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Subject: Docket No. 120015-EI (Thomas Saporito's Post-Hearing Brief on Proposed Settlement)

Attachments: 2012.11.30 Saporito's Post-Hearing Brief.pdf

Electronic Filing

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b. Docket No. 120015-EI

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

(Proposed Settlement Agreement)

c. The document is being filed on behalf of Thomas Saporito.

d. The total number of pages is 30.

e. Brief description of documents being filed:

- Thomas Saporito's Post-Hearing Brief on Proposed Settlement Agreement

Thank you for your cooperation and timely attention to this electronic filing.

s/Thomas Saporito

____

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Florida Power & Light Company (Proposed Settlement Agreement)	**Docket No. 120015-EI Dated: 30 NOV 2012**

THOMAS SAPORITO'S POST-HEARING BRIEF ON PROPOSED SETTLMENT AGREEMENT

Pursuant to Order No. PSC-12-0617-PHO-EI, *pro* se Citizen Intervenor, Thomas Saporito (Saporito) hereby submits his Post-Hearing Brief on the Proposed Settlement Agreement and states as follows:

STATEMENT OF BASIC POSITION

The Florida Power & Light Company (FPL) is a public utility doing business in the state of Florida providing electric service to approximately 4.5-million retail customers within the parameters set-out under Section 366.02, F.S. and subject to the Florida Public Service Commission's (Commission's) jurisdiction, regulation, and oversight. To the extent that the Commission's authority under Section 366.03 F.S. requires that: *"[a]ll rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it...shall be fair and reasonable..."* the Commission is required to adhere to Section 366.03 F.S. in deciding FPL's proposed settlement agreement (Settlement) in the above-captioned matter. Moreover, under Sections 366.041 and 366.06, F.S., the Commission is required to apply a "fair", "just", "reasonable" standard in its decision making process in the instant action in determining whether the issues brought in this proceeding are in the Public Interest.

On August 15, 2012, FPL filed a joint motion to approve a proposed settlement agreement which contained a finality provision which states that: *"The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification."* See Exhibit-1 of settlement at p.16, par.15. The settlement includes, but is not limited to, a four year term during which time FPL can increase base retail rates three times utilizing a Generation Base Rate Adjustment (GBRA) mechanism; and provides FPL increased rates during periods outside of FPL's requested test year and extending to the end of 2016. Moreover, FPL failed to provide the Commission with copies of permits, construction contracts, work orders, invoices, applications for permits, proof of ownership of land upon which facilities are to be constructed, plan of finance (i.e. equity or debt), financing documents, proof of financing costs, plant drawings, analysis of alternatives to plant construction, and other documentation in support of the terms and conditions contained in the settlement related to recovery of investments made outside of the 2013 test year.

To the extent that the Commission placed the hearing related to the settlement on a rush-rush expedited basis, the discovery period allotted by the Commission for the parties to engage in discovery was not sufficient for the non-signatory parties to request, obtain, and review such evidence. Notably, at the extended hearing related to the settlement, FPL simply filed conclusory witness testimony without evidential support. Thus, to the extent of the questionable accuracy of FPL's reported, actual, and historic earnings, the prudence of the Commission in establishing rates to take effect over 4-years based on mere conjecture and speculation is unlawful and unconstitutional and a clear violation of the ratepayers' "due-process" rights. Notably, the Office of Public Counsel (OPC), the Federal Retail Federation (FRF) and two *pro se* Intervenors all opposed the settlement. Although the settlement was endorsed by three Intervenor parties, the fact that OPC strenuously opposed the settlement is particularly important because OPC represents "all" FPL ratepayers in this matter.

Notably, as the Florida Supreme Court found in *Citizens v. Mayo,* OPC is a necessary party to any settlement - inasmuch as he is the plenary and statutory representative of all of FPL's customers as established by Florida law. As stated earlier, OPC strenuously opposed the settlement and the signatories to the settlement do not and cannot represent the interests of FPL's 4.6-million customers - but rather a tiny fraction of FPL's customer base. Thus, the signatories to the settlement are not authorized under F.S. to settle FPL's March 19, 2012 petition forcing non-represented customers to pay higher base rates and charges to FPL for electric service - and to otherwise disallow non-represented customers from filing a petition to Intervene against any of the terms and conditions set-out in the settlement.

To the extent that Saporito intervened in this matter opposing the settlement, he maintains that the Commission does not have requisite jurisdiction and authority to consider the settlement - and that such action by the Commission is a violation of [h]is "due-process" rights as a United States citizen and a citizen of the state of Florida; and as a ratepayer of FPL. Saporito further maintains that had [h]e known that the Commission would consider the proposed settlement which contains items such as the GBRA mechanism at a rate case subsequent to the Commission's determination for need for those power plants, he would have intervened at that time. Thus, to the extend that the Commission is considering the GBRA mechanism in the settlement, Saporito contends that his "due-process" rights have been violated - since he had no opportunity to investigate rates and revenue impacts from events such as a potential sale of assets, as might occur with the City of South Daytona, or a potential purchase of assets, as might occur if FPL purchases the City of Vero Beach's electric utility or other municipal electric utilities it currently is pursuing. Notably, the proposed GBRA mechanism precludes examination of whether FPL's overhead allocations are appropriate and whether FPL is over-recovering such costs through such allocations. Finally, if this Commission were to approve the settlement, it would irreparably undermine public trust and confidence in the Commission and place the Commission in a questionable light in all other Public Interest matters going forward.

For all the above stated reasons, the Commission must reject the settlement and find that it is not "fair", "just", and "reasonable" and therefore not in the Public Interest.

GENERAL SUMMARY

A. 10.7% Return on Equity and 59.62% Equity Ratio

The settlement provides for a base rate adjustment of $378-million dollars which includes a 10.7% return on equity (ROE) together with a 59.62% equity ratio. Notably, the record in this docket clearly shows that as the equity ratio increases, the investment risk decreases and the ROE required by investors also decreases; and that a 10.7% ROE would be the highest return on equity of any 2012 Commission decision. Moreover, a 59.62% equity ratio would be the highest equity ratio of any Commission 2012 decision. Taken together as a whole, the 10.7% ROE coupled with a 59.62% equity ratio impacts on revenue requirements with the force of "windfall" profits for FPL investors. Even FIPUG's witness Pollock could not dispute that a 10.7% ROE addressed in the settlement is higher than average.

For this reason standing alone, the Commission must reject the settlement and find that it is not "fair", "just", and "reasonable" and therefore not in the Public Interest.

B. Amortization Term and Condition

The amortization term and condition of the settlement which allows FPL to utilize $209-million dollars of fossil dismantlement reserves, essentially turns the objective of capital cost recovery on its head and unfairly enriches FPL at the expense of its ratepayers. Notably, the proper objective of the capital cost accounting is the matching principle which serves the goal of inter-generational equity. However, the settlement would create a "slush-fund" which would enhance FPL's earnings. Clearly, the Commission would better serve the Public Interest by requiring FPL to perform a detailed study and base the Commission's decision on sound data and reputable analysis of that data. But the settlement allows FPL to continue operations and (business-as-usual) without the Commission having the benefit of a detailed study - until after the settlement 4-year term has expired at the end of 2016. As the Commission is keenly aware, the objective of capital cost recovery is best accomplished when the amortization is reflected in the test year revenue requirements resulting in decreased base rates concurrent with the time that FPL applies the amortization which enhances its earnings.

However, the settlement is structured by design to ensure that the amortization never appears in a base rate test year and therefore never results in rate reductions to benefit the ratepayers. Clearly, this provision of the settlement is skewed to benefit FPL at the expense of ratepayers - resulting in unfair, unjust, and unreasonable rates. Thus, there is no off-setting ratepayer benefits which justify a concession to allow FPL a 10.7% ROE.

For this reason standing alone, the Commission must reject the settlement and find that it is not "fair", "just", and "reasonable" and therefore not in the Public Interest.

C. Generation Based Rate Adjustments

The settlement also has terms and conditions related to three generation based rate adjustments (GBRAs). The record shows that two of those GBRAs fall outside the projected 2013 test year and would be relative to the 2014 and 2016 time periods. Moreover, the revenue requirements of the affected GBRA plants are clearly overstated because (1) they use a 10.7% ROE; and (2) FPL applies an incremental capital structure to the 10.7% ROE which includes only debt and equity. However, the impact of the capital structure is to increase the revenue requirements of those GBRA plants by $50-million dollars each per year - which is one of the substantive issues resolved in FPL's favor by the settlement. However, the philosophy and methodology of base rate proceedings before the Commission involve overall costs, revenues, and investments which vary over time - while base rates remain constant so long as the ROE remains within a fair and reasonable range as decided by the Commission - and where FPL has the burden to demonstrate the need to increase rates.

Here, the settlement contains a GBRA mechanism which essentially bypasses the Commission's rate-making process and allows FPL to adjust rates - even though the company's earnings could off-set all or even a part of the revenue requirements of the plant while creating a fair return. Clearly, the

GBRA mechanism contained in the settlement benefits FPL - rather than the ratepayers - by allowing FPL to protect its earnings at the expense of the ratepayers.

For this reason standing alone, the Commission must reject the settlement and find that it is not "fair", "just", and "reasonable" and therefore not in the Public Interest.

D. Incentive Payment Mechanism

In the settlement, FPL purports to claim an incentive payment when it purchases power at a price lower than what it costs to generate that same amount of power. However, a fundamental obligation on the part of FPL is to provide its customers reliable electric power at the lowest reasonable price - not withstanding the settlement. Notably, had FPL incorporated the purchased power incentive mechanism as far back as 2001, (as shown in EXB-722), ratepayers would have paid approximately $46-million dollars more in incentive payments to FPL. Moreover, the incentive mechanism provides for unintended consequences which could result in FPL's pursuit of high margin opportunities in a manner that jeopardizes reliable and economical electric service to retail customers. To the extent that monitoring the complex transactions within the incentive mechanism would be very challenging and time consuming, the Commission would not be able to properly and effectively monitor the incentive mechanism. Even more disturbing, the record in this matter fails to show that FPL performed any type of cost-benefit analysis. Indeed, FPL failed to define the incremental cost of asset optimization and there are no offsetting benefits which justify an excessive 10.7% ROE and a 59.62% equity ratio.

E. Rate Increases Guaranteed Under The Settlement

The settlement does, in fact, guarantee that base rates will increase over the 4-year term of the settlement through the end of 2016 - to the <u>unfair disadvantage of ratepayers</u> and to the advantage of FPL and its investors and stockholders. Notably, in comparison to FPL's original filing in this docket, the settlement allows FPL to increase rates if its ROE decreases below 9.7% during the term of the settlement - which is advantageous to FPL, its investors and stockholders - but unfair, unjust, and unreasonable to the ratepayers - where the ratepayers cannot Intervene or otherwise have a say in the matter.

For this reason standing alone, the Commission must reject the settlement and find that it is not "fair", "just", and "reasonable" and therefore not in the Public Interest.

F. Settlement Increases Late Fee By 20%

The settlement would increase the late payment fee charged by FPL by 20% without any basis or justification. Notably, the record in this matter shows that FPL never conducted any cost-benefit analysis to evaluate whether or not increasing the late payment fee from $5 dollars to $6 dollars would incent customers to pay their bills on time. Moreover, FPL failed to conduct any behavior studies to evaluate whether or not increasing the late payment fee by 20% would cause customers to timely pay their bills. None-the-less, FPL made an off-the-cuff decision to incorporate a 20% increase in the late payment fee in the settlement based solely on speculation and conjecture and nothing more. Such arrogance on the part of FPL undermines and makes suspect the entirety of the settlement.

For this reason standing alone, the Commission must reject the settlement and find that it is not "fair", "just", and "reasonable" and therefore not in the Public Interest.

G. Administrative Efficiency

The terms and conditions of the settlement will ultimately prove to be much more expensive to ratepayers than the cost of additional rate case proceedings to address the addition of more power plants. Indeed, the Commission has authority to allow FPL to seek expedited consideration of a limited proceeding for exactly such purpose - and without driving the bus over the "due-process" rights of ratepayers. Moreover, such limited proceedings would be in the Public Interest because the Commission would have the benefit of record evidence to support their decision.

For this reason standing alone, the Commission must reject the settlement and find that it is not "fair", "just", and "reasonable" and therefore not in the Public Interest.

LEGAL ISSUES

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?

SAPORITO: *No, the record shows that the GBRA mechanism will not streamline recovery of revenue requirements for 3-generating units previously approved in Commission need determinations - but instead - allow FPL to regulate its own ROE and result in higher rates for the majority of ratepayers. Indeed, the settlement involves billions of dollars in profits for FPL compared to maybe 5-million for each future rate case. Alternatively FPL can seek expedited consideration by the Commission for approval of interim rate relief with respect to the new plants. Notably, on March 17, 2010, the Commission issued Order No. PSC-10-0153-FOF-EI and found at p.13 that: *"Section 366.071, F.S., provides expedited approval of interim rates until issuance of a final order for a rate change. Rule 25-0243, F.A.C, establishes the minimum filing requirement for utilities in a rate case. These procedures have been sufficient in the past for FPL and other regulated utilities wishing to recover capital expenditures when a new generating facility begins commercial service. We find that the GBRA shall expire as scheduled when new rates are established as delineated in this Order."**

ARGUMENT: The Commission considered and rejected a prior FPL GRBA mechanism and found that: *"...[i]t is not possible for us to exercise as adequate a level of economic oversight within the context of a GBRA mechanism as we can exercise within the context of a traditional rate case proceeding." See,* Order No. PSC-10-0153-FOF-EI at p.16. Notably, in that Order, the Commission specifically observed that FPL had built a number of generating units since 1985 without seeking a rate increase; and that FPL's own witnesses conceded that if economic conditions or other factors changed, that FPL's base rates could be sufficient to cover the cost of a new generating unit in whole or in part without the application of the proposed GBRA. Moreover, the Commission found that: *"...[o]ther factors, such as the addition of new customers and increased electricity sales tend to offset the additional costs of new power plants."*

In the instant action, FPL contends that the GBRA mechanism is justified because the Commission already approved "need" determinations for the affected power plants. However, Order No. PSC-10-0153-FOF-EI succinctly explains the Commission's rejection of FPL's GBRA mechanism as an unreasonable attempt to rely upon evidence from a need determination proceeding to justify a rate increase and held that: *"...[i]t is not possible for us or interested parties to examine projected costs at the same level of detail during a need determination proceeding as we would be able to do in a traditional rate case proceeding. A need determination examines costs only in comparison to alternative sources of generation. It does not allow for a review of the full scope of costs and earnings, as a rate case does."* Moreover, the Commission - in rejecting FPL's GBRA mechanism - specifically noted FPL's own admission that: *"...the GBRA mechanism would be a limited-scope proceeding focused only on the GBRA, and intervenors would not be able to raise other cost issues in such a proceeding."*

Witness Ryan M. Allen:

On October 12, Intervenor Federal Executive Agencies (FEA), a signatory to the settlement, proffered the prefiled direct testimony of Ryan M. Allen (Allen) to testify in support of Issue #1 and Issue #5. However, Allen instead testified that the purpose of [h]is testimony was: *"...to identify the economic impact of Patrick AFB and Cape Canaveral Air Force Station on the Florida economy, and highlight the impact of increased utility bills on Patrick AFB and Cape Canaveral Air Force Station."* (TR 5343: 21-24). In fact, the entirety of Allen's testimony does not contain even a "scintilla" of probative evidence in support of FPL's GBRA mechanism as outlined in the settlement. Instead, Allen testified that:

> *"Since funds to pay for utility bills comes out of the operations and maintenance budget for Patrick Air Force Base and Cape Canaveral Air Force Station, any increase in the utility bills represents a corresponding decrease in the funds that could be utilized elsewhere for funding essential military operations and maintenance. The proposed settlement will permit Patrick Air Force Base and Cape Canaveral Air Force Station to use its operation and maintenance funds for purchasing the necessary supplies and services required to perform its mission to delivered assured space launch range and combat capabilities for the nation."*

(TR 5348: 2-13). Allen further testified that he performed an economic impact analysis but conceded that his analysis is not an analysis of the economic impact of the rate increases and stipulation on the general body of FPL ratepayers - and that his testimony was <u>only</u> about the impact of the increase in the settlement on utility bills of Patrick Air Force Base and Cape Canaveral Air Force Station (TR 5349: 22-25, TR 5350: 1-10). Allen further conceded that his testimony did not address the impact of increased utility bills on the other four million FPL customers, such as residential users or retail customers (TR 5350: 11-16). Allen further conceded that his testimony did not use the terms "fair, just and reasonable" with respect to FPL's rates proposed in the settlement (TR 5351: 1-4).

Incredibly, **despite FEA's representation to the Commission that Allen would testify with respect to Issue #1,** Allen conceded that [h]e was not presenting evidence in support of the GBRAs contained in the settlement (TR 5351: 23-25, TR 5352: 1-2).

Allen testified that the combination of 24,000 military retirees and 4,800 secondary jobs equates to approximately 28,550 residential customers of FPL (TR 5356: 3-8). Allen testified that if utility rates go up - that most people view utility rates and bills as a must-pay bill, and therefore, they would have less disposable income to spend on other items (TR5356: 20-24). Allen further testified that if the rates were to increase - that could have a potential negative impact on those referenced (residential) folks to be able to spend money on other items - and that would negatively impact the economics of Florida (TR 5357: 2-9). Allen further testified that: when utility bills increase, other areas of military operations and maintenance must be reduced and that the only mechanism to increase overall funding level is to request additional appropriations from Headquarters Air Force Base and ultimately Congress (TR 5357: 13-19). However, Allen conceded that if the Commission were to reject FPL's proposed settlement agreement and adopt the position of OPC to lower FPL's electric rates by $250-million, that the overall funding level for the Air Force bases would increase due to lower electric bills (TR 5357: 20-25); and that there would be less money expended for utility bills, and therefore, it would have the opposite affect (increase the overall funding level for the Air Force bases) as what's in the stated testimony (TR 5358: 1-6). Notably, even on redirect, Allen conceded that - if the rate is lower, obviously there is more money available for other activities in support of the national defense mission, and if the rate is higher, then there is less (TR 5360: 12-16).

<u>Witness Lane Kollen</u>:

The South Florida Hospital and Healthcare Association (SFHHA) sponsored Lane Kollen (Kollen) as a witness in support of Issues 1,2,3,4 & 5 related to the settlement. With respect to Issue #1, Kollen testified that:

> *"The second reason is that the GBRA increases are limited to the Canaveral, Riviera, and Port Everglades modernization projects. The Company cannot seek or implement any other base rate increases during the next four years regardless of increased costs unless it is unable to achieve a return on equity of 9.70% through a combination of revenue growth, cost controls, or amortization of the remaining depreciation reserve surplus and the fossil dismantlement reserve."*

(TR 5651: 1-7). Here Kollen concedes that FPL can seek other base rate increases over the 4-year term of the settlement if FPL is unable to achieve a return on equity of 9.70%. In addition, Kollen further concedes that the settlement would allow FPL to self-regulate by using the amortization of the remaining depreciation reserve surplus and the fossil dismantlement reserve (TR 5687-88: 19-25, 1).

To allow FPL to self-regulate without oversight by the Commission as intended by the Florida Legislature would violate the "due-process" rights of Florida citizens who are FPL ratepayers. Clearly, FPL ratepayers have a "due-process" right to challenge any and all expenses and costs for which FPL seeks recovery related to the three plants described in the settlement. To the extent that the settlement "illegally" deprives FPL ratepayers from challenging those associated GBRA expenses and costs, the settlement violates the ratepayers' due-process rights. Moreover, to the extent that the majority of FPL's 4.6-million customers are <u>not represented by the signatories to settlement</u> - but rather by OPC - their due-process rights are further violated by the GBRA mechanism of the settlement. Clearly, there can be no "legal" settlement of this matter where the majority of FPL's customers had no voice in the negotiations that led up to acceptance of the GBRA mechanism contained in the settlement.

Ironically, Kollen testified that [h]e:

> *"opposed FPL's proposed GBRA in the last rate case because it would have permanently supplanted the traditional base ratemaking process for all major generation and transmission projects and because the methodology was not well-defined and was flawed in important respects."*

(TR 5651: 21-24). However, the record in the instant action clearly shows that the GBRA mechanism contained in the settlement will also permanently supplant the traditional base ratemaking process for three major generation projects; and that the methodology for use of the GBRAs in the settlement is not well-defined and is flawed in important respects. Kollen attempted to explain his conflicting testimony with respect to the GBRA mechanism by stating that:

> *"Unlike the Company's proposal in the last case, the settlement GBRA in this case provides rate certainty and stability over a limited duration of four years, limits the rate increases only to recovery of the costs of the three modernization projects, which are known and measurable as of today. . . "*

(TR 5652: 1-4). However, the GBRA mechanism does not provide rate certainly in the least. As discussed early, the settlement allows FPL to "*self-regulate*" and to increase rates as it desires during the four-year term of the settlement. Moreover, as Kollen conceded, FPL only is aware of the costs of the three modernization projects which are <u>known and measurable as of today</u> - but what about the <u>future</u> - when construction costs, materials, inflation, and labor increase? These uncertainties are the very reason that the Commission was empowered by the Florida Legislature to monitor and to discern these costs and expenses through the traditional ratemaking process where FPL ratepayers can participate and have a say. Even Kollen conceded its not a good idea to set rates based on a forecasted test year and then the year after that - and then 2-years out and 3-years out and 4-years out (TR 5672: 6-15). Kollen was silent about FPL earnings (TR 5716: 1-11) - but the Commission must consider FPL's earnings looking forward and based on its most recent quarterly earnings reports which show that FPL earned at least 17% quarter-over-quarter; and Silagy told the Commission in Aug. 2012, that FPL expects to add an additional 100,000 new customers. Clearly, <u>FPL can absorb the costs for the three proposed plants without the GBRA mechanism in the settlement and without increasing rates</u>.

<u>Witness Robert E. Barrett</u>:

FPL proffered Robert E. Barrett (Barrett) to testify in support of the GBRA mechanism contained in the settlement. Barrett testified that:

> *"The GBRA mechanism is an integral part of the Proposed Settlement Agreement, and is required in order to facilitate four years of base rate certainty to our customers while affording the Company the opportunity to recover its prudently incurred costs. Without GBRA, the Company could not commit to a four-year period of no base rate increases because it would be unable to absorb the costs of the new units."*

(TR 5740: 8-13). Therefore, should the Commission find that the GBRA mechanism is not "fair", "just", and "reasonable" and therefore not in the Public Interest, the Commission must reject the entire settlement.

Barrett conceded that:

> *"FPL retains all the construction risk associated with building these new generation, highly efficient technologies. It must independently finance the construction of these projects over long periods. GBRA does not provide for an automatic pass through..."*

(TR 5744: 12-15). Thus, the GBRA mechanism contained in the settlement would likely <u>cause great concern with the investment community</u> due to the fact that FPL will be taking on a <u>great deal of risk over an extended four-year period</u>. In reading from EXB-717, Barrett conceded that the Commission found in a prior FPL rate case that:

> *"FPL Witness Barrett also acknowledged that if economic conditions or other factors changed, it was possible that FPL's base rates could be sufficient to cover the cost of a new generating unit in whole or in part without the application of a GBRA. Other factors such as the addition of new customers and increased electricity sales tend to offset the additional costs of new power plants. . . that under certain hypothetical circumstances with a GBRA mechanism in place, customers' bills could go up as a result of adding new generation, though FPL's earnings would remain unaffected."*

(TR 5770-71: 23-25, 1-10).

> *"FPL Witness Barrett testified that it is possible for the company to structure the timing of a rate request associated with a new plant so that both the plant's costs and its fuel savings benefits are received by the customer at the same time....Barrett acknowledged that the GBRA mechanism would be a limited scope proceeding focused only on the GBRA, and Intervenors would not be able to raise other cost issues in such a proceeding."*

(TR 5771: 13-23).

Barrett conceded that the weighted average cost of capital for FPL after a GBRA transaction would be higher (TR 5785-86: 25, 1).

<u>Witness Donna Ramas</u>:

OPC offered the testimony of Donna Ramas (Ramas) in opposition to the settlement. Ramas testified that:

> *"Yes, it is my opinion that rates which are not fair, just, or reasonable are not in the public interest. It is also my opinion that for rates to be fair, just, and reasonable, they should be cost based. In other words, rates should be calculated based on the prudently incurred costs necessary to provide a reasonable level of service to customers."*

(TR 6031: 22-25). Ramas further testified that if the calculation of the Canaveral Modernization Project base rate increase is calculated based on the methodology and amounts presented by Mr. Barrett instead of the methodology specified in settlement language at stipulation 8(A), that the amount of base rate increase for the project would not be fair or reasonable (TR 6042: 7-20). Additionally, Ramas testified that the GBRAs contained in the settlement are not fair, reasonable, or justified because:

> "The Canaveral Modernization Project base rate step increase that is being considered as part of FPL's original rate case filing, or the 2012 Rate Petition and accompanying MFRs, is projected to be placed into service within the first 6 months of the 2013 test year that was considered in the rate case. The project clearly falls within the test year. The additional base rate step increases provided for in Stipulation 8 of the August 15 document fall well beyond the test year in this rate case, with the Riviera Modernization Project projected to go into service in June 2014 and the Port Everglades Modernization Project projected to be placed into service in June 2016. There are many reasons why the additional base rate step increases, which the August 15 document identifies as "Generation Base Rate Adjustments" or "GBRA," are not fair or reasonable."

(TR 6043: 3-12). Ramas further testified that the capital structure at stipulation 8(C) of the settlement is not appropriate if a GBRA is considered because:

> *"The capital structure contained in FPL's MFRs for the Canaveral Step Increase consisted of 39.03% long-term debt and 60.97% common equity, and ignored any other components of the capital structure. As indicated in my direct testimony filed in July 2012, if any step increase for the Canaveral Modernization Project is allowed, the ROE should be based on the overall ROE approved by the Commission for the base rate increase, and should not be limited to long-term debt and equity. Project financing does not occur in a vacuum. During the term contemplated in the August 15 document, other factors will impact the capital structure, the amount of short-term and long-term debt, and the amount of common equity beyond the modernization projects. In my July 2012 testimony, I identified 2 recent orders involving Gulf Power and Tampa Electric Company in which the Commission allowed for step increases that factored in the overall*

rate of return found appropriate in those decisions. They were not limited to long-term debt and equity components."

(TR 6047: 12-24).

Witness John Hendricks:

John Hendricks (Hendricks) appeared as a *pro se* Intervenor party and testified that:

"...the GBRA eliminates one of the factors that ... counterbalances the general tendency of regulated firms to overinvest in capital to grow their revenue for shareholders....that...the GBRA eliminates the possibility of a rate case for three large generation facilities that were approved in need determination proceedings that occurred when the Commission and the parties had the expectation that these investments would be subjected to the further scrutiny of a rate case before entering the rate base. If the reasonable expectation in these need determination proceedings had been that these large investments would automatically enter the rate base, other parties would likely have participated and many other issues and arguments would likely have been raised in these proceedings....that under the proposed GBRA the costs for "equity gross-up," which is calculated to cover the state and federal corporate income taxes on the equity returns, constitutes over 30% of the total cost of long-term investor capital. The gross-up cost alone in the first year of operation for the three facilities covered by the GBRA would be about $130 million and these costs would continue for many years..."

(TR 6147-48: 1-23, 1-2). Hendricks further testified that:

"..if corporate income taxes are reduced as now being advocated by many political leaders, large unintended windfall profits can be created during the fixed term of the rates implemented under the GBRA...with only a very restrictive opportunity for revision provided....This would create a windfall increase in equity return of about 15% to 30% if all other factors remained the same."

(TR 6148: 14-22). Hendricks continued in his testimony stating that:

"As it stands, the proposed GBRA process is not in the public interest because it fails to balance the benefits and reduction of risks for the utility with comparable benefits and risk reduction for the ratepayers."

(TR 6149: 16-18). To the extent that Hendrick's testimony was not refuted by any of the signatories, the Commission must accept [h]is testimony as accurate and true.

The record evidence with respect to the GBRA mechanism is compelling and shows that under the GBRA mechanism, FPL will be allowed to "self-regulate" without proper oversight by the Commission which will result in higher rates for the majority of FPL customers over the four-year term of the agreement. Thus, to the extent that the GBRA mechanism is not "fair", "just" and "reasonable", this Commission must find that the GBRA mechanism is not in the Public Interest as a matter of law. Moreover, where the GBRA mechanism is found by the Commission not to be in the Public Interest - and to the extent that the settlement contains language of an (all or nothing deal) - the Commission must find that the entirety of the settlement is not in the Public Interest as a matter of law.

The Florida Supreme Court:

The Florida Supreme Court accentuated the Commission's responsibility through statutory provisions under Section 366 F.S. in *Citizens of Florida v. Public Service Commission,* 425 So. 2d 534 (Fla. 1982)(citing sections 366.06(2) and 366.05(1), Florida Statutes (1979) where the Court found that:

"[t]he statutory standard imposed upon the Commission is to fix 'fair, just and reasonable rates.'" Moreover, the Court reasoned that:

"intense scrutiny, cross-examination, and adversarial contest...required in the final public hearings" when establishing permanent rates. *Id.* Here, in the instant action, the settlement would deprive FPL ratepayers and the citizens of Florida and the citizens of the United States of America from participating in the Commission's rate-making process. On this ground alone, the Commission must find that the entirety of the settlement is not fair, just and reasonable and therefore not in the Public Interest as a matter of law.

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?

SAPORITO: *No. The amortization term of the settlement simply creates a "slush-fund" for FPL to use to its advantage without proper oversight by the Commission. It essentially turns the objective of capital cost recovery on its head and unfairly enriches FPL at the ratepayers' expense. Notably, instead providing for a means of capital cost accounting through matching principle to achieve inter-generational equity - the amortization term of the settlement creates a "slush-fund" for the sole purpose of enriching FPL's earnings to the benefit of FPL investors and shareholders. Moreover, the settlement term would allow FPL to postpone needed studies until after the end of the four-year term of the settlement. However, the objective of capital cost recovery is best accomplished when the amortization is directly shown in the test year revenue requirements; and thereby reducing the base rates concurrently when FPL applies the amortization that enhances its earnings. The settlement term is designed to ensure that the amortization is never reflected in a base rate test year and therefore never acts to reduce rates to benefit ratepayers.*

ARGUMENT: As a threshold matter, Section 120.542 of the Florida Statues provides for a specific procedure for the waiver of the requirements; however Barrett testified that [h]e didn't know whether FPL filed a waiver or not. In fact, Barrett testified that [h]e didn't know the requirements of the statue (TR 6251:

18-25). Notably, under Rules 25-6.0436 and 25-6.04364, FPL is required to file for a waiver in conjunction with its settlement in this proceeding. However, Barrett testified that to his knowledge FPL has not filed for such a waiver (TR 6252: 1-4).

Moreover, Barrett testified that OPC, FRF, Village of Pinecrest, Saporito, and Hendricks have not agreed to a waiver; and that under Rules 25-6.0436 and 25-6.04364, absent the approval of the agreement, FPL would be required to file with the Commission both a depreciation study and a dismantlement study in March of 2013 (TR 6251: 4-13). Therefore, to the extent that absent the settlement, FPL would ordinarily have to comply with the Commission's rules and regulations which require FPL to file a depreciation study and a dismantlement study in March of 2013; and to the extend that FPL failed to file a waiver of such requirements; and to the extend that the non-signatories to the settlement would otherwise be disenfranchised and have their "due-process" rights violated if the Commission were to approve the settlement - the Commission must find that ISSUE 2, of the settlement is not fair, just and reasonable and therefore not in the Public Interest as a matter of law. Notably, Barrett conceded that the last sentence of Paragraph 11 provides the quote,

> *"Parties agree that the provisions of Rules 25-6.0436 and 25-6.04364 pursuant to which depreciation dismantlement studies are generally filed at least every four years will not apply to FPL during the term,"*

(TR 6250: 18-24). If all the above were not enough, Barrett further conceded that the language of Paragraph 11 of the settlement... means that FPL will not be required, but still may file the respective studies during the term of the agreement if they so choose (TR 6252: 5-11). Moreover, Barrett testified that if the agreement is approved and FPL elects not to file the studies during the term of the agreement, that [h]e presumes FPL would file its next depreciation and dismantlement studies *"right after the end of this agreement."* Barrett conceded that the last time that FPL filed a depreciation or dismantlement study was March of 2009 (TR 6252: 18-22); and that the two rules require the filing of these studies four years from the submission date of the previous study (TR 6252-53: 23-25, 1). Here, FPL's settlement would clearly authorize FPL to ignore the Commission's rules in timely filing depreciation or dismantlement studies as otherwise required under Florida Statues. Thus, to the extent that the settlement authorizes FPL not to comply with the Commission's rules with respect to the timely filing of depreciation or dismantlement studies, the Commission must find that the settlement is not fair, just, or reasonable and therefore not in the Public Interest as a matter of law.

<u>Witness Lane Kollen</u>:

Kollen testified that under the settlement, FPL has the ability to use the depreciation surplus and the dismantlement reserve to boost FPL's earned return up to 11.7% in each year during the four year period (TR 6252: 18-22). Notably, Kollen offered no direct testimony with respect to the Commission's rules which require FPL to timely file depreciation and dismantlement studies - other than to say that:

> *"The issue here is whether the depreciation rates can or should be changed as the result of a depreciation study during the next four years when the settlement precludes a concomitant change in the Company's base rates to reflect the changes in depreciation expense resulting from changes in the depreciation rates.*

(TR 5653: 20-24). In other words, under the settlement, FPL would be allowed to "self-regulate" itself to the detriment of the ratepayers without proper oversight by the Commission.

<u>Witness Jacob Pous</u>:

OPC proffered the testimony of Jacob Pous (Pous) who testified that:

> *"Chapter 366, Florida Statues, dictates that rates for public utilities shall be fair, just, and reasonable (Section 366.03, 366.041, 366.05, 366.06, and 366.07, F.S.)....that permitting FPL to amortize $209 million of fossil dismantlement reserves and the postponement of the scheduled depreciation studies for several years will not result in fair, just, and reasonable rates."*

(TR 6005: 7-12). Pous further explained that:

> *" Unlike the Commission's treatment of depreciation reserve surplus in FPL's last rate case, FPL's current proposal to amortize $209 million of dismantlement reserve for the purpose of managing its earnings, in the absence of a study and outside of the evaluation of test year expenses in a base rate case, would turn the fundamental purpose of capital recovery accounting on it head."*

(TR 6005: 19-23). Notably, Pous further explained that:

> *"...if adopted, the proposal outlined in the August 15 document would enrich FPL at the expense of treating customers unfairly. Any rates that would be designed and implemented as a consequence of adopting this aspect of the August 15 document would by definition be unjust, unfair, and unreasonable."*

(TR 6006: 3-7). Pous continued to explain that:

> *"...the purpose of dismantlement accounting is identical to that of depreciation accounting. It is to ensure that each generation of customers pays its fair share of the cost of the asset that serves it, and by doing so avoids intergenerational inequity."*

(TR 6006: 18-21). Pous explained the importance of the Commission's decision in FPL's last rate case in connection with the depreciation reserve surplus and stated that:

> *"Three important principles embedded in the manner in which the Commission determined and treated the depreciation reserve surplus in FPL's last rate case are not only conspicuous, but also provide guidance in its consideration of FPL's August 15 document: (1) the Commission's purpose and motivation in Docket No. 080677-EI was to adhere to the matching principle, and the effect on FPL's earnings was a by-product of that objective; (2) the amortization was ordered after a detailed study and, where the study was challenged, a proceeding that included competing evidence and argument occurred (i.e., the Commission determined factually, based on a detailed evidentiary record, the existence and magnitude of the surplus imbalance); and (3) the amortization ordered by the Commission occurred simultaneously with the construction of test year revenue requirements and the setting of rates, so that customers who overpaid in the past benefited directly through cost of service and rate reductions."*

(TR 6009: 1-13). Pous then explained how the settlement would harm FPL customers by stating that:

> *"The matching principle must be paramount in the decision to modify a reserve through an ordered amortization; otherwise, the accounting for capital recovery will become distorted to the prejudice of either past or future customers. If the amortization is not directly adjusted in the test year revenue requirements of a rate case, FPL will modify its rate base; however, the intergenerational inequity will not be corrected most effectively, because customers will not receive the money that they overpaid."*

(TR 6009: 16-22). The importance of the Commission requiring FPL to produce the legally required studies was summed up by Pous as follows:

> *"It is important to have a study and, where the study is challenged, a determination by the Commission....because a surplus correction will have the effect of increasing future rate base, thereby affecting the rates that future customers will pay. Before a step is taken that will require a future generation to pay higher rates, the Commission should investigate whether it is on solid evidentiary footing. Indeed, in the last base rate case the Commission adjusted many of FPL's depreciation proposals after its study was challenged. It is also important to address the imbalance at the same time that base rates are set....because it would be patently unfair and unreasonable to effectively lower FPL's expenses materially -- for the stated purpose of boosting its earnings and achieved rate of return -- and not reflect those lower expenses in the rates that customers pay."*

(TR 6010: 1-11). Perhaps the most damning testimony from Pous is where [h]e testified about FPL's motives and intent by comparing FPL's conduct in its last rate case with the terms and conditions set-out in the settlement in the present case as follows:

> *"...the Company requested that the surplus be returned to customers over the approximately 20-year remaining lives of the investments....FPL wanted significant and immediate rate treatment for its under-recovery, but was not willing to offset the under-recovery with admitted over-recoveries for which it sought corrective measures over a 20-year period....when OPC recommended that an amortization of reserve be accompanied by a corresponding lowering of test year expenses, cost of service, and base rates, FPL opposed the measure and complained about it afterwards [sic]. FPL's consistently one-sided approach to such situations demonstrates the need for the Commission to properly investigate reserve amortization positions to establish fair, just, and reasonable rates. After a full evidentiary hearing in Docket No. 080677-EI, FPL's proposal in that case was found by the Commission to be anything but fair, just, and reasonable. In the instant case, neither FPL nor the Commission has identified or quantified a surplus in the dismantlement reserve that is the subject of FPL's $209 million proposal in the August 15 document. In fact, in its last case, FPL requested a 41% increase (from $15.2 million to $21.5 million) in annual dismantlement accruals! In this case, FPL has not proposed to reduce the size of the annual fossil dismantlement accrual, even though it now proposes a $209 million dismantlement reserve excess amortization."*

(TR 6013: 2-20). Pous' testimony on this point is best summed up as shown below:

> *"...rates that deliberately do not take into account the impact of a proposed $209 million reduction in expense levels over the period outlined in the August 15 document would not be fair, just, or reasonable."*

(TR 6014: 10-13).

> *"...The proposal in the August 15 document is severely skewed toward serving FPL's interests at customers' expense."*

(TR 6016: 19-20).

Thus, to the extent that ISSUE 2 is not "fair", "just" and "reasonable", this Commission must find that ISSUE 2 (and the therefore the entirety of the settlement) is not in the Public Interest as a matter of law.

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?

SAPORITO: *No. Clearly the provisions of Rules 25-6.0436 and 25-6.04364 pursuant to which depreciation dismantlement studies are generally filed at least every four years must be complied with by FPL as a matter of law - to provide the Commission a solid basis to make an informed decision with respect to the impact of those studies on the ultimate rates that FPL customers will have to pay. To the extent that OPC, FRF, Saporito, Village of Pinecrest, and Hendricks were not signatories to the settlement, paragraph 11 of the Stipulation and Settlement would necessarily impinge on their "due-process" rights to engage FPL and the Commission at rate cases to investigate and examine the particulars associated with those studies - and the resultant rates. Accordingly, the Commission must find that ISSUE 3 is not fair, just, and reasonable and therefore not in the Public Interest as a matter of law.*

ARGUMENT: To the extent that Florida Statutes and the Commission's rules require FPL to timely file depreciation and dismantlement studies every four-years - such a legal requirement cannot be set-aside through the settlement document in which OPC, FRF, Saporito, Village of Pinecrest, and Hendricks were not signatories. Moreover, even if all parties were signatories to the settlement, the Commission lacks requisite jurisdiction and authority to waive such filing requirements under the rules - unless FPL timely filed a request for such a waiver for that specific purpose. As the record in this matter clearly shows - FPL failed to file any waiver seeking permission from the Commission which would allow FPL not to file timely depreciation and dismantlement studies as required under the Commission's rules.

Thus, the Commission need not review the record further on this issue - but instead - must find that ISSUE 3 (and the therefore the entirety of the settlement) is not fair, just, and reasonable and therefore not in the Public Interest as a matter of law.

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?

SAPORITO: *No. FPL is obligated to provide safe, reliable electric power at the lowest achievable price. However, FPL proposes (through the settlement) to include power purchases and claim an incentive payment when it purchases power at a lower price compared to the cost of generation for that very same power. Notably, if FPL's purchased power "Incentive Mechanism" feature been included in FPL's 2001 limited incentive program, ratepayers would have paid approximately $46-million dollars more in incentive payments to FPL. Moreover, to the extent that FPL's so-call "Incentive Program" is open-ended - a potential exists for unintended consequences where the proposed expansion could lead to a perverse incentive for FPL to pursue high-margin opportunities in a manner that would jeopardize reliable and economical service to retail customers. More importantly, it would be extremely difficult - if not impossible - for the Commission to properly oversee such a program where highly complex transactions occur. Moreover, FPL has not performed any type of cost-benefit analysis to support that such a program would be in the Public Interest and warrant an excessive 10.7% ROE.*

ARGUMENT: FPL offered Sam Forrest (Forrest) to testify in support of the settlement "Incentive Mechanism". Forrest testified that:

> *"The proposed Incentive Mechanism is a win-win for FPL and its customers. It provides FPL a meaningful incentive to encourage innovation and maximization of its asset utilization to produce gains for customers, while ensuring that customers will retain 100% of the first $46 million of such gains and a percentage of any gains above that threshold. Over the term of the Proposed Settlement Agreement, $46 million represents a 'stretch goal' for FPL, exceeding its current projections of customer savings by approximately $10-$20 million per year."*

(TR 6198:7-14). Forrest conceded that:

> *"Only if FPL exceeds its 'stretch goal' will shareholders receive a portion of incremental gains above that goal."*

(TR 6198: 14-15). Forrest further described the "Incentive Program" by stating that:

> *"The purpose of the incentive mechanism is to provide appropriate incentives to enhance or add value beyond the economic dispatch process. Engaging in both power purchases and sales allows a utility to improve upon the economic dispatch of its own resources.....Gains on power sales and savings due to power purchases have the same dollar-for-dollar impact on reducing fuel expenses."*

(TR 6200: 12-16, 18-20). What is strikingly missing from the testimony of Forrest is a cost-benefit analysis incorporating both purchases and sales and any resultant benefit to customers. Without a cost-benefit analysis, the testimony of Forrest is merely conjecture and speculation for which the Commission should disregard in its entirety. Notably, Forrest conceded that [h]is own exhibit SF-4 shows that during the years 2001 through 2011, under the current mechanism, FPL customers would have received $500,903,115 dollars - but had the proposed "Incentive Mechanism" been in place during that same time period, that FPL customers would have received $454,339,082 dollars (TR 6215-16: 9-25, 1-2).

Forrest conceded that the difference in the two amount totaled $46,000,564.33 dollars; and that adding the $46.6 million to the amount in Column I, which is $1,875,647 that FPL received over that time period, it would total the $48,439,680 that appears in Column K (TR 6216: 19-24). Forrest agreed that the 48.4 million is the amount that FPL would have received for that period (TR 6217: 2-6). Notably, Forrest conceded that based on [h]is exhibit, the $46.6 million of the 500.9 million was saved by customers under the current mechanism during the 2001 to 2011 time frame - and that if the proposed "Incentive Mechanism" in the settlement had been in place, customers would have incurred an additional 46.6 million more in fuel costs (TR 6217: 12-25).

OPC witness James W. Daniel (Daniel) responded to inquiries made by Commissioner Graham about the "Incentive Mechanism" and spoke in relation to exhibit JWD-2 and stated that:

> *"...my exhibit shows an immediate place where it could go bad is historically they made purchase power decisions ... without any kind of incentive under their new program, without any change in behavior, they get $47 million. ...that's significant dollars and a negative impact on ratepayers."*

(TR 5941: 17-24). Commissioner Graham then asked Daniel - But the ratepayers also get a benefit out of that, correct? To which Daniel replied:

> *"...no, the benefit they get out of it has been reduced by $47 million." "...Exhibit JWD-2, which looking at historic data, if you include savings from purchase power in the incentive mechanism, fuel costs to ratepayers would have gone up $47 million....the 47 million is the difference between the total number in Column I, which is what FPL currently gets, and the number in Column K, which is the number FPL would get under the new incentive mechanism....the differences between those two numbers is 47 million."*

(TR 5942: 2-20). Commissioner Graham then asked Daniel - But, now, what do the ratepayers get in that same scenario? To which Daniel replied:

> *"They get a higher fuel factor to the tune of $47 million."*

To which Commissioner Graham responded - "You still have me lost."

(TR 5942: 21-25). Daniel then clarified by stating that:

> *"...it's from the inception of the current incentive mechanism. If the new or the proposed incentive mechanism would have been in place during that time frame, fuel charges to ratepayers would have gone up $47 million."*

(TR 5943: 4-8).

Clearly, with the additional questioning by Commissioner Graham, the record distinctly shows that the proposed "Incentive Mechanism" contained in the settlement would actually harm FPL customers by causing fuel charges to increase by $47 million dollars. Thus, the Commission must find that ISSUE 4 is not fair, just, or reasonable and therefore not in the Public Interest as a matter of law.

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

SAPORITO: *No. To the extent that the settlement contains an "all or nothing clause"; and where ISSUES 1-4 are clearly not fair, just or reasonable, the Commission must find that the entirety of the settlement is not in the Public Interest as a matter of law. Indeed, the settlement contains a term or condition that allows FPL to raise the late fee from $5 dollars to $6 dollars which equates to a 20% increase. Yet, FPL did not perform any studies or cost-benefit analysis to show whether or not such an extreme increase would cause customers to make timely payments. Moreover, OPC represents approximately 99.99% of FPL's customers and OPC is not a signatory to the settlement. Thus, the Commission must acquiesce to the dictate of the Florida Supreme Court and find that the settlement is not in the Public Interest.*

<u>Witness Renae B. Deaton</u>:

Deaton testified on behalf of FPL and conceded that increasing the late fee amount from $5 dollars to $6 dollars equates to a 20% increase (TR 5392: 1-4).

ARGUMENT: As a threshold matter, the term Public Interest can be defined as meaning:

> *"Anything affecting the rights, health, or finances of the public at large. Public interest is a common concern among citizens in the management and affairs of local, state, and national government. It does not mean curiosity but is a broad term that refers to the body politic and the public weal. A public utility is regulated in the public interest because private individuals rely on such company for vital services."*

See, EXB-TS706, The Free Dictionary - definition of "Public Interest". In this vein, Public Interest relates to whether each and every term and condition of the FPL proposed settlement between <u>only the signatories</u>, is fair, just, and reasonable of the FPL ratepayers at large who are private individuals that rely on FPL for the vital service of electric power. Thus, <u>where OPC is not a signatory to the FPL proposed settlement</u>, the document simply cannot be in the Public Interest at large as a <u>matter of law</u>.

<u>Witness Kollen</u>:

Kollen (on behalf of SFHHA) testified that the term public interest incorporates the terms fair, just, and reasonable (TR 5714: 21-23). When questioned about what FPL's earnings would be in regards to the settlement for the years 2014, 2015, and 2016, Kollen stated: *"I don't know"* (TR 5716: 1-3). When questioned as to how [h]e could sit here and testify under oath to this Commission about whether the settlement is in the Public Interest - Kollen stated: *"You know, that's a difficult question to answer."* (TR 5716: 12-17). Kollen further testified that the settlement contains an all or nothing clause - that either the entire settlement is accepted and adopted by the Commission or the entire settlement has to be rejected (TR 5717: 20-25). When asked if the Commission can cherry-pick some of the stuff they like from the settlement and put it back in the original rate case - Kollen testified that: *"...the Commission can decide whether to reject or accept this settlement agreement."* (TR 5718: 8-13).

<u>Witness Ramas</u>:

Ramas testified on behalf of OPC and stated that:

> *"...it is my opinion that rates which are not fair, just, or reasonable are not in the public interest. It is also my opinion that for rates to be fair, just, and reasonable, they should be cost based. In other words, rates should be calculated based on the prudently incurred costs necessary to provide a*

reasonable level of service to customers."

(TR 6031: 22-25). Ramas further testified that a base rate increase of $378,000,000, effective January 1, 2013, is not fair, just, and reasonable, and not based on the costs to serve FPL's customers during the 2013 test year (TR 6033: 15-18). Ramas further testified that:

> *"In its Post-Hearing Brief filed on September 21, 2012, OPC recommended a reduction in FPL's current base rates of at least $253.4 million effective January 1, 2013....* and that ... *"The January 1 increase contemplated in the August 15 document is at least $631.4 million higher than the amount of revenues recommended by OPC in this case and supported by the experts representing the Citizens. Additionally, FPL's own numbers contained in its original filing, coupled with the return on equity ("ROE") provided for in the August 15 document and a change in the Commission's rules on the interest to be paid on customer deposits, clearly show that the $378 million increase provided for in the August 15 document is above a reasonable level."*

(TR 6033-34: 18-24, 1-2).

Witness Deaton:

Deaton conceded that under the proposed settlement, bills for residential customers will increase by $5.75 as of June 2013 (TR 5386: 17-21). Notably, FPL's Typical Residential Customer Bill - Proposed Settlement Agreement for a 1,000-kWh Residential Customer will increase by approximately 13.34% from January 2012 to June 2013. *See,* EXB-TS707, (*FPL, key customer advocacy groups ask PSC to approve proposed rate settlement that would help secure low rates for FPL customers for four years.)* Moreover, Deaton conceded that:

> *"If the rates go up, they have less money left for other things."*

(TR 5388: 15-16). Common sense tells us that if 99.99% of FPL customers' base rates increase, they will have less money to purchase products and services offered by Florida businesses - and that simply is not good for Florida's economy - and therefore not in the Public Interest at large.

Incredibly, Deaton further conceded that there was nothing in [h]er testimony or exhibits that provides an illustration or comparison of what a typical customer's bill might be in 2014 or 2016 (TR 5393: 9-14). However, the settlement contains provisions which clearly allow FPL to raise rates as it desires without proper oversight from the Commission - and perhaps this is what FPL contends is the reliability part of the settlement - the raising of customer rates over the four-year term of the agreement.

Chairman Brise' made inquiries of Deaton about the term and condition of the settlement which increased the late fee from $5 to $6.

Deaton testified that the late fee charges are not cost based (TR 5394: 16-18). Deaton conceded that in review of EXB-RBD-16, that the Commission has not approved a late fee charge greater than $5 for investor-owned utilities (TR 5395 7-14). Deaton conceded that FPL had not quantified the cost to FPL when a customer is late in making a bill payment - that it is a rate designed to incent proper payment behavior. (TR 5399: 15-17). Deaton further conceded that FPL did not perform any behavioral studies that would show that a $1 increase in late fees would result in timely bill payments by FPL customers (TR 5403: 20-23). Deaton did not know what percentage of FPL's customer base or population are chronic late fee payers (TR 5040: 13-18).

Deaton conceded that the settlement would change the way costs were allocated among the classes and result in a lower increase to FPL's industrial and commercial customers (TR 5398: 5-8).

CONCLUSION

The record evidence and testimony clearly demonstrate that none of the five issues raised in this matter are fair, just, and reasonable and therefore not in the Public Interest as a matter of law. Indeed, the Commission can arrive at this legal conclusion by simply considering whether or not FPL actually needs any increase in base rates - and whether FPL's existing base rates should be lowered by $253-million dollars.

Common sense (and the record in this docket) tells us that if the Commission were to Order FPL to lower its base rates - millions of customers would have more disposable income to spend on products and services offered by Florida businesses - and that would greatly benefit Florida's economy - which would cause small businesses to hire more folks - which would further stimulate Florida's economy. This is the very same rational relied upon by the U.S. Federal Reserve in lowering interest rates to near zero. If the Commission were to approve the FPL proposed settlement - it would act as a tax on millions of customers -

and cause further recession in Florida's already fragile economy. Moreover, the proposed settlement serves no purpose other than to lower rates for approximately less than .01% of FPL's customers who are industrial and commercial interruptable customers - while shifting certain and specific costs onto the residential and retail customers who make up approximately 99.99% of FPL's customer base. Clearly, that is not fair, just, and reasonable - and therefore <u>not in the Public Interest</u>.

Moreover, and perhaps most importantly, FPL is a financially strong and healthy company which saw fit to compensate its executives - such as Lewis Hay the 2011 CEO in the sum total amount of $14,823,375 over the protests of its shareholders. Notably, FPL recently and historically has reported exceptionally healthy earnings quarter-over-quarter.

January 27, 2012 11:57 AM

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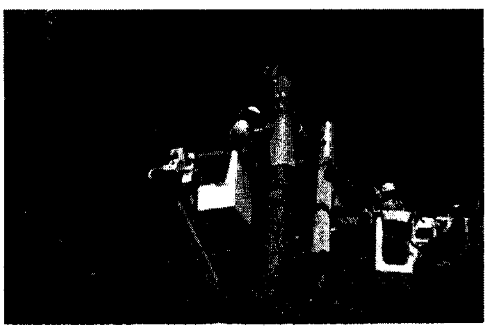

Source: CBS4

TALLAHASSEE (CBS4)- Florida Power & Light's 4th quarter net income and for all of 2011, as compared to the previous year, according to a report issued Friday

The state's largest electric utility had net income of $216 million, or 51 cents a share, during the fourth quarter of 2011, compared to $181 million, or 43 cents a share, in 2010, the News Service of Florida reported

FPL had net income of $1.07 billion, or $2.55 a share, for all of 2011, compared to $945 million, or $2.29 a share, in 2010.

The FPL results were part of a broader report issued by its parent company, NextEra Energy, Inc. For the full year, NextEra reported net income of $1.92 billion, or $4.59 a share, down slightly from $1.96 billion, or $4.74 a share, in 2010.

But on an adjusted accounting basis, NextEra's full-year earnings went up slightly, from $1.78 billion in 2010 to $1.84 billion in 2011.

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Endeavour's Final Launch

Source: http://miami.cbslocal.com/2012/01/27/report-fpl-earnings-up-for-4q-year/

Proof positive of FPL's financial strength is its ability to pay dividends on a regular bases.

Dividend Information

Pending Common Stock Dividend*

Declaration Date	Ex-Dividend Date	Record Date	Payable Date	Amount	Type
10/12/12	11/28/12	11/30/12	12/17/12	$0.60	Regular Cash

*Declaration of dividends and dates shown are subject to the discretion of the board of directors of NextEra Energy. Dates shown are based on the assumption that past patterns will prevail.

Historical Dividend Information

Declaration Date	Ex-Dividend Date	Record Date	Payable Date	Amount	Type
10/12/12	11/28/12	11/30/12	12/17/12	$0.6000	Regular Cash
07/27/12	08/29/12	08/31/12	09/17/12	$0.6000	Regular Cash
05/25/12	05/31/12	06/04/12	06/15/12	$0.6000	Regular Cash
02/17/12	02/29/12	03/02/12	03/15/12	$0.6000	Regular Cash
10/14/11	11/22/11	11/25/11	12/15/11	$0.5500	Regular Cash
07/29/11	08/24/11	08/26/11	09/15/11	$0.5500	Regular Cash
05/20/11	06/01/11	06/03/11	06/15/11	$0.5500	Regular Cash
02/18/11	03/02/11	03/04/11	03/15/11	$0.5500	Regular Cash
10/15/10	11/23/10	11/26/10	12/15/10	$0.5000	Regular Cash
07/30/10	08/25/10	08/27/10	09/15/10	$0.5000	Regular Cash
05/21/10	06/02/10	06/04/10	06/15/10	$0.5000	Regular Cash
02/12/10	02/24/10	02/26/10	03/15/10	$0.5000	Regular Cash
10/16/09	11/24/09	11/27/09	12/15/09	$0.4725	Regular Cash
07/24/09	08/26/09	08/28/09	09/15/09	$0.4725	Regular Cash
05/22/09	06/03/09	06/05/09	06/15/09	$0.4725	Regular Cash
02/13/09	02/25/09	02/27/09	03/16/09	$0.4725	Regular Cash
10/17/08	11/26/08	11/28/08	12/15/08	$0.4450	Regular Cash
07/25/08	08/27/08	08/29/08	09/15/08	$0.4450	Regular Cash
05/23/08	06/04/08	06/06/08	06/16/08	$0.4450	Regular Cash
02/15/08	02/27/08	02/29/08	03/17/08	$0.4450	Regular Cash
10/19/07	11/28/07	11/30/07	12/17/07	$0.4100	Regular Cash
08/29/07	08/31/07	08/03/07	09/17/07	$0.4100	Regular Cash
05/25/07	06/06/07	06/08/07	06/15/07	$0.4100	Regular Cash
02/16/07	02/28/07	03/02/07	03/15/07	$0.4100	Regular Cash
10/13/06	11/21/06	11/24/06	12/15/06	$0.3750	Regular Cash
08/04/06	08/23/06	08/25/06	09/15/06	$0.3750	Regular Cash
05/26/06	06/07/06	06/09/06	06/15/06	$0.3750	Regular Cash
02/17/06	03/03/06	03/07/06	03/15/06	$0.3750	Regular Cash
10/14/05	11/23/05	11/25/05	12/15/05	$0.3550	Regular Cash
07/29/05	08/24/05	08/26/05	09/15/05	$0.3550	Regular Cash
05/20/05	06/01/05	06/03/05	06/15/05	$0.3550	Regular Cash
02/18/05	03/02/05	03/04/05	03/15/05	$0.3550	Regular Cash

Source: http://www.investor.nexteraenergy.com/phoenix.zhtml?c=88486&p=irol-dividends

In the proposed settlement, FPL requests that the Commission force customers to pay for the Cape Canaveral Plant, and two additional power plants through a GBRA mechanism absent any concurrent regulatory consideration of FPL's current rate structure which could absorb all of the costs of these projects without any increase in base rates - and absent any regulatory consideration of FPL concurrent quarterly 17% growth in profits. The base rate increases which comprise the FPL proposed settlement are overreaching and devoid of the standards of fairness and reasonableness - which compel deliberate and decisive action by the Commission to reduce FPL's base rates in these dire economic times to foster a business climate which promotes job growth, consumer spending, and economic recovery for the state of Florida - which will benefit everyone at large in the Public Interest. The role of the Commission is to act as an advocate on behalf of Florida's consumers who depend on and who trust the Commission to act in a manner which provides consumers needed services that they are able to afford. As Chairman Brise' has been quoted: *"...Our responsibility as economic regulators is to make sure at the end of the day everything is measured in such a way that when our consumers are impacted, it makes sense financially for them and it's all in the general interest."* **The Florida Current (Aug.2, 2012).** If the Commission were to approve FPL's proposed settlement - it would certainly and profoundly and irreparably undermine public trust and confidence in the Commission.

FOR ALL THE ABOVE-STATED REASONS, the record evidence and testimony amply shows that the entirety of FPL's proposed settlement is not fair, just, and reasonable and therefore not in the Public Interest. Thus, the Commission should reject and otherwise disapprove FPL's proposed settlement as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 120015-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served electronically via email/link on this 30th day of November 2012 to the following:

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