FILED NOV 10, 2016
DOCUMENT NO. 08772-16
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power 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

AARP'S BRIEF REGARDING NON-UNANIMOUS STIPULATION

AARP[1] participated in a hearing held by the Commission on November 27, 2016 regarding the sole question: "*Is it in the public interest for the Settlement Agreement to be approved?*" The "Settlement Agreement" in question is a non-unanimous stipulation (also referred to in this brief as the "Stipulation") that was filed on October 6, 2016 by a minority number[2] of the intervenors to this electric rate case. No party that exclusively represents residential household consumers is supportive of this Stipulation.

[1] Orders have continued to incorrectly identify AARP as the "American Association of Retired Persons". As was noted in its Application to Intervene, the name was legally changed to simply "AARP" in 1999, in recognition of the fact that people do not have to be retired to become members.

[2] Florida Power & Light Company ("FPL" or the "Company"), along with three of the nine intervening parties: Office of Public Counsel ("OPC"), the South Florida Hospital and Healthcare Association ("SFHHA") and the Florida Retail

On October 21, 2016, pursuant to Order No. PSC-16-0456-PCO-EI, AARP filed a timely Objection to this settlement agreement and a Notice that its expert witness Michael Brosch would appear the hearing. At the November 27, 2016 hearing, Mr. Brosch provided testimony on the record explaining how the Stipulation would be unreasonable and harmful to consumers.[3] FPL and the other signatories to the Stipulation did not cross-examine Mr. Brosch.[4]

AARP opposes the Stipulation and asks the Commission to reject it as it is unreasonable and unfair to residential electric consumers. Instead, AARP urges the Commission to rely on the substantial evidentiary record already before it and issue a rate case decision giving FPL customers a break: a 2017 *rate decrease* of more than $300 million in the utility's current base rate revenue. By contrast, adopting the Stipulation would deny consumers that base rate reduction that they deserve, moving electric rates in the other direction, resulting in cumulative double-digit percentage increases in residential base rates over the next three years, and locking in an overly-generous profit for FPL over the next four years. The Stipulation would burden Florida ratepayers with multiple large base rate increases, including amounts not yet determinable for new solar generation, *even though* there is no credible evidence in the record to prove that FPL will actually need higher revenues in 2019 or 2020. AARP's testimony that "there is simply no way to accurately determine the Company's actual financial needs four years into the future" stands *unrefuted* in the record and requires that the Stipulation be rejected by the Commission, for the same reasons the

Federation ("FRF") [collectively, the "Signatories"]. The "Signatories" signed the document and filed a Joint Motion for Approval of Settlement Agreement, See Second Prehearing Order, p. 1, Footnote 2.

[3] Transcript of the October 27, 2016 Hearing ("Transcript" or "Tr."), pp. 124-140.

[4] Tr. at pp. 141-142.

Commission rejected similar out-year and piecemeal rate increase proposals in Docket No. 080677-EI.

Worst of all, the Stipulation would allow FPL to set up a theoretical depreciation reserve surplus and depreciation reserve amortization scheme that virtually guarantees that FPL's corporate profit (return on equity or "ROE") can be high as ***<u>11.6 percent</u>*** (as explained below) for a period of four years. Such a scheme for manipulating returns has never been allowed by the Commission outside of a settlement, and no legal precedent exists for it outside of a settlement. Allowing a corporate profit in this range would be anomalously excessive for a regulated electric monopoly, as compared to all other public utility commission ROE decisions issued in the entire United States of America over at least the past three years. An allowed ROE of 11.6% actually exceeds the ROE requested by FPL during the original evidentiary rate hearing held in this case.[5] If a decision approving such an excessive amount is issued by the Commission in this rate case, it will be a decision that constitutes an extreme anti-consumer outlier, out of the mainstream of utility rate case decisions issued in this country.

Under the terms of the Stipulation, *FPL has compromised nothing* financially, relative to its initially filed rate case positions. Under the Stipulation, the utility is assured of stronger financial performance than could ever be secured under traditional rate regulation, all at customers' expense.[6] The Stipulation appears to provide for somewhat lower base rate increases than FPL had initially requested in this case;[7] however, Paragraph 12 of the Stipulation offsets these rate increase savings by

[5] See Hevert Direct testimony.
[6] Tr. at 126.
[7] Stipulation, Paragraphs 4, 9, and 10.

permitting FPL to record negative depreciation reserve amortization amounts and reduced annual depreciation expense that will increase rate base at the Stipulation's term by more than $1 billion.[8] What appears superficially to be a reduction in FPL's requested rate increases is actually an accounting mechanism to insure excessive earnings by putting any additional revenue needs onto ratepayers' "tab" through creative depreciation accounting.

This additional depreciation giveaway to FPL, is on top of base rate increases of $400 million effective January 1, 2017, $211 million of additional base rate increases effective January 1, 2018, an estimated further incremental base rate increase of approximately $200 million effective upon commercial service of the Okeechobee unit in 2019, plus an unspecified additional base rate increase during the term of the stipulation through a new solar base rate adjustment mechanism.[9] These potential burdens for consumers are in contrast to the expert testimony in the evidentiary record from the Office of Public Counsel, which supports a 2017 base rate *reduction* of $327 million and then *no rate increases* for FPL in 2018 or thereafter.[10] Furthermore, the AARP testimony of Michael Brosch recommends reductions in FPL's rate of return and equity ratio that would have also significantly reduced the company's proposed 2017 rate increase.[11]

The Stipulation is one-sided in favor of FPL that it does not incorporate *any* of the rate base or operating income adjustments that were proposed by the Office of Public Counsel ("OPC") or by other parties to this proceeding during the general

[8] Stipulation, Paragraph 12, pp. 18-20; Tr. at 126.
[9] Tr. at 127.
[10] OPC Exhibit 717.
[11] See pp. 23-26 of AARP's Post-Hearing Brief.

evidentiary hearing. Paragraph 2 of the Stipulation provides that the signatories concede to all of FPL's position for the “adjustments to rate base, net operating income, and cost of capital set forth in FPL's minimum filing requirements, MFR Schedules B2, C1, C3, and D1A, as revised by the filed notices of identified adjustments”.[12] Only the company's calculations and none of the other parties' adjustments would be “deemed approved for accounting and regulatory reporting purposes”.[13] These provisions effectively eliminate the ratemaking adjustments that were proposed by any party other than FPL in all future monthly earnings surveillance reports, resulting in a potentially significant understatement of FPL's actual adjusted earnings that would be used to administer the Stipulation.[14] Again, this translates into higher rate base and depreciation charges to ratepayers after the term of the Stipulation.

In the record of the general rate case hearing in this matter, several parties other than FPL put forth lower ROE, equity ratio, or overall cost of capital recommendations. The Stipulation illustrates no compromise on those recommendations, virtually handing FPL the excessive financial relief it had originally requested. Schedule D1A to the Stipulation would also lock in FPL's excessive common equity ratio of nearly 60 percent of financial capital, which the evidentiary record shows also to be excessive and unreasonably costly to ratepayers.[15]

FPL's equity ratio (which would be sanctioned in the Stipulation) would then be applied to an authorized return on equity of up to 11.6%.[16] This percentage exceeds

[12] Stipulation, Paragraph 2, p. 3.
[13] Stipulation, Paragraph 2, p. 3.
[14] Tr. at 128.
[15] See AARP’s Post-Hearing Brief, pp. 16-19.
[16] Stipulation, Paragraphs 3 and 12(c), pp. 3 and 18-20.

the upper end of the range of returns recommended by the utility's own expert witness, Mr. Hevert. An 11.6% ROE vastly exceeds the recommendations of the other witnesses addressing this issue in testimony. For example, Dr. Woolridge for OPC recommended utilizing an 8.75% ROE; South Florida Hospital's witness Baudino recommended a 9.0% ROE; and Witness Gorman, appearing on behalf of the Federal Executive Agencies, recommended an ROE of 9.25%. An authorized ROE of 10.6% would fall outside the mainstream of public utility regulation in this decade, not to mention how excessive an 11.6% ROE would compare, especially given current economic conditions in the state of Florida. This would be a result that is completely inconsistent with the level and direction of ROE levels authorized by other regulators across the country.

How would the Stipulation assure that FPL will earn up to 11.6% ROE levels? Paragraph 12 of the Stipulation provides earnings assurance via the $1.07 billion "theoretical depreciation reserve surplus".[17] That is specified to be amortized in amounts "to be amortized in each year of the term ***left to FPL's discretion***" [emphasis added].[18] The company can be expected to use this discretion over this theoretical reserve amortization process to manage its reported earnings at the top of the permitted earnings range in order to maximize profits for its shareholders. Unfortunately, this large benefit to shareholders during the stipulation term translates into similarly large incremental cost to ratepayers after 2020. The mechanics of the "theoretical depreciation reserve surplus" are explained in detail in Mr. Brosch's testimony.[19]

---

[17] Stipulation, Paragraph 12, pp. 18-20.
[18] Id.
[19] Tr. 133-138.

Essentially, the Stipulation allows FPL to use the “theoretical depreciation reserve surplus” as ratepayer-provided funds for the sole benefit of FPL's shareholders as a pool of dollars that can be amortized to increase earnings during the term of the Stipulation. A designated amount of these ratepayer-provided funds, exceeding $1 billion, can be employed to increase FPL's achieved earnings to 11.6 percent each year at the company's discretion, would eventually increase rate base by more than $1 billion starting in 2021.[20] In all subsequent rate cases, ratepayers would be required to pay a return on rate base increased by over $1 billion, and then ratepayers would be forced to again pay depreciation expense to recover this investment a second time.[21]

An analogy is a typical home mortgage where you pay principal and interest to return the amount originally invested in your house along with interest on the unpaid balance to a lender. The Stipulation at paragraph 12 would allow FPL to reverse and amortize the cumulative balance of depreciation that has been previously recovered from ratepayers on a discretionary basis. This would be like letting your mortgage lender adjust the amount you owe on your mortgage in his/her discretion to ensure the bank's earnings never fall below 11.6% return on equity. Four years from now, under the Stipulation at Paragraph 12, FPL will tell ratepayers how much more they owe in higher depreciation and return on rate base charges because some of the depreciation reserve surplus previously collected from ratepayers will have been spent to prop up utility earnings to an 11.6% achieved ROE.[22]

---

[20] Stipulation, Paragraph 12, pp. 18-20.
[21] Tr. at p. 135.
[22] Tr. at p. 136.

Ratepayers would be better off with an accurate determination of FPL's truly needed 2017 base rate increase, and then with periodic determination of the utility's actual financial needs based upon evidence presented in rate cases when they are needed. Any incentive for management efficiency is largely destroyed by the permitted depreciation reserve amortization provision contained within the Stipulation.[23] Unplanned increases in FPL's cost to provide service will have no detrimental impact upon FPL's shareholders under the Stipulation, because higher costs can be offset by ever larger amounts of depreciation reserve amortizations to ensure that earnings stay near 11.6% ROE levels each year. Notably, FPL’s only responsive testimony to AARP was on this point, where the Company’s witness assured the Commission that FPL would continue to pursue management efficiency. However, this testimony did not dispute that the Stipulation blunts any economic incentive for efficiency in spite of FPL’s stated intentions.

In addition to the depreciation reserve surplus amortizations of more than $1 billion that would be used at FPL's discretion to maintain its earnings at 11.6% ROE, Paragraph 12(b) reduces depreciation accrual rates and annual depreciation expense by another 125.8 million per year.[24] This provision would increase jurisdictional rate base by more than $500 million over the four-year term, obligating ratepayers to even higher depreciation expense and return on rate base for that amount over many subsequent years.[25]

[23] Tr. at p. 137.
[24] Tr. at p. 138.
[25] Tr. at p. 138.

There is no enforceable base rate case moratorium under the Stipulation, even after ratepayers are committed to vastly higher base rates and depreciation deferrals past 2020. If the series of multiple base rate increases in Paragraphs 4, 9, and 10, coupled with the discretionary depreciation amortization credits exceeding $1 billion available from Paragraph 12(c), and with the annual depreciation expense reductions exceeding 125 million in Paragraph 12(b), ultimately prove insufficient to prevent FPL's earnings from falling below 9.6 percent return on equity in any year, the utility is allowed, under Paragraph 11, to petition for a base rate increase or other needed relief. Thus, FPL assumes no significant risk to its future earnings, and it could abandon the Stipulation within its four-year term if costs grow faster than revenues and reduce the utility's achieved return levels. Such a lop-sided deal is patently unfair and unreasonable to consumers.

No witness for FPL or for any of the other signatories to the Stipulation have submitted any credible financial forecast evidence to demonstrate that FPL *needs* the large base rate increases that are proposed within the Stipulation throughout the next four years. The company-filed MFR schedules reflect its financial forecast results for the 2017 test year and for a 2018 subsequent year, but no financial forecast data was filed by FPL or made available to the Commission, its staff, or other parties in support of any amounts of rate relief after calendar 2018. The Stipulation would expose ratepayers to considerable risk of excessive rate increases, as compared to actual conditions and future performance.[26] The uncertainties inherent in attempting to accurately forecast electric sales volumes, capital market conditions, utility expense levels, and rate base

[26] Tr. 129-131.

investments more than 24 months into the future, when coupled with the unavoidable management bias in developing such ratemaking forecasts dictates that speculative multiyear financial forecasts should be not be relied upon as support for large utility rate increases stretching into 2020.[27] The risks that the stacked multiyear base rate increases within the proposed Stipulation will prove excessive is simply too great. The Commission should protect consumers by only approving rate changes when changes in FPL's future cost and revenue levels demonstrate the need for any base rate increases.[28] If a rate change is needed after 2017, then the utility can submit a future base rate case application to justify such increases.

This Commission has previously rejected subsequent year base rate increases and generation base rate adjustments when proposed by FPL.[29] The Commission has previously decided against putting consumers at risk in that rate case for the same reasons that AARP now recommends rejection of the multiyear Stipulation in this rate case.[30]

FPL has also provided no evidence showing a financial *need* for the additional base rate increases within the Stipulation for the Okeechobee unit or for new solar generating facilities. This is an alarming omission because of the distinct possibility that continuing growth in FPL's future energy sales may yield significant new revenues partially or fully paying for the cost of such new generation.[31] Additionally, if any of the utility's future expenses decline because of FPL's widely-touted efficiency measures or

[27] See AARP's Post-Hearing Brief, pp. 7-14.
[28] Tr. 131.
[29] Docket No. 080677-EI.
[30] See the Commission's Order No. PSC-10-0153-FOF-EI in Docket No. 080677-EI.
[31] Tr. at pp. 131-132.

due to NextEra's pending acquisition of Oncor in Texas, such cost savings would also be available to offset the incremental cost of new generating resources.[32] There is simply no way to accurately determine the company's actual financial needs for four years into the future. However, the stipulation simply assumes that an overall financial need for such higher rates will exist and then obligates ratepayers to pay higher base rates for new Okeechobee and solar generation without regard to what will happens to FPL's other changing revenues and costs at that time.[33]

The Stipulation would provide no certainty as to how high the overall level that electric bills could reach over the four-year period of its terms. The stipulation offers only the certainty of higher base rates, and it is replete with provisions that would allow FPL to seek additional rate increases during the term through a variety of surcharges. AARP contends that locking in any four-year rate plan, and shifting that risk to consumers that rates will cause electric rates to be too high for Florida consumers, given future changing conditions. The proposed Stipulation would be particularly detrimental to FPL consumers, because it would significantly raise electric rates, while doing nothing to reduce the burden arising from FPL's many existing tariff surcharges to track and recover changes in fuel cost, capacity charges, environmental costs, conservation charges, or storm costs.[34] The Stipulation is replete with uncertainties that could render overall electric rates higher than would be reasonable, and thus it fails in its stated mission of maintaining “stability and predictability” for ordinary FPL electric

[32] Tr. at 132.
[33] Tr. at 132.
[34] In fact, Paragraph 7 of the Stipulation opens the door to additional new surcharges that would further burden customers for any vaguely defined new government-imposed “requirements on FPL involving new or atypical kinds of costs”, pp. 8-9.

customers. The Stipulation provides no enforceable rate case moratorium to protect ratepayers during its four-year term.

The only bright spot for residential consumer interests contained within the Stipulation is preservation of the current customer charge component of residential rates.[35] Unfortunately, the Stipulation takes back even this concession by granting significant rate relief to larger customer groups, ***shifting additional costs onto household residential consumers***, making a bad rate case proposal even worse for ordinary Florida citizens. The Stipulation shifts more of the proposed rate increases to the residential customer class than was initially proposed by FPL in its general rate filings.[36] Schedule E5 of FPL's filed minimum filing requirements ("MFRs") initially showed about **53%** of the base rate increases in 2017 and 2018 assigned to the residential customer class. In contrast, the stipulation Exhibit A now shows more than **65%** of the proposed 2017 and 2018 base rate increases being assigned to the residential class.[37] Paragraph 49(f) of the Stipulation refers to a "negotiated methodology for allocating distribution plant", and the Commission's "traditional gradualism test", but provides absolutely no details about how the larger share of rate increases now attributed to the residential customers was derived, nor why this change is reasonable. The shift in cost recovery from large industrial and commercial customers to residential consumers may explain why some parties are not opposing the Stipulation, but the fact that it shifts unreasonable costs onto the smallest and poorest consumers illustrates why this "deal" should be rejected.

[35] In the Stipulation, FPL has apparently agreed to forgo its filed request to raise the current fixed monthly residential customer charge of $7.87. This concession is a relief to small usage customers, but does not reduce the overall revenue requested from the residential class.
[36] Stipulation, Paragraph 4, pp. 4-6 and attached tariff sheets.
[37] Ibid. p. 1.

As explained herein, the terms of the Stipulation are contrary to the overwhelming weight of the evidence received into this docket -- they are harmful to ratepayers of FPL and inconsistent with the public interest. Therefore, AARP respectfully requests that the Commission reject the Stipulation, and issue a rate case decision based upon the evidentiary record received at the general hearing held on August 22, 2016 through September 1, 2016. AARP recommends that the Commission rely upon the evidence presented and extensively explained at that hearing. Accordingly, the Commission should arrive at an appropriate level of rate relief that is *needed* for the test year 2017 *only* (a significant rate reduction), rather than accepting the speculative and excessive financial relief that would be provided to FPL under the Stipulation, at the significant expense of residential household consumers.

Respectfully submitted,

/s/ John B. Coffman

____

John B. Coffman (Mo Bar #36591)
John B. Coffman, LLC
871 Tuxedo Blvd.
St. Louis, MO 63119-2044
Ph: (573) 424-6779
E-mail: john@johncoffman.net

Qualified Representative for AARP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing document has been furnished by electronic mail on this 10th day of November, 2016, to the following:

Martha Barrera
Suzanne Brownless
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
sbrownle@psc.state.fl.us
mbarrera@psc.state.fl.us

Ken Hoffman
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1858
ken.hoffman@fpl.com

John T. Butler
R. Wade Litchfield
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
john.butler@fpl.com
wade.litchfield@fpl.com

Jon C. Moyle, Jr.
118 North Gadsden Street
Tallahassee, FL 32301
jmoyle@moylelaw.com

K. Wiseman/M. Sundback/W. Rappolt
Andrews Law Firm
1350 I Street NW, Suite 1100
Washington DC20005
kwiseman@andrewskurth.com
msundback@andrewskurth.com
wrappolt@andrewskurth.com

Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com

Stephanie U. Roberts
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
sroberts@spilmanlaw.com

Federal Executive Agencies
Thomas A. Jernigan
c/o AFCEC/JA-ULFSC
139 Barnes Drive, Suite 1
Tyndall AFB FL32403
Thomas.Jernigan.3@us.af.mil

John B. Coffman, LLC
Coffman Law Firm
871 Tuxedo Blvd.
St. Louis MO63119-2044
john@johncoffman.net

Jack McRay
AARP Florida
200 W. College Ave., #304
Tallahassee FL32301
jmcray@aarp.org

Robert Scheffel Wright/John T. LaVia, III
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee FL32308
schef@gbwlegal.com
jlavia@gbwlegal.com

J.R. Kelly
Public Counsel
Patricia A. Christensen
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399
kelly.jr@leg.state.fl.us
christensen.patty@leg.state.fl.us

/s/ John B. Coffman