

**BEFORE THE FLORIDA  
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 120015-EI  
FLORIDA POWER & LIGHT COMPANY**

**IN RE: PETITION FOR RATE INCREASE BY  
FLORIDA POWER & LIGHT COMPANY**

**DIRECT TESTIMONY & EXHIBITS OF:**

**TERRY DEASON**

**(PROPOSED SETTLEMENT AGREEMENT)**

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**DIRECT TESTIMONY OF TERRY DEASON**

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FPSC-COMMISSION CLERK

1 **Q. Please state your name and business address.**

2 A. My name is Terry Deason. My business address is 301 S. Bronough Street,  
3 Suite 200, Tallahassee, Florida 32301.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by the law firm Radey Thomas Yon and Clark as a Special  
6 Consultant specializing in the fields of energy, telecommunications, water and  
7 wastewater, and public utilities generally.

8 **Q. Have you filed testimony previously in this proceeding?**

9 A. Yes.

10 **Q. Are you sponsoring an exhibit with this testimony?**

11 A. No.

12 **Q. For whom are you appearing as a witness?**

13 A. I am appearing as a witness for Florida Power & Light Company (“FPL” or  
14 the “Company”).

15 **Q. Have you reviewed the Stipulation and Settlement filed in this docket on  
16 August 15, 2012 (the “Proposed Settlement Agreement”)?**

17 A. Yes, I have. The Proposed Settlement Agreement was entered into by FPL,  
18 the Florida Industrial Power Users Group (“FIPUG”), the South Florida  
19 Hospital and Healthcare Association (“SFHHA”) and the Federal Executive  
20 Agencies (“FEA”).

21 **Q. What is the purpose of your testimony?**

22 A. The purpose of my testimony is to provide a contextual background for the  
23 Florida Public Service Commission’s (“Commission”) consideration of the

1 Proposed Settlement Agreement.

2 **Q. What has been the standard applied by the Commission in determining**  
3 **whether a proposed settlement agreement should be approved?**

4 A. The Commission has generally applied a public interest standard.

5 **Q. Does the Commission's enabling statute establish how this standard is to**  
6 **be applied?**

7 A. No. Chapter 366, Florida Statutes, declares that the regulation of public  
8 utilities is in the public interest and further establishes that its provisions shall  
9 be liberally construed. The determination of what constitutes the public  
10 interest is left to the discretion of the Commission. However, when a  
11 settlement addresses rate levels and rate structures, the Commission has taken  
12 guidance from Section 366.041, Florida Statutes, that the resulting rates  
13 should be just, reasonable, and compensatory. Like so much of the  
14 Commission's regulatory authority, a determination of reasonableness is an  
15 essential requirement. In its Order No. PSC-05-0902-S-EI, approving a  
16 settlement in FPL's 2005 rate case, the Commission stated:

17           Upon review and consideration, we find that the Stipulation and  
18           Settlement provides a reasonable resolution of the issues in this  
19           proceeding with respect to FPL's rates and charges and its  
20           depreciation rates and capital recovery schedules... In conclusion,  
21           we find the Stipulation and Settlement establishes rates that are  
22           fair, just, and reasonable and that approval of the Stipulation and  
23           Settlement is in the public interest.

1 **Q. How much discretion does the Commission have in determining whether**  
2 **a proposed settlement is reasonable?**

3 A. The Commission's discretion, while not unlimited, is extensive and broad.  
4 The Commission has historically exercised abundant discretion to approve  
5 many different and varied proposed settlements that it deemed to be in the  
6 public interest and to result in just, reasonable, and compensatory rates.

7 **Q. What has been the Commission's policy with regard to encouraging**  
8 **settlement?**

9 A. The Commission has had a long standing policy of encouraging and perhaps  
10 even favoring public utilities and intervenors to reach proposed settlements  
11 and to afford them deference. In the same Order No. PSC-05-0902-S-EI that I  
12 earlier cited, the Commission stated: "Nonetheless, this Commission has a  
13 long history of encouraging settlements, giving great weight and deference to  
14 settlement, and enforcing them in the spirit in which they were reached by the  
15 parties."

16 **Q. Why has this been the Commission's long standing policy?**

17 A. The Commission has long recognized that a proposed settlement is an  
18 effective regulatory tool to fulfill its responsibility to regulate in the public  
19 interest and to set rates that are just, reasonable, and compensatory. The  
20 Commission has further recognized that proposed settlements can encourage  
21 innovative solutions to regulatory issues that could be difficult to achieve  
22 within the confines of traditional litigated rate cases. In the Commission's  
23 experience, innovative solutions that have their origin in settlements can later

1           become part of the generally accepted “toolbox” of mechanisms that the  
2           Commission can use to better regulate in the public interest. Thus, settlements  
3           can provide a proving ground for ratemaking innovation.

4   **Q.    Has the Commission’s policy to encourage settlements and show them**  
5   **deference been beneficial?**

6   A.    Yes, it most definitely has. This policy has benefited all stakeholders, most  
7           notably the customers of public utilities. These benefits have been derived by  
8           a regulatory process in Florida that provides ample information upon which  
9           parties can negotiate from positions of strength and engage in substantive  
10          negotiations to achieve these beneficial results. These benefits have also been  
11          achieved by the parties’ hard work, innovative approaches to solve complex  
12          regulatory challenges, and a willingness to find balance.

13 **Q.    Has the Commission generally reacted favorably to proposed settlements**  
14 **that are presented for its approval?**

15 A.    Yes. The vast majority of proposed settlements have been approved by the  
16          Commission. This is not surprising, given Florida’s policy of encouraging  
17          settlements and giving them deference and the efforts of utilities and  
18          intervenors to engage in meaningful negotiations. I know of no settlement  
19          that has been approved that was subsequently overturned on appeal.

20 **Q.    Has there been a standard set of criteria by which the Commission**  
21 **decides whether to approve a proposed settlement?**

22 A.    There is no standard list of reasons or criteria that is used by the Commission  
23          in making its determination as to whether a proposed settlement is in the

1 public interest. Each proposed settlement should be evaluated on its  
2 individual merits, taking into account all of the facts and circumstances at the  
3 time, which is what the Commission has historically done. However, over the  
4 years, the Commission has expressly stated reasons why it accepted particular  
5 proposed settlements.

6 **Q. What are some of these reasons?**

7 A. At various times when considering different proposed settlements, the  
8 Commission has given the following reasons for approving proposed  
9 settlements:

- 10 • The overall reasonableness of the resulting rates
- 11 • Rate stability and predictability
- 12 • The resulting financial strength of the public utility and its ability (and  
13 encouragement) to make needed capital investments
- 14 • The ability of the public utility to maintain or improve its quality of  
15 service and overall reliability
- 16 • The existence of safeguards for the protection of customers and investors
- 17 • The amount of information provided to make a reasoned decision
- 18 • Regulatory efficiency and the minimization of regulatory costs and  
19 burdens
- 20 • The minimization of risk and uncertainty

21 **Q. How would you assess the Proposed Settlement Agreement with respect to**  
22 **these reasons for approval?**

1 A. While it is the Commission's role to weigh all of these matters and make a  
2 final decision on whether the proposed settlement is in the public interest, the  
3 Proposed Settlement Agreement certainly appears to be consistent with and  
4 offer benefits in the areas listed above. As explained in more detail by  
5 witnesses Barrett, Deaton, Dewhurst, and Forrest, the Proposed Settlement  
6 Agreement offers the benefits of reasonable rates with stability and  
7 predictability that also allows FPL to provide high quality, reliable service  
8 with the necessary financial integrity to continue to make investments for the  
9 benefit of its customers. Based on my review of the Proposed Settlement  
10 Agreement and the circumstances that have brought it to this point, I believe it  
11 satisfactorily addresses all of the reasons listed above and, in at least one  
12 notable aspect, surpasses what the Commission has seen in previous proposed  
13 settlements that it has approved.

14 **Q. What is the notable aspect to which you refer?**

15 A. It is the fact that the Commission has taken the previously unprecedented step  
16 of conducting discovery and holding a full evidentiary hearing on the  
17 Proposed Settlement Agreement. Previously the Commission has set  
18 proposed settlements for consideration at an Agenda Conference and allowed  
19 parties to engage in oral argument. In fact, the Florida Supreme Court has  
20 previously determined that this more limited process was sufficient to protect  
21 parties' due process rights. See *SFHHA v. Jaber et al.*, 887 So.2d 1210 (Fla.  
22 2004). Therefore, the more extensive process being followed now should give  
23 the Commission even greater assurances that it has all the necessary



1 information to determine whether the Proposed Settlement Agreement is in  
2 the public interest.

3 **Q. What levels of information did the signatories to the Proposed Settlement**  
4 **Agreement have?**

5 A. The signatories to the Proposed Settlement Agreement had the benefit of a  
6 wealth of information which enabled them to negotiate from a position of  
7 knowledge and strength. The signatories had the benefit of the Minimum  
8 Filing Requirements, direct testimony from FPL and intervenor witnesses,  
9 rebuttal testimony from FPL witnesses, and a vast amount of additional  
10 information in the form of depositions, interrogatory responses, and document  
11 productions. Not all settlement agreements that have been approved by the  
12 Commission have had this much information available to the signatories as  
13 they engaged in their negotiations. The fact that this level of information was  
14 available should give an extra degree of comfort that the Proposed Settlement  
15 Agreement was carefully and thoughtfully negotiated to give due  
16 consideration to all relevant facts and opinions necessary to reach a balanced  
17 outcome. Likewise, the commission has the benefit of the expansive record  
18 developed in the technical hearings and the additional evidentiary record in  
19 the instant proceeding on the Proposed Settlement Agreement.

20 **Q. Are you aware that the Proposed Settlement Agreement does not have the**  
21 **Office of Public Counsel (“OPC”) as a signatory?**

22 A. Yes, I am aware of that and realize that the OPC is openly opposed to the  
23 Proposed Settlement Agreement.

1 **Q. Does this change your conclusion that the Proposed Settlement**  
2 **Agreement satisfactorily addresses the reasons given by the Commission**  
3 **in approving previous proposed settlements?**

4 A. No, it does not.

5 **Q. Please explain.**

6 A. A determination that a proposed settlement is (or is not) reasonable and in the  
7 public interest rests solely with the Commission. While in my experience the  
8 Commission has always recognized OPC's role, and has historically found  
9 comfort in the OPC being a signatory to an agreement, the OPC's position is  
10 not and should not be dispositive of the final outcome. The Commission has a  
11 statutory responsibility to make an independent determination of what  
12 constitutes the public interest. Essentially, all parties submit evidence and  
13 take positions that they are asking the Commission to find to be in the public  
14 interest, but it is up to the Commission to make that determination. The fact  
15 that previous settlement agreements have included the OPC as a signatory  
16 should not become a prerequisite or standard upon which all subsequent  
17 proposed settlements are considered. Parties, including OPC, must remain  
18 free to determine when and whether to negotiate a resolution that they believe  
19 is in the public interest and to submit that resolution for the Commission's  
20 consideration.

21 **Q. Are you saying that the Commission should not be concerned with OPC's**  
22 **position on the Proposed Settlement Agreement?**

1 A. No. To the contrary, the Commission should carefully consider OPC's  
2 evidence in support of its belief that the Proposed Settlement Agreement is not  
3 in the public interest. However, the OPC has the corresponding responsibility  
4 to support its views with evidence for the Commission's consideration.  
5 Simply being opposed is not sufficient.

6 **Q. How should the Commission's decision on approval of the Proposed**  
7 **Settlement Agreement be made?**

8 A. Any final determination, whether it be approval or denial, should be based  
9 upon reasoned consideration of the particular merits of the agreement, taking  
10 into account the facts and circumstances of the agreement. The Commission  
11 should use the reasons I previously identified and any other reasons the  
12 Commission believes to be relevant to its final determination. These reasons  
13 should be clearly communicated at the Agenda Conference and in its final  
14 order. I would strongly encourage the Commission not to deny the Proposed  
15 Settlement Agreement simply because OPC is not a signatory. Doing so  
16 could have significant adverse consequences because it could substantially  
17 chill the prospects for future proposed settlements being brought to the  
18 Commission and give the OPC de facto veto power that was never envisioned.  
19 The best negotiated settlements are those where the public utility and the  
20 intervenors all willingly negotiate from a position of knowledge and strength  
21 with a willingness to engage in compromise to achieve a beneficial balance.  
22 A negotiation in which one intervenor has de facto veto power would not be  
23 conducive to or consistent with this approach.

1 **Q. Should the Proposed Settlement Agreement be rejected if the**  
2 **Commission has concerns with any one provision of the settlement?**

3 A. No. Based upon my experience, rarely if ever are a Commission and all of the  
4 individual commissioners totally happy with all of the provisions contained in  
5 a proposed settlement. The Commission should understand that a settlement  
6 is a carefully balanced compromise and that it must be evaluated as a whole.  
7 If the Proposed Settlement Agreement is determined to be reasonable and  
8 consistent with the public interest *on the whole*, it should be approved. If it is  
9 determined to be unreasonable and inconsistent with the public interest *on the*  
10 *whole*, it should be rejected.

11 **Q. If the Commission were to approve the Proposed Settlement Agreement,**  
12 **would it lose its ability to actively regulate FPL to ensure that rates**  
13 **remain just and reasonable?**

14 A. No. While the Proposed Settlement Agreement binds the signatories, the  
15 Commission preserves its statutory right and duty to insure that FPL's rates  
16 remain just and reasonable. If circumstances change to the extent that the  
17 Commission sees fit to exercise its jurisdiction beyond the confines of the  
18 Proposed Settlement Agreement, it may do so. However, just as is the case  
19 when the Commission approves a settlement, it should show it great deference  
20 and enforce it in the spirit in which it was reached.

21 **Q. Does this conclude your testimony?**

22 A. Yes, it does.