BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.	DOCKET NO. 080677-EI
In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.	DOCKET NO. 090130-EI ORDER NO. PSC-11-0089-S-EI ISSUED: February 1, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO BALBIS
JULIE I. BROWN

ORDER APPROVING PROPOSED STIPULATION AND SETTLEMENT, DENYING MOTION FOR RECONSIDERATION, AND DENYING PETITION FOR A BASE RATE PROCEEDING

BY THE COMMISSION:

BACKGROUND

On March 17, 2010, the Commission issued Order No. PSC-10-0153-FOF, granting in part and denying in part Florida Power & Light Company's (FPL or Company) request for a permanent rate increase and setting depreciation and dismantlement rates and schedules (Final Order) in Docket Nos. 080677-EI and 090130-EI. The Final Order was issued as a result of the Commission's vote on FPL's revenue requirements and rates at the Commission's January 13 and January 29, 2010, Special Agenda Conferences. The Final Order was a culmination of the rate case proceedings which commenced on March 18, 2009, with the filing of a petition for a permanent rate increase by FPL. The Office of Public Counsel (OPC), the Office of the Attorney General (AG), the Florida Industrial Power Users Group (FIPUG), The Florida Retail Federation (FRF), the Florida Association for Fairness in Rate Making (AFFIRM), the Federal Executive Agencies (FEA), South Florida Hospital and Healthcare Association (SFHHA), the Associated Industries of Florida (AIF), the City of South Daytona, Florida (South Daytona), the I.B.E.W. System Council U-4 (SCU-4), the FPL Employees Intervenors (Employee Intervenors), Thomas Saporito (Saporito), and Richard Unger (Unger) intervened in this proceeding. Only FPL, OPC, FIPUG, SFHHA, and Saporito filed post-decision motions.

On January 19, 2010, Saporito, who withdrew from the docket three days prior to the Prehearing Conference, filed a petition for a base rate proceeding, asking that we use the

evidentiary record from this docket to reach a different decision. Since Saporito's petition was filed after our decision setting forth the revenue requirements, his petition is addressed herein.

On April 1, 2010, both FPL and FIPUG filed Motions for Reconsideration. FPL included in its motion a Motion for Clarification. On April 8, 2010, OPC, SFHHA, and FIPUG filed responses to FPL's Motion for Reconsideration and for Clarification. On that same date, FPL filed a response to FIPUG's Motion for Reconsideration. On April 16, 2010, FPL filed a Motion for Leave to File Response to SFHHA's Response to FPL's Motion for Reconsideration and Clarification. On July 22, 2010, Commission staff filed its recommendation on the Motions for Reconsideration. At the August 17, 2010 Agenda Conference, we voted to deny FPL's request that we reconsider a portion of the working capital adjustment for cost recovery clause overrecoveries. Our decision on that matter is set forth herein. Consideration of the remaining issues was deferred to the August 31, 2010, Agenda Conference.

On August 20, 2010, FPL filed an Agreed Motion for Approval of Settlement Agreement to resolve all of the outstanding matters in Docket Nos. 080677-EI and 090130-EI. The signatories to the Stipulation and Settlement (Stipulation) are FPL, OPC, AG, FIPUG, FRF, SFHHA, FEA, and AIF (Joint Movants). Staff withdrew its recommendation on the reconsideration requests upon receipt of the Stipulation. The Stipulation does not affect our vote on August 17 on the working capital portion of the motion for reconsideration. On August 26, 2010, Commission staff sent data requests to all parties seeking clarification of certain aspects of the Stipulation. The responses were filed in the docket file on September 7 and 8, 2010.

On September 8, 2010, FPL filed a Petition for Writ of Prohibition in the First District Court of Appeal, and on September 10, 2010, the court issued an order requiring the Commission to show cause why the petition should not be granted. This order operated to stay this Commission from proceeding further on this as well as other FPL-related dockets, pending resolution by the court. On December 10, 2010, the court granted the Commission's unopposed request to relinquish jurisdiction for consideration of approval of the Stipulation in this docket; that matter was addressed at the December 14, 2010 Agenda Conference. The court acknowledged FPL's voluntary dismissal of its petition by order dated January 4, 2011, and the remaining issues in these dockets were addressed at the January 11, 2011, Agenda Conference.

This order addresses our vote denying reconsideration of the working capital issue at the August 17, 2010, Agenda Conference, the proposed Stipulation, and Saporito's petition. We have jurisdiction over these matters pursuant to Chapter 366, Florida Statutes, (F.S.), including Sections 366.041, 366.06, 366.07, and 366.076, F.S.

DENYING REQUEST FOR RECONSIDERATION[1]

In its Motion for Reconsideration of the Final Order, FPL requests that we reconsider a portion of the $101,971,000 working capital adjustment for cost recovery clause overrecoveries (hearing Issue 46). Specifically, FPL contends the computation of the over-recovery overlooks

[1] Commissioners Argenziano, Edgar, and Skop participated in this portion of the decision; Commissioner Edgar dissented on a procedural basis.

and is inconsistent with a recent Commission decision in the 2009 fuel adjustment proceeding,[2] thereby overstating the impact on test year working capital of the projected 2010 fuel cost overrecovery. In its base rate filing, FPL assumed the established practice for fuel clause true-ups of overrecoveries and underrecoveries: the projected overrecovery from 2009 would be reflected in the 2010 fuel clause factor and hence the refund would occur ratably throughout calendar year 2010. This practice resulted in FPL forecasting an average balance due customers over the course of the test year totaling $94.5 million, which reduces working capital requirements by that amount. However, we directed FPL to refund the full amount of its 2009 net true-up overrecovery as a one-time credit in January 2010.

Had FPL forecasted in the minimum filing requirements (MFRs) for 2010 that the fuel cost overrecovery would be refunded in January 2010 instead of ratably over the calendar year, the average fuel cost overrecovery balance would be reduced from $94.5 million to $66.3 million, which has the effect of increasing FPL's test year working capital requirements, and thereby rate base, by $28.1 million

None of the Intervenors has taken a position on the appropriateness of FPL's request for reconsideration of the adjustment made in this issue.

Upon consideration of the argument, we find it appropriate to deny FPL's request for reconsideration of a portion of the working capital adjustment for cost recovery clause overrecoveries.

APPROVING PROPOSED STIPULATION AND SETTLEMENT[3]

The Joint Movants have proffered the proposed Stipulation (Attachment 1) as a complete resolution of all matters pending in Docket Nos. 080677-EI and 090130-EI. The major elements contained in the Stipulation are:

- Current base rates frozen through the last billing cycle in December 2012 unless return on equity falls below 9.00 percent. (Paragraphs 1 and 6)

- Recovery of storm damage costs and storm damage reserve replenishment (not to exceed $4.00/1,000 kilowatt-hour (kWh) monthly for residential customers) will begin, on an interim basis, 60 days following the filing of a petition. (Paragraph 3)

- Recovery of the West County Unit 3 non-fuel revenue requirements equal to the projected fuel savings associated with the operation of the unit until the next base rate proceeding. The recovery will be accomplished through the capacity cost recovery clause. (Paragraph 5)

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[2] Order No. PSC-09-0795-FOF-EI, issued December 2, 2009, in Docket No. 090001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

[3] Commissioners Graham, Edgar, Skop, Brisé, and Balbis participated in this part of the decision.

- Discretion to amortize the theoretical depreciation reserve surplus up to $267 million each calendar year in 2010, 2011, and 2012, not to exceed a total of $776 million. (Paragraph 7)

The proposed Stipulation consists of 11 paragraphs of agreement among the Joint Movants. We find that several of the paragraphs merit comment or clarification. These are as follows:

Paragraph 3: Paragraph 3 addresses storm damage cost recovery. After 60 days following the filing of a petition seeking recovery of storm damage costs, the Joint Movants have agreed that FPL will be allowed to implement, on an interim basis, a monthly storm cost recovery surcharge of up to $4.00/1,000 kWh on residential customer bills based on a 12-month recovery period. If the storm costs exceed that level, any additional costs will be recovered in a subsequent year(s) as determined by this Commission. However, if FPL incurs storm damage in excess of $800 million, FPL reserves the right to petition us to increase the initial 12-month recovery above the $4.00/1,000 kWh level. The Joint Movants have also agreed that FPL's earnings level will not be an issue at the time any request for storm damage cost recovery is made.

Under the Final Order, FPL is no longer authorized to make any accruals to the storm damage reserve. Paragraph 3 allows FPL to use the surcharge to replenish its storm damage reserve to the level as of the implementation date of the Stipulation if it is totally depleted. It is estimated that the storm damage reserve level as of the implementation date will be approximately $201 million. Based on the $4.00/1,000 kWh monthly cap for residential customers, the annual amount of the surcharge would be $220 million for residential customers and a total of $377 million for all of FPL's customers in the event of a major storm.

Paragraph 4: Paragraph 4 addresses recovery of the costs of capital projects or other costs not currently recovered in base rates through various cost recovery clauses. According to FPL and the intervenors, this paragraph does not preclude or prevent FPL from petitioning for cost recovery through a clause for capital projects not currently recovered in base rates. We note that while the stipulation "freezes" base rates, it allows flexibility for FPL to petition for recovery of base rate costs through various cost recovery clauses. We further note that our review of such petitions would be on a case-by-case basis and that intervenors can oppose any such petition.

Examples of costs for which FPL could request recovery through a cost recovery clause would be incremental cybersecurity costs (capacity clause), the cost of projects not included in base rates and which result in fuel savings (fuel clause), and the cost of environmental compliance equipment and qualifying solar projects (environmental clause). Further, new or atypical costs imposed by an authorized governmental entity could be considered for recovery through a cost recovery clause. An example of costs that FPL could not recover through a clause would be increases in typical capital costs such as investment in transmission assets.

Paragraph 5: Under Paragraph 5, FPL would be allowed to collect annually through the capacity cost recovery clause that portion of the annual revenue requirement associated with

West County Unit 3 (WEC 3) that equals the projected annual fuel savings. According to the Stipulation, the fuel savings amount would be calculated by modeling FPL's system with and without the addition of WEC 3. The applicable fuel price forecast would be the same forecast that is used to calculate FPL's fuel factors in the fuel and purchased power cost recovery proceeding. It should be noted that the amount of the WEC 3 revenue requirements recovered from the ratepayers will be based solely on the projected amount of fuel savings. Regardless of the subsequent actual amount of fuel savings, no adjustment would be made to the revenue requirement recovered through the capacity cost recovery clause for any difference between the projected and actual amounts of fuel savings. The calculation of fuel savings can be reviewed and contested by the intervenors. In addition, according to FPL, the revenue requirements for WEC 3 for 2011 and 2012 would exceed the fuel savings. However, only the amount equal to the projected fuel savings would be passed through the capacity cost recovery clause.

Paragraph 5(b) of the Stipulation specifies that the projected non-fuel annual revenue requirements associated with WEC 3 will reflect the costs upon which the cumulative present value revenue requirements were predicated, and pursuant to which a need determination was granted by this Commission in Order No. PSC-08-0591-FOF-EI,[4] as adjusted by the application of a 10.00 percent return on equity (ROE), in lieu of the ROE that was used in the determination of need proceeding. According to FPL, the application of a 10.00 percent ROE as specified by Paragraph 5(b) results in an overall cost of capital of 8.42 percent. In the Final Order, we approved an overall cost of capital of 6.65 percent. The 2011 revenue requirements for WEC 3, based on the cost of capital prescribed in the Stipulation, is approximately $14.3 million greater than the revenue requirements for WEC 3 based on the cost of capital approved in the Final Order.[5]

The fuel savings would be passed on to the ratepayers through the fuel clause on an energy, or kilowatt hour (kWh) basis, while the revenue requirement would be collected through the capacity cost recovery clause, on a demand, or kilowatt (kW) basis. While on a total retail basis there would be no impact from including WEC 3, various rate classes will see slightly different bill impacts depending on their energy versus demand consumption. For example, the residential class typically places more demand on the system when compared to their energy consumption. Thus, the revenue requirement amount allocated to the residential class in the capacity cost recovery clause would be greater than the corresponding fuel savings amount allocated to the residential class in the fuel clause. In response to Commission Staff's Data Request, FPL projects the 1,000 kWh residential bill to be $100.45 for the period January through May 2011, prior to the inclusion of WEC 3 in rates. For the period June through December 2011, after the inclusion of WEC 3, FPL projects the 1,000 kWh residential bill to be $100.61, or $0.16 higher (including gross receipts tax). Conversely, industrial customers, who are typically large energy users, are expected to see a slight reduction in their bills as a result of the fuel savings attributable to WEC 3.

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[4] Issued September 12, 2008, in Docket No. 080203-EI, In re: Petition to determine need for West County Energy Center Unit 3 electrical power plant, by Florida Power & Light Company.

[5] Based on the projected revenue requirements for the period June 2011 – December 2011, or the 7 months WEC 3 is expected to be in commercial service in 2011.

Paragraph 6: Under Paragraph 6, FPL can petition us to amend its base rates if its actual, adjusted earned ROE falls below 9 percent, per its monthly earnings surveillance report (ESR), during the term of the Stipulation. The Company can petition us to amend base rates in a general rate proceeding or a limited proceeding. Likewise, any party can petition us to review FPL's base rates if the Company's actual, adjusted earned ROE exceeds 11 percent, as reported on the Company's monthly ESR, during the term of the Stipulation.

Paragraph 6 does not bar FPL from recovery of costs otherwise contemplated by the Stipulation; does not apply to requests to change FPL's base rates that would become effective after the Stipulation expires; and does not limit any party's rights in proceedings to change base rates in proceedings allowed by Paragraph 6.

Paragraph 7: Paragraph 7 addresses the amortization of the $894 million depreciation reserve surplus (Total Depreciation Surplus) we identified in the Final Order. By the terms of this paragraph, FPL would be given flexibility in the amount of reserve surplus amortization it would record in each year of the 3-year settlement period. The Joint Movants have agreed that FPL would amortize an amount of the Total Depreciation Surplus necessary for it to maintain an ROE, measured on a Commission actual, adjusted basis, of at least 9 percent and no more than 11 percent in each 12-month period of the settlement term. The maximum annual amortization amount is $267 million and the maximum 3-year total amortization amount is $776 million, unless a greater amortization amount is needed to avoid a surveillance report showing earnings of less than 9 percent in any given year. Additionally, FPL is required to use the remaining available Total Depreciation Surplus for the purpose of increasing its earned ROE to at least 9 percent before initiating a petition to increase base rates.

If FPL records less than $267 million in a given year, it is permitted to carry forward and increase the maximum yearly amortization that may be recorded in a subsequent year of the settlement term. For example, if FPL records an amortization of $200 million in 2010 so that its ROE is in the 9 percent to 11 percent range, it would be permitted to carry forward and record in 2011 or 2012 the $67 million difference between the amount booked and the yearly cap of $267 million, in addition to the $267 million capped amount for 2011. To the extent there exists any remaining unamortized reserve surplus at the end of the 3-year settlement period, FPL would amortize it in 2013 in accord with the 4-year amortization period approved in the Final Order unless we require a different result pursuant to a final rate order effective on or after January 1, 2013.

Paragraph 9: Paragraph 9 provides that the cost of service and rate design issues remain as set forth in the Final Order. This paragraph also allows FPL to request approval of new or revised rate schedules or tariff provisions, provided that such request does not increase any base rates during the term of the Stipulation unless the new or revised tariff is optional.

We have reviewed the terms of the Stipulation, and believe that the Stipulation provides a reasonable resolution of the outstanding issues in Docket Nos. 080677-EI and 090130-EI and is in the public interest. Therefore, the proposed Stipulation is hereby approved.

DENYING SAPORITO'S PETITION FOR BASE RATE PROCEEDING[6]

On January 19, 2010, six days after we voted on FPL's petition for a general rate case, Thomas Saporito filed a Petition for the Conduct of a General Rate Case and Request for Hearing and Leave to Intervene. Saporito asks that we conduct a general investigation and/or a general rate case of FPL's rates as approved at the January 13, 2010, Agenda Conference, and that we determine whether FPL's rates, effective as of that date, should be reduced and/or refunded.

Saporito states that he intends to rely upon the evidence and testimony filed in Docket No. 080677-EI. He states that the disputed issues of material fact will include, but will not be limited to, whether FPL's current electric rates should be decreased. Saporito states he reserves the right to identify and develop additional issues as the docket progresses.

We deny Saporito's petition for base rate proceeding because it fails to meet the criteria established in Rule 28-106.201, Florida Administrative Code (F.A.C.). We find that the petition fails to allege any disputed issues of material fact which we have not already resolved by the issuance of the Final Order.

It is our opinion that this petition would be nothing more than a rehearing of the prior proceeding. We heard, considered, and rendered our decision based on the evidence in the record. Included in the record is testimony filed by Saporito, OPC, and other intervenors, arguing for a rate decrease. Saporito states he will rely on that same evidentiary record in the new proceeding for a rate decrease. Therefore, we have already resolved all issues of disputed fact which were before us regarding the rates that FPL would charge.

Furthermore, Saporito's interests were represented in this docket. Saporito participated as a party in the FPL rate case docket; he was granted intervenor status by Order No. PSC-09-0280-PCO-EI, issued April 29, 2009. Saporito filed testimony and evidence in the docket, conducted discovery, and filed a prehearing statement. On August 13, 2009, 4 days prior to the Prehearing Conference, Saporito withdrew from the docket citing health reasons, and the withdrawal was accepted by the Prehearing Officer. The hearing was conducted over several weeks in August, September and October. On October 2, 2009, Saporito filed a Withdrawal of his Motion to Withdraw, which was denied by the presiding officer as an untimely new petition to intervene. See Order No. PSC-09-0687-PCO-EI, issued October 14, 2009.

While Saporito was not physically present at the technical hearings in the proceeding, his and all other consumers' interests were represented by both OPC and AG. By statute, OPC provides "legal representation for the people of the state [of Florida] in proceedings before the [Public Service] commission . . . ." Section 367.0611, F.S. The AG, as chief legal officer of the state of Florida, was granted intervention on behalf of the state of Florida. As part of his position in the request to intervene, the AG cited State ex. Rel. Shevin v. Yarborough, 257 So. 2d 891 (Fla. 1972) for the proposition that "there is no statute which prohibits the Attorney General from

[6] Commissioners Graham, Edgar, Brisé, Balbis, and Brown participated in this part of the decision.

representing the State of Florida as a consumer, and offering such evidence and argument as will benefit its citizens." See Order No. PSC-09-0289-PCO-EI, issued May 1, 2009, in this docket.

The petition for a new base rate proceeding seeks a different decision, a reduction of base rates, on the same factual record as was used by this Commission to reach our decision in the Final Order. Saporito participated in the issues that were ultimately decided by this Commission in the Final Order. Therefore, Saporito's petition fails to state any material issue of disputed fact and shall be dismissed as failing to meet the requirements of Rule 28-106.201, F.A.C.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that FPL's request for reconsideration regarding fuel clause overrecoveries is denied. It is further

ORDERED that the Joint Movants' proposed Stipulation is approved as set forth herein. It is further

ORDERED that the Petition for Base Rate Proceeding filed by Mr. Thomas Saporito is denied. It is further

ORDERED that these dockets shall be closed upon the expiration of the time for appeal.

By ORDER of the Florida Public Service Commission this 1st day of February, 2011.

ANN COLE
Commission Clerk

(SEAL)

JSC

CONCURRENCE BY: COMMISSIONER SKOP

COMMISSIONER SKOP, concurring with a separate opinion:

The settlement agreement validates the Commission's prior decision in the Florida Power & Light Company (FPL) rate case in all material aspects including the authorized Return on Equity (ROE). Specifically, the settlement agreement freezes base rates protecting FPL customers from base rate increases through 2012, while ensuring the financial health and integrity of the utility by affording FPL the ability to manage its earnings for financial reporting purposes. The settlement agreement also provides for the cost recovery of the West County Three (WEC-3) CCCT generating unit, limited to smaller of the projected fuel savings or revenue requirement, when the plant enters commercial service in 2011 thereby avoiding the need to conduct a limited proceeding. Accordingly, the settlement agreement represents constructive regulation which avoids protracted litigation and promotes a constructive regulatory environment.

One of the most important aspects of the settlement agreement, however, is that the authorized ROE encompassed by the settlement agreement (i.e., an authorized midpoint ROE of 10% plus or minus 100 basis points) is exactly the same as it was decided by the Commission in the FPL rate case.

Finally, one point which is extremely important to recognize, and which may have been overlooked, is that the settlement agreement arose from the decision of the Commission in the FPL rate case. While that decision was criticized, history has shown that the Commission (including three honorable Commissioners - Steve Stevens, David Klement, and Nancy Argenziano who no longer serve on the Commission) made the right decision as evidenced by the fact that the utility is financially healthy, earning a reasonable rate of return, and able to raise capital at attractive rates. Furthermore, post-rate case earnings, as measured by earnings surveillance reports, are the subject of a docket recently opened by Commission staff. More importantly, the lights are still on, and FPL customers continue to receive the same level of excellent service that FPL is well known for providing.

In closing, I would like to commend the parties to this docket for entering into the settlement agreement which provides rate stability for approximately 4.5 million FPL ratepayers through 2012, while ensuring the financial health and integrity of the utility.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Attachment 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.	Docket No. 080677-EI
In re: 2009 comprehensive depreciation study by Florida Power & Light Company.	Docket No. 090130-EI

STIPULATION AND SETTLEMENT

WHEREAS, Florida Power & Light Company ("FPL" or the "Company"), the Office of the Attorney General ("AG"), the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), the South Florida Hospital and Healthcare Association ("SFHHA"), the Federal Executive Agencies ("FEA") and the Associated Industries of Florida ("AIF") have signed this Stipulation and Settlement (the "Agreement"; unless the context clearly requires otherwise, the term "Party" or "Parties" means a signatory to this Agreement); and

WHEREAS, on March 16, 2009, FPL petitioned the Florida Public Service Commission ("FPSC" or "Commission") for an increase in base rates of approximately $1.044 billion in 2010, a subsequent year adjustment to base rates of approximately $247.4 million in 2011, approval to continue the Generation Base Rate Adjustment mechanism to adjust base rates for the addition of new generating plants such as the West County Energy Center Unit 3 ("West County Unit 3") that is projected to go into service in June 2011, and other related relief; and

WHEREAS, on March 16, 2009, FPL filed comprehensive depreciation studies in accordance with FPSC Rule 25-6.0436(8)(a), Florida Administrative Code; and

WHEREAS, the Parties filed voluminous prepared testimony and exhibits, conducted extensive discovery, participated in nine service hearings and fifteen days of technical hearings held by the Commission, and fully briefed their positions to the Commission following the conclusion of the hearings; and

WHEREAS, the Commission issued Order No. PSC-10-0153-FOF-EI on March 17, 2010 in the above dockets ("the Final Order"), in which the Commission approved a base rate increase effective March 1, 2010 of approximately $75.5 million; and

WHEREAS, on April 1, 2010, FPL and FIPUG filed motions for reconsideration of certain aspects of the Final Order; and

WHEREAS, all Parties have the right to appeal the Final Order, as revised by the Commission's decision on reconsideration, to the Supreme Court of Florida; and

WHEREAS, the Parties recognize that this is a period of substantial economic uncertainty and that this Agreement will provide rate certainty to FPL's customers during the term of the Agreement; and

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in these proceedings so as to maintain a degree of stability as to FPL's base rates and charges;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Agreement will become effective upon approval and final order of the Commission (the "Implementation Date") and continue through the last billing cycle in December 2012 (the period from the Implementation Date through the last billing cycle in December 2012 may be referred to herein as the "Term"). Base rates set in the Final Order shall remain unchanged during the Term except as otherwise permitted in this

Agreement.

2. Nothing in this Agreement shall preclude FPL from requesting the Commission to approve the recovery of costs that are recoverable through base rates under the nuclear cost recovery statute, Section 366.93, Florida Statutes, and Commission Rule 25-6.0423, F.A.C. Parties may participate in nuclear cost recovery proceedings and proceedings related thereto and may oppose FPL's requests.

3. Nothing in this Agreement shall preclude FPL from petitioning the Commission to seek recovery of costs associated with any storms without the application of any form of earnings test or measure and irrespective of previous or current base rate earnings or level of theoretical depreciation reserve. Consistent with the rate design method set forth in Order No. PSC-06-0464-FOF-EI, the Parties agree that recovery of storm costs from customers will begin, on an interim basis, sixty days following the filing of a cost recovery petition and tariff with the Commission and will be based on a 12-month recovery period if the storm costs do not exceed $4.00/1,000 kWh on monthly residential customer bills. In the event the storm costs exceed that level, any additional costs in excess of $4.00/1,000 kWh shall be recovered in a subsequent year or years as determined by the Commission. All storm related costs shall be calculated and disposed of pursuant to Commission Rule 25-6.0143, F.A.C., and will be limited to costs resulting from a tropical system named by the National Hurricane Center or its successor, to the estimate of incremental costs above the level of storm reserve prior to the storm and to the replenishment of the storm reserve to the level as of the Implementation Date. The

Parties to this Agreement are not precluded from participating in any such proceedings. The Parties agree that the $4.00/1,000 kWh cap in this Paragraph 3 will apply in aggregate for a calendar year; provided, however, that FPL may petition the Commission to allow FPL to increase the initial 12 month recovery beyond $4.00/1,000 kWh in the event FPL incurs in excess of $800 million of storm recovery costs that qualify for recovery in a given calendar year, inclusive of the amount needed to replenish the storm reserve to the level that existed as of the Implementation Date. All Parties reserve their right to oppose such a petition. The Parties expressly agree that any proceeding to recover costs associated with any storm shall not be a vehicle for a "rate case" type inquiry concerning the expenses, investment, or financial results of operations of the Company and shall not apply any form of earnings test or measure or consider previous or current base rate earnings or level of theoretical depreciation reserve.

4. Nothing shall preclude the Company from requesting the Commission to approve the recovery of costs (a) that are of a type which traditionally and historically would be, have been, or are presently recovered through cost recovery clauses or surcharges, or (b) that are incremental costs not currently recovered in base rates which the Legislature or Commission determines are clause recoverable subsequent to the approval of this Agreement. It is the intent of the Parties in this Paragraph 4 that FPL not be allowed to recover through cost recovery clauses increases in the magnitude of costs of types or categories (including but not limited to, for example, investment in and maintenance of transmission assets) that have been and traditionally, historically, and ordinarily would be recovered through base rates. It is further the intent of the Parties to recognize that an

authorized governmental entity may impose requirements on FPL involving new or atypical kinds of costs (including but not limited to, for example, requirements related to cybersecurity), and, concurrently with the imposition of such requirements, the Legislature and/or Commission may authorize FPL to recover those related costs through a cost recovery clause. Nothing in this Agreement shall affect the shifts from clause to base rate recovery and from base rate to clause recovery that were approved in the Final Order.

5. (a) FPL projects that West County Unit 3 will enter commercial service during the summer of 2011, when this Agreement is in effect. The Parties agree that, beginning with the first billing cycle on or after the date on which West County Unit 3 enters commercial service, FPL shall be authorized to recover during the remainder of the calendar year that portion of the projected non-fuel revenue requirements associated with FPL's West County Unit 3 which equals the projected fuel savings associated with the operation of West County Unit 3 through the balance of the calendar year via FPL's capacity cost recovery clause. Thereafter during the Term, FPL shall be authorized to collect annually through its capacity cost recovery clause that portion of the annual revenue requirements associated with West County Unit 3 that equates to the projected annual fuel savings associated with the addition of West County Unit 3, provided that if the projected fuel cost savings are greater than the annual revenue requirements of West County Unit 3, then FPL's recovery pursuant to this section shall be limited to the annual revenue requirements of West County Unit 3.

(b) The revenue requirements associated with West County Unit 3 quantified pursuant to this paragraph shall be allocated to customer classes utilizing the same cost of service and rate design methodology that was approved in the Final Order. The projected non-fuel annual revenue requirement associated with West County Unit 3 will reflect the costs upon which the cumulative present value revenue requirements were predicated, and pursuant to which a need determination was granted by the Commission in Order No. PSC-08-0591-FOF-EI, as adjusted by the application of a 10% return on equity in lieu of the return on equity that was used in the determination of need proceeding. FPL will calculate and submit for Commission confirmation the amount of the revenue requirement at the time it submits its capacity clause projection filing for the year that the plant is to go into service. If the actual capital costs of West County Unit 3 are lower than projected in the need determination proceeding, the lower figure shall constitute the full revenue requirements. If actual capital costs for West County Unit 3 are higher than the costs projected in the need determination proceeding, FPL, at its option, may initiate a limited proceeding to recover such additional costs in future ratemaking proceedings subsequent to the termination of this Agreement. FPL's request to recover such additional costs shall be governed by the standards of Commission Rule 25-22.082(15), F.A.C. Any Party to this Agreement shall be permitted to intervene in such limited proceeding to challenge FPL's request to recover such costs. However, while FPL shall calculate the total revenue requirements for West County 3 in this manner, the amount of the revenue requirements associated with West County Unit 3 that FPL may collect through its capacity cost recovery clause from customers during the Term shall be limited by the projected fuel savings described in this paragraph.

(c) FPL shall implement for the remainder of the calendar year in which West County Unit 3 achieves commercial service a revised fuel cost recovery factor that reflects the projected fuel savings associated with the addition of West County Unit 3 to its generating fleet. FPL shall quantify the projected fuel savings associated with the addition of West County Unit 3 through the use of the same computerized simulations of its system and current assumptions and data regarding unit performance, system load, and fuel costs that it employs to project its fuel costs in the fuel cost recovery proceeding to compare the total fuel costs that FPL would incur without the addition of West County Unit 3 to the total fuel costs it will incur with the addition of West County Unit 3. Simultaneously with the implementation of the revised fuel cost recovery factor that incorporates the fuel savings associated with the addition of West County Unit 3, FPL shall be authorized to begin collecting the portion of the revenue requirements associated with West County Unit 3 that is equivalent to the fuel savings projected for West County Unit 3 through the capacity cost recovery clause. The revised fuel cost recovery factor and the revised capacity cost recovery factor shall be calculated and their implementation timed so as to accomplish the intent of the Parties, which is that revenues collected to recover the costs of owning and operating West County Unit 3 shall be completely offset by projected fuel savings associated with the unit during the Term. FPL shall submit the revised fuel cost recovery factor and supporting calculations to the Commission and to the Parties at the time it submits the quantification of West County Unit 3's revenue requirements. Other Parties shall have the right to contest FPL's projection of fuel cost savings associated with West County Unit 3.

(d) FPL's right to recover the portion of the non-fuel revenue requirements for West County Unit 3 that is offset by projected fuel savings pursuant to this Paragraph 5 shall survive termination of this Agreement and shall continue until such time as new base rates are authorized for FPL that are based on a test year that reflects the then applicable non-fuel revenue requirements for West County Unit 3. The Parties understand and agree that this Paragraph 5 shall not be construed as authorizing FPL to defer the recognition of any costs associated with owning and operating West County Unit 3, or defer the collection of any portion of the calculated annual revenue requirements associated with West County Unit 3 that exceeds the projected fuel savings associated with the unit, to future periods. During this Agreement FPL shall book the full investment and all costs of owning and operating the unit, including depreciation expense, of West County Unit 3 during the calendar year to which such investment and costs relate. Further, when quantifying the investment in West County Unit 3 to be included in rate base during future base rate proceedings, FPL shall recognize fully the accumulated depreciation associated with West County Unit 3 that it records during the Term. It is the intent of the Parties that the provisions regarding West County Unit 3 are integral to and interrelated with the other provisions of this Agreement. Accordingly, nothing in this Paragraph 5 shall be construed to limit the ability of FPL and the other Parties to invoke their respective rights to seek changes in base rates pursuant to Paragraph 6 of this Agreement in the event the inclusion of the costs and revenues associated with West County Unit 3 in accordance with this Paragraph 5 in the calculation of FPL's earned return on equity cause FPL's earned return on equity to trigger a threshold of Paragraph 6 below.

6. Notwithstanding Paragraph 1 above, if FPL's earned return on common equity falls below 9% during the Term on an FPL monthly earnings surveillance report stated on an FPSC actual, adjusted basis, FPL may petition the FPSC to amend its base rates, either as a general rate proceeding under Sections 366.06 and 366.07, Florida Statutes, and/or as a limited proceeding under Section 366.076, Florida Statutes. (Throughout this Agreement, "FPSC actual, adjusted basis" and "actual adjusted earned return" shall mean results reflecting all adjustments to FPL's books required by the Commission by rule or order, but excluding pro forma, weather-related adjustments.) If FPL files a petition to initiate a general rate proceeding pursuant to this provision, FPL may request an interim rate increase pursuant to the provisions of Section 366.071, Florida Statutes. The other Parties to this Agreement shall be entitled to participate in any proceeding initiated by FPL to increase base rates pursuant to this paragraph, and may oppose FPL's request. Notwithstanding Paragraph 1 above, if FPL's earned return on common equity exceeds 11% during the Term on an FPL monthly earnings surveillance report stated on an FPSC actual, adjusted basis, any other Party shall be entitled to petition the Commission for a review of FPL's base rates. In any case initiated by FPL or any other Party pursuant to this paragraph, all parties will have full rights conferred by law. Notwithstanding Paragraph 1 above, this Agreement shall terminate upon the effective date of any final order issued in any such proceeding pursuant to this Paragraph 6 that changes FPL's base rates prior to December 31, 2012. This Paragraph 6 (a) shall not be construed to bar or limit FPL to any recovery of costs otherwise contemplated by this Agreement; (b) shall not apply to any request to change FPL's base rates that would become effective after this Agreement terminates; and (c) shall not limit any Party's rights in proceedings

concerning changes to base rates that would become effective subsequent to the termination of this Agreement to argue that FPL's authorized ROE range should be different than 9% to 11%.

7. In the Final Order, the Commission determined a net theoretical depreciation reserve surplus in the total amount of $894 million ("Total Depreciation Surplus"). The Commission directed FPL to amortize the Total Depreciation Surplus over four years. The Parties hereby agree that in any given year of this Agreement, FPL shall have discretion to vary the amount of amortization of Total Depreciation Surplus taken in that year, provided that (a) for any surveillance reports submitted by FPL during which its return on equity (measured on an FPSC actual, adjusted basis) would otherwise fall below 9%, FPL must amortize at least the amount of the available Total Depreciation Surplus necessary to maintain in each such 12-month period a return on equity of 9%; (b) FPL may not amortize Total Depreciation Surplus in an amount that results in FPL achieving a return on equity of greater than 11% (measured on an FPSC actual, adjusted basis) in any such 12-month period as measured by surveillance reports submitted by FPL during the Term; and (c) FPL shall amortize no more than $267 million of its Total Depreciation Surplus per calendar year during the Term (but if less than this maximum yearly amortization is taken in any calendar year during the Term, then the remaining available amortization amount will carry forward to increase the maximum yearly amortization that may be used in any subsequent calendar year throughout the Term). Notwithstanding the foregoing, in no event shall FPL amortize more than $776 million of its Total Depreciation Surplus during the period January 1, 2010, through December 31,

2012, unless a greater amount of amortization is necessary to avoid a surveillance report showing an FPSC actual adjusted return on equity of less than 9%. FPL shall not satisfy the requirement of Paragraph 6 that its actual adjusted earned return on equity must fall below 9% on a monthly surveillance report before it may initiate a petition to increase base rates during the Term unless FPL first uses any of the Total Depreciation Surplus that remains available for the purpose of increasing its earned return on equity to at least 9% for the period in question.

8. No Party to this Agreement will request, support, or seek to impose a change in the application of any provision hereof. Except as provided in Paragraph 6, a Party to this Agreement will neither seek nor support any reduction in FPL's base rates, including limited, interim or any other rate decreases, that would take effect prior to the first billing cycle for January 2013, except for any such reduction requested by FPL or as otherwise provided for in this Agreement. FPL shall not seek interim, limited, or general base rate relief during the Term except as provided for in Paragraph 6 of this Agreement. FPL is not precluded from seeking interim, limited or general base rate relief that would be effective during or after the first billing cycle in January 2013. Such interim relief may be based on time periods before January 1, 2013, consistent with Section 366.071, Florida Statutes, and calculated without regard to the provisions of this Agreement.

9. Cost of service and rate design methodologies will be as set forth in the Final Order. Nothing in this Agreement will preclude the Company from filing and the Commission from approving any new or revised tariff provisions or rate schedules requested by FPL, provided that such tariff request does not increase any existing base rate component of a

tariff or rate schedule during the Term unless the application of such new or revised tariff or rate schedule is optional to the Company's customers.

10. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof. No party will assert in any proceeding before the Commission that this Agreement or any of the terms in the Agreement shall have any precedential value. Approval of this Agreement in its entirety will resolve all matters in Docket Nos. 080677-EI and 090130-EI pursuant to and in accordance with Section 120.57(4), Florida Statutes. Upon approval of this Agreement in its entirety by the Commission, FPL and FIPUG will withdraw their respective Motions for Reconsideration of the Final Order. These Dockets will be closed effective on the date the Commission Order approving this Agreement is final and no Party shall seek appellate review of any order issued in these Dockets.

11. This Agreement is dated as of August 20, 2010. It may be executed in counterpart originals, and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

Attachment 1

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