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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:  
DOCKET NO. 20210015-EI  
PETITION FOR RATE INCREASE  
BY FLORIDA POWER & LIGHT  
COMPANY.

\_\_\_\_\_ /

PROCEEDINGS: SPECIAL AGENDA  
COMMISSIONERS  
PARTICIPATING: CHAIRMAN GARY F. CLARK  
COMMISSIONER ART GRAHAM  
COMMISSIONER ANDREW GILES FAY  
COMMISSIONER MIKE LA ROSA  
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, October 26, 2021  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS WRAY  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
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## 1 P R O C E E D I N G S

2 CHAIRMAN CLARK: Good morning. Welcome,  
3 everyone, this morning. I'd like to call this  
4 meeting to order.

5 I'm going to ask -- I lost her -- I'm looking  
6 at the wrong side -- ask Ms. Brownless, if she  
7 would, to give us the background of the case today.

8 MS. BROWNLESS: Thank you, sir.

9 FP&L filed a petition for a base-rate increase  
10 on March 12th, 2021, and is seeking to put its  
11 proposed rates into effect on January 1, 2022, and  
12 consolidate its rates with Gulf Power Company,  
13 recently acquired by FP&L's parent company,  
14 NextEra.

15 OPC, FIPUG, FEA, FIT, FRF, SACE, Vote Solar,  
16 Walmart, the Larsons, CLEO, Florida Rising, LULAC,  
17 and ECOSWF have been granted intervention and  
18 participated in this case.

19 FAIR has been granted provisional  
20 associational standing in this case, over FPL's  
21 objection, and has participated fully in the case  
22 to date. A final ruling on FAIR's associational  
23 status is one of the items at issue today.

24 On August 10th, 2021, FPL, OPC, FRF, FIPUG,  
25 and SACE filed a joint motion for approval of the

1 stipulation and settlement agreement, which we'll  
2 refer to as the 2021 settlement.

3 At the August 18th, 2021, final hearing, the  
4 procedures for conducting a full hearing at a later  
5 date on the petition for rate increase and the 2021  
6 settlement testimony filing dates and a new hearing  
7 date of September 20th through 22nd for the rate  
8 case and settlement was set.

9 Final hearing on FP&L's base-rate increase  
10 petition as well as the 2021 settlement was held on  
11 September 20th, 2021. The testimony of 60  
12 witnesses and 635 exhibits were admitted into the  
13 record.

14 On October 11th, post-hearing briefs were  
15 filed by FP&L, OPC, FIT, FIPUG, FRF, FEA, FAIR,  
16 Florida Rising, LULAC, ECOSWF, Larsons, SACE, and  
17 Walmart.

18 The issues to be decided today can be roughly  
19 divided into three groups. The first group are  
20 jurisdictional issues, Issues 1 through 6, whether  
21 the Commission has the statutory authority to  
22 approve certain proposed rate mechanisms as part of  
23 the settlement agreement; for example, the RSAM and  
24 the storm-cost recovery mechanism.

25 The second group of issues would be standing

1 issues: that's Issue No. 9, whether FAIR's request  
2 to intervene in this case should be granted;

3 And, finally, whether the August 9th  
4 settlement agreement should be approved; that is,  
5 the settlement agreement, when taken as a whole --  
6 does it resolve all issues, is it in the public  
7 interest, and does it result in fair, just, and  
8 reasonable rates. And that's identified as  
9 Issue A.

10 Staff is available at this time to answer your  
11 questions.

12 CHAIRMAN CLARK: All right. Let's take into  
13 consideration -- I guess I'm going to suggest that  
14 we vote on the standing issue, Issue No. 9, first.  
15 Then we will take up the jurisdictional issues, 1  
16 through 6. And then, finally, we will consider  
17 Issue 8, the settlement agreement.

18 Everyone in agreement with that order? All  
19 good?

20 All right. Standing issue: Has Floridians  
21 Against Increased Rates demonstrated individual or  
22 associational standing to intervene in this  
23 proceeding.

24 Ms. Brownless, would you please discuss the  
25 legal criteria.

1 MS. BROWNLESS: Yes, sir, the legal criteria  
2 to determine standing for an association is found  
3 in Florida Home Builders vs. the Department of  
4 Labor and Employment Security, 412 So.2d, 351,  
5 Florida 1982.

6 The three-prong test found in Florida Home  
7 Builders requires an association to: One,  
8 demonstrate that a substantial number of its  
9 members may be substantially affected by the  
10 Commission's decision in a docket; two, demonstrate  
11 that the subject matter of the proceeding is within  
12 the association's general scope and interest and  
13 activity; and, three, demonstrate that the relief  
14 requested is of a type appropriate for the  
15 association to receive on behalf of its members.

16 CHAIRMAN CLARK: All right. Could you  
17 summarize the record of evidence for us, please.

18 MS. BROWNLESS: And I'm going to turn this  
19 over to Mr. Stiller at this time.

20 MR. STILLER: Good morning, Commissioners.  
21 Shaw Stiller with the legal office.

22 Regarding the three criteria of the Florida  
23 Home Builders, the following is the evidence -- the  
24 record evidence submitted by FAIR.

25 As to the first prong of the test, the

1 substantial number of members, FAIR presented  
2 evidence that they had 16 -- one-six -- members as  
3 of May 4. That's the date the petition was filed.

4 FAIR also produced evidence that they had 513  
5 members as of June 15th. That's the date prefiled  
6 testimony was prepared.

7 FAIR also presented evidence that they had 770  
8 members as of July 25th, 2021. That's the date on  
9 which -- or the 27th is the date on which's FAIR's  
10 board adopted the resolution admitting members.

11 At all times, at least 80 percent of the  
12 members have been FPL ratepayers. And that -- and  
13 FAIR has verified that each membership form  
14 contains the required information and demonstrates  
15 eligibility.

16 As to the second prong, the bylaws of FAIR  
17 clearly place advocacy for lower utility rates  
18 within the scope of interest of the association.

19 And with respect to the third prong, this  
20 Commission has ruled previously that an association  
21 is appropriate to receive relief on behalf of  
22 ratepayers.

23 Now, FPL has raised several challenges, legal  
24 challenges, to the sufficiency of that factual  
25 demonstration. First, FPL alleges that FAIR was

1 required to and did not personally verify the  
2 identity of every member.

3 Secondly, Florida Power & Light argues that  
4 consideration of standing is limited to the facts  
5 and the membership as they exist on the date the  
6 petition was filed.

7 Third, Florida Power & Light contends that  
8 FAIR did not comply with its bylaws and that, until  
9 June -- July 27th, when the board took a vote to  
10 admit members, there were no official members of  
11 the organization.

12 And then, finally, Florida Power & Light takes  
13 issue with the organizational -- the physical  
14 organizational structure -- my words -- of FAIR;  
15 that is: office space, phone line, and saying that  
16 they -- they are not the, quote, "functional  
17 equivalent" of an associating and, therefore, don't  
18 have standing.

19 And with that, Commissioners, I'm available  
20 for questions.

21 CHAIRMAN CLARK: All right. Commissioners,  
22 any questions? Comments? Discussion?

23 Commissioner La Rosa. Commissioner?

24 COMMISSIONER La ROSA: Thank you, Chairman.

25 I'll just start with the comments. I think

1           intervening parties are incredibly important in  
2           this process. You know, I've listened to the  
3           evidence. I don't agree with everything that FP&L  
4           has laid out for FAIR, but I do have to pay  
5           attention to some of the contradictions that I see,  
6           particularly in the first prong that's been  
7           discussed today.

8                    I -- I do not believe they should be granted  
9           intervening status. I think there's a -- kind of a  
10          lot to be questioned there, specifically when their  
11          membership started.

12                   So, with that, Chairman, I plan to not vote in  
13          support of allowing them -- or granting them  
14          status.

15                   CHAIRMAN CLARK: Thank you, Commissioner La  
16          Rosa.

17                   Commissioner Graham.

18                   COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

19                   My question is not necessarily granting them  
20          or not granting them intervening status  
21          (unintelligible).

22                   I guess my question comes down to  
23          (unintelligible) -- when they first filed -- can  
24          you hear me now?

25                   When they first filed to be intervenors, it



1           seemed -- well, it comes across, to me, that they  
2           weren't necessarily a legitimate entity when they  
3           made that filing.

4           And I guess my question is to staff: Do we  
5           run into any sort of ethical issues for -- because  
6           of that?

7           CHAIRMAN CLARK: Mr. Stiller.

8           MR. STILLER: Was that "ethical issues"?

9           COMMISSIONER GRAHAM: Yes.

10          MR. STILLER: Commissioner, let -- if I may  
11          answer that in two -- two parts: Number one, the  
12          very basic framework of an organization was there  
13          at the beginning, bylaws, articles of  
14          incorporation.

15          It was the membership -- and I believe maybe  
16          that's what you're speaking to. And as far as  
17          "ethical" for this Commission, I would defer to  
18          your advisor, but I'm not aware of any.

19          If a party or an attorney re- -- you know,  
20          brings a frivolous claim -- not saying this is that  
21          at all -- but there are statutory remedies for  
22          misplaced or other claims that are imposed for  
23          purposes outlined in the statutes, but that's among  
24          the parties.

25          To my knowledge, Commissioner, there is

1 nothing that would implicate this Commission in any  
2 ethical or bad business or good business decision.  
3 The Commission is just ruling on the record as it  
4 stands.

5 COMMISSIONER GRAHAM: Did I misunderstand,  
6 when they first came before us and they first  
7 filed, did they or did they not have membership  
8 other than the three board members?

9 MR. STILLER: They did have members. There  
10 was an affidavit submitted by FAIR in response to  
11 the motion for summary final order. And  
12 Mr. Herndon, I believe -- the affidavit sets forth  
13 that there were 16 -- one-six -- members; that he  
14 reviewed the applications, reviewed the manner that  
15 they were transmitted to the organization, and they  
16 had been received before May 4th.

17 COMMISSIONER GRAHAM: And these 16 members  
18 were currently Florida Power & Light customers?

19 MR. STILLER: That is correct.

20 There is an affidavit from one of those  
21 members also attached to the mo- -- to the response  
22 to the motion for summary final order.

23 COMMISSIONER GRAHAM: Anything else? Okay.

24 CHAIRMAN CLARK: Commissioner Fay.

25 COMMISSIONER FAY: Thank you, Mr. Chairman.

1           And I think Commissioner La Rosa commented on  
2           what I believe is probably the main component of  
3           this -- this issue. And it's -- it's a very  
4           complex issue. I -- I think there's probably --  
5           as -- as a lawyer, there's probably very few things  
6           I take more seriously than -- than due process and  
7           what is provided to the parties that come before  
8           us.

9           And I think, when you start talking about a  
10          docket that has an extremely broad and wide scope  
11          and is inclusive of a lot of different issues, I  
12          think that's relevant and -- to part of our  
13          analysis as to -- if standing is satisfied or not.

14          It's been touched on a little bit. The legal  
15          standing here is fairly clear. I -- the -- the  
16          legal basis is very clear. The Home Builders case  
17          has been around for a long time and that -- that  
18          being the foundation is really not dis- -- argued  
19          by the parties.

20          With that said, the -- the facts and the  
21          implementation of it are, they're -- they're  
22          debated pretty significantly and -- in all three  
23          parts of that -- that test.

24          And I found the first component, as to what  
25          Commissioner Graham has touched on, regarding the

1 members being a significant one because trying to  
2 interpret clarity as to if that was relevant in  
3 satisfying intervention requirements -- it's --  
4 it's a tough analysis to make.

5 I will say that it's concerning not a single  
6 board member of the organization is an actual FPL  
7 ratepayer. That surprised me.

8 It's also concerning that there's no proper  
9 e-mail and/or phone contact information for any of  
10 the members of the organization to reach out to  
11 FAIR and/or their -- their bar -- their board  
12 members.

13 With that said, I don't think either of those  
14 issues negate what's in the record here as -- in  
15 regards to satisfying that standard. And I think,  
16 when you look at the actual membership component,  
17 the bylaws seem to be the main issue that is the  
18 basis of that membership component in the first  
19 part of there.

20 And I think -- I think our legal counsel here,  
21 Mr. Stiller, did a good job of laying that out, but  
22 I also think there's some pretty good case law  
23 about not allowing retroactive standing in these  
24 cases.

25 So, that first part of it is critical to

1           this -- this decision. And I think the bylaws  
2           state fairly clearly, to me, that business  
3           entities, as stated in the bylaws, require to be  
4           voted in. And that's not clear to me as just for  
5           individuals to be members.

6                     And so, I think as -- as complex and as  
7           convoluted as this may be and -- and knowing that  
8           FAIR probably didn't do a lot of things that they  
9           could have done better, I still found that they did  
10          satisfy the standing requirements and -- and felt  
11          that that would be what's appropriate going  
12          forward, but those are my thoughts, Mr. Chairman.

13                    Thank you.

14                    CHAIRMAN CLARK: Thank you, Commissioner Fay.

15                    Anyone else?

16                    Commissioner Passidomo.

17                    COMMISSIONER PASSIDOMO: Thank you, Mr. Chair.

18                    I just want to sort of echo my fellow attorney  
19          up here on the panel. Really, just a quick comment  
20          of -- I agree, I think FAIR could have done a much  
21          better job of presenting, you know, and including  
22          in their board, you know, actual affected  
23          customers, but that being said, looking at the Home  
24          Builders, the legal standard, it's pretty -- it's  
25          pretty broad, pretty low threshold for meeting that

1 criteria.

2 And I think I'm -- I'm leaning more towards,  
3 you know, allowing intervention. Generally, I  
4 think, as -- as Commissioner La Rosa said, it's --  
5 you know, due process, we take very seriously and  
6 we want the participants -- as many participants to  
7 be involved in that.

8 CHAIRMAN CLARK: Thank you, Commissioner  
9 Passidomo.

10 Any other questions or comments?

11 I'll entertain a motion.

12 Commissioner Fay.

13 COMMISSIONER FAY: Mr. Chairman, I would move  
14 that, based on the record before us, I believe FAIR  
15 has satisfied the -- the three-prong test laid out  
16 in the Florida Home Builders and would be granted  
17 full intervenor rights in this case.

18 CHAIRMAN CLARK: Is there a second to the  
19 motion?

20 COMMISSIONER PASSIDOMO: Second.

21 CHAIRMAN CLARK: Motion and a second.

22 Any discussion?

23 On the motion, all in favor, say aye.

24 (Chorus of ayes.)

25 CHAIRMAN CLARK: All opposed?

1 COMMISSIONER La ROSA: No.

2 CHAIRMAN CLARK: Motion carries.

3 All right. We will move on to Issue Nos. 1  
4 through 6. These are jurisdictional issues.

5 Ms. Brownless, can you summarize these for us,  
6 please.

7 MS. BROWNLESS: Yes, sir. The legal issue  
8 presented in these issues is whether the Commission  
9 has the statutory authority to approve the  
10 mechanisms identified, and those mechanisms are  
11 part of a settlement agreement.

12 The mechanisms are storm-cost recovery  
13 mechanism; the reserve surplus amortization  
14 mechanism, which we call RSAM; the solar base-rate  
15 adjustment, commonly known as SoBRA; the adjustment  
16 of FPL's ROE based on its performance, including  
17 non-electric transactions in the asset-optimization  
18 incentive, creating a process to deal with any  
19 federal income tax changes, and the four-year  
20 planned stay-out provision.

21 CHAIRMAN CLARK: All right. Would you review  
22 the legal standard, please.

23 MS. BROWNLESS: The standard to be applied is  
24 whether the statutory language of Chapter 366 gives  
25 the Commission the authority to approve these types

1 of mechanisms.

2 Chapter 366 is very broad and states that the  
3 Commission shall have the authority to determine  
4 and fix fair, just, and reasonable rates. In doing  
5 so, the Commission shall consider the actual  
6 legitimate costs of property of each utility  
7 company that's actually used and useful in public  
8 service and determined by the Commission to be  
9 prudently invested by the IOU.

10 With regard to what is included in settlement  
11 agreements, the Commission's standard is the  
12 public-interest standard. A case-specific analysis  
13 of the agreement as a whole, considerations used by  
14 the Commission to determine public interest include  
15 costs, effects on ratepayers, and ensuring the  
16 reliability of service.

17 Each of these mechanisms has been previously  
18 approved by the Commission as part of either  
19 earlier FP&L settlement agreements or settlement  
20 agreements of the other IOUs.

21 With the exception of the modification of the  
22 asset-optimization incentive, each of those  
23 mechanisms has been part of settlement agreements  
24 that have been upheld by the Florida Supreme Court.

25 CHAIRMAN CLARK: All right. Thank you,



1 Ms. Brownless.

2 It appears all of these jurisdictional  
3 questions are the same for each of the issues. I  
4 will leave it to the Commissioners whether you  
5 would prefer to vote on them individually or do  
6 them collectively at one time -- or we can take  
7 them as a group. Any objection?

8 Seeing none, I'll entertain a motion -- first  
9 of all, any -- any question or discussion? No  
10 questions.

11 I'll entertain a motion.

12 Commissioner Fay.

13 COMMISSIONER FAY: Thank you, Mr. Chairman.

14 If I could just have a quick comment and then  
15 I'd be happy to make a motion.

16 I -- I took the issues, 1 through 6, related  
17 to the jurisdiction very seriously. And I  
18 approached them ind- -- individually; although I  
19 think the legal question was one that was  
20 consistent throughout those.

21 There -- there's a number of mechanisms here  
22 in the settlement that -- that basically implement  
23 different accounting and/or finance principles.  
24 And I -- I hoped maybe when I graduated law school  
25 that -- that the numbers were not going to follow

1 me around, but I'd say this docket, more than any,  
2 uses extremely complex accounting and finance  
3 provisions as to how these -- these rates are  
4 implemented.

5 And I did find that, in some of these, that  
6 the regulatory components of these mechanisms were  
7 not exactly the same as some that had been in  
8 previous settlements. And I do think that -- that  
9 just having one of these mechanisms present, by  
10 itself, in a previous rate case or settlement is --  
11 is not sufficient to allow it to -- just by itself.  
12 Doesn't mean it's in or out.

13 There are some that have been addressed in  
14 Supreme Court rulings. And, for those, I think  
15 there's a very sound basis and there's little  
16 debate as to whether those are sufficient here.

17 But I found, going through each individual  
18 one, that -- that all six of them met the legal  
19 threshold as to stating that we do have statutory  
20 authority to take -- take those up.

21 And so, with that, Mr. Chairman, I found  
22 the -- the Issues 1 through 6 and the mechanisms  
23 inherent in them to be within the public interest  
24 and that the Commission does have the statutory  
25 authority and/or jurisdiction to take up those

1 issues.

2 I would move.

3 CHAIRMAN CLARK: Commissioner Fay's motion.

4 Do I have a second?

5 COMMISSIONER GRAHAM: Second.

6 CHAIRMAN CLARK: Second.

7 Any discussion?

8 On the motion, all in favor, say aye.

9 (Chorus of ayes.)

10 CHAIRMAN CLARK: Opposed?

11 Motion is adopted.

12 All right. Now, we're going to take up  
13 Issue A: Should the stipulation and settlement  
14 agreement dated August 9, 2021, be approved.

15 Ms. Brownless.

16 MS. BROWNLESS: Yes, sir, the legal standard  
17 to apply in consideration of whether to approve a  
18 settlement agreement is whether this settlement  
19 agreement, one, resolves all identified issues;  
20 two, when taken as a whole, is in the public  
21 interest; and, three, results in rates that are  
22 fair, just, and reasonable.

23 A determination of public interest is case-  
24 specific and must be based on competent,  
25 substantial evidence of record.

1 CHAIRMAN CLARK: All right. Thank you very  
2 much.

3 We will open the item up for discussion.  
4 Commissioners? Who would like to go first?  
5 Commissioner Fay.

6 COMMISSIONER FAY: Thank you, Mr. Chairman. I  
7 feel like I'm hogging the mic here today, but I'll  
8 do my best to -- to be brief.

9 I -- I did have a -- maybe a few quick  
10 questions for -- for staff and/or some -- some  
11 comments. So, with that, Mr. Chairman, can I just  
12 direct my questions to them? I --

13 CHAIRMAN CLARK: Absolutely.

14 COMMISSIONER FAY: Thank -- thank you.

15 So, it's obviously a comprehensive settlement,  
16 but in the initial filing, there was a component  
17 for a 50-basis-point incentive in -- in the ROE  
18 provision. Is -- is that component included in  
19 this settlement ROE?

20 MR. MOURING: Good morning, Commissioners.  
21 Curt Mouring with Commission staff.

22 You're correct, that adder was included in the  
23 initial petition, but it is not included in the  
24 settlement agreement.

25 COMMISSIONER FAY: Okay. So, then, is the

1           only -- the only trigger mechanism would be  
2           essentially the 30-year treasury adjustment, that  
3           20 basis points? There is no other adjustment  
4           beyond that?

5           MR. MOURING: That's correct.

6           COMMISSIONER FAY: Okay. Great.

7           The next question I had was on the RSAM. This  
8           might be -- might be more of an accounting  
9           principle, but when I went through the record, I --  
10          I did have trouble sort of understanding if the  
11          RSAM, itself, was consistent with the general  
12          accounting -- accepted accounting principles or if  
13          it was -- it didn't appear to be in violation of  
14          them, but can you, I guess, maybe address that one  
15          way or another?

16          MR. MOURING: So, the accounting entries that  
17          effectuate the reserve surplus amortization  
18          mechanism are not inconsistent with generally-  
19          accepted accounting principles.

20          Some of the issues raised by intervening  
21          parties really go to different areas of concern  
22          with the RSAM, but in terms of compliance with  
23          generally-accepted accounting principles, staff  
24          does not see an issue there.

25          COMMISSIONER FAY: So, it wasn't just that I'm

1 a lawyer and had trouble understanding that part.  
2 That makes me feel better.

3 And then, just the last is the -- you know,  
4 the settlement lays out a -- a four-year stay-out  
5 provision, which is a -- is a very long time.  
6 We've got other settlements around the country.  
7 That is -- you know, that's a long time to stay  
8 out.

9 Is there -- I guess, is -- is there any  
10 procedure -- what would be the means, I guess,  
11 within the four years, if -- if interest rates  
12 change significantly in the next few years?

13 MS. BROWNLESS: If, in fact, interest rates  
14 change significantly, such that Florida Power &  
15 Light finds itself in an under-earning position --  
16 is that the question you have?

17 COMMISSIONER FAY: Yes.

18 MS. BROWNLESS: Then, of course, they can come  
19 in and petition to have their rates changed so that  
20 they can earn at least at the bottom of their rate  
21 of return.

22 COMMISSIONER FAY: Okay. So, just similar to,  
23 if they exceed, it could initiate them coming in to  
24 the Commission. If they go below, it's the same  
25 pro- -- or similar process.

1 MS. BROWNLESS: Yes, sir.

2 COMMISSIONER FAY: Okay. Great.

3 Mr. Chairman, that -- that answers all my  
4 questions. I'm prepared to move, but I'll let my  
5 colleagues weigh in.

6 CHAIRMAN CLARK: Any other questions or  
7 comments?

8 Commissioner La Rosa.

9 COMMISSIONER La ROSA: Thank you,  
10 Mr. Chairman.

11 And -- and just really kind of, you know,  
12 maybe a general comment. There's obviously a lot  
13 before us and -- and this is a settlement, in  
14 which -- what this means, to me, is that there's  
15 been multiple parties, of course, we've seen before  
16 us over the last few months have all had different  
17 terms and -- and which have been important to them.  
18 And I think it's important, of course, for us to  
19 understand that this is truly a -- a settlement.  
20 And that's what we're -- that's what we're looking  
21 at.

22 I know what it's like to be in the middle of  
23 understanding of what one side wants and what the  
24 other side needs to get out of a deal, but that's  
25 not exactly the way this process works here. So,

1 we don't necessarily know what some of the leverage  
2 points are and what things are hinging on.

3 There is an element within this that I -- I do  
4 want to bring up. And it has to do with electric  
5 vehicles. And maybe this sort of just kind of  
6 leads to a question, but I've certainly been paying  
7 a lot of attention to what's been happening in the  
8 marketplace, I've been paying attention to what's  
9 been happening downtown over the last couple weeks  
10 with when the Legislature has been meeting.

11 Both the House and Senate -- there have been  
12 presentations on our behalf to them explaining what  
13 we know about electric vehicles, and there's been a  
14 lot of questions. Some of those questions are  
15 not -- they're not answerable because the data is  
16 not just there or -- or we're just too new in the  
17 process.

18 So, I did notice the way -- the way this was  
19 drafted. There wasn't necessarily a reporting  
20 requirement. So, I guess my question would be  
21 to -- maybe to Mary Anne -- and how we could  
22 request reporting requirements to include it at  
23 least in the order of -- of this.

24 And, obviously, I'm -- I'm speaking  
25 specifically on the electric vehicles. And



1           there's -- there is an order -- a PSC 20200512 that  
2           does have reporting requirements that do exist.  
3           And I'm leaning on, you know, how can we include  
4           something similar to that within this order.

5           MS. HELTON: Well, I think that it's within  
6           your authority to request information or data as  
7           the companies go forward, if you approve that with  
8           the EV program.

9           With respect to what the information is that  
10          you ask for, I would not be the right person to --  
11          to tell you that. There's other people here  
12          that -- that can do that, but I definitely think  
13          that's within your authority, and you could make  
14          that part of your motion.

15          MR. FUTRELL: And, Mr. Chairman, Mark Futrell  
16          with staff.

17          Just to tag on to Mary Anne, the Commission  
18          has, in approving other EV pilots or EV tariffs,  
19          they've requested companies provide information,  
20          typically annually.

21          Mr. Doehling from ENG can go into more depth,  
22          if you'd like to explore some of that.

23          MR. DOEHLING: Good afternoon,  
24          Commissioners -- or good morning, Commissioners.  
25          Jeff Doehling with --

1           CHAIRMAN CLARK: Mr. Doehling, would you --  
2           would you mind pulling your mask so we can --

3           MR. DOEHLING: Oh, no problem.

4           Similar to the reporting requirements that  
5           were established in the order you referenced, we  
6           would recommend that, for the EVolution program and  
7           the public fast-charging program, that they would  
8           continue to report on those metrics that they  
9           outlined.

10          As far as the residential EV charging services  
11          and the commercial EV charging services program, we  
12          would recommend consistent metrics with those.

13          Of course, you know, we would like things such  
14          as, you know, the total program, capital O & M  
15          costs, any revenue requirements that change  
16          throughout the program, revenues collected and,  
17          more specifically, metrics such as, you know,  
18          average cost per port, total number of installed  
19          ports, monthly charging sessions, and it --  
20          possibly any participating customer savings that  
21          customers might see in those programs. We would  
22          all suggest those metrics be reported on.

23          COMMISSIONER La ROSA: Okay. Thank -- thank  
24          you. And I'm -- and I'm reading along with -- with  
25          what you're -- what those reporting requirements

1 are. So, thank you.

2 And so, I guess my -- my comment would be is  
3 that I -- I'd like to include that -- I'd like to  
4 direct staff to include that in the order.

5 CHAIRMAN CLARK: I'm going to ask a couple of  
6 quick questions here, related to that, Commissioner  
7 La Rosa. We are -- we're con- -- our consideration  
8 is a settlement agreement that the parties have  
9 already come to.

10 Would it actually be appropriate for us to tag  
11 something on to that settlement agreement? Or  
12 could we just ask for a commitment from FPL here  
13 for a voluntary compliance? Would that be simpler  
14 without having to open the settlement agreement? I  
15 do not want to do that, so I'm trying to --

16 COMMISSIONER La ROSA: And I agree. And I --  
17 and I'm trying not to as well.

18 CHAIRMAN CLARK: Okay. Good.

19 COMMISSIONER La ROSA: So, thank you for  
20 framing it that way.

21 MS. HELTON: I don't see it as inconsistent.  
22 I mean, I think if you approve the settlement  
23 agreement, you can do that. And, in addition to  
24 that, under your authority in Chapter 366, you can  
25 request whatever reporting that you want to

1 request. I don't see them as being inconsistent at  
2 all.

3 CHAIRMAN CLARK: All right. Good. That's --  
4 that clarifies that for me.

5 Is that good with you?

6 COMMISSIONER La ROSA: Very much so. Thank  
7 you.

8 CHAIRMAN CLARK: Okay. Great.

9 All right. Anyone else? Any other comments?  
10 Commissioner Graham.

11 COMMISSIONER GRAHAM: I have a question. I  
12 guess I was following up on a question that  
13 Commissioner Fay asked you about the ROE and the  
14 adder.

15 And you said that there was a 50-basis-point  
16 adder in their original request, but with the  
17 settlement, there -- there was -- the adder just  
18 wasn't included?

19 MR. MOURING: That's correct, Commissioner.  
20 The 50-basis-point adder was to the mid-point ROE.  
21 In the settlement agreement, the mid-point ROE is  
22 just a negotiated term.

23 COMMISSIONER GRAHAM: So, it's possible --  
24 because we don't know what's actually in the black-  
25 box settlement. So, that adder could have been

1 included in what actually came out of that bo- --  
2 that black box, correct?

3 MR. MOURING: That -- that is a possibility.  
4 It is a black-box. The 10.6 is below the 11.5  
5 requested in the initial petition, but it -- it  
6 could have been a consideration.

7 COMMISSIONER GRAHAM: And the adder was  
8 considered a performance adder?

9 MR. MOURING: Yes.

10 COMMISSIONER GRAHAM: Thank you.

11 CHAIRMAN CLARK: Commissioner Passidomo.

12 COMMISSIONER PASSIDOMO: Thank you,  
13 Mr. Chairman.

14 I just -- if it's okay with staff, I kind of  
15 want to divert to the expansion of the  
16 SolarTogether program. I don't know if you recall,  
17 during the settlement hearing, I asked FPL Witness  
18 Valle about -- about the program and wondered  
19 whether there was a need to increase the credit  
20 when there wasn't a waiting list currently with  
21 customers eager to participate in the program at  
22 the current tariff rate.

23 And FPL Witness Valle explained that existing  
24 participants would shift to the new -- the new  
25 credit rate to -- for efficiencies in bridging

1           those two programs.

2                   And I'm kind of wondering -- Mr. Ellis, I'll  
3           direct it towards you -- whether if we keep the  
4           credit as is from the inception of the program so  
5           that there would not be as much of an immediate  
6           impact in the general body of ratepayers that flows  
7           to them through the clauses, would you get the same  
8           result if we kept the current rate in effect for  
9           current customers and the expansion of the program?

10                   MR. ELLIS: There would be a seven-year  
11           payback in both scenarios.

12                   COMMISSIONER PASSIDOMO: Okay. That's what  
13           I -- thank you.

14                   CHAIRMAN CLARK: All right. Anyone else?

15                   I want to make a couple of observations about  
16           the settlement agreement and, I guess, probably  
17           ramble just a minute about my views on the  
18           settlement. There are a lot things in it that I  
19           like. There are some things in it that I don't  
20           like.

21                   I think the fact that it establishes for us a  
22           predictability of the rates going forward for the  
23           next five years is certainly a plus. There are  
24           things within that predictability that, I think,  
25           give -- give homeowners, give businesses some -- a

1           surety going into the future that they have a -- a  
2           stable rate climate. They can do their budgeting  
3           accordingly. I think that is a very positive --  
4           very positive thing.

5           A couple of things in it -- I appreciate the  
6           work that was done in the transition into including  
7           Gulf Power into the FPL system. This transition  
8           rider was not what I originally anticipated when  
9           the discussions began on incorporating these two  
10          separate utilities into one, but I will commend  
11          that -- the parties for negotiating this term.

12          I do look forward to seeing -- Gulf Power  
13          customers that exist now will see a rate decrease  
14          over the next five-year period. I think that's a  
15          very positive thing for folks on the west side of  
16          the river. The rates are actually going to be  
17          coming down at the end of five years compared to  
18          what they're paying now. That's a very positive --  
19          very positive feature that came out of the  
20          settlement agreement.

21          I think certainly there are advantages to the  
22          existing FPL system by incorporating those  
23          customers into the system. You get some of the  
24          advantage of the transition-rate rider for the  
25          five-year period. I also see some diversity that

1 is included in the system that I think certainly  
2 will benefit the remainder of the FPL system as  
3 well.

4 The Smart Panel pilot program was just one of  
5 those highlights that I pulled out that I really  
6 like. I think that's a huge plus. I think that's  
7 the wave of the future. I think that's where we're  
8 going to be able to have the most effect on energy  
9 efficiency, on demand-side management, on allowing  
10 consumers to control and manage energy within their  
11 homes. My hat's off to you guys for putting that  
12 particular portion in there.

13 The RSAM -- I'd made a note on the RSAM -- a  
14 couple of the other folks talked about it. They  
15 understood it a lot better than I did. They're a  
16 lot smarter than I am. That's an extremely complex  
17 mechanism and it seems to have the benefit of  
18 contributing and adding to that rate stability that  
19 is going forward in the future. And I think that's  
20 a huge plus.

21 I think we're continuing to -- the things I  
22 honestly just didn't like in the program: the  
23 expansion of SolarTogether and the EV program.  
24 We're continuing to subsidize these programs off  
25 the back of residential ratepayers. To me, that --



1           that is a -- a negative in there.

2           But at the same time, I see where we're going  
3           in this state. I see where the demand is moving to  
4           and I certainly understand the need for it. And I  
5           think that, altogether, that does incorporate  
6           public interest. That does bring the public  
7           interest into play. And I think that this answers  
8           the public-interest component that I am most  
9           concerned with.

10           I just want to address, finally, the consumer  
11           input. It was amazing to me the amount of  
12           correspondence that transpired during this rate  
13           case. My office -- I think I had 11- -- I think  
14           we -- last count we had was over 1,100 e-mails from  
15           consumers in this rate case. I'm sure that you  
16           guys received an equal number or probably more than  
17           I did, but to me, the -- the amount of  
18           correspondence that was contributed was  
19           significant.

20           Not only that, but reviewing back -- looking  
21           back at our rate hearings, looking at the customer  
22           service hearings and the number of consumers that  
23           we were taking into account each night that we had  
24           the hearing, each day that we had a hearing, a  
25           significant number of consumers that were

1           expressing how they felt about this, I really  
2           believe, constitutes good solid public input,  
3           consumer input.

4           And we did so -- and I'll take up two seconds  
5           to commend staff again for their ability to manage  
6           this in this new virtual world. We did virtual  
7           customer hearings, and I -- I think that that  
8           opened up a whole new avenue that we're going to be  
9           exploring even further in the future.

10           I say all that to conclude with my overall  
11           thoughts. I believe that all of the parties are to  
12           be commended for the outstanding jobs that you did  
13           negotiating on behalf of folks that you  
14           represented. Pretty obvious some of you did a  
15           little better job than others, but all of you are  
16           to be commended for the input that you made into  
17           this particular settlement agreement.

18           And with that, I would entertain a motion.

19           Commissioner Fay.

20           COMMISSIONER FAY: Thank you, Mr. Chairman.

21           I -- I'll make sure -- I'll see either Mary Anne or  
22           Suzanne nod their head if I get this right, but  
23           I -- I want to make sure --

24           CHAIRMAN CLARK: Good.

25           COMMISSIONER FAY: -- the motion is

1           appropriate.

2           So, based on the legal requirements, I believe  
3           the settlement presented before us addresses all  
4           issues, sets rates that are fair, just, and  
5           reasonable, and is in the public interest with --  
6           based on the comprehensive record that is before  
7           us.

8           Is that sufficient?

9           CHAIRMAN CLARK: Meets my criteria.

10          Is that good with you guys?

11          I have a motion. Do I have a second?

12          COMMISSIONER GRAHAM: Second.

13          CHAIRMAN CLARK: I have a second.

14          Any discussion on the motion?

15          One second. Mr. Futrell, am I missing  
16          something?

17          MR. FUTRELL: I'm sorry, Chairman. I just  
18          wanted to check in with Commissioner La Rosa about  
19          his question that he raised earlier.

20          COMMISSIONER La ROSA: Right. So, how -- how  
21          could I add the reporting requirements into -- into  
22          the order? That has to be made in motion?

23          MS. HELTON: I -- I think y'all could vote out  
24          Commissioner Fay's motion and then Commissioner La  
25          Rosa could -- could tack that on.

1           CHAIRMAN CLARK: Sounds good. Let's handle  
2           that in two separate motions.

3           Any other discussion?

4           On the settlement agreement --

5           COMMISSIONER PASSIDOMO: Commissioner --  
6           Mr. Chairman, could I just say -- I just want --  
7           quickly, before we finalize this vote, again,  
8           speaking towards the standard, when we're reviewing  
9           the settlement agreements, it's taken as a whole.

10          And, in this context, in the -- taken as a  
11          whole, there's a lot of benefits here, expansion of  
12          renewables, solar, four-year stay-out providing  
13          cer- -- rate certainty and, really importantly,  
14          that the Office of Public Counsel, who's  
15          statutorily charged with representing the consumers  
16          of Florida Power & Light's custom- -- you know,  
17          representing Florida Power & Light's customers,  
18          signed on to the settlement agreement and asserted  
19          that it is in the public interest.

20          And so, with that, I would second Commissioner  
21          Fay's motion.

22          CHAIRMAN CLARK: All right. Any further  
23          discussion?

24          On the motion all in favor, say aye.

25          (Chorus of ayes.)

1 CHAIRMAN CLARK: Any opposed?

2 Settlement agreement is approved.

3 Commissioner La Rosa, you're recognized for a  
4 motion.

5 COMMISSIONER La ROSA: Thank you, Chairman.

6 I would -- I'd like the motion to add the  
7 reporting requirements that are in the PSC  
8 20200512, that we discussed earlier today, that are  
9 in the EVolution case that's -- that those require  
10 them to report back in the EV program -- I'd like  
11 to include that as a motion.

12 CHAIRMAN CLARK: Do I have a second?

13 COMMISSIONER FAY: Second.

14 COMMISSIONER GRAHAM: Second.

15 CHAIRMAN CLARK: Motion and a second.

16 Any discussion?

17 Commissioner Graham.

18 COMMISSIONER GRAHAM: Does it say where those  
19 reports are supposed to come back to and what time  
20 frame?

21 MR. FUTRELL: Commissioner Graham, those  
22 reports were required to be filed annually and  
23 they're filed with the clerk's office. It would be  
24 placed in -- they could be placed in the undocketed  
25 file, but they'll be filed with the Commission,

1 with the clerk's office.

2 COMMISSIONER GRAHAM: I just want -- I just  
3 want to make sure that we're clear about what we're  
4 asking --

5 MR. FUTRELL: Yes, sir.

6 COMMISSIONER GRAHAM: -- and what frequency.

7 CHAIRMAN CLARK: Any other questions?

8 On the motion, all in favor, say aye.

9 (Chorus of ayes.)

10 CHAIRMAN CLARK: Opposed?

11 Motion carries.

12 All right. Staff, any additional matters that  
13 need to be handled today?

14 MS. BROWNLESS: No, sir. Thank you.

15 CHAIRMAN CLARK: Commissioners, any other  
16 questions or comments?

17 All right. Again, let me thank all of the  
18 parties for the outstanding work that you did.

19 Thank you, all, for being here today.

20 And this special agenda is adjourned.

21 (Whereupon, the proceedings concluded at 10:13  
22 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, ANDREA KOMARIDIS WRAY, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 9th day of November, 2021.



ANDREA KOMARIDIS WRAY  
NOTARY PUBLIC  
COMMISSION #HH 089181  
EXPIRES February 9, 2025