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June 21, 2021

VIA ELECTRONIC FILING

Adam Teitzman, Commission Clerk
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

RE: Docket No. 20210015-EI
Petition by FPL for Base Rate Increase and Rate Unification

Dear Mr. Teitzman:

Attached for filing on behalf of Floridians Against Increased Rates, Inc. ("FAIR") in the above-referenced docket are the Direct Testimony and Exhibits of FAIR witness Timothy J. Devlin.

Please let me know if you should have any questions regarding this submission.

Cordially yours,

Richard Scheffel Wright

RSW:mae
Encl.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light)
Company for Rate Unification and for) DOCKET NO. 20210015-EI
Base Rate Increase) FILED: JUNE 21, 2021
_____)

DIRECT TESTIMONY

OF TIMOTHY J. DEVLIN

On Behalf of

Floridians Against Increased Rates, Inc.

1 A. I earned a Bachelor of Business Administration degree from the
2 University of South Florida in 1974, with a major in Finance. I am a
3 Certified Public Accountant (CPA) licensed in the State of Florida.

4 I was employed by the Florida Public Service Commission
5 (“Commission” or “PSC”) from 1976 to 2011. During my tenure on the
6 Commission Staff, I held various positions of increasing responsibility,
7 including positions involving auditing and financial analysis of utility
8 operations and financial documents (1976-1984), Director of the PSC’s
9 Auditing and Financial Analysis Division (1984-2000), Director of the
10 PSC’s Economic Regulation Division (2000-2010), and Executive
11 Director of the Commission (2010-2011).

12 During my career as a member of the Commission Staff, I also
13 served as a member of the Subcommittee on Accounting and Finance
14 of the National Association of Regulatory Utility Commissioners
15 (“NARUC”) for many years, including three years as Chairman of that
16 NARUC Subcommittee.

17 After I left the Commission, I served, under contract, as a
18 consultant to the Florida Department of Agriculture and Consumer
19 Services’ (FDACS) Office of Energy Policy from 2011 to 2012. In my

1 work for the FDACS Office of Energy Policy, I provided support for the
2 Department's development of legislative recommendations relating
3 to energy policy.

4
5 **Q. Have you previously testified in proceedings before utility regulatory**
6 **authorities? If so, please briefly describe your prior testimony and**
7 **presentations before regulatory authorities.**

8 A. Yes, I have testified in rate cases as well as rulemaking proceedings
9 before the Florida PSC. I also authored and co-authored many
10 recommendations to the Commissioners on accounting, financial, and
11 ratemaking issues and I participated in making verbal presentations of
12 many of those recommendations to the Commissioners. I have also
13 made several presentations to various Florida legislative committees
14 upon request. These presentations included topics such as the
15 Commission's budget and overviews of Commission proceedings as
16 well as various technical presentations. I was also involved in the
17 Commission's training program for staff. I made several presentations
18 regarding the determination of revenue requirements in rate
19 proceedings. I helped prepare and then presented the "Cost

1 Allocation and Affiliate Transactions Guidelines” to the NARUC which
2 NARUC subsequently adopted by resolution. At page 31 of FPL
3 Witness Keith Ferguson’s testimony, he states that FPL “largely follows
4 these guidelines.”

5

6 **Q. Are you testifying as an expert in this proceeding? If so, please state**
7 **the area or areas of your expertise relevant to your testimony.**

8 A. Yes, I am testifying as an expert on utility accounting issues and
9 regulatory policy relating to the treatment of depreciation and
10 particularly to the treatment of any depreciation reserve surpluses
11 that may be identified in this case, including how the amortization of
12 any such depreciation reserve surplus should be used in determining
13 FPL’s revenue requirements.

14

15 **Q. Are you sponsoring any exhibits in this case?**

16 A. Yes, I am sponsoring the following exhibits:

17 Exhibit TJD-1 Résumé of Timothy J. Devlin;

- 1 Exhibit TJD-2 Comparison of FPL’s authorized midpoint Return
2 on Equity (ROE) to the achieved ROE for years 2017
3 through 2021 year to date (YTD);
- 4 Exhibit TJD-3 FPL’s Past Use of the RSAM for Years 2017 through
5 2021 Year-to-Date (YTD);
- 6 Exhibit TJD-4 Effects of RSAM on FPL’s Revenue Requirements,
7 2017-2020; and
- 8 Exhibit TJD-5 Estimated Effects of RSAM on Future FPL Revenue
9 Requirements, 2022-2025.

10

11

PURPOSE AND SUMMARY OF TESTIMONY

12

Q. What is the purpose of your testimony?

13

A. FAIR engaged me to provide my professional analyses and opinions
14 regarding FPL’s proposed Reserve Surplus Amortization Mechanism
15 (RSAM) and related subjects and issues. My opinions address the
16 proper determination of whether FPL has a depreciation surplus in this
17 case; proper and consistent treatment of depreciation expense
18 estimates in determining the existence and amount of any
19 depreciation surplus; the impact of an RSAM on the utility’s risk profile

1 if any such concept were to be approved in this case; and, the proper
2 use of any RSAM allowance in supporting FPL's earnings, as that
3 directly impacts the fairness and reasonableness of FPL's rates.

4
5 **Q. Please summarize your opinion regarding FPL's RSAM proposal in**
6 **this case.**

7 A. FPL's RSAM proposal is deeply flawed and not in the public interest. If
8 the PSC were to approve FPL's proposal as requested, the PSC would
9 be giving away hundreds of millions of dollars of depreciation value
10 created and paid for by FPL's customers, to FPL's sole shareholder,
11 NextEra Energy, Inc. The result would be rates that are unfair, unjust,
12 and unreasonable, and contrary to the public interest.

13 If, contrary to these facts and my recommendation, any RSAM
14 or equivalent were to be approved in this case, it is critical – in order
15 to ensure that the rates that FPL charges its customers are fair, just,
16 and reasonable as required by Florida law and fundamental regulatory
17 policy – that FPL only be allowed to use any surplus amounts to
18 achieve an ROE no greater than the midpoint of its authorized range.
19 This would provide FPL extraordinarily strong protection of its financial

1 integrity while ensuring that its risk of under-earning is virtually zero,
2 and it would result in customer rates that are fair, just, and reasonable,
3 consistent with the PSC's determination of whatever ROE it ultimately
4 approves.

5 Again, recognizing that I strongly oppose FPL's proposed RSAM,
6 if an RSAM were to be approved in this case, the PSC should recognize
7 that such a mechanism would have a tremendous impact in reducing
8 FPL's risk profile. This is illustrated by FPL's extensive recent and
9 current practice in the existing RSAM approved in its 2016 rate case
10 (Docket No. 20160021-EI, Order No. PSC-2016-0560-AS-EI).
11 Specifically, the mechanism has effectively eliminated risks faced by
12 FPL with respect to its achieved ROE, as evidenced by the fact that FPL
13 has earned the same ROE every month since July 2018, and that rate
14 has been at the very top of FPL's authorized ROE; these results are
15 presented in my Exhibit TJD-2. Earnings levels at the top of the
16 authorized range are not necessary for FPL to maintain a strong
17 financial position, nor are they necessary for FPL to provide safe and
18 reliable service. Earnings at the midpoint ROE, which is by definition
19 the fair, just, and reasonable ROE as determined by the Commission,

1 are entirely sufficient to maintain FPL's financial position and integrity,
2 and to cover all of FPL's costs of providing safe and reliable service.

3

4 **BACKGROUND: DEPRECIATION PRINCIPLES, DEPRECIATION EXPENSE,**
5 **AND DEPRECIATION RESERVE SURPLUSES**

6 **Q. Please explain how depreciation expense is calculated or estimated,**
7 **both generally and for purposes of determining the amounts of**
8 **depreciation expense that are included in a utility's revenue**
9 **requirements and in the utility's rates.**

10 A. PSC Rule 25-6.0436, Florida Administrative Code, defines the methods
11 and procedures used in calculating depreciation rates. Electric utilities
12 are required to file a depreciation study every four years which
13 involves the calculation of depreciation rates for all categories of plant
14 investment. As FPL's depreciation witness Ned Allis recites in his
15 testimony, the Uniform System of Accounts ("USOA") promulgated by
16 the Federal Energy Regulatory Commission ("FERC") defines
17 depreciation as follows:

18 Depreciation, as applied to depreciable electric plant,
19 means the loss in service value not restored by current

1 maintenance, incurred in connection with the
2 consumption or prospective retirement of electric plant
3 in the course of service from causes which are known to
4 be in current operation and against which the utility is not
5 protected by insurance. Among the causes to be given
6 consideration are wear and tear, decay, action of the
7 elements, inadequacy, obsolescence, changes in the art,
8 changes in demand and requirements of public
9 authorities.

10 Depreciation expense is a cost that is typically calculated for each
11 group of assets (e.g., power plants by type, transmission poles,
12 transmission and distribution conductor, transformers, meters, and so
13 on) based on the assets' book value divided by the assets' useful life in
14 years. Depreciation expenses, along with other operating and
15 maintenance ("O&M") costs, are used in the determination of revenue
16 requirements and consequently, customer rates.

17
18
19

1 **Q. In regulatory utility accounting, what is a depreciation reserve?**

2 A. The depreciation reserve represents the accumulation of depreciation
3 expense, year by year, less the gross investment associated with plant
4 retirements.

5

6 **Q. In terms of regulatory utility accounting, what is a depreciation
7 reserve surplus? How does such a depreciation reserve surplus come
8 into existence?**

9 A. A depreciation reserve surplus is the difference between the book
10 depreciation reserve, commonly known as “accumulated reserve for
11 depreciation,” and the calculated theoretical reserve. The calculated
12 theoretical reserve is the reserve that represents a more accurate
13 reflection of the remaining plant service lives. The calculated
14 theoretical reserve is made using updated estimates of various
15 components of depreciation expense, including the asset’s useful life
16 and any expected net salvage value at the end of its life.

17 A depreciation surplus occurs, or comes into existence, when
18 the theoretical reserve is less than the booked reserve. Stated
19 differently, a depreciation surplus comes into existence when the

1 utility has collected too much depreciation expense up to a given point
2 in time. This can occur when an asset's life is extended as a result of
3 some upgrade, or simply through the recognition that the asset's
4 remaining life at a given point in time is greater than was previously
5 estimated.

6

7 **Q. Is there a standard regulatory policy or set of accounting and**
8 **ratemaking principles applicable to depreciation reserve surpluses?**

9 A. Yes. Standard regulatory accounting for depreciation surplus
10 balances, as applied in determining the utility's revenue requirements
11 and rates, returns the surplus to the utility's customers. This is
12 accomplished by amortizing the surplus balance over some period of
13 time, which is usually determined depending on the amount of the
14 surplus. It may simply be amortized over the average remaining life of
15 the assets or amortized over an accelerated period (fewer years) in
16 order to better match the "return" of the surplus to the customers
17 who created it. As the PSC has recognized, such accelerated
18 amortization will reduce or avoid "intergenerational inequity," which
19 is the term used to refer to a mis-matching of flowing or crediting back

1 a depreciation surplus to future customers who didn't pay to create it,
2 thus being unfair or inequitable to the previous customers who did pay
3 to create it.

4 This is true regardless of which of the methods or schedules
5 discussed above is chosen: whether over a short period of time, such
6 as four years, or a longer period of time, such as twenty years, the
7 surplus should always be returned to the utility's customers.

8

9 **Q. Is there such a thing as a depreciation reserve deficit?**

10 A. Yes. Deficits arise, or come to be recognized, when the amount of
11 depreciation expense that has been collected from customers for a
12 particular asset or assets is less than the amount that should have
13 been collected if the utility is going to be able to fully depreciate the
14 asset over its estimated remaining useful life. This occurs when a
15 power plant is retired early and before its book value has been fully
16 recovered through depreciation expense built into the utility's rates.

17

18

19

1 **FPL'S PROPOSED RESERVE SURPLUS AMORTIZATION MECHANISM (RSAM)**

2 **Q. How does FPL propose to calculate depreciation expense and what**
3 **effect does that calculation have on the resulting depreciation**
4 **reserve surplus amount in this case?**

5 A. FPL proposes that it be allowed to pick different depreciation
6 parameters – particularly asset lives – for certain major assets in
7 calculating depreciation expense, dependent on whether its RSAM
8 proposal is approved. If the RSAM is not approved, FPL wants to use
9 the depreciation rates established in the depreciation study
10 completed by Ned W. Allis of Gannett Fleming, Inc. On the other hand,
11 if the Commission approves the RSAM, FPL wants to apply what it calls
12 “RSAM depreciation adjustments” to the same assets, which would
13 result in a lower theoretical depreciation reserve and thus in a greater
14 surplus than if the results of Witness Allis’s 2021 depreciation study
15 were used.

16

17 **Q. Do you have an opinion regarding which of FPL’s two sets of**
18 **depreciation rates should be used to determine FPL’s revenue**
19 **requirements and to set FPL’s rates in this case?**

1 A. Yes. The depreciation parameters and rates that FPL proposes to use
2 for RSAM purposes are reasonable to me. The RSAM rates are based
3 on the best estimates of remaining service life. For example, FPL's
4 Vice President of Finance, Robert Barrett, stated that it is reasonable
5 to expect the St. Lucie Nuclear license to be extended to reflect a total
6 life of 80 years (see deposition of Robert Barrett at page 129). This
7 extended life was used by FPL in calculating depreciation expense for
8 RSAM purposes. If the rates are reasonable for the calculation of the
9 RSAM, then there is no reason not to use them regardless of whether
10 the RSAM is approved.

11 It is worth noting that FPL has already obtained a comparable
12 license extension for its Turkey Point Nuclear Plant, and FPL is using an
13 80-year life for Turkey Point in the current rate proceeding. Another
14 major asset group is FPL's fleet of combined cycle plants; Witness
15 Allis's initial study would apply a depreciation life of 40 year to these
16 power plants, but the proposed alternate RSAM life would be 50 years.
17 Witness Barrett stated on page 132 of his deposition that he believes
18 there is no reason the combined cycle plants cannot operate for 50
19 years.

1 **Q. Do you have an opinion as to whether FPL has a depreciation reserve**
2 **surplus in this case?**

3 A. Yes. FPL has had a pattern of reserve surpluses dating back to the 2009
4 rate case. This indicates a pattern of excessive depreciation charges
5 which results in a reserve surplus. FPL's calculation of a Reserve
6 Surplus of \$1.48 billion is reasonable based on the underlying
7 depreciation assumptions found in both Witness Allis's and Witness
8 Ferguson's testimonies.

9

10 **IMPACT ON FPL'S EARNINGS, REVENUE REQUIREMENTS, AND RATES**

11 **Q. What does FPL want to do with the reserve surplus that its "RSAM**
12 **depreciation adjustments" would create?**

13 A. FPL wants to use the surplus, through its proposed RSAM, to "manage"
14 its ROE. FPL has demonstrated this accounting treatment over the
15 past four years by using a significant portion of the surplus to make its
16 ROE hit the top or near the top of its allowed return. If its ROE in any
17 given month is calculated to exceed the top of the ROE range, then FPL
18 uses the reserve surplus to avoid over-earning. This accounting
19 manipulation allows FPL to use the RSAM as a "slush fund" to avoid

1 triggering an earnings investigation or inquiry, e.g., through a “show
2 cause” order issued by the Commission.

3

4 **Q. How much control would FPL have over its ROE using its proposed**
5 **RSAM?**

6 A. As shown in Exhibit REB-11, FPL requests that a Reserve Surplus
7 amount of \$1.48 billion be established for the RSAM. FPL further
8 requests that it be allowed to amortize any of the Reserve Surplus, **at**
9 **its sole discretion**, subject to certain conditions. Under FPL’s plan, it
10 can amortize any amount during the 2022 thru 2025 timeframe even
11 if it is earning an ROE above the midpoint. It is the midpoint ROE that
12 is used to define fair, just and reasonable rates that will afford FPL the
13 opportunity to earn that fair, just and reasonable ROE as established
14 by the Commission. FPL does not need to earn more than the mid-
15 point of the authorized ROE to remain financially viable. In 2020, the
16 difference in revenue requirements between the midpoint ROE
17 (currently 10.55 percent) and the top of FPL’s ROE range is about \$288
18 million taking into account the effect of the former Gulf Power
19 operations. This is shown in the values in my Exhibit TJD-4, which I

1 calculated using data from FPL's Earnings Surveillance Reports filed
2 with the PSC.

3

4 **Q. Is there reason to believe that FPL will use the Reserve Surplus and**
5 **its proposed RSAM to increase its ROE to the top of the ROE range?**

6 A. Yes. There is every reason to believe that FPL will use the Reserve
7 Surplus through its proposed RSAM to increase its ROE to the top of
8 the range. The settlement agreement approved in FPL's 2016 rate
9 case operates almost identically to that proposed by FPL in this case.
10 The PSC's order approving that settlement became effective on
11 January 1, 2017. If history is an indicator of FPL's future intentions,
12 then it appears that FPL will use the RSAM to increase its earnings to
13 the top or near the top of its ROE range. As shown on Exhibit TJD-2,
14 FPL achieved an ROE at the top of the authorized range three of the
15 four years since its last authorized midpoint of 10.55 percent was
16 established by the Commission in the 2016 settlement. In the first
17 three months of this year, FPL booked approximately \$316 million in
18 depreciation credits solely to achieve an ROE of 11.6 percent in each
19 of those months. As of April 1, 2021, there was approximately \$577

1 million in the Reserve Surplus accounts which can be used in the
2 remaining months of 2021 to increase its FPL's ROE to the top of the
3 approved ROE range.

4 Further evidence of FPL's intentions with regards its ROE can be
5 found on page 113 of witness Barrett's deposition where he stated
6 that in each year from 2018 through 2020, FPL set and achieved an
7 ROE of 11.6 percent. FPL has set its target ROE for 2021 at 11.6
8 percent as well.

9
10 **Q. How will FPL's customers be impacted if this proposed RSAM is**
11 **approved?**

12 **A.** If FPL is allowed to use the Reserve Surplus for the purpose of
13 managing its ROE, FPL's rate base at the time of its next rate case, likely
14 based on a 2026 test year, will be greater by up to \$1.48 Billion; ergo,
15 FPL's customers' rates will have been excessive. In addition, FPL's
16 customers will no longer have the benefit of the amortized credits
17 associated with the reserve surplus. FPL's customers paid for the
18 surplus, but they will have been deprived of the value their payments

1 created because the credits will have been transferred to FPL and then
2 to earnings which would eventually accrue to NextEra.

3 The rates proposed by FPL in this case are higher than necessary
4 due to the way FPL has used its current RSAM. If FPL had earned a
5 midpoint ROE during the previous settlement period (2017 through
6 2020) revenue requirements in this proceeding would be
7 approximately \$901 million less than proposed. This amount is
8 calculated by taking the difference between the achieved ROE for each
9 of the four years and the mid-point ROE (10.55%). The impact on
10 revenue requirements would be much greater if we considered years
11 dating back to 2010.

12
13 **Q. Are you aware of any other state public utility commission or public**
14 **service commission approving the use of a mechanism similar to**
15 **FPL's proposed RSAM?**

16 **A.** No. In my 35 years working for the Florida PSC, including my service
17 on the NARUC Subcommittee on Accounting and Finance, I never
18 heard of any such proposal being approved (or even considered) by
19 any other state regulatory authority. The only thing like it has been

1 past FPL RSAMs as part of settlement agreements. No other electric
2 utility in Florida has used an RSAM.

3

4 **Q. Is there any precedent for such a mechanism being approved by the**
5 **Federal Energy Regulatory Commission (FERC)?**

6 A. No, not to my knowledge.

7

8 **OPINIONS REGARDING FPL'S PROPOSED RSAM**

9 **Q. In your opinion, what constitutes fair, just, and reasonable rates?**

10 A. In my experience, and in my opinion, fair, just, and reasonable rates
11 are rates that cover a utility's reasonable and prudent operating and
12 maintenance expenses and provide the utility with the opportunity to
13 earn a reasonable return on its reasonable and prudent investments
14 that are used and useful in providing safe, adequate and reliable
15 service to the utility's customers. This is essentially the basic
16 statement of fundamental regulatory rate-making policy. The
17 reasonable return in this context is the amount or rate necessary to
18 attract sufficient capital for the utility to make and support its
19 necessary investments - it is not anything greater than that rate.

1 **Q. Do you believe that FPL’s proposed RSAM is appropriate?**

2 A. No. FPL’s proposed RSAM would result in rates paid by FPL’s
3 customers being unfair, unjust, and unreasonable. FPL’s proposed
4 RSAM would transfer tremendous amounts of money – hundreds of
5 millions of dollars a year, probably a total of \$1.48 Billion – from FPL’s
6 customers to FPL’s shareholder, NextEra Energy, Inc. This is contrary
7 to the public interest and to the individual interests of FPL’s
8 customers.

9
10 **Q. Please explain why you believe that the RSAM, as proposed by FPL,
11 is inconsistent with sound regulatory practice and contrary to the
12 public interest?**

13 A. The regulatory framework under which utilities and the Commission
14 operate is the long-established practice, or set of principles,
15 commonly referred to as the “Regulatory Compact.” Under this
16 practice, a regulated electric utility is granted the exclusive right to
17 serve a designated territory and to enjoy a monopoly status. In
18 Florida, territorial agreements and PSC territorial orders, if necessary,
19 are used to define such areas. In exchange for this legal monopoly

1 status, the utility agrees to provide utility service to all customers in its
2 service area at fair, just and reasonable rates. Fair, just and reasonable
3 rates are predicated on the reasonable and prudent costs of the utility
4 including a fair rate of return on equity. In Florida, the midpoint ROE
5 is used in determining the utility's allowed revenue requirements and
6 in calculating rates that are fair, just, and reasonable.

7 Contrary to these basic principles, FPL's proposed RSAM would
8 provide FPL with significant control over its earnings levels for the next
9 four years by using excess depreciation reserves paid for by FPL's
10 customers, who have overpaid depreciation expense.

11
12 **Q. Do you believe that the adoption of the RSAM as proposed by FPL in**
13 **this case violates the statutory obligation under Section 366.05,**
14 **Florida Statutes, for the Commission to set fair, just and reasonable**
15 **rates?**

16 A. I believe approval of FPL's proposed RSAM undermines and violates
17 the statute's intent. Section 366.05, Florida Statutes, states that "the
18 Commission shall have the power to prescribe fair, just and reasonable
19 rates and charges." This is also the foundational principle of regulatory

1 ratemaking policy and the Regulatory Compact. I believe that fair, just
2 and reasonable rates are predicated on rates being set at the midpoint
3 ROE. As proposed by FPL, its RSAM can be used – and FPL has used the
4 same mechanism over the past four years – to undermine the statute’s
5 intent by the fact that rates may be set at a midpoint ROE but, with
6 the RSAM, the utility will likely end up earning at the top of the range
7 by simply dipping into the Reserve Surplus.

8 ROEs at the top of the range are unnecessary to sustain
9 excellent shareholder value. When the Commission determines a
10 midpoint ROE for FPL or any utility, that midpoint value is, by
11 definition, the fair, just and reasonable ROE. It is unfair to use the
12 ratepayer-supported Reserve Surplus to increase earnings beyond
13 what is necessary to maintain a strong financial position for FPL.

14
15 **Q. FPL’s witness Barrett stated on page 48 of his deposition that so long**
16 **as the ROE is within the authorized range, it should be considered**
17 **reasonable. Do you agree?**

18 **A.** No, I do not agree with this broad statement. The Commission
19 establishes a rate of return range for purposes of Earnings

1 Surveillance, that is for determining whether a utility is experiencing
2 overearnings or underearnings pursuant to Section 366.071, Florida
3 Statutes, commonly referred to as the “Interim Statute”. This statute
4 addresses when a utility can obtain “interim” rate relief if it is
5 underearning and when a customer party can obtain “interim” relief,
6 at least having potential overearnings held subject to refund, if the
7 utility is overearning. Separate from the Interim Statute, the statute
8 that provides the Commission the power to set fair, just and
9 reasonable rates, Section 366.05, Florida Statutes, does not mention
10 the establishment of an ROE “range.”

11 As a general rule, rates are set at the midpoint ROE based on
12 the Commission’s determination that that rate – the midpoint ROE –
13 is the fair, just, and reasonable rate of return on common equity that
14 should be used to set the utility’s rates. This is by definition the fair,
15 just and reasonable ROE. Note that witness Barrett on page 46 of his
16 deposition states that in the context of FPL’s rate proposal a mid- point
17 ROE of 11.5% is reasonable.

18

1 **Q. What should the Commission consider when evaluating whether**
2 **earnings are above or below a midpoint ROE?**

3 A. Earned ROEs at both the top of the range and bottom of the range may
4 or may not be fair, just and reasonable. The context and underlying
5 facts are critically important in this consideration. For example, if a
6 utility were to earn close to or even at the top of its ROE range by
7 virtue of company-initiated and company-funded efficiency measures
8 that reduced its costs, earning a high ROE would not be unreasonable.
9 However, using up a customer-paid-for depreciation reserve surplus,
10 as FPL has been doing and as FPL wants to do based on its proposals
11 in this case, in order to earn at the top of an established Earnings
12 Surveillance range will lead to unfair, unjust and unreasonable rates.
13 Such practice takes away value created by and paid for by the utility's
14 customers and gives it to the utility. It is not fair, just or reasonable
15 regulatory policy to allow a utility to deprive customers of the value
16 that they created. Under normal rate-making treatment, customer-
17 created value is returned to customers because the depreciation
18 reserve surplus is a deduction from rate base when revenue
19 requirements are set. The greater the reserve, the lower the rate

1 base, the lower the revenue requirements, and the lower the rates
2 paid by customers.

3 It is hard to understand why a utility would ask to be allowed to
4 use hundreds of millions of dollars of customer-paid-for value just so
5 the utility can earn hundreds of millions of dollars above what is
6 determined to be its fair, just, and reasonable cost of equity capital.
7 Further, regardless of whether the earned ROE is within the
8 authorized range, FPL still has the responsibility to make fair, just and
9 reasonable decisions that do not negatively impact its customers.
10 Only prudent and reasonable costs are considered when determining
11 a utility's revenue requirement. The same standard applies to the use
12 of RSAM Reserve Surplus debits and credits. It might be reasonable if
13 the amortization amounts were used in a fashion that facilitates both
14 the shareholder interests of maintaining a strong financial condition
15 while fairly returning the Reserve Surplus funded by ratepayers. In my
16 opinion, it is unreasonable, unfair, and unjust for the utility to use the
17 Reserve Surplus to attain a higher ROE solely for shareholder benefit
18 when a midpoint ROE would fairly and adequately address
19 shareholder concerns. The utility should consider customers and

1 maximize the customers' benefits from the Reserve Surplus that they
2 have paid for while ensuring FPL's strong financial position is
3 maintained.

4
5 **Q. In your opinion, what is required to maintain strong shareholder**
6 **value and a strong financial position?**

7 A. FPL can and will maintain strong shareholder value and a strong
8 financial position if it recovers its reasonable and prudent operating
9 and maintenance costs, including depreciation expense, and its debt
10 costs, and earns a return that is sufficient to enable it to make needed
11 investments to provide safe and reliable service. A properly set
12 midpoint ROE will accomplish all these things.

13
14 **Q. Are you suggesting that FPL should never be allowed to earn**
15 **anything above its midpoint ROE?**

16 A. Absolutely not. I am saying that FPL should not be allowed to use
17 customer-created and customer-paid-for value to earn anything
18 greater than its midpoint ROE. If FPL can earn above the midpoint
19 without using RSAM, then more power to them. If, for example, FPL

1 can increase its earnings above the midpoint by implementing FPL-
2 initiated efficiency and cost-saving measures that reduce costs, then
3 of course that is appropriate and consistent with the Regulatory
4 Compact.

5
6 **Q. How does FPL's control over the Reserve Surplus affect ratepayers?**

7 A. The Reserve Surplus is a result of overstated depreciation expense in
8 prior years. Changed circumstances can lead to deficient or excessive
9 depreciation rates and the resultant depreciation reserve deficit or
10 surplus. In this case, we are dealing with a significant reserve surplus
11 – a reserve surplus resulting from past excessive depreciation
12 expenses which were paid for by ratepayers. To the extent FPL uses
13 the Reserve Surplus to increase earnings above that which is necessary
14 to maintain a strong financial position, it is needlessly enriching
15 shareholders to the detriment of ratepayers. Exhibit TJD-4 shows the
16 effect (\$900,784,157) of the difference between the midpoint ROE and
17 the top of the range ROE over the four-year timeframe outlined in the
18 2016 settlement. To the extent this amount is due to RSAM, and most
19 if not all of it is, it translates into overcharging ratepayers by that

1 amount. However, the Commission cannot retroactively make the
2 necessary adjustments to provide ratepayers their fair share of the
3 Reserve Surplus in past years as it would be considered retroactive
4 ratemaking. This issue (what is the fair share of the Reserve Surplus
5 for ratepayers) should be addressed in considering the proposed
6 RSAM in this case. The difference between the top of the range ROE
7 and the midpoint ROE is expected to be significantly greater during
8 FPL's proposed four-year rate plan in this rate proceeding. A
9 reasonable, conservative estimate of the revenue requirements
10 difference between the fair and reasonable midpoint ROE and the top
11 of the range for this future period is \$1.518 billion (see my Exhibit TJD-
12 5). If FPL is allowed to use the RSAM to achieve these earnings above
13 the midpoint ROE, FPL will be taking that amount – \$1.518 billion – of
14 customer-paid-for value away from customers. This is neither fair, nor
15 just, nor reasonable.

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IMPACT OF THE RSAM ON FPL’S RISK PROFILE

Q. What impact, if any, would allowing FPL to use an RSAM have on its risk profile?

A. Approving an RSAM that would allow FPL to use Reserve Surplus amounts to achieve its midpoint ROE would significantly reduce FPL’s already favorable risk profile. Due to its monopoly status, FPL faces exceptionally low risks relative to recovering its costs and earning a reasonable return on the equity component of its capital structure. Further, the use of this proposed RSAM is unique to FPL and is not reflected in any models, including the Discounted Cash-Flow model, commonly used to determine reasonable ROEs.

FPL’S “RATE STABILITY” ARGUMENTS

Q. FPL states that the RSAM will help provide rate stability and obviate the possibility of another rate case within the next four years. Do you agree?

A. FPL’s argument is misleading and self-serving. Obviously, the more money FPL makes, the less likely it is to need an additional base rate increase. I do not agree that the RSAM is appropriate or fair in the

1 long-term. The cost to FPL's customers of achieving this rate stability
2 would be the loss of the customer-created value – up to \$1.5 billion,
3 and possibly more – in the RSAM Reserve Surplus, to the extent that
4 FPL uses the RSAM to achieve an ROE greater than the midpoint ROE.

5

6 **Q. What would be the result or impact on customer rates?**

7 A. Customer rates would be excessively high in the future because it is
8 likely FPL would use the Reserve Surplus created in this rate case to
9 earn 100 basis points above the midpoint ROE, just as it has done every
10 year since 2018. Under its proposal, FPL would earn approximately
11 \$360 million or more per year than it would earn at its midpoint ROE.
12 Therefore, FPL's future rate base would be higher by approximately
13 \$1.48 billion, which is roughly four years' worth of earnings at 100
14 basis points above the midpoint.

15

16 **Q. Would an RSAM that could only be used to allow FPL to reach the**
17 **midpoint of its ROE range provide the same benefits in terms of rate**
18 **stability?**

1 A. Yes. By definition, the rates set in this case at the midpoint ROE would
2 be fair, just, and reasonable, both to customers and to FPL. If the
3 Commission were to approve an RSAM that limited the use of the
4 Reserve Surplus to amounts necessary to earn its midpoint ROE, FPL's
5 customers would have the rate stability touted by FPL and FPL would
6 have the financial stability that it wants. FPL's customers would also
7 retain the benefit of the value created by any remaining Reserve
8 Surplus that they paid for.

9
10 **Q. What would be the impact of FPL's RSAM proposal on the**
11 **depreciation reserve surplus created by customers?**

12 A. FPL's proposed RSAM and the proposed rates based on its RSAM
13 proposal would come with a significant cost to ratepayers in the form
14 of lost opportunity to benefit from the Reserve Surplus value that the
15 ratepayers created. Again, the Reserve Surplus was supported by
16 ratepayers via higher than needed depreciation rates and therefore,
17 excessive revenue requirements in past periods. As long as FPL is
18 afforded the opportunity to earn a reasonable ROE, it is FPL's
19 ratepayers – that is, FPL's customers who created the Reserve Surplus

1 by paying too much in depreciation expense over the years – who
2 should receive the full benefit of the Reserve Surplus.

3

4 **Q. How has the PSC addressed the existence of significant depreciation**
5 **reserve surpluses or depreciation reserve deficits in previous cases?**

6 A. The Commission has authorized amortization schedules for both
7 depreciation reserve surpluses and reserve deficits related to early
8 plant retirements. This is usually done in conjunction with a
9 depreciation study. In Exhibit KF-4, FPL has requested a ten-year
10 amortization on its capital recovery schedules for depreciation reserve
11 deficits related to various plant items.

12

13 **RECOMMENDATIONS**

14 **Q. What specific recommendations are you making with regard to the**
15 **RSAM and Reserve Surplus?**

16 A. I recommend that the Commission reject the RSAM as proposed by
17 FPL. I further recommend that the Reserve Surplus of \$1.48 billion be
18 amortized over a ten-year period beginning January 1, 2022. The full

1 effect of this ten-year amortization should be reflected in customer
2 rates.

3

4 **Q. Why aren't you recommending a shorter amortization period to**
5 **better match customers who paid for the Reserve Surplus with**
6 **customers who will benefit from the amortization of this surplus?**

7 A. Under normal circumstances, I would recommend a four-year
8 amortization consistent with past Commission practice. In Order No.
9 PSC 10-0153-FOF-EI, issued in Docket No. 20080677-EI (the FPL rate
10 case begun in 2008 and decided in 2010) and Docket No. 20090130-EI
11 (the associated depreciation docket), the Commission stated that,
12 "the very presence of a reserve imbalance indicates the existence of
13 intergenerational inequity." The Commission went on to say, "The
14 magnitude of the reserve imbalance should also dictate what action is
15 taken. The matching principle argues for a correction of any surplus,
16 the quicker the better, so that ratepayers who may have overpaid
17 would have a chance of benefitting." However, FPL is proposing
18 Capital Recovery Schedules with a ten-year amortization. These
19 schedules represent under-depreciated retired plant investments. It is

1 proper to match the recovery periods for both depreciation deficits
2 and surpluses.

3

4 **Q. Why don't you net the deficits shown in the Capital Recovery**
5 **Schedules with the Reserve Surplus?**

6 A. Netting deficits and surpluses makes sense in certain situations. For
7 example, in the 2008-2010 FPL rate case and associated depreciation
8 docket, the Commission ordered the transfer of \$314.2 million of the
9 then-existing reserve surplus to offset the unrecovered balance
10 (\$314.2 million) shown in the Capital Recovery Schedules. The
11 remaining Reserve Surplus balance of \$894.6 million was amortized
12 over four years. However, in this case, the plant investments that
13 generated the Reserve Surplus are in different depreciation accounts
14 than the accounts associated with the unrecovered investments
15 reflected in the current Capital Recovery Schedules. Having parallel
16 amortization periods for both the Reserve Surplus and the Capital
17 Recovery Schedules serves the same purpose as netting. The annual
18 Reserve Surplus amortization amounts will reduce customer rates in
19 addition to the depreciation expense decreases for the 2022 Test Year

1 and 2023 Subsequent Year by \$239 million and \$249 million,
2 respectively, as stated in Witness Ferguson’s testimony on page 17.

3

4 **Q. How does your recommended parallel amortization schedules for**
5 **the Reserve Deficit and for Capital Recovery result in a fair, just and**
6 **reasonable solution for both ratepayers and shareholders?**

7 A. My recommended amortization schedule will ensure that ratepayers
8 are properly credited for the Reserve Surplus they paid for while at the
9 same time, providing FPL with fair, just, and reasonable recovery of
10 the undepreciated deficit amounts associated with the retired assets
11 and preserving FPL’s opportunity to earn a reasonable ROE.

12

13 **Q. If the Commission rejects the RSAM, what options exist for FPL to**
14 **protect itself from deficient earnings, realizing that a base rate**
15 **change typically takes eight months?**

16 A. This is a legitimate concern for all regulated utilities. It is commonly
17 referred to as regulatory lag. That is, the time between when a utility
18 first experiences a revenue deficiency and the time it can expect rate
19 relief.

1 The Commission has implemented many measures over the
2 years to mitigate regulatory lag. In the 1980's, the Commission
3 transitioned to projected test periods from historical test periods. This
4 change significantly reduced regulatory lag and provided a better
5 matching of rates to costs. In short, a projected test year allows a
6 utility to file for base rate relief before it ever experiences a revenue
7 deficiency. With respect to depreciation, the Commission changed
8 from whole life rates to remaining life rates which increased the
9 accuracy of depreciation and facilitated faster cost recovery for
10 utilities experiencing excess reserves. Additionally, over the years the
11 Commission has established several cost recovery clauses which
12 reduces regulatory lag. The long-standing Fuel and Purchased Power
13 Cost Recovery Clause, with true-ups, generally ensures recovery of a
14 significant portion of a utility's actual costs and mid-course/mid-year
15 corrections are available when projected and actual fuel costs vary
16 significantly. In addition, the Conservation Cost Recovery Clause, the
17 Environmental Cost Recovery Clause and the more recent Solar Base
18 Rate Adjustment Mechanism and Storm Cost Recovery Mechanism are
19 also available to ensure timely recovery of costs. The electric public

1 utilities, including FPL, can and do also recover significant amounts of
2 their costs through the Storm Protection Plan Cost Recovery Clause.
3 These costs are recovered through the PSC's "clause dockets."

4 Additionally, under applicable provisions of Florida Statutes
5 (specifically, Section 366.076, Florida Statutes), utilities can petition,
6 in a limited scope proceeding, for recovery of extraordinary costs such
7 as costs associated with a new power plant. Importantly, the Florida
8 Legislature provided an accelerated means for mitigating regulatory
9 lag in enacting Section 366.07, Florida Statutes, the Interim Rates
10 statute. Upon petition by a utility under this statute, the Commission
11 shall authorize, within 60 days, rates to earn the minimum approved
12 ROE.

13 All the measures mentioned above provide Florida investor-
14 owned utilities multiple tools to reduce regulatory lag and thereby
15 reduce regulatory lag risk to the utility. The RSAM proposed by FPL
16 would reduce risk to the utility but at an unreasonable cost to
17 ratepayers. The proposed RSAM is not necessary to protect FPL
18 against inadequate earnings.

19

1 Q. In the event the Commission believes that RSAM is an appropriate
2 tool in facilitating rate stability, do you have any recommendations
3 as to how to make a better balance between ratepayer and
4 shareholder interests?

5 A. Yes. Although I believe the best, fairest, and most appropriate use of
6 the Reserve Surplus is to amortize it back to the ratepayers over a ten-
7 year period, if the Commission were to approve an RSAM the following
8 two changes are necessary to maintain an appropriate share of the
9 benefits for ratepayers.

10 First, limit the Reserve Surplus amortization amount during any
11 twelve-month period to a level that would not cause FPL's Regulatory
12 ROE in an Earnings Surveillance Report to exceed the authorized
13 midpoint. The purpose of this limitation is to prevent FPL from using
14 the Reserve Surplus to achieve an earned ROE at the top of its
15 authorized range for the exclusive benefit of NextEra Energy.

16 Second, limit the use of the Reserve Surplus to depreciation
17 credits. It is inappropriate to allow the replenishment of the Reserve
18 Surplus via depreciation debits to avoid overearnings and at the same
19 time, earn an ROE at the top of the range.

1

2 **Q. How should the Commission factor the impacts of an RSAM into**
3 **determining FPL's ROE in this case?**

4 A. If use of the Reserve Surplus under an RSAM is capped at the midpoint
5 ROE, FPL is virtually assured of earning that midpoint ROE over the
6 next 4 years. Given this, FPL's earnings and financial risks would be
7 greatly reduced, and the midpoint ROE should reflect that risk-
8 reduction benefit to FPL and its shareholder.

9

10 **Q. Does this conclude your direct testimony?**

11 A. Yes.

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Timothy J. Devlin

Overview

With over 35 years experience in utility regulation at the Florida Public Service Commission (PSC), I have acquired unique and extensive knowledge of the utility industry. This includes dealing with accounting, finance and other regulatory issues associated with electric utilities, local natural gas distribution companies, telecommunications companies and water/wastewater utilities. During the last 11 years with the PSC, the majority of my work centered on the energy needs for the State of Florida.

Professional Experience

I was employed by the Florida Public Service from February 1976 to July 2011. I worked for the Department of Agriculture and Consumer Services (Office of Energy) from October 2011 to March 2012.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Position</u>
February 1976	August 1984	Various positions involving auditing and finance.
August 1984	May 2000	Director, Auditing and Financial Analysis, FPSC: Responsible for audits of utilities and regulatory issues involving finance, security applications, income taxes and depreciation.
May 2000	January 2010	Director, Economic Regulation, FPSC: Responsible for utility rate cases, finance issues, certification of utility service, territorial disputes, rate structure, energy conservation, and power plant siting.
January 2010	July 2011	Executive Director, FPSC: Responsible for technical staff, PSC budget and administrative functions.
October 2011	March 2012	Consultant for Office of Energy, FDACS: Provide support for the Office in its development of legislative recommendations relating to energy policy.

Timothy J. Devlin

Education

January 1971-June 1974 University of South Florida in Tampa, Florida
Bachelor of Arts in Finance

Professional Certifications, Awards and Accomplishments

2010, Member of the National Association of Regulatory Commissions' Executive Management Subcommittee.
2008, Member of the Florida Cap and Trade Technical Working Group.
2004, Gunter Award for Distinguished Service, Florida Public Service Commission.
1997-2000, Chairman of the National Association of Regulatory Commissions' Accounting and Finance Subcommittee.
1994, Honored by the Florida Public Service Commission for management of the multi-state audit of BellSouth.
1985-1988, Member of the Southern Task Force formed under the Southeastern Association of Regulatory Commissions.
1983-1985, Member of the Federal/State Joint Board core staff working group on telephone cost separations reform and establishment of the Universal Service Fund.
1980, Developed the earnings surveillance program, which is an integral tool in the Florida Public Service Commission's regulatory oversight.
1976 to present, Certified Public Accountant in good standing.

Professional and Community Memberships

Certified Public Accountant licensed in Florida
Warden of the Vestry and member of the Finance Committee for Christ Church Anglican
Accountant, The Farm Homeowners' Association
Vice Chairman, Wakulla Advisory Group for the Community Center
Treasurer for the Master Gardener program, Wakulla Extension Office
Treasurer for the 4-H program, Wakulla Extension Office
Tax preparer for AARP's Tax-Aide program

Docket No. 20210015-EI
Comparison of Authorized ROE to Achieved ROE, 2017-2021 (YTD)
Exhibit TJD-2, Page 1 of 1

<u>Year</u>	<u>Authorized Midpoint ROE</u>	<u>Maximum Allowed ROE</u>	<u>Achieved ROE</u>
2017	10.55 percent	11.60 percent	11.08 percent
2018	10.55 percent	11.60 percent	11.60 percent
2019	10.55 percent	11.60 percent	11.60 percent
2020	10.55 percent	11.60 percent	11.60 percent
2021 (YTD)	10.55percent	11.60 percent	11.60 percent

Source: Florida Power & Light Company, Rate of Return Surveillance Reports to the Florida Public Service Commission for calendar years 2017 through 2020, and for the 12 months ending March 31, 2021.

Docket No. 20210015-EI
FPL's Past Use of the RSAM, 2017-2021 (YTD)
Exhibit TJD-3, Page 1 of 1

Year	RSAM Depreciation	RSAM balance-year end
2016		\$1,252,100,355
2017	\$ (1,252,100,355)	0
2018	\$ 540,949,289	\$540,949,289
2019	\$ 356,664,152	\$897,613,441
2020	\$ 1,195,568	\$898,809,009
2020	\$ (5,000,000)*	\$893,809,009
2021(YTD)	\$ (316,264,673)	\$577,544,336

*Reduction in Reserve Surplus pursuant to the 2016 Settlement Agreement

Source: Florida Power & Light Company, Rate of Return Surveillance Reports to the Florida Public Service Commission for calendar years 2017 through 2020, and for the 12 months ending March 31, 2021.

Year	Revenue Requirements Difference between Achieved ROE and Midpoint ROE
2017	\$125,597,611
2018	\$231,258,082
2019	\$256,300,811
2020	<u>\$287,627,653</u>
Total	\$900,784,157

Note: Authorized midpoint of 10.55%

Source: Source: Florida Power & Light Company, Rate of Return Surveillance Reports to the Florida Public Service Commission for calendar years 2017 through 2020.

Year	Revenue Requirements Difference between Achieved ROE and Midpoint ROE
2022	\$360,000,000
2023	\$386,000,000
2024	\$386,000,000
2025	<u>\$386,000,000</u>
Total	\$1,518,000,000

Note: Customer rates are based upon Commission-determined fair, just and reasonable revenue requirements at the midpoint ROE. Based on past FPL practices, implementing the proposed RSAM could result in a future revenue requirement up to \$1.48 Billion more than necessary for FPL to earn the midpoint ROE. FPL's estimated revenue requirements value for 100 basis points for 2022 is \$360,000,000 per year and for 2023 is \$386,000,000 per year. The impact for 2024 and 2025 was assumed here to remain at the 2023 level.

Source of revenue requirements difference between Midpoint ROE and estimated ROE at top of ROE range: Deposition of Robert Barrett, June 11, 2021, page 86.