

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

INTERVENORS SIGNATORY POST-HEARING BRIEF ON THE SETTLEMENT

Pursuant to Order No. PSC-16-0456-PHO-EI, issued October 12, 2016, the Office of Public Counsel, the South Florida Hospital and Healthcare Association and the Florida Retail Federation (“the Intervenor Signatories”), hereby submit this Post-Hearing Brief.

BACKGROUND AND BASIC POSITION

Florida Power & Light Company (“FPL”) filed a request for a base rate increase seeking an approximately \$826 million increase in 2017, another \$270 million increase in 2018, plus a third increase of \$209 million in mid-2019 for the Okeechobee Clean Energy Center (“Okeechobee”), representing cumulative total increased revenues of approximately \$4.45 billion over the four-year period covered by FPL’s Petition. (TR 147). FPL’s base rate increase also requested an 11.0 % authorized return on equity (“ROE”) midpoint plus a 50 basis point “adder” with a range of 10.5% to 12.5%. (Petition at pp. 1-2).

The Commission consolidated Docket Nos. 160021-EI, Petition for Base Rate Increase, 160061-EI, Storm Hardening Plan, 160088-EI, Incentive Mechanism, and 160062-EI, Depreciation and Dismantlement, and conducted an evidentiary hearing from August 22, 2016

through September 1, 2016. The parties filed post hearing briefs on September 19, 2016.

Before the August 22 - September 1, 2016 hearing, participants engaged in extensive, but unsuccessful, settlement negotiations. Subsequent to the hearing, FPL and the Office of Public Counsel (“OPC”), the South Florida Hospital and Healthcare Association (“SFHHA”), and the Florida Retail Federation (“FRF”) reached a settlement (“Settlement Agreement”) which resolves all outstanding issues in the consolidated dockets. On October 6, 2016, the Intervenor Signatories and FPL filed a Joint Motion for Approval of the Settlement Agreement. The Settlement Agreement reduces FPL’s increased base rate revenues for 2017, 2018 and Okeechobee to \$2.55 billion compared to the original request of approximately \$4.45 billion. It further sets the authorized return on equity at 10.55% with a range of 9.6% to 11.6%. The Parties to the Settlement Agreement also negotiated additional terms and conditions embodied therein. The Commission held a hearing on the Settlement Agreement on October 27, 2016.

At the Settlement Hearing, the Commission received supplemental evidence regarding the provisions of the Settlement Agreement not before the Commission in the hearing on the FPL Petition plus the public interest considerations for approving the Settlement Agreement. The Intervenor Signatories affirmed that the Settlement Agreement when taken as a whole is a fair resolution of the pending base rate case and consolidated dockets given the specific facts and circumstances of those cases and is in the public interest.

POSITIONS AND ARGUMENT ON DISPUTED ISSUES

ISSUE 1: Whether the settlement dated October 6, 2016 is in the public interest and should be approved?

POSITION: *The Intervenor Signatories affirmed that the Settlement Agreement when taken as a whole is a fair resolution of the pending base rate case and consolidated dockets and is in the public interest.*

ARGUMENT:

FPL’s Petition for base rate revenue increases requested approximately \$826 million in 2017, another \$270 million in 2018, plus a third increase of \$209 million in mid-2019 for

Okeechobee. (TR 147) FPL's Petition covered a four-year period. FPL's base rate increase also requested an 11.0 % authorized return on equity ("ROE") midpoint plus a 50 basis point "adder" with a range of 10.5% to 12.5%. (Petition at pp. 1-2). The intervenors took various positions opposed to FPL's request primarily based on capital structure, rate of return on equity and depreciation expense and surplus reserve treatment.

The Commission conducted an evidentiary hearing from August 22, 2016 through September 1, 2016 on the consolidated dockets, including the base rate case. Subsequent to the conclusion of the initial evidentiary hearing in the docketed proceedings, Intervenor Signatories and FPL were able to reach a Settlement Agreement, which resolved all outstanding issues in the consolidated cases, including a base rate case revenue increase that was significantly lower than requested in the Petition. An outline to the terms and conditions are discussed below.

Terms of Settlement Agreement

The Settlement Agreement sets a minimum term of four years wherein base rate increases are limited to the amounts and in the manner established in the agreement and are otherwise frozen for the term of the agreement. (Settlement Agreement at p. 3) In 2017, the base rate increase is limited to \$400 million, a reduction of \$426 million from each year's revenue under FPL's 4 year litigation rate proposal. In 2018, an additional increase of \$211 million will be implemented which is \$59 million less than FPL's request for each of the 3 years that then would remain under FPL's 4 year litigation rate proposal. When the Okeechobee Clean Energy Center is placed into service, base rates will be increased by \$200 million, which is a \$9 million reduction from FPL's request. (Settlement Agreement at p. 4) The Settlement Agreement also sets the Return on Equity (ROE) midpoint at 10.55% for setting rates, with a range of 9.6% to 11.6% for all purposes. (Settlement Agreement at p. 3) In addition, a provision in the agreement would allow FPL to use surplus depreciation in accordance with the constraints established in the Settlement. Agreement. (Settlement Agreement at pp. 5, 7)

The Settlement Agreement also includes additional provisions as part of the negotiated exchange of consideration amongst the signatories. One provision authorizes the implementation of a Solar Base Rate Adjustment (SoBRA) to allow recovery of solar projects subject to Commission approval during the term of the agreement. (Settlement Agreement at pp. 12-16) All

SoBRA projects must be cost effective in order to receive Commission approval. Other provisions permit continuation of the Storm Cost Recovery mechanism that has been in place for the past six years and an Incentive Mechanism, just as another version of an incentive mechanism has been in place for nearly four years. (Settlement Agreement at pp. 21) The Settlement Agreement also maintains: (1) Commercial/Industrial Load Control (CLIC) tariff credits at current levels; (2) the current 12 CP and 1/13 methodology for Production Plant; (3) the 12 CP for Transmission Plant; (4) and a negotiated methodology for allocating Distribution Plant. (Settlement Agreement at pp. 5-6) Under the Settlement Agreement, the Company will also terminate 100% of financial hedging for natural gas prospectively during the minimum term, implement a battery storage pilot program, and request a Commission workshop regarding a Demand-Side Management Opt-out program. (Settlement Agreement at pp. 21, 22, 23) Pursuant to the Settlement Agreement, West County Energy Center Unit 3 (WCEC) is moved into base rates and the Settlement Agreement also addresses the Martin-Riviera Lateral natural gas pipeline. (Settlement Agreement at pp. 9, 22)

Settlement Agreement in the Public Interest

As noted in previous electric rate cases that have resulted in settlements, the Commission will make a determination whether this Settlement Agreement is in the public interest, when taken as a whole. See, Order No. PSC-13-0023-S-EI, issued January 14, 2013, in Docket No. 120015-EI (FPL rate case), Order No. PSC-13-0670-S-EI, issued December 19, 2013, in Docket No. 130140 (Gulf rate case), Order No. PSC-13-0443-FOF-EI, issued September 30, 2013, in Docket No. 130040-EI (Tampa Electric rate case), and Order No. PSC-14-0517-S-EI, issued September 29, 2014, in Docket No. 140025-EI. As the Commission previously stated, its review of the public interest standard requires a fact-intensive, case-specific analysis. See, Order No. PSC-13-0023-S-EI, at p. 7.

In applying the public interest standard, the Commission has considered whether the settlements resolve the outstanding issues in the case. The Commission also has considered whether the settlements provided the stability and predictability of electric rates to customers while maintaining the utility's financial strength to make necessary investments to provide customers safe and reliable power. See Order No. PSC-13-0023-S-EI at p. 7. Finally, the Commission has determined whether the settlements have resulted in fair, just, and reasonable rates for customers,

when taken as a whole. See, Order No. PSC-13-0670-S-EI, at p. 2 and Order No. PSC-14-0517-S-EI at p. 2.

The Settlement Agreement in this proceeding resolves all the issues in the consolidated cases, as originally filed. This Agreement controls base rate increases over the four years of the agreement which allows for greater price and planning predictability and stability in base rates for customers. Intervenor Signatories submit the agreed upon ROE in this Agreement will provide ample opportunity for FPL to make all necessary investments in its system to maintain safe and reliable power for customers over the four-year term. Further, Intervenor Signatories submit that implementation of all of the provisions of this Settlement Agreement results in rates that are fair, just, and reasonable for all customers.

While the Commission makes its public interest determination based on the facts and circumstances of each individual electric rate case, it is instructive to take note that the most recent electric rate case settlements have contained many similar provisions. These similar provisions establish revenue increases, ROEs, duration of the agreement, and provisions that restrict the opportunity to seek any base rate increases during that term. See, Order No. PSC-13-0023-S-EI, Order No. PSC-13-0670-S-EI, Order No. PSC-13-0443-FOF-EI, and Order No. PSC-14-0517-S-EI. When taken into consideration with the other case specific negotiated terms and conditions, the Commission found these agreements to be in the public interest. The Florida Supreme Court recently took specific note of the base rate freeze provision and its linkage to fair, just and reasonable rates in upholding the Commission's approval of such a comprehensive settlement in *Citizens v. Fla. PSC*, 146 So 3d 1143 (Fla. 2014) at pp. 1161, 1169, 1172-1173. Similarly in this case, the base rate increases, ROE, term, and base rate restrictions have been negotiated along with other terms and conditions which when taken in whole result in fair, just, and reasonable rates for all customers. Furthermore, this Settlement enjoys broad support from a diverse cross-section ratepayers: OPC as the statutory representative of all ratepayers across FPL's system; FRF, which represents a range of commercial customers, and SFHHA representing mid-to-large institutions.

Non-Signatories

At the Settlement Hearing, the Non-Signatories presented their positions on the Settlement Agreement. Florida Industrial Power Users Group (FIPUG) and Federal Executive Agencies (FEA) both stated that they took no position on the Agreement. (TR 20) Walmart did not join the stipulation for reasons related to the ROE; however, they did state that on balance Walmart does not oppose approval of the settlement as a whole. (TR 22)

Sierra Club, the Larsons, and AARP opposed the Settlement Agreement. Only AARP put on live testimony through their witness Michael Brosch. While Sierra Club opposed the Settlement Agreement as not being in the public interest, it nevertheless praised parts of the Settlement Agreement, such as the additional solar generation provision. (TR 23) The Larsons filed a written opening statement in which they adopted AARP's positions on the Settlement Agreement.

AARP witness Brosch criticized the Settlement Agreement on the grounds that it is contrary to the record evidence. (TR 125) He focuses his criticism on the use of the depreciation surplus and negotiated ROE. (TR 126-127) His main argument was that his testimony and the other intervenor testimonies recommended significantly lower base rates and ROE. (TR 127-129) Yet, Witness Brosch conceded that the Settlement Agreement provides for a "somewhat" lower base rate increase. (TR 126) He also complained that his testimony along with the other intervenors' testimonies in the underlying hearing would have supported a lower result (TR 127); however, he ignores the fact that FPL's testimony in the underlying proceeding advocated *higher* rates than negotiated in the Settlement Agreement. Further, the Commission as the ultimate arbiter in this matter has the discretion to make findings based all of the testimony presented, not just one side.

Witness Brosch also testified that the Settlement Agreement's upper end of its ROE range (11.6%) exceeded the upper end of FPL's witness Hevert's range in the underlying hearing. (TR 129) However, this is incorrect since FPL witnesses advocated for an 11.0% midpoint plus a 50 basis point adder to the midpoint. (TR 2127, 2129, 3598) The Commission historically establishes the midpoint with a range of 100 basis points above and below that midpoint. The upper end of the FPL range based on their witnesses recommended 11.0% midpoint plus 50 basis point adder would be 12.5%. Thus, the Settlement Agreement's negotiated ROE of 10.55% midpoint with a

negotiated range of 9.6% to 11.6% is well below the range that the evidence could have supported in the underlying case.

Witness Brosch also complained about the depreciation mechanism in the Settlement Agreement. While the Settlement Agreement provides for the discretionary use of the depreciation surplus amounts by FPL to manage its earnings, this depreciation mechanism more importantly provides protection to customers by requiring that these funds be used to bring earnings up to the bottom of the range in the event FPL's earnings fall below the 9.6% level. This ensures that if unexpected expenditures occur during the term of the agreement, the agreement will be maintained and not terminated early. Thus, this depreciation mechanism increases the base rate stability to customers in the context of this Settlement Agreement.

Half of the Non-Signatories, while not joining the Settlement Agreement for various reasons, do not oppose the Commission approving the Settlement Agreement as a fair, just, and reasonable resolution of the consolidated dockets that is in the public interest. The remaining Non-signatories/intervenors acknowledged what they believed to be positive aspects of the overall agreement. As with all negotiations, compromise is required such that no party's advocated position prevails exclusively. It is a "give and take" whereby all parties give up something in return for a settlement position. Thus, this Settlement Agreement has produced a reasonable result for all customers given the facts and circumstances in these dockets. In a vacuum, Intervenor Signatories may not have much disagreement with certain positions taken by AARP in a litigated case. However, the Intervenor Signatories reached a compromise that, in our collective judgment, leads to a reliable, known outcome compared to what was perceived to potentially involve a range of fully litigated outcomes that could not be predicted with 100% confidence given the facts and circumstances of the instant proceedings.

Conclusion

As noted in the Settlement Agreement, the provisions of the Agreement are contingent upon its approval in its entirety by the Commission without modification. As a whole, the Settlement Agreement is in the public interest. (Settlement Agreement at p. 24). The Intervenor Signatories sponsored the great bulk of the non-FPL evidence, and conducted the vast majority of the cross-examination of FPL's witnesses, and have made a knowledgeable decision that reflects

their commitment of resources to these dockets. Intervenor Signatories believe that considering all its terms and conditions, the Settlement Agreement produces a fair resolution of these dockets given the facts and circumstances of this case.

ISSUE 2: Should the consolidated dockets be closed?

POSITION: *Yes. Upon the Commission's approval of the Settlement Agreement the consolidated dockets should be closed at the expiration of the appeal period.*

Yes. Upon the Commission's approval of the Settlement Agreement the consolidated dockets should be closed at the expiration of the appeal period.

Dated this 10th day of November, 2016.

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CERTIFICATE OF SERVICE
Docket No. 160021-EI

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

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