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Subject: Electronic Filing - Docket 120015-EI

Attachments: 120015.FRF.Post-HearingStmt.11-30-12.pdf

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b. 120015-EI
In Re: Petition for Increase in Rates by Florida Power & Light Company.

c. Document being filed on behalf of the Florida Retail Federation.

d. There are a total of 18 pages.

e. The document attached for electronic filing is The Florida Retail Federation's Post-Hearing Statement of Issues and Positions and Notice of Concurrence in Brief of the Citizens of the State of Florida).
(see attached file: 120015.FRF.Post-HearingStmt.11-30-12.pdf)

Thank you for your attention and assistance in this matter.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Increase in Rates By Florida Power & Light Company.	DOCKET NO. 120015-EI FILED: NOVEMBER 30, 2012

THE FLORIDA RETAIL FEDERATION'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND NOTICE OF CONCURRENCE IN BRIEF OF THE CITIZENS OF THE STATE OF FLORIDA

The Florida Retail Federation (the "FRF" or "Federation"),[1] pursuant to the Prehearing Orders for this docket, Order No. PSC-12-0617-PHO-EI and Order No. PSC-12-0617A-PHO-EI, hereby submits the Federation's Post-hearing Statement and Notice of Concurrence with the Brief of the Citizens of the State of Florida. To conserve time and resources, and for the sake of brevity, with respect to most issues, the FRF will simply note its concurrence in the analysis and conclusions of the Citizens; as will be readily apparent, in a limited number of instances, the FRF provides additional discussion and analysis of the issues.

SUMMARY

The Commission should reject the Purported Settlement because it is substantively contrary to the public interest. In simple terms, the Purported Settlement is contrary to the public

[1] In this Post-hearing Statement and Brief/Notice of Concurrence, the following additional abbreviations are used: the Citizens of the State of Florida, represented by the Office of Public Counsel, are referred to as "Citizens" or "OPC"; the South Florida Hospital and Healthcare Association is referred to as "SFHHA"; the Florida Industrial Power Users Group is referred to as "FIPUG"; and the Federal Executive Agencies are referred to as "FEA." "FPL" and "Company" refer to Florida Power & Light Company. The document filed in this proceeding on August 15, 2012 and titled "Joint Motion for Approval of Settlement Agreement" is referred to as "the August 15 Document" or the "Purported Settlement." The term "Signatories" refers to FPL, SFHHA, FIPUG, and FEA together, in that they are the parties to the Purported Settlement. "Commission" refers to the Florida Public Service Commission. Citations to the hearing transcript are in the form "TR (page number)," with the name of the witness preceding the TR cite where appropriate. Citations to hearing exhibits are in the form "EXH (Exhibit number) (page number)."

interest because it will result in rates that are unnecessarily high, rates that would drain funds away from Floridians' disposable incomes to enrich FPL's shareholders, wherever they are, by charging more for FPL's service than is consistent with its duty to provide safe and reliable service at the lowest possible cost. Moreover, the Purported Settlement is fatally defective and unlawful in several ways. Perhaps most significantly, the Purported Settlement is unlawful, and for the Commission to approve it would be error, in that the Purported Settlement lacks the consent of the statutory representative of all of FPL's customers. The Signatories all together represent no more than a few hundred customer accounts out of FPL's 4.6 million customer accounts, all of whom are represented by the Office of Public Counsel. The Purported Settlement is further defective in that it would approve future base rate increases without compliance with applicable Commission rules.

A base rate increase of $378 million per year, to be effective in January 2013, is contrary to the public interest in that it would provide revenues far in excess of what FPL needs to fulfill its duty of providing safe and reliable service at the lowest possible cost. As demonstrated by competent, substantial evidence of record in this docket, FPL can fulfill that duty with rates that are lower than its current rates by approximately $253 million per year. Moreover, the rate of return on common equity that the Purported Settlement would provide is overreaching and unnecessary to enable FPL to attract sufficient capital to support its investments. This point is supported by the sworn testimony not only of the Citizens' witnesses, who support – by competent, substantial evidence – an after-tax ROE of 9.00%, with a capital structure including 50.0% equity from investors funds, Woolridge, TR 2304; O'Donnell, TR 2436-37, EXH 235, **but also** by the SFHHA's witness Richard Baudino, who supports an after-tax ROE of 9.0%, Baudino, TR 2992, and the FEA's witness Michael Gorman, who supports an after-tax ROE of

9.25%. Gorman, TR 3281. The public interest requires that FPL provide safe and reliable service at the lowest possible cost, and both the base rate increase and the increase in ROE provided for by the Purported Settlement are directly contrary to the public interest. Accordingly, the Commission should reject the Purported Settlement.

The proposed Generation Base Rate Adjustments ("GBRAs") are also contrary to the public interest, as determined by the Commission in FPL's last rate case. Moreover, it is clear that GBRAs are, per se, increases in base rates. They are therefore subject to the Commission's rules requiring test year notification and minimum filing requirements, but FPL has failed to comply with any of these rules with respect to these proposed future base rate increases. Accordingly, in addition to the substantive violations of the public interest – imposing rate increases without any proof that they are needed – that would be visited on all of FPL's customers by the GBRAs, it would be error for the Commission to approve the GBRAs because the Purported Settlement fails to comply with the Commission's rules. The Commission should reject the Purported Settlement.

Allowing FPL to use up $200 million of its Fossil Dismantlement Reserve, where FPL recognizes that it needs to continue accruing to this reserve, as reflected in its filed case, is contrary to the public interest because it will shift costs improperly – effectively robbing "Peter" – future FPL customers, who will have to make up future deficits – to pay "Paul" – FPL's current shareholders. Accordingly, the Commission should reject the Purported Settlement.

The proposal in the Purported Settlement to excuse FPL from complying with the Commission's rules requiring the timely filing of dismantlement and depreciation studies would frustrate the fundamental regulatory goal of matching depreciation and dismantlement accruals to the time periods in which those costs are incurred, and could also allow FPL to maintain

higher rates than are justified, if, for example (as in Docket No. 080677-EI), a large depreciation or dismantlement surplus were to exist that should be amortized. This proposal is contrary to the public interest, and the Commission should reject it along with the rest of the Purported Settlement.

It is contrary to the public interest, as well as the Legislature's intent in establishing the Office of Public Counsel as the representative of all customers, to allow a partial group of the parties to a docket – FPL and the other 3 Signatories in this instance – to force a settlement on all of a utility's (FPL's) customers. The Purported Settlement proffered in this instance is particularly egregious in that it not only excludes the Citizens of Florida but is actually opposed by a majority of the parties remaining in the case, and further in that the minority Signatories (SFHHA, FIPUG, and FEA) together represent at most a tiny fraction of FPL's customer accounts. Accordingly, the Commission should reject the Purported Settlement and proceed to vote on the remaining issues (i.e., those that have neither been dropped nor stipulated) as set forth in the Prehearing Order, leaving FPL and the other Signatories to pursue lawful means of seeking whatever additional relief they may believe appropriate.

THE FLORIDA RETAIL FEDERATION'S POSTHEARING STATEMENT 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?

FRF: *No. The proposed increases for the Riviera and Port Everglades Projects are contrary to the public interest for the same reasons that the Commission rejected FPL's GBRA proposal in Order No. 10-0153-FOF-EI – they would provide automatic future increases with no proof that FPL needs any revenue increases at all in order to provide safe and reliable service at the lowest possible cost. Moreover, these proposed increases are unlawful in that they are future base rate increases that FPL has proposed without complying with the Commission's test year notification and minimum filing requirements rules applicable to such increases. As stated in its post-hearing statement filed in this docket on

September 21, the FRF supports a base rate step increase for the Canaveral Project of $121.5 million per year, when the plant comes into service, based on the MFRs and other evidence of record.*

Discussion

The FRF concurs with the analysis of the Citizens regarding the future GBRA adjustments. The FRF notes particularly that the Commission considered this concept, for general future application that is fundamentally identical to the current proposal – GBRAs for 3 plants over 4 years – in the previous FPL rate case, Docket No. 080677-EI, Order No. PSC-10-0153-FOF-EI. In that order, the Commission recognized the fact, also demonstrated by the record evidence in this docket, that FPL has added several power plants (in fact, more than 8,000 MW of capacity, EXHs 486, 492, 493) with no base rate increases, stating:

> The record indicates that FPL built several generating units since 1985 without seeking a rate increase. 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. FPL witness Barrett testified 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.

Order No. PSC-10-0153-FOF-EI at 14.

The Commission also correctly addressed – and properly rejected – FPL's argument that GBRAs can avoid the need for future rate cases, stating:

> Another of FPL's arguments for the GBRA mechanism was that it has the potential to avoid the need for a rate case. It 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.

Order No. PSC-10-0153-FOF-EI at 15. Thus, the Commission recognized the fallacy in FPL's current argument (i.e., that cost scrutiny in need determinations is sufficient to ensure that future rate impacts are acceptable): rate cases address the question whether a utility needs a rate

increase in order to provide safe and reliable service at fair, just, and reasonable rates, whereas a need determination simply addresses whether the projected costs of a proposed power plant are cost-effective when compared to other alternatives.

It is particularly noteworthy that, in FPL's last rate case, the Commission observed that FPL's Witness Kim Ousdahl agreed with the statement that:

> "One of the benefits of a base rate proceeding from a consumer's perspective is that a base rate proceeding would examine a utility's entire cost of service to determine whether reductions in rate base may offset capital additions." Witness Ousdahl also agreed that as part of a base rate proceeding we have the opportunity to examine whether a utility's accumulated depreciation or increases in a utility's billing determinants would result in a decrease in its rate base.

Id. at 15-16. The Commission also observed in its Order that:

> ***One criticism that SFHHA witness Kollen had of the GBRA mechanism is that "it provides the Company an almost unfettered ability to automatically impose base rate increases to recover selective increases in certain costs without consideration of increases in revenues and reductions in all other costs."***

Id. (Emphasis supplied.)

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?

FRF: *No. Allowing FPL to "use up" this reserve fund to enhance its earnings is contrary to the public interest, particularly where FPL's own case-in-chief represents that it needs to continue accruing some $18 million per year to this fund. Approving this measure would simply rob a figurative "Peter" – future FPL customers – to pay the current "Paul" – FPL's shareholders.*

Discussion

The FRF concurs with the analysis and conclusions of the Office of Public Counsel, representing the Citizens of the State of Florida, on this issue. The proposal in the Purported Settlement to use up fossil dismantlement reserve funds, which FPL recognizes are needed

because it wishes to continue accruing monies into that fund, is contrary to the public interest, and the Commission should reject it along with the rest of the Purported Settlement.

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?

FRF: *No. The proposal in the Purported Settlement to excuse FPL from complying with the Commission's rules requiring the timely filing of dismantlement and depreciation studies would frustrate the fundamental regulatory goal of matching depreciation and dismantlement accruals to the time periods in which those costs are incurred, and could also allow FPL to maintain higher rates than are justified, if, for example (as in Docket No. 080677-EI), a large depreciation or dismantlement surplus were to exist that should be amortized to offset current rates and better serve the "matching principle." This proposal is contrary to the public interest, and the Commission should reject it along with the rest of the Purported Settlement.*

Discussion

The FRF concurs with the analysis and conclusions of the Office of Public Counsel, representing the Citizens of the State of Florida, on this issue. The proposal in the Purported Settlement to excuse FPL from complying with the Commission's rules requiring the timely filing of dismantlement and depreciation studies would frustrate the fundamental regulatory goal of matching depreciation and dismantlement accruals to the time periods in which those costs are incurred, and could also allow FPL to maintain higher rates than are justified, if, for example (as in Docket No. 080677-EI), a large depreciation or dismantlement surplus were to exist that should be amortized. Moreover, postponement of these rule-required studies would enable FPL to avoid having to reflect lower depreciation expense in a test year, which would also allow FPL to maintain higher rates than are justified by underlying depreciation and dismantlement costs. From the perspective of the public interest, this is particularly significant because the Purported Settlement would facilitate these improper results by preventing the Commission or any other

party from fully evaluating FPL's depreciation and dismantlement costs as required by the Commission's rules. This proposal is contrary to the public interest, and the Commission should reject it along with the rest of the Purported Settlement.

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?

FRF: *No. This proposal is contrary to the public interest because it would provide additional compensation to FPL for simply fulfilling its basic duty of providing safe and reliable service at the lowest possible cost. FPL's shareholders do not need to be, and do not deserve to be, paid extra for doing what the Company is supposed to be doing anyway, particularly where the Company operates in a highly protected, low-risk regulatory environment.*

Discussion

The FRF concurs with the analysis and conclusions of the Office of Public Counsel, representing the Citizens of the State of Florida, on this issue. This proposal is contrary to the public interest, and the Commission should reject it along with the rest of the Purported Settlement.

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

FRF: *No. The Purported Settlement is contrary to the public interest because it will result in FPL collecting more money from its customers than FPL needs to fulfill its duty of providing safe and reliable service at the lowest possible cost. The resulting rates would be excessive – i.e., unfair, unjust, and unreasonable – and would drain money out of Floridians' wallets and checkbooks, thereby reducing economic activity in the state. As discussed elsewhere, the provisions that would approve GBRAs, allow FPL to use up a needed fossil dismantlement reserve, excuse FPL from complying with the Commission's rules for dismantlement and depreciation studies, and allow FPL to keep additional funds from "asset optimization" activities that FPL should be doing anyway, are also contrary to the public interest. Finally, that the Purported Settlement is contrary to the public interest is emphasized by the fact that the statutory representative of all FPL customers, the Office of Public Counsel, opposes the settlement.*

Discussion

The Commission should reject the Purported Settlement because it is contrary to the public interest in almost every way imaginable. It would implement an immediate base rate increase – of $378 million per year – that is excessive relative to (a) the amount of revenues that FPL needs to fulfill its duty of providing safe and reliable service at the lowest possible cost and (b) the percentages of requested increases that the Commission has historically awarded FPL – other than pre-approved step increases, including GBRA increases under the 2005 settlement, only one increase greater than 50 percent of FPL's request. EXH 486. It would also impose the burden on FPL's customers of paying an excessive rate of return on common equity ("ROE"), 10.7 percent, with impacts on customers compounded by the continued use of an excessive equity ratio. The ROE that the Purported Settlement would provide is overreaching and unnecessary to enable FPL to attract sufficient capital to support its investments. This point is supported by the sworn testimony not only of the Citizens' witnesses, who support – by competent, substantial evidence – an after-tax ROE of 9.00%, with a capital structure including 50.0% equity from investors funds, Woolridge, TR 2304; O'Donnell, TR 2436-37, EXH 235, **but also** by the sworn testimony of two of the minority-consumer Signatories, the SFHHA's witness Richard Baudino, who supports an after-tax ROE of 9.0%, Baudino, TR 2992, and the FEA's witness Michael Gorman, who supports an after-tax ROE of 9.25%. Gorman, TR 3281. Combining these and other factors will result in FPL maintaining excessive earnings at the expense of Florida's individual citizens and businesses, draining money out of Floridians' wallets and checkbooks to excessively enrich FPL's shareholders while diminishing economic activity because Floridians will have less disposable income to spend in their communities.

The Purported Settlement is unlawful because it is opposed by the Office of Public Counsel, as the statutory representative of the Citizens of the State of Florida, i.e., all of FPL's

customers. Moreover, the fact that the Purported Settlement is contrary to the public interest is powerfully supported by the substantive facts that the Purported Settlement is opposed not only by the Public Counsel, but by a majority of the parties representing consumer interests – OPC, the FRF, the Village of Pinecrest, Thomas Saporito, and John Hendricks – in this case.

With regard to the suggestion that the Office of Public Counsel and the FRF refused to participate in settlement negotiations, whether such suggestion is made by innuendo (see, e.g., Dewhurst, TR 6277, referring to "those who chose to sit down to the table") or otherwise, the extensive record embodied in the Commission's orders proves that such a suggestion is absurd. Consider the following:

The Commission's orders demonstrate that, over the past 26 years, the Office of Public Counsel has been a signatory to at least 16 stipulations and settlement agreements with Florida electric investor-owned utilities, as well as at least one with a public utility that provides natural gas service. Most of these settlement agreements have involved general base rate proceedings, identified in Hearing Exhibit 486. These general base rate stipulations and settlement agreements in which the Public Counsel participated include the following:

> In re: Petition for Limited Proceeding to Approve Stipulation and Settlement Agreement by Progress Energy Florida, Inc., Docket No. 120022-EI, Order No. PSC-12-0104-FOF-EI, Final Order Approving Stipulation and Settlement Agreement at 1 (March 8, 2012) (comprehensive settlement approving a base rate increase for Progress in 2013, and resolving outstanding issues in Docket No. 100437-EI, In re: Examination of the Outage and Replacement Fuel/Power Costs Associated with the CR3 Steam Generator Replacement Project, by Project Energy Florida, Inc., and also in Docket No. 120009-EI, In re: Nuclear Cost Recovery Clause);
>
> In re: Petition of Florida Power & Light Company for an Increase in its Rates and Charges, Docket No. 080677-EI and Docket No. 090130-EI, Order No. PSC-11-0089-S-EI, Order Approving Proposed Stipulation and Settlement, Denying Motion for Reconsideration, and Denying Petition for a Base Rate Proceedings at 1 (February 1, 2011) (resolving issues pending after the Commission's decision in FPL's 2009 general rate case, including, among other things, providing for

specific treatment of FPL's accumulated depreciation surplus to "give[] FPL flexibility in the amount of reserve surplus amortization it would record in each year of the 3-year settlement period," id. at 6, and providing for an additional base rate increase associated with FPL's West County Unit 3 electrical power plant, id. at 5) [also EXH 491];

In re: Review of the Continuing Need and Costs Associated with Tampa Electric Company's 5 Combustion Turbines and Big Bend Rail Facility, Docket No. 090368-EI, Order No. PSC-10-0572-FOF-EI, Final Order Approving the Joint Motion for Approval of Stipulation and Settlement Agreement at 1 (September 16, 2010) ("complete resolution of all matters pending in this docket and in the pending appeal" of the prior rate case order in Docket No. 080317-EI, id. at 2);

In re: Petition for Rate Increase by Progress Energy Florida, Docket No. 050078-EI, Order No. PSC-05-0945-S-EI, Order Approving Stipulation and Settlement at 1 (September 28, 2005) (comprehensive settlement on terms that included a base rate freeze for 3 years, id. at 2, revenue-sharing, id., and base rate recovery of the full revenue requirements of Hines Unit 4 on its commercial in-service date, id. at 3);

In re: Petition for Rate Increase by Florida Power & Light Company, Docket No. 050045-EI, and In re: 2005 Comprehensive Depreciation Study by Florida Power & Light Company, Docket No. 050188-EI, Order No. 05-0902-S-EI, Order Approving Stipulation and Settlement at 1 (September 14, 2005) [EXH 490] (stipulation embodying a base rate freeze for 4 years, including specific provisions for Generation Base Rate Adjustments to allow for the inclusion of the costs of future power plants in FPL's base rates, id. at 19);

In re: Review of Florida Power Corporation's Earnings, Including Effects of Proposed Acquisition of Florida Power Corporation by Carolina Power & Light, Docket No. 000824-EI, and In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor, Docket No. 020001-EI, Order No. 02-0655-AS-EI, Order Approving Settlement, Authorizing Midcourse Correction, and Requiring Rate Reduction at 2 (May 14, 2002) ("complete resolution of all matters" on terms that included a base rate reduction of $125,000,000, id. at 2, recovery of depreciation expense and return on capital for Hines Unit 2, id. at 3, discretionary ability for FPC to accelerate amortization of specified regulatory assets, id., and a revenue-sharing plan, id.);

In re: Review of the Retail Rates of Florida Power & Light Company, Docket No. 001148-EI, and In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor, Docket No. 020001-EI, Order No. 02-0501-AS-EI, Order Approving Settlement, Authorizing Midcourse Correction, and Requiring Rate Reductions at 9 (April 11, 2002) [EXH 489];

In re: Investigation into the Earnings and Authorized Return on Equity of Gulf Power Company, Docket No. 990250-EI, and In re: Petition for a Full Revenue Requirements Rate Case for Gulf Power Company by the Citizens of the State of Florida, Docket No. 990947-EI, Order No. PSC-99-2131-S-EI, Order Approving Stipulation, Withdrawing PAA Order, and Closing Dockets at 1 (October 28, 1999) (settling general rate proceedings on terms that included a base rate reduction of $10 million per year, id. at 2, and revenue-sharing based on defined thresholds, id.).;

In re: Petition by the Citizens of the State of Florida for a Full Revenue Requirements Rate Case for Florida Power & Light Company, Docket No. 990067-EI, Order No. 99-0519-AS-EI, Order Approving Stipulation and Settlement at 1 (March 17, 1999) [EXH 488] (resolving a general rate case initiated by OPC with settlement terms that included a $350 million annual base rate reduction, id. at 1, 6, provision for FPL to amortize depreciation reserve amounts, id. at 5, and provision for revenue-sharing between FPL and customers subject to FPL's revenues achieving defined thresholds, id. at 7-8);

In re: Prudence Review to Determine the Regulatory Treatment of Tampa Electric Company's Polk Unit, Docket No. 960409-EI, Order No. 96-1300, Order Approving Stipulation at 1 (settlement including base rate freeze, $25 million refund, and other provisions);

In re: Investigation into Earnings for 1995 and 1996 of Tampa Electric Company, Docket No. 950379-EI, Order No. 96-0670-S-EI, Order Approving Stipulation at 1 (May 20, 1996) (stipulation to resolve overearnings issues that included a base rate freeze, refund of $25 million, and potential additional refunds if earnings exceed the maximum of the Company's ROE range, id. at 3); and, in the same docket, Order No. 00-1441-AS-EI, Order Approving Settlement Agreement at 1 (August 8, 2000) (additional refund of $13 million and dismissal of appeals, id. at 5);

In re: Request by Occidental Chemical Corporation for Reduction of Retail Electric Service Rates Charged by Florida Power Corporation, Docket No. 870220-EI, Order No. 18627, Order Approving Joint Motion for Approval of Settlement at 1 (January 4, 1988) (stipulated base rate reduction of $121,500,000 plus a one-time credit of $18.5 million to reflect a flowthrough of excess deferred income taxes); and

In re: Petition of Citizens of State of Florida for a Limited Proceeding to Reduce Rates and Charges of Florida Power Corporation to Reflect Reduction in Authorized Return on Equity to 12.5%, Docket No. 860196-EI, Order No. 16862, Final Order at 1(November 19, 1986), and Order No. 16862-A, Amendatory Order (November 25, 1986) (stipulated refund of $54,000,000).

In addition to these general base rate proceedings, the Commission's orders show that the Public Counsel has also executed two settlements of storm cost recovery issues. In re: Petition for Issuance of Storm Recovery Financing Order Pursuant to Section 366.8260, F.S. (2005), by Gulf Power Company, Docket No. 060154-EI, Order No. 06-0601-S-EI, Order Approving Stipulation and Settlement Agreement and Closing Docket at 1 (July 10, 2006) (resolving all issues in Gulf Power's 2006 storm cost recovery docket); and In re: Petition for Approval of Stipulation and Settlement for Special Accounting Treatment and Recovery of Costs Associated with Hurricane Ivan's Impact on Gulf Power Company, Docket No. 050093-EI, Order No. PSC-05-0250-PAA-EI, Notice of Proposed Agency Action Order Approving Stipulation and Settlement at 1 (March 4, 2005) (resolving all issues in Gulf Power's 2005 storm cost recovery docket).

Further, the Public Counsel's Office has also participated in at least one settlement in which a public utility providing natural gas service was allowed to implement a base rate increase pursuant to such settlement. In re: Petition for Rate Increase by Peoples Gas System, Docket No. 020384-GU, Order No. PSC-03-0038-FOF-GU, Order Granting Rate Increase for Peoples Gas System (January 6, 2003) ("This Order memorializes the approved stipulations and final rates for Peoples. Parties to the proceeding are the Office of Public Counsel (OPC), the Florida Industrial Gas Users (FIGU), and Auburndale Power Partners (Auburndale)." Id. at 2.)

And, finally, a simple WestLaw search of the Commission's orders for the terms "OPC" or "public counsel" on the same page as the word "settlement" yielded 470 returns. See, e.g., In re: Application for Increase in Water and Wastewater Rates in Volusia County by Plantation Bay Utility Company, Docket No. 050281-WS, Order No. PSC-06-0665-S-WS, Order Approving Stipulation and Settlement and Closing Docket (August 7, 2006); In re: Petition for Rate Increase

by Florida Public Utilities Company, Docket No. 080366-GU, Order No. 09-0848-S-GU, Final Order Approving Stipulation and Settlement (December 28, 2009). (The FRF is not asserting that this large number of returns indicates that there were another 400-plus settlements in which the OPC participated, but cites this information from the Commission's orders as additional evidence that the Public Counsel has participated in numerous settlements over the years, further debunking the notion that the Public Counsel refused to negotiate toward a reasonable settlement in this case.)

These orders demonstrate the Public Counsel's extensive history of participating actively and constructively toward successful stipulations and settlement agreements in utility rate cases and other proceedings affecting utility rates. In fact, there is no evidence in the record that either the OPC or the FRF has ever, when given the opportunity, refused to participate or failed to participate constructively in negotiations toward settling rate cases (see Dewhurst, TR 6311-12, 6314) and related cases affecting utility rates, e.g., the Gulf Power storm cost settlements in 2005 and 2006. It is unreasonable – and false – to argue otherwise.

Although the FRF has only been participating in rate cases before the PSC for the past 10-12 years, over this period, the FRF has an unbroken record of participating actively and constructively toward settling cases with Florida public utilities, including settlements in which the FRF has agreed to base rate increases for both FPL and Progress Energy Florida. Cases in which the FRF has been a signatory to settlements include many of those cited above:

> In re: Petition for Limited Proceeding to Approve Stipulation and Settlement Agreement by Progress Energy Florida, Inc., Docket No. 120022-EI, Order No. PSC-12-0104-FOF-EI, Final Order Approving Stipulation and Settlement Agreement at 1 (March 8, 2012);
>
> In re: Petition of Florida Power & Light Company for an Increase in its Rates and Charges, Docket No. 080677-EI and Docket No. 090130-EI, Order No. PSC-11-0089-S-EI, Order Approving Proposed Stipulation and Settlement, Denying

Motion for Reconsideration, and Denying Petition for a Base Rate Proceedings at 1 (February 1, 2011) [also EXH 491];

In re: Review of the Continuing Need and Costs Associated with Tampa Electric Company's 5 Combustion Turbines and Big Bend Rail Facility, Docket No. 090368-EI, Order No. PSC-10-0572-FOF-EI, Final Order Approving the Joint Motion for Approval of Stipulation and Settlement Agreement at 1 (September 16, 2010);

In re: Petition for Rate Increase by Progress Energy Florida, Docket No. 050078-EI, Order No. PSC-05-0945-S-EI, Order Approving Stipulation and Settlement at (September 28, 2005);

In re: Petition for Rate Increase by Florida Power & Light Company, Docket No. 050045-EI, and In re: 2005 Comprehensive Depreciation Study by Florida Power & Light Company, Docket No. 050188-EI, Order No. 05-0902-S-EI, Order Approving Stipulation and Settlement at 1 (September 14, 2005) [EXH 490];

In re: Review of Florida Power Corporation's Earnings, Including Effects of Proposed Acquisition of Florida Power Corporation by Carolina Power & Light, Docket No. 000824-EI, and In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor, Docket No. 020001-EI, Order No. 02-0655-AS-EI, Order Approving Settlement, Authorizing Midcourse Correction, and Requiring Rate Reduction at 2 (May 14, 2002); and

In re: Review of the Retail Rates of Florida Power & Light Company, Docket No. 001148-EI, and In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor, Docket No. 020001-EI, Order No. 02-0501-AS-EI, Order Approving Settlement, Authorizing Midcourse Correction, and Requiring Rate Reductions at 9 (April 11, 2002) [EXH 489].

The FRF also participated in the settlement of storm cost recovery issues with Gulf Power following the 2005 hurricane season. In re: Petition for Issuance of Storm Recovery Financing Order Pursuant to Section 366.8260, F.S. (2005), by Gulf Power Company, Docket No. 060154-EI, Order No. 06-0601-S-EI, Order Approving Stipulation and Settlement Agreement and Closing Docket (July 10, 2006).

Against this proven record of the FRF's active and constructive participation in settlement negotiations and settlement agreements, FPL attempts to offer the slender reed of a quote from the FRF's president in a newspaper article (EXH 726) some 2 months before FPL

filed its MFRs in this case, and attempts to translate that quote into a unilateral refusal by the FRF to even negotiate. This assertion is false, and is not supported by any evidence in the record. In fact, FPL's Chief Financial Officer, Moray Dewhurst, who was proffered by the Company to answer questions on this subject matter, testified as follows.

1. FPL has, on "multiple occasions . . . been able to successfully work out agreements with FRF and many other parties." TR 6313 These successful agreements included settlements that included FPL and the FRF in 2002, 2005, and 2010. TR 6313
2. He acknowledged that the FRF was a party to the 2012 Progress settlement. TR 6314
3. When asked, Mr. Dewhurst also admitted that he had no knowledge "one way or the other" of any instance where the FRF did not participate actively toward settling a pending case. TR 6314
4. When asked whether he knew whether the FRF "was offered a choice to sit down to the [negotiating] table," he didn't know. TR 6314-15
5. He further confirmed that he was aware of meetings involving FPL and OPC in March, but when asked whether the FRF had been invited, he said, "I don't know, but I don't believe so." TR 6315
6. When asked whether he knew if the FRF was involved in meetings in the July 2012 timeframe, he said that his recollection was "very unclear" but that it was his understanding that there were one or two meetings "around that time" with OPC, that FRF may have attended, but he did not know who, if anyone, from the FRF actually attended those meetings. TR 6315-16
7. Finally, he acknowledged that he didn't have any knowledge as to whether the FRF was offered the opportunity to negotiate toward a settlement while such agreement was being

formulated or whether the FRF was only offered the opportunity to sign onto an already executed agreement. TR 6316

So, if FPL wants to suggest that its slender reed – a statement in a press interview two months before FPL even filed its MFRs in this docket (EXH 726) somehow negates the FRF's longstanding history of participating constructively in actual settlement negotiations, it is free to make the argument, but the FRF's record of active participation in settlements stands on its own merits, and there is no evidence in the record of this case to indicate that the FRF was invited to participate in settlement talks before an agreement between FPL and one or more of the Signatories was executed, and no evidence that the FRF refused to participate constructively in any such talks.

CONCLUSION

WHEREFORE, based on the foregoing, the Commission should reject the Purported Settlement and decide this case by voting on the merits of each of the issues in the Prehearing Order that have not been dropped or stipulated.

Respectfully submitted this 30th day of November, 2012.

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CERTIFICATE OF SERVICE

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