November 10, 2016

Via electronic filing and email

Carlotta Stauffer
Director, Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket Nos. 160021-EI, 160061-EI, 160062-EI, and 160088-EI

Dear Ms. Stauffer:

Sierra Club hereby files with the Florida Public Service Commission its Post-Hearing Brief and Statement of Issue and Position in the above-referenced, consolidated dockets pursuant to Order No. PSC-16-0456-PCO-EI. Should you have any questions regarding this filing, please contact me.

Sincerely,

/s/ Diana A. Csank

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Qualified Representative for Sierra Club

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company	Docket No. 160021-EI
In re: Petition for approval of 2016-2018 Storm hardening plan by Florida Power & Light Company	Docket No. 160061-EI
In re: 2016 depreciation and dismantlement study by Florida Power & Light Company	Docket No. 160062-EI
In re: Petition for limited proceeding to modify and continue incentive mechanism by Florida Power & Light Company	Docket No. 160088-EI Filed: November 10, 2016

SIERRA CLUB'S
POST-HEARING BRIEF AND
STATEMENT OF ISSUE AND POSITION

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I. INTRODUCTION

Only prudent utility expenses are eligible for recovery under Florida law. In rate cases, where the Florida Public Service Commission (Commission or PSC) determines the expenses utilities may recover from customers through base rates, utilities have the burden to prove by a preponderance of the evidence that their expenses are prudent. As the Commission has held, and as the Florida Supreme Court has affirmed, this includes proving the utility completed a timely analysis of its options, and then took every reasonably available prudent action—consistent with that analysis—to minimize its cost of service. Options analysis is thus the core of rate cases.

Here, Florida Power & Light Company (FPL) failed to carry its burden of proof: FPL never produced an options analysis on the overhaul of its gas combustion turbines, referred to as "peakers" in this proceeding. Indeed, when asked if such analysis was "documented somewhere," FPL's president testified: "… at Florida Power & Light, I don't know if we have that documentation." Tr. 292 (Silagy). Another company executive explained that "… the analysis was pretty simple to [FPL]"—a simple comparison between the action it had unilaterally taken and doing nothing (a false option). Tr. 1582 (Barrett).

The missing options analysis is stunning because FPL demands more than a billion dollars from customers for capital expenses and profits on new and expanded peakers—the Peaker Expenses. Yet these are not even necessary, as FPL could not point to any environmental requirement, reliability requirement, or other regulatory compliance reason compelling its move to new and expanded peakers. FPL also admitted its previous peakers could operate another nine or more years, and that the peaker technology FPL is adding may

be obsolete in just four years, in 2020, when it is FPL's own judgment that solar and energy storage will outperform peakers. To make matters worse, the peakers further extend FPL's reliance on natural gas imports, which Florida Statutes and Commission precedent have stressed should be avoided.

Nor do settlement proposals change the legal standard for rate cases. The Commission cannot exceed its delegated statutory authority simply because private parties to a settlement agreement deem it mutually beneficial. Here, the Settlement Proposal conflicts with the law because it would grant FPL recovery of the Peaker Expenses, but the Commission is only authorized to approve the recovery of prudent expenses.

The Settlement Proposal also fails the Commission's public interest test because it would grant FPL higher profits than FPL requested, which all the intervenors agreed were already excessive. Moreover, the Signatories never explain, much less substantiate in the record, why customers should pay any expenses associated with new gas-reliant facilities and services in a market where abundant, competitive non-gas options are available to FPL. As FPL voluntarily admitted, in the next four years "large scale deployment" of energy storage and a "large program" of solar are not only possible, together, they can address peak demand, save customers money, and produce other benefits. Tr. 104, 113, 116–17 (Barrett). Yet when asked whether FPL would therefore delay the gas-reliant expenses in the Proposal, FPL's witness testified: "No, I do not know the answer to that." Tr. 93 (Barrett).

On the record here, devoid of support for charging customers unprecedented amounts for new gas-reliant facilities and services, Florida law bars FPL's request and the Settlement Proposal, as this brief further explains.

II. LEGAL STANDARD FOR RATE CASES

The Florida Supreme Court has affirmed that utilities may not recover imprudent expenses from their customers. *Gulf Power Co. v. Florida Pub. Service Com'n*, 453 So.2d 799, 802–803 (Fla. 1984) (approving Commission Order No. 11936, including downward adjustment of requested rates upon finding of excessive expenses due to "imprudent managerial decisions"); *accord* Section 366.06(1), F.S. (expenses recovered through rates "shall be … honestly and prudently invested"—"as determined by the commission").

The Florida Supreme Court has also acknowledged that "statutes and caselaw routinely apply the prudence standard in the PSC context"—"that standard is, … what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made." *Southern Alliance for Clean Energy v. Graham*, 113 So.3d 742, 749–750 (Fla. 2013) (quoting Commission Order No. PSC-11-0547-FOF-EI).

In *Gulf Power*, an appeal of a Commission rate case, the Florida Supreme Court ruled against a utility-appellant that had "failed to prove" that "it had made a timely effort" to analyze its options, and had likewise failed to then "t[ake] every reasonably available prudent action"—consistent with such analysis—to minimize its cost of service. *Gulf Power*, 453 So.2d 799, at 802 (quoting Order No. 11936). Options analyses are key to taking informed, prudent actions, and thus to assessing expenses in rates cases. *See generally* Sierra Club Post-Hearing Brief, at 2–8 (discussing the options analysis requirement in Florida Statutes and caselaw) [hereinafter "September Sierra Club Brief"]. Moreover, given Florida's dangerous over-reliance on natural gas imports, both Florida Statutes and Commission precedent have

stressed the need to identify and pursue options that reduce, rather than extend reliance on, natural gas imports. *See* September Sierra Club Brief, at 6–8. (discussing relevant statutes and Commission precedent).

The "burden of proof in a [C]ommission proceeding is always on a utility seeking a rate change." *Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (1982). The standard of proof is "a preponderance of the evidence." Section 120.57(1)(j), F.S.

Settlement proposals do not change the legal standard for rate cases. Florida recognizes "no principal of law" that "allow[s] any agency"—"to exceed its delegated statutory authority simply because private parties to a settlement agreement deem it mutually beneficial." *Baker Cty. Med. Servs., Inc. v. State*, 178 So. 3d 71, 77 (Fla. Dist. Ct. App. 2015) (construing informal disposition provision in Florida Administrative Procedure Act, Section 120.57(4), F.S.), review denied, No. SC15-2217, 2016 WL 1083235 (Fla. Mar. 18, 2016).

Accordingly, the Commission may approve an agreed settlement by private parties only if the Commission has "determined that the agreement is in the public interest," Order No. PSC-16-0456-PCO-EI at 2; results in rates that are "fair, just, and reasonable;" and the agreement is "supported by competent, substantial evidence." *Citizens of State v. Florida Pub. Serv. Comm'n*, 146 So. 3d 1143, 1150, 1173 (Fla. 2014).

There is no precedent whatsoever for what FPL is requesting here: Commission approval of FPL charging customers expenses exceeding one billion dollars to effect sweeping, unilateral changes to the way the company serves peak demand. *Compare* Order No. PSC-09-0571-FOF-EI (allowing "step increase in rates to generate $33.5 million of additional revenue" to partially cover utility's five new peakers).

III. BACKGROUND AND FACTUAL OVERVIEW

In the 2013 Environmental Cost Recovery Clause (Environmental Clause) proceeding, FPL sought recovery of its $822 million planned expenditures to retire 48 peakers and replace them with 8 new peakers for environmental compliance (FPL's 2013 Plan). Order No. PSC-13-0513-PHO-EI, at 4–5.

Public Counsel and other parties objected to FPL's 2013 Plan on numerous grounds. Part of Public Counsel's objection was that "FPL ha[d] not demonstrated that any [of its] proposed measure[s] to comply with an existing environmental regulation is designed using the lowest cost solution, including, for example, purchase of existing facilities." *Id.* at 5 [emphasis added]. Another party disputed "FPL's assertions that FPL's 'self-build' [peaker] option is the most cost-effective alternative for meeting its needs, and further dispute[d] whether FPL adequately explored all available alternatives, and combinations of alternatives." *Ibid.* [emphasis added]. FPL then filed a notice of withdrawal of its Plan.

On December 21, 2013, the Commission issued an order in the Environmental Clause proceeding acknowledging that: (1) FPL and another party identified alternatives to FPL's 2013 Plan; (2) FPL sought to withdraw the matter before the Commission could complete its fact-finding on the Plan and the alternatives; and (3) FPL notified the Commission of its intent to file an amended proposal, and "work with [Staff] and the parties to propose an appropriate hearing schedule to address the matter." *Id.* at 2.

In the following years, FPL did not file an amended proposal, nor work with Staff and the parties to address the matter. FPL did, however, unilaterally move forward with a peaker replacement program, in FPL's words, "essentially equivalent" to the one it proposed

to the Commission in 2013 and then withdrew—the difference being that FPL had proposed eight new peakers in 2013, and "it's 7 now because they are a little bit bigger." Tr. 1580 (Barrett).

On March 15, 2016, FPL filed a petition for a base rate increase, its depreciation and dismantlement study, and a petition for approval of its 2016–2018 storm hardening plan. On April 15, 2016, FPL filed a petition for a limited proceeding to modify and continue its asset optimization incentive mechanism. On May 4, 2016, the Prehearing Officer granted the Commission Staff's motion to consolidate these dockets.

In this proceeding, FPL is back before the Commission asking customers to fund the peaker replacement program that FPL unilaterally undertook—retiring 44 peakers and adding seven new peakers, approximately $800 million in capital expenses plus profits. FPL Petition at 13, Tr. 813 (Kennedy), Tr. 1501–02 (Barrett). FPL is likewise asking customers to fund a peaker expansion program[1] that it unilaterally undertook—expanding another 26 peakers, approximately $450 million in capital expenses plus profits. FPL Petition at 13, Tr. 812 (Kennedy), Tr. 1568–87 (Barrett). Together, the Peaker Expenses exceed $1.4 billion, and FPL has no pre-approval to recover these sums from customers. Tr. 286 (Silagy).

The hearing held August 22–26, 29–31, and September 1, 2016, encompassed the 165 recognized, disputed issues in this proceeding. One issue (with two sub-parts) refers directly to the Peaker Expenses—to which FPL has admitted it is already fully committed:

> Examiner The peakers, when—if this commission were to decide, no, I am not sure they need all the peakers,the new peakers, maybe they need half of them, and they issued that decision in January,

[1] The expansion program has also been referred to as the ".05" program in this proceeding.

	you wouldn't have replaced all the peakers in January of 2017, correct?
FPL	We would have, yes.
Examiner	They would already be cranking up and new, you would already be done with that?
FPL	Yes, they are scheduled for in-service by the end of this year.

Tr. 1525–26 (Barrett), *see also* Tr. 812 (Kennedy) (peaker expansions are "being installed during FPL's scheduled planned outages from 2015 to 2017.").

At the hearing, FPL could not point to any regulatory compliance reason for moving forward with its peaker programs at this time. FPL admitted there is "no longer an environmental reason to replace those peakers." Tr. 1505 (Barrett). Nor is there a reliability reason, as FPL admitted the peaker replacement program "essentially has no impact" on FPL's reserve margin requirement, Tr. 1581–82 (Barrett),[2] and the expansion program "will result in only [a] *de minimis*" impact on it. FPL Post-Hearing Brief, at 38 (citing Tr. 879–80 (Kennedy)).

FPL also never produced an options analysis for the Peaker Expenses. When Sierra Club asked FPL's president at the hearing whether such analysis, which he contended he himself performed, was "documented somewhere," he testified: "Not that I am aware of." Tr. 291 (Silagy). He explained: "You know, at Florida Power & Light, I don't know if we have that documentation." Tr. 292 (Silagy). Another company executive explained that "… the analysis was pretty simple to [FPL]," Tr. 1582 (Barret), as he tried to defend FPL's

[2] In fact, unlike the peakers FPL unilaterally retired, the new peakers cannot operate in an emergency ("black start capability"), "[t]hey need auxiliary power to get them started." Tr. 1502 (Barrett). The new peakers thus lack a critical reliability function to assure continuous power.

simple comparison of the action it unilaterally took against doing nothing—a false option given that FPL is already fully committed to the Peaker Expenses.

FPL likewise admitted that its previous peakers could have operated another nine or more years. Tr. 4664 (Barrett). Yet FPL never looked at the economics of waiting one year, much less four. Tr. 878 (Kennedy), Tr. 1502 (Barrett). In four years, however, the peaker technology that FPL is adding may be obsolete, as FPL's own judgment is that in 2020 solar and battery storage[3] will outperform peakers. Tr. 1592–93, 1635 (Barrett), Ex. 639.

To make matters worse, FPL's new and expanded peakers further extend its reliance on natural gas imports, which flouts the Florida Statutes and Commission precedent that have stressed that this should be avoided.[4]

On September 19, 2016, the parties[5] filed post-hearing briefs. Sierra Club's brief explained that Florida law, Commission precedent, and the record bar FPL's requested rate increase for the Peaker Expenses.[6] In its defense, FPL offered no more than

[3] "Battery storage" or "batteries" are among the technologies that store energy for later use, referred to collectively as "energy storage." This brief uses these terms interchangeably.

[4] FPL's contention that the new and expanded peakers burn less fuel relative to other peakers is misleading. Peakers can generally operate for decades, Ex. 626 at 96–103 (FPL reporting new peakers can operate 30 years), and rely on natural gas (or oil) imports to do so. Tr. 868–89, 871–72 (Kennedy) (discussing reliance on gas imports). Peakers thus further extend FPL's reliance on gas imports compared to non-gas options, such as solar and batteries.

[5] FPL, Public Counsel, Florida Industrial Power Users Group (FIPUG), Wal-Mart Stores East, LP and Sam's East, Inc. (Walmart), Federal Executive Agencies (FEA), South Florida Hospital and Healthcare Association (SFHHA), American Association of Retired Persons (AARP), Florida Retail Federation (FRF), Daniel R. Larson and Alexandria Larson (Larsons), and Sierra Club.

[6] Two intervenors filed briefs in accord with Sierra Club (Issue nos. 57 and 57A). FIPUG Post-Hearing Brief, at 46–47 ("FIPUG further adopts as its own the arguments and legal authority set forth in the post-hearing brief of the Sierra Club."); FRF Post-Hearing Brief, ("Agree with FIPUG"—and by extension Sierra Club).

unsubstantiated opinions and post-hoc justifications for FPL having committed to those expenses already, all at once. *See* FPL Brief, at 36–38. FPL, for instance, asserted that the Peaker Expenses cost less than an option FPL identified in 2013. *Id.*, at 37. FPL's reliance on this assertion about an option in another proceeding—an option that FPL unilaterally withdrew and the Commission never issued a conclusion on—demonstrates that the record here is devoid of support for the Peaker Expenses.

On October 6, 2016, FPL and three intervening parties[7] (Signatories) filed a Joint Motion for Approval of Settlement Agreement (Settlement Proposal). The Signatories moved the Commission to approve the Settlement Proposal "as full and complete resolution of all matters" pending in this proceeding. Settlement Proposal, at 1. They would allow FPL to charge customers for the Peaker Expenses and higher profits (i.e., return on equity) than FPL had requested, which all intervenors agreed were already excessive. *See* Pre-Hearing Order, at 131 (Issue 84); *see also* OPC Post-Hearing Brief, at 64; FIPUG Post-Hearing Brief, at 25; Larsons Post-Hearing Brief, at 16; SFHHA Post Hearing Brief, at 78–84; FEA Post-Hearing Brief, at 2; AARP Post-Hearing Brief, at 18–23; FRF Post-Hearing Brief, at 38; Walmart Post-Hearing Brief, at 2; September Sierra Club Brief, at 39.

In contrast to FPL's original request, the Proposal contemplates adding "cost-effective" solar and battery storage. Settlement Proposal, at 2–3, 5, 12–16, and 22.

The hearing on October 27, 2016, was on the "sole issue" of whether the Proposal "is in the public interest and should be approved." Order No. PSC-16-0456-PCO-EI. There, FPL stated, "all of those capital initiatives" it had requested, including the Peaker Expenses,

[7] OPC, FRF, and SFHHA.

"are going to be paid for, if you will, by the revenues generated from this settlement agreement." Oct. Tr. 103 (Barrett).[8]

Additionally, FPL said it would add 50 megawatts of battery storage in the next four years. Oct. Tr. 95 (Barrett). Batteries, FPL explained, are "becoming a more viable and more cost-effective technology," and the company "is able to leverage the learnings" its sister company has "already gotten" from multiple battery storage projects. Oct. Tr. 108–09 (Barrett).

FPL said it would also add 1,200 megawatts of solar generation in the next four years, 300 megawatts per year. Oct. Tr. 104 (Barrett). FPL identified this as a "great feature" of the Proposal because "not only are we going to get a renewable resource, zero emission and zero fuel cost resource, but it's going to save customers money over the long term." *Id.* FPL expects these savings due to the "large"—"scale" of the solar investment now contemplated by the company. *Id.*

There is no reason—thus, unsurprisingly, none proffered by the Signatories—why more investment in solar and batteries will not yield even more savings and other benefits for customers.[9] Indeed, solar and batteries are competitive, non-gas solutions to serve peak demand and other grid functions, as FPL has voluntarily admitted. Specifically, FPL admits that battery storage "could be deployed with solar" at "large" scales to solve the

[8] To distinguish between the October hearing transcript and the transcript from the hearing held August 22–26, 29–31, and September 1, 2016, this brief cites the October transcript as "Oct. Tr."

[9] FPL's equivocal statement that battery storage "may not be cost-effective in terms of lowering costs," Tr. 99 (Barrett), is belied by statements the company made last year at an industry conference. There, FPL stated "[b]attery storage is the holy grail of the renewables business," and company executives "expect energy storage prices to experience a similar cost plunge to that of solar costs over the last seven years." During cross-examination on these statements, FPL took no issue with their authenticity or accuracy, Tr. 1593 (Barrett), so they were entered into the record. Ex. 639.

intermittency of solar, and used to "shave the peak," "shift the peak," and "improve from reliability [*sic*]"—"from a continuous power perspective." Oct. Tr. 104, 113, 116–17 (Barrett). That FPL has refused to study solar and batteries as alternatives to its new and expanded peakers is stunning given these admissions that they can meet the same need as the peakers. *Id.*, Tr. 1592–93 (Barrett), Tr. 1635 (Barrett), Ex. 639.[10]

The Signatories likewise fail to explain, much less substantiate in the record, why, in a market with competitive non-gas options available to FPL—as FPL's testimony immediately above demonstrates—customers should pay unprecedented amounts for more gas-reliant facilities and services. Staff, for instance, asked if FPL does "build the 1,200 megawatts of solar generation"—"whether or not that would delay any of Florida Power & Light's upcoming natural gas combined cycle facilities," which the Proposal would have customers fund. FPL's lead witness on the Proposal testified: "No, I don't know the answer to that." Oct. Tr. 93 (Barrett).

IV. DISCUSSION

Both the law and the public interest preclude FPL's request to recover the Peaker Expenses from customers. The Commission should therefore reject FPL's request and the Settlement Proposal, which advances that request. The following discussion has three parts: Part A explains that Florida law bars FPL's recovery of the Peaker Expenses because FPL failed to carry its burden to prove the expenses are prudent. Part B explains that Florida law bars the Settlement Proposal because the Commission only has authority to approve the

[10] To be clear, solar and batteries support reliability better than FPL's new peakers do. As the above note 2 explains, the new peakers cannot produce continuous power. Solar and battery storage in contrast can produce do so, as FPL acknowledged. Tr. 116, *see also* Ex. 639 (averring energy storage's wide-ranging applications for "reliability purposes").

recovery of prudent expenses. Finally, as Part C explains, the Signatories failed to prove that the Proposal is in the public interest.

A. Florida law bars FPL's recovery of the Peaker Expenses because they are not prudent expenses.

FPL cannot charge customers the Peaker Expenses because only prudent utility expenses are eligible for recovery under Florida law—law well settled by the Commission and the Florida Supreme Court, as discussed above (in Section II).

Here, it was FPL's burden to prove by a preponderance of the evidence that the Peaker Expenses were prudently incurred by the company after it analyzed its options and then "took every reasonably available prudent action"—consistent with such analysis—"to minimize" cost of service. *Gulf Power,* 453 So.2d 799, at 802. FPL did not. The company never produced an options analysis for the Peaker Expenses. FPL could not do so as FPL's president testified: "… at Florida Power & Light, I don't know if we have that documentation." Tr. 292 (Silagy).

Another company executive tried to defend that "… the analysis was pretty simple to [FPL]." Tr. 1582 (Barrett). While it is certainly simple, the analysis the company proffered comparing the action it had unilaterally taken against doing nothing is not an options analysis. Indeed, FPL has admitted that doing nothing is not an option because FPL is already fully committed to the Peaker Expenses. Tr. 812 (Kennedy) (peaker replacement program), Tr. 1525–26 (Barrett), (peaker expansion program).

With no options analysis in the record, FPL cannot point to any evidence that the Peaker Expenses are the product of informed, prudent decisions, nor that FPL actually took every reasonably available prudent action to minimize the cost of serving customers' peak

demand. Absent such evidence, the law bars FPL's recovery of the Peaker Expenses.

Moreover, the record here shows that the Peaker Expenses are stunningly imprudent: FPL unilaterally committed more than a billion dollars, all at once, and effected sweeping changes to the way it serves customers' peak demand. As the Commission has found, and as the Florida Supreme Court has affirmed, it is the responsibility of utilities to investigate incremental changes, such as deferred in-service dates or smaller capacity additions, to minimize their cost of service. *Gulf Power,* 453 So.2d 799 at 802–803 (quoting Commission Order No. 11936). Yet FPL has admitted that it failed to do so before moving forward with the Peaker Expenses. Tr. 878 (Kennedy), Tr. 1502 (Barrett).

Nor was it even necessary for FPL to move forward at this time. As FPL has admitted, there was no environmental requirement, reliability requirement, nor any other regulatory compliance reason compelling it to do so. Tr. 1505, 1581–82 (Barrett).

The fact that FPL moved forward anyway without ever looking at the economics of waiting one year, much less four, is baffling because FPL has admitted that its previous peakers could have operated another nine or more years. Tr. 4664 (Barrett). In just four years, however, the peaker technology FPL is adding may be obsolete, as it is FPL's own judgment that solar and batteries will outperform peakers by 2020. Tr. 1592–93, 1635 (Barrett), Ex. 639.

To make matters worse, FPL's new and expanded peakers further extend its reliance on natural gas imports, flouting Florida Statutes and Commission precedent calling for the opposite. *See* September Sierra Club Brief, at 6–8. (discussing statutes and Commission precedent stressing the need to identify and pursue options to reduce gas imports).

In fact, settling parties, including Public Counsel, objected to similar expenses in 2013 as not the "lowest cost solution," nor the product of "FPL adequately explor[ing] all available alternatives." Order No. PSC-13-0513-PHO-EI, at 7.

Perhaps most stunning of all, following such objections in 2013, FPL withdrew its request for Commission approval and unilaterally committed to the Peaker Expenses. Now, without any evidence that FPL analyzed it options in a timely manner, and overwhelming evidence that FPL failed to take every reasonably available prudent action to minimize its cost of service, FPL requests payment—a request that is sharply barred by Florida law.

B. Florida law bars the Settlement Proposal because the Commission only has authority to approve the recovery of prudent expenses.

Settlement proposals do not change the legal standard for rate cases. Indeed, Florida recognizes "no principal of law" that "allow[s] any agency"—"to exceed its delegated statutory authority simply because private parties to a settlement agreement deem it mutually beneficial." *Baker Cty. Med. Servs., Inc. v. State*, 178 So. 3d 71, 77 (Fla. Dist. Ct. App. 2015) (construing informal disposition provision in Florida Administrative Procedure Act, Section 120.57(4), F.S.), review denied, No. SC15-2217, 2016 WL 1083235 (Fla. Mar. 18, 2016).

Here, the Settlement Proposal conflicts with the law because it would grant FPL recovery of the Peaker Expenses—but the Commission only has authority to approve the recovery of prudent expenses. Section 366.06(1), F.S., see also discussion in Section IV.A. The Commission therefore should reject the Proposal.

C. The Signatories failed to prove the Settlement Proposal is in the public interest.

For argument's sake, assume that, somehow, the law does not preclude the Settlement

Proposal. To approve it, the Commission would still need to determine that it "is in the public interest," Order No. PSC-16-0456-PCO-EI at 2; results in rates that are "fair, just, and reasonable;" and are "supported by competent, substantial evidence." *Citizens of State v. Florida Pub. Serv. Comm'n*, 146 So. 3d 1143, 1150, 1173 (Fla. 2014).

Here, however, the Signatories failed to meet the most fundamental of requirements, that their proposal be in the public interest—and by extension result in fair, just, and reasonable rates. Not only do the Signatories propose to allow FPL to recover the Peaker Expenses, but also higher profits than FPL originally requested, and that all intervenors agreed were already excessive. *See* Pre-Hearing Order, at 131 (Issue 84); *see also* OPC Post-Hearing Brief, at 64; FIPUG Post-Hearing Brief, at 25; Larsons Post-Hearing Brief, at 16; SFHHA Post Hearing Brief, at 78–84; FEA Post-Hearing Brief, at 2; AARP Post-Hearing Brief, at 18–23; FRF Post-Hearing Brief, at 38; Walmart Post-Hearing Brief, at 2; September Sierra Club Brief, at 39.

Yet the Signatories failed to explain, much less substantiate in the record, why customers should pay for the Peaker Expenses at all—or for that matter pay for any new expenses associated with gas-reliant facilities and services. This is a glaring omission because the Proposal itself and FPL's testimony demonstrate that competitive solar and battery storage options are in the market available to FPL, and that they can meet the same need as the peakers, and grid functions, too. Oct. Tr. 104, 113, 116–17 (Barrett).[11]

Moreover, these are conditions and circumstances that "were known, or should [have] been known, at the time [FPL's] decision[s] w[ere] made." *Southern Alliance for Clean Energy v.*

[11] See note 10, above, explaining solar and batteries support reliability better than peakers.

Graham, 113 So.3d 742, 749–750 (Fla. 2013) (quoting Commission Order No. PSC-11-0547-FOF-EI). As FPL broadcasted last fall, FPL itself has "expect[ed] energy storage prices to experience a similar cost plunge to that of solar costs over the last seven years." Ex. 639. FPL thus knew before it petitioned the Commission to open this proceeding that investments in solar and batteries were viable alternatives to its existing and planned gas-reliant expenses, and, indeed, that "[i]t is a great time to be in the renewables business." *Id.*

Under these conditions and circumstances, a prudent utility manager would have undertaken an expedited analysis of its non-gas options and deferred its gas-reliant expenses as much as possible until the analysis was complete—FPL did not. More than a year after FPL broadcasted its views on the competitiveness of energy storage and renewables, FPL still "does not know the answer" to whether it will defer or avoid its planned gas-reliant expenses, Oct. Tr. 93 (Barrett), but FPL nonetheless seeks recovery for them in the Proposal. This is an untenable position, as this Commission has held, and the Florida Supreme Court has affirmed, a timely options analysis is necessary to put FPL in a position to actually incur prudent expenses and minimize its cost of service. *Gulf Power,* 453 So.2d 799 at 802–803 (quoting Commission Order No. 11936).

On the record here, devoid of support for charging customers unprecedented amounts for new gas-reliant facilities and services, and chronically missing options analysis, the Signatories have failed to prove that the Settlement Proposal is in the public interest.

V. ISSUE AND POSITION STATEMENT

Issue 168: Is the Settlement Proposal in the public interest and should it be approved?

Sierra Club: *No. Only prudent utility expenses are eligible for recovery under Florida law. Here, FPL failed to carry it burden to prove the Peaker Expenses are prudent because FPL never produced an options analysis for these unprecedented expenses, which exceed one billion dollars. Settlement proposals by private parties do not change the legal standard for rate cases. Here, the Settlement Proposal would allow FPL to recover the Peaker Expenses, but the Commission only has authority to approve the recovery of prudent expenses. Assuming for argument's sake the law, somehow, does not bar the Settlement Proposal, the Signatories still failed to carry their burden to prove that the Proposal is in the public interest. Specifically, they did not point to any evidence that FPL's existing and planned gas-reliant expenses included in the Proposal are based on a timely analysis of its options, and thus prudent. Moreover, overwhelming evidence demonstrates that FPL has failed to take every reasonably available prudent action to pursue competitive non-gas options to minimize its costs of service.

VI. CONCLUSION

For all the foregoing reasons, the Commission should reject FPL's requested base rate increase and the Settlement Proposal, which advances that request, because they conflict with the law and the public interest.

Respectfully submitted this 10th day of November 2016.

/s/ Diana A. Csank

Diana A. Csank
Qualified Representative for Sierra Club

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served electronically on this 10th day of November, 2016 on:

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This 10th day of November 2016.

/s/ Diana A. Csank

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Qualified Representative for Sierra Club