to have their electric service interrupted during periods of peak energy demand. These customers provide a valuable resource to help FPL manage its electrical system, and the credits have not been changed in many years.

B. Overview of How the PSA is in the Public Interest

Reasonable Base Rate Increase: FPL's overall revenue request of $378 million under the PSA represents a $139 million reduction from FPL's original request of $517 million, or roughly 27%. It corresponds to an 8.6% increase on total retail base operating revenues, which is below the 13.3% increase granted to Gulf Power on April 3, 2012, and the 9.7% increase approved on March 8, 2012, in Progress Energy Florida's ("PEF") settlement agreement. The $378 million is necessary to fill the void left by the $367 million impact resulting from the change in surplus depreciation amortization from 2012 to 2013. Absent this rate increase, there is simply no way to avoid earnings dropping to levels well below reasonable or competitive ROEs.

Stability and Low Bills for Customers: Under the PSA, the 2013 typical residential bill is expected to remain the lowest in the state. Moreover, the PSA strictly limits FPL's ability to adjust base rates during the four-year term, which provides rate stability and predictability and assures customers that their bills will remain among the lowest over that time frame.

Promotes Economic Development: The PSA 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 designed to stimulate job growth and investment by businesses within the state and by those outside of Florida who are considering investment in our state. These competitive rates also help large governmental customers with facilities in Florida that are critical to local economies. FPL's own investments are a significant part of that equation. In 2010 and 2011, FPL was the largest private investor in Florida. FPL is now in the

midst of the largest capital investment program in its history, with investments amounting to roughly $9 billion from 2011-2013. This capital investment, made possible by the Company's financial strength and integrity, is a positive impact on the Florida economy and the creation of critically needed new employment.

Enhanced Certainty for All Parties: For all customers, four years of rate stability and predictability provides a clearer view of what their electric bills will be over the long-term and allows them to plan and budget 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 as it provides assurance that FPL's massive infrastructure investments in Florida will be timely recovered.

Promotes Administrative Efficiency: The use of GBRAs for the Canaveral, Riviera and Port Everglades will help avoid lengthy, costly and disruptive rate proceedings during the four-year term. Likewise, the PSA 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.

Stable Financial Position for FPL: The PSA supports investor interests by offering the prospect of earned ROEs in the range of 9.7% to 11.7%. Although the proposed ROE is lower than originally requested in FPL's March 2012 Petition and even though it will likely need to be supported in part by the amortization of non-cash credits, the PSA will nevertheless make FPL competitive with other utilities in the southeast region to which it is commonly compared by investors. This helps ensure that FPL will be able to maintain financial stability and will have access to needed financial resources on reasonable terms. At 10.7% ROE, FPL's weighted

average cost of capital will be 6.53%, the amount actually reflected in rates, and will be one the lowest in Florida. Tr. 6264 (Dewhurst).

LEGAL STANDARD

A. Settlements Should Be Approved if they are in the Public Interest

The Commission has a "long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." Order No. PSC-05-0902-S-EI, Docket No. 050045-EI, *Re Florida Power & Light Company*, (F.P.S.C. Sept. 14, 2005). The proper standard for the Commission's approval of a settlement agreement is whether it is in the public interest. *See, e.g., Id.* ("In conclusion, we find that the Stipulation and Settlement establishes rates that are fair, just, and reasonable and that approval of the Stipulation and Settlement is in the public interest. Therefore, we approve the Stipulation and Settlement.").

The Commission has broad discretion in deciding what is in the public interest and may consider a variety of factors in reaching its decision. *See* Order No. PSC-04-1162-FOF-WS, at p. 7, Docket No. 030102-WS, *Re The Woodlands of Lake Placid, L.P.*, (F.P.S.C. Nov. 22, 2004). Order No. PSC-93-1376-FOF-EI, at p. 15, Docket No. 921155-EI, *In Re: Petition for approval of plan to bring generating units into compliance with the Clean Air Act by Gulf Power Company*, (F.P.S.C. Sept. 20, 2003).[3]

[3]Like this Commission, the Federal Energy Regulatory Commission ("FERC") strongly encourages parties to settle cases and has developed a model for addressing contested settlements that may be instructive to this Commission's consideration of the PSA. *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998). Although not controlling on this Commission, the FERC's *Trailblazer* model provides a tested framework that promotes the important policy of encouraging settlement. FERC can (1) decide each contested issue on the merits based on record evidence; (2) determine that the settlement provides an overall just and reasonable result; (3) conclude that the settlement's benefits outweigh the nature of the objections and that the contesting parties' interests are too attenuated; or (4) sever the contesting party, and approve the settlement as uncontested, while allowing litigation involving the severed party to go forward. *Id.* at ¶ 62,342-45. *See also* 18 C.F.R. § 385.602(h)(1).

B. Consideration of PSA as a Whole

As with all negotiated solutions, the PSA represents a series of interrelated compromises reached by independent parties with divergent interests which often differ from their litigation positions. Settlement negotiations can produce innovative approaches to ratemaking not otherwise available under the traditional litigated rate case process. Tr. 5231 (Deason). The PSA is no exception. The Signatories resourcefully assembled various elements in a way that strikes a fair and innovative balance. As with any settlement, the merits of the PSA should be considered as a whole, rather than focusing on any individual provision or subset of provisions in isolation. Tr. 5300 (Deason).

OPC witnesses Ramas and O'Donnell agree in principle that settlements are to be considered as a whole. Tr. 6102 (Ramas); 5981 (O'Donnell). Despite their agreement with that principle, however, there is no evidence that any of OPC's witnesses evaluated the benefits of the PSA as a whole. Rather, OPC simply targeted discrete components of the PSA without considering the impact of the entire PSA, even challenging elements OPC has supported in other settlement agreements. Tr. 6121 (Ramas); 5931 (Daniel); 6025 (Pous).

C. The Proper Role of OPC

The Signatories recognize that OPC plays an important role in proceedings before this Commission. Tr. 5832-33 (Dewhurst). No provision in Florida law, however, requires that OPC be a party to a settlement agreement.[4] Research has found no case in which the FPSC has

[4] On October 17, OPC filed a petition for writ of *quo warranto* with the Florida Supreme Court seeking to have the Court prohibit the Commission from approving the proposed settlement agreement. On October 9, Thomas Saporito filed a similar petition (for writ of *certiorari*, treated by the Court as a writ of *mandamus*). On November 14, the Court dismissed most of both petitions without prejudice as premature and transferred petitions to the First District Court of Appeal for the limited purpose of ruling on the portions of the petitions that questioned who are necessary and appropriate parties to settlement agreements. On November 15, the First DCA denied both petitions in *per curiam* decisions.

rejected a settlement because it was not supported by OPC[5], while in at least one case the Commission denied a settlement to which OPC was a party.[6] Neither OPC's participation nor assent is determinative of whether a settlement is in the public interest. Tr. 5258 (Deason). Indeed, parties to a rate case frequently stipulate to specific issues without OPC, including many of the issues in this docket.

The simple fact is that nothing in Florida law gives OPC veto power over other parties' efforts to reach a compromise, or this Commission's actions, including its decision to approve a settlement. Nothing in Section 350.061, Florida Statutes (the provision that created the OPC), its legislative history,[7] or the entire Chapter 350 accords any special or superior party status to OPC. OPC advocates positions *they deem* to be in the public interest, which is the same course for all parties. The determination of what *is* in the public interest, however, remains exclusively the purview of the Commission. The Commission's standard for approval does not depend on whether OPC is a signatory to a settlement agreement. Tr. 5258, 5318 (Deason); 5980 (O'Donnell). As outlined below, the PSA is in the public interest and it can and should be approved. Tr. 5258 (Deason).

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[5] To the contrary, the Commission approved a settlement that was not supported by OPC. *See* Order PSC-99-1794-FOF-WS, Docket No. 950495-WS, *In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc.* (F.P.S.C. Sept. 14, 1999). *See also* Order No. PSC-12-0179-FOF-EI, Docket No. 110138-EI, *In re: Petition for increase in rates by Gulf Power Company* (F.P.S.C. April 3, 2012) (neither OPC nor Florida Retail Federation participated in portions of the settlement approved by the Commission).

[6] Order No. 25723, Docket No. 910731-TL, *In Re: Modified Minimum Filing Requirements Report of Northeast Florida Telephone Company* (F.P.S.C. Feb. 14, 1992).

[7] A 1974 Staff Evaluation report for the Senate Standing Committee on Governmental Operations summarized an early version of the "Public Advocate" legislation, in part, as follows: ". . . the advocate's power and duties to include appearing on behalf of the public before the public service commission and the courts regarding any matter in which the Public Service Commission has original jurisdiction. The advocate will have all the rights of counsel which any other bona fide party to a suit would have . . . ." This language suggests that the Legislature intended for OPC to have the same rights – no more or no less – than any other party to a proceeding. It is also consistent with the recollections of the Commission's General Counsel, a former state senator who served in the legislature during the creation of the Public Advocate bill, as presented to the Commission on August 30, 2012, during the technical hearing in this proceeding. Tr. 4620-21.

DISCUSSION OF 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?

****Yes, in the context of this PSA. GBRA has worked successfully in the past. Here, 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 above the mid-point. Additionally, it does not eliminate the Commission's oversight.****

As was the case under FPL's 2005 rate case settlement (which OPC supported), the GBRA would provide a streamlined procedure to allow the matching of fuel savings to customers with the recovery of revenue requirements for new, cleaner generating units thoroughly reviewed and approved by the Commission in prior need determination proceedings. Tr. 5738 (Barrett). The Commission's Order in the 2005 case found that the settlement agreement established rates that were fair, just and reasonable, and also found that approval of the agreement was in the public interest. Likewise, the GBRA is consistent with the public interest and is an integral part of the PSA because it would: (1) provide four years of rate certainty; (2) allow for Commission oversight and customer protection; (3) synchronize fuel savings with recovery of non-fuel costs; and (4) promote administrative efficiency. Tr. 5739-44 (Barrett). The GBRA also mirrors the Canaveral Step Increase proposed in the March 2012 Petition. Finally, the limitations on the GBRA in the PSA adequately address the concerns expressed by the Commission in 2010 when considering FPL's request for permanent GBRA authority. Tr. 5745-46 (Barrett); 5651-52, 5673 (Kollen).

A. Four Years of Rate Certainty

Absent rate adjustments, FPL will experience declines in its earned ROE of approximately 148 and 136 basis points, respectively, when Riviera and Port Everglades go into service. Tr. 5740, 5767 (Barrett); Exh. 676. Without the GBRA mechanism to recover the costs,

this deterioration surely would force FPL to petition the Commission for multiple base rate increases. Tr. 5796, 6232 (Barrett).

Contrary to OPC witness Ramas' suggestion, it is unreasonable to expect that FPL's other costs will go down and revenues will increase in amounts sufficient to offset the magnitude of revenue requirements associated with the Modernization Projects over the four-year term. Tr. 6231 (Barrett).[8] Witness Ramas' suggestion ignores three significant facts. First, FPL's 2013 test year assumes the Company will amortize $191 million in 2013, but it will have only $209 million left to amortize over the subsequent three years.[9] Second, FPL will be adding substantial investments in transmission, distribution, and other operating assets. No base rate relief is available under the PSA for these capital expenditures, which are projected to amount to approximately $4.7 billion between 2014 and 2016 — equivalent to at least four new $1 billion generation units. Exh. 698; Tr. 6233 (Barrett). Third, FPL's non-fuel O&M costs per kWh are lower than 90% of utilities nationwide, so expecting further large reductions is unrealistic. Tr. 868 (Kennedy). The PSA incentivizes FPL to continue to tightly manage its operating expenses to earn its authorized return. Tr. 5413 (Pollock); 5679 (Kollen); Exhibit 704.

Indeed, witness Ramas herself admits that she has no way of knowing what FPL's costs and revenues will be over the term of the settlement. Tr. 6131-32 (Ramas). She also admits that, if the Company is earning within its Commission authorized ROE range, the rates would be deemed to be fair and reasonable. Tr. 6076 (Ramas).

FPL acknowledges that prior to 2005, the combination of a robust economy, strong sales growth and FPL's improving cost structure allowed FPL to place generation units into service

[8]OPC witness Ramas criticized the GBRA because FPL did not provide any evidence regarding its overall operating and capital budgets for 2014-2016 or for FPL's projected revenue requirements for that period. Tr. 6097 (Ramas). It is worth noting, however, that OPC did not make such criticisms when it fully supported the GBRA under the 2005 settlement agreement which provided recovery for plants that were placed into service in 2007 and 2009. Tr. 6099 (Ramas).

[9] $209 million = $400 million of Reserve Amount that FPL may amortize under the PSA, less $191 million amortized in 2013.

without the need for rate proceedings.[10] However, when sales growth slowed, and FPL had achieved top decile cost performance, the Company could no longer absorb the revenue requirements of new generating units. Consequently, FPL sought approval of the GBRA mechanism in the 2005 settlement to avoid pancaked rate proceedings to recover the costs of Turkey Point Unit 5 in 2007 and West County Units 1 and 2 in 2009. The same conditions continue today and the evidence suggests that FPL will be forced to initiate rate proceedings to recover the costs for Riviera and Port Everglades if the PSA is not approved. Tr. 5569-70; Exh. 651 (FPL's Responses to Staff's 20th Set of Int. No. 544).

B. Commission Oversight

OPC witness Ramas mistakenly asserts that need determination proceedings are insufficient to evaluate the estimated cost of the generation projects. In fact, the Commission undertakes a robust analysis of such costs in need determination proceedings. Tr. 6233 (Barrett); 6176 (Deason). The Commission has consistently found FPL customers to have standing to intervene in need determinations. Thus, as acknowledged by OPC witness Ramas, parties to this docket could have intervened (and in some instances did intervene) in the need determinations for the Modernization Projects that are subject to GBRAs under the PSA. Tr. 6124 (Ramas).

Experience with prior GBRAs has consistently shown that the generating units subject to GBRA recovery are built at or under their projected construction costs. As outlined in Exh. 698, the aggregate cost estimates set forth in need determination proceedings have been within 1% of actual costs. Tr. 6234 (Barrett). Thus, there is persuasive evidence that need determination estimates serve as a reasonable basis for setting future rates. Tr. 5741 (Barrett).

[10] It is important to note that the generating units placed into service prior to the GBRA mechanism (i.e., before 2007) have smaller generating capabilities and higher average net heat rates than the more fuel efficient generating units included in the PSA GBRA. In addition, the more efficient units placed into service under the GBRA have had a materially greater impact in reducing fuel costs; therefore, the net effect has been the same or similar to an outcome of not raising base rates pre-GBRA.

No GBRA rate change is made without proper regulatory oversight. Under the PSA, the Commission would confirm the revenue requirements and base rate impacts for GBRAs through Capacity Clause proceedings prior to their implementation. In other words, no GBRA rate change is made without proper regulatory oversight. No party (including OPC and the Florida Retail Federation ("FRF")) has ever objected to GBRA calculations submitted as a part of this efficient and well understood process. Tr. 5742 (Barrett). Moreover, although the GBRA factors are initially based on projected costs, customers would benefit directly and automatically via a refund and lowered prospective GBRA factors if actual construction costs are lower than projected. On the other hand, FPL would have to petition for a limited proceeding if it sought to recover higher-than-projected costs and affected parties could challenge those higher costs. Tr. 5738 (Barrett); 5339 (Deason).

C. Synchronizing Fuel Savings with Recovery of Revenue Requirements

The GBRA mechanism will synchronize recovery of the revenue requirements for the Modernization Projects with their fuel savings. Because the Modernization Projects will produce customer savings over the life of these assets on a present value basis, it is reasonable to employ a cost recovery method that matches fuel savings with base rate recovery. Tr. 5808 (Barrett).

D. Administrative Efficiency

Using GBRAs for the Modernization Projects would result in greater regulatory and administrative efficiency and avoid the tremendous expenditure of costs and resources associated with multiple back-to-back base rate proceedings. Tr. 5743-44, 5796-97 (Barrett).[11] Although those projects could potentially be addressed through separate limited proceedings, such proceedings have been known to grow in scope and complexity until they rival full-blown rate proceedings. Tr. 5339 (Deason). The Company recognizes that base rate filing are a necessary

[11] As noted by FPL witness Barrett, rate cases include not only a monetary cost (approximately $4-6 million) but also the enormous time and resources necessary to assemble and prosecute the filing. Tr. 5796-97 (Barrett).

part of doing business as a regulated enterprise, but they require a significant amount of resources in time and cost on the part of all parties and can be a distraction from pursuing efficient utility operation. Tr. 6235-36 (Barrett); 5796-97, 6325-26 (Dewhurst). Thus, while administrative efficiency of GBRAs should not be the sole consideration, it is an important one to take into account in evaluating the PSA as a whole. Tr. 6235-36 (Barrett).

E. The PSA Adequately Addresses Previous Commission Concerns About the GBRA

The PSA limitations on the GBRA adequately address the concerns expressed by the Commission in 2010 with respect to FPL's request for permanent GBRA authority. First, the proposed GBRA would not be permanent and would only be applicable to the specifically identified generating units (i.e. Canaveral, Riviera, and Port Everglades) with no general precedent or applicability to other utilities. Tr. 5745, 6234-35 (Barrett).

Second, under the PSA, FPL would be locked in to the $378 million increase and would be generally prohibited from seeking other base rate increases, whereas there was no such restriction in FPL's earlier GBRA proposal. Tr. 5770 (Barrett). Thus, it is FPL that bears most of the risk under the PSA, because it provides the opportunity to recover only the incremental infrastructure costs associated with the GBRA generating units with no specific allowance for increased recovery on other infrastructure investment or O&M costs. Tr. 5413 (Pollock). Similarly, FPL bears the risk that its cost of capital and other costs will increase during the term of the settlement. Customers are insulated from that risk. Tr. 5679-80 (Kollen).

F. GBRA Mirrors Step Increase Approach

The GBRA mechanism is similar but offers better customer protections than the Canaveral Step Increase proposed in the March 2012 Petition and step increases previously approved by the Commission. Like a step increase, the GBRA properly reflects the incremental cost of financing the new generating plant and therefore provides a proper matching of costs and

rates. Also, as with the Canaveral Step Increase, the incremental capital structure for the GBRAs takes deferred taxes into account as a reduction to rate base. Tr. 5764-65 (Barrett). OPC witness Ramas agrees that this was a reasonable treatment for the Canaveral Modernization Project.[12]

Finally, the proposed GBRA addresses the Commission's concern regarding a potential ROE over-earning scenario. Such a result would be mathematically impossible, as the GBRA is by its nature "mid-point seeking."[13] The implementation of the GBRA will bring the ROE down if earnings are above the mid-point before the plant goes into service. Tr. 5768 (Barrett). OPC witness Ramas admits that implementation of a GBRA by itself would not increase the overall ROE of the mid-point. Tr. 6078 (Ramas). She also admits that if the Commission sets an authorized ROE range and the Company is earning within its range, the rates would be deemed to be fair and reasonable. Tr. 6076 (Ramas).

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?

****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.****

A. Flexibility to Achieve Reasonable Financial Results

Paragraph 10 of the PSA would provide FPL with discretion to amortize the depreciation reserve surplus remaining after 2012 (a minimum of $191 million) and up to a maximum $209 million of fossil dismantlement reserve (the "Reserve Amount"). The total Reserve Amount to be amortized could not exceed $400 million over the PSA term. Tr. 5747 (Barrett). Currently,

[12] Tr. 6080 (Ramas). It would be inappropriate to use an embedded cost of capital, including such items as existing short term debt and customer deposits (which will vary independent of the existence of the new plant) to calculate revenue requirements for new generating plants which will require new long term debt and equity for permanent financing. Tr. 5764 (Barrett).

[13] Tr. 6235 (Barrett). SFHHA witness Kollen addressed this same point in the context of the Canaveral Step Increase which in this respect applies the same as the GBRA. 3260-62; 3265 (Kollen).

FPL is projecting that it will have approximately $20 million more in reserve surplus left in 2012 due to favorable weather. Tr. 5807 (Barrett). This would reduce further the amount of fossil dismantlement reserve that FPL could utilize under the term of the PSA to less than $200 million. Tr. 5747, 5807 (Barrett).

Allowing amortization of a portion of FPL's fossil dismantlement reserve is consistent with the public interest and critical to the PSA because it will provide the Company added flexibility to help achieve reasonable financial results during the four-year settlement term in spite of the PSA's rate freeze and the loss of $191 million depreciation reserve surplus amortization at the end of 2013. Absorbing the loss of that amortization without separate rate relief for 2014-2016 represents almost $600 million in cash value to customers, a point entirely ignored by OPC. Tr. 5720 (Kollen). In reality, the $378 million base rate increase under the PSA is just barely enough to make up for the large drop-off in surplus depreciation amortization from 2012 to 2013. To put 2013 into the proper perspective, FPL expects to have $335 million less depreciation surplus to amortize in 2013 than the amount it projects to amortize in 2012, which together with the impact of the increase to rate base resulting from the amortization, creates a need for $367 million in additional revenues. Tr. 1157-58 (Barrett); 5824 (Dewhurst); Exh. 145.

Without the flexibility to amortize a portion of the dismantlement reserve, FPL could not agree to hold base rates constant over four years due to the risk of weather, inflation, mandated cost increases, the loss of the depreciation reserve surplus amortization and other factors beyond the Company's control. Tr. 5747-48, 5783 (Barrett). The Reserve Amount amortization serves as a "shock absorber" over the four-year term. Tr. 5801 (Barrett). Similar reserve amortization tools have been successfully employed by the Commission in the past to help facilitate favorable settlements for both FPL and PEF. Tr. 6238 (Barrett).

OPC witness Ramas spuriously asserts that nothing would bar FPL from earning above the ROE range provided for in the PSA. Tr. 6052 (Ramas). She admits, however, that the PSA provides the other Signatories with the right to initiate a rate case if FPL earns above the top of its ROE range and forbids FPL from amortizing any portion of the Reserve Amount that would cause FPL to earn above the top of the ROE range. Tr. 6080-81 (Ramas). Moreover, she agrees that FPL has not used similar amortization flexibility under the 2010 settlement to exceed the ROE range, even though FPL has more flexibility to affect its earnings through amortization under the current settlement than it will under the PSA. Tr. 6068, 6082, 6084, 6086 (Ramas). There is simply no factual basis to suggest that FPL would exceed the ROE range provided under the PSA. Tr. 6087 (Ramas).

B. Matching Principle

OPC witness Pous incorrectly asserts that the proposed dismantlement amortization would violate the matching principle. Tr. 6169 (Deason). This is based on a considerably exaggerated view of the matching principle. In setting depreciation or dismantlement rates there are many variables. While the original cost of an asset can be readily ascertained when it is placed into service, there is much uncertainty as to its life. This is further complicated by asset additions, potential life extensions or even life curtailments due to economic or physical obsolescence. This is a fundamental reason the Commission uses the remaining life method of depreciation, which self-corrects any reserve imbalances as information on actual costs becomes better known with the passage of time. In the case of dismantlement, there is even greater uncertainty as to the dollar cost of the ultimate dismantlement, potential salvage values, and the exact timing of the dismantlement. Accordingly, there is no one correct amount of "cost" at any given time against which to match rates. Tr. 6169 (Deason).

Moreover, OPC witness Pous concedes that FPL's dismantlement reserve for the Modernization Projects includes amounts for final, "greenfield" dismantlement that will now be deferred for many decades. Tr. 6015-16 (Pous); Tr. 6239, 5750 5805 (Barrett); Exh. 650 (FPL's Response to Staff's 19th Int. No. 498). Thus, it is consistent with the matching principle to provide an accelerated return of a portion of the dismantlement reserve to the customers who have been funding it, precisely the effect of the dismantlement reserve amortization. Tr. 6237-38 (Barrett).

Finally, the potential impact of the amortization on future dismantlement accruals is so modest in size relative to FPL's overall revenue requirement that it could not be realistically characterized as leading to significant intergenerational differences.[14] Tr. 5801, 6237-38 (Barrett); Exh. 677.

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?

****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. ****

Deferral of depreciation and dismantlement studies during the settlement term is consistent with the public interest, because such deferral is critical to the PSA's four years of rate stability and predictability. Tr. 5751 (Barrett). FPL would be harmed if it committed to a settlement with fixed base rates if there were depreciation and/or dismantlement accrual increases during the settlement term. Conversely, customers could be harmed by fixed base rates if the Company's depreciation accruals were reduced during the term. Tr. 5751 (Barrett).

[14] For example, an amortization of $209 million assumed to be spread ratably over all assets, all else equal, would increase the accrual by approximately $7.0 million. This increase would be only 0.1% of FPL's total 2013 projected revenue requirements. This is illustrated on Exhibit 677. Tr. 5749-50 (Barrett). This would constitute an impact on a 1,000 kWh residential bill of only about seven cents per month, after the end of the settlement term. Tr. 6238 (Barrett).

A. No Requirement for Dismantlement Study to Accompany Rate Case Filing

OPC's witness Pous is incorrect for at least three reasons in asserting that a dismantlement study must accompany review of the PSA. First, there was no requirement for a dismantlement study to have been filed in conjunction with the rate case in this docket. It would be unreasonable and contrary to the Commission's policy of promoting settlements to now interject a new unanticipated requirement before a settlement can be accepted. Tr. 6167 (Deason). Second, the Commission has on several occasions given a utility discretion within a settlement agreement to vary the level of depreciation and has never required a depreciation (or dismantlement) study be filed as a prerequisite. Finally, there is no need for a depreciation (or dismantlement) study to be filed and considered every time customer rates are changed. To the contrary, the Commission routinely uses its discretion both in setting depreciation rates and how it will use a depreciation (or dismantlement) study as a tool to set those rates. Resetting depreciation rates is done on a schedule that can be altered, and the Commission can and routinely does establish just and reasonable customer rates without the use of a new depreciation (or dismantlement) study. Tr. 6167-68 (Deason).

B. OPC's Expectation of an Increased Depreciation Reserve Surplus is Speculative and Unlikely

OPC witness Pous is unrealistic in anticipating that there will be another depreciation reserve surplus as a result of FPL's next depreciation study. To the contrary, that study may instead reflect a deficit. Authorized service lives and other parameters were set and a reserve surplus was calculated by the Commission in FPL's 2010 rate case order after considering all evidence, including the evidence of both FPL's and OPC's depreciation witnesses. Since that time, FPL has been making substantial additional capital investments, primarily in asset, such as

nuclear units with fixed life spans, which will tend to increase depreciation accrual requirements and hence tilt the imbalance toward a deficit. Tr. 6239-40 (Barrett).

C. OPC's Opposition to the Deferral of Depreciation and Dismantlement Studies is Inconsistent with its Position in the PEF Settlement

OPC wholeheartedly endorsed deferral of the depreciation and dismantlement studies in the recent PEF settlement and made no mention of intergenerational inequity. Its positions in this docket are completely inconsistent with that recent endorsement, and witness Pous offers nothing to reconcile the inconsistency. Tr. 6240 (Barrett); Exh. 650 (FPL's Responses to Staff's 19th Int. No. 499).

D. A Separate Request for Waiver of Rules 25-6.0436 and 25-6.04364 is Unnecessary

The Commission's authority to approve settlements encompasses the authority to prescribe the date by which the utility's next depreciation and dismantlement studies are due. In fact, Rules 25-6.0436 (depreciation) and 25-6.04364 (dismantlement) expressly authorize the Commission to modify the time frame for filing studies.[15] The Commission exercised this authority as recently as eight months ago when it approved the PEF settlement. *In re: Progress Energy Florida, Inc.*, Docket No. 120022-EI, PSC-12-0104-FOF-EI (Fla. P.S.C. March 8, 2012) (noting that "PEF agrees to file a Depreciation Study, Fossil Dismantlement Study or Nuclear Decommissioning Study on or before July 31, 2017," which is different from the default four-year time frame under the rules). Here, the Commission is in a far better position to evaluate whether to defer the studies because parties on both sides of the issue have submitted testimony, engaged in discovery, and were subject to cross-examination. Thus, the Commission's decision

[15] Rule 25-6.0436, F.A.C. provides that "[e]ach company shall file a study for each category of depreciable property for Commission review at least once every four years . . . *unless otherwise required by the Commission.*" Rule 25-6.04364 states that "[e]ach utility shall file a dismantlement study for each generating site once every 4 years . . . *unless otherwise required by Commission order.*"

to exercise its discretion to defer FPL's depreciation and dismantlement will be well-informed and limited to the specific circumstances of this case.[16]

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?

****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.****

The proposed Incentive Mechanism is consistent with the public interest, because it is a win-win proposition for FPL and its customers. Tr. 5537 (Forrest). The proposal simply adds incentives for FPL to create additional value for customers above current levels and allows FPL to recover modest incremental costs associated with such implementation. Tr. 5538-39, 5553 (Forrest).

Under the proposed Incentive Mechanism, FPL would not share in any gains until the gains exceeded two thresholds. The first threshold of $36 million is based on FPL's 2013 projections for short-term power sales gains and short-term purchased power savings that were filed on August 31, 2012, in Docket No. 120001-EI. This 2013 projection is higher than the comparable projections for the remaining years of the settlement term. Exh. 651 (FPL's Response to Staff's 20th Int. No. 556).

There is then a second threshold of $10 million, which represents additional value that FPL will attempt to create solely for its customers through expanding its optimization program. Tr. 5538-39 (Forrest). The combination of the two thresholds results in FPL's customers

[16] Additionally, the comprehensive process afforded by the Commission in this proceeding has developed all of the information necessary to support a basis for waiver if one were necessary. The purpose of a waiver request is to provide notice and to provide the Commission the details that warrant the waiver or variance. Here, the parties have been on notice since August and the public has been on notice regarding the pending motion to approve the PSA since November 7, 2012.

receiving 100% of the benefits up to $46 million, or nearly $11 million more than FPL's 2013 projected benefits resulting from gains on sales and savings on purchases. Tr. 5539 (Forrest). FPL expects that the incremental costs associated with generating these additional gains will be approximately $500,000.

A potential $10 million return on an investment in additional personnel costs of approximately $500,000 is clearly a good deal. The Signatories consider this proposition a "no-lose" and believe that the Incentive Mechanism presents a very good deal for customers. Tr. 6219 (Forrest). To his discredit, OPC witness Daniel could not bring himself to acknowledge this exceptional value proposition for customers in response to a simple question about it from Commissioner Graham. Tr. 5940 (Daniel).

A. The Incentive Mechanism Strikes a Fair Balance

OPC witness Daniel speculates that FPL would deprive customers of lower cost power or fuel in order to experience higher levels of gains under the proposed Incentive Mechanism. Tr. 6198-99 (Forrest). This ignores FPL's past practice and is completely unsupported by the record evidence: FPL has been operating under an incentive mechanism for years and has consistently emphasized first and foremost the delivery of the lowest cost power to its retail customers. Tr. 6198-99 (Forrest).

OPC witness Daniel is likewise off-base in asserting that the proposed Incentive Mechanism would result in FPL receiving too large a share of gains. Rather, it would provide a reasonable, meaningful incentive where the current mechanism does not. Tr. 5599-5600, 6199-6200 (Forrest). This is illustrated by witness Daniel's own Exhibit 685. Even though his exhibit is skewed against FPL by including only five out of eleven years of relevant data,[17] it still

[17] When queried by Commission Graham regarding Exhibit 685, witness Daniel admitted that his data set was incomplete and that he failed to inquire why two of the five years included were significantly over the $46 million threshold. Tr. 5945-46 (Daniel).

demonstrates that: (1) FPL has not received meaningful incentives under the current mechanism (0.38%); and (2) the sharing methodology prescribed in the proposed Incentive Mechanism would have resulted in customers receiving approximately 84% of the total benefits with only 16% going to FPL. Tr. 6199-6200 (Forrest); Exh. 722.

FPL's Exhibit 722 expands witness Daniel's exhibit beyond his cherry-picked years to include the full eleven years in which the current incentive mechanism has been in place. It shows that FPL customers would have received more than 90% of the total benefits, with FPL receiving just below 10%. Tr. 5923 (Daniel); Exh. 722. FPL's Exhibit 722 also recognizes that the proposed $46 million threshold would have represented a meaningful stretch goal over the past eleven years, as FPL would have received no incentive more than half those years. Tr. 5599-5601, 5627-29 (Forrest); Exh. 722.

An even more fundamental flaw in witness Daniel's exhibit is that it unrealistically assumes that FPL would have behaved no differently over the past eleven years under the proposed Incentive Mechanism than it did under the current mechanism. Commissioner Graham illustrated this flaw in an exchange with FPL witness Forrest. Had the proposed Incentive Mechanism been in place from 2001 to 2011 and had FPL met the $46 million threshold year, FPL's customers would have realized $26.1 million *more* in fuel savings rather than the $47.6 million reduction claimed by witness Daniel. Tr. 6220-22 (Forrest).

B. Impact of Incentive Mechanism on Reliability

Providing reliable electric service is the foundation of the electric utility business. Fuel procurement and the utilization of fuel is a core component of providing reliable electric service. As such, FPL would never jeopardize the reliability of its system as OPC witness Daniel irresponsibly asserts. Tr. 5584-85 (Forrest). The primary goal of FPL's fuel procurement activities is to deliver the most reliable fuel supply to FPL's generating units. This would not

change with the implementation of the proposed Incentive Mechanism. Tr. 5585, 6201-02 (Forrest).

C. Short Term Power Purchases Are Distinct From the Economic Dispatch Process

OPC witness Daniel has no experience with managing the economic dispatch process, and he mistakenly assumes that power purchases are part of that process. Tr. 6200 (Forrest); 5911, 5913 (Daniels). The concept of economic dispatch specifically relates to the efficient utilization of a utility's own resources. Resources that are not under a utility's control are not part of its economic dispatch process. The purpose of an incentive mechanism is to provide appropriate incentives to enhance or add value beyond the economic dispatch process. Tr. 6198-6201 (Forrest). Engaging in both power purchases and sales allows a utility to improve upon the economic dispatch of its own resources. Opportunities to participate in the wholesale power market must be actively pursued and require the execution of several activities. Gains on power sales and savings due to power purchases have the same dollar-for-dollar impact on reducing fuel expenses. For these reasons, the same incentives should apply to both power sales and purchases. Tr. 5626-27, 6200 (Forrest).

D. FPL Provided Voluminous Information About the Proposed Incentive Mechanism

OPC had nearly two months to seek information regarding the proposed Incentive Mechanism. It ignored that opportunity, yet now complains that it lacked sufficient time to obtain information. Tr. 5924-25, 5928 (Daniel). Despite OPC's inaction, FPL provided ample, detailed information in response to over 90 discovery requests from Staff covering all relevant topics related to the proposed Incentive Mechanism. Tr. 6198-6201 (Forrest); 5924-25 (Daniel). OPC had access to all of that information. Specifically, with respect to the risk components and safeguards for the proposed Incentive Mechanism, FPL provided detailed analyses in its responses to Staff's Twenty-Second Set of Interrogatories Nos. 608 through 611. Tr. 6207

(Forrest); Exh. 653. Given the amount of information provided by FPL and OPC's failure to seek additional information, OPC's belated assertions that the proposed Incentive Mechanism is vague are not credible.[18] Tr. 5924 (Daniel).

E. Review and Timing

Witness Daniel argues that it would be difficult for the Commission to review FPL's transactions under the proposed Incentive Mechanism, but admits that he failed to review any of the FPSC orders outlining the Commission's oversight of similar transactions under the existing recovery mechanisms for the hedging program and incremental power plant security costs. Tr. 5925-26 (Daniel). The Commission and interested parties will have ample opportunity for review. After FPL files its proposed Incentive Mechanism activities with its Final True-Up filing at the beginning of March each year, the Commission will have approximately eight months to conduct a review prior to the annual fuel hearing in November. The Commission has processes in place to conduct a thorough review of FPL's activities, including the ability to conduct an annual audit. The Commission currently reviews FPL's hedging program and its incremental power plant security costs on an annual basis and FPL expects that Staff would put that extensive expertise to use in effectively monitoring FPL's proposed Incentive Mechanism activities. Tr. 6209 (Forrest).

F. The Proposed Incentive Mechanism Presents an Ideal Opportunity as a Pilot

Settlement agreements provide a good opportunity to test new concepts such as the proposed Incentive Mechanism.[19] The provisions of the proposed Incentive Mechanism are unique to FPL at this point. There is not necessarily a "one size fits all" incentive mechanism.

[18] It should be noted that OPC witness Daniel admitted that he was not retained until a week before his testimony was due and OPC failed to seek any discovery on the incentive mechanism until two days before his testimony was due such that FPL's responses to that discovery had not yet been completed. Tr. 5924-25 (Daniel).

[19] The Joskow article cited by intervenor and witness Hendricks (*Incentive Regulation and Its Application to Electricity Networks*) actually adds support for the position that incentive mechanisms such as the one proposed under the PSA may be a beneficial regulatory tool. Tr. 6159 (Hendricks); Exhibit 724.

The proposed Incentive Mechanism would only be in place for four years unless the Commission decides that it makes sense to continue with the program. Implementing the proposed Incentive Mechanism initially for FPL while limiting it to a four-year term is an ideal pilot program to learn more about the practical implementation realities and then decide whether and how to expand or adjust the application of the mechanism to other utilities. Tr. 6210-11 (Forrest).

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

****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 PSA promotes administrative efficiency. It also supports continued investment in Florida, thus promoting economic growth in the state.****

A. Balance of Interests

A settlement is the consummation of negotiations and approval of a settlement should be based upon the agreement as a whole and whether it is in the public interest. Tr. 5300 (Deason); 5981 (O'Donnell). The evidence presented that the PSA is consistent with the public interest is un-rebutted. Tr. 5234, 5240 (Deason); 5820-21, 5855 (Dewhurst); 5395-96 (Deaton); 5655-56 (Kollen); 5410-11 (Pollock). FPL's exceptional quality of service record remains unchallenged by any party in this proceeding. Under the PSA, customers will continue to enjoy relatively low rates, strong reliability and excellent customer service over a four-year period, while simultaneously providing investors with the opportunity to earn a fair return on their investment. Tr. 5821-22 (Dewhurst); 5411 (Pollock). Additionally, the PSA as a whole is consistent with the public interest because it provides the following specific benefits:

Low Bills. The PSA provides for a roughly 27% reduction in FPL's January 2013 base rate request, from $517 million to $378 million. Tr. 5822-23 (Dewhurst). For residential customers, the net impact on the typical bill in June 2013 would be $1.54 a month or 5 cents per day, which is less than a 2% increase compared to December 2012. The net impact on bills for

commercial and industrial customer classes in June 2013 is expected to range from zero to a 3% decrease. Tr. 5366 (Deaton). Bills under the PSA are expected to remain the lowest for the state's investor owned utilities, and the bills for commercial and industrial customers would be more competitive with rates of other utilities in Florida and the Southeast. Tr. 5366 (Deaton); 5417 (Pollock); Exh. 681. Moreover, the PSA helps improve overall parity compared to current rates. Tr. 5368 (Deaton). The four-year term will provide customers additional confidence that they will continue to benefit from FPL's strong value proposition. Tr. 5828 (Dewhurst).

Sales to FPL's residential customers comprise only 51% of FPL's total delivered sales. Tr. 5380 (Deaton). Members of the Signatories take service under eight different commercial and industrial rate classes, which total 48% of FPL's total delivered sales. Exh. 719. It is worth noting that members of FRF also take service under some of the same commercial and industrial rate classes as the Signatories and thus will also significantly benefit from the rates proposed under the settlement.[20] Exh. 719.

Strong Financial Position Promotes Investment. The PSA will help to ensure that FPL will be able to maintain a strong financial position and will have access to the financial resources to sustain continued investment (projected $9 billion from 2011-2013) – investment that in turn will enable FPL to provide superior reliability and strong customer service. Tr. 5821-22 (Dewhurst). Taken in the aggregate, the PSA is likely to be broadly viewed by investors as balanced and constructive; consequently, capital is likely to be available to FPL on competitive terms. Tr. 5824-25 (Dewhurst); 5415 (Pollock).

FPL's continued access to capital is critical because FPL is currently investing in amounts substantially in excess of internally generated cash flow. FPL must sustain its

[20] It is therefore not surprising that FRF filed no testimony regarding the PSA. Indeed, FRF's only witness to date in this proceeding testified under oath that the controlling issue is what customers pay—not what the utility earns. Tr. 2953 (Chriss).

investment to complete the three major Modernization Projects. FPL must also sustain investment in its core infrastructure, including continuation of its multi-year storm hardening initiative and ongoing investment designed to enhance the reliability of its transmission and distribution network as well as its generation fleet. Tr. 5824-25 (Dewhurst). The need to sustain storm-hardening investments was underscored by the recent devastating storm in the Northeast.

Reduced Uncertainty. The PSA offers reduced uncertainty for customers and investors. Tr. 5825-26 (Dewhurst). For customers, the PSA establishes a four-year period with reduced uncertainty; FPL would not be permitted to seek another base rate increase except as expressly provided in the PSA. While this is not absolute certainty, it nevertheless provides all customer classes a much better view of what they can expect in terms of bills over a four-year period. Tr. 5415 (Pollock). Practical experience confirms that customers value predictability and reductions in rate volatility. Tr. 5825-26, 5870-71 (Dewhurst); 6189 (Deason).

For investors, the four-year term of the PSA offers greater predictability around the level and variability of FPL's earned ROE, together with reduced regulatory uncertainty – a benefit for the entire state of Florida. This is particularly valuable for investors with a long-term outlook, those FPL most seeks to attract. Tr. 5825-26 (Dewhurst). The importance of taking steps to attract and retain investors was underscored when NextEra Energy, Inc. lost about 25% of its market capitalization after the initial 2009 rate case order was issued and prior to approval of the 2010 settlement agreement. Tr. 6329 (Dewhurst).

Administrative Efficiency. The PSA is consistent with the public interest because it promotes administrative efficiency. Tr. 5826 (Dewhurst). The GBRA mechanism avoids the need for multiple rate cases, as described in greater detail above (Issue 2). Additionally, the currently approved mechanism for recovery of prudently incurred storm costs supports

administrative efficiency but does not sacrifice any FPSC oversight as to the prudence of storm restoration efforts. Tr. 5826 (Dewhurst).

Continued Investment and Economic Growth in Florida. The PSA supports continued investment in Florida both directly and indirectly. Tr. 5827 (Dewhurst). Directly, it will support FPL's own capital investment program. FPL is in the midst of the largest capital investment program in its history. Tr. 5827-28, 5870-71 (Dewhurst). This roughly $9 billion of capital investment from 2011-2013 directly translates into a positive impact on the Florida economy and the creation of thousands of critically needed new jobs. Moreover, FPL expects to continue to invest additional capital through the four-year term of the Agreement. Tr. 5827-28 (Dewhurst). FPL was the largest private investor in the state in 2010 and 2011 and will likely remain among the largest throughout the settlement period. *Id.*

The PSA also supports continued investment indirectly through its impact on rates and reliability. Tr. 5827-28 (Dewhurst). Efficient, reliable electric service is an important underpinning of a modern economy, and FPL's commercial and industrial customers depend in part for their own competitiveness on the efficiency and reliability of FPL's service. When viewed in the context of the Southeastern United States - the economic region within which many of FPL's commercial and industrial customers compete - FPL's residential rates are low by comparison and very likely to remain so under the PSA. The rates proposed for commercial and industrial customers under the PSA, including the impact of CILC and CDR rider credits, will improve the relative competitiveness of FPL's commercial and industrial customers. All else equal, this will help them to grow in a way that benefits Florida relative to other southeastern states. This will, in turn, support investment and employment within Florida, benefiting all Floridians. Tr. 5827-28, 5870-71 (Dewhurst); 5400-01 (Deaton); 5444-45 (Pollock).

A specific example of the PSA's positive economic impact within Florida was provided by FEA witness Allen. He described how Patrick Air Force Base and Cape Canaveral Air Station employ over 9,000 military government and civilian employees with an annual payroll of $336,000,000 and generates nearly 4,850 secondary jobs in the local community with an estimated economic impact in Florida of over $208,000,000. Tr. 5348 (Allen). He went on to state that the PSA will permit Patrick Air Force Base and Cape Canaveral Air Force Station to continue to use its operation and maintenance funds for purchasing the necessary supplies and services required to perform its mission to deliver assured space launch range and combat capabilities benefiting not only Floridians but the entire nation. Tr. 5348 (Allen).

Reasonable Return. The PSA offers investors the prospect of earned ROEs in the range of 9.7% - 11.7%, which although lower than originally requested in FPL's March 2012 Petition and supported in part by the amortization of non-cash credits to expense, will nevertheless make FPL more competitive with other utilities in the broader southeast region with which it is commonly compared by investors and will support the largest capital investment program in the state of Florida. Tr. 5828, 6271-72 (Dewhurst); 5415 (Pollock).

The four-year term of the PSA is something of a two-edged sword for investors. On the one hand, the effect of locking-in the base rate framework for the next four years accentuates investors' exposure to potential increases in inflation and interest rates, both of which are widely anticipated at some point within the term of the PSA. Tr. 5328 (Deason); 6268-70 (Dewhurst). It is commonly accepted among professional investors that today's interest rate environment is distorted by Federal Reserve Bank actions designed to stimulate the economy, and this makes it difficult to rely on today's yield curve for investment horizons exceeding a few months to a year. On the other hand, the PSA also provides investors with clarity around the likely determinants of future base rates and will reduce perceptions of regulatory risk to some degree. Overall, the

agreement provides a reasonable balance that FPL believes will be adequate from the standpoint of meeting its obligations to investors. Tr. 5829, 6323 (Dewhurst).

Notwithstanding OPC witness O'Donnell's piece-meal approach, the question of reasonableness of the ROE and capital structure embedded in the PSA cannot be viewed in isolation, ignoring the broader context of its full scope as well as the broader environment in which it was negotiated. Witness O'Donnell provided little new perspective on the subjects, instead largely reiterating OPC's previous claims outlined in the August hearing. What new opinions he offered were internally inconsistent and did not support his contentions. Tr. 6258-62 (Dewhurst). In a nutshell, witness O'Donnell's basic thesis is that because the PSA's terms do not reflect the positions OPC has taken with respect to ROE and capital structure, the resulting rates are not fair, just and reasonable. Tr. 6261-62 (Dewhurst).

In addition to the full range of testimony previously submitted on ROE and capital structure, the reasonableness of ROE and capital structure is also evidenced by the fact that the PSA was extensively negotiated between sophisticated parties with widely differing and opposing positions on the core issues, including ROE and capital structure. Tr. 6258-60 (Dewhurst). In fact, the co-signatories had litigation positions which, while not as extreme as those advanced by the OPC, were in direct opposition to FPL's. Tr. 6263-65 (Dewhurst). Thus, these terms, when viewed in the context of the full PSA, necessarily imply a meaningful degree of give-and-take. While not dispositive, this provides strong support for the conclusion that the PSA strikes a reasonable overall balance. Tr. 6263-64 (Dewhurst).

OPC witness O'Donnell also claims that the Commission should ignore all authorized ROEs (for other utilities with which FPL is frequently compared by investors) except those issued this year. This claim is misguided as investors can and do compare FPL's authorized ROE with those currently applicable to other utilities in the southeast peer group, and those

ROEs represent the contemporaneous, competing opportunities available to them. Tr. 6258-60 (Dewhurst); 5427-29 (Pollock); Exh. 680.

Additionally, the Commission can reasonably look to the PEF 2012 Settlement Agreement for a wide range of comparisons with corresponding terms in the PSA, including ROE. Tr. 6274-78 (Dewhurst). OPC witness O'Donnell asserts that it is inappropriate to compare the PSA to the 2012 PEF Settlement Agreement. However, he notes that the 10.7% ROE – to which OPC agreed – included 20 basis points conditioned upon PEF getting its "crippled Crystal River Nuclear Plant" back online prior to 2016. Tr. 6274-76 (Dewhurst). He also notes that under its 2012 agreement, PEF agreed to refund $288 million in replacement power costs in connection with its "broken nuclear unit." Tr. 6274 (Dewhurst). In so doing, OPC Witness O'Donnell inadvertently makes the important point that nuclear units infuse risk for a utility. Tr. 5992 (O'Donnell).

FPL operates four nuclear units in Florida while PEF has only one unit at Crystal River. Tr. 6274-76 (Dewhurst). Accordingly, with witness O'Donnell's agreement that all other things being equal, having four nuclear units could present more risk, then as a matter of policy (and economic impact), OPC should have no difficulty supporting a 10.7% ROE for a utility that does not have a "broken" nuclear unit but rather four operating units. Tr. 5994 (O'Donnell); 6274-76 (Dewhurst). This point is further underscored when considering that FPL's 2013 generation portfolio will be comprised of 24% nuclear, whereas PEF's nuclear unit was projected to represent only 15.1% of its generation portfolio[21] — important statistics that OPC witness O'Donnell failed to consider. Tr. 5996 (O'Donnell).

OPC witness O'Donnell makes fatal errors in his attempt to argue that costs of capital have declined in 2012 and that interest rates and inflation will remain low in the future. Tr.

[21] *See* PEF Ten Year Site Plan, Docket No.110000-OT (compiled before PEF took Crystal River offline).

6259, 6266-71 (Dewhurst). Under the PSA, FPL's investors are exposed to a greater degree of inflation, lost revenue and interest rate risk. Tr.6268-70 (Dewhurst). Simply put, investors see very little if any room for further interest rate decreases but substantial risk for material increases. Tr. 6268 (Dewhurst).

Finally, witness O'Donnell continues to focus on utility equity ratios to the exclusion of all other risk factors in his myopic examination of ROE. Contrary to his implicit assumption, companies differ in their risk profiles in many more ways than simply their equity ratios. Indeed, the very fact that FPL's current equity ratio co-exists with its current 'A-' rating clearly demonstrates that there are other risk factors that must be mitigated, in effect 'requiring' FPL's 59.6% equity ratio to support its 'A-' rating. By witness O'Donnell's logic, FPL should be rated much higher than that, if its equity ratio is "extravagant." Tr. 6278-80 (Dewhurst).

B. Reasonable Cost-Based Rates

When applying the percentage increases of total retail base operating revenues reflected in the PEF Settlement (9.7%) and the Gulf rate case outcome (13.3%) to FPL's total operating revenues of $4.4 billion, FPL's overall increase in January 2013 would be $429 million and $586 million, respectively. Tr. 6069-73; Exh. 723. By comparison, the overall revenue increase of $378 million under the PSA is reasonable, especially when considering that FPL's overall customer bills are already 25% lower than the national average. Tr. 392 (Silagy).

OPC witness Ramas argues that the overall revenue increase of $378 million under the PSA is unreasonable because it does not reflect the revenue adjustments recommended by OPC in this case. Tr. 6033 (Ramas). She admits, however, that the rates the Commission approves do not have to be supported by OPC's litigation positions and that it is likely the Commission would not accept 100% of OPC's recommendations. Tr. 6088 (Ramas). Similarly, in reaching a public interest determination, the rates the Commission approves do not have to reflect or be based

upon OPC's litigation positions. Tr. 6088 (Ramas).

Additionally, in reaching her assertion that the overall revenue request under the PSA is unreasonable, OPC witness Ramas misconstrues the purpose of FIPUG witness Pollock's Exhibit 679. It is not presented as, nor purported to be, a comprehensive evaluation of all changes in FPL's expenses, all drivers of what might produce a rate increase, or of the revenue requirements increase from 2010 to 2013. Rather, it focuses on only one segment of FPL's costs that have increased since the last rate case—jurisdictional rate base - to demonstrate how the $378 million is a reasonable compromise among competing interests. Tr. 6067 (Ramas); 5423 (Pollock).

OPC witness Ramas also incorrectly argues that FPL's rates under the PSA are not fair, just and reasonable because they are not cost-based. However, FPL's base rate filing is based on costs as required in the MFRs. This cost-based filing formed the starting point of FPL and intervenor negotiations, which resulted in settlement rates that provide a clear discount from FPL's filed 2013 cost of service. Tr. 6228-29 (Barrett). The record evidence before the Commission is also abundantly clear that OPC took a litany of aggressive positions on many different revenue requirement issues. Because the revenue requirement contemplated in the PSA exceeds that advocated by OPC does not mean that the resulting rates are not cost-based. To the contrary, there is ample evidence to conclude that the rates are cost-based. Tr. 6172 (Deason).

What Ms. Ramas is really saying is that the rates are not cost-based because they are not based on OPC's view of FPL's costs. Notwithstanding the fact that rates under the PSA are cost-based, such a finding is not strictly necessary and has not been a prerequisite in approving other settlement agreements. Tr. 6172-73 (Deason). Even OPC witness Ramas admits there are times when provisions in settlements provide benefits for ratepayers that are not strictly cost-based. Tr. 6093-94 (Ramas).

The most recent example is the PEF base rate settlement approved by the Commission in Order No. PSC-12-0104-FOF-EI. That settlement was consummated and approved without a test year letter, rate case petition, testimony or MFRs to demonstrate a cost-based revenue requirement, and after only a limited hearing. The Commission stated in the order, "Based upon the petition, our review of the Agreement, and the evidence and oral argument taken at the hearing, we find approval of the Agreement to be in the public interest." Order No. PSC-12-0104-FOF-EI, at p. 1. In view of the limited supporting documentation for the rates approved in that settlement, the Commission reached its conclusion that the settlement was in the public interest without conducting any sort of formal cost-of-service evaluation. In addition, in FPL's base rate proceedings in Docket Nos. 001148-EI and 050045-EI, no formal hearing on the evidence were conducted in either of these cases as a settlement agreement was filed prior to the start of technical hearings. Tr. 6173-74 (Deason).

C. Late Payment Charge

Late fees are not cost based but they are intended to incent timely behavior. The late payment charge minimum in the PSA is in line with that charged by other utilities in Florida. It is a dollar more than the other investor owned utilities, but is within the range of the minimum charged by 31 other utilities in Florida. Tr. 5399 (Deaton); Exh. 671. Although the charge is not cost-based, late payments do increase costs on the utility, which are then borne by the general body of customers who pay timely. Tr. 5394 (Deaton). OPC witness Ramas agrees that the Commission has the authority to approve late payment charges that are not cost-based. Tr. 6096 (Ramas).

Contrary to intervenor Saporito's assertions, there is no evidence that only customers who are in financial distress pay late. Tr. 5390 (Deaton). Customers pay late for many reasons and financial ability is not always one of those reasons. Tr. 5390 (Deaton). Moreover, the

revenue from late payment charges directly offsets the amount of revenue required to be collected from all residential and small commercial customers, including the ones that can least afford it. Additionally, FPL offers various assistance programs to help customers pay timely if they wish. Tr. 5391-92, 5403-05 (Deaton).

D. Cost of Service Methodology

The PSA does not change the cost of service methodology that was filed with FPL's MFRs in the March 2012 Petition (the 12 coincident peak and 1/13 methodology). Tr. 5397 (Deaton). The PSA does allocate the reductions differently among classes in order to lower the increases to industrial and commercial customers and it recognizes that there were opposing views on how rate increases should be allocated. Tr. 5397, 5403 (Deaton). As such, the PSA represents a compromise about how increases are allocated. Tr. 5397 (Deaton). Importantly, the change is not a detriment to residential or small business owners. Tr. 5398 (Deaton). Moreover, it is important to note that OPC presented *no evidence* that the PSA results in any cost-shifting among customer classes.

E. Reasoned Consideration

Any final determination of the PSA by the Commission should be based upon reasoned consideration of the particular merits of the agreement, taking into account the facts and circumstances of the agreement. Tr. 5237 (Deason). The best negotiated settlements are those where the public utility and the intervenors all negotiate from positions of knowledge and strength with a willingness to engage in compromise to achieve a beneficial balance. Tr. 5241, 5280-81, 5289-90 (Deason). To this end, FPL made several good faith efforts starting in November of 2011 (prior to FPL's filing of its test-year letter) to include OPC in the negotiations that culminated in the PSA. Tr. 6289 (Dewhurst). Indeed, FPL historically reaches out to OPC first to initiate potential settlement negotiations. Tr. 6296 (Dewhurst).

Following informal meetings held at FPL's request in late 2011 and January 2012 (after FPL filed its test-year letter), OPC indicated that it would need to see FPL's full rate request filing before engaging in further negotiations. Tr. 6290-91 (Dewhurst). FPL and OPC later met on March 1, 2012 regarding a potential settlement where OPC offered to execute a non-disclosure agreement ("NDA") to receive additional information. Tr. 6297 (Dewhurst). FPL agreed to the form of NDA sent by OPC on March 13, 2012 but an NDA was not executed due to the impending March 19 filing. Exh. 726. Following the March 19 filing, FPL communicated with OPC and was advised that OPC would contact FPL when and if OPC was ready to discuss settlement. OPC never reached out to FPL during an approximate four-month period. Tr. 6303, 6311 (Dewhurst); Exh. 726. Due to OPC's continued silence, FPL initiated direct discussions with other parties to the rate case who were willing to discuss settlement. These discussions ultimately led to a settlement term sheet and agreement. Tr. 6311 (Dewhurst). Thereafter, FPL again reached out to OPC and a meeting was held to review the term sheet on July 15, 2012. Tr. 6314-15 (Dewhurst).[22] Unfortunately, no agreement with OPC could be or has since been reached. Parties may elect to entertain settlement discussions; however, no intervenor, even OPC, should have the right, either through the positions it takes or the decision of when or whether to negotiate, to dictate whether an agreement that is reached among other parties may be in the public interest. Accepting OPC's premise in this regard could have significant adverse consequences because it would substantially chill the prospects for future proposed settlements being brought to the Commission and give the OPC de facto veto power that was never envisioned by the Legislature and is not found in OPC's enabling statutes. Tr. 5241 (Deason).

Following the Signatories' filing of the PSA on August 15, 2012, OPC and FRF, in a flurry of oral comments, as well as written motions, before the Commission, the Florida Supreme

[22] On August 17, 2012 FRF filed a settlement offer that essentially reflected OPC's and FRF's litigation positions.

Court and to media outlets, criticized the PSA and attempted to provide arguments as to why the FPSC cannot and/or should not even discuss or consider the PSA. Statements to the media and court filings are not evidence in this case and unpersuasive. In contrast, this Commission has ample evidence – 726 exhibits and the sworn testimony of 40 witnesses provided during 13 days of technical hearings – upon which to conclude that the PSA is in the public interest.

CONCLUSION

Competent substantial evidence in this case proves that the rates contained in the PSA are fair, just and reasonable and that the PSA is in the public interest. Approving the PSA will help FPL maintain the lowest typical residential bills in the state, outstanding service reliability, excellent, award winning customer service and a clean emission profile that is the envy of most utilities around the world. This is made possible through the PSA's combination of a moderate impact on base rates and a predictable level of support for sustained investment in clean, fuel efficient, smart technologies. The PSA 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 and the state's reputation as a great place to live and work by increasing infrastructure investment in the state and promoting job growth opportunities and promoting predictability and stability. Finally, the PSA advances administrative efficiency. In sum, the PSA, as a whole, is a fair deal that is in the public interest and should be approved.

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CERTIFICATE OF SERVICE
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I HEREBY CERTIFY that a true and correct copy of Joint Post-Hearing Brief on Settlement Issues was served electronically this 30th day of November 2012, to the following:

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