BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company	Docket No. 160021-EI
In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company	Docket No. 160061-EI
In re: 2016 depreciation and dismantlement study by Florida Power & Light Company	Docket No. 160062-EI
In re: Petition for limited proceeding to modify and continue incentive mechanism by Florida Power & Light Company	Docket No. 160088-EI Filed: November 10, 2016

FLORIDA POWER & LIGHT COMPANY'S POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS REGARDING SETTLEMENT

Florida Power & Light Company ("FPL" or the "Company"), pursuant to Order No. PSC-16-0483-PHO-EI (the "Second Prehearing Order"), hereby files this Post-Hearing Brief and Statement of Issues and Positions in support of the Joint Motion for Approval of the Stipulation and Settlement filed in the above dockets on October 6, 2016 (the "Proposed Settlement Agreement" or "Agreement").

The Proposed Settlement Agreement is the result of extended, complex and collaborative negotiations. As one of the joint signatories, FPL believes the Agreement provides an appropriate resolution of all issues in the above-referenced dockets, consolidated for purposes of this proceeding. Further, FPL respectfully submits that the Proposed Settlement Agreement is in the public interest and, accordingly, should be approved, consistent with the Commission's long-standing policy of encouraging settlements in contested proceedings when they are in the public interest. First, the Proposed Settlement Agreement would provide FPL customers with stability and predictability with respect to their electricity rates, while allowing FPL to maintain the

financial strength to make investments it believes are necessary to provide customers with safe and reliable power. Second, it would increase the amount of emissions-free solar energy that will be available to serve all of FPL's customers on a cost-effective basis. Third, the Proposed Settlement Agreement would reflect an average annual growth rate in base rates of slightly less than 2%, below the expected rate of inflation and extremely reasonable in light of recent increases for other electric utilities through litigated and settled outcomes. The resulting rates through 2020 are projected to remain 30% below the current national average, 13% below the current Florida average, and among the lowest in the country – even though this comparison assumes the scheduled increases for FPL but no increases for other utilities. Finally, the Proposed Settlement Agreement would provide FPL a period of time within which to continue to focus on further improving reliability, service delivery, and operational efficiency. This is a model that FPL has successfully employed over prior settlement periods to the benefit of customers.

I. BACKGROUND AND OVERVIEW

On March 15, 2016, FPL made three related filings: (i) a petition requesting base rate increases effective January 1, 2017 and January 1, 2018, as well as a limited scope adjustment for the revenue requirements associated with the Okeechobee Clean Energy Center (the "Okeechobee Unit") when that unit goes into commercial operation, expected in mid-2019; (ii) its 2016 depreciation and dismantlement studies, the results of which were reflected in FPL's rate request; and (iii) a petition for approval of FPL's 2016-2018 storm hardening plan, the implementation costs for which are reflected in FPL's rate request. These three filings were assigned to Docket Nos. 160021-EI, 160062-EI and 160061-EI, respectively. On April 15, 2016, FPL filed a petition to continue with modifications the asset optimization incentive mechanism that had been approved as part of FPL's 2012 rate case settlement but is expiring at the end of

2016. That filing was assigned Docket No. 160088-EI. On May 4, 2016, the Commission issued Order No. PSC-16-0182-PCO-EI consolidating these four dockets.

FPL and intervening parties filed voluminous testimony and exhibits, and they conducted extensive discovery, in the consolidated dockets. Ultimately, the parties' evidence was presented at a technical hearing that covered nine days in August and September 2016, resulting in over 6,000 pages of transcript and more than 800 exhibits. The parties then filed voluminous post-hearing briefs, cumulatively totaling hundreds of pages, summarizing the extensive evidentiary record and presenting their arguments on the more than 165 contested issues identified for Commission decision.

Throughout much of the period since the consolidated dockets were opened, FPL and intervenors have been exploring the possibility of settlement. However, it was not until after briefs were filed that FPL and three of the intervenors – the Office of Public Counsel ("OPC"), the South Florida Hospital and Healthcare Association ("SFHHA") and the Florida Retail Federation ("FRF") (collectively, the "Signatories") – were able to conclude those complex negotiations on mutually agreeable terms. On October 6, 2016, as Hurricane Matthew was bearing down on the South Florida coast, the Signatories executed the Proposed Settlement Agreement and filed it in the consolidated dockets with a joint motion for its approval. Due to the conditions surrounding Hurricane Matthew, the Signatories were unable to reach other parties to determine their positions on the joint motion, and they so stated in the joint motion. On October 13, 2016, the Signatories filed an updated certificate of conferral for all of the parties who had stated a position.

Among other things, the Proposed Settlement Agreement provides:

- An effective date of January 1, 2017, continuing until FPL's base rates are next reset in a general base rate proceeding (the "Term"), with the minimum Term of the Agreement being four years through December 31, 2020 (the "Minimum Term"). Except as expressly provided, FPL could not seek another base rate increase during the Term of the Proposed Settlement Agreement.

- Base rate adjustments as follows:

    - A $400 million increase, effective January 1, 2017;

    - A $211 million increase, effective January 1, 2018;

    - A $200 million base rate adjustment upon the commercial operation date for the Okeechobee Unit, projected to be in mid-2019; and

    - Authority to implement Solar Base Rate Adjustments ("SoBRA") upon the commercial operation date of solar generation projects that FPL will undertake to construct during the Minimum Term and must complete within one year after the conclusion of the Minimum Term. Such solar projects would be subject to Commission approval, and, except as provided in the Agreement, would not exceed 300 MW per year.

- FPL's return on common equity ("ROE") would be 10.55% for purposes of setting rates. FPL's authorized ROE range for the Term is 9.60% - 11.60%.

- FPL would be given continued flexibility during the Term of the Proposed Settlement Agreement to amortize up to $1.0 billion of the theoretical depreciation reserve surplus, together with any reserve amount remaining at the end of 2016 under the 2012 settlement agreement approved in Order No. PSC-13-0023-S-EI (collectively, the "Reserve Amount"), with the obligation to use that flexibility to maintain FPL's earned ROE within its authorized range.

- The storm cost recovery mechanism provided in the 2010 and 2012 settlement agreements would remain in effect.

- FPL agrees to terminate 100% of its natural gas financial hedging prospectively for the Minimum Term (i.e., commencing with FPL's 2017 Risk Management Plan). FPL would not be precluded from filing a proposed risk management plan to address natural gas hedging following expiration of the Minimum Term.

In resolving all of the issues in the consolidated proceeding, the Proposed Settlement Agreement necessarily includes many of the key elements and issues that were addressed by the parties in the extensive record of the technical hearing. The Agreement also contains a small

number of elements that were necessary for the Signatories to reach a full compromise of all issues in this proceeding, but which themselves had not been explicitly addressed in the technical hearing. The Commission determined that it would be appropriate to hold a supplemental hearing at which parties could present evidence supporting or opposing the elements of the Proposed Settlement Agreement not previously addressed. On October 12, 2016, the Commission issued a notice to all of the parties in the consolidated dockets that the settlement hearing would be held on October 27, 2016, a date that was already calendared for the Commission's special agenda conference in the consolidated dockets. This notice complied with the requirement for 14 days' notice of an administrative hearing in Section 120.569, Florida Statutes. The Commission also issued a revised order establishing procedure on October 12, Order No. PSC-16-0456-PCO-EI ("Order 16-0456"). This order provided for additional discovery, advised parties how they could present testimony and exhibits at the settlement hearing, and stated what the Commission considered to be the ultimate purpose of that hearing: "[t]he sole issue to be decided in this hearing is whether the Settlement Agreement dated October 6, 2016, is in the public interest and should be approved." Order 16-0456, at 2. At the same time, the order recognized that:

> In order to fully evaluate this Settlement Agreement, additional information on the terms of the Settlement Agreement discussed in Paragraphs 10 (Solar Base Rate Adjustment), 12 (theoretical depreciation reserve surplus), 16 (natural gas financial hedging), 18 (battery storage pilot program), and 19 (pilot demand side management opt-out program) is necessary.

Id. The order provided all parties an opportunity to propose additional new items that should be addressed with additional evidence. No party proposed any such additional items.

Pursuant to the timetable provided in Order 16-0456, FPL filed prepared testimony and exhibits of four witnesses on October 13, 2016. Staff and AARP served FPL with discovery requests, to which FPL timely and fully responded. Order 16-0456 gave parties opposing the

Proposed Settlement Agreement the option of either filing prepared testimony on October 21, 2016 or simply giving notice on that date of witnesses whom they intended to present live at the October 27 hearing, along with a list of the provisions in the Proposed Settlement Agreement that the witnesses would address.

On October 13, 2016, AARP and the Larsons filed responses opposing approval of the Proposed Settlement Agreement. The AARP response also asked the Commission to delay the hearing for two weeks, which the Signatories opposed as impractical, not reasonable and unnecessary. The Commission agreed with the Signatories and issued Order No. PSC-16-0472-PCO-EI denying the requested extension. On October 21, 2016, AARP gave notice of its intent to present live testimony of Michael Brosch, stating that the testimony would address Paragraphs 1, 2, 3, 4, 6, 7, 9, 10, 11 and 12 of the Proposed Settlement Agreement. No other party filed prepared testimony or gave notice of its intent to present live testimony opposing the Proposed Settlement Agreement. On October 24, 2016, the Commission issued Order No. PSC-16-0483-PHO-EI, the prehearing order for the settlement hearing.

On October 27, 2016, the Commission held the settlement hearing as scheduled. In opening statements at the outset of the hearing, the Signatories all stated their support for the Proposed Settlement Agreement; AARP, the Sierra Club and the Larsons[1] announced their opposition to the Proposed Settlement Agreement; and the Federal Executive Agencies ("FEA"), Wal-Mart Stores East, LP/Sam's East, Inc. and the Florida Industrial Power Users Group ("FIPUG") stated that they did not oppose the Proposed Settlement Agreement. FPL presented its four settlement witnesses (Tiffany Cohen, Keith Ferguson, Sam Forrest and Robert Barrett), whose testimony addressed Paragraphs 10, 12, 16, 18 and 19 of the Proposed Settlement

[1] The Larsons' counsel advised Staff early on the morning of the hearing that he would not be able to attend and instead provided a written opening statement that was entered into the record.

Agreement as directed by Order 16-0456. None of the parties opposing the Proposed Settlement Agreement cross-examined any of FPL's witnesses, but Staff and the Commissioners asked questions to follow up on some of the points made by the witnesses in their prefiled testimony. AARP's witness Brosch read statements into the record opposing certain settlement provisions, much of it repetitious of his August testimony. Mr. Brosch was not cross-examined. FPL presented Mr. Barrett as a live rebuttal witness to clarify that FPL would continue to act aggressively to control costs and improve performance if the Proposed Settlement Agreement is approved, as FPL has done under the current and prior settlements.

At the conclusion of the hearing, the parties were asked whether they wished to file briefs, and AARP indicated that it intended to do so. Consistent with the schedule laid out in Order 16-0456, parties were given until November 10, 2016 to file briefs. This Post-Hearing Brief is being filed pursuant to that direction and addresses the following: Section II sets forth the standard by which the Proposed Settlement Agreement should be evaluated and summarizes the reasons why it is in the public interest; Section III summarizes the evidence presented at the settlement hearing supporting Paragraphs 10, 12, 16, 18 and 19 of the Proposed Settlement Agreement; and Section IV shows that evidence in the record from both the August and October technical hearings[2] supports the compromise reflected in the Proposed Settlement Agreement on the other topics, including those addressed by AARP witness Brosch in his oral testimony (*i.e.,* Paragraphs 1, 2, 3, 4, 6, 7, 9, 10, 11 and 12).

[2] Citations used throughout this brief will refer to the transcript from the hearings that took place August 22 through September 1 as "Aug. Tr." and to the transcript from the October 27 hearing as "Oct. Tr."

II.
THE PROPOSED SETTLEMENT AGREEMENT SHOULD BE APPROVED BECAUSE IT IS IN THE PUBLIC INTEREST

A. Legal Standard

The legal system "favors the settlement of disputes by mutual agreement between the contending parties." *Ameristeel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997). This general rule applies equally to administrative proceedings and within the context of utility rate cases. *See* § 120.57(4), Fla. Stat. ("Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order."); Order No. PSC-13-0023-S-EI, issued January 14, 2013. Indeed, the Commission has a "long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." *In re Florida Power & Light Company*, Order No. PSC-05-0902-S-EI at 6, Docket No. 050045-EI (F.P.S.C. Sept. 14, 2005).

The legal standard for the Commission's approval determination is whether the settlement agreement is in the public interest. *See, e.g.*, Order No. PSC-05-0902-S-EI at 6 ("In conclusion, we find that the Stipulation and Settlement establishes rates that are fair, just, and reasonable and that approval of the Stipulation and Settlement is in the public interest. Therefore, we approve the Stipulation and Settlement."). The Commission has broad discretion in deciding what is in the public interest, and it may consider a variety of factors in reaching its decision. *See In re: The Woodlands of Lake Placid, L.P.*, Order No. PSC-04-1162-FOF-WS, at p. 8, Docket No. 030102-WS (F.P.S.C. Nov. 22, 2004); *In Re: Petition for approval of plan to bring generating units into compliance with the Clean Air Act by Gulf Power Co.*, Order No. PSC-93-1376-FOF-EI at 15, Docket No. 921155-EI (F.P.S.C. Sept. 20, 2003).

While each proposed settlement is evaluated on its distinct merits, all settlements share a common characteristic: they represent a series of interrelated compromises reached by

independent parties with divergent interests, and thus should be considered as a whole, rather than focusing on any individual provision or subset of provisions in isolation. *See* Oct. Tr. 77-78 (Barrett). The Proposed Settlement Agreement is no exception. The Signatories resourcefully assembled various elements in a way that strikes a fair and reasonable balance.

B. FPL's Proposed Settlement Agreement is in the Public Interest

There is no strict or exhaustive set of "public interest" criteria. In assessing whether a settlement is in the public interest, the Commission has considered the following factors:

- The overall reasonableness of the resulting rates;
- Rate stability and predictability;
- The resulting financial strength of the public utility and its ability (and encouragement) to make needed capital investments;
- The ability of the public utility to maintain or improve its quality of service and overall reliability;
- The existence of safeguards for the protection of customers and investors;
- The amount of information provided to make a reasoned decision; and
- Regulatory efficiency and the minimization of regulatory costs and burdens.

See In re: Petition for increase in rates by Florida Power & Light Company, Order No. PSC-13-0023-S-EI, Docket No. 120015-EI (F.P.S.C. Jan. 14. 2013) (overall rate reasonableness, rate stability and predictability, financial strength and service quality); *In re: Petition for Rate Increase by Florida Power & Light Co.*, Order No. PSC-05-0902-S-EI, Docket Nos. 050045-EI and 050188-EI, (F.P.S.C. Sept. 14, 2005) (same); *In re: Environmental cost recovery clause*, Docket No. 120007-EI, Order No. PSC-12-0425-PAA-EU, (F.P.S.C. 2012) (regulatory efficiency); *In re: Review of the retail rates of Florida Power & Light Co.*, Order No. PSC-02-0501-AS-EI, Docket Nos. 001148-EI, 020001-EI (F.P.S.C. 2002) (Mar. 22, 2002 agenda, Tr. 55-57 (thorough record); and *In re: Petition for limited proceeding to approve stipulation and*

settlement agreement by Progress Energy Florida, Inc., Order No. PSC-12-0104-FOF-EI, Docket No. 120022-EI, (F.P.S.C. Mar. 8, 2012) (Feb. 22, 2012 agenda, Tr. 101-02) (customer safeguards).

Not every settlement presented to the Commission will satisfy all of these factors, nor are they required to do so in order to be approved. But in this instance, the Proposed Settlement Agreement does satisfy each factor.

Stable, Predictable and Reasonable Rates for Customers. Through at least 2020, accounting for the proposed scheduled (i.e., 2017, 2018 and Okeechobee) base rate increases, FPL's typical residential bill is expected to remain 30 percent below the current national average, 13 percent below the current Florida average and among the lowest in the state. Oct. Tr. 28 (Cohen); Oct. Tr. 78 (Barrett); Ex. 808. And, even when accounting for the expected impact of the SoBRAs, FPL's typical bill still is projected to remain substantially below the current national and state averages. Oct. Tr. 38 (Cohen).[3] In other words, FPL's typical bills compare favorably, even with the projected increases for FPL yet without accounting for any increases in the state and national averages likely to occur during the term of the Agreement. Oct. Tr. 28, 38 (Cohen). And, because the Proposed Settlement Agreement prescribes FPL's limited ability to adjust base rates during the Term, it also provides rate stability and predictability. Oct. Tr. 85 (Barrett), 28 (Cohen).

Financial Strength Necessary To Maintain Quality Service. The Proposed Settlement Agreement will provide FPL the revenue and financial strength it requires to continue its capital

[3] In response to live questioning during the settlement hearing, Ms. Cohen indicated that FPL's bills were projected to remain about 30 percent below the national average. Upon further review, FPL has determined that its bills will remain about 23 percent below the national average, even assuming other utilities' rates remain fixed. Ms. Cohen also stated that FPL's bills would remain about ten percent below the Florida average, which figure has been confirmed.

initiatives, such as reliability and storm hardening projects as well as investments in new generation and storage technologies. Oct. Tr. 101-02 (Barrett). By facilitating these initiatives, the Proposed Settlement Agreement directly supports FPL's ability to continue improving its customer service and delivering great value for all customers. Oct. Tr. 101-02 (Barrett).

Safeguards for Customers and Investors. Customers are well-protected under the Proposed Settlement Agreement. For at least four years, FPL would be precluded from increasing base rates except as specifically provided in the Agreement. The Commission at all times exercises oversight authority through earnings surveillance reporting, with the right to initiate proceedings if the Company's earnings exceed the top of its authorized range. The same mechanism protects investors in the event that FPL's earnings fall below the bottom of its authorized range, allowing FPL to petition for rate relief if that were to occur, subject to FPL's obligation to use the depreciation surplus reserve to maintain minimum earnings levels before filing to increase rates.

Abundant Supporting Information. The Commission has the benefit of an expansive record developed during the August technical hearings, including live and prepared testimony as well as the evidence adduced through cross-examination. The evidentiary record was further developed with the settlement-specific testimony of four FPL witnesses and one AARP witness. Throughout the rate case proceeding, the parties also obtained substantial information from Minimum Filing Requirements, depositions, interrogatory responses, and document production, not to mention the supplemental discovery conducted on the settlement. The signatories to the Proposed Settlement Agreement, too, had the benefit of this wealth of information. Thus, not only does the Commission have ample competent evience upon which it can rely for its

evaluation, it also can be assured that the parties negotiated from a position of knowledge and gave due consideration to all relevant facts and opinions necessary to reach a balanced outcome.

Regulatory Efficiency. By their very nature, rate cases are lengthy and cumbersome. Multi-year increases and use of the base rate adjustment mechanism for the Okeechobee Unit and solar facilities avoid costly and disruptive rate proceedings during the four-year term. This promotes regulatory efficiency by reducing the taxation on Commission resources, and it promotes efficiency that benefits customers by allowing FPL to focus on providing safe and reliable service and finding ways to make further improvements to productivity. Oct. Tr. 144-45 (Barrett).

III. THE EVIDENCE SUPPORTS THE NEW SETTLEMENT PROVISIONS

In Order 16-0456, the Commission found that additional information is needed on Paragraphs 10, 12, 16, 18 and 19 of the Proposed Settlement Agreement in order to fully evaluate it. The discussion below summarizes FPL's response to the Commission's directive and demonstrates that there is record evidence supporting each of those paragraphs as reasonable within the context of the overall benefits provided by the Proposed Settlement Agreement.

A. Paragraph 10 – Solar Base Rate Adjustment

The SoBRA is very similar to the generation base rate adjustment ("GBRA") mechanism the Commission has approved in past settlements. For purposes of SoBRA cost recovery pursuant to the Proposed Settlement Agreement, FPL may construct approximately 300 MW of solar generating capacity per calendar year, projected to go into service no later than 2021. The cost of the components, engineering and construction for any solar project undertaken pursuant to the Proposed Settlement Agreement must be reasonable and may not exceed $1,750/kWac. FPL intends to demonstrate that its costs for components, engineering and construction are reasonable by conducting competitive solicitations to ensure that it is contracting on the most

favorable terms. This is the same process that FPL used for the solar projects that are entering service in 2016, which applied to roughly 90% of the installed cost of those solar projects. Moreover, the $1,750/kWac cap will require FPL to continue aggressively to seek out cost reductions, as it is approximately $100/kWac less than the already-favorable pricing that FPL was able to achieve for the 2016 projects. All savings achieved by FPL's cost-reduction actions would be passed through directly to customers. Oct. Tr. 80, 94, 105 (Barrett).

For solar projects 75 MW or greater that are subject to the Florida Electrical Power Plant Siting Act ("Siting Act"), FPL would file a petition for a Determination of Need with the Commission. If approved, FPL would calculate and submit for Commission confirmation the SoBRA amount for each such solar project using the annual Capacity Clause projection filing for the year in which that solar project is scheduled to go into service. Solar projects less than 75 MW, and therefore not subject to the Siting Act, would be subject to Commission approval through the annual Fuel Docket. The petition for approval would be made in the annual true-up filing in March. The cost effectiveness will be determined by whether the solar project lowers FPL's projected system cumulative present value revenue requirement ("CPVRR"), evaluated on the same basis as FPL's other generation additions. FPL would calculate and submit for Commission confirmation the amount of the SoBRA for each such solar project using the annual Capacity Clause projection filing for the year that solar project is scheduled to go into service and, if the solar project is approved as cost-effective, base rates will be adjusted consistent with that amount upon commercial operation of the respective solar projects. Oct. Tr. 81, 94-95 (Barrett).

Each SoBRA will be calculated to recover the estimated revenue requirements for the first twelve months of operation using a 10.55% ROE and the appropriate incremental capital

structure consistent with that used for the Okeechobee Limited Scope Adjustment reflected in FPL's 2016 Rate Petition, adjusted to reflect the inclusion of investment tax credits on a normalized basis. As the solar generating facilities are expected to increase system efficiency by lowering the overall system fuel cost, FPL also will seek approval in the Fuel Docket for fuel factors that reflect those savings coincident with the projected in-service dates of the solar projects. Oct. Tr. 82 (Barrett).

Similar to the existing GBRA mechanism, the initial SoBRA factor will be adjusted if actual capital expenditures are lower than projected. In that event, a revised SoBRA factor will be calculated and a one-time credit will be made through the Capacity Clause, with base rates adjusted on a going-forward basis for the revised factor. *Id.*

If actual capital expenditures are higher than projected, FPL at its option, may initiate a limited proceeding, to address the issue of whether FPL has met the requirements of Rule 25-22.082(15), F.A.C. (i.e., that such costs were prudently incurred and due to extraordinary circumstance). All parties would have the right to participate in the limited proceeding and challenge whether FPL has met the Rule 25-22.082(15) requirements. If the Commission finds that FPL has met the requirements, then FPL may increase the SoBRA by the corresponding incremental revenue requirement due to such additional capital costs. This process is identical to the process that was available, but never employed, under the terms that governed the GBRA mechanism throughout the period since a GBRA was first established under FPL's 2005 settlement agreement in Order No. PSC-05-0902-S-EI. Oct. Tr. 82-83 (Barrett).

FPL may not receive approval for incremental SoBRA recovery of more than 300 MW of solar projects in a calendar year; provided, however, to the extent that FPL receives approval for SoBRA recovery of less than 300 MW in a year, the difference between the amount of capacity

authorized and the 300 MW annual level can be carried over to the following years for approval and recovery. For example, if FPL receives approval for SoBRA recovery in 2017 of 200 MW of solar capacity, it would be entitled to increase its request for SoBRA recovery subsequently by 100 MW. Additionally, in 2017, FPL may at its option and for administrative efficiency, petition for approval of up to 300 MW for 2017 SoBRA recovery and up to 300 MW for 2018 SoBRA recovery; provided, however, that no base revenue increase may occur in 2017 until the Commission has approved the 2017 SoBRA and those projects have entered commercial service. Oct. Tr. 83 (Barrett).

The SoBRA is designed to help facilitate an aggressive roll-out of new solar capacity that will add cost-effective fuel diversity to FPL's generation mix. Over four years, it would facilitate the addition of up to 1,200 MW of cost-effective solar capacity, which is more than five times the amount of solar capacity that FPL is adding in 2016. Oct. Tr. 103-04 (Barrett). For 2018, the additional solar output that would result from 300 MW of additional SoBRA solar projects would constitute 1.1% of FPL's total generation, up from 0.5% that was projected for 2018 in FPL's 2016 Ten Year Site Plan. Exs. 574 (Schedule 6.2 of FPL's 2016 Ten Year Site Plan), 812 (Staff's 43rd Int. 530). This percentage would continue to grow during the term of the Proposed Settlement Agreement, as additional SoBRA projects come into service.

B. Paragraph 12 -- Flexible Reserve Amortization

Paragraph 12 of the Proposed Settlement Agreement provides for FPL to employ the depreciation rates set forth in Exhibit D to the Proposed Settlement Agreement, which reflect the Signatories' negotiated compromise on certain depreciation parameters (i.e., service lives and net salvage percentages) compared to the parameters in FPL's 2016 depreciation study. Based on Exhibit D, the 2017 depreciation expense is reduced by about $125.8 million and the resulting theoretical depreciation reserve is estimated to be $1.070 billion as of January 1, 2017. The

compromise depreciation parameters generally reflect the positions of the intervenors and their witnesses in this proceeding and are not unreasonable as part of the overall, comprehensive settlement. Oct. Tr. 43-45 (Ferguson); Ex. 812 (Staff's 43rd Int. 532).

Under Paragraph 12, FPL may amortize the Reserve Amount at its discretion during the settlement term, conditioned by the following: (1) for any period in which FPL's actual FPSC adjusted ROE would otherwise fall below 9.6%, FPL must amortize any remaining Reserve Amount to at least increase the ROE to 9.6%; and, (2) FPL may not amortize the Reserve Amount in an amount that results in FPL achieving an FPSC adjusted ROE greater than 11.6%. The Reserve Amount is composed of $1.0 billion of the approximately $1.070 billion in theoretical reserve surplus that is calculated under Exhibit D together with whatever portion of the reserve amount that FPL was authorized to amortize under the 2012 rate case settlement remained unamortized as of the end of 2016. Oct. Tr. 78-79 (Barrett). The Commission approved a very similar mechanism in Order No. PSC-13-0023-S-EI, as part of FPL's 2012 rate case settlement. Oct. Tr. 79-80 (Barrett). Mr. Ferguson confirmed in response to questions from Staff that that there are no significant differences between the flexible reserve amortization mechanisms in the Proposed Settlement Agreement and the one that FPL has used for the last four years under its 2012 Settlement. Oct. Tr. 52. (Ferguson).

The reserve amortization mechanism is critical to the Proposed Settlement Agreement, because it provides the Company with the flexibility necessary to achieve reasonable financial results during the four-year settlement period while also enabling the Company to agree to substantially lower base revenue increases compared to those requested in the 2016 Rate Petition. Without this flexibility, base rates could not be held constant for such an extended period due to the risk of weather, inflation, rising interest rates, mandated cost increases and

other factors that may affect FPL's earnings but are largely are beyond the Company's control. Oct. Tr. 79-80 (Barrett). AARP witness Brosch asserted incorrectly that the flexible reserve amortization mechanism is for the sole benefit of shareholders. To the contrary, the mechanism is what has made it possible for FPL to accept for settlement purposes a substantial reduction in the cash-based revenue increase that customers will pay under the settlement rates. Oct. Tr. 89 (Barrett).

At the settlement hearing, AARP witness Brosch suggested that the flexible reserve amortization mechanism should not be approved because he claimed that it would remove FPL's incentive to operate efficiently. That statement is directly contradicted by FPL's actual practice and experience under the prior two settlement agreements with similar amortization mechanisms. FPL witness Barrett stated that FPL has been operating under settlements that provide for flexible reserve amortization since 2010 and yet FPL's 2017 test year projected O&M expense is actually lower than FPL's 2010 O&M expense. Oct. Tr. 144. Mr. Barrett also explained that the four-year settlement term will provide a period of time when FPL can focus on running the business and confirmed that he fully expects FPL to continue to seek opportunities to increase efficiency and improve productivity during that term. Oct. Tr. 144-45. Finally, Mr. Barrett pointed out that FPL constantly strives to reduce costs and improve performance, a fact that is well established through reference to the unrefuted record evidence in the underlying technical hearing.

C. Paragraph 16 – Termination of Hedging

Paragraph 16 provides that FPL will terminate natural gas financial hedging prospectively for the Minimum Term of the Proposed Settlement Agreement. FPL witness Forrest explained that this meant FPL would leave the hedges in place that it has already

executed with respect to gas purchases in 2017, would not execute hedges in 2017-2019 for gas purchases in 2018-2020, and would evaluate whether to propose renewing hedging with its 2020 Risk Management Plan filed in 2019 for gas purchases in 2021. Oct. Tr. 61-62, 68-69 (Forrest). Terminating FPL's natural gas financial hedging for that time period is responsible and is not unreasonable as a compromise among the Signatories that helps to facilitate the overall benefits of the Proposed Settlement Agreement. Oct. Tr. 60-61, 71-72 (Forrest). Recently, the other three major investor-owned utilities have agreed separately in Docket No. 160001-EI to a one-year moratorium on hedging, during which the Commission intends to hold workshops on how to improve existing approaches to hedging. FPL intends to participate in those workshops and, if the Commission remains supportive of hedging at some level, intends to re-implement hedging in some form in its 2020 risk management plan consistent with the outcome of the workshops. Oct. Tr. 68-69, 72 (Forrest).

D. Paragraph 18 – Battery Storage Pilot Project

The battery storage pilot program would allow FPL to deploy up to 50 MW of battery storage technology designed to serve commercial, industrial and retail customers. Through this program, FPL would be able to gain a better understanding of how battery storage can improve the reliability and efficiency of the system. FPL has agreed that the average installation cost of the battery storage projects will not exceed $2,300/kWac during the Term of the Agreement, and FPL will not seek incremental recovery of the revenue requirements associated with the pilot program until its next general base rate increase. The Signatories have agreed that this pilot program will provide benefits for FPL's customers and have committed that they will not challenge the prudence of investments under the program at that time, but the Commission and other parties would not be bound by that commitment. Oct. Tr. 84, 108 (Barrett).

At the settlement hearing, Mr. Barrett explained to the Commission that the specifics of how FPL would deploy pilot battery storage installations have not yet been determined, but that FPL intends to work with the Signatories, and would welcome input from the Commission Staff, in making that determination. Oct. Tr. 96, 100-01 (Barrett). The intent of the project is to deploy the 50 MW of battery storage in different settings – from existing or planned solar facilities to large commercial or industrial customers, down to small distribution-level installations of 1 MW or less – in order to determine the benefits that can be achieved in terms of a variety of factors, including improved reliability, peak shaving and voltage regulation. Oct. Tr. 114-117 (Barrett). Once the data are collected, FPL would rely on in-house expertise in data analytics and system operation – coupled with the growing experience of its sister company, NextEra Energy Resources – to evaluate whether and how battery storage could be deployed on a broader scale for the benefit of customers. Oct. Tr. 100, 108-09, 116-17 (Barrett).

E. Paragraph 19 – Workshop on Pilot Demand-Side Management Opt-Out Program

Under Paragraph 19, the Signatories have agreed that FPL and certain interested Signatories will jointly request a Commission workshop to consider a pilot demand-side management ("DSM") Opt-Out Program. The items to be considered at that workshop will include eligibility criteria for opting out of FPL's DSM programs, procedures for verifying continued compliance with those eligibility criteria, impacts on FPL's cost recovery for DSM and other implementation issues. The workshop will not be limited to the Signatories, but may include anyone who otherwise would be eligible to participate as determined by the Commission. There is no commitment among the Signatories regarding the appropriate outcome of such a workshop, beyond requesting the workshop and participating in good faith. The Signatories will work with the Commission Staff to determine the appropriate time for the workshop and a

focused itinerary to guide evaluation of the topics mentioned above. Of course, it is ultimately up to the Commission whether to hold the requested workshop and the topics it will cover. Oct. Tr. 84-85, 98-99 (Barrett); Ex. 812 (Staff's 43rd Int. 546 and 547).

IV.
RECORD EVIDENCE SUPPORTS THE COMPROMISE REFLECTED IN THE PROPOSED SETTLEMENT AGREEMENT

A. AARP's challenges are belied by the record

Mr. Brosch argued that the Proposed Settlement Agreement does not adopt rate base, net operating income, capital structure or ROE recommendations proposed by AARP, OPC or other intervenors in the case. Oct. Tr. 127-29. He misses the point entirely. Rate base, net operating income, capital structure and ROE are all elements of the Commission's overall determination of FPL's revenue requirements and, ultimately, the electric rates that FPL may charge. The Proposed Settlement Agreement does not adopt FPL's – or any other party's – original position on revenue requirements or rates. Rather, and true to the hallmark of any settlement, this Proposed Settlement Agreement reflects compromises made by the Signatories as to revenue requirements and rates. AARP, of course, was free to decide not to sign the Agreement, even while AARP's constituents enjoy low bills and high reliability, but AARP must recognize that those who were willing to sign it have chosen to forgo positions in favor of reaching an overall compromise on terms that they can support.

AARP also asserted that there is a lack of evidence to support the base rate increases, ROE and other elements of the Proposed Settlement Agreement. As demonstrated below, the record developed through the August and October technical hearings contains abundant competent evidence supporting the rate increases proposed in the Agreement. AARP's allegations are misplaced.

The record supports the 2017 and 2018 base rate increases. As even Mr. Brosch admits, FPL filed Minimum Filing Requirements ("MFR") reflecting its financial forecasts for 2017 and 2018. Oct. Tr. 130 (Brosch); Exs. 28, 29. FPL financial and operational witnesses testified that the Company's need to increase rates in 2017 and 2018 was driven principally by capital investment initiatives that support storm hardening, increased reliability and system growth, while providing long-term economic benefits to customers and ensuring regulatory compliance. Aug. Tr. 1070-74 (Miranda), 1419, 1433 (Barrett); Exs. 86, 91. In addition to developing an enhanced grid, FPL plans to place in service three generation upgrade products estimated to save customers $286 million. Aug. Tr. 1420-22 (Barrett). Further, FPL provided a high-level financial forecast of 2019 and 2020, which indicates that earnings will decline in those years even if the Commission were to have granted FPL's full March 2016 rate request. Ex. 460 (OPC's 1st Int. 3). FPL witness Barrett confirmed during the settlement hearing that the revenues generated by the Proposed Settlement Agreement will pay for those capital investment initiatives, as well as investments in new technologies. Oct. Tr. 102-03 (Barrett).

Mr. Brosch's settlement testimony simply recycles his opposition to efficient, multi-year rate relief, once again ignoring the incontrovertible fact that Florida recognizes and authorizes such multi-year requests. *Citizens v. Public Serv. Comm'n*, 146 So. 3d 1143, 1157 n.7 (Fla. 2014), § 366.076(2), F.S. and 25-6.0425, F.A.C.; *see also* Order Nos. 13537, PSC-92-1197-FOF-EI and PSC-93-0165-FOF-EI. He also overlooks the safeguard provided by the Commission's robust earnings surveillance reporting requirement, which is designed to monitor earnings so that it can take corrective actions during the Term, if necessary.

The record supports the appropriateness of a base rate adjustment for Okeechobee. The base rate adjustment for Okeechobee under the Proposed Settlement Agreement is no different

than the Okeechobee Limited Scope Adjustment included in FPL's original request, which is supported by ample evidence. Aug. Tr. 1436-37 (Barrett), 2821-24 (Cohen), 1669 (Ousdahl), 821-22 (Kennedy). FPL has filed the information required by Rule 25-6.0431, F.A.C. and proposed to begin recovery of the first-year non-fuel revenue requirements when the Okeechobee Unit enters service concurrent with a reduction in fuel factors in order to match recovery with fuel savings. Aug. Tr. 1436-37 (Barrett). This base rate adjustment, like those implemented under FPL's 2012 Settlement, is "mid-point seeking," and thus cannot elevate FPL's earnings above the authorized ROE mid-point. Aug. Tr. 1437 (Barrett).

The record supports the settlement ROE and common equity ratio. Mr. Brosch alleges that the proposed settlement ROE "of up to 11.6 percent . . . exceeds the upper end of the Company's own witness, Mr. Hevert's recommended range of returns." Oct. Tr. 129. Mr. Brosch resolutely ignores the record. FPL witnesses Dewhurst and Hevert both recommended, based on their experience and a series of analyses, an authorized mid-point of 11%. Tr. 2127, 2129 (Hevert), 2470 (Dewhurst). Mr. Dewhurst also recommended a 50-basis points ROE adder. Aug. Tr. 2472-77. Thus, FPL's requested authorized range under the March 2016 filing was 10.5% to 12.5%, nearly 100 basis points higher than the range in the Proposed Settlement Agreement. Aug. Tr. 207 (Silagy). The record likewise supports the appropriateness of FPL's equity ratio. *See, e.g.,* Aug. Tr. 2468 (Dewhurst).

All customer classes received reasonable and appropriate increases. Failing to appreciate the balanced nature of the Proposed Settlement Agreement, Mr. Brosch complains that the Proposed Settlement Agreement shifts a greater portion of revenue increase to the residential customer class than was initially proposed by FPL. Oct. Tr. 139 (Brosch). Had Mr. Brosch performed even a cursory review of the settlement data he would have concluded that

residential customers receive about the same or a lesser increase than do large demand customers. Exs. 809; 812 (Staff's 43rd Int. 545, Attch. 1).

Hearing Exhibit 809, which sets forth the projected typical bills for various classes, reveals that from 2016 to 2020, the Residential Class's bills are projected to have increased by about 12.5%, while large demand customers (GSLD-1 and GSLD-2; 500 kW or greater demand) are projected to have increased by about 13.2% and 14.5%, respectively. Exhibit 812 (Staff's 43rd Int. 545, Attch. 1, p. 2) reveals similar results. For 2018, the cumulative increase with adjustment clauses for the Residential Class is projected to be 6.4%, while large demand customers (GSLD(T)-1 and GSLD(T)-2) each are projected to receive a 7% increase and large demand customers subject to load control (CILC-1D and CILC-1(T)) are projected to receive 6.4% and 6.2%, respectively.[4] Additionally, as described below, the Signatories propose to maintain the residential customer charge at current levels, rather than raising it pursuant to the negotiated Distribution Plant allocation methodology. *See* Section IV.B., below. Only the residential class received this benefit.

B. The Proposed Cost of Service Methodologies, Credit Levels, Storm Cost Recovery Mechanism and FPL's Storm Hardening Plan are Supported by Record Evidence

The evidence developed in the August and October technical hearings also supports the proposed cost of service methodologies, credit levels, storm recovery mechanism and FPL's storm hardening plan.

Cost of Service. Paragraph 4(f) of the Proposed Settlement Agreement provides that the settlement rates are calculated based on a cost of service study that applies (i) the 12 CP and 1/13 methodology for Production Plant, (ii) 12 CP for Transmission Plant and (iii) a negotiated methodology for allocating Distribution Plant, limited by the Commission's traditional

[4] Exhibit 809 shows that GS-1 and GSD-1 customer classes received a lesser increase, as was required by the Commission's parity principles. *See* Ex. 810.

gradualism test found in Order No. PSC-09-0283-FOF-EI, pp. 86-87. The proposed Production Plant allocation is based on the same methodology FPL employs today, and it was addressed at length by SFHHA witness Baron and FIPUG witness Pollock. *See, e.g.*, Aug. Tr. 4204 (Baron) 4329-30 (Pollock). The proposed Transmission Plant allocation is based on the same method FPL proposed in its original filing, as was explained by FPL witness Deaton and supported by FEA witness Alderson. Aug. Tr. 2926-27 (Deaton), 3781 (Alderson); Exs. 28, 29 (MFR E-10, pp. 10-11, 16).

Regarding the Distribution Plant allocation, FPL witness Cohen explained that FPL used a methodology that reflected, with two enumerated differences, the average of the results of the minimum distribution system (MDS) studies employed by Tampa Electric Company ("TECO") and Gulf Power Company ("Gulf") in their respective last rate cases. Oct. Tr. 37 (Cohen). The MDS methodology was addressed in detail by intervenor witnesses, and the proposal to allocate distribution costs based on the average results from the TECO and Gulf studies was proposed by SFHHA witness Baron and FIPUG witness Pollock. Aug. Tr. 4206-16 (Baron), 4338-39 (Pollock), 3816, 3798-99 (Alderson). Unlike TECO and Gulf, however, FPL did not conduct a study specific to its system, and it did not increase the customer charge for residential customers as a result of the change in allocation. Oct. Tr. 37 (Cohen). As part of the negotiated settlement, FPL maintained the residential customer charge at $7.87 instead of implementing the $12 charge that would have resulted from a more traditional MDS application. *Id*. This benefit was unique to the residential class. Details regarding the impact of this negotiated Distribution Plant allocation method on rate class revenue requirements are set forth in Exhibit 812 (Staff's 43rd Int. 544, p. 2).

Credit Levels. Pursuant to Paragraph 4(e) of the Proposed Settlement Agreement, the credits for customers receiving service pursuant to FPL's Commercial/ Industrial Load Control ("CILC") tariff and the Commercial/Industrial Demand Reduction ("CDR") rider will be the same as those currently in effect. The appropriate level of the credits – including whether to maintain them at current levels – was addressed at length by intervenor witnesses. *See* Tr. 4289 (Pollock), 4222 (Baron), 3779 (Alderson). The Proposed Settlement Agreement provides that the appropriate level of credits for CILC and CDR customers will be examined and established by the Commission at the next DSM goals proceeding, anticipated to take place in 2019. Oct. Tr. 36 (Cohen). The rates applicable during the settlement Term would not be impacted by that 2019 decision, however. *Id*. Instead, the credit levels established during that proceeding will be implemented at the time of FPL's next general base rate proceeding.

Storm Cost Recovery Mechanism. The Storm Cost Recovery Mechanism set forth in the Proposed Settlement Agreement is the same as the mechanism requested in FPL's original filing, which was addressed by FPL witness Dewhurst. It has been approved by the Commission in FPL's last two settlement agreements. Aug. Tr. 2477-79, 5942-47. During the settlement hearing, FPL witness Ferguson confirmed that the mechanism has served FPL well. Oct. Tr. 56. Additionally, Mr. Barrett described the various thresholds that trigger cost recovery. Oct. Tr. 120-21.

Storm Hardening Plan. Unrestrained by such formalities as adherence to the Commission's procedural orders or the need to present evidence, the "written statement" filed by the Larsons' counsel on the morning of the settlement hearing asserted that the Commission should stay a decision on FPL's Storm Hardening Plan and Wooden Pole Inspection Program "pending a Commission workshop to assess the effectiveness and weaknesses of FPL's Storm

Hardening Plan and Wooden Pole Inspection Program in the wake of Hurricane Matthew."[5] This attempt to belatedly interject a new issue with no evidentiary support is decidedly improper.

The Commission has before it a well-developed record regarding the appropriateness of FPL's Storm Hardening Plan.[6] *See, e.g.*, Aug. Tr. 1093-1107 (Miranda). Moreover, during the settlement hearing, FPL witness Barrett indicated that the aftermath of Hurricane Matthew provided good empirical evidence regarding the performance of FPL's storm hardened-system. Oct. Tr. 102. The Larsons, if they wish to do so, may address the performance of FPL's system generally at the appropriate time and in an appropriate docket.

CONCLUSION

In conclusion, the Proposed Settlement Agreement taken as a whole is in the public interest, is supported by the record evidence and resolves all of the issues in FPL's March 2016 rate case. Oct. Tr. 111-12 (Barrett). The Proposed Settlement Agreement provides customers four-year minimum period of predictability: by expressly prescribing FPL's limited ability to increase rates, customers will know the amount and timing of base rate increases over at least the next four years. FPL must "stay out" from seeking additional base rate relief during the Term and instead must continue to seek out and implement efficiency measures. Moreover, as described above, the Proposed Settlement Agreement includes provisions that improve the diversity of FPL's fleet, through zero-fuel cost, zero-emissions and cost-effective generation. The Proposed Settlement Agreement includes a battery storage pilot that will allow FPL – and its customers – to be on the forefront energy storage technology. Finally, the

[5] Larsons' October 27, 2016 Written Statement in Lieu of Appearance, at p. 8.

[6] On October 10, 2016, the Signatories filed Joint Notice of Clarification of Stipulation and Settlement confirming that pursuant to Paragraph 24 of Agreement, FPL's Storm Hardening Plan and Wooden Pole Inspection program, and the expenditures associated therewith quantified in FPL's filing, should be approved as part of the Proposed Settlement Agreement.

Proposed Settlement Agreement promotes efficiency both in terms of conserving regulatory resources as well as further incenting FPL to seek out and implement productivity improvements.

For these reasons, FPL respectfully requests that the Commission enter an order approving the Proposed Settlement Agreement as being in the public interest.

*** *** ***

FPL'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: **Whether the Settlement Agreement dated October 6, 2016 is in the public interest and should be approved.**

FPL: The Proposed Settlement Agreement, taken as a whole, is in the public interest and should be approved. It produces reasonable, stable and predictable rates for customers that will remain substantially below national and state averages, while providing FPL the financial strength and flexibility necessary to continue its focus on delivering reliable service. The Agreement also includes terms that facilitate investments in emissions-free technologies that will benefit all customers and the state of Florida.

ISSUE 2: **Should the consolidated dockets be closed?**

FPL: Yes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 10th day of November 2016 to the following parties:

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