BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company	)))	DOCKET NO. 20210015-EI

FLORIDA RISING'S, LEAGUE OF UNITED LATIN AMERICAN CITIZENS', & ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA'S POST-HEARING BRIEF IN OPPOSITION TO SETTLEMENT AGREEMENT

The League of United Latin American Citizens of Florida ("LULAC"), Environmental Confederation of Southwest Florida ("ECOSWF"), and Florida Rising, pursuant to Order No. PSC-2021-0302-PHO-EI and Order No. PSC-2021-0362-PHO-EI, hereby file this Post-Hearing Brief in Opposition to the Settlement Agreement.

EXECUTIVE SUMMARY

A few gigawatts of additional gas power plants here, a few additional gigawatts of gas there, and soon you're talking about real gas generation. Similarly, a billion dollars here, and a billion dollars there from residential customers, and soon you're talking about real money. This blasé approach from Florida Power & Light Company ("FPL") to build out rate base through needless gas power plant expansions, billions wasted on transmission and distribution upgrades, and billions of wealth transfer from residential customers and small businesses to the largest commercial and industrial users sums up FPL's and the Settlement signatories' attitude in this rate case. To put it succinctly, a settlement that includes so much wasteful spending to double-down on fossil fuels, that transfers so much wealth from residential customers to commercial and industrial customers, and that literally leaves residential customers *worse* off than in FPL's original proposal, cannot be in the public interest.

This "Settlement" gives FPL everything they want—and more. In fact, everyone gets what they want, except the residential public and small businesses—who account for the vast majority of FPL's total customers and sales, yet notably are the only major customer classes unrepresented in the proposed Settlement. LULAC, ECOSWF, and Florida Rising agree with the July 2021 position of the Office of Public Counsel ("OPC")—any rate hike right now is not justified, and the Commission does not have the legal authority to approve numerous mechanisms contained within FPL's original proposal, which are now incorporated into the proposed Settlement. LULAC, ECOSWF, and Florida Rising, groups whose members are almost entirely residential customers,[1] many of them low-income, object to and oppose the proposed Settlement agreement as perhaps the most egregious settlement to ever be presented to the Commission for approval.

FPL and the other signatories failed to consult with Florida Rising, ECOSWF, and LULAC in their motion as required by Florida Administrative Code Rule 28-106.204(3). This is not a ministerial guideline, but rather an important, substantive rule intended to encourage parties to proactively and efficiently work out their differences. Nor is this a rule that should only apply to procedural motions. Instead, by deliberately ignoring the requirements of this rule, the signatories ensured that no party representing residential customer interests[2] was invited, much less present at the negotiating table. It is no surprise that since residential customers were denied a seat at the table, they wound up on the menu.

And that's precisely what happened: in even the most cursory review of the Settlement, it seems that every dispute among the negotiating parties as to how to pay for FPL's gratuitous revenue requests was resolved by the settling parties sending the bill to the uninvited,

[1] ECOSWF does have non-residential small business customer members.
[2] OPC has repeatedly indicated that they represent customers as a whole and do not protect residential customer interests against other classes. Proof of this is seen by OPC agreeing to this Settlement.

unrepresented residential customers. Although the revenue requirements for 2022 and 2023 are moderately lower than FPL's original proposal, very little of the decrease goes to small businesses and residential customers, who still face a nearly 20% increase in rates. Instead, almost all of the savings from lowering the revenue requirement are awarded to the largest commercial and industrial customers. This giveaway to large commercial and industrial users is all the more striking considering that residential customers and small businesses were already forecasted to be paying *over* parity in FPL's original proposal, that is, paying more than their classes' fair share, and in so doing, subsidizing the rates of large commercial and industrial customers. Under the proposed Settlement, that cross-subsidy will surge to almost *three hundred million dollars* per year. That's *three hundred million dollars* of free-riding by the largest energy users in the state on the backs of the hard-working families and mom-and-pop businesses that form the backbone of our economy, every single year.

But wait, there's more! In exchange for this slight decrease in revenue requirement in 2022 and 2023 for residential customers and massive subsidies for commercial and industrial customers from residential customers, the Settlement Agreement greenlights FPL to chuck in a couple *billion dollars* of additional rate base during the settlement period in the form of about $200 million for electric vehicle chargers—which do not generate, transmit, or distribute electricity for use in homes and businesses—and about $2 billion in additional solar generation through FPL's faux-community solar program, SolarTogether. SolarTogether is still a bad idea, making customers pay for solar twice—once through base rates, and a second time in the form of payments to large commercial/industrial customers for whom the program is disproportionately reserved. The proposed allocations in the Settlement, while not as egregiously in favor of large commercial and industrial customers as the original SolarTogether, still effectuate a massive transfer of wealth from the residential class to the participating large commercial and industrial customers. As if that were not enough, the Settlement Agreement actually *increases* these unlawful subsidies to the already large commercial/industrial participating customers in SolarTogether—paid for, of course, by primarily residential customers and small businesses.

These additions to rate base in the Settlement will come home to roost during the next base rate proceeding, when they will *more than* wipe out any savings residential customers may have received in 2022 and 2023 from this Settlement as compared to FPL's original proposal. In other words, on net, this Settlement unequivocally makes things *worse* for residential customers than if the Commission had approved every egregious proposal in FPL's original filing. Unequivocally, because FPL never disputed this or provided any contrary evidence at the hearing, making this an *undisputed* fact. Residential customers would have been better off with FPL's originally proposed mid-point of 11.5% ROE, which was ludicrous, unsupported, and *still* would have cost customers less than the Settlement's additional $2 billion in rate base and the 11.7% ROE effectively guaranteed by the Agreement's incorporation of the Rate Surplus Amortization Mechanism ("RSAM").

Also raised for the first time in the Settlement is a hidden minimum bill of $25 for residential customers. Although a major policy change and one that could hurt, on average, 360,000 residential customers per month, this change is not noted anywhere in the proposed Settlement but is found buried in the exhibits in the residential tariff.

The Settlement also amends the "capital recovery schedules" from a 10-year amortization period to a 20-year amortization period. Although FPL should not be able to recover its profits for prematurely retired generating facilities to begin with, this change alone means FPL will collect about an extra $600 million in profits over what it originally proposed. It also means that people being born today will, when they become adults, still be paying for retired coal plants and other facilities that were *never* used and useful in their entire *lifetimes*. This fact alone, without anything else, makes this Agreement against the public interest, by binding future generations to pay for uneconomic and retired coal plants that in which FPL should never have purchased an interest in the first place.

The Settlement includes numerous unreasonable and unlawful mechanisms, such as the RSAM, that Florida Rising, LULAC, and ECOSWF—like OPC in July—have already warned that the Commission does not have the legal authority to approve. We could not have said it better than OPC, which in response to the question of whether the Commission has the statutory authority to approve the RSAM stated: “No, the Commission does not have the ability to establish non-cost-based rates.” OPC Prehearing Statement at 11. Cloaking the RSAM in a Settlement does not exempt or enlarge the Commission’s authority from the strictures of Florida law. The RSAM is simply a mechanism that allows FPL to take ratepayer money that should be used to pay down the enormous rate base, and instead book it as earnings to keep FPL at the precise top of its allowed earnings range for the duration of the settlement period. It is unlawful and makes a mockery of the *midpoint* ROE since, thanks to the RSAM, FPL essentially functions at a fixed ROE at the top of its range, in this case, 11.7%. At a time when authorized ROEs have been trending downward for decades, an 11.7% ROE is unheard of in this nation for an Investor-Owned Utility (“IOU”). Moreover, FPL, as a large and stable IOU, should have an ROE lower than the national average, not hundreds of basis points higher.

Taken as a whole, the Commission must recognize the sundry violations of Florida law and abuse that the Settlement Agreement would impose on the public, and deny it as being against the public interest and contrary to Florida law.

STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Does the Commission have the statutory authority to grant FPL's requested storm cost recovery mechanism as part of the Stipulation and Settlement Agreement?

POSITION: *No. There is no statutory authority for pre-approval of a rate increase as contemplated and proposed by FPL here.*

ISSUE 2: Does the Commission have the statutory authority to approve FPL's requested Reserve Surplus Amortization Mechanism (RSAM) as part of the Stipulation and Settlement Agreement?

POSITION: *No. The Commission does not have the ability to establish non-cost-based rates. Section 366.06, Florida Statutes, provides that "[t]he commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service" and must determine the "net investment . . . honestly and prudently invested . . . less accrued depreciation." There is absolutely no statutory mechanism to allow the use of RSAM and deprive FPL's customers the value of any surplus depreciation.*

ISSUE 3: Does the Commission have the statutory authority to approve FPL's requested Solar Base Rate Adjustment mechanism for 2024 and 2025 as part of the Stipulation and Settlement Agreement?

POSITION: *No. No statutory authority exists for SoBRA adjustments for 2024 and 2025 to be approved through this proceeding.*

ISSUE 4: Does the Commission have the statutory authority to adjust FPL's authorized return on equity based on FPL's performance as part of the Stipulation and Settlement Agreement?

POSITION: *No, there is no statutory authority to adjust FPL's authorized return on equity based on performance as proposed by FPL.*

ISSUE 5: Does the Commission have the statutory authority to include non-electric transactions in an asset optimization incentive mechanism as part of the Stipulation and Settlement Agreement?

POSITION: *No. Cost recovery is only permissible for costs arising from generation, transmission, or distribution of electricity. No statutory authority exists to approve such a mechanism.*

ISSUE 5(a): Does the Commission have the authority to approve FPL's requested proposal for a federal corporate income tax adjustment that addresses a change in tax if any occurs during or after the pendency of this proceeding as part of the Stipulation and Settlement Agreement?

POSITION: *No. No statutory authority exists to approve FPL's requested proposal based on hypothetical situations that have not occurred. Should tax changes occur, the issue could be addressed in a separate proceeding at that time, if appropriate statutory authority exists, to grant FPL any relief requested.*

ISSUE 6: Does the Commission have the statutory authority to grant FPL's requested four year plan as part of the Stipulation and Settlement Agreement?

POSITION: *No. No statutory authority exists to grant FPL's requested four year plan as contemplated by the Settlement.*

ISSUE 9: Has Floridians Against Increased Rates, Inc. demonstrated individual and/or associational standing to intervene in this proceeding?

POSITION: *No position.*

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

POSITION: *Absolutely not. As shown by testimony and cross-examination, the Settlement extracts over a billion dollars of wealth from residential customers and transfers it to the largest commercial and industrial customers, with some of those customers receiving over $1 million per year in subsidies. The Settlement also saddles customers with paying FPL for retired plants for decades, and leaves residential customers worse off than they were under FPL's original proposal.*

STANDARD OF REVIEW

Settlement agreements are reviewed by the Commission under the public interest standard, that is, "whether the agreement—as a whole—resolved all the issues, [and] established rates that were just, reasonable, and fair, and that the agreement is in the public interest." *Sierra Club v. Brown*, 243 So. 3d 903, 909 (Fla. 2018) (internal quotations omitted). However, ultimately the "Commission's actions are conditioned by statute (rates set must be fair, just, and reasonable)." *Id.* As such, the Commission may only act to approve a utility proposal when it has statutory authority to do so. *Citizens v. Graham,* 191 So. 3d 897, 900 (Fla. 2016). If a Settlement would lead to unjust or discriminatory rates or would lead to the approval of unlawful accounting mechanisms or cost-recovery not authorized by statute, the Commission must disapprove the Settlement.

ARGUMENT

I. FPL's Rate Base is Large, Unjustified, and Composed of Unreasonable, Imprudent, and in Some Cases, Unlawful Investments.

A. FPL's Rate Base Has Grown at Exponential Rate Without Justification.

FPL's jurisdictional adjusted rate base has grown from $15.683 billion in 2009, Exhibit 582 at 24780,[3] to an approximate projection of $68.349 billion in 2025.[4] This relentless addition to rate base has not been to serve customers—FPL has been adequately serving customers for decades. It has far outpaced the number of customers being added to FPL during that time. In 2010, FPL's and Gulf's territories served a combined population of 9,725,286 people. Exhibit 457 at 19739.[5] At that time, FPL had a jurisdictional rate base of $16,800,538,432, Exhibit 581

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[3] References to testimony will be in the form of "T. Vol. X at XX (Witness)," and references to exhibits will be in the form of "Exhibit XX at YYYY" where YYYY corresponds to the PDF page number found in the official exhibits, *available at* http://www.psc.state.fl.us/library/filings/2021/01705-2021/01705-2021.pdf.

[4] Although Mr. Bores indicated that he believed Exhibit 620 to include the SolarTogether additions to the projected rate base, T. Vol 13 at 2840 (Bores), he was mistaken. Instead, the projection of rate base contained in Exhibit 620 was the same as the earlier projection of jurisdictional adjusted rate base contained in Exhibit 513, which were workpapers in support of the rebuttal testimony *before* the SolarTogether and Electric Vehicle rate base additions were contemplated. Thus, to calculate the actual (approximate) projected rate base, the $66.314 billion projection contained in Exhibit 620 must be added to the rate base projections of the incremental SolarTogether Expansion and Electric Vehicle charging infrastructure programs. The additional SolarTogether Expansion in the Settlement is expected to add $554 million to rate base in 2023, $1.301 billion in 2024, and $1.865 billion in 2025. Exhibit 487 at 22876 (row "Total Rate Base, Average"). FPL expects the residential electric vehicle charging in the Settlement to add $10.4 million to rate base in 2024 and $19.8 million to rate base in 2025, Exhibit 475 at 20221 (row "Total Rate Base, Average") and the commercial electric vehicle charging to add $660,000 and $544,000 to rate base in 2024 and 2025, respectively, Exhibit 475 at 20242 (row "Total Rate Base, Average"). The Electric Vehicle charging aspects of the program are expected to add about $170 million to rate base (*see* settlement paragraph 22, adding up the investments minus the existing EVolution pilot program costs, Exhibit 483 at 20332-34).

[5] 8,851,966 people for FPL and 873,320 for Gulf.

at 24754, and Gulf had a jurisdictional rate base of $1,512,206,226, Exhibit 614 at 25126, for a combined jurisdictional rate base of $18.313 billion. As noted above, by 2025, under the settlement, that rate base is expected to increase to $68.349 billion, almost quadrupling in the 16 years (2010-2025).[6] By contrast, FPL projects that its combined population (for FPL and Gulf), in 2025, will be 11,724,498, a 20% increase from 2010 levels. Exhibit 458 at 19770. It should go without saying, but a 20% growth in population, plus some inflation, does not justify the 373% increase in rate base. And, as discussed below when specifically looking at FPL's investments in power plants and transmission and distribution, no other excuses for FPL's egregious rate basing capital expenditures hold up to any real scrutiny. It does not help that FPL continues to seek to expand its monopoly power into new areas with the Settlement: EV charging, both at home and in the public; and at-home or onsite on the business solar—all types of infrastructure currently handled by the public sector with no need for FPL to use its monopoly power to undercut the private market while at the same time expanding rate base. Such infrastructure does not serve the ratepayers at large, is not in useful service, and is now allowable for rate base and cost-recovery under Florida law. *See* § 366.06, Fla. Stat.

B. FPL's Unneeded Gas Investments Are Not Reasonable and Prudent.

With this Settlement comes spending on gas infrastructure and a doubling-down on fossil fuels despite the threat of climate change. This Settlement embraces all of FPL's original proposed gas investments, which, as noted below, amounts to about an additional 4.125 GW being added to rate base. Exhibit 483 at 20309 ("Except as set forth in this Agreement, the Parties agree that adjustments to rate base . . . set forth in FPL's Minimum Filing Requirements . . . shall be deemed approved."). This includes capital spending on 17 different combined cycle

[6] 68.439 divided by 16.8005 is 3.73.

units, totaling $3.884 billion and 14 different gas combustion turbines totaling another $500.431 million, Exhibit 514 at 23982, 23984 (adding together 2019-2023), for a total of $4.384 billion in gas capital expenditures being added to rate base. It is no wonder why FPL is making so many capital expenditures. For the capital expenditures FPL is seeking to have approved as part of the settlement, including the transmission and distribution projects, discussed below in Section I(C), *infra*, FPL projected $72.837 *billion* in pre-tax return on capital, Exhibit 445[7] tab 7, cell L1447, which equates to $60.842 *billion* in profit—return-on-equity, pre-tax, for FPL, Exhibit 445, tab 1.[8] And that was with a 10.55% ROE, Exhibit 445 tab 1, and under the prior depreciation rates before the adoption of RSAM. *See, e.g.*, Exhibit 445 tab 4 (solar facilities having book life of 29.4 years, whereas RSAM adjusted that to 35 years). With a 10.6% ROE, but functionally an 11.7% ROE, and a longer depreciation time-period, FPL's profits off of this spending will be even higher. *See* T. Vol. 14 at 2963 (Rábago); T. Vol. 12 at 2703 (Rábago).

Most galling is how little need there is for any of these projects. Take, for example, the 938 MW unit, "Gulf Clean Energy Center 8," that FPL is constructing at Crist. Exhibit 514 at 23984. FPL justifies this by changing the reserve margin criterion for the Gulf standalone system to 30%. T. Vol. 2 at 375 (Sim). Gulf had previously planned to a much lower reserve margin criterion. *See Petition of Gulf Power Company to determine need for proposed electrical power plant in Bay County*, Docket No. 990325-EI, Order No. PSC-99-1478-FOF-EI at 4 (Fla. P.S.C. Aug. 2, 1999) (granting need determination and "recognizing Gulf and Sothern's use of a 13.5% reserve margin for planning purposes"). FPL does not bother to justify this doubling of

[7]Exhibit 445 is a staff electronic exhibit and is not included in the PDF document of the official exhibits. Exhibit 445 is available at http://www.psc.state.fl.us/library/filings/2021/11881-2021/Support/Exhibit%20445/Attachments/.

[8] Common equity is responsible for 83.5% of the 10.08% weighted pre-tax cost rate (8.42 divided by 10.08). 83.5% of $72.837 billion is $60.842 billion.

the reserve margin except to note that Gulf Power is no longer part of Southern Company, yet fails to provide any kind of analysis about how this impacts reliability to Gulf's customers or how reliability would change with a 30% reserve margin. FPL did admit that the cost of a 30% reserve margin versus a 20% reserve margin (*not* Gulf Power Company's previous reserve margin as would be the appropriate comparison) is $106 million in cumulative present value revenue requirements. Exhibit 533 at 24182. Despite the lack of justification for a 30% reserve margin, and even before this 938 MW unit was expected to come online, FPL projected a 40.7% reserve margin for the Gulf only system, with a corresponding loss of load probability of 0.005837 in 2021. Exhibit 532 at 24171. As noted in FPL's Ten Year Site Plan, FPL uses a 0.1 loss of load probability criterion, Exhibit 458 at 19767, better stated as an expectation of not being able to meet all firm load due to lack of generation resources once out of every ten years. Gulf, as a standalone system, was already at once out of every 171 years.[9] As shown by FPL's own documents, the addition of the 938 MW CT leads to an astounding 84.1% reserve margin in the Gulf service territory in 2022. Exhibit 146 at 16044. FPL never bothered to even see what the LOLP for Gulf was in 2022 with or without the addition of the 938 MW CT. Exhibit 532 at 24167, 24172. Elementary deduction, with the addition of such enormous generating resources on a system with an LOLP of less than once every 171 years shows that the LOLP would drop even further.

FPL did perform a very limited analysis of need to try to demonstrate that it needed fast-ramping capability. According to FPL's sworn interrogatory answers, this analysis is contained in Exhibit 528, where FPL posits a scenario where in the Gulf territory there was a 2,400 MW load. It should be noted that this hypothetical load is very close to Gulf's peak-demand for all

[9] 1 divided by 0.005837 equals 171.3.

year. Exhibit 527 at 24136 (2,410 MW for summer 2020 (winter was 2,129 MW)). In Exhibit 528, therefore, the scenario posited is basically the peak-load for the entire year, as the *starting* point for measuring fast-start ramping capability and determining how many *additional* Megawatts is available within 15 minutes, and concludes that with already 2,400 MW, with no additional CT units (like the 938 MW CT unit FPL decided was needed), and with the North Florida Resiliency Connection ("NFRC"), Gulf still has 436 *additional* MW available within 15 minutes, and this list of available resources does not include the Shell PPA worth 885 MW of capacity for Gulf, *see* Exhibit 145 at 16043-44. Exhibit 528 at 24145. FPL then removes the NFRC and finds that the generating capacity falls short. Well, the easy answer is that arbitrarily deleting 885 MW of capacity, which is expected to be available through 2023, Exhibit 145, will do that. In the next scenario, to come up with such a large need for generation in Gulf's territory, FPL assumes the loss of the 885 MW from the Shell PPA (inexplicably never in the analysis to begin with), the 850 MW from the NFRC, and the loss of 475 MW from Crist Unit 7, all not being the result of a storm (because then load would drop from damage to transmission and distribution lines) while needing to meet the peak demand of the year. Exhibit 528 at 24146 (Scenario 3). Of course, FPL completely fails to calculate the probability of such a scenario (for that is what the loss of load probability criterion captures and which FPL refused to calculate—apparently FPL did not want to know the answer), rendering such a scenario absurdist and not worth further responding to. This absurd scenario is the only justification (it hardly qualifies as analysis) that FPL uses to justify the construction of a gigantic 938 MW combustion turbine that completely bypasses the Florida Power Plant Siting Act and need determination process. Far from reasonable and prudent, reckless and extravagant would fit as better descriptors for this kind of spending and slipshod justification.

The purported Cumulative Present Value Revenue Requirement ("CPVRR") savings from FPL's plan of action are a fig leaf—they fail to consider any alternative that was not explicitly discussed in Dr. Sim's testimony. *See, e.g.*, Exhibit 535 at 24190. Based on Dr. Sim's step analysis, after the "Initial Step 1" with the high reserve margin and lack of analysis supporting the Combustion Turbines (the analysis at this stage did not support the construction of a 938 MW CT), the Crist conversion and the 938 MW combustion turbine were considered baked-in and carried forward in all subsequent analyses. Although FPL did not file any analysis as to what was driving the CPVRR in these early stages, it can be seen in what they have provided that once again, fuel costs and hypothetical carbon costs are driving the CPVRR calculations. Exhibit 534 at 24186 (savings from each step overwhelmingly driven by projected "emissions" costs and "fuel" costs—in fact, almost without exception, each subsequent step of the analysis supporting FPL's conclusions regarding additional construction reflecting CPVRR savings comes with higher Generation Capital costs, i.e., more rate base, which is not surprising given this outcome-oriented analysis).

FPL apparently believes that the Commission will overlook the prudence of these hundreds of millions of dollars of expenditures without any real showing of need whatsoever (they might as well have dreamed up a scenario where all of their generating resources are lost yet their entire transmission and distribution grid remain intact on the day with higher load than ever before experienced for all the weight that should be given to FPL's hypotheticals described above). That belief does not make them prudent investments, and simply put, FPL's own reliability criteria for the FPL system as a whole, and even their outrageous 30% reserve margin for the Gulf standalone system, simply show no need, whatsoever, for the 938 MW CT at this time in Gulf's service territory. Hypotheticals about future years when FPL argues it may have been able to demonstrate such a need are belied by FPL's refusal to even evaluate the reliability criteria in a scenario where the 938 MW CT was not constructed. Exhibit 532 at 24167 (FPL refusal to run and calculate reserve margin or loss of load probability criteria for scenario where 938 MW CT was not constructed, and FPL admitting it had never run such a scenario). FPL's own answers to interrogatories show that FPL plans to barely use this 938 MW CT unit, with a range of capacity factors from 0% to 8.4% between 2021 to 2030, with most years having a capacity factor in the 2% range (2022, 2026-2030). Exhibit 531 at 24159. Basically, FPL's customers are paying for a monument to excess generation, not actual generation that is useful and provides a meaningful service to FPL's customers, but rather, serves FPL by ensuring that FPL can earn profit over its profligate spending.

The analyses provided by FPL for some of the other gas investments (others do not seem to have had any analysis) do not support the spending either. One of those projects was the "DLN 2.6 + 3SAR upgrade," a $786 million capital project in CPVRR. Exhibit 77 at 15907. FPL projects, in the end, that this will lead to $57 million in CPVRR net savings. Exhibit 77 at 15907. Of course, as always, those savings would be entirely wiped out if hypothetical carbon prices do not end up being enacted. Exhibit 77 at 15907 ($99 million of $57 million in savings from "Emissions," without which, project would be a net cost). First, those projections are still based on the incorrect and misleading ROE of 10.55%. Exhibit 519 at 24074 (under general assumptions, asset costs for common equity are set at 10.55%). Even with a 10.55% ROE, and emissions costs, FPL does not project cumulative CPVRR savings until 2044. Exhibit 519 at 24077 (last row "Cumulative CPVRR"). The further savings are into the future, the more in doubt they are as the more tenuous projections of costs become. It is no mystery why FPL supports such projects. FPL's return on equity over a 30-year time horizon on the project is projected to be $86,415,000 in CPVRR, and again, that was under a 10.55% ROE, not 10.60% as set by the settlement, likely to operate as 11.7% (or even 11.8%) as discussed below in section III(B)(iv). Similarly, the $288 million CPVRR "2.0" project is expected to yield $20 million in CPVRR benefits. Exhibit 77 at 15907. But again, this is based on a 10.55% ROE, leads to a $67,376,000 CPVRR return on equity, and is not even projected to be a net benefit to customers on a CPVRR basis until 2042. Exhibit 520 at 24082 (showing 10.55 ROE), 24083 (showing CPVRR ROE in row "Return on Equity"), 24084 (showing net benefit on CPVRR basis in 2042).

Included in FPL's capital costs it is seeking to recover as part of the rate case, and hence, part of the settlement, is the cost of converting plant Crist to gas at a cost of $178 million. Exhibit 530 at 24154. Again, FPL provides no analysis, nor ran any analysis, on the need for this generation to meet any of its reliability criteria, just deciding on its own, without analysis, that its interests in capital spending in order to earn ever more profit was more important than ensuring that those costs were prudently incurred. Exhibit 532 at 24173 (FPL admitting that it never ran and refused to run and calculate reserve margin or loss of load probability criteria for any scenario where Crist was not converted to gas or was allowed to retire).

All of this overbuilding leads to a generation system so overbuilt that, by 2023, the loss of load probability is 0.000009, or less than once every 100,000 years.[10] Exhibit 532 at 24171. In other words, given the amount of generation FPL expects to have in 2023, if conditions stayed constant, FPL would expect one instance between the year 2023 and the year 111134 when it would not have sufficient generation resources to meet all demand. That is proof that FPL's system is incredibly overbuilt. That's more than 10,000 times as reliable as FPL's reliability

[10] 1 divided by 0.000009 is 111,111.111 years.

criterion (which is conservative and reasonable) dictates. That rebuilding comes at a great cost to those that have to pay for it—FPL's ratepayers and customers, especially low-income customers, who, as noted below in Section III(A)(i), *infra*, cannot afford to pay for such excesses. It is also proof that FPL is not adding generation to maintain a minimum standard of reliability necessary to serve customers, but is relentlessly spending money in its quest to continue to expand rate base.

All of this generation overbuilding has led FPL to become ever more dependent on gas as a fuel source, exposing its customers to ever more rate shock from fluctuations in gas prices. FPL keeps comparing its proposed bills from the settlement to the bills from 2006. *See, e.g.*, T. Vol. 1 at 20 (Silagy). In the 2006 timeframe, gas prices reached a high, significantly higher than they are now. Exhibit 552 at 24298. Yet, in 2006, FPL "only" used gas to supply 50.4% of its energy. Exhibit 525 at 24126. That has now increased to 70.9% reliance for FPL, and, under FPL's direction, an astounding 95.5% for Gulf. Exhibit 526 at 24132. This is because FPL is seeking the addition of over 4 GWs of gas through this proceeding.[11] FPL, which had a large bill spike in 2006 attributable to overreliance on gas and a spike in gas prices, has become ever more reliant on gas. This billions in spending on additional gas infrastructure does nothing to start to wean FPL's gas dependence, and has only led FPL's customers to be subject to ever more rate shock from sudden increases in gas prices. *See, e.g.*, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Docket No. 20210001-EI, Order

[11] 938 MW from the Gulf CT addition, 1,163 MW from Dania Beach Unit 7, Exhibit 514 at 23982, 924 MW from conversion of existing Crist units to gas, *see* Exhibit 485 at 22295, approximately 100 MW from Lansing Smith upgrade, T. Vol. 3 at 583 (Broad), and more than 1,000 additional MW from 9 Combined Cycle unit upgrades and 35 CT upgrades, T. Vol. 3, p. 591 (Broad). Adding these numbers together equals 4,125 MW of additional, new gas capacity that FPL is seeking to recover through this rate case and settlement.

No. PSC-2021-0142-PCO-EI, Order Approving Florida Power & Light Company's Petition for Mid-Course Correction at 6 (Fla. P.S.C. April 21, 2021) (approving FPL mid-course correction, increasing fuel charge by 18.23% on a 1,000 kWh residential bill).

Although Florida Rising, LULAC, and ECOSWF do not support coal-fired generation, FPL's efforts to buy-up coal plants and saddle customers with their retirement costs is not laudable, but only leads to further increases in rate base. With the $100 million consummation payment to JEA (including FPL's ROE on that payment), FPL does not expect its customers to break-even from the retirement of Scherer until the end of the 2030s, Exhibit 518 at 24069 (row "Cumulative CPVRR"),[12] and that was under the old ROE of 10.55%, Exhibit 518 at 24066,[13] and does not take into account the increase in amortization period that is expected to add around $600 million in costs along with the other projects subject to the increase in amortization period, T. Vol. 13, p. 2840 (Bores).

C. <u>FPL's Wasteful Spending on Transmission & Distribution Opposite of Prudent and Reasonable Investments.</u>

By FPL's own testimony, in numerous places, they have one of the most reliable transmission and distribution systems in the nation. Florida Rising, LULAC, and ECOSWF do not dispute this. So why is FPL spending so much on transmission and distribution upgrades? Because they can and doing so adds to rate base. Vote Solar and CLEO witness Curt Volkmann provided extensive analysis regarding FPL's justifications for this transmission and distribution spending. *See* T. Vol. 7 p. 1442-1467. Ultimately, he concluded that the $11.5 billion of transmission and distribution spending in 2019-2023 was unsupported by FPL. T. Vol. 7, p. 1446. Simply put, FPL failed to provide any cost-benefit analysis, or make any showing as to

[12] Cumulative CPVRR turns favorable in the year 2039.
[13] Finance assumption as assets cost of common equity set at 10.55%.

why these costs being borne were reasonable and prudent. That alone, and that it is contained in the Settlement, make the Settlement contrary to the public interest.

By FPL's own admission, the costs for the NFRC have not even been finally determined yet due to ongoing discussions regarding impacts on Duke's system. Exhibit 529 at 24149. Given that Duke has now filed a complaint against FPL at FERC regarding the NFRC, such discussions do not seem to be going well. T. Vol. 13. p. 2839 (Barrett). And, despite these unknown costs, potentially being hundreds of millions of dollars, and without accounting for them, FPL's own projections show that it will be many years before ratepayers could see any savings from FPL constructing the NFRC as opposed to using the existing Duke or Southern system transmission networks to send energy, never even considering keeping Gulf integrated with the Southern system and preserving the status quo. Despite all of this, and assumptions of ever greater costs to send energy though the Southern system or the Duke system, FPL projects, on a net present value basis, that sending energy through the Southern system is still cheaper through 2042 than constructing the NFRC ($629,962,568 versus $631,030,082), Exhibit 148 at 16047-48, and 2038 through the Duke system, Exhibit 148 at 16047, 16049. Only by extending the analysis so far, and by assuming that the price will increase from a 2021 charge of $3.30780/kW-month to $12.62407/kW-month for the Southern system by 2042, Exhibit 148 at 16048, does FPL project savings from the construction of the NFRC. This tortured analysis does not support such spending, but proves that it is not a reasonable and prudent use of ratepayer money, and provides further support that since it is embedded in the Settlement that the Settlement is not in the public interest.

Furthermore, the only analysis purporting to show any such need for the NFRC, contained in Exhibit 528, does not demonstrate any such need. In Scenario 2, which neglects to include the 885 MW Shell PPA, FPL's own analysis shows that it can have 1,986 MW operational in 15 minutes for the Gulf service territory with no NFRC and no 938 CT addition to Plant Crist. Exhibit 528 at 24145. FPL says this is insufficient, as the scenario calls for 2,400 MW of load. But FPL provides no explanation or reasonable scenario where the load in Gulf's territory would go from 1,550 MW to its yearly peak at 2,400 MW in less than 15 minutes. Absurd scenarios do not justify such large capital projects like the NFRC, and do not make such projects reasonable and prudent.

D. Excessive Capital Spending Leading to New Power Plants and New Transmission and Distribution Naturally Results in Lower Operating and Maintenance Costs.

FPL, throughout their testimony and case, present their operations and maintenance costs ("O&M") as a great success worthy of praise (and additional profits). However, as shown above in subsections B & C, their success in lowering O&M costs are not magic. Building lots of brand-new power plants and transmission and distribution lines, and prematurely retiring older power plants and power lines, will, of course, lead to lower operating and maintenance expenses. The question, then, is are the construction projects and the retirements leading to customer savings? With this largest rate increase in Florida history, the answer is quite apparently no. The "FPL effect," of continuously expanding rate base by building new power plants and new transmission lines, and prematurely retiring older assets, has the incidental impact of lowering O&M costs. The best example of the "FPL effect" can be seen in FPL's takeover of Gulf's service territory, which FPL seems to be quite proud of. FPL, in numerous places, brags about the lower O&M costs it is brought to Gulf customers. What FPL fails to mention is the great costs that would be imposed because of the FPL effect if Gulf customers continue to be treated separately for ratemaking purposes.

E. FPL’s “Improvements” to Gulf Reflect Billions of Capital Expenditures That Saddle Ratepayers with Unneeded Rate Hikes.

The proof, as it were, is in the pudding. If FPL has been so great to Gulf’s customers and the bottom-line, improving efficiency and cost savings, why is FPL proposing to increase Gulf rates, as a standalone entity if consolidated rates are not approved, by over 40%? Exhibit 510 at 23932. The answer, of course, is that FPL is not good for Gulf customers and has not made improvements that benefit Gulf’s customers, but rather, only benefit FPL’s bottom-line. That is why FPL’s improvements do not come as savings to Gulf’s customers—but come as enormous costs, only hidden by combining FPL’s and Gulf’s rates together. If they were not combined, the energy charge for residential customers, not including fuel or any of the clauses, was proposed by FPL to increase to 6.866 cents per kWh, an astounding 40.5% increase. Exhibit 510 at 23932. The general service demand rates would go up even more, by over 50%. Exhibit 510 at 23932. Overall, for 1,000 kWh of energy usage, residential bills would have increased from $139.89 to $168.20, one of the highest in the nation. Exhibit 42 at 13736. That is not value for customers—that is the FPL effect, hidden only by combining the rates for FPL and Gulf customers and having existing FPL customers subsidize existing Gulf customers for all of the “improvements” FPL has been making in Gulf’s service territory.

F. Electric Vehicle Pilot Programs Have No Place in the Rate Base.

FPL’s original filing would have added $56 million to rate base to build 1,000 EV charging stations, under its “EVolution" pilot program, Exhibit 511 at 23935, to which the Settlement Agreement adds an additional $170 million in rate-based costs, Exhibit 483 at 20332-34; T. Vol. 13 at 2823-24 (Barrett, Valle). Cumulatively, FPL plans to charge customers a quarter of a billion dollars for proposals that do not generate or provide electricity to the general body of customers, and are unsupported by any cost-benefit analysis. T. Vol. 12 at 2705

(Rábago). Instead, these programs, while purportedly designed to bring the benefits of increased EV adoption in Florida, would cynically function to increase FPL's load growth. *Id.* For instance, FPL touts the new "UEV Tarriff" being rolled out "to charge drivers directly at . . . EVolution fast charging stations." T. Vol. 2 at 487-88 (Valle). It is wrong for FPL to charge its entire rate base, including millions of income constrained families, for the cost of installing and subsidizing EV charging stations for the benefit of the select customers who are willing and able to acquire an electric vehicle. T. Vol. 12 at 2705 (Rábago). Because the general rate base is being charged for something which will not benefit it, at least on this record, for which FPL provided no cost-effectiveness analysis, T. Vol. 12 at 2706 (Rábago), this aspect of the Settlement Agreement is contrary to the public interest and requires the Commission to reject it.

G. <u>The Greenwashing Hydrogen Pilot is an Impermissible Attempt to Justifying Other Unlawful Elements of the Settlement Agreement While Charging Customers for Uneconomic R&D.</u>

The Commission should reject FPL's proposed "Green Hydrogen" pilot for numerous reasons. Among other defects, the pilot is: radically uneconomic and inefficient; used to justify other schemes and features of the Settlement Agreement that run counter to the public interest; and ultimately an attempt by FPL to use its monopoly power to extract R&D rents from captive rate payers to subsidize its possible entry into wholesale sales of hydrogen, which does nothing to benefit its customers.

FPL seeks to slip this $65 million pilot into its rate base through its underlying rate case and the Settlement Agreement. According to FPL Witness Valle, the Green Hydrogen pilot is crucial to solving the "curtailment" problem, which results from having more instantaneous solar generation than instantaneous demand on the grid at any given time. T. Vol. 2 at 489 (Valle). The basic idea is to use a solar array to generate electricity that, instead of being fed directly into the grid, is used to run an energy intensive electrolyzer to break water molecules into oxygen and hydrogen. T. Vol. 2 at 490 (Valle). The resulting hydrogen would then be mixed into the gas feedstock—representing *up* to 5%—of the fuel for one combustion turbine of one the combined cycle units at FPL's Okeechobee gas plant. T. Vol. 2 at 490-91 (Valle).

Most fundamentally, this pilot has no basis in reality. Witness Rábago, who has extensive experience in hydrogen research, notes that while hydrogen may have a role for specialized technological applications, particularly at a small, distributed scale, "it is not a reasonable or economic option for large-scale energy systems and facilities like gigawatt-power plants." T. Vol. 14 at 2961 (Rábago). Witness Rábago further notes that:

> Current technologies for electrolysis are extravagantly expensive and consume huge amounts of electricity, meaning the net energy value of the hydrogen is negative and the total system costs of producing hydrogen to blend into a fossil methane pipeline and plant amounts to the application of a luxury energy carrier to a commodity energy construct.

Id. The negative net energy value above refers to the tremendous loss in energy incurred where ready-for-the grid electricity from solar panels is exchanged for electricity produced by a hydrogen-fired combined cycle unit, with respect to both the energy-intensive electrolysis process and further energy losses from heat rate inherent to thermal generation. No matter how efficient the thermal unit, FPL's implied longer-term plan to convert its entire gas fleet to burn hydrogen would result in "overbuilding the generation fleet and inefficiently consuming valuable solar facility production." *See* T. Vol. 14 at 2961 (Rábago). Furthermore, FPL's and Gulf's past and current projected solar deployment accounts for less than 5% of their respective total generation, Exhibit 526 at 24131-32, far below the deep penetrations where solar curtailment could even hypothetically be implicated. As far as FPL's curtailment argument, this pilot is a very expensive "solution" in search of a problem.

The hydrogen pilot presents other serious issues in that it is used as a justification for other unlawful elements of the Settlement Agreement. First, it is invoked as a substantial reason for extending the in-service life of FPL's combined cycles units from 40 to 50 years, T. Vol. 4 at 752-53 (Ferguson), to which is attributed much of the hypothetical calculated "reserve surplus," *id.*, underlying the unlawful RSAM (*see* Part II.B, *infra*). FPL witnesses also use this pilot to justify not ruling out the construction of future gas combustion turbines and combined cycle units, on the basis that such units could *also* burn hydrogen. T. Vol. 13 at 2862 (Bores, Valle); Exhibit 625 at 25569. Finally, it is invoked as another fuel stock to be "optimized" in the legally impermissible "Incentive Mechanism." T. Vol. 4 at 804 (Forrest). This mention indicates FPL's intention to have its "captive monopoly customers" funds "diverted to what is essentially a fuels production research project" for a new fuel source FPL could sell on the wholesale market for its own benefit. *See* T. Vol. 14 at 2961 (Rábago).

Ultimately far too little is known about this costly first step towards dubious future projects to justify its inclusion, through the Settlement Agreement, in the rate base. As nothing on the record demonstrates this project to be in the public interest, the Commission should reject this inefficient, extractive pilot.

II. Other FPL Profit Drivers are Unlawful, Out of Step with Other Utilities, and Bad for Customers.

Florida law charges this Commission to set rates that are "fair, just, and reasonable," and not "unjustly discriminatory." § 366.06(1)-(2), Fla. Stat. The "public interest standard" by which the Commission evaluates proposed Settlement Agreements in turn flows from that bedrock statutory mandate. *Sierra Club v. Brown*, 243 So. 3d 903, 909 (Fla. 2018). Because these terms are undefined by the statute, *see* § 366.06, their "plain and ordinary" meaning, which "can be ascertained by reference to a dictionary," applies. *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992). "Fair" means "marked by impartiality and honesty: free from self-interest, prejudice, or favoritism."[14] "Just" means "conforming to a standard of correctness: PROPER," or "acting or being in conformity with what is morally upright or good: RIGHTEOUS."[15] "Reasonable" means "being in accordance with reason" or "not extreme or excessive."[16] "Discriminatory" means "applying or favoring discrimination in treatment."[17]

Here, FPL's exorbitant and unjustified spending spree to inflate its rate base is only one dimension of the significant harms this Settlement Agreement would impose on the public; having added tremendous expenses to the rate base kitty, FPL now seeks to make record profits on that spending through a lopsided capital structure and various accounting schemes and incentives, every one of which defies reason and is wholly unsupported by the record. Through the Settlement Agreement, FPL proposes to stick customers with a Return on Equity ("ROE") and a Common Equity Ratio that are both far in excess of what FPL needs to attract investment capital and recover an appropriate, risk-based profit. The Settlement also seeks the approval of the Reserve Surplus Amortization Mechanism (RSAM), which relies on accounting slight-of-hand to manipulate FPL's earnings to maximize profits while extracting from customers approximately $1.4 billion dollars of overpaid depreciation costs. Finally, the Settlement seeks to

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[14] https://www.merriam-webster.com/dictionary/fair
[15] https://www.merriam-webster.com/dictionary/just
[16] https://www.merriam-webster.com/dictionary/reasonable
[17] https://www.merriam-webster.com/dictionary/discriminatory. In turn, discrimination is defined as "the practice of unfairly treating a person or group of people differently from other people or groups of people." https://www.merriam-webster.com/dictionary/discrimination

include several so-called incentive mechanisms which would further enrich FPL at its customers' expense.

The signing parties ask the Commission to violate its statutory mandate—and moral obligation to the people of Florida—to set lawful rates that are "fair, just, and reasonable" and "[non-]discriminatory." Any one of these extractive profit-driving schemes would be sufficient to find the Settlement is at odds with the public interest. Taken collectively, these financial hijinks will increase costs to the public by billions above what is needed to provide reliable electricity service and a reasonable rate of return for FPL. The only defensible conclusion is that the Settlement Agreement is against the public interest, and the Commission must disapprove it.

A. FPL's Unjustified, Excessively High ROE and Equity Ratio will Needlessly Harm Customers.

Investor-owned, monopoly utilities are entitled to a "fair, just, and "reasonable" return on capital investments made to their systems. The Supreme Court's long-established *Hope* and *Bluefield* standard evaluates a utility's capital structure based on the actual value and risk of the investments involved to determine whether a given return is "fair, just, and reasonable." *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works and Improvement Co. v. Public Service Comm'n*, 262 U.S. 679 (1923). A reasonable return is one that: 1) reflects the returns the investors would expect from like investments of comparable risk, 2) is reasonably sufficient to assure investor confidence that the utility is financially sound, and 3) is adequate for the utility to maintain creditworthiness and attract capital. *Hope*, 320 U.S. at 603; *Bluefield*, 262 U.S. at 692-93.

The Settlement Agreement flagrantly violates this standard by proposing an ROE and a common equity ratio that are both far above reasonable values. Given FPL's status as a regulated monopoly status—for which it enjoys guaranteed profits—it is absurd to classify investing in FPL (via its parent company NextEra) as high risk. Moreover, as demonstrated over and over in the record, FPL already boasts very strong financial position, and could continue to do so even if, in keeping with industry norms and averages, the company's ROE and common equity ratios were substantially lower. The plainly unfair, unjust, and unreasonable character of the proposed capital structure and ROE are alone sufficient to reject the Settlement Agreement.

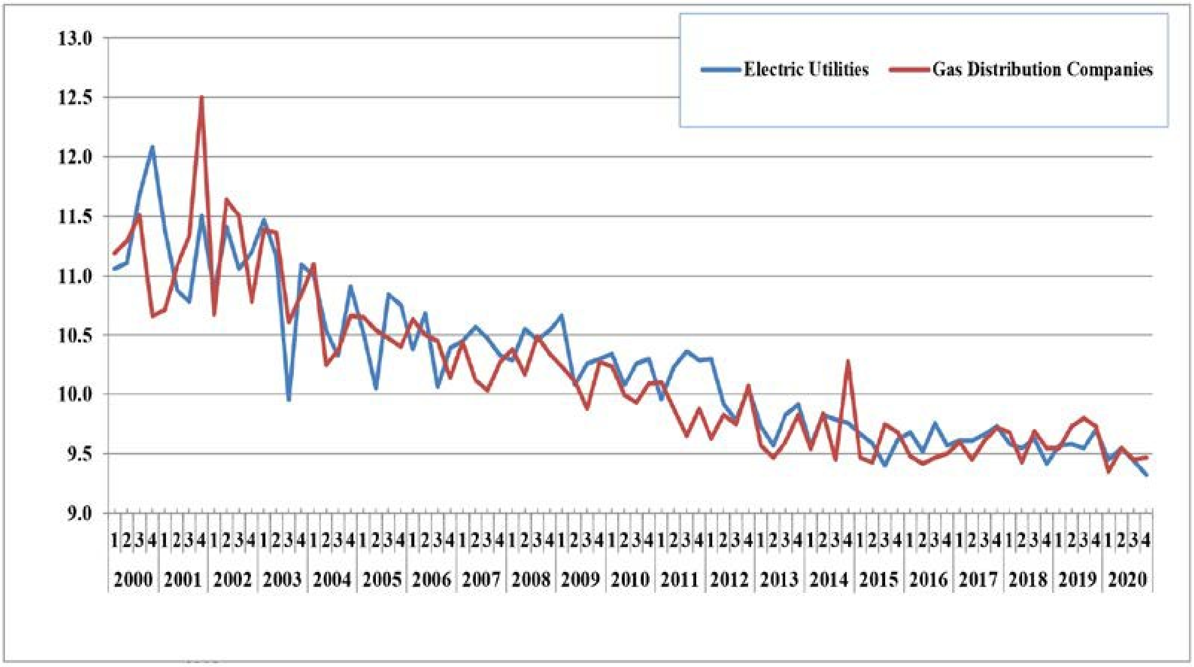
i. The ROE is Egregiously Inflated.

The proposed Settlement Agreement includes an unreasonable ROE mid-point of 10.6% and a range that tops out at 11.7% (with the option for FPL to further raise the cap to 11.8% at its discretion if an interest rate trigger is met). Exhibit 483 at 20309. Through its original proposal and then the Settlement Agreement, FPL has sought to justify a very high ROE on the bases of needing: 1) to maintain a "strong financial position" to access capital to offset the alleged high risk of investing in FPL, T. Vol. 10 at 2260-61, 2277, 2340-41 (Barrett), and 2) to recognize and compensate via bonus profits FPL's self-proclaimed superior performance, T. Vol. 1 at 60-68, 174 (Reed). These arguments crumble under further scrutiny, and all that remains is an ROE that costs customers far more than necessary for FPL to provide reliable service.

FPL's proposed ROE is an outlier against a decades long downward trend for the average authorized utility ROE, culminating in last year's all-time low. T. Vol. 6 at 1186-87 (Woolridge) (see figure below). From 2000 to 2020, average authorized electric utility ROE fell from 12.5% to 9.39%. *Id.* FPL's requested ROE would be the highest in the state, well above the settlement ROEs of 9.85% for Duke Energy Florida (approved) and 9.95% for Tampa Electric Company (pending) in rate cases this year. T. Vol. 12 at 2606 (Mac Mathuna). Moreover, industry press have emphasized that FPL's proposed 10.6% midpoint stands "significantly above" the average

ROE awarded in 2021 (through August). T. Vol. 12 at 2608 (Mac Mathuna); Exhibit 496 at 23779.

Authorized ROEs for Electric Utility and Gas Distribution Companies 2000-2020



T. Vol. 6 at 1187 (Mac Mathuna Direct Testimony, Figure 6).

FPL Witness Barrett's implication that other utilities with comparatively lower ROEs have had difficulty accessing capital, T. Vol. 10 at 2258, is not borne out by fact. To the contrary, utilities across the board have continued to "perform strongly even in the face of the COVID-19 pandemic" due to their continued ability to access a "variety of capital markets." T. Vol. 5 at 1095-96 (O'Donnell). As FEA Witness Gorman observed, although the average authorized return on equity for regulated utilities has fallen below the mid-9% range, utilities have nonetheless maintained access to "large amounts of external capital, even as they are funding large capital expenditure programs." T. Vol. 7 at 1508 (Gorman).

Secondly, the investment risk of FPL does not remotely reach a level for which such a high ROE would be needed to attract investors. FPL enjoys creditworthiness ratings well above the average of its peers; when compared to the average of Mr. Coyne's and Mr. Mac Mathuna's respective proxy groups, S&P's credit rating for FPL is two notches above the proxy average ("A" versus "BBB+") while Moody's rating for FPL is three notches above the proxy average ("A1" versus "Baa1"). T. Vol. 6 at 1171 (Mac Mathuna).

To reach his conclusion to the contrary, FPL Witness Coyne opined at length over a basket of five factors for major business risk, including capital expenditures, nuclear generation ownership, severe weather risk, regulatory risk, and the use a multi-year rate plan. T. Vol. 9 at 2141-58 (concluding that FPL's risk is greater than other utilities in Mr. Coyne's proxy group for every factor except regulatory risk, which was merely "comparable"). In reality, all of the previous factors are already considered by the major credit rating agencies when evaluating and assigning credit ratings, T. Vol. 7 at 1582-84 (Gorman) (noting that S&P considers financial risks *and* business risks, which "among others," encompasses a "company's size, competitive position, generation portfolio, and capital expenditure programs, as well as consideration of the regulatory environment, current state of the industry, and the economy as whole"). There is simply no sound evidence on this record that FPL somehow poses a heightened investment risk.

Finally, to the extent that FPL's high ROE is driven by its supposed excellent performance, that is not only an inappropriate factor for setting the authorized ROE, it also operates on a flawed premise. As detailed in greater depth in sections I(b) and I(d) of this brief, *supra*, FPL's actual performance does not reflect the glowing superlatives of FPL's filings in this docket.

ii. The Equity Ratio is Far Too High, Needlessly Increasing Customer Costs for FPL's Benefit.

The equity ratio sought in the Settlement Agreement likewise has no justifiable basis in this record. Utilities finance capital investments through a combination of common equity and debt, within the parameters of a percentage allocations by this Commission. The distinction between debt and equity financing is crucial, as the inherent cost of capital differs significantly between these modes, and when multiplied by the staggering amounts in FPL's rate base, can have huge impacts on customers. In an open market, competition will drive a utility to select the most efficient allocation between debt and equity, while a regulated monopoly utility instead experiences an incentive to maximize the use of equity, on which it is guaranteed generous return from a captive customer base. T. Vol. 5 at 1109 (O'Donnell). As such, it is crucial for the Commission to authorize FPL the most modest equity ratio at which the company can still provide reliable electric service and earn a *reasonable* return.

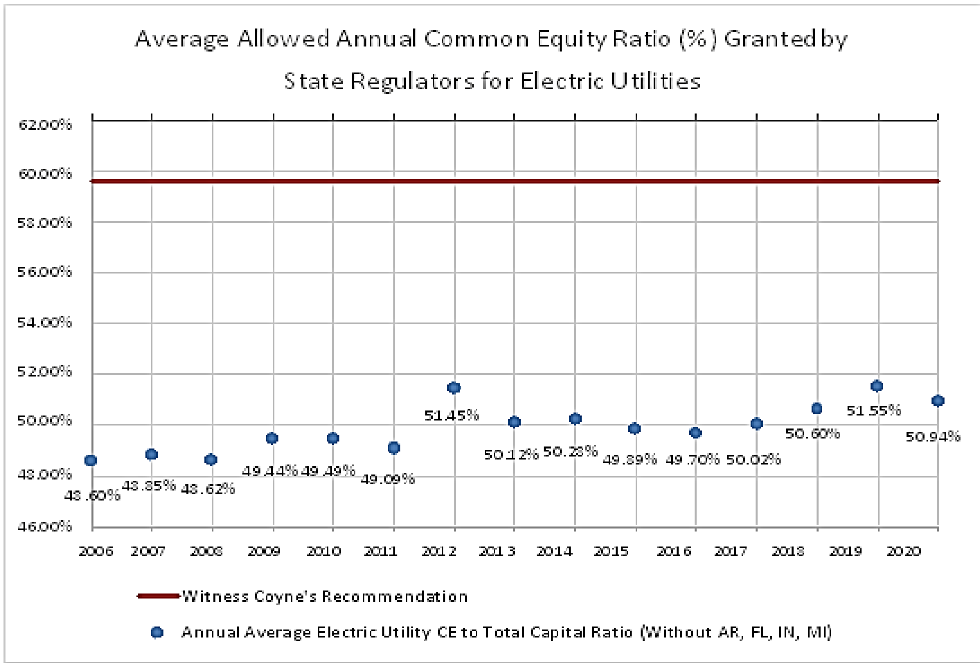
Due to current interest rates the impact of paying taxes on shareholder dividends, the cost of debt is substantially cheaper than equity. T. Vol. 5 at 1104 (O'Donnell) ("Returns on common equity, which in part take the form of dividends to stockholders, are not tax deductible which, on a pre-tax basis alone, makes this form of financing about 21% more expensive than debt financing."). Therefore, for every incremental rise in the authorized equity ratio there is a corresponding increase in revenue requirement. T. Vol. 6 at 1196 (Woolridge). Accordingly, if the authorized equity ratio is set higher than necessary, "rates will be higher than they need to be." *Id.*

OPC Witness O'Donnell found that under FPL's originally proposed ROE, its equity ratio of 59.6% put customers on the hook for over half a billion dollars of excessive costs each year, as compared to a typical utility capital structure consisting of 50% debt and equity each. T. Vol. 5 at 1088 (O'Donnell); Exhibit 228 at 18008; T. Vol. 6 at 1192 (Woolridge) (showing U.S. average authorized IOU equity ratios to have consistently hovered around 50% over the last 15 years). Even reducing the equity ratio by a smaller amount, down to 55% would save customers

$245 million each year. T. Vol. 5 at 1088 (O'Donnell); Exhibit 228 at 18008. While the 10.6% mid-point of the Settlement Agreement ROE marginally softens the overall impact of this excessive authorized return, customers would still save hundreds of millions of dollars per year by reducing the equity ratio to 50% or 55%.

As with the proposed ROE, the 59.6% common equity ratio proposed by the Settlement Agreement stands out as markedly higher than not only every other vertically integrated, investor-owned utility in Florida, but across the country as well. T. Vol. 5 at 1123-24 (O'Donnell). For comparison, this Commission has just approved a 53.0% equity ratio for Duke Energy Florida, while Tampa Electric Company's settlement includes a 54.0% ratio. T. Vol. 12 at 2601 (Mac Mathuna). FPL's common equity ratio also greatly exceeds the average of proxy groups by OPC Witness Woolridge (44.5%) and FPL's own Witness Coyne (45.4%). T. Vol. 6 at 1192 (Woolridge). Over the last 15 years, from 2006-2020, the average common equity ratios authorized by state regulators for investor sources have ranged from 48.6% to 51.55%, with an average from the most recent five complete years (2016-2020—FPL's last settlement period) of 50.56%. *Id.*

Common Equity Ratio Granted by State Regulators (2006 – 2020)



T. Vol. 5 at 1124 (O'Donnell Direct Testimony, Chart 4)[18]

FPL trots out many of the same unavailing justifications for this high equity ratio as for its proposed ROE, such as the need to overcome a higher risk profile than peer utilities to still attract capital investments. *See, e.g.*, T. Vol. 10 at 2255-56, 2284-85 (Barrett); T. Vol. 9 at 2160. These risk-based arguments must fail for the same reasons detailed above in the ROE discussion.

In addition, FPL's equity ratio is also higher than its publicly traded parent company, NextEra, as well as all of NextEra's non-regulated subsidiaries. T. Vol. 5 at 1124-25 (O'Donnell); T. Vol. 6 at 1192-93 (Woolridge); Exhibit 5 at 1337-38. This fact belies FPL's argument that such a high equity ratio is needed to attract investors, as it is the lower equity NextEra, not FPL, which is actually traded. *See* T. Vol. 6 at 1193 (Woolridge) ("It is appropriate to [compare] the common equity ratios of the utility holding companies because the holding

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[18] Arkansas, Florida, Indiana, and Michigan report common equity ratios on an all capital sources basis. Witness O'Donnell removed these states from the analysis to provide a fair comparison to FPL, because its requested common equity ratio is based exclusively on investor-owned sources of capital. T. Vol. 5 at 1122-23 (O'Donnell).

companies are publicly-traded and their stocks are used in the cost-of-equity capital studies.”). Furthermore, the relative lower equity ratios of NextEra and its non-regulated subsidiaries as compared to FPL is evidence that FPL is using a higher equity ratio than is economic for its operations—simply because it can get away with that as a monopoly—resulting in customer’s unreasonable overpayment for electricity.

Finally, because of the mutual interaction between a utility’s authorized equity ratio and its ROE, each must be considered in relation to the other. A capital structure with a high equity ratio “can amplify the overall impact of a relatively low ROE,” while a structure with a lower equity ratio can “mitigate” the otherwise excessive impact of a high ROE. T. Vol. 6 at 1196 (Woolridge). Even if the Commission were to accept FPL’s erroneous assertions that it is somehow a high-risk investment, having either a very high ROE or a very high equity ratio dramatically lowers that risk. T. Vol. 6 at 1197-98 (Woolridge). Because FPL has presented such a high ROE and equity ratio, the Commission has only two reasonable options. Either it must adopt a more reasonable equity ratio in line with the average of the proxy group from which the cost of equity was calculated *and* then reflect the lower equity ratio through lowered revenue requirements, or, to recognize the significant financial risk mitigation of a very high equity ratio and adopt a common equity cost rate that is below the proxy group average. *Id.*

Put simply, FPL cannot “have it both ways” as it seeks to do in through the Settlement Agreement: a high equity ratio lowers risk and should be reflected in a lower ROE, while a high ROE lowers risk and should be reflected in a lower equity ratio. The Settlement Agreement, with its industry bucking highs for both ROE and equity ratio, is plainly against the public interest as its fundamental capital structure would produce unfair, unjust, and unreasonable rates.

B. The RSAM is Unjust to Customers and the Commission Has No Legal Basis to Approve It.

In a rate hike already littered with greed, FPL's proposed Reserve Surplus Amortization Mechanism ("RSAM") nonetheless stands out for its sheer audacity. The RSAM, which has no legal basis for approval, would be against the public interest even if the Commission did have the legal authority to approve it. At its essence, the mechanism is a slush fund, created from thin air by manipulating the remaining service lives of FPL assets to create an artificial surplus, which is then used to guarantee FPL profits at the very top of its authorized ROE range. Unsurprisingly, the RSAM operates to the significant detriment of FPL's customers, who receive no additional value for this additional extraction of wealth.

The RSAM must be rejected because it violates the Commission's obligation to set cost-based rates. Section 366.06, Florida Statutes, directs this Commission to investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service" and must determine the "net investment . . . honestly and prudently invested . . . less accrued depreciation." Therefore, there is no statutory basis for the Commission to include the accrued depreciation for ratemaking purposes, as sought under the Settlement Agreement. To allow otherwise would necessarily impact the total money FPL gets to keep from the established rate structure during the Settlement term—that is, it would be used, unlawfully, for ratemaking purposes.

The Supreme Court recognizes this same principle when evaluating the rates of other public utilities. *See., e.g.*, *Lindheimer v. Illinois Bell Tel. Co.*, 292 US 151, 168-69 (1934). In *Lindheimer*, the Court considered a telephone company's application of monies recovered through annual depreciation charges—which are meant to spread the "actual cost of property" in yearly increments "evenly over the service life" of particular assets—to other accounts. *Id.*, 292

U.S. at 167-68. The Court reasoned that, because the "depreciation reserve represent[s] the consumption of capital, on a cost basis," when a utility charges operating accounts for any excess credits to depreciation reserve, it effectively forces customers to make "capital contributions . . . to secure additional plant and equipment upon which the utility expects a return" instead of paying the actual depreciation losses "incurred by the utility in service rendered." *Id.*, 292 U.S. at 168-69. To the extent that FPL's Settlement Agreement proposes to use the RSAM to make credits and debits to accumulated depreciation reserve for the purpose of manipulating its ROE, rather than for recording actual depreciation, it violates Supreme Court case law and Florida Statutes. There is absolutely no legal justification to allow the use of RSAM and deprive FPL's customers the value of any surplus depreciation.

However, even if the Commission otherwise had the legal authority to approve the RSAM, it operates so decisively against the public interest that the Settlement Agreement that contains it must still be rejected. The RSAM is "funded" from the "theoretical reserve imbalance," which is calculated as the difference between FPL's actual, recorded running total of depreciation activity ("book accumulated depreciation"), and FPL's estimation of accumulated depreciation at any given time ("theoretical reserve") reserve. T. Vol. 3 at 729-30 (Allis). Changes in assets' expected service lives or salvage value can produce either a surplus or deficit theoretical reserve balance as compared to the book value over time. *Id.*. It also means that FPL can cook up a "fresh study" with new assumptions, T. Vol. 13 at 2919 (Barrett), when it is expedient to reach a result, such as enabling the RSAM.

In this case, FPL's own witnesses simultaneously present two sharply different calculations of this hypothetical imbalance. These deeply inconsistent conclusions as to the value of the depreciation reserve imbalance typify FPL's shrewd attempts to "have it both ways" at the public's expense. The Depreciation Study filed by FPL Witness Allis recommended depreciation parameters that result in a deficit balance of $437 million, meaning that FPL has collected $437 million less than it should have at this time to cover depreciation costs. T. Vol. 4 at 731-32 (Allis); Exhibit. 207 at 16739.

However, because the negative balance would not allow the use of the RSAM slush fund, FPL Witness Ferguson asked Mr. Allis to "calculate several alternative parameters . . . in lieu of those presented in the 2021 Depreciation Study to enable continued use of the RSAM." T. Vol. 4 at 751 (Ferguson). In stark contrast, with the new depreciation reserve calculations based on "RSAM parameters" FPL Witness Ferguson presents a surplus balance of $1.48 billion, meaning that FPL has collected $1.48 billion *more* than it should have at this time to cover depreciation costs. Exhibit 201at 47. The gymnastics required to produce this new balance included extending the lives of: the St. Lucie nuclear plant by 20 years (33% increase); all combined cycle generating units by 10 years (25% increase); all solar units by 5 years (14% increase); for all transmission, distribution, and general assets, the values of the 2016 FPL Rate Settlement and the 2021 Depreciation Study were compared, and "whichever results in longer lives and/or higher net salvage" was adopted. T. Vol. 4 at 751 (Ferguson); T. Vol. 14 at 2963-64 (Rábago) (noting the flimsy justifications for each of these modifications). Ultimately, without these "cherry-picking adjustments," the RSAM would not be possible. T. Vol. 6 at 1309 (Lawton).

The adoption of the RSAM leads to concrete, negative consequences for FPL's captive ratepayers, most obviously through its functional guarantee that FPL will earn at the absolute top of its ROE range. This Commission sets a mid-point ROE as the intended reasonable return for a utility, which utilities are expected to aim for, and a buffer range (typically 100 basis points above and below the midpoint). As the Supreme Court of Florida has long explained, the entire purpose of establishing a range *in addition* to the authorized midpoint is to recognize that a utility cannot practicably match an exact ROE over time, and is intended to provide just enough flexibility for natural fluctuations *around* the targeted value:

> By establishing a rate of return range in addition to establishing a specific rate of return, the commission is acknowledging the economic reality that a company's rate of return will fluctuate in the course of a normal business cycle. Earnings in excess of the authorized rate of return could possibly be offset by lower earnings in later years. Thus the purpose of having a range is to give the commission some flexibility in deciding whether a public utility's rates should be changed.

Gulf Power Co. v. Wilson, 597 So. 2d 270, 273 (Fla. 1992) (quoting *United Tel. Co. of Fla. v. Mann*, 403 So. 2d 962, 967-68 (Fla. 1981)). Just as importantly, the Florida Supreme Court has ruled that earning an ROE that falls within an authorized range does *not* automatically establish that the return is reasonable. *Id.* Specifically in the context of a utility that consistently earns at the top of its range, the Court has found that

> *The existence of the range does not limit the commission's authority to adjust rates even though a public utility's rate of return may fall within the authorized range.* **For example, if a public utility is consistently earning a rate of return at or near the ceiling of its authorized rate of return range, the commission may find that its rates are unjust and unreasonable** even though the presumption lies with the utility that the rates are reasonable and just. *The commission's discretion in this matter is not annulled by the establishing of a rate of return range.*

Id. (italics in original, bold added).

In this context, the RSAM—and particularly FPL's historical usage of the RSAM—makes a mockery of the mid-point and range system. As FPL's own filings show, since the first pilot of the RSAM, the company has consistently targeted and achieved the upper extreme of its authorized "range" with surgical precision and historic consistency. Exhibit 571 at 24492; Exhibit 572 at 24512; Exhibit 573 at 24540; Exhibit 574 at 24568; Exhibit 575 at 24596, Exhibit 576 at 24624; Exhibit 577 at 24651; Exhibit 578 at 24678; Exhibit 579 at 24704; Exhibit 580 at

24733; Exhibit 581 at 24754. In fact, during the 11 years that the Commission has permitted FPL to use this unlawful mechanism or its predecessor mechanism, the company has achieved its top of line ROE every single year except twice, including in 2017 when FPL "absorb[ed] the cost of Hurricane Irma" instead of using the established channel for storm cost recovery. Exhibit 507 at 23884-87 (even in the two years that FPL did not max out its annual ROE, FPL still achieved an ROE of just 54 and 52 basis points, respectively, below the maximum—still well above its mid-point); T. Vol. 1 at 93-94 (Reed). In practice, under the Settlement Agreement's proposed 59.6% equity ratio, the revenue requirement impact of an additional 100 basis points on equity is approximately $360 million. T. Vol. 6 at 1339 (Smith). Approving the RSAM burdens FPL's customers with an extra $360 million in costs every year, for which they receive *zero* additional value, while the company earns profits far above the already generous rate—which is meant to reflect a reasonable return—requested from the Commission. This is an obvious violation of principles of cost-based rate-making.

In addition, the depreciation parameters used to extend the lives of various assets also risks increasing the remaining book value of plants that have become uneconomic, with the result that customers will either experience added costs for plants that are not used and useful, or that the outsize remaining book value will unreasonably postpone the cost-effective retirement of uneconomic plants. T. Vol. 14 at 2963-64 (Rábago).

FPL's claim in defense of the RSAM that it would save customers $2 billion dollars in cash payments over the four-year term, T. Vol. 12 at 2761 (Bores), is deceptive at best. First, this argument completely ignores the excess costs to customers represented by FPL being virtually guaranteed to earn at the top of its ROE, as addressed above. Second, it also ignores the fact that any RSAM used from the accrued depreciation would later be recollected from future customers from expenses. T. Vol. 12 at 2683 (Rábago) ("The RSAM is a rate making shell game which allows excessive capital spending to be deceptively masked in the appearance of savings today while increasing electric rate burdens and utility profits in decades to come."); *see also In re: Petition for increase in rates by Florida Power & Light Company*, Docket No. 080677-EI, Order, No. PSC-10-0153-FOF-EI at 83 (Mar. 17, 2010) ("We believe that the very presence of a reserve imbalance indicates the existence of intergenerational inequity.") If there is a reserve imbalance, the only appropriate use of the surplus is to flow it back to customers "over a short period of time" using the remaining life technique as explained by OPC Witness McCullar. T. Vol. 5 at 1069-70 (McCullar) (quoting the NARUC *Public Utility Depreciation Practices* manual[19]); Exhibit 219.

Likewise, FPL's assertion that it is impossible to enter into a multi-year rate structure without it, T. Vol. 12 at 2757 (Bores), finds no support in the record. While multi-year rate agreements have become a regular regulated utility practice, including in Florida, FPL could not identify a single other utility that has ever included a comparable mechanism—as part of a multiyear agreement or otherwise. Moreover, Witness Smith analyzed FPL's earnings under the current settlement, using a "conservative" approach—measuring against the authorized 10.55% mid-point, rather than the actual low end of the range of reasonableness—and concluded that there was "no ratemaking need" for the use of RSAM. T. Vol. 6 at 1329 (Smith). He found that even when credits and debits from the RSAM were removed and FPL's profits recalculated to reflect what the company would have earned without the RSAM, FPL's earnings exceeded its

[19] National Association of Regulatory Commissioners (NARUC), *Public Utilities Depreciation Practices* at 189 (1996).

authorized mid-point for every month between January 2017 and March 2021, and in several months, even exceeded FPL's maximum allowed rate of return. T. Vol. 6 at 1330-32 (Smith).

FPL has argued that RSAM is not used for maintaining top-of-line ROE, R. 2756-59 (Bores), but has failed to adduce any evidence to support this assertion, nor to overcome the concrete, pre-filed analyses conducted by intervenor witnesses that conclude the contrary. But it is not just intervenors that understand the true purpose and effect of RSAM—high profile investment and credit rating analysts have come to the same conclusion. Moody's has extolled FPL's "ability to earn roughly 100 bps above its authorized ROE, which it has been able to achieve through the use of the [RSAM] . . . ." T. Vol. 11 at 2412 (Mac Mathuna), while Scotiabank's review of the RSAM moved FPL to seek confidential treatment of Witness Mac Mathuna's quotation thereof, T. Vol. 11 at 2413 (confidential version), but left intact Mac Mathuna's conclusion based on the confidential quotation that the RSAM "greatly minimize[s] FPL's cost recovery risk and actively contribute[s] to FPL's earning at the top of the ROE range." T. Vol. 11 at 2413 (Mac Mathuna).

Tellingly, in its original proposal, FPL proposed the adoption of the parameters yielding the $1.48 billion surplus *unless* the Commission rejected the RSAM. T. Vol. 12 at 2761 (Bores) ("[W]ithout the RSAM, we would not adopt the alternative parameters and, instead, would revert to the filed depreciation study from FPL Witness Allis."); T. Vol. 13 at 2825-26 (Bores). That is, if the RSAM were rejected, FPL requested the consolation prize of adopting Witness Allis' original deficit-producing parameters. FPL's attempt to have it both ways with respect to the RSAM demonstrates the need to reject both. If there *is* a surplus, it should be flowed back to customers now to avoid intergenerational inequity by raising rates to recoup misallocated depreciation costs at FPL's next rate case. If there is not a surplus, FPL's RSAM mechanism is a moot point. In the context of RSAM's inclusion in the Settlement Agreement, the public interest requires the Agreement be denied.

C. The Settlement Agreement Contains Other Unlawful Incentives and Recovery Mechanisms.

Florida Law charges this Commission with establishing "fair, just, and reasonable rates" for electric utility service. § 366.06, Fla. Stat. In relevant part, an electric utility is defined as "an investor-owned utility . . . which owns, maintains, or operates an electric generation, transmission, or distribution system" in Florida. § 366.02(2), Fla. Stat. Therefore, as the Florida Supreme Court has recently affirmed, there is no lawful basis for the Commission to approve cost recovery for any activities outside the immediate scope of electricity generation, transmission, and distribution. *Citizens of State v. Graham*, 191 So. 3d 897, 901 (Fla. 2016) (reversing unlawful PSC order that erroneously allowed FPL to recover costs for a fracking project in Oklahoma). Even where the activity for which cost recovery is sought would purportedly unlock savings to "benefit [the utility's] customers," the Commission "does not have the statutory authority" to exceed the plain meaning of sections 366.06 and 366.02, Florida Statutes, which restrict recovery to "only costs arising from the 'generation, transmission, or distribution' of electricity." *Graham*, 191 So. 3d, at 899, 901.

Furthermore, the Commission may not raise rates unless and until it has 1) held a "public hearing," in order to 2) "determine the actual legitimate costs" of such utility property that is "actually used and useful in the public service," and 3) found as a result that the existing rates are "insufficient" to reasonably compensate the utility. § 366.06(1)-(2), Fla. Stat. Only then may the Commission, "by order" fix new "fair and reasonable rates." § 366.07, Fla. Stat. Therefore, under Florida law, there is never a lawful basis for the Commission to pre-approve any rate increase.

Nevertheless, the proposed Settlement Agreement seeks approval of a number of schemes, discussed below, which seek cost recovery that is: a) not based on actual costs, b) based on activities unrelated to generation, transmission, or distribution, c) pre-approved, or d) some combination of the above. To authorize recovery for such schemes exceeds this Commission's authority as a matter of law.

i. Incentive Mechanism

FPL Witness Forrest proposes the continuation and expansion of FPL's "Incentive Mechanism," which has also been incorporated into the Settlement Agreement. Exhibit 483 at 20331-32. As included in the Settlement, this scheme would allow FPL to "optimize" assets, by buying and selling off on the short-term market: any and all FPL fuel sources, transportation capacity in its gas pipelines and storage facility, and economy sales and purchases of electricity in the southeast region and beyond, and buy selling off the renewable energy credits (RECs) associated with its solar generation. T. Vol. 4 at 794-99, 804 (Forrest). FPL proposes to recover any expenses involved in these extracurricular activities through the Fuel Clause. T. Vol. 4 at 800-01 (Forrest).

The proposed incentive mechanism is unlawful as it seeks recovery costs from activities unrelated to generation, transmission, or distribution of electricity. In addition, the incentive mechanism violates section 366.05, Florida Statutes, which both requires public utilities to keep separate accounts for sales of appliances and other merchandise and the resulting profits and requires the Commission not to consider profits or losses from such sales in rate-setting. As such, the Commission does not have the legal authority to approve the mechanism.

The same principles apply in regard to FPL's proposal to monetize the sale of renewable energy credits. While renewable energy credits are created by the addition of renewable generation assets that are paid for by the general body of customers, which socializes the risk and costs in generating them, FPL nonetheless seeks to privatize the benefits of selling off the renewable energy credits. T. Vol. 12 at 2696-97 (Rábago). This plan violates cost-of-service and cost-causation principles, as it requires burdensome cross-subsidies from all ratepayers (as all are paying for the solar, and thus the renewable energy credits), with no guarantee of receiving any of the benefits . Vol. 12 at 2697-98 (Rábago). At the same time FPL will undoubtedly claim that it is generating solar energy *for* its customers, which is deceptive if it has sold the renewable energy credits associated with that solar generation. T. Vol. 12 at 2697-98 (Rábago).

ii. Solar Cost Cap Incentive

The Settlement Agreement proposes a second unlawful incentive, this time in conjunction with the 1,788 MW of additional utility scale solar proposed in FPL's original petition. Specifically, the Agreement contemplates an installed cost "cap" of $1,250 per kW_{AC} (alternating current) for each additional project, but simultaneously proposes an "incentive" whereby, if FPL should deliver any project below the cost cap, it will charge rate payers 25% of the difference between the actual installed cost and the $1,250/$kW_{AC}$ cap. Exhibit 483 at 20317-38, 20320-21.

This incentive is as illegal as it is absurd. First, to the extent that FPL is able to deliver new solar generation below a cost cap—that it itself has defined—it is illegal to mark up the project cost by 25% of the difference between the actual installed cost and the cap. Consider FPL's own example: "if the actual installed cost of a solar generation site is $1,150 per kW_{AC}, the cost to be used for purposes of computing the revenue requirement would be $1,175 per kW_{AC} [0.25 times ($1,250 - $1,150) + $1,150)]." Exhibit 483 at 20321. Giving the company an enormous benefit of the doubt that the \$1,150/kW$_{AC}$ spent on a solar project that FPL has specifically engineered to defeat the Power Plant Siting Act[20]—evading need determinations and competitive bidding—does in fact represent the lowest-cost, reasonable and prudent construction, then the "actual legitimate costs" of that project would be \$1.15 million multiplied by the nameplate MW capacity. As FPL proposes to charge the rate base for \$1.175 million/MW, those costs necessarily cannot reflect the "actual legitimate costs" of the solar arrays. This difference may appear small for one plant, but to apply FPL's example above to the entire 1,788 MW solar expansion contemplated the Settlement would result in customers paying nearly \$45 million above the legitimate costs of used and useful plant.[21]

However, as Witness Rábago points out, there is "absolutely no incentive" for FPL to actually deliver new solar arrays below the cost cap given the "outrageously high" equity returns on capital investments included in the agreement. T. Vol. 12 at 2699. While the company would rate base 25% of the difference between the cap and a lower installed cost, it will still come out ahead if it can rate base 100% of the cost—all the way up to the cap. *See id.* ("[F]or every dollar of cost below the cap, the Company realizes a 25-cent incentive, but loses \$1 worth of capex and associated return."). Ultimately, under the proposed solar construction incentive, customers lose either way, and the public interest requires that the Commission reject this mechanism.

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[20] No construction of a new or expanded power plant that falls under the jurisdiction of the Power Plant Siting Act ("PPSA"), §§ 403.501-403.518, Fla. Stat., may occur until the plant has been reviewed and certified according to detailed procedures, including an affirmative need determination by the Commission. §§ 403.506(1), 403.519, Fla. Stat. Solar power plants of 75 MW or greater are subject to the PPSA. § 403.503(14), Fla. Stat. Since 2010, FPL has built 33 solar generation plants, with an average nameplate capacity of 71 MW, and never once exceeding a nameplate capacity of 74.5 MW. T. Vol. 2 at 474 (Valle).

[21] [(\$1.175 – \$1.150) x (1,788)] = \$44,700,000

iii. Storm Cost Recovery Mechanism

FPL's proposed Storm Cost Recovery Mechanism (SCRM) would allow it to begin collecting a charge from customers up to $4 per 1,000 kilowatt-hours ("kWh") on a monthly residential bill for costs incurred due to a named tropical storm beginning 60 days after filing a petition for recovery with the Commission. This interim recovery period would last up to 12 months. If costs related to named storms exceed $800 million in any one year, FPL could ask the Commission to increase the $4 per 1,000 kWh. It can also ask to increase its storm reserve to $150 million.

As with the previous iteration of the SCRM outlined in the FPL's 2016 rate case settlement, this Settlement Agreement allows FPL to begin collecting $4/1000 kWh as soon as it files its petition, subject only later to an actual hearing. Exhibit 483 at 20315-16; T. Vol. 10 at 2298 (noting that FPL's spending will only later be reviewed, "often many months after the restoration has been completed"). The SCRM's charge first, consider "actual legitimate costs" later approach violates sections 366.06 and 366.07, Florida Statutes, which mandate the Commission hold a public hearing and make such determinations regarding the sufficiency of current recovery structures *prior* to any authorization for new rate increases. Consequently, the SCRM and Settlement Agreement containing it must be denied.

iv. Solar Base Rate Adjustment

FPL's proposed expansion of the Solar Base Rate Adjustment (SoBRA) mechanism suffers many of the same defects as its accompanying schemes. Through the Settlement Agreement, FPL seeks additional SoBRA projects on top of what the company had already proposed in the underlying rate case, all of which would be subject to subsequent increases in base rates—at FPL's discretion—in 2024 and 2025. Exhibit 483 at 20317-22.

There are at least two reasons that the SoBRA mechanism exceeds the statutory authority of the Commission to grant. Once again, FPL has put the rate hike cart before the public hearing and insufficient current rates horse, as SoBRA seeks to bake in now authority for FPL to raise rates based on capital investments in solar generation that occur years later, in violation of section 366.06, Florida Statutes. In addition, to the extent that the SoBRA mechanism is intended to reflect an "interim" rate increase, under section 366.07, Florida Statutes, it once again fails to meet the requirements as proposed. An interim rate increase cannot be authorized unless and until a showing that a public utility is *currently* earning below its reasonable range of return. § 366.07, Fla. Stat. Therefore, there is no legal basis for the Commission to grant FPL dispensation to increase rates years in advance for new capital additions without a public evidentiary hearing to establish that FPL's current rate structure is insufficient to support a reasonable return on its reasonable investments. *Id.* As such, the SoBRA expansions contained in the Settlement Agreement must be denied.

v. Proposed Federal Tax Adjustment

The Settlement Agreement also demands that FPL be permitted to unilaterally change its rates if some future change in federal taxation should come to pass. Exhibit 483 at 20322-20324. During the former Gulf Power Company's most recent rate case, this Commission has already encountered this type of speculative request premised on hypothetical future federal legislation—and soundly rejected it. *In re: Petition for rate increase by Gulf Power Company*, Docket No. 160186-EI, Order No. PSC-17-0099-PHO-EI at 107-008 (Fla. P.S.C. Mar. 14, 2017) (finding the issue "premature and not ripe for consideration at this time" and ordering that it instead be addressed in a separate proceeding, "[s]hould federal tax changes occur in the future"). This issue is similarly unripe in this proceeding. As with other issues presented in this Settlement

Agreement, Florida law does not permit this Commission to grant interim rate relief without a dedicated public hearing and actual proof that FPL's current earnings have fallen below the lower threshold of its authorized range of return. *See* § 366.07, Fla. Stat. If a change in federal taxation does materialize subsequent to the closing of this docket, it would be appropriate, only once its negative impacts to FPL's earnings were concrete, for the company to petition this Commission for relief. At this time, however, the Commission must reject this proposal.

III. The Settlement, Which Makes Things Even Worse for Residential Customers and Small Businesses Than That Originally Proposed by FPL, Cannot Be in the Public Interest

The Settlement, as shown below, extracts billions more from the residential class (and small businesses) than what had been originally proposed by FPL, ultimately making residential customers *worse* off than that originally proposed by FPL.

A. <u>Settlement Extracts More Money from Residential Customers Via Rate Class Subsidies</u>

One of the primary ways the Settlement extracts money from the residential class is via the rate structure, with the signatories agreeing that the residential class subsidize (via higher rates) FPL's largest commercial and industrial users by over $1 billion over the course of the Settlement, taking existing subsidies and making them even worse.

i. FPL Customers Already Suffer from Some of the Highest Electric Bills in the Nation.

FPL, throughout this proceeding, touts that they have the lowest residential electricity bills in the nation as a justification for this rate increase. The only problem is that it isn't true! What FPL means when they discuss low residential bills is a comparison of standardizing all electric bills to an arbitrary 1,000 kWh of usage across all utilities, regardless of actual usage. Exhibit 606 at 24973; T. Vol. 13, at p. 2875 (Cohen). Since January of 2017, FPL customers have averaged approximately 1,119 kWh of usage per month, Exhibit 606 at 24937, with residential electric bills averaging over $140 per month in the summer months. Exhibit 606 at 24976 (bills averaging over $140 in July-September, 2020). In fact, according to EIA data that FPL pulled, which FPL has no reason to dispute, T. Vol. 13, p. 2877 (Cohen), FPL, compared to the largest 50 around the nation, already has the 13th highest average residential electric monthly bills. Exhibit 604 at 24957 (FPL average residential bill lower than 12 companies, and higher than 37 companies). Even when limited to just the top 20 IOUs, FPL still has significantly higher than average residential bills. T. Vol. 14 at 2947 (Rábago). And that is before accounting for any increases contemplated by the Settlement.

Although FPL dismisses the importance of the actual bill customers pay (the bill being the thing that comes in the mail from FPL and that customers must pay in order to keep receiving electric service), the actual bill is really important to FPL's actual ratepayers. *See, e.g.*, T. Vol. 9 at 1888, 1891 (Marcelin); 1899-1900 (Alvarez); 1904-05 (Gustavus); 1911-12 (Jerkins); 1917-20 (Mathis); 1926 (Mercado); 1930-31 (Osses); 1936-37 (Salvador); 1943-44 (Corugedo); 1953 (Hernandez); 1958-59 (Sinclair); 1964-65 (Werner); 1971-72 (Ayech); 1979 (Blomquist); 1984-85 (Davenport); 1989-90 (Lewis, on behalf of Miakka Community Club); 1993-94 (Wilson). Every dollar matters to the members of Florida Rising, LULAC, and ECOSWF, *id.*, and any "bill" set at an arbitrary electricity usage that does not reflect actual usage is small comfort to a 20% (now 19%) increase in rates. And it is not just the members of Florida Rising, LULAC, and ECOSWF. Florida has millions of people who face severe energy burdens, made worse by FPL's abysmal energy efficiency offerings. T. Vol. 14 at 2967 (Rábago). Although energy efficiency would serve as a way to decrease energy burden for the households struggling the most to afford electricity, food, rent, and medicine, FPL ignores this solution as it does not increase their profits. *Id.*

ii. FPL Residential Customers Face Virtually Same Immediate Rate Increase Under Settlement as They Did in FPL's Original Proposal.

FPL keeps saying that residential customers will see substantial savings due to the Settlement, but that is not apparent in what is at issue in this case—base rates. Under FPL's original proposal, base rates were proposed to increase from $69.90 to $84.74, Exhibit 183 at 16207, a 21.2% increase in base rates.[22] Under the settlement, instead of increasing to $84.74, base rates are expected to increase to $83.27. Exhibit 481 at 20284. So now, instead of a 21.2% increase, residential customers are facing a 19.1%[23] increase in base rates. This is not much considering the coming bill in the years after the Settlement for residential customers from increased amortization periods and increased rate base because of the Settlement (*see* sections III(C) and III(D), *infra*).

iii. Disconnections by FPL Exemplify FPL's Lack of Customer Care.

During a year of so much suffering, now is not the time to raise rates to make it even harder for struggling families to afford their electric bill, and to be clear, when it comes to disconnections, FPL has been relentless in disconnecting so many desperate Florida families. Since resuming disconnections in October of 2020, FPL has disconnected 686,000 customers.[24] With, on average, 2.25 members per household, Exhibit 458 at 19770, 686,000 residential customers equates to approximately 1,543,500 people that FPL has disconnected. That's

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[22] 84.74 divided by 69.90 is 1.212.
[23] 83.27 divided by 69.90 is 1.191.
[24] 72,836 customers in October, 2020 plus 78,834, 104,199, 74,049, 69,257, 71,318, 68,393 in November, 2020-April, 2021, Exhibit 555 at 24318-21, plus 67,496 in May of 2021, Exhibit 556 at 24330; plus 79,618 customers in June, 2021, Exhibit 557 at 24339.

outrageous. Yet, FPL wants to increase these customers' bills by almost 20% through this rate increase, pushing even more customers into arrearage and facing disconnection. There can be no doubt that this rate increase and Settlement will cause more Floridians in FPL's territory to lose access to life-saving electricity by causing an increase in disconnections.[25] Having the most "reliable" electricity in the nation is not very useful unless you can afford it, and, unfortunately, for increasing numbers of FPL's customers, FPL provides a necessity they simply can no longer afford.

iv. FPL's Original Proposal in the As-Filed Rate Case Called for the Subsidization of Large Commercial and Industrial Customers by Residential Customers.

Beyond a supersized rate base and an exorbitant ROE and unheard-of equity to debt ratio in the capital structure, FPL proposed that residential customers and small businesses subsidize the rates of the largest commercial and industrial customers. With an equalized rate of return (meaning all rate classes paying their fair share), according to FPL's own cost of service study, residential customers should have seen their rates go up by $396,789,000 in 2022.[26] Exhibit 6 at 1403; T. Vol. 13 at 2878-79 (Cohen). For small businesses, that number is $72,155,000. Exhibit 6 at 1401. For large commercial and industrial customers, rate classes GSD(T)-1, GSLD(T)-1, GSLD(T)-2, and GSLD(T)-3, those numbers, respectively, are $334,812,000, $187,642,000, $65,554,000, and $11,554,000 respectively. *Id.* What FPL actually proposed for the residential class was an increase of $490,976,000, Exhibit 6 at 1406, which is almost $100 million more

[25] Any improvements to FPL's disconnection policy during extreme weather (which occurs with increasing frequency) are more than offset by the increased disconnections caused by this settlement. FPL still has no policy of reconnecting customers if extreme weather occurs *after* disconnection.

[26] Keeping in mind, of course, that, if anything, rates should be decreased. *See, e.g.*, T. Vol. 11 at 2489 (Mac Mathuna).

than parity. Meanwhile, FPL only proposed increases for rate classes GSD(T)-1, GSLD(T)-1, GSLD(T)-2, and GSLD(T)-3, respectively, $332,644,000, $113,247,000, $36,933,000, and $7,968,000. Exhibit 6 at 1404. Those are underpayments of $2,168,000,[27] $74,395,000,[28] $28,621,000,[29] and $3,586,000,[30] respectively, for a total originally proposed subsidy of $108,770,000 in rates for the largest commercial and industrial customers of FPL, paid for almost entirely by an extra almost $100 million from residential customers. *See also* T. Vol. 12 at 2687 (Rábago). That is not fair, and if FPL's rate relief was appropriate (and it is not), any rate increase should be done in a fair manner that has the cost-causers paying their fair share of the costs. The Commission has disapproved of rate structures and rebates that "represent a large subsidy from the general body of ratepayers to a very small segment of each utility's customers," *In re: Commission review of numeric conservation goals*, Docket Nos. 130199-EI through 130204-EM, Final Order Approving Numeric Conservation Goals, Order No. PSC-14-0696-FOF-EU at 60 (Fla. Pub. Serv. Comm'n Dec. 16, 2014), even when there was arguable statutory authority to do so, *see, e.g.*, § 366.82(7), Fla. Stat. (under Energy Efficiency and Conservation Act "Utility programs may include variations in rate design . . . residential energy, statutory authority that is absent in this case. The principle that the cost causers, if a cost of service study shows who causes the costs, should pay their fair share of costs is not new and is embedded in Florida law by the requirement of having fair, just, and reasonable rates. *City of New Smyrna Beach v. Fish*, 384 So. 2d 1272, 1276 (Fla. 1980) (upholding flat-rate structure for trash collection for residential customers as non-discriminatory as it was impossible or impractical to

[27] 334,812,000 minus 332,644,000.
[28] 187,642,000 minus 113,247,000.
[29] 65,554,000 minus 28,621,000.
[30] 11,554,000 minus 3,586,000.

quantify the differences in cost of garbage collection from the different classes of residential owners, but establishing principles that rates must be fair, just, and "based upon legitimate distinctions between the rate classes"). Here, FPL originally proposed rates that "draw[s] an unfair link or strike[s] an unfair balance between those in like circumstances having equal rights and privileges." *Id.* at 1274 (Fla. 1980) (quoting McQuillin, Municipal Corporations (3d Ed. 1970)) (although said about discriminatory rates from municipal utilities, the same standard should apply to whether rates are discriminatory from investor-owned utilities). Instead, utilities should have "the right to classify consumers under reasonable classifications based upon such factors as the cost of service, the purpose for which the service or the product is received, the quantity or the amount received, the different character of the service furnished, the time of its use or any other matter which presents a substantial difference as a ground of distinction." *Id.* FPL, other than citing "gradualism," provided no justification as to why it was proposing such large subsidies to large commercial and industrial customers from residential customers.

The one good thing to say about FPL's original rate proposal is that it gradually reduced the size of this subsidy. By 2023, instead of residential customers overpaying by almost $100 million, residential customers "only" were proposed to overpay by $67.7 million. T. Vol. 12 at 2687 (Rábago). The amount of subsidy going to the largest commercial and industrial customers was reduced by a similar amount. *Id.* Unfortunately, with the Settlement, things have gotten even worse and FPL no longer proposes to try to lower the subsidy paid by residential customers.

v. FPL Took an Originally Proposed Unfair Rate Structure and Made it Much, Much Worse in the Settlement.

Karl Rábago, extending FPL's as-filed cost of service study, calculated the equalized share of settlement revenue requirement. T. Vol. 12 at 2688-89 (Rábago). FPL criticized this analysis, arguing that the revenue under the proposed settlement agreement is based on a separate, compromise, cost-of-service methodology. T. Vol. 12 at 2811 (Cohen). Incredibly, FPL admitted that there is no "full settlement cost-of-service available to calculate parity at settlement rates," T. Vol. 12 at 2811 (Cohen), that is, FPL has no cost of service study to produce in discovery or that can be tested under cross-examination to show how costs were being allocated to each class, and ensuring that those costs were reasonable. *See, e.g.*, T. Vol. 12 at 2881 (Cohen) ("there's not a full cost of service at settlement rates"). In other words, FPL essentially says "trust us, we didn't screw over residential customers," but refuses to provide any evidence to back up this assertion. It is no mystery why residential customers were stuck with spending over a billion dollars extra in the settlement to subsize the largest commercial and industrial customers (discussed below): simply put, residential customers were not represented in the settlement negotiations. Of the parties originally signing the agreement (FIPUG, OPC, FRF, & SACE), Florida Industrial Power Users Group, an ad-hoc group that is not even an association but purports to represent industrial customers (yet refuses to disclose a single member), does not purport to represent residential interests. *See* Florida Industrial Power Users Group Petition to Intervene. The Florida Retail Federation does not purport to represent the interests of residential customers either. *See* Florida Retail Federation Petition to Intervene. The Southern Alliance for Clean Energy does purport to have residential members, *see* Southern Alliance for Clean Energy Petition to Intervene at 2, but presented no testimony in the case, including no testimony from its members to demonstrate their interests. SACE, in signing the settlement, was not representing residential customer interests, but rather, must have been supporting its objective of driving policy that "supports investment in solar power and EV programs." SACE Petition to Intervene at 5. That is the only explanation, as no one representing the interests of residential customers could possibly think the Settlement is in the interests of residential customers—how could they, given the billion-dollar subsidies from residential customers to the largest commercial and industrial customers?

FPL also fails to provide any convincing argument as to why its as-filed cost of service study is no longer applicable, and fails to point out anything in the settlement that would actually change the cost to serve FPL customers, other than FPL agreeing, as a "compromise," that it should make it appear that residential customers cost more to serve than as presented in their as-filed cost of service study. FPL also refused to calculate the equalized return of revenue under the as-filed cost of service study with the settlement revenue. T. Vol. 13 at 2880 (Cohen) ("Q: Did you run the revenue requirement, as - - as set by the settlement, through the as-filed cost-of-service study? A: I don't believe so."). With no new cost of service study, FPL's original as-filed cost of service study stands, as does Mr. Rábago's analysis of the Settlement under the original study, as FPL has failed to provide any reason the study is no longer reliable.

Pursuant to the only reviewable cost-of-service study, residential customers in 2022 will be subsidizing the largest commercial and industrial customers by $286.5 million. T. Vol. 12 at 2689 (Rábago). This gets even worse in 2023, with the subsidy rising from residential customers to $295.2 million. *Id.* Small businesses are in the same situation, with subsidies to the largest businesses from small businesses of $31 million and $39.5 million in 2022 and 2023 respectively. *Id.* With just 8 customers in the rate class GSLD-3, Exhibit 634 at 25712; T. Vol. 13 at 2885 (Cohen), customers in that class average over $1 million in subsidies per year each. T. Vol. 13 at 2887 (Cohen); T. Vol. 12 at 2689 (Rábago) ($9 million in subsidies to class GSLD-3 in 2023). Over 4-years, those subsidies amount to a transfer of over $1 billion of wealth from residential customers (and some more from small businesses) to the largest commercial and industrial users. T. Vol. 12 at 2688 (Rábago). Such a large transfer is not fair, just, and reasonable, and is clearly contrary to the public interest. FPL's defense that it has a Settlement, and its allegations that Florida Rising, ECOSWF, and LULAC have no "agenda other than to oppose," (with no evidence to support this assertion), T. Vol. 11 at 2547, is no defense to the requirements of Florida law. Such a large wealth transfer essentially amounts to an unjust, and unjustified, tax on residential customers, especially low-income customers, and transferring that money as a check to the largest commercial and industrial users.

As seen above, these transfers are so much worse than what was originally proposed. As originally proposed, residential customers were supposed to subsidize the rates of the wealthiest by $94.2 million. T. Vol. 12 at 2687 (Rábago). This shoots up by an additional $192.3 million in 2022,[31] and up by an additional $227.5 million in 2023 under the Settlement.[32] Over the 4-year term of this Settlement, this will add up to almost $1 billion more than originally proposed by FPL. In other words, of the over $1 billion subsidy (extra) residential customers need to pay under the settlement, almost all of that subsidy is from the Settlement, and not as originally proposed. The reason for this is because almost all of the "savings" from the Settlement went to the wealthiest and largest corporations and industrial customers. Even though the vast majority of revenue comes from residential customers (and are the vast, vast majority of customers), including the vast majority of electricity sales, T. Vol. 13 at 2866 (Valle), residential customers did not receive much of the "savings" from the proposed settlement. According to FPL's own data, in 2023, under the Settlement, the largest commercial and industrial customers save 12% to 20.5% as compared to originally proposed. T. Vol. 12 at 2690 (Rábago); T. Vol. 13 at 2881-82 (Cohen). By comparison, residential customers only save 1.9%. *Id.* And, that 1.9% in savings

[31] 286.5 million subsidy under the settlement minus 94.2 million as originally proposed.
[32] 295.2 million subsidy under the settlement minus 67.7 million as originally proposed.

calculation for residential customers does not take into consideration the $32 million expected from residential customers from paying the newly proposed minimum bill. T. Vol. 13 at 2884 (Cohen). As that $32 million is coming from residential customers, adding that back to revenue from the residential class ($5,519.8 million from 2023 settlement plus $32 million in revenue from minimum bill) is revenue of $5,551.8 million, which is only 1.3% less than that originally proposed by FPL for 2023. So, 1.3% represents the true savings for residential customers under the settlement for 2023 as compared to that originally proposed by FPL (in their already unfair rates).

A better comparison would be is what *should* (i.e., their fair share for an equalized rate of return) residential customers have been paying under FPL's original 11.5% proposed ROE. The answer, as admitted by FPL: less than FPL proposes they pay under the Settlement. This fact, on its own, is proof that the Settlement is not in the public interest. As admitted by FPL and shown in their own cost of service study, residential customers, under an 11.5% ROE, should have had a $396,789,000 increase in 2022. T. Vo. 13 at 2878 (Cohen). Instead, under the Settlement, residential customers are seeing a $410,769,000 increase. T. Vol. 13 at 2879 (Cohen). Somehow (and it is no mystery, it is to transfer money from residential customers to large commercial and industrial customers in order to get them to sign the Settlement), FPL has made residential customers *worse* under a 10.6% ROE than they should have been under an 11.5% ROE. That is quite the accomplishment, and not in a good way. Anyone having any interest in supporting equity for residential customers, especially low-income customers, would oppose this kind of outcome—not merely those with an alleged "agenda for opposition."

As further evidence of the unfairness of the rates is the equivalent ROE each class of customers is going to be paying under the Settlement. Residential customers and small business will be paying as if FPL's ROE had been set at a mid-point of *over* 11.7%. T. Vol. 12 at 2692 (Rábago). By contrast, the largest commercial and industrial users will be paying rates as if FPL's mid-point ROE had been set between 4.4% to 5.6% in 2022 and 2023. *Id.* From a rates standpoint, residential customers and small businesses live under a completely different utility, with a different profit margin, that that of the largest commercial and industrial users. That is not fair, and any settlement including these kinds of massive imbalances cannot be in the public interest. That imbalance is only allowed by having large transfers of wealth from residential and small business customers by increasing their rates in order to pay for lower rates for large commercial and industrial users. Such transfers will only exacerbate wealth inequality and energy burden, in this case, by well over $1 billion dollars. This also violates Florida law, which requires that the Commission "consider the cost of providing service to the class." § 366.06(1), Fla. Stat. In asking the Commission to approve the Settlement, the settling parties ask the Commission to throw out this part of the statutory requirements.

B. SolarTogether in Settlement Transfers Billions More to Large Commercial & Industrial Customers from Residential Customers & Small Businesses.

The over $1 billion in transfer of wealth to the largest corporations in the Settlement was not enough for FPL and the signatories. They wanted more, a lot more, and they got it via the expansion of SolarTogether, both in the size of the program (amount of subscriptions available) and the size of the credits (increasing the amount of credit for subscribing), all paid for, again, by higher rates on residential customers.

i. SolarTogether Program Allocations Show the Program Only for Large Corporations.

The fact that the program design favors one segment of FPL's customer base, who would now make billions of dollars from this program at the expense of the remaining customer base, demonstrates that this program, newly revised and made worse, is unjustly discriminatory and not fair, reasonable, or just within the meaning of Section 366.06, Florida Statutes. The evidence before the Commission demonstrates that large commercial and industrial customers' interests are at the center of the SolarTogether program. The program's customer allocations, when compared with energy usage by FPL's overall customer base, demonstrate that this program was designed for large customers. The original SolarTogether reserved 75% of the program for the large commercial and industrial customers, with the incremental addition reserving 60% of the addition for those large customers, saving the remainder for both small businesses and residential customers. In comparing the program allocations to FPL's overall customer base, the allocations are not representative of FPL's customer base. Residential customers, on their own, make up 63% of FPL's energy sales, not including small businesses. T. Vol. 13 at 2866 (Valle); Exhibit 628. Yet, residential customers have to *share* 25% of the original program, and 40% of the incremental expansion, with small businesses. The vast majority of the program is reserved for large commercial and industrial customers, proving that this is whom the program is designed for. As further evidence of this, even though the expanded program adds 1,072.8 additional MW for large commercial and industrial customers to subscribe to, Exhibit 628 at 25688, there is already a waitlist from those customers for 1,694 MW, a waitlist that has long since had to close. T. Vol. 13 at 2867 (Valle); Exhibit 629 at 25691. As discussed below, it is no mystery, when it is so financially beneficial, why large commercial and industrial customers like the program, and were able to obtain so much additional money paid for by residential customers as part of the settlement.

ii. Low-Income Customers Essentially Forgotten in Program.

Despite the tremendous need and energy burden low-income customers face, and despite facing higher bills to pay for SolarTogether (see below), low-income customers have just 2.5% of the program reserved for them. T. Vol. 13 at 2873 (Valle). That is enough to serve 11,700 to 16,500 low-income participants. *Id.*; Exhibit 630 at 25696. Any customer who is at or below 200% of the federal poverty level is eligible to participate in the low-income portion of the program. Exhibit 483 at 20550. The poverty rate in Florida is 14% of Floridians, and the percent of working families under 200% of the poverty line is 37.7%. Exhibit 344 at 18489. FPL, by 2024 (when the SolarTogether expansion starts), expects to have 5,179,421 residential customers. Exhibit 458 at 19770. Needless to say, and FPL agrees, FPL has more customers at or below 200 percent of the federal poverty level than will be served by the low-income program, T. Vol. 13 at 2873-74 (Valle), a lot more. 37.7% of FPL's projected residential customer base is 1,952,642 customers and families living at or below 200 percent of the federal poverty level. FPL's program meets 0.8% of the need.[33] This is not to argue that SolarTogether needs to be expanded more—it does not, as the more it expands, the more it hurts low-income customers—but rather that FPL's touting of its low-income program is a fig leaf to cover the harm it is causing, and the wealth it is extracting, from low-income customers. As proof, unlike the large commercial and industrial customers that are seeing their credits increased as a result of the Settlement, the only credits left unchanged from the original program are those for low-income customers. T. Vol. 13 at 2874 (Valle).

[33] 16,500 divided by 1,952,642 is 0.8%.

iii. Credits to Large Commercial and Industrial Large and Increasing, Paid for by Residential Customers.

The changes FPL proposes to make to the SolarTogether program through this settlement approval are terrifying and extractive. FPL wants to bring SolarTogether from a $4 billion program, Exhibit 622 at 25559 ("Nominal Total" for "Total FPL SolarTogether Costs"), to an $11 billion program, Exhibit 480 at 20281 ("Nominal Total" for "Total SolarTogether Costs"). This is a more than doubling of the program. It is not just the total subscriptions that are being increased, but the credits being given to participants are increasing as well under the Settlement. T. Vol. 13 at 2844-45 (Valle). In the original program, the general body of customers were promised $112 million of CPVRR benefits if SolarTogether was approved. Exhibit 622 at 25559 ("CPVRR" column, "Totl Net RevReq's (fav) unfav" row). With these changes, that number has been decreased to $68 million for the original phase of the program. Exhibit 480 at 20282; T. Vol. 13 at 2846 (Bores). In the original program, the general body of customers was "only" supposed to pay $678 million in credits to participants, Exhibit 622 at 25559 ("Nominal Total" column, "Participant Net Distribution (Payment)" Row)—that number has now increased to a net payment of $928 million, Exhibit 480 at 20281 ("Nominal Total" column, "Participant Net Distribution (Payment)" Row); T. Vol. 13 at 2848-49 (Bores). In other words, in the short period of time since the Commission approved the SolarTogether program, the amount of savings that are supposed to accrue over 30 years (now 35 years) have been cut almost in half, and the payout to the participants (mainly large commercial and industrial users) in exchange for nothing meaningful has increased by almost 50%. The increase in credits look more and more like a payment, from residential customers, to large commercial and industrial customers to keep them happy and to induce them to sign the Settlement.

The incremental solar, more than the size of the original program, that FPL is proposing to add in the Settlement makes things for the general body of ratepayers, including low-income customers, even worse. Combined together (original program with changes under the Settlement, and the incremental (more than doubling) of solar that is being added through SolarTogether), participants will now receive a net payout of over *$2 billion*. T. Vol. 13 at 2849-50 (Bores); Exhibit 480 at 20281. That is worth $356.6 million on a CPVRR basis. *Id.* The initial years are especially bad for the general body of customers, with FPL's own projections showing that the general body of customers is expected to be worse off in 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2030, and 2031 as a result of the program (and the changes made to it). T. Vol. 13 at 2854 (Bores); Exhibit 480 at 20281. FPL defends itself by saying that the enormous costs cannot get passed onto customers through base rates during the period of the settlement. T. Vol. 13 at 2850 (Bores). However, FPL could seek a rate increase for 2026. T. Vol. 13 at 2850 (Bores). That year, as an example, the costs of the solar panels themselves in the combined program are projected to be $158.6 million. T. Vol. 13 at 2851 (Bores); Exhibit 480 at 20281. Yet, the general body of ratepayers is expected to pay $166.9 million that year, more than the costs of solar, because of $8.3 million in net credits to participants. T. Vol. 13 at 2851-52 (Bores); Exhibit 480 at 20281. Meaning, of course, that the SolarTogether program adds costs compared to FPL just building the solar—$8.3 million in costs in 2026 alone. Over the life of the program, the participants are expected to receive everything they pay into the program, *plus* a little over $2 billion paid for by the general body of ratepayers, adding that much ($2 billion in costs) compared to if FPL had just built utility-scale solar as it does as part of SoBRA. T. Vol. 13 at 1853-54 (Bores); Exhibit 480 at 20281. In the initial years of the program, FPL expects the general body of ratepayers to be over $1 billion in the hole, which will take decades to make up, even under FPL's wildly optimistic projections (as shown below in section III(B)(iv), *infra*).

The additional solar being added by FPL in SolarTogether under the Settlement, contrary to their assertions, does not help FPL ratepayers, but rather, costs them additional money, for decades, even under FPL's wildly optimistic and deceptive projections (no additional solar, ever). Contrary to FPL's assertions that participants will be paid back in 7 years, participants under the extension do quite a bit better. Participants pay a net of $2.8 million between 2023-2025, T. Vol. 13 at 2870 (Bores); Exhibit 480 at 20283, (while at the same time the general body of ratepayers will pay a net of $331.1 million, Exhibit 480 at 20283 (adding the $50.9, $116.9, and $163.3 found in the last row)), but in 2026-2027 participants get *paid* a net of $3.1 million, Exhibit 480 at 20283 (adding the $0.7 and $2.4 in row "Regular Participant Net Distribution (Payment)"), meaning that they have a payback of less than five years (starting in 2023 having more than made up their investment by 2027). After that, it is just profit for the participants, totaling $1 billion, net, over the life of the program. Exhibit 480 at 20283 (Row "Regular Participant Net Distribution(Payment)" Nominal Total). The incremental solar being constructed under the Settlement for SolarTogether, even under FPL's optimistic assumptions, does not have a positive cumulative CPVRR value until 2048, and that does not take into account the credits being paid to participants (meaning, that when taking into account credits being paid, it will take even longer for non-participants to break even). T. Vol. 13 at 2865 (Bores); Exhibit 627 at 25606 (last row "Cumulative CPVRR").

In sum, under the Settlement, over $2 billion is being paid, via credits, to primarily large commercial and industrial customers by primarily residential customers and small businesses. That is the epitome of unfair windfalls. In exchange for this windfall of billions of dollars, the participants contribute a couple of million dollars in the initial years. That is not a bargain, that is a fig leaf to cover up this payment to large commercial and industrial customers in exchange for supporting the Settlement. The PSC has previously held that "a rate reduction for select customers . . . would create unduly discriminatory rates." *In re: Complaint of South Florida Hospital and Healthcare Association, et al. Against Florida Power & Light Company, Request for Expeditions Relief, and Request for Interim Rate Procedures with Rates Subject to Bond,* Docket No. 010944-EI, Order No. PSC-01-1930-PCO-EI at 11 (Fla. P.S.C. Sept. 25, 2001), *aff'd S. Fla. Hosp. & Healthcare Ass'n v. Jaber*, 887 So. 2d 1210 (Fla. 2004). Participants, through bill credits, are select customers receiving a rate reduction funded by non-participating customers. The proposed rate structure for this program is unfair, unjust, and unduly discriminatory, and, on its own, means that the proposed Settlement violates the public interest test by being against the public interest (an extra $2 billion in costs) and by violating Florida law.

iv. SolarTogether is Not Cost-Effective When Using More Realistic Assumptions, or When Comparing it to Normal Utility-Scale Solar.

All of FPL's CPVRR projections from SolarTogether are based on scenarios that make no sense and, we can confidently say, will not occur. Basically, SolarTogether assumes, for cost projection purposes, that the alternative is no solar, ever, even though solar may be (and we would argue is) the most cost-effective generating resource, that therefore the only alternative is more gas infrastructure, and that that gas infrastructure will be subject to ever increasing carbon taxes. T. Vol. 13 at 2855-60 (Bores). FPL, on cross-examination, admitted that without the carbon costs, which have not been enacted or are in any finalized legislation or rule, the net revenue requirement for the general body of ratepayers for SolarTogether would be a *cost* of $248.7 million (CPVRR). T. Vol. 13 at 2857 (Bores). FPL also admitted that if these carbon emissions did not materialize, SolarTogether would be a net burden for the general body of ratepayers, even over the 35-year life of the solar fields, yet the credits to the Participants (the net $2 billion) would not be impacted. T. Vol. 13 at 2857 (Bores). This issue would be very easy to avoid—if there simply were no subscription charges and credits, the general body would not have to pay a net of $356.6 million CPVRR to participants, Exhibit 480 at 20281 ("Participant Net Distribution(Payment)" CPVRR), which would more than make up for the lack of carbon costs. Of course, in a truly fair comparison, of solar with SolarTogether, and solar without SolarTogether, there would be zero incremental emissions benefits, zero incremental gas transport benefits, and zero system net fuel benefits. Instead, all you would be left to see is that SolarTogether adds $2 billion in costs, and would be made more cost-effective by delaying its installation until it was needed (because FPL has so over-built their generation system, it could be many years before additional solar installations are required to meet need). An additional reason to ignore the "benefits" from "avoided gas" from the expansion of SolarTogether is that even if the Settlement is approved, including the SolarTogether expansion, FPL refuses to make *any* commitment to not invest in gas infrastructure or turbines. T. Vol. 13 at 2862 (Bores); Exhibit 625 at 25569.

Another fundamental flaw in FPL's SolarTogether cost projections was the use of a 10.55% ROE. T. Vol. 13 at 2864 (Bores). Yet, FPL is requesting a 10.6% ROE, which will operate as an 11.7% ROE due to the RSAM mechanism. T. Vol. 12 at 2692 (Rábago). When using an 11.7% ROE, the program amounts to a net *cost* of $94.5 million CPVRR for the general body of ratepayers, even though the program is expected to save an overall $216 million CPVRR, because of the unaltered $310 million in CPVRR transferred to participants. T. Vol. 12 at 2693 (Rábago). FPL tried to argue that if it did use an 11.7% ROE, the program design would be different to keep the current structure of "protecting" the general body of ratepayers by lowering the credits to participants or raising the subscription charge, but admitted that there was no mechanism in the tariff to do so. T. Vol. 13 at 2841 (Bores). To be clear, then, a more honest 11.7% ROE, on its own, would be enough for SolarTogether not to make any sense, representing a net cost on a CPVRR basis over the 35-year life of the program even though the analysis still contains the idea that the alternative to SolarTogether is no solar, ever, as well as including ever-increasing carbon costs and gas transport costs, all the while credits to participants would not be impacted.

v. SolarTogether Extracts Billions From Residential Customers.

In addition to the over $2 billion paid, net, by primarily residential customers and small businesses to primarily large commercial and industrial customers, the SolarTogether extension in the Settlement (not including the original SolarTogether) represents a projected return on equity (profit) for FPL of almost $2.2 billion. And that is under the 10.55% ROE, not the more realistic 11.7% ROE. Under an 11.7% ROE, FPL's projected return on equity from the extension is over $2.4 billion. Exhibit 488 at 23355 (Row "Return on Equity," Column "Sum"). In total, the Settlement's changes and expansion of SolarTogether represents the extraction of billions of dollars from residential customers, including low-income customers, and transferring those billions of dollars to FPL and to FPL's largest commercial and industrial customers, paying them to agree to the Settlement and the profit-making mechanisms included in it.

C. <u>It is Undisputed That Settlement Leaves Residential Customers Worse-Off Than Originally Proposed by FPL.</u>

As noted above, residential customers save very little money under the Settlement as compared to FPL's original proposal ($1.47 in 2025 in base rates, T. Vol. 12 at 2696 (Rábago)). But, with the SolarTogether being added as discussed above, and the billions being added to rate base from that additional solar, the 2026 bill impact, from the SolarTogether changes in the

Settlement, are expected to be about $1.69 per 1,000 kWh. T. Vol. 12 at 2696 (Rábago). In other words, in 2026, when FPL may raise rates again, residential customers will be *worse-off* than if FPL's original proposal had been approved in toto. FPL *never even tried* to refute this analysis. The only conclusion is that when considering the medium-term (i.e., the next five years), when a settlement leaves residential customers, who comprise so much of the public, are actually *worse off* than the original proposal with a mid-point ROE of 11.5%, the Settlement cannot possibly be considered to be in the public interest and must be rejected. This does not even take a long-term view, which, as noted in section III(D), *infra*, also leaves residential customers worse-off than originally proposed by FPL.

D. Increase in Amortization Period for Prematurely Retired Power Plants Leads to Extra $600 Million for FPL and People Being Born Today Left Paying for Power Plants Never Used in their Lifetime.

As if all of this was not enough, FPL makes things worse for its residential customers still by giving a short-term slight payoff to its largest customers by changing the amortization period for retired "assets," no longer in useful service and likely not prudently incurred in the first place (like the $100 million payment to JEA, which FPL expects to earn its ROE on, to allow FPL to continue to retire coal assets without a convincing showing that doing so is in the public interest) from ten-years to twenty-years. Extending this period was calculated by FPL to increase the costs to ratepayers by approximately $600 million, T. Vol. 13 at 2840 (Bores), $600 million additional going to FPL and its shareholders from ratepayers. This alone wipes out almost the entirety of the "savings" from the settlement as compared to FPL's original proposal. This creates large intergenerational inequity, leaving customers to pay for retired assets for the next 20-years. In other words, people being born today, when they become adults, will still be paying FPL, and for FPL's return on equity (profits), for coal-fired and other power plants that did not generate a single kWh during the entirety of their lifetimes. *See* T. Vol. 12 at 2704 (Rábago). This fundamentally violates the principles of needing to ensure generational equity and ensuring that rates reflect the costs of property "actually used and useful in the public service." § 366.06, Fla. Stat.

E. Minimum Bill Unfair, Unsupported, and Disproportionately Hurts Low-Income Customers.

FPL, for the first time, includes a $25 minimum bill in the Settlement. FPL does not bother justifying this minimum bill with any kind of cost-of-service study or other methodology to show how this bill is fair, just, and reasonable. FPL does provide enough data to show that, on average, over the Settlement, 360,000 customers (with each customer representing more than 2 Floridians on average) will be impacted by the $25 minimum bill (i.e., having to pay the minimum bill even though they did not use $25 worth of electricity). T. Vol. 13 at 2888 (Cohen). FPL does not know, and did no analysis, to determine the income of the people being impacted by this minimum bill. *Id.* Instead, by having such a minimum bill, it forces low users of electricity to subsidize higher users of electricity. T. Vol. 12 at 2700 (Rábago). We also know that low-income customers are much more likely to use less energy than high-income customers. Exhibit 345 at 18492 (median electricity usage of folks making less than $25,000 just over half of that of those with incomes over $100,000). In other words, the *only* information we have in the record shows that the minimum bill is going to disproportionately fall on low-income customers, causing low-income customers to further subsidize the rates of other customers (mainly, as shown above, large commercial and industrial users). This minimum bill seems to embody FPL's and the signatories' philosophy in this case—why have large commercial and industrial customers pay for FPL's unprecedentedly high profits given the market when low-income communities can be made to pay and suffer more?

CONCLUSION

This Settlement, which extracts so much wealth from residential customers and small businesses, and transfers it to FPL and the largest commercial and industrial customers, cannot rationally be said to be in the public interest or to have "fair, just, and reasonable" rates. This Commission must disapprove this Settlement pursuant to Florida law and basic ratemaking principles. Florida Rising, LULAC, and ECOSWF implore the Commission to consider residential customers and small businesses when rendering its decision, as FPL and the settling parties did not.

RESPECTFULLY SUBMITTED this 11th day of October, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 11th day of October, 2021, via electronic mail on:

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DATED this 11th day of October, 2021.

/s/ Bradley Marshall
Attorney