

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Rate Increase ) DOCKET NO. 20210015-EI  
By Florida Power & Light Company )  
\_\_\_\_\_ ) FILED: October 11, 2021

**JOINT POST HEARING BRIEF IN SUPPORT OF THE PROPOSED  
SETTLEMENT OF THE FLORIDA INDUSTRIAL POWER USERS GROUP, THE  
FLORIDA RETAIL FEDERATION AND THE FEDERAL EXECUTIVE AGENCIES**

The Florida Industrial Powers Users Group (“FIPUG”), the Florida Retail Federation (“FRF”) and the Federal Executive Agencies (“FEA”), collectively referenced herein as the Joint Intervenors, pursuant to the Commission’s Second Prehearing Order, Order No. PSC-2021-0362-PHO-EI, issued September 16, 2021, and subsequent rulings by the Prehearing Officer, submit this Joint Post Hearing Brief in Support of the Proposed Settlement.

**BASIC BACKGROUND**

On March 12, 2021, Florida Power & Light Company (“FPL”) filed a petition, minimum filing requirements, and testimony for a base rate increase effective January 2022, which would be followed by an additional base rate increase beginning in January 2023 (the “Subsequent Year Adjustment”). FPL further proposed limited base rate increases in calendar years 2024 and 2025 solely to accommodate new large-scale solar PV additions to its system (the “SoBRA” adjustments). These proposed increases constitute the exclusive basis for changes to FPL base rates for the four-year period 2022-2025. As a part of this filing, FPL proposed to consolidate the rates applicable to customers in the Gulf Power service territory (*i.e.*, migrate those customers to the otherwise applicable FPL rate schedule and employ a five-year declining transition surcharge/credit rider to gradually equalize those rates). FPL also proposed to re-establish the

Reserve Surplus Amortization Mechanism (“RSAM”) which the Commission had previously approved as part of prior multi-year FPL base rate settlement agreements.

The FPL rate filing presented a host of revenue requirement, accounting, cost allocation and rate design issues and questions. In their individual capacities, the Joint Intervenors conducted discovery and submitted expert testimony addressing numerous issues and concerns with the FPL filing. In particular, FIPUG, FRF and FEA each challenged aspects of FPL’s cost of service study and proposed different revenue allocations as compared to those proposed by FPL in its filing.

On August 10, 2021, FPL, the Office of Public Counsel (“OPC”), FIPUG, FRF, and the Southern Alliance for Clean Energy (“SACE”) filed a Joint Motion for Approval of Stipulation and Settlement Agreement (the “2021 Settlement”). The proposed 2021 Settlement follows the basic structure of the FPL rate filing (*i.e.*, base rate increases in 2022 and 2023 (including RSAM), SoBRA-only base rate adjustments in 2024 and 2025, and unification of rates in the Gulf Power service area), but with material compromises proposed to the FPL revenue requirement, revenue allocation and related issues. FEA and the intervenor parties the CLEO Institute and Vote Solar subsequently joined in the 2021 Settlement as signatories. Walmart, Inc., another active intervenor in this proceeding, announced that, although not a signatory, it did not oppose Commission approval of the 2021 Settlement. In short, among the active participants in this base rate proceeding, the proposed 2021 Settlement enjoys a broad base of consumer, business and environmental support.

### **STATEMENT OF POSITION**

**ISSUE A:** Should the Stipulation and Settlement Agreement dated August 9, 2021, be approved?

**Joint Intervenors:** \*\*Yes. The 2021 Settlement should be approved as filed. The proposed settlement, as a fully integrated package of terms, represents a carefully balanced outcome for FPL and all customer segments, resulting in rates that will be, in all respects, fair, just and reasonable.\*\*

## Argument

### **1. The Settlement, taken as a complete and integrated package, is reasonable and in the public interest.**

The Commission, for good reason, has a long-standing practice of encouraging negotiated settlement among stakeholders in rate cases. The issues are complex and often highly inter-related. Parties negotiating in good faith have the opportunity to craft an overall outcome that is administratively more efficient than an extended series of Commission votes on discrete disputed issues, and it allows for the development of innovative solutions that present fair and reasonable rate-setting alternatives for Commission approval. That is precisely what occurred in this case with the proposed 2021 Settlement.

The appropriate standard of review by the Commission of a rate settlement is whether the proposal, considered as a whole, is in the public interest.<sup>1</sup> In that context, the proposed 2021 Settlement has been submitted as a complete, comprehensive and interdependent settlement package. All signatories, including in particular the Joint Intervenors, support Commission approval of the entire proposal, and by its terms disapproval of any settlement provision would negate the 2021 Settlement in its entirety.

Every negotiated rate settlement requires compromise by the stakeholders involved to achieve an overall result that is in the public interest. In this instance, the Commission has the benefit of a full record that includes FPL's filed MFRs and supporting testimony, responsive testimony on numerous issues by intervening parties, including the Joint Intervenors, rebuttal testimony filed by FPL, hundreds of exhibits, and testimony supporting the 2021 Settlement. A

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<sup>1</sup> *Sierra Club v. Brown*, 243 So. 3d 903, 909-16 (Fla. 2018); *see also, e.g.*, Order No. PSC-13-0023-S-EI, issued on January 14, 2013, in Docket No. 120015-EI, *In re: Petition for increase in rates by Florida Power & Light Company*; and Order No. PSC-2021-0202-AS-EI, issued on June 4, 2021, in Docket No. 20210016-EI, *In re: Petition for limited proceeding to approve 2021 settlement agreement, including general base rate increases, by Duke Energy Florida, LLC*.

review of this record makes it readily apparent that all signatory parties made substantial concessions from positions taken in testimony in order to achieve a reasoned and reasonable overall outcome on the proposed revenue requirements, revenue allocation and related matters. The settlement resolves all contested matters associated with the FPL base rate filing and produces affordable and predictable rate levels for an extended term. The Joint Intervenors urge the Commission to adopt the 2021 Settlement as filed.

**2. The Settlement has broad based support among interested parties.**

As noted, FPL, OPC, FIPUG, FRF, FEA, SACE, the CLEO Institute and Vote Solar are all signatories to the agreement. Although it is not a signatory, Walmart does not oppose Commission approval of the 2021 Settlement. Collectively, the intervenor parties represent small and large end users, businesses, environmental interests and parties advancing investments in clean energy resources. In short, the signatories represent a very broad, and highly representative, group of consumer and energy policy interests. The terms of the 2021 Settlement address the essential concerns raised in the case by these and other parties that extend to core revenue, accounting, cost allocation and revenue apportionment concerns, and provide express FPL commitments regarding clean energy. We urge the Commission to acknowledge the broad base of stakeholder support for the proposed settlement and approve the 2021 Settlement as being in the public interest.

**3. The Settlement produces reasonable outcomes for all customer sectors.**

As described above, the 2021 Settlement has the support of most, but not all, of the active intervening parties in the FPL base rate proceeding. The parties opposing the proposed settlement do not appear for otherwise unrepresented constituencies, but merely offer a varied perspective from signatories representing the same or similar interests. The hearing conducted on September 20, 2021, provided the opposing parties with a full opportunity to present their perspectives and arguments to the Commission. At bottom, the opposing parties effectively ask the Commission to

adopt the litigation positions asserted in their June 2021 testimony, testimony which was submitted before the 2021 Settlement Agreement was filed. Their testimony opposing the 2021 Settlement is largely devoid of any suggestion of compromise or balance.

In addition, the Florida Rising coalition<sup>2</sup> did not address cost of service or revenue allocation matters in any of the eighteen pieces of pre-filed testimony it filed on June 21, 2021, however, this group of parties now criticizes the settlement's proposed compromise revenue apportionment among customer classes.<sup>3</sup> The record shows, however, that each of the Joint Intervenors had submitted expert testimony contesting various aspects of the FPL cost of service study, proposed gradualism mitigation, and the resulting FPL-proposed revenue allocation.<sup>4</sup> Each of these parties' experts recommended that FPL assign distribution costs in its cost of service study by applying a Minimum Distribution System ("MDS") approach. FPL was well aware that applying the MDS approach to its cost of service would be an issue in this proceeding because it had committed in its 2016 rate settlement in Docket No. 20160021-EI, approved in Order No. PSC-16-0560-AS-EI, to provide an MDS-based assessment in this case, which FPL provided in the exhibits of witness Tara DuBose.<sup>5</sup> The opponents' complaints regarding the negotiated revenue allocation in the proposed settlement ring hollow when considering these very issues were

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<sup>2</sup> Positions on litigated issues and in opposition to the settlement were jointly sponsored by Florida Rising, League of United Latin American Citizens ("LULAC"), and the Environmental Confederation of Southwest Florida (ECOSWF).

<sup>3</sup> TR 2683-2691 (Direct Testimony of Karl R. Rábago on Motion to Approve Settlement).

<sup>4</sup> See the testimony of FIPUG (J. Pollock) at TR 1659-1684; FEA (B. Collins) at TR 1598-1615; and FRF (T. Georgis) at TR 1778-1799 .

<sup>5</sup> Exhibit Nos.196-197. Notably, Duke Energy Florida, LLC recently made a similar commitment to assess the MDS approach in its 2021 base rate settlement agreement approved by the Commission in Order No. PSC-2021-0202-AS-EI. Further, in its pending base rate settlement, Tampa Electric Company agreed to apply an MDS approach in its cost of service analysis. Docket 20210034-EI, *Petition for Rate Increase by Tampa Electric Company*, Motion to Suspend Procedural Schedule and Approve 2021 Stipulation and Settlement Agreement, dated August 6, 2021 (proposing a transition from the 12CP and 1/13 cost of service methodology to a 4 CP and 100 percent MDS cost of service methodology).

identified and addressed in FPL's direct case, contested by key intervenors (FIPUG, FRF and FEA) in pre-filed testimony, and ultimately resolved through compromise and settlement.

In her settlement testimony, FPL witness Tiffany Cohen explained that the 2021 Settlement addressed these questions through a proposed revenue apportionment of increases to FPL rate classes that consists of negotiated compromises between FPL's originally filed cost of service approach and the MDS method advocated by the Joint Intervenors. The negotiated outcome does not adopt any particular methodology in that it neither adopts FPL's cost of service study nor does it embrace the results that would flow from the Joint Intervenors' testimonies.<sup>6</sup> In sum, a core benefit of the proposed settlement is that, notwithstanding the substantial disputes over cost of service questions, it fairly allocates revenue responsibility among all of FPL's customer classes.

### **CONCLUSION**

The record before the Commission provides competent substantial evidence that the 2021 Settlement Agreement is in the public interest and should be approved. The 2021 Settlement Agreement provides all FPL customers with certainty of near term base rates, which facilitates planning for all FPL customers. The 2021 Settlement Agreement is in the public interest and should be approved.

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<sup>6</sup> TR 2796-2798; *see also* TR 2808-09. Notably, the negotiated result, shown on Exhibit 470 (settlement Sch. E-8 (with RSAM) (FPL's response to Staff's fifth data request, Nos. 1-23 (request No. 2))), preserves a below system average percentage increase for residential customers for both 2022 and 2023 (a result not likely to be secured if distribution costs were fully allocated using MDS).

Respectfully submitted,

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Dated this 11th day of October 2021.

**CERTIFICATE OF SERVICE**  
**Docket No. 20210015-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Parties' Brief has been furnished by electronic mail on this 11th day of October 2021, to the following:

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