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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20210015-EI

Petition for rate increase  
by Florida Power & Light  
Company.

VOLUME 12  
PAGES 2583 - 2816

PROCEEDINGS: HEARING

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

DATE: Monday, September 20, 2021

TIME: Commenced: 1:00 p.m.  
Concluded: 5:28 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS WRAY  
Court Reporter

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING  
112 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

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## I N D E X

WITNESS:	PAGE
BREANDÁN MAC MATHUNA	
Examination by Mr. Wright	2587
Prefiled Supplemental Direct Testimony inserted	2589
TIMOTHY J. DEVLIN	
Examination by Mr. Wright	2619
Prefiled Supplemental Direct Testimony inserted	2621
JOHN THOMAS HERNDON	
Examination by Mr. Wright	2640
Prefiled Supplemental Direct Testimony inserted	2642
KARL R. RABAGO	
Examination by Mr. Marshall	2675
Prefiled Supplemental Direct Testimony inserted	2677
ROBERT E. BARRETT	
Examination by Ms. Moncada	2715
Prefiled Settlement Testimony inserted	2717
SCOTT R. BORES	
Examination by Ms. Moncada	2740
Prefiled Settlement Testimony inserted	2743
JAMES M. COYNE	
Examination by Ms. Moncada	2766
MATTHEW VALLE	
Examination by Ms. Moncada	2774
Prefiled Settlement Testimony inserted	2776
TIFFANY C. COHEN	
Examination by Ms. Moncada	2789
Prefiled Settlement Testimony inserted	2792

1	EXHIBITS		
2	NUMBER:		ID ADMITTED
3	485-492	As identified in the CEL	2713
4	493-494	As identified in the CEL	2674
5	495-496	As identified in the CEL	2618
6	497	As identified in the CEL	2639
7	620	High-level 2024 & 2025 Revenue Requirements - Proposed Settlement	2756
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
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## 1 P R O C E E D I N G S

2 (Transcript follows in sequence from  
3 Volume 11.)

4 CHAIRMAN CLARK: All right. We are at witness  
5 testimony. I believe I swore three of these  
6 witnesses in this morning. I'm not sure if the  
7 fourth one was on the list this morning.

8 We also have some additions for FPL.

9 Are all of your witnesses here, Ms. Moncada?

10 MS. MONCADA: Yes, they are.

11 CHAIRMAN CLARK: Okay. And I believe -- did  
12 we miss Mr. Rabago this morning?

13 MR. MARSHALL: That's correct. We did not  
14 swear him in.

15 CHAIRMAN CLARK: We did not swear him in.  
16 Okay.

17 If all the witnesses that were not sworn in  
18 this morning will please stand and raise your right  
19 hand and we'll swear you in now.

20 (Witnesses sworn en masse.)

21 CHAIRMAN CLARK: All right. Thank you.  
22 Consider yourselves sworn in.

23 All right. I believe we've switched the order  
24 up a little bit. We're going to begin with the  
25 non-signatory opponents.

1 FAIR, Florida Rising, your witness first.

2 MR. WRIGHT: Yes, sir. Thank you.

3 Mr. Chairman, on behalf of Floridians Against  
4 Increased Rates, Florida Rising, LULAC, and ECOSWF,  
5 we recall Mr. Breandán Mac Mathuna to the stand.

6 EXAMINATION

7 BY MR. WRIGHT:

8 Q Good afternoon.

9 A Good afternoon.

10 Q You testified this morning in what we call the  
11 main rate-case portion, correct?

12 A Correct.

13 Q And you understand you're still under oath?

14 A I do.

15 Q Did you prepare and cause to be filed in this  
16 case prefiled supplemental testimony regarding the  
17 settlement agreement proposed in this case, consisting  
18 of 26 pages?

19 A I did.

20 Q Do you have any changes or corrections to make  
21 to that testimony?

22 A I do not.

23 Q Thank you.

24 And if I were to ask you those same questions  
25 today, would your answers be the same?

1           A     They would.

2           Q     And do you adopt this as your sworn testimony  
3     to the Florida Public Service Commission, with respect  
4     to the settlement agreement in this case?

5           A     I do.

6           MR. WRIGHT: Thank you.

7           Mr. Chairman, I request that Mr. Mac Mathuna's  
8     supplemental direct testimony regarding the  
9     settlement agreement be entered into the record as  
10    though read.

11          CHAIRMAN CLARK: So ordered.

12          MR. WRIGHT: Thank you.

13          (Whereupon, Witness Mac Mathuna's prefiled  
14    supplemental direct testimony was inserted into the  
15    record as though read.)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by Florida Power & Light )  
Company for Rate Unification and for a )  
Base Rate Increase )  
\_\_\_\_\_ )

DOCKET NO. 20210015-EI  
FILED: SEPTEMBER 13, 2021

**SUPPLEMENTAL DIRECT TESTIMONY**

**OF BREANDAN T. MAC MATHUNA**

**RE: PROPOSED SETTLEMENT AGREEMENT**

**On Behalf of**

**Floridians Against Increased Rates, Inc.,**

**Florida Rising, Inc.,**

**The League of United Latin American Citizens  
of Florida, and**

**The Environmental Confederation of Southwest Florida**

**IN RE: PETITION BY FLORIDA POWER & LIGHT COMPANY FOR  
RATE UNIFICATION AND FOR BASE RATE INCREASE,  
DOCKET NO. 20210015-EI**

**SUPPLEMENTAL DIRECT TESTIMONY OF BREANDAN T. MAC MATHUNA  
REGARDING PROPOSED SETTLEMENT AGREEMENT  
ON BEHALF OF  
FLORIDIANS AGAINST INCREASED RATES, INC.,  
FLORIDA RISING, INC.,  
THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF FLORIDA, AND  
THE ENVIRONMENTAL CONFEDERATION OF SOUTHWEST  
FLORIDA**

**Table of Contents**

I. INTRODUCTION ..... 3  
II. PURPOSE AND SUMMARY OF SUPPLEMENTAL TESTIMONY..... 4  
III. BACKGROUND..... 7  
IV. CONCLUSIONS REGARDING SETTLEMENT AGREEMENT ..... 10

**IN RE: PETITION BY FLORIDA POWER & LIGHT COMPANY FOR  
RATE UNIFICATION AND FOR BASE RATE INCREASE,  
DOCKET NO. 20210015-EI**

**SUPPLEMENTAL DIRECT TESTIMONY OF BREANDAN T. MAC MATHUNA  
REGARDING PROPOSED SETTLEMENT AGREEMENT  
ON BEHALF OF FLORIDIANS AGAINST INCREASED RATES, INC.,  
FLORIDA RISING, INC.,  
THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF FLORIDA, AND  
THE ENVIRONMENTAL CONFEDERATION OF SOUTHWEST  
FLORIDA**

**I. INTRODUCTION**

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

2 A. My name is Breandan T. Mac Mathuna, and my business address is GDS  
3 Associates, Inc. (“GDS”), 1850 Parkway Place, Suite 800, Marietta, Georgia  
4 30067. I am employed as a Principal with GDS. In my role as one of the  
5 company’s Principals, I regularly provide, for and on behalf of GDS’s  
6 clients, analyses and expert testimony regarding the cost of capital and  
7 capital structure for regulated electric companies.

8 **Q. On whose behalf are you testifying?**

9 A. I am testifying on behalf of Floridians Against Increased Rates, Inc.  
10 (“FAIR”), a Florida not-for-profit corporation, and its members who are  
11 retail customers of Florida Power & Light Company (“FPL”); Florida Rising,  
12 Inc.; the League of United Latin American Citizens of Florida (“LULAC”),  
13 and the Environmental Confederation of Southwest Florida (“ECOSWF”).

14 **Q. Have you previously submitted testimony in this proceeding?**

1 A. Yes. I filed direct testimony and exhibits on behalf of FAIR on June 21,  
2 2021. My June 21 testimony was subsequently adopted and co-sponsored by  
3 Florida Rising, LULAC, and ECOSWF. My June 21 testimony included my  
4 educational background and professional experience as a subject matter  
5 expert on cost of capital and capital structure issues. My June 21 testimony  
6 and exhibits presented my analyses of the cost of equity capital and the  
7 financial equity ratio, i.e., the appropriate percentage of investor-supplied  
8 funds from common equity, that should be used for setting FPL's revenue  
9 requirements and rates in current capital market conditions. My June 21  
10 testimony presented my analyses and conclusions regarding the appropriate  
11 midpoint rate of return on common equity (ROE) for FPL based on current  
12 capital market conditions and the appropriate percentage of equity capital to  
13 be used for determining FPL's revenue requirements and rates for 2022, also  
14 based on current capital market conditions. My June 21 testimony also  
15 provided a critique of the testimony of FPL's witness James M. Coyne  
16 regarding the proper ROE and financial equity ratio.

## **II. PURPOSE AND SUMMARY OF SUPPLEMENTAL TESTIMONY**

17 **Q. What is the purpose of your supplemental direct testimony?**

18 A. The purpose of my supplemental direct testimony is to address what I  
19 understand to be a new primary issue in this proceeding, now that FPL and  
20 certain other parties (collectively the "Settling Parties") have submitted a  
21 proposed settlement agreement – hereinafter, the "Settlement Agreement" –

1 for approval by the Florida PSC. As I understand it, that issue is stated as  
2 follows:

3 Should the Stipulation and Settlement Agreement dated  
4 August 9, 2021 be approved?

5 **Q. Please summarize your supplemental direct testimony.**

6 A. My supplemental direct testimony addresses whether the Settlement  
7 Agreement is in the public interest, based on the fundamental principles of  
8 utility regulation, specifically that regulators – the Florida PSC in this case -  
9 should set a utility’s revenue requirements and rates at levels that are  
10 sufficient to cover all of the utility’s legitimate costs (including O&M costs  
11 and return of amounts invested through allowed depreciation of prudent  
12 investments) and yield an ROE and debt cost recovery at competitive rates  
13 of return that will support the investments necessary to provide safe and  
14 reliable service.

15 Considering the Settlement Agreement, my analyses, and the other  
16 testimony and exhibits submitted in this case, I conclude that, if approved by  
17 the PSC, the Settlement Agreement, as proposed by FPL and the other  
18 Settling Parties, would result in FPL realizing an ROE and earnings that are  
19 significantly greater than FPL requires to provide safe and reliable service,  
20 cover all of its O&M costs, cover all of its debt service costs, and realize a  
21 fair and reasonable return on its equity investment.

1           In summary, while the dollar impacts of the proposed Settlement  
2 Agreement on FPL's customers would be reduced as compared to FPL's  
3 original requests, the Settlement Agreement would still result in FPL earning  
4 at least \$800 million more in 2022 than it needs under current capital market  
5 conditions to provide safe and reliable service, cover all of its costs, and earn  
6 a reasonable return, all while maintaining financial integrity. Accordingly,  
7 the proposed Settlement Agreement is inconsistent with established  
8 regulatory standards and is therefore, in my strong opinion, contrary to the  
9 public interest.

10           Finally, I want to make clear that my ultimate conclusions that the fair  
11 and reasonable ROE for FPL should be set at 8.56 percent and that FPL's  
12 equity ratio should be set at 55.4 percent for purposes of setting FPL's  
13 revenue requirements and rates for 2022 are unchanged. (If rates are to be  
14 set for 2023, then these values should be applied for 2023 as well.)  
15 Moreover, my critique of the testimony and analyses submitted by James M.  
16 Coyne on behalf of FPL likewise remains unchanged; Mr. Coyne's analyses  
17 are flawed, and his recommended ROE, like the ROE proposed in the  
18 Settlement Agreement, is neither fair nor reasonable and result in the rates  
19 being demanded of FPL's retail customers being unfair and unreasonable.  
20

1 **Q. Are you sponsoring any exhibits with your supplemental direct**  
2 **testimony?**

3 A. Yes. I am sponsoring the following exhibits:

4 Exhibit BTM-9: Revenue Requirement Analysis for 2022 and 2023; and

5

6 Exhibit BTM-10: Referenced Articles and Reports

### **III. BACKGROUND**

7 **Q. Please summarize FPL's original requests for rate increases and your**  
8 **testimony filed in June 2021.**

9 A. In March 2021, FPL submitted a petition and supporting testimony, exhibits,  
10 and related documentation by which it requested the PSC's authorization to  
11 increase its rates so as to produce \$1,108 million per year in additional base  
12 rate revenues in 2022 and further to increase its rates so as to produce an  
13 additional \$607 million per year in 2023. Relative to the key financial  
14 parameters that I addressed in my June testimony, FPL's requests were based  
15 on a midpoint ROE of 11.50 percent and an equity ratio of 59.60 percent.

16 Based on my analyses of FPL and current capital market conditions, I  
17 concluded in my June 2021 testimony that FPL could provide safe and  
18 reliable service and recover all of its legitimate, reasonable and prudent costs  
19 (including O&M costs and return of amounts invested through allowed  
20 depreciation of prudent investments), and also including all of its reasonable  
21 and prudent costs of debt capital, if the PSC sets FPL's revenue requirements  
22 and rates using a mid-point rate of return on common equity of 8.56 percent

1 and a financial equity ratio, defined as the percentage of investor-supplied  
2 capital funds provided via common equity, of 55.40 percent for ratemaking  
3 purposes.

4 My June 2021 testimony further concluded that, based on these values  
5 for ROE and equity ratio, FPL's annual revenue requirements for 2022  
6 should be \$1,230 million (\$1.230 billion) less than FPL requested, such that  
7 FPL's retail rates should be reduced by approximately \$121 million per year  
8 in 2022.

9 **Q. FPL submitted rebuttal testimony on July 14, 2021. Did its proposed**  
10 **revenue and rate increases change?**

11 A. Yes. Where FPL originally requested a revenue increase of \$1,108 million  
12 (\$1.108 billion) per year in 2022, its July rebuttal testimony indicated a  
13 relatively slight reduction from that amount, to \$1,075 million (\$1.075  
14 billion) per year. FPL's proposed 2023 increase remained virtually  
15 unchanged: the original proposal was \$607 million per year, and the revised  
16 value requested in its July rebuttal testimony was \$605 million per year.

17 **Q. What is your understanding of the proposed Settlement Agreement?**

18 A. As it relates to the issues that I address, namely ROE and the financial equity  
19 ratio, the Settlement Agreement nominally proposes to reduce FPL's ROE  
20 for ratemaking purposes from its originally proposed 11.50% to 10.60%,  
21 with a range of plus or minus 100 basis points centered on a midpoint ROE  
22 of 10.70% i.e., 9.70% to 11.7%, which would result in the maximum of the

1 ROE range being 110 basis points above the proposed ROE of 10.60%.<sup>1</sup> The  
2 proposed financial equity ratio of 59.60% - the percentage of investor-  
3 supplied funds from common equity – is unchanged from FPL’s original  
4 filing. The revenue increases in the Settlement Agreement are \$692 million  
5 per year for 2022 and \$560 million per year for 2023. These values do not  
6 reflect an ROE of exactly 10.60 percent, apparently because the revenue  
7 increases were agreed to separately by the Settling Parties.<sup>2</sup> The Settlement  
8 Agreement also proposes a small reduction in the depreciation reserve  
9 amount that FPL would be allowed to use through its proposed Reserve  
10 Surplus Amortization Mechanism, from \$1.48 billion to \$1.45 billion; the  
11 proposed RSAM is addressed in the direct and supplemental direct testimony  
12 of witness Timothy J. Devlin. Finally, the Settlement Agreement, as  
13 presented to the PSC, is “contingent on approval of this Agreement in its  
14 entirety by the Commission without modification.” Settlement Agreement,  
15 para. 30 at page 32. In other words, the Settlement Agreement is an “all or  
16 nothing” deal; according to FPL and the other Settling Parties, the Settlement  
17 Agreement must be approved in its entirety or not at all.

18

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<sup>1</sup> Additionally, there is a mechanism to increase the ROE of 10.60% to 10.80%, and increase the range to 9.80% - 11.80%, if the average 30-year Treasury bond yields increases by at least 50 bps over a 6-month period.

<sup>2</sup> See FPL’s response to Staff’s Second Data Request, Request No. 1, filed on Aug. 16, 2021. The response can be found at <http://www2.psc.state.fl.us/library/filings/2021/09630-2021/09630-2021.pdf>.

**IV. CONCLUSIONS REGARDING SETTLEMENT AGREEMENT**

1 **Q. In your June 21 direct testimony and exhibits, you concluded that FPL**  
2 **can provide safe and reliable service and recover all of its reasonable**  
3 **and prudent costs, including the costs of its projected investments, if the**  
4 **PSC sets FPL's rates using an ROE of 8.56 percent and a financial equity**  
5 **ratio of 55.40 percent. Have your conclusions regarding these values**  
6 **changed?**

7 **A. No. They have not. While I have not performed a detailed ROE analysis**  
8 **using an updated study period, I examined how key capital market**  
9 **benchmarks have evolved since the end of my six-month study period, which**  
10 **ended in April 2021. The table below summarizes the changes seen from the**  
11 **six-month period ending April 2021 to the four-month period ending August**  
12 **2021, for the following benchmarks: (1) 30-year Constant Maturity Treasury**  
13 **Bond yield (2) Moody's Public Utility Bond Index "A" and (3) Moody's**  
14 **Public Utility Bond Index "Baa." As Table 1 demonstrates, the bond yields**  
15 **reported for each period were broadly comparable. Additionally, I note the**  
16 **bond yields in the later period remained within the range of the earlier time**  
17 **period.**

1

*Table 1: Capital Market Benchmarks*

	30-year Treasury Bond Monthly Average Yield	Moody's Public Utility Bond Index "Baa" Monthly Average Yield	Moody's Public Utility Bond Index "A" Monthly Average Yield
November 2020 – April 2021	1.97%	3.34%	3.06%
May 2021 – August 2021	2.09%	3.35%	3.10%
<b>Basis Points Change</b>	<b>+12</b>	<b>+1</b>	<b>+4</b>

2 Furthermore, I note that FPL's S&P and Moody's long-term credit ratings  
3 haven't changed since the end of my original six-month period and neither  
4 have the ratings for the members of my proxy group. Therefore, given the  
5 lack of change in the credit ratings together with the comparable capital  
6 market benchmark data points, it is reasonable to expect that similar ROE  
7 results would be achieved today. Accordingly, my conclusions regarding the  
8 fair and reasonable ROE of 8.56% and financial equity ratio of 55.4% have  
9 not changed.

10 **Q. In your June 21 testimony, you stated that, if the PSC were to set FPL's**  
11 **revenue requirements and rates using your recommended ROE of**  
12 **8.56% and financial equity ratio values, FPL could provide safe and**  
13 **reliable service and recover all of its reasonable and prudent costs,**  
14 **including the costs of its projected investments, with revenue**  
15 **requirements \$1,230 million (\$1.230 billion) per year less than proposed**  
16 **by FPL in its March filing. Do the changes proposed by FPL in its July**

1           **rebuttal testimony, or any other factors, change your conclusions**  
2           **regarding that total revenue requirement figure?**

3       A.    No, not significantly. Using the recalculated base revenue information  
4           presented by Ms. Fuentes in Exhibit LF-12, together with my recommended  
5           ROE and equity values, results in a revenue requirement that is  
6           approximately \$1,228 million lower than that requested by FPL based on its  
7           July 2021 request.

8       **Q.    On a related note, in your June 21 testimony, you stated that applying**  
9           **your recommended ROE and equity ratio values would result in an**  
10          **annual rate reduction for FPL’s customers, as compared to current**  
11          **rates, of approximately \$121 million per year. Do the changes proposed**  
12          **by FPL in July, or any other factors, change your conclusion regarding**  
13          **the annual revenue impact?**

14      A.    Yes. Applying the above reduction in FPL’s revenue requirements to FPL’s  
15           updated revenue requirements per its July rebuttal testimony results in a  
16           reduction of \$153 million per year from FPL’s current rates in 2022, as  
17           compared to the decrease of \$121 million per year in my June 21 testimony.  
18           This increased reduction is driven by the structure of FPL’s updated request  
19           that incorporated a lower rate base and an increase in jurisdictional net  
20           operating income under existing rates.<sup>3</sup>    The impact of using my

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<sup>3</sup>    See Fuentes Rebuttal Testimony, Exhibit LF-12.

1 recommended ROE and equity ratio is virtually unchanged, but because  
2 FPL's updated revenue requirement increase is approximately \$33 million  
3 less than in its original filing, the reduction from current rates and revenue  
4 requirements is correspondingly increased by a similar amount.

5 **Q. How do the ROE and financial equity ratio values agreed to by the**  
6 **Settling Parties in the Settlement Agreement compare to other recent**  
7 **settlements agreed to by Florida utilities?**

8 A. The ROE and financial equity ratio parameters agreed to in other recent  
9 settlements negotiated by Florida investor-owned utilities are considerably  
10 lower than the parameters included in the Settlement Agreement. For  
11 instance, on June 4, 2021 the Florida PSC approved a settlement involving  
12 Duke Energy Florida ("DEF") that included a midpoint ROE of 9.85% and a  
13 financial equity ratio of 53 percent.<sup>4</sup> Additionally, in a proceeding involving  
14 Tampa Electric Company ("TEC"), a proposed settlement agreement was  
15 filed on August 6, 2021, four days before the FPL Settlement Agreement was  
16 filed, that includes similar values to those in the DEF settlement: an ROE of  
17 9.95 percent and an equity ratio of 54.0 percent.<sup>5</sup>

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<sup>4</sup> In re: Petition for Limited Proceeding to Approve 2021 Settlement Agreement, including General Base Rates Increases, by Duke Energy Florida, LLC, Docket No. 20210016-EU, Order No. PSC-2021-0202-AS-EI, Final Order Approving 2021 Settlement Agreement at 12 (Fla. Pub. Serv. Comm'n, June 4, 2021).

<sup>5</sup> In re: Petition for Rate Increase by Tampa Electric Company, Docket No. 20210034-EI, Tampa Electric Company's Motion to Suspend Procedural Schedule and Approve 2021 Stipulation and Settlement Agreement, FPSC Document No. 08857-2021, at 2-3 (filed August 6, 2021).

1 **Q. Can you provide the Commission with any insight into the relative risk**  
2 **profiles of FPL as compared to those of DEF and TEC?**

3 A. Yes. It is informative to review the respective S&P and Moody's credit  
4 ratings for the Florida utilities given that credit ratings reflect an agency's  
5 comprehensive review of all the risks a company faces including both  
6 business and financial risk, and further recognizing that the agency's ratings  
7 are intended to provide an objective and independent measure of a utility's  
8 risk. As the Figure below illustrates, FPL's credit rating is of better quality  
9 compared to both DEF and TEC. Both DEF and TEC have an S&P long-term  
10 rating of BBB+, two notches below FPL, and a rating from Moody's of A3,  
11 again two notches below FPL. These rating differentials suggest that FPL has  
12 lower investment risk, as measured by credit ratings, than both DEF and  
13 TEC. Correspondingly, all else being equal, it would be reasonable to expect  
14 that investors would require a lower return for investing in FPL than the other  
15 two utilities.

16

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Figure 1: Credit Ratings Comparison for FPL, DEF and TEC.

S&P Rating	FPL	DEF	TEC
AAA			
AA+			
AA			
AA-			
A+			
A	A		
A-			
BBB+		BBB+	BBB+
BBB			
BBB-			
BB+			
BB			
BB-			

Moody's Rating	FPL	DEF	TEC
Aaa			
Aa1			
Aa2			
Aa3			
A1	A1		
A2			
A3		A3	A3
Baa1			
Baa2			
Baa3			
Ba1			
Ba2			
Ba3			

2 **Q. How do the ROE and financial equity ratio values agreed to by the**  
3 **Settling Parties in the Settlement Agreement compare to the utility rate**  
4 **case decisions reached by other U.S. state regulatory authorities during**  
5 **2021?**

6 **A.** Apart from the Florida PSC's decision regarding the DEF settlement, all the  
7 other utility rate case decisions reached during 2021 for vertically integrated  
8 utilities (for which data are available) have involved an allowed ROE value  
9 that is at least 100 bps lower and a financial equity ratio that is at least seven  
10 full percentage points lower than that included in the Settlement Agreement.  
11 (The financial equity ratio for DEF is 6.6 full percentage points below the  
12 comparable equity ratio value in the FPL Settlement Agreement.) The  
13 average allowed ROE for all decisions involving vertically integrated utilities  
14 was 9.47%, and the average financial equity ratio was approximately

1           51.62%.<sup>6</sup> Both parameters are clearly much lower than that included in the  
2           Settlement Agreement, which stands in contrast to the persistent downward  
3           trend seen over recent years in allowed ROE decisions in particular. Indeed,  
4           the Regulatory Research Associates, a group within S&P, recently  
5           commented on the persistent trend of regulatory authorities awarding lower  
6           allowed ROE:

7                               While electric equity return authorizations  
8                               reached record lows in 2020 and the first half of  
9                               2021, authorized ROEs had been on a decline  
10                              before the pandemic took a toll on the U.S.  
11                              economy. The average allowed ROEs for the  
12                              electric sector have been trending downward  
13                              since the 1980s, consistent with the declining  
14                              interest rate environment. In addition, the  
15                              proliferation of automatic adjustment and  
16                              investment recovery mechanisms that reduce the  
17                              business risk of a utility has often been cited as a  
18                              contributing factor by commissions in  
19                              authorizing lower ROEs.<sup>7</sup>

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<sup>6</sup> Based on data made available by S&P Capital IQ Pro (formerly known as S&P Global Market Intelligence) and decisions made over the period January through August 2021. Note, in respect of the financial equity ratio calculation, I excluded the proceeding involving Kentucky Power Co., Case No. C-2020-00174, as I understand the percentage value reported in the referenced dataset was not a financial equity ratio value. Additionally, in respect of the DEF decision, D-20210016-EI, I used the financial equity ratio of 53% that was reported in the settlement agreement. I also excluded the proceeding involving Oklahoma Gas and Electric Co., D-18-046-FR (2020 update), because the proceeding did not involve determining an allowed ROE and capital structure.

<sup>7</sup> S&P Capital IQ Pro, Regulatory Research Associates, RRA Regulatory Focus, *US electric ROE determinations in H1'21 remain at all-time low mark*, August 24, 2021. See Exhibit BTM-10 at page 29.

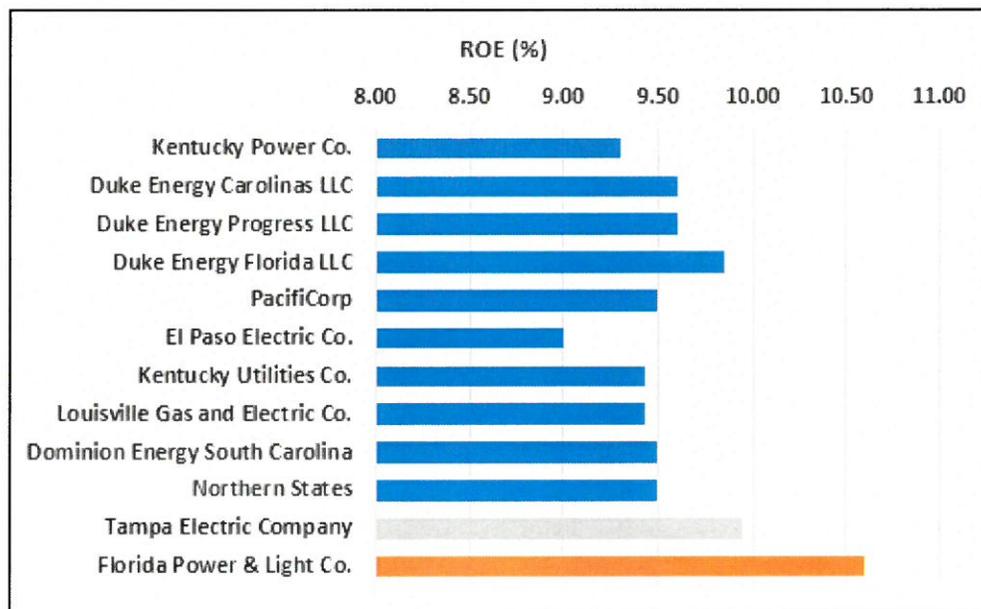
1 **Q. Please summarize how the ROE and equity ratio parameters included**  
2 **in the Settlement Agreement compare to the recent settlement**  
3 **agreements involving Florida utilities and U.S. state regulatory**  
4 **authorities decisions reached during 2021.**

5 A. The Figures below summarize, numerically and graphically, how much  
6 greater the Settlement Agreement parameters are as compared to these other  
7 data points.

1 *Figure 2: ROE: Settlement Agreement Comparison to State Decision Data &*  
 2 *Other Florida Utility Settlements<sup>8</sup>*

**State Allowed ROE Values (Jan - Aug. 2021)**

Vertically Integrated Cases Companies	State	Date of Decision	ROE	Decision Type
Kentucky Power Co.	KY	01/13/21	9.30	Fully litigated
Duke Energy Carolinas LLC	NC	03/31/21	9.60	Settled
Duke Energy Progress LLC	NC	04/16/21	9.60	Settled
Duke Energy Florida LLC	FL	05/04/21	9.85	Settled
PacifiCorp	WY	05/18/21	9.50	Fully litigated
El Paso Electric Co.	NM	06/23/21	9.00	Fully litigated
Kentucky Utilities Co.	KY	06/30/21	9.43	Settled
Louisville Gas and Electric Co.	KY	06/30/21	9.43	Settled
Dominion Energy South Carolir	SC	07/21/21	9.50	Settled
Northern States	ND	08/18/21	9.50	Settled
Tampa Electric Company	FL	TBD	9.95	Proposed Settlement
Florida Power & Light Co.	FL	TBD	10.60	Proposed Settlement

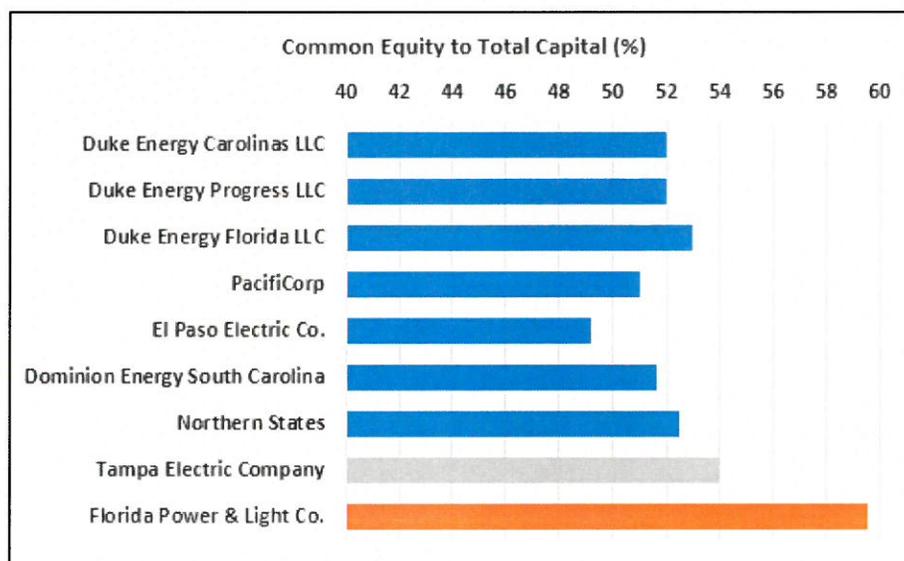


<sup>8</sup> Please refer to footnote 6 for further details regarding the proceedings reported in this Figure.

1 *Figure 3: Equity Ratio: Settlement Agreement Comparison to State Decision Data*  
 2 *& Other Florida Utility Settlements<sup>9</sup>*

**State Equity Ratio Values (Jan - Aug. 2021)**

Vertically Integrated Cases Companies	State	Date of Decision	Common Equity To Total Capital (%)	Decision Type
Kentucky Power Co.	KY	01/13/21	-	Fully litigated
Duke Energy Carolinas LLC	NC	03/31/21	52.00	Settled
Duke Energy Progress LLC	NC	04/16/21	52.00	Settled
Duke Energy Florida LLC	FL	05/04/21	53.00	Settled
PacifiCorp	WY	05/18/21	51.00	Fully litigated
El Paso Electric Co.	NM	06/23/21	49.21	Fully litigated
Kentucky Utilities Co.	KY	06/30/21	-	Settled
Louisville Gas and Electric Co.	KY	06/30/21	-	Settled
Dominion Energy South Carolir	SC	07/21/21	51.62	Settled
Northern States	ND	08/18/21	52.50	Settled
Tampa Electric Company	FL	TBD	54.00	Proposed Settlement
Florida Power & Light Co.	FL	TBD	59.60	Proposed Settlement



3 **Q. How have certain industry analysts and observers commented on the**  
 4 **Settlement Agreement as it relates to the issues you address in your**  
 5 **supplemental testimony?**

<sup>9</sup> Please refer to footnote 6 for further details regarding the proceedings reported in this Figure.

1 A. Certain reports focused on the above average nature of the ROE included in  
2 the Settlement Agreement. For example, the proposed ROE of 10.60% was  
3 highlighted in the industry press as being “significantly above” the average  
4 allowed ROE awarded during the first half of 2021.<sup>10</sup> Furthermore, a  
5 Morningstar analyst covering NextEra Energy Inc., commented that the  
6 Settlement Agreement, if approved, reflects the “favorable treatment  
7 NextEra Energy continues to enjoy relative to peer utilities” and the analyst  
8 specifically mentioned the lower ROEs provided for in the DEF and TEC  
9 settlements.<sup>11</sup>

10 Additionally, it bears pointing out that the proposed ROE is 310 basis  
11 points greater than the ROE of 7.5% included in Morningstar’s discounted  
12 cash flow valuation model which is used to determine its fair value estimate  
13 of NextEra Energy Inc.’s stock price. Moreover, the Morningstar analyst  
14 explains that the 7.5% ROE is lower than the “9% rate of return we expect  
15 investors will demand for a diversified equity portfolio, reflecting NextEra's  
16 lower sensitivity to the economic cycle and lower degree of operating  
17 leverage.”<sup>12</sup>

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<sup>10</sup> S&P Capital IQ Pro, Financial Focus, *Utility valuations edge closer to S&P 500 in August as trading volatility cools*, September 2, 2021. See Exhibit BTM-10 at page 1.

<sup>11</sup> Morningstar, Stock Analyst Notes, Andrew Bischof, *NextEra Energy Settlement Highlights Constructive Florida Regulation; In Line With Expectations*, August 10, 2021. See Exhibit BTM-10 at page 6.

<sup>12</sup> Morningstar, Stock Analyst Notes, Andrew Bischof, *Increasing Our NextEra FVE on Increased Expectations for Renewable Energy Development*, September 07, 2021. See Exhibit BTM-10 at page 11.

1 **Q. Are you aware of other publicly available information that would indicate**  
2 **that the terms of the Settlement Agreement would provide FPL with more**  
3 **revenues than it needs to provide safe and reliable service at reasonable**  
4 **cost?**

5 A. Yes. On August 23, 2021, Moody's issued an updated Credit Opinion for FPL  
6 that includes a discussion of the pending Settlement Agreement. I have  
7 attached this Moody's report as part of Exhibit BTM-10 to my supplemental  
8 testimony.<sup>13</sup> Of particular significance are the following two facts noted by  
9 Moody's. First, with the new Settlement Agreement in place Moody's  
10 projects that FPL would have a cash flow interest coverage ratio of about ten  
11 times and a ratio of Cash From Operations ("CFO"), pre-working capital to  
12 Debt of about 30 percent. The reported cash flow interest coverage ratio result  
13 is firmly within Moody's generally stated metric range for an "Aaa" rated  
14 utility and the CFO pre-working capital to Debt result of 30% is on the cusp  
15 of the stated metric range for an "Aa" or an "A" rated utility (i.e., at the top  
16 end of the range for an "A" rated utility and the low end of the range for an  
17 "Aa" rated utility).<sup>14</sup> However, of particular note, is that Moody's 12-18  
18 month forward view as of the report's publication date, in respect of these two  
19 particular financial strength metrics, classifies the cash flow interest coverage

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<sup>13</sup> See Exhibit BTM-10 at page 16.

<sup>14</sup> Moody's Investors Service, Rating Methodology, Regulated Electric and Gas Utilities, page 22 (June 2017). See Exhibit BTM-8.2, page 161.

1 ratio as falling within the “Aaa” rating category and the CFO pre-working  
2 capital to Debt ratio as falling within the “Aa” rating category. Additionally,  
3 in the report, Moody’s continues to refer to a potential downgrade threshold  
4 level of 25% in respect of the CFO pre-working capital to Debt metric.  
5 Correspondingly, these particular metric results reported by Moody’s suggest  
6 that the projected revenue produced under the terms of the Settlement  
7 Agreement is providing for significantly more than what is needed to maintain  
8 the existing credit rating of A1 and can therefore be reasonably considered to  
9 be excessive.

10 The second noteworthy fact is Moody’s observation that FPL’s debt  
11 to capitalization ratio of 32.6 percent (as of March 31, 2021), puts it among  
12 the lowest leveraged utilities in the United States. This is compelling  
13 evidence, in addition to the evidence I provided in my direct testimony, that  
14 FPL’s equity ratio is excessively high, resulting in FPL’s customers paying  
15 more than necessary for safe and reliable service.

16 **Q. What would FPL’s revenue requirements for 2022 and 2023 be if the**  
17 **values in the DEF and TEC settlements were used to set FPL’s revenue**  
18 **requirements and rates in this docket?**

19 **A.** The tables below summarize the estimated revenue requirements if the ROE  
20 and financial equity ratios in the DEF and TEC settlements were applied.

1 *Table 2: 2022 Test Year Revenue Requirements with DEF & TEC Settlement*  
 2 *Values*

2022 TEST YEAR REVENUE REQUIREMENT INCREASE (\$000's)	REVENUE REQ'T INCREASE AS FILED JULY 14 2021	REVENUE REQ'T INCREASE USING DEF SETTLEMENT ROE & EQUITY RATIO	REVENUE REQ'T INCREASE USING TEC SETTLEMENT ROE & EQUITY RATIO
Revenue Requirement	\$ 1,074,933	\$ 214,815	\$ 286,852
Delta		\$ (860,118)	\$ (788,081)

3 *Table 3: 2023 Subsequent Year Revenue Requirement with DEF and TEC*  
 4 *Settlement Values*

2023 SUBSEQUENT YEAR REVENUE REQUIREMENT INCREASE (\$000's)	REVENUE REQ'T INCREASE AS FILED JULY 14 2021	REVENUE REQ'T INCREASE USING DEF SETTLEMENT ROE & EQUITY RATIO	REVENUE REQ'T INCREASE USING TEC SETTLEMENT ROE & EQUITY RATIO
Revenue Requirement	\$ 605,390	\$ 550,923	\$ 555,154
Delta		\$ (54,467)	\$ (50,235)

5 **Q. What would FPL's revenue requirements for 2022 and 2023 be if the**  
 6 **average values reported by S&P Capital IQ Pro for other states were**  
 7 **used?**

8 **A.** The tables below summarize the estimated revenue requirements if the  
 9 average ROE and financial equity ratios from nationwide State decisions  
 10 over the period January through August 2021 involving vertically integrated  
 11 utilities were applied. Again, those values are a national average ROE of  
 12 9.47 percent and a national average financial equity ratio of 51.62 percent.

1 *Table 4: 2022 Test Year Revenue Requirement with State Decision values (Jan -*  
 2 *Aug 2021)*

<b>2022 TEST YEAR REVENUE REQUIREMENT INCREASE (\$000's)</b>	<b>REVENUE REQ'T INCREASE AS FILED JULY 14 2021</b>	<b>REVENUE REQ'T INCREASE USING STATE DECISIONS (JAN- AUG 2021) ROE &amp; EQUITY RATIO</b>
Revenue Requirement	\$ 1,074,933	\$ 40,783
Delta		\$ (1,034,150)

3 *Table 5: 2023 Subsequent Year Revenue Requirement with State Decision Values*  
 4 *(Jan - Aug 2021)*

<b>2023 SUBSEQUENT YEAR REVENUE REQUIREMENT INCREASE (\$000's)</b>	<b>REVENUE REQUIREMENT AS FILED JULY 14 2021</b>	<b>REVENUE REQ'T INCREASE USING STATE DECISIONS (JAN- AUG 2021) ROE &amp; EQUITY RATIO</b>
Revenue Requirement	\$ 605,390	\$ 539,648
Delta		\$ (65,742)

5 **Q. Do any of these recent examples affect your conclusions regarding the**  
 6 **appropriate ROE and equity ratio for FPL?**

7 **A.** No. None of this new information changes my opinion that, based on current  
 8 capital market conditions and FPL's risk profile, the fair and reasonable  
 9 return for FPL is an ROE of 8.56 percent and the appropriate financial equity  
 10 ratio for FPL is 55.40 percent. Further, this new information does not change  
 11 my conclusions that, if the PSC were to set FPL's revenue requirements and  
 12 rates for 2022 using my recommended ROE and equity ratio values, FPL  
 13 could provide safe and reliable service, make all of its projected investments,  
 14 and recover all of its reasonable and prudent costs, all while maintaining  
 15 financial integrity.

1           Finally, my conclusion that setting FPL's revenue requirements and  
2 rates using my recommended ROE and equity ratio will be fair to FPL and  
3 to FPL's customers remains unchanged. As I testified then,

4           This outcome would provide the necessary fair and  
5 symmetrical treatment between FPL and its customers under  
6 the guiding principles of utility rate regulation in the United  
7 States. FPL would, assuming efficient management, be able to  
8 recover its operating costs and debt service expenses, and to  
9 raise needed equity and debt capital to support its projected  
10 investments, which is what it effectively represents it needs to  
11 provide safe and reliable service, and still earn a fair, just, and  
12 reasonable rate of return. Moreover, my analyses rely on  
13 appropriately designed market-based data and analyses that  
14 satisfy the criteria set forth in *Hope* and *Bluefield* and protects  
15 both investors and customers alike.

16 **Q.   What are the implications of implementing the proposed Settlement**  
17 **Agreement?**

18 A.   In my expert view, and as discussed above, the revenue requirements and  
19 rates that would result from the ROE and equity ratio in the Settlement  
20 Agreement would provide FPL with far more than investors' required  
21 returns, as estimated using market-based data, and consequently: customers'  
22 rates would be higher than necessary, and FPL's earnings would also be

1 higher than necessary for FPL to provide safe and reliable service and to  
2 make all necessary investments and recover all reasonable and prudent costs  
3 necessary for it to do so.

4 **Q. Does this conclude your supplemental direct testimony?**

5 A. Yes, it does.

1 BY MR. WRIGHT:

2 Q Mr. Mac Mathuna, did you also prepare and  
3 cause to be filed with your supplemental direct  
4 testimony two exhibits that were identified in your  
5 testimony as Exhibits BTM-9 and BTM-10?

6 A I did.

7 MR. WRIGHT: And, Mr. Chairman, I know, for  
8 the record, that Mr. Mac Mathuna's exhibits have --  
9 in the settlement case have been identified as  
10 Exhibits 495 and 496 in the comprehensive exhibit  
11 list.

12 BY MR. WRIGHT:

13 Q Mr. Mac Mathuna, will you please summarize  
14 your settlement case testimony for the Commission.

15 A Good afternoon, again, Commissioners.

16 I was asked by FAIR, Florida Rising, LULAC,  
17 and ECOSWF to provide my expert views as to whether the  
18 settlement agreement is in the public interest, with  
19 particular attention to the overall level of revenues as  
20 affected by the ROE and financial equity ratio that were  
21 included in the proposed settlement.

22 The proposed settlement agreement includes an  
23 ROE of 10.6 percent and a financial equity ratio of  
24 59.6 percent. Based on my review, I find these  
25 parameters to be excessively high.

1           As detailed in my supplemental testimony, I  
2 examined how the proposed settlement compared to the  
3 Duke Energy Florida settlement, recently approved by the  
4 Commission, and the proposed Tampa Electric Company  
5 settlement, which is now pending.

6           Importantly, both DEF and TECO have credit  
7 ratings that are two notches below FPL, which suggests  
8 that FPL has lower investment risks. Notwithstanding  
9 that, these other settlements included lower ROE and  
10 equity-ratio parings than that provided for in the FPL  
11 proposed settlement, with the -- DEF's agreement  
12 including an ROE of 9.85 percent and an equity ratio of  
13 53 percent, and the TECO agreement including an ROE of  
14 9.95 percent and an equity ratio of 54 percent.

15           Additionally, I note that the national-average  
16 ROE and equity-ratio values approved by other U.S. state  
17 regulatory authorities so far in the -- so far in 2021  
18 have been approximately 9.5 percent, 51.6 percent  
19 respectively. All these data points are considerably  
20 lower than those included in the FPL settlement  
21 agreement.

22           Applying the highest pair of data points just  
23 mentioned, those in the pending Tampa settlement would  
24 increase FPL's revenue requirement from its current  
25 rates by approximately 285 million in 2022, as opposed

1 to the 692-million increase proposed by the settlement  
2 agreement.

3           Considering my analysis and objective data  
4 observed in Florida and across the U.S. this year and in  
5 2020, the settlement agreement would impose excessive  
6 rates on FPL's customers and is, therefore, contrary to  
7 the public interest. Accordingly, the settlement  
8 agreement should be rejected.

9           Thank you.

10           MR. WRIGHT: Thank you, Mr. Mac Mathuna.

11           We tender Mr. Mac Mathuna for cross-  
12 examination.

13           CHAIRMAN CLARK: All right. Thank you very  
14 much.

15           FPL.

16           MR. LITCHFIELD: No questions.

17           CHAIRMAN CLARK: Any of the parties intend to  
18 cross-examine the witness?

19           All right.

20           MR. WRIGHT: Thank you --

21           CHAIRMAN CLARK: Staff --

22           MR. WRIGHT: -- Mr. Chairman.

23           CHAIRMAN CLARK: I'm sorry -- staff?

24           Commissioners?

25           Mr. Wright.

1 MR. WRIGHT: Thank you, again, Mr. Chairman.  
2 I would move Exhibit 495 and 496 into the record.

3 CHAIRMAN CLARK: So ordered.

4 (Whereupon, Exhibit Nos. 495 and 496 were  
5 admitted into the record.)

6 MR. WRIGHT: And, with that, I -- I would ask  
7 that Mr. Mac Mathuna be excused for good.

8 CHAIRMAN CLARK: You are excused. Thank you  
9 very much for your testimony.

10 THE WITNESS: Thank you very much for the  
11 opportunity.

12 MR. WRIGHT: Thank you, Mr. Chairman.

13 CHAIRMAN CLARK: Next witness, Mr. Wright.

14 MR. WRIGHT: Yes, sir. Again, on behalf of  
15 FAIR, Florida Rising, LULAC, and ECOSWF, I call  
16 Mr. Timothy J. Devlin to the stand.

17 THE WITNESS: Good afternoon, Commissioners,  
18 again.

19 MR. WRIGHT: Oh. Excuse me. I --

20 THE WITNESS: Oh, I'm sorry.

21 MR. WRIGHT: -- do have a couple of  
22 introductory questions --

23 THE WITNESS: Okay.

24 MR. WRIGHT: -- for you.

25 THE WITNESS: Sorry. I jumped the gun here.

1

## EXAMINATION

2 BY MR. WRIGHT:

3 Q Do you understand that you're still under  
4 oath?

5 A Yes.

6 Q Thank you.

7 Did you prepare and cause to be filed in this  
8 case prefiled supplemental direct testimony regarding  
9 the settlement agreement, consisting of 15 pages?

10 A Yes.

11 Q Do you have any changes or corrections to make  
12 to your supplemental testimony regarding the settlement  
13 agreement?

14 A No. No, I do not.

15 Q If I were to ask you the same questions  
16 contained therein today, would your answers be the same?

17 A Yes.

18 Q And do you adopt this testimony as your sworn  
19 testimony with the Florida Public Service Commission  
20 this afternoon?

21 A Yes.

22 MR. WRIGHT: Mr. Chairman, I request that  
23 Mr. Devlin's supplemental direct testimony be  
24 entered into the record as though read.

25 CHAIRMAN CLARK: So ordered.

1 MR. WRIGHT: Thank you.

2 (Whereupon, Witness Devlin's prefiled  
3 supplemental direct testimony was inserted into the  
4 record as though read.)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by Florida Power & Light	)	
Company for Rate Unification and for	)	DOCKET NO. 20210015-EI
Base Rate Increase	)	FILED: SEPTEMBER 13, 2021
_____	)	

**SUPPLEMENTAL DIRECT TESTIMONY**

**OF TIMOTHY J. DEVLIN**

**RE: PROPOSED SETTLEMENT AGREEMENT**

**On Behalf of**

**Floridians Against Increased Rates, Inc.,**

**Florida Rising, Inc.,**

**The League of United Latin American Citizens  
of Florida, and**

**The Environmental Confederation of  
Southwest Florida**



1 **Q. Have you previously submitted testimony in this proceeding?**

2 A. Yes. I filed direct testimony and exhibits on behalf of FAIR on June 21,  
3 2021. My testimony was subsequently adopted by, and is being co-  
4 sponsored by, Florida Rising, LULAC, and ECOSWF. My June 21  
5 testimony included my educational background and a summary of my  
6 professional career and experience, most of which was the thirty-five  
7 years that I served on the PSC Staff.

8

9 **PURPOSE AND SUMMARY OF SUPPLEMENTAL TESTIMONY**

10 **Q. What is the purpose of your supplemental direct testimony?**

11 A. FAIR engaged me to provide my professional analyses and opinions  
12 regarding FPL's proposed Reserve Surplus Amortization Mechanism  
13 (RSAM) and related subjects and issues, which I presented in my June  
14 21 testimony. Since my June 21 testimony extensively addresses  
15 fundamental principles of accepted regulatory policy, for example the  
16 Regulatory Compact principles of setting rates that are fair, just, and  
17 reasonable to both utilities and their customers, and the relationship  
18 of depreciation to the RSAM, the Commission should consider my June

1           21 testimony as being fully incorporated by reference into this  
2           supplemental testimony.

3           In my supplemental testimony, I provide my opinions regarding  
4           the settlement agreement that FPL and several other parties to this  
5           docket signed on August 9, 2021 and filed with the PSC on August 10,  
6           2021. For simplicity, I refer to that agreement as the “Settlement  
7           Agreement” and to parties that have signed onto or joined the  
8           Settlement Agreement as “Settling Parties.” The Settling Parties  
9           include the Office of Public Counsel, the Florida Industrial Power Users  
10          Group (FIPUG), the Florida Retail Federation (FRF), the Southern  
11          Alliance for Clean Energy (SACE), the CLEO Institute, Vote Solar, and  
12          the Federal Executive Agencies.

13          Although the ultimate issues presented by the Settlement  
14          Agreement – determination of FPL’s revenue requirements and rates  
15          – are essentially the same as those posed by FPL’s original petition  
16          seeking base rate increases and other substantial benefits for FPL, the  
17          primary issue now before the Commission is stated as follows:

18                   Should the Stipulation and Settlement Agreement dated  
19                   August 9, 2021 be approved?

1 **Q. Please summarize the main points of your supplemental testimony.**

2 A. In my opinion, for any regulatory decision to be in the public interest,  
3 it must provide for fair, just, and reasonable rates and, like the  
4 fundamental principles embodied in the Regulatory Compact, must  
5 provide for fair treatment of both the utility and the utility's  
6 customers. By these widely accepted standards, the proposed  
7 Settlement Agreement is contrary to the public interest and the  
8 Commission should reject it. Additionally, I am unaware of an RSAM  
9 being approved and used by any other regulated utility or regulatory  
10 authority in the U.S.

11 The Settlement Agreement is contrary to the public interest  
12 because it would deprive FPL's customers of up to \$1.45 billion in  
13 depreciation reserve surplus (Reserve Surplus) that those customers  
14 created by transferring the Reserve Surplus to FPL (and its sole  
15 shareholder, NextEra Energy). Since the customers created the  
16 Reserve Surplus, it should be available to offset FPL's rate base in its  
17 next rate case. The transfer of the customer-created Reserve Surplus  
18 to FPL and NextEra is contrary to the public interest, contrary to the

1 individual interests of FPL’s residential and business customers, and  
2 contrary to the public interest of the Florida economy.

3 Since the Settlement Agreement is an “all or nothing” deal, as  
4 its terms plainly state, the Commission should reject the Settlement  
5 Agreement as presented by FPL and the other Settling Parties. If any  
6 modified settlement terms are presented for the PSC’s consideration,  
7 then at a minimum, the PSC must – to fulfill its statutory mandate to  
8 regulate FPL in the public interest and to protect FPL’s customers –  
9 ensure that FPL is not allowed to use the RSAM to earn any more than  
10 the midpoint ROE established in this case.

11

12 **Q. Are you sponsoring any exhibits with your supplemental testimony?**

13 **A.** Yes, I am sponsoring the following exhibit:

14 Exhibit TJD-6 Revised Effects of RSAM on Future FPL Earnings,  
15 2022-2025.

16

17

## BACKGROUND

1

2 **Q. Please define and discuss the “public interest” criterion as it is**  
3 **applied to settlement agreements presented to the Florida PSC.**

4 A. The issues that the PSC must decide with respect to the proposed  
5 Settlement Agreement are the same as those that I addressed in my  
6 June 21 testimony. The ultimate issue is whether the rates to be  
7 approved by the PSC, whether through voting on 100-plus specific  
8 issues in the normal general rate case format or voting on a single issue  
9 regarding approval of a Settlement Agreement, are fair, just, and  
10 reasonable and “in the public interest.”

11 The “public interest” can be defined as the general welfare or  
12 well-being of the public, or society as a whole. It is my professional  
13 opinion that, with respect to regulated utilities that provide necessary  
14 services (such as electricity or potable water), the public interest is  
15 served and promoted where the utility provides safe and reliable  
16 service at rates, and under terms and conditions, that are fair, just, and  
17 reasonable. As I discussed in my June 21 testimony, the public interest  
18 is served where the long-established and widely accepted set of  
19 principles known as the “Regulatory Compact” are followed. Under

1 the Regulatory Compact, the regulated utility is granted the exclusive  
2 monopoly right to serve a designated area, and in return for this  
3 valuable right, the utility agrees to provide safe and reliable service to  
4 all customers in its service area at fair, just, and reasonable rates. Fair,  
5 just, and reasonable rates are based on the reasonable and prudent  
6 costs of the utility, including a fair rate of return on equity (ROE). In  
7 Florida, and in most if not all other jurisdictions, the utility's allowed  
8 revenue requirements and rates are based on the "midpoint ROE,"  
9 which is determined by the regulatory authority to be the "fair and  
10 reasonable" return.

11

12 **Q. Please summarize your understanding of the RSAM proposal that is**  
13 **included in the Settlement Agreement.**

14 A. The RSAM provisions in the proposed Settlement Agreement are  
15 virtually identical to the RSAM provisions in FPL's original petition,  
16 testimony, and exhibits. The only differences are that the total  
17 amount of the depreciation Reserve Surplus that FPL would be allowed  
18 to amortize is \$1.45 billion in the Settlement Agreement as compared  
19 to \$1.48 billion in FPL's original request, and that the Settlement

1 imposes a limit on the amount that FPL can amortize in the first year  
2 of the settlement term, i.e., in 2022 only, of \$200 million. In all  
3 subsequent years, FPL would be permitted by the Settlement  
4 Agreement to use the Reserve Surplus at its sole discretion, subject  
5 only to the limit that it could not use it to exceed an ROE of 11.70  
6 percent, which is the maximum of the ROE range provided in the  
7 Settlement Agreement.

8  
9 **THE SETTLEMENT AGREEMENT IS CONTRARY TO THE PUBLIC INTEREST**  
10 **AND THE COMMISSION SHOULD REJECT IT**

11  
12 **Q. Is the Settlement Agreement in the public interest of Florida and**  
13 **Floridians? Please explain your answer.**

14 **A. No. The Settlement Agreement is contrary to the public interest**  
15 **because it will result in rates that are unfair, unjust, and unreasonable.**  
16 **The proposed Settlement Agreement will result in a massive transfer**  
17 **of purchasing power (of up to \$1.45 billion) *out of customers' pockets***  
18 ***and into FPL's and NextEra Energy's pockets.* It is a virtual certainty**  
19 **that FPL will, given the opportunity, use the RSAM to earn above its**  
20 **midpoint ROE, probably to earn at the very top of its authorized**

1 earnings range, just as it has for the past several years. With respect  
2 to the earnings range, it is worth noting that, under the proposed  
3 Settlement Agreement, the maximum of the range would be 110 basis  
4 points above the midpoint, rather than the usual 100 points. As shown  
5 on Exhibit TJD-6, the difference in potential earnings between the  
6 midpoint ROE and the maximum ROE over the four-year rate plan  
7 exceeds the \$1.45 billion Reserve Surplus. Given FPL's history of  
8 targeting earnings at the maximum ROE, it is highly probable that FPL  
9 will, if allowed, use the Reserve Surplus to achieve the maximum ROE  
10 during the four-year rate plan. **Although it is permissible for FPL to**  
11 **earn at the top of its authorized range or maximum ROE, it should**  
12 **not be allowed to earn above the midpoint by using customer-**  
13 **funded depreciation credits.**

14 The Settlement Agreement would also cause customer rates to  
15 be unfair, unjust, and unreasonable in the longer run, i.e., following  
16 FPL's next rate case, because the value created by FPL's customers  
17 over-paying depreciation expense would have been used up to  
18 support higher than necessary earnings. Taking money – likely more  
19 than a billion dollars of real purchasing power – out of the pockets of

1 Florida customers is contrary to the public interest in the most basic  
2 terms, and it is especially offensive while Florida remains in deep  
3 suffering and economic struggles due to the COVID-19 pandemic.

4

5 **Q. How should the proposed Settlement Agreement be evaluated in**  
6 **terms of fundamental regulatory policy, such as the principles that**  
7 **embody the Regulatory Compact?**

8 A. Under the Regulatory Compact, the regulated utility is granted the  
9 exclusive monopoly right to serve a designated area, and in return for  
10 this valuable right, the utility agrees to provide safe and reliable  
11 service to all customers in its service area at fair, just, and reasonable  
12 rates. Fair, just, and reasonable rates are based on the reasonable and  
13 prudent costs of the utility, including a fair rate of return on equity  
14 (ROE). In Florida, and in most if not all other jurisdictions, the utility's  
15 allowed revenue requirements and rates are based on the "midpoint  
16 ROE," which is determined by the regulatory authority as the "fair and  
17 reasonable" return.

18 The proposed Settlement Agreement violates the Regulatory  
19 Compact by enabling FPL to earn at or near the top of its authorized

1 range, which is much higher than the midpoint ROE, by using  
2 ratepayer-provided funding. Rates that produce such excessive  
3 earnings, greater than the midpoint ROE, which FPL has consistently  
4 earned over the past several years, are not fair, not just, and not  
5 reasonable. The Settlement Agreement, and particularly the RSAM  
6 feature, is also contrary to the public interest because it is unfair to  
7 customers, and unduly beneficial to FPL, by allowing FPL to earn an  
8 unnecessarily high ROE on the backs of its customers.

9

10 **Q. What should the PSC do? Should the PSC approve the Settlement**  
11 **Agreement?**

12 A. The PSC should reject the Settlement Agreement, as submitted,  
13 because it is contrary to the public interest.

14 If, contrary to the facts and my recommendation, any RSAM or  
15 similar mechanism were to be approved in this case, it is critical – in  
16 order to ensure that the rates that FPL charges its customers are fair,  
17 just, and reasonable as required by Florida law and fundamental  
18 regulatory policy – that FPL only be allowed to use any customer-  
19 provided Reserve Surplus amounts to achieve an ROE no greater than

1 the midpoint of its authorized range. This would provide FPL  
2 extraordinarily strong protection of its financial integrity while  
3 ensuring that its risk of under-earning is virtually zero, and it would  
4 result in customer rates that are fair, just, and reasonable, consistent  
5 with the PSC's determination of whatever ROE it ultimately approves.  
6 Additionally, limiting the use of the RSAM to the midpoint ROE, will  
7 accommodate FPL's agreement to a four-year stay-out provision.

8

9 **Q. In your June 21 testimony, you testified that, in your opinion and**  
10 **based on your career of service to the Florida PSC, FPL's proposed**  
11 **RSAM would undermine and violate the intent of Florida's**  
12 **ratemaking statutes. Does it make any difference if the RSAM were**  
13 **to be approved as part of the Settlement Agreement as distinguished**  
14 **from its being proposed in the general rate case filing?**

15 **A.** No, it would not make any difference. Whatever decisions the  
16 Commission makes, it should make them to promote fair, just, and  
17 reasonable rates, consistent with the statutory requirements and with  
18 the Regulatory Compact. The "packaging" of a regulatory mechanism  
19 in a utility's petition or in a settlement agreement doesn't matter. A

1 mechanism, such as the RSAM in this case, that results in unfair,  
2 unjust, and unreasonable rates, and in unfair treatment of customers  
3 such as the RSAM would impose on FPL's customers, is inconsistent  
4 with fundamental regulatory policy and should be rejected.

5

6 **Q. Is the RSAM proposed in the Settlement Agreement an appropriate**  
7 **mechanism for achieving rate stability over the four years of the**  
8 **settlement term?**

9 A. No. The RSAM in the Settlement Agreement is virtually the same as  
10 that proposed by FPL in its original petition, and both versions would  
11 result in rates that are unfair, unjust, and unreasonable. The price of  
12 the touted rate stability is unfair, unjust, and unreasonable. As I  
13 pointed out in my June 21 testimony, rate stability with *fair rates* could  
14 be achieved if FPL's ability to use the RSAM was limited to achieving  
15 only the midpoint ROE.

16

17

1 **RECOMMENDATIONS**

2 **Q. What specific recommendations are you making regarding the**  
3 **proposed Settlement Agreement in this proceeding?**

4 A. I recommend that the Commission reject the Settlement Agreement  
5 because, as I have explained above, the Settlement Agreement is  
6 contrary to the public interest of Florida and to the interests of  
7 individual Florida citizens and Florida businesses who are FPL  
8 customers.

9 Considering that the Settlement Agreement is, by its own terms,  
10 an “all or nothing” deal, it is so obviously contrary to the public interest  
11 and so unfair to FPL’s customers that I cannot see any valid  
12 justification for approving it.

13

14 **Q. In the event the Commission was to entertain modifications to the**  
15 **Settlement Agreement, is there any way that an RSAM could be**  
16 **applied fairly and reasonably to achieve a better balance between**  
17 **ratepayer and shareholder interests?**

18 A. Yes. As I testified in my June 21 testimony and again above, an RSAM  
19 provision that limits FPL’s ability to use any amount of a depreciation

1 surplus to **only** amounts sufficient to reach its midpoint ROE and only  
2 to depreciation credits, could be fair to both FPL and its customers and  
3 would, at least, provide a better balance of customers' interest in rate  
4 stability at fair, just, and reasonable rates and of FPL's interests in  
5 earning a fair and reasonable return – the midpoint ROE – and  
6 maintaining a strong financial position. Referring to Exhibit TJD-6, if  
7 the midpoint ROE was used as the limit for the amortization of the  
8 Reserve Surplus versus the maximum ROE, the majority if not all of the  
9 Reserve Surplus would be reserved for ratepayers for future reduction  
10 of rates while still maintaining both a strong financial position for FPL  
11 and supporting the four-year stay-out provision.

12

13 **Q. Does this conclude your supplemental direct testimony?**

14 **A. Yes.**

15

16

17

18

1 BY MR. WRIGHT:

2 Q Mr. Devlin, did you also prepare and cause to  
3 be filed with your supplemental direct testimony one  
4 exhibit that was identified in your testimony as  
5 Exhibit TJD-6?

6 A Yes.

7 MR. WRIGHT: And, Mr. Chairman, again, I would  
8 note for the record that Mr. Devlin's exhibit in  
9 the settlement case has been identified as  
10 Exhibit No. 497 in the comprehensive exhibit list.

11 BY MR. WRIGHT:

12 Q Mr. Devlin, please summarize your supplemental  
13 testimony for the Commission.

14 A I would be glad to. Again, good afternoon,  
15 Commissioners, and thank you for the opportunity to  
16 testify in this settlement portion of the case.

17 And, again, I'm testifying on behalf of the  
18 Floridians Against Increased Rates, on behalf of Florida  
19 Rising, the League of United Latin American Citizens of  
20 Florida, the Environmental Confederation of Southwest  
21 Florida, each of whom oppose various aspects of the  
22 Florida rate proposals. With respect to the settlement  
23 reached between FPL and certain parties, I believe the  
24 settlement is contrary to the public interest and should  
25 be rejected.

1           The settlement does involve two changes from  
2 the -- FPL's original proposal: one, it limits the  
3 amortization of the surplus for 2022 to \$200 million;  
4 and then, two, it reduces the overall reserve surplus  
5 from 1.48 billion to 1.45 billion.

6           These two changes, in my opinion, are not  
7 significant and do not alter the fundamental flaws of  
8 the proposed plan. The proposed settlement would  
9 effectively deprive FPL customers of value of their  
10 overpayments created, depreciation, and transfer this  
11 huge amount of wealth and purchasing power -- up to  
12 \$1.45 billion -- to FPL and its shareholder, NextEra  
13 Energy.

14           This taking of ratepayers' money is unfair,  
15 unjust, and contrary to the public interest and,  
16 therefore, should be reject- -- the Commission should  
17 reject this proposal.

18           The benefits of RSAM, touted by FPL, can be  
19 maintained with one critical change: use the mid-point,  
20 not the top of the range, as a limit for the reserve  
21 surplus. That one change would still ensure FPL would  
22 earn a reasonable rate of return for four years and  
23 maintain a strong financial position and, at the same  
24 time, preserve the significant portion, if not all, of  
25 the customer-paid-for value credits, the Florida

1 customers, as it should be.

2 Thank you, again, for the opportunity to  
3 present my testimony. And I'd be happy to answer any  
4 questions.

5 MR. WRIGHT: Mr. Chairman, I tender Mr. Devlin  
6 for cross-examination.

7 CHAIRMAN CLARK: All right. Any of the  
8 parties have questions?

9 MR. LITCHFIELD: No, sir.

10 CHAIRMAN CLARK: Any parties?  
11 Staff?

12 MS. BROWNLESS: No, sir.

13 CHAIRMAN CLARK: Commissioners.  
14 Mr. Wright.

15 MR. WRIGHT: Thank you, Mr. Chairman. I would  
16 move Exhibit 497 into the record.

17 CHAIRMAN CLARK: So ordered.

18 MR. WRIGHT: Thank you.

19 (Whereupon, Exhibit No. 497 was admitted into  
20 the record.)

21 MR. WRIGHT: And, with that, I would ask that  
22 Mr. Devlin be excused from the hearing altogether.

23 CHAIRMAN CLARK: You're excused. Thank you  
24 for your testimony, Mr. Devlin.

25 THE WITNESS: Thank you, sir.

1 CHAIRMAN CLARK: All right. Next witness.

2 MR. WRIGHT: Thank you, Mr. Chairman. Again,  
3 on behalf of FAIR, Florida Rising, LULAC, and  
4 ECOSWF, I call Mr. John Thomas Herndon.

5 THE WITNESS: Good afternoon, Commissioners.

6 EXAMINATION

7 BY MR. WRIGHT:

8 Q Mr. -- Mr. Herndon, I have a few preliminary  
9 questions for you.

10 Did you prepare and cause to be filed in this  
11 case prefiled supplemental direct testimony regarding  
12 the settlement agreement that has been proposed in this  
13 case, consisting of 27 pages?

14 A Yes.

15 Q Do you have any changes or corrections to make  
16 to that testimony?

17 A No.

18 Q If I were to ask you the same questions  
19 contained therein today, would your answers be the same?

20 A Yes.

21 Q And do you adopt this as your sworn testimony  
22 to the Florida PSC in this proceeding?

23 A I do.

24 MR. WRIGHT: Mr. Chairman, I request that  
25 Mr. Herndon's supplemental direct testimony

1           regarding the settlement agreement be entered into  
2           the record as though read.

3                   CHAIRMAN CLARK:   So ordered.

4                   MR. WRIGHT:   Thank you.

5                   (Whereupon, Witness Herndon's prefiled  
6           supplemental direct testimony was inserted into the  
7           record as though read.)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by Florida Power & Light )  
Company for Rate Unification and for ) DOCKET NO. 20210015-EI  
Base Rate Increase ) FILED: SEPTEMBER 13, 2021  
\_\_\_\_\_)

**SUPPLEMENTAL DIRECT TESTIMONY**

**OF JOHN THOMAS HERNDON**

**RE: PROPOSED SETTLEMENT AGREEMENT**

**On Behalf of**

**Floridians Against Increased Rates, Inc.,**

**Florida Rising, Inc.,**

**The League of United Latin American Citizens  
of Florida, and**

**The Environmental Confederation of  
Southwest Florida**

**IN RE: PETITION BY FLORIDA POWER & LIGHT COMPANY FOR  
RATE UNIFICATION AND FOR BASE RATE INCREASE,  
DOCKET NO. 20210015-EI**

**SUPPLEMENTAL DIRECT TESTIMONY OF JOHN THOMAS HERNDON  
REGARDING PROPOSED SETTLEMENT AGREEMENT  
ON BEHALF OF  
FLORIDIANS AGAINST INCREASED RATES, INC.,  
FLORIDA RISING, INC.,  
THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF FLORIDA,  
AND  
THE ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA**

**INTRODUCTION**

1

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

3 A. My name is John Thomas Herndon, and my address is 9062 Eagles Ridge  
4 Drive, Tallahassee, Florida 32312.

5

6 **Q. By whom and in what position are you employed?**

7 A. In practical terms, I am self-employed as an independent contractor. After  
8 more than thirty years of service to two Florida governors, the Florida  
9 Legislature, the Public Service Commission, and other agencies in Florida's  
10 state government, as well as brief periods in consulting, I retired from full-  
11 time employment in 2005. Since that time, I have worked as an independent  
12 contractor, including service as a director and board member for several  
13 organizations and occasionally as a consultant on various matters, including  
14 utility issues.

1 **Q. On whose behalf are you testifying in this proceeding?**

2 A. I am testifying on behalf of Floridians Against Increased Rates, Inc. (FAIR),  
3 a Florida not-for-profit corporation, and FAIR's members who are customers  
4 of FPL; Florida Rising, Inc.; the League of United Latin American Citizens  
5 of Florida (LULAC); and the Environmental Confederation of Southwest  
6 Florida (ECOSWF).

7  
8 **Q. Have you previously submitted testimony in this proceeding?**

9 A. Yes. I submitted direct testimony and exhibits on behalf of FAIR and its  
10 members on June 21, 2021. My June 21 testimony was subsequently co-  
11 sponsored by Florida Rising, LULAC, and ECOSWF. My June 21 testimony  
12 also included my educational background and professional experience in  
13 public service to the State of Florida, including a term as a member of the  
14 Florida PSC.

15  
16 **Q. Are you sponsoring any exhibits with your supplemental testimony?**

17 A. Yes. I am sponsoring the following exhibits:

18 Exhibit JTH-6 FPL Test Year Notification Letter dated January 11,  
19 2021; and

20  
21 Exhibit JTH-7 U.S. Treasury Bond Yield Rates, October 2016 and  
22 August 2021;

23  
24  
25  
26

1           **PURPOSE AND SUMMARY OF SUPPLEMENTAL TESTIMONY**

2   **Q.    What is the purpose of your supplemental direct testimony in this**  
3           **doCKET?**

4    A.    My supplemental testimony in this proceeding provides my opinions  
5           regarding the settlement agreement that FPL and certain other parties to this  
6           doCKET signed on August 9, 2021 and submitted to the PSC on August 10,  
7           2021. For convenience, I refer to that agreement as the “Settlement  
8           Agreement” and to parties that have signed the Settlement Agreement as the  
9           “Settling Parties.” The Settling Parties include the Office of Public Counsel,  
10          the Florida Industrial Power Users Group (FIPUG), the Florida Retail  
11          Federation (FRF), the Southern Alliance for Clean Energy (SACE), the  
12          CLEO Institute, Vote Solar, and the Federal Executive Agencies.

13                 My supplemental testimony also specifically addresses a new primary  
14                 issue in this doCKET, which is stated as follows:

15                         Should the Stipulation and Settlement Agreement dated  
16                         August 9, 2021 be approved?

17  
18   **Q.    Please summarize the main points of your supplemental testimony.**

19    A.    In my June 21 testimony regarding FPL’s requests for rate increases set forth  
20           in its petition, testimony, and MFRs, I explained how and why I believe that:  
21           FPL’s requests were excessive; they represent the largest rate increase  
22           request in Florida regulatory history and would, if approved, represent the

1 largest rate increases in Florida history. If granted, they would result in  
2 unfair, unjust, and unreasonable rates being charged to FPL's customers; and,  
3 if granted, they would be contrary to the public interest of Florida and  
4 Floridians by causing an unreasonable transfer of wealth from the pockets of  
5 FPL's customers to FPL and its sole shareholder, NextEra Energy, Inc.  
6 Nothing has occurred or come to light that would change any of my opinions  
7 stated in my June 21 testimony.

8 Addressing the new issue framed above, the real question presented is  
9 whether the Settlement Agreement, taken as a whole, is in the public interest.  
10 In summary, while the Settlement Agreement would take slightly less money  
11 out of the pockets of FPL's customers over the next 4 years, FPL would still  
12 earn profits that are unreasonably high by any objective standard. FPL's  
13 rates would, correspondingly, still be unfair, unjust, and unreasonable  
14 because they would be dramatically higher than necessary for FPL to provide  
15 safe and reliable service while covering all of its costs and earning a  
16 *reasonable* return. Like FPL's original requests, the Settlement Agreement  
17 would still result in the largest rate increases in the history of Florida electric  
18 utility regulation.

19 Moreover, the Settlement Agreement's provisions that would allow  
20 FPL to earn even more by amortizing – i.e., “using up” – its projected  
21 depreciation reserve surplus to earn even higher returns would most likely  
22 deprive future FPL customers of the rate-reducing benefits that the

1 depreciation reserve surplus would provide in FPL's next rate case. Based  
2 on FPL's observed practices over recent years, this impact would likely be  
3 to deprive FPL customers of somewhere between \$1 billion and \$1.5 billion  
4 of rate-base-reducing value in FPL's next rate case.

5 For these reasons, the Settlement Agreement is contrary to the public  
6 interest and should be rejected.

### 7 **BACKGROUND**

8 **Q. Please summarize your understanding of the main provisions of the**  
9 **Settlement Agreement.**

10 A. From the perspective of FPL's customers, the main provisions are those that  
11 affect their rates. These include the following base rate increases:

- 12 a. \$692 million per year beginning in 2022;
- 13 b. \$560 million per year beginning in 2023;
- 14 c. A Solar Base Rate Adjustment (SOBRA) beginning in 2024; and
- 15 d. An additional Solar Base Rate Adjustment beginning in 2025.

16 Assuming no growth in FPL's sales, the 2022 increase would provide FPL  
17 with approximately \$2,768 million (\$2.768 billion), over the proposed  
18 settlement period of 2022-2025. Assuming no growth in sales, the 2023 rate  
19 increase would provide FPL with approximately \$1,680 million, or \$1.68  
20 billion, over the 2022-2025 period. If the 2024 SOBRA were implemented  
21 at the beginning of 2024, it would provide FPL with approximately \$280  
22 million over the period: \$140 million per year in 2024 and another \$140

1 million per year in 2025, based on values presented in FPL president Eric  
2 Silagy's test year notification letter to Chairman Clark dated January 11,  
3 2021. (For reference, I have included Mr. Silagy's test year letter as Exhibit  
4 No. JTH-6 to this testimony.) And finally, if the 2025 SOBRA were  
5 implemented at the beginning of 2025, that would add another \$140 million  
6 to FPL's base rate revenues over the period. In total, and again assuming no  
7 growth in sales that would also incur the higher base rates implemented in  
8 each year, these increases would give FPL total increases in its *annual* base  
9 rate revenues of *\$1.532 billion per year in 2025*, and *total cumulative base*  
10 *rate revenues over the 2022-2025 period of approximately \$4.868 billion.*

11 FPL would have a defined midpoint rate of return on common equity  
12 (ROE) of 10.60 percent, with a range of 9.70 percent to 11.70 percent to be  
13 applied for earnings surveillance purposes. Pursuant to provisions of the  
14 Settlement Agreement that are referred to as the "trigger" provisions, in the  
15 event that the yield on 30-year U.S. Treasury bonds increases by a defined  
16 amount, FPL would be allowed to increase its ROE for regulatory purposes  
17 to 10.80 percent and also to increase its earnings surveillance range to 9.80  
18 percent to 11.80 percent.

19 The Settlement Agreement would also allow FPL to create a  
20 depreciation reserve surplus of \$1.45 billion based on certain depreciation  
21 rates for certain assets that FPL would be allowed to use, effectively, to  
22 supplement its earnings over the period, so long as its monthly return on

1 equity does not exceed 11.70 percent. This is basically the same Reserve  
2 Surplus Amortization Mechanism, or RSAM, that FPL proposed in its  
3 original petition.

4 The Settlement Agreement also includes a provision for rate  
5 adjustments in the event of state or federal permanent tax changes, a storm  
6 cost recovery mechanism like those in previous settlements, an agreement  
7 not to pursue natural gas financial hedging, authorization of cost recovery for  
8 certain pilot programs, and other provisions.

9 In return for the revenue and rate increases described above, the  
10 RSAM provision, the advance approval of the several pilot programs and  
11 projects, and other provisions in FPL's favor, and with certain exceptions,  
12 FPL would agree not to increase its base rates before 2026.

13 Significantly, as presented to the PSC, the Settlement Agreement is  
14 an "all or nothing" proposition, in that the provisions of the Settlement  
15 Agreement "are contingent on approval of this Agreement in its entirety by  
16 the Commission without modification."  
17

18 **Q. Please explain your intended meaning of the term "the public interest"**  
19 **as you use it in your supplemental testimony.**

20 A. As I explained in my June 21 testimony, I believe that the "public interest"  
21 means the public welfare generally, and this includes considerations of the  
22 overall health of the Florida economy and the welfare of all Florida

1 citizens. With respect to a specific utility such as FPL, including both the  
2 historical FPL and the new, combined FPL including Gulf Power  
3 Company, this means at least the welfare of all of the people served and  
4 directly affected by the utility's service. This includes considerations of the  
5 economic impacts of a utility's rates and rate increase requests on  
6 individuals, households, and businesses. To be completely clear, I am not  
7 advocating in any way that low-income customers should be subsidized by  
8 a utility's other customers or by the utility's shareholders, but I am saying  
9 that the PSC must consider the overall impacts on the Florida economy and  
10 on all customers in making its decisions on rate increases, whether pursuant  
11 to a rate increase petition or pursuant to a settlement agreement.

12 In present-day, real-world circumstances, the PSC must recognize  
13 that many Floridians, Florida households, and Florida businesses are still  
14 struggling toward recovery from the impacts of the COVID-19 pandemic.  
15 It is obvious that, as of this writing, Florida and Floridians are suffering  
16 even more from the pandemic than they were when FPL filed its original  
17 rate petition in March. Given the continuing impacts of the COVID-19  
18 pandemic on Florida, I believe that the Commission must consider the  
19 impacts that the Settlement Agreement would impose on all Floridians  
20 through the massive transfer of spending power and wealth from FPL's  
21 customers to FPL and its sole shareholder, NextEra Energy.

22

**THE SETTLEMENT AGREEMENT IS CONTRARY  
TO THE PUBLIC INTEREST**

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**Q. In your opinion, is the Settlement Agreement in the public interest?**

**Please explain your opinions.**

A. No. The Settlement Agreement is contrary to the public interest of Florida and Floridians because, if approved, it will unnecessarily transfer unreasonable amounts of purchasing power – more than \$3 billion – from the pockets and pocketbooks of hard-working Floridians and businesses to FPL and NextEra over the next four years. This will hurt the Florida economy and is particularly egregious given that our state is still suffering greatly from the COVID-19 pandemic.

Perhaps the worst aspect of the Settlement Agreement is that most, if not all, of these increases are not necessary for FPL to fulfill its obligation to provide safe and reliable service at the lowest possible cost. FPL can and should provide service in 2022 with rates no greater than its current rates. The Public Counsel’s witnesses support an overall rate reduction for FPL’s customers of approximately \$70 million per year in 2022, and FAIR’s witnesses support a similar reduction of at least \$121 million per year in 2022. While the Federal Executive Agencies take no position on the ultimate revenue increase, their witness, Michael Gorman, supports an ROE of 9.40 percent and an equity ratio of 53.5 percent, which together would produce

1 revenue requirement results similar to those advocated by the Public  
2 Counsel's witnesses and FAIR's witnesses.

3

4 **Q. How do you estimate that the Settlement Agreement would produce**  
5 **excess revenues on the order of \$3 billion for FPL and its shareholder,**  
6 **NextEra?**

7 A. My estimate is based on a comparison of the additional base rate revenues  
8 that the Settlement Agreement would give FPL to what I believe is a  
9 generous estimate of what FPL might otherwise be able to justify for the  
10 years 2023 through 2025. The revenue increases set forth in the Settlement  
11 Agreement would yield total additional base rate payments to be made by  
12 Florida citizens and businesses to FPL of approximately \$4.868 billion over  
13 the 2022-2025 period covered by the Settlement Agreement. (This is the  
14 simple sum of four times the 2022 increase of \$692 million per year, plus  
15 three times the 2023 increase of \$560 million per year, plus two times the  
16 approximate 2024 SOBRA rate increase of \$140 million per year, plus the  
17 2025 SOBRA increase of approximately \$140 million per year. (The 2022  
18 and 2023 base rate increase values are taken directly from page 5 of the  
19 Settlement Agreement. The SOBRA values were taken from FPL president  
20 Silagy's letter to Chairman Clark dated January 11, 2021, page 3.) In 2025,  
21 when all of these annual increases would be in effect, the total annual base  
22 rate increases would be more than \$1.5 billion per year.

1           To provide a reasonable or generous estimate of what FPL might  
2 otherwise be able to justify, I start with the positions advocated by the Public  
3 Counsel's witnesses and also by FAIR's witnesses, which indicate that FPL  
4 should be required to reduce its base rates in 2022. From there, I considered  
5 whether FPL should perhaps be allowed to increase its rates in 2023. While  
6 I am not convinced that FPL needs an increase in 2023, if, for the sake of  
7 argument, one were to assume that the Public Counsel's position that FPL  
8 should be allowed to increase its rates by approximately \$417 million per  
9 year in 2023, and further to assume that both the 2024 and 2025 SOBRA  
10 increases were approved, the total *cumulative* base rate revenues that FPL  
11 would receive over the 2022-2025 period would be approximately \$1.671  
12 billion, over the four years, and the total *annual* rate increases as of 2025  
13 would be \$697 million per year. These revenue increases are dramatically  
14 less than the Settlement Agreement would provide: specifically, the four-  
15 year cumulative difference is more than \$3 billion (\$4.868 billion minus  
16 \$1.671 billion = \$3.197 billion), and the difference in the cumulative annual  
17 increases is more than \$800 million per year (\$1.532 billion per year minus  
18 \$697 million per year = \$835 million per year).

19

20

1 **Q. How can you say that the increases provided for in the Settlement**  
2 **Agreement are unnecessary?**

3 A. The Settlement Agreement increases, at least for 2022, are simply  
4 unnecessary because FPL can do its job of providing safe and reliable service  
5 with no increases at all next year. The revenue *decrease* proposed by FAIR,  
6 like the revenue *decrease* proposed by the Public Counsel for 2022 (in its  
7 positions stated in the Prehearing Order for this docket, Order No. PSC-2021-  
8 0302-PHO-EI, at page 169), would still allow FPL to recover *all* of its O&M  
9 costs, *all* of its interest expense, and *all* of its depreciation expense, and still  
10 provide a *reasonable return* on a *reasonable amount of equity capital* in  
11 FPL's capital structure. Similarly, while the decrease recommended by the  
12 Public Counsel does include some rate base and other adjustments, it is  
13 obvious that the ROE and equity ratio values recommended by the Public  
14 Counsel's witnesses – an ROE of 8.75 percent recommended by Professor  
15 Randall Woolridge and an equity ratio of 55.0 percent recommended by  
16 OPC's witness Kevin O'Connell – would produce results nearly identical to  
17 those recommended by FAIR's witnesses even without any other  
18 adjustments. It is also obvious that, while the Federal Executive Agencies  
19 did not take a position on revenue requirements, the recommendations of its  
20 cost of capital witness, Michael Gorman, specifically an ROE of 9.40 percent  
21 and an equity ratio of 53.5 percent, would produce similar results.

1           The bottom line is simple: FPL can do its job of providing safe and  
2 reliable service with no increase in 2022 and still earn a reasonable return on  
3 a reasonable amount of equity capital while covering all of its other costs and  
4 expenses and making all of its planned investments for 2022. At best, the  
5 Settlement Agreement would impose *excessive rates and charges on FPL's*  
6 *customers on the order of \$3 billion* over the 2022-2025 period, and the  
7 Settlement Agreement would result in annual rates as of 2025 that are *more*  
8 *than \$800 million per year* higher than necessary.

9           The PSC should also keep in mind the fact that, if approved, the  
10 increases provided by the Settlement Agreement would be the largest electric  
11 rate increases in Florida history.

12  
13 **Q. You have stated that the Settlement Agreement rate increases would be**  
14 **the largest in Florida history. Upon what do you base this statement?**

15 A. I base this statement on data presented in the Public Service Commission's  
16 report titled, "REVENUE REDUCTIONS AND INCREASES ORDERED  
17 BY THE FLORIDA PUBLIC SERVICE COMMISSION FOR CERTAIN  
18 INVESTOR-OWNED ELECTRIC AND NATURAL GAS UTILITIES,  
19 UTILITIES FROM 1960 TO PRESENT (All Utilities from 1968 to  
20 Present)," which is included as Exhibit No. JTH-2 to my June 21 testimony.  
21 This document shows the amounts requested and amounts approved for  
22 Florida's investor-owned electric utilities from 1960 to the present. Casual

1 or detailed examination will readily show that the largest previous request  
2 was FPL's request in Docket No. 20080677-EI seeking a \$1.043 billion  
3 annual increase in 2010 to be followed by a \$247 million annual increase in  
4 2011. These requests were nearly as large as FPL's requests in this case.

5 The largest base rate increases previously approved by the PSC were  
6 those approved in the settlement of FPL's 2016 rate case, in Docket No.  
7 20160021-EI. The actual base rate increases in that case were \$400 million  
8 in 2017, \$211 million in 2018, a plant-specific increase of \$200 million in  
9 mid-2019, and four SOBRA increases totaling approximately \$210 million  
10 per year between 2017 and 2020. These are obviously much less than the  
11 increases in the current proposed Settlement Agreement.

12  
13 **Q. Are there other aspects of the Settlement Agreement that are contrary**  
14 **to the public interest?**

15 A. Yes. The 10.60 percent ROE that the Settlement Agreement would allow is  
16 unreasonable, as is the proposed 59.6 percent equity ratio. The authorized  
17 range of allowable returns on equity, from 9.70 percent to 11.70 percent,  
18 would potentially allow FPL to earn even more excessive returns; further, if  
19 the PSC were to approve the RSAM without capping its use at the midpoint  
20 ROE, it would, based on FPL's recent observed behavior, ensure that FPL  
21 would earn returns greater than the just and reasonable midpoint return,  
22 whatever that is determined to be.

1 **Q. Are you aware of other information that would inform the PSC as to**  
2 **whether the rate increases, ROE, and equity ratio in the Settlement**  
3 **Agreement are reasonable?**

4 A. Yes, I am. Keeping in mind that it is FPL's job – I would argue its duty,  
5 although FPL prefers to call it a “goal” – to provide safe and reliable service  
6 at the lowest possible cost, the PSC must recognize that many other utilities  
7 provide safe and reliable service with ROEs and equity ratios significantly  
8 less than those requested by FPL in the Settlement Agreement. Relevant  
9 results for 2020 have already been presented in testimony and exhibits in this  
10 case. For the first eight months (January through August) of 2021, the  
11 available data show that, for vertically integrated electric utilities, the ROEs  
12 approved by state regulatory authorities, including the Florida PSC, have  
13 ranged from a low of 9.00 percent (in New Mexico for El Paso Electric  
14 Company) to a high of 9.85 percent, by the Florida PSC for Duke Energy  
15 Florida. The average ROE for the ten reported cases during this period was  
16 9.47 percent. Only seven of these cases had identifiable equity ratios, and  
17 the average of those was 51.62 percent.

18 The Florida PSC's decision to approve the settlement agreement  
19 negotiated by Duke Energy Florida, the Florida Public Counsel, and other  
20 intervenor parties, is notable: the ROE was 9.85 percent, the highest in the  
21 U.S. so far this year, and the equity ratio was 53.0 percent. Order No. PSC-  
22 2021-0202-AS-EI, issued June 4, 2021, at pages 3 and 12. Tampa Electric

1 Company has also presented a settlement agreement to the PSC, also joined  
2 by the Public Counsel, with an ROE of 9.95 percent and an equity ratio or  
3 54.0 percent. In re: Petition for Rate Increase by Tampa Electric Company,  
4 Docket No. 20210034-EI, Tampa Electric Company's Motion to Suspend  
5 Procedural Schedule and Approve 2021 Stipulation and Settlement  
6 Agreement, FPSC Document No. 08857-2021, at 2-3 (filed August 6, 2021).

7 The corresponding values of the key financial variables – ROE and  
8 equity ratio – translate into vast sums of customer money for FPL. Even  
9 taking the ROE alone, FPL has acknowledged that 100 basis points  
10 represents approximately \$360 million per year in 2022, and \$386 million  
11 per year in 2023. If FPL, the Public Counsel, and the other Settling Parties  
12 would have negotiated an ROE of 9.5 percent, which is slightly above the  
13 national average for this year, the difference in revenue requirements –  
14 customer payments to FPL – would have been \$396 million in 2022 and  
15 approximately \$424 million per year in 2023, 2024, and 2025. This simple  
16 difference, with no adjustment of the equity ratio, would amount to well over  
17 \$1.6 billion over the proposed term of the Settlement Agreement. The  
18 difference if they had agreed to the ROE that Duke Energy Florida and the  
19 Public Counsel negotiated in the settlement approved by the PSC, again  
20 without involving the equity ratio, would have been over \$1.1 billion.

21 These are significant amounts of money to pandemic-impacted  
22 Floridians and Florida businesses. Recognizing the objective measures of

1 what utilities need to provide service, as shown by national data and by the  
2 Duke settlement approved by the Florida PSC, it is not in the public interest  
3 in any way to approve a deal that transfers such amounts of purchasing power  
4 from Floridians to FPL and NextEra in ordinary time, let alone when our  
5 state and her citizens continue to suffer from the COVID-19 pandemic.

6

7 **Q. Isn't it true that the settlement approved by the PSC in 2016, which**  
8 **included both FPL and the Office of Public Counsel as signatories, had**  
9 **some terms that are similar to those in the 2021 Settlement**  
10 **Agreement? If this is true, then how can you criticize the Settlement**  
11 **Agreement in this case?**

12 A. In the first place, any settlement, like any rate case proposal, must be  
13 evaluated on its own merits. For the reasons explained above, it is my  
14 strong opinion that the rate increases that the Settlement Agreement  
15 proposed in this docket would be excessive and harmful to Floridians and  
16 Florida businesses both in the short run and in the long run. In summary,  
17 the Settlement Agreement in this case is contrary to the public interest of  
18 Florida, Florida citizens, and Florida businesses.

19 Having made these points clear, I will agree that the ROE, the equity  
20 ratio, and the RSAM provisions of the Settlement Agreement in this case  
21 are nearly identical to those in the 2016 settlement. The ROE in this case is  
22 10.60 percent as compared to 10.55 percent in the 2016 settlement, the

1 equity ratio is identical, and the RSAM is similar, although the 2016  
2 settlement had a smaller original balance, \$1.25 billion as compared to  
3 \$1.45 billion in the current proposed Settlement Agreement.

4 However, there are three significant differences between these two  
5 settlements. First, the total amounts that the current Settlement Agreement  
6 would take from Floridians are much greater than the total rate and revenue  
7 increases that resulted from the 2016 settlement. Second, the percentage of  
8 FPL's original request that the current Settlement Agreement would  
9 provide to FPL is significantly greater. And finally, the market costs of  
10 capital are significantly lower today than in 2016, indicating that the ROE  
11 that the Settling Parties have agreed to in the current Settlement Agreement  
12 is excessive. Considering all factors, the current Settlement Agreement is a  
13 very bad deal for FPL's customers and for Florida, and it should be  
14 rejected.

15  
16 **Q. Please summarize the total cost impacts that would be imposed on**  
17 **FPL's customers by the current Settlement Agreement as compared to**  
18 **those under the 2016 settlement.**

19 A. The total amounts of money – of purchasing power otherwise in the hands,  
20 pockets, and checking accounts of Floridians – that the current Settlement  
21 Agreement would take from Floridians and Florida businesses is much  
22 greater than the corresponding amounts in the 2016 settlement. The total

1 additional base rate revenues over four years, per the 2016 settlement as  
2 shown in Exhibit No. JTH-2 was approximately \$3.126 billion, including  
3 the mid-2019 increase for FPL's Okeechobee generating unit and including  
4 SOBRA increases in 2017, 2018, 2019, and 2020, and carrying forward all  
5 increases through 2020 in order to provide a comparable four-year  
6 comparison. The total amount of customer money that FPL would take  
7 under the current proposed Settlement Agreement greatly exceeds the  
8 amount obtained under the 2016 settlement: \$4.868 billion minus \$3.126  
9 billion = \$1.742 billion.

10 Similarly, the annual rate increases in the fourth year of the 2016  
11 settlement, including the Okeechobee increase and all of the SOBRA  
12 increases, were \$1.033 billion per year, which is \$500 million a year less  
13 than the \$1.532 billion per year that the current Settlement Agreement  
14 would impose in its fourth year.

15  
16 **Q. Please explain the differences between the amounts that the settling**  
17 **parties in 2016 agreed to as compared to the amounts that the Settling**  
18 **Parties to the current Settlement Agreement allowed FPL to take from**  
19 **customers.**

20 A. Comparing the two base rate increases requested by FPL in its 2016 case to  
21 the corresponding settlement amounts shows that the 2016 settlement deal  
22 agreed to by the Public Counsel serving at that time provided

1 approximately 54 percent of FPL's original request in the increases  
2 approved in the 2016 settlement. Including FPL's annual Okeechobee  
3 request of \$209 million per year and all four of the SOBRA increases, the  
4 percentage becomes 66.3 percent. By comparison, the percentage of the  
5 annual base rate requests agreed to in the current Settlement Agreement is  
6 76.8 percent.

7 The total revenue increases over the four-year term that the current  
8 Settlement Agreement would give FPL, \$4.868 billion, represents  
9 approximately 73.0 percent of the total revenues requested in FPL's original  
10 filing. By comparison, the total revenue increases to FPL per the 2016  
11 settlement represented about 59.6 percent of FPL's original requests (\$3.126  
12 billion divided by \$5.243 billion). The bottom line is simple: the current  
13 Settlement Agreement would give FPL much more outright revenues and a  
14 significantly greater percentage of its original request than did the 2016  
15 settlement.

16  
17 **Q. Please explain why you believe that current capital market conditions**  
18 **are different from those in 2016.**

19 **A.** In simple terms, the cost of capital is significantly less today than it was when  
20 the 2016 settlement was agreed to. The yield rate on 30-year U.S. Treasury  
21 bonds is widely regarded as the appropriate measure of the risk-free cost of  
22 capital. The 2016 settlement was executed on October 6, 2016, and the

1 current Settlement Agreement was executed on August 9, 2021. My Exhibit  
2 No. JTH-7 shows the yield rates for 30-year U.S. Treasury bonds for the  
3 month of October 2016 and the month of August 2021. The average of the  
4 daily yield rates for October 2016 was 2.50 percent, which is approximately  
5 58 basis points greater than the average of the daily yield rates for the  
6 corresponding period of August 2021. While this difference is not directly  
7 dispositive of the question as to what a reasonable return would be for FPL  
8 in this case – which, of course, is addressed extensively by witnesses in this  
9 case – it clearly indicates that overall costs of capital are less now than in  
10 2016, which should inform the PSC that the ROE approved here should be  
11 less than the ROE in 2016.

12 Of course, the PSC also has readily available information regarding  
13 appropriate ROEs for electric utilities that support this same conclusion. The  
14 national average ROE for vertically integrated U.S. electric utilities in the  
15 first eight months of 2021 was only 9.47 percent, and the highest ROE  
16 approved thus far in the U.S. in 2021 is the 9.85 percent approved by the  
17 Florida PSC for Duke Energy Florida. The PSC will also note that the  
18 average equity ratio for U.S. utility decisions involving vertically integrated  
19 utilities was 51.62 percent, and that the equity ratio for Duke Energy Florida  
20 approved by the PSC is 53.0 percent (also the highest reported in the U.S. so  
21 far this year). These data strongly support what I believe is the obvious

1 conclusion that the 10.60 percent ROE in the Settlement Agreement is  
2 grossly excessive.

3

4 **Q. Please summarize your opinions regarding the comparison of the**  
5 **Settlement Agreement proposed in this case to the settlement agreement**  
6 **approved by the PSC for FPL in 2016.**

7 A. While the ROE, equity ratio, and RSAM provisions of both settlements are  
8 similar, the current Settlement Agreement is much more generous to FPL,  
9 and as a result, much more injurious to FPL's customers, than was the 2016  
10 settlement. The customer-adverse provisions that stand out the most are the  
11 fact that the current Settlement Agreement would give FPL much more of  
12 customers' money – more than \$1.7 billion more – than the 2016 settlement,  
13 while also giving FPL significantly more as a percentage of its original  
14 requests, all while allowing FPL to earn an unreasonably high return on  
15 equity as compared to current capital market conditions vs. those that existed  
16 when the 2016 settlement was negotiated.

17

18 **Q. In your opinion, are the higher rates that customers would pay under**  
19 **the Settlement Agreement fair and reasonable in light of the fact that**  
20 **FPL would agree not to further increase its base rates during the term**  
21 **of the Settlement Agreement?**

1 A. No. In short, the price that customers would pay – in excessive rates and  
2 revenues – for the “rate stability” that would nominally be afforded by the  
3 Settlement Agreement is simply excessive. FPL does not need the 2022  
4 increase that the Settlement Agreement would give it, and probably does not  
5 need all of what the Settlement Agreement would provide in 2023, 2024, or  
6 2025. Customers should not be asked to pay more than FPL needs to provide  
7 safe and reliable service, cover its legitimate operating and interest costs, and  
8 earn a reasonable return on its investment. The excess revenues that FPL  
9 would earn under the Settlement Agreement simply do not justify over-  
10 paying for their service.

11

12 **FPL’S PROPOSED “RESERVE SURPLUS AMORTIZATION MECHANISM”**

13 **Q. What is FPL’s proposed “Reserve Surplus Amortization Mechanism,”**  
14 **or “RSAM” in the Settlement Agreement?**

15 A. Let me start by observing that the RSAM in the Settlement Agreement  
16 appears to be virtually identical to the RSAM proposed in FPL’s original  
17 case; the only apparent differences are the total amount of depreciation  
18 reserve, \$1.45 billion in the Settlement Agreement as compared to \$1.48  
19 billion in FPL’s original filing, and a limit, only applicable in 2022, on the  
20 amount that FPL can amortize in 2022 to \$200 million. (Again, this limit is  
21 only applicable in 2022; FPL otherwise has complete discretion subject to  
22 its ROE not exceeding 11.70 percent under the Settlement Agreement.)

1 **Q. In the context of the Settlement Agreement, is this RSAM proposal in**  
2 **the public interest?**

3 A. No. At a minimum, as proposed by FPL and as previously employed by  
4 FPL, it is contrary to the public interest because it allows FPL to earn  
5 returns above the fair and reasonable midpoint ROE and results in unfair,  
6 unjust, and unreasonable rates being charged to FPL's customers.

7 As employed by FPL, FPL can debit the RSAM or "Reserve  
8 Surplus" account in its discretion to offset amortization expense, which  
9 increases book earnings, and it can use any amount available in the RSAM  
10 account to achieve earnings up to the top of its ROE range. If FPL is  
11 allowed to use up a depreciation surplus of any amount, e.g., the \$1.45  
12 billion surplus allowed for in the Settlement Agreement, such that that  
13 surplus is fully depleted at the end of the four-year period, then FPL's  
14 customers as of that time will be deprived of the rate-reduction benefits that  
15 the surplus would provide when applied to FPL's future rate base.  
16 Whatever the amount of FPL's rate base might be in the future, if FPL is  
17 allowed to use up the surplus, then FPL's rate base in its next rate case  
18 would be \$1.45 billion greater than if the surplus were not used up, and  
19 FPL's future customers would be saddled with the capital costs – return on  
20 equity and interest cost – of that much greater rate base. This is clearly  
21 intergenerational inequity!

1           The public interest point and the fairness point are the same:  
2           customers create any depreciation surplus by over-paying depreciation  
3           expense over time. Standard regulatory accounting and ratemaking practice  
4           is to flow back this customer-created value to the utility's customers;  
5           although the term of the amortization period (e.g., 4 years vs. 20 years) is  
6           sometimes disputed by parties in a rate case, the customer-created surplus  
7           value is always flowed back to customers. This standard treatment is fair  
8           and in the public interest. FPL's proposal, in stark contrast, would keep up  
9           to the entire \$1.45 billion of customer-created value for FPL and its  
10          shareholder.

11           I have reviewed the testimony of FAIR's witness Tim Devlin on this  
12          subject, and I agree with Mr. Devlin that the RSAM provided for in the  
13          Settlement Agreement is contrary to the public interest. I further agree that,  
14          if any RSAM-type proposal is to be allowed in this case, FPL's ability to  
15          use it should be capped to only amounts necessary for FPL to achieve its  
16          midpoint ROE, which is the fair and reasonable return to FPL's equity  
17          investor.

18           Relative to my earlier discussion regarding the partial comparability  
19          of the 2016 settlement and the current proposed Settlement Agreement, I  
20          would add the following regarding the RSAM. The RSAM provision in this  
21          Settlement Agreement is also likely to harm FPL's customers in the same  
22          way that the RSAM provision in the 2016 settlement harmed them. The first

1 harm would likely be enabling FPL to earn returns that are consistently 100  
2 basis points above the midpoint ROE, which is supposed to be the “fair and  
3 reasonable” or the “fair, just, and reasonable” return on FPL’s equity  
4 investment. This is what occurred under the 2016 settlement, and there is  
5 every reason to expect that FPL will attempt to get the same results if given  
6 the opportunity to do so. Second, the RSAM would harm FPL’s customers  
7 by depriving them of the depreciation reserve that their payments of  
8 depreciation expense should and would, under normal regulatory accounting  
9 principles, create and be applied to reduce FPL’s rate base in its next rate  
10 case. Rates that produce returns that are consistently 100 basis points above  
11 the fair and reasonable return level are unfair, unjust, and unreasonable, and  
12 taking customer-created surplus value for the benefit of FPL and its  
13 shareholder, NextEra Energy, is equally unfair, unjust, and unreasonable.  
14 The mere fact that the two settlement agreements are similar in this regard  
15 does not make either one of them consistent with the public interest of Florida  
16 and Floridians.

17

18 **SUMMARY AND RECOMMENDATIONS**

19 **Q. Please summarize your opinions regarding the proposed Settlement**  
20 **Agreement.**

21 A. In closing, my opinions regarding the rate increases that would be imposed  
22 on FPL’s customers by the Settlement Agreement are substantially the

1 same as my opinions regarding FPL's original rate increase requests: the  
2 PSC should reject the Settlement Agreement for essentially the same  
3 reasons that it should reject FPL's original requests. While the Settlement  
4 Agreement would result in modestly less money being taken from  
5 Floridians and Florida businesses unnecessarily than FPL's original request  
6 would have taken, it is my opinion that FPL has generally fulfilled its  
7 mission to provide safe, reliable, and reasonably priced energy services  
8 within the revenue parameters of its current base rates, and no further base  
9 rate increases are necessary, at least not for 2022! To the same effect, the  
10 RSAM in the Settlement Agreement is essentially the same as the RSAM in  
11 FPL's original case, and it should be rejected for the reasons discussed in  
12 my testimony above.

13           Given that the Settlement specifically provides that it is an "all or  
14 nothing" deal, the PSC should reject the Settlement Agreement because it is  
15 contrary to the public interest.

16  
17 **Q. Does this conclude your supplemental direct testimony regarding the**  
18 **proposed Settlement Agreement?**

19 **A.** Yes, it does.

1 BY MR. WRIGHT:

2 Q Mr. Herndon, did you also identify, assemble,  
3 and cause to be filed with your supplemental direct  
4 testimony two exhibits that were identified in your  
5 testimony as Exhibit No. JTH-6 and JTH-7?

6 A Yes.

7 MR. WRIGHT: Mr. Chairman, I note for the  
8 record that Mr. Herndon's exhibits in the  
9 settlement case have been identified as  
10 Exhibits 493 and 494 in the comprehensive exhibit  
11 list.

12 BY MR. WRIGHT:

13 Q Mr. Herndon, please summarize your testimony  
14 for the Commissioners.

15 A I'll be happy to.

16 Good afternoon, Commissioners. Thank you for  
17 the opportunity to be here today. It's been close to 30  
18 years since I was a Commissioner, but I can guarantee  
19 you I don't envy you the position you're in dealing with  
20 this rate case.

21 In my June 21st testimony, regarding FP&L's  
22 request for rate increases set forth in its originally-  
23 filed case, I explained how and why I believe that,  
24 number one, FP&L's requests were excessive. They  
25 represent the largest rate-increase request in Florida

1 regulatory history and would, if approved, represent the  
2 largest rate increase in Florida history.

3           If granted, they would result in unfair,  
4 unjust, and unreasonable rates being charged to FP&L's  
5 customers and, if granted, they would be contrary to the  
6 public interest of Floridians by causing an unreasonable  
7 transfer of wealth from the pockets of FP&L's customers  
8 to FP&L and its sole shareholder, NextEra Energy, Inc.

9           Nothing has occurred or come to light that  
10 would change any of my opinions since that June 21st  
11 testimony, but I'd like to address the new issue that's  
12 posed by this hearing and by the proposed settlement  
13 agreement.

14           The real question presented is whether the  
15 settlement agreement, taken as a whole, is in the public  
16 interest. And, in summary, while the settlement  
17 agreement would take slightly less money out of the  
18 pockets and checking accounts of FP&L's customers over  
19 the next four years, FP&L would still earn profits that  
20 are unreasonably high, by any objective measure.

21           FP&L's rates would, correspondingly, still be  
22 unfair, unjust, and unreasonable because they would be  
23 dramatically higher than necessary for FP&L to provide  
24 safe and reliable service, while covering all of its  
25 costs and earning a reasonable return.

1           Like FP&L's original request, the settlement  
2 agreement would still result in the largest rate  
3 increase in the history of Florida electric utility  
4 regulation.

5           Moreover, the settlement agreement's  
6 provisions that would allow FP&L to earn even more by  
7 amortizing -- i.e., using up its projected depreciation  
8 reser- -- reserve surplus to earn even higher returns --  
9 would most likely deprive future FP&L customers of the  
10 rate-reducing benefits that the depreciation reserve  
11 surplus would and should provide in FPL's next rate  
12 case -- FP&L's customers of the rate-reducing benefits  
13 that the depreciation reserve surplus would and should  
14 provide in the next FP&L rate case.

15           Based on FP&L's observed practices of recent  
16 years, this impact would likely be to deprive FP&L  
17 customers of somewhere between 1 billion and 1.5 billion  
18 of rate-reducing value in FP&L's next rate case. This  
19 is a clear-cut case of unfair intergenerational  
20 inequity.

21           As Mr. Devlin has pointed out, FP&L's  
22 customers overpaid for this depreciation and, if the  
23 past is any prologue, then FPL will use that money to  
24 reward the owners, not the customers, of FP&L.

25           I would make these direct points in closing:

1 first, as it stands, the settlement agreement is  
2 contrary to the public interest and should be rejected;

3 Second, just because the proposed settlement  
4 agreement would take slightly less money from customers  
5 than FP&L's initial overreaching request does not make  
6 it a good or fair deal in any respect;

7 And, finally, in the current state of  
8 conditions facing Floridians, notably driven by the  
9 COVID-19 pandemic, this Commission should recognize that  
10 you have great leeway to set FP&L's rates within a range  
11 that is supported by the evidence in this case. You're  
12 not bound to adopt the settlement agreement. You can  
13 impose whatever rates that you choose on FP&L.

14 In the public interest and the interest of  
15 Florida's citizens and businesses, you should consider  
16 this and do what you can to ensure that FP&L's revenues  
17 and rates are set at the lowest possible level that is  
18 consistent with safe and reliable service.

19 And contrary to what you may have heard today,  
20 in some respects, I add that, in closing, FP&L's  
21 residential customers get the short end of the stick  
22 even though, in their settlement, they make up the  
23 majority of FP&L's customers.

24 And that completes my testimony. And thank  
25 you, again, for the opportunity. It's nice to be back

1 here.

2 MR. WRIGHT: Thank you, Mr. Herndon.

3 Mr. Chairman, I tender Mr. Herndon for cross-  
4 examination.

5 CHAIRMAN CLARK: All right. Any parties have  
6 any questions?

7 No parties.

8 Staff?

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

10 CHAIRMAN CLARK: Commissioners?

11 Mr. Wright.

12 MR. WRIGHT: Thank you, Mr. Chairman. I would  
13 move Exhibit 3- -- sorry -- Exhibit 493 and 494  
14 into the record.

15 CHAIRMAN CLARK: So moved.

16 MR. WRIGHT: Thank you.

17 (Whereupon, Exhibit Nos. 493 and 494 were  
18 admitted into the record.)

19 MR. WRIGHT: And, with that, may Mr. Herndon  
20 be excused for the remainder of the day?

21 CHAIRMAN CLARK: You're excused. And thank  
22 you for your testimony --

23 THE WITNESS: Thank you.

24 CHAIRMAN CLARK: -- Mr. Herndon.

25 MR. WRIGHT: Thank you, Mr. Chairman. And



1           A     Yes, I did.

2                   MR. MARSHALL: Mr. Chairman, I would note  
3           that, in the comprehensive exhibit list, those  
4           exhibits are marked as 484 through 492.

5                   CHAIRMAN CLARK: Noted.

6 BY MR. MARSHALL:

7           **Q     Do you have that testimony and those exhibits**  
8 **with you today?**

9           A     Yes.

10          **Q     If I asked you the same questions today, would**  
11 **your answers be the same?**

12          A     The same or substantially the same, yes.

13          **Q     And do you have any changes to your prefiled**  
14 **testimony?**

15          A     I do not.

16                   MR. MARSHALL: Mr. Chairman, at this point,  
17           I'd like to have Mr. Rabago's prefiled testimony  
18           regarding the settlement entered into the record as  
19           though read.

20                   CHAIRMAN CLARK: So ordered.

21                   (Whereupon, Witness Rabago's prefiled  
22           supplemental direct testimony was inserted into the  
23           record as though read.)

24

25

Direct Testimony of Karl R. Rábago  
On Motion to Approve Settlement  
FL RISING/LULAC/ECOSWF  
Florida PSC, Docket No. 20210015-EI

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re:   Petition for rate increase    )  
          by Florida Power & Light    )     DOCKET NO. 20210015-EI  
          Company                        )**

**DIRECT TESTIMONY**

**IN OPPOSITION TO MOTION TO APPROVE SETTLEMENT**

**OF KARL R. RÁBAGO**

**ON BEHALF OF**

**FLORIDA RISING, INC.,**

**LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS OF FLORIDA,**

**AND**

**ENVIRONMENTAL CONFEDERATION  
OF SOUTHWEST FLORIDA, INC.,**

September 13, 2021

1 **I. INTRODUCTION AND OVERVIEW**

2 **Q. Please state your name, business name, and address.**

3 A. My name is Karl R. Rábago. I am the principal of Rábago Energy LLC, a Colorado  
4 limited liability company, located at 2025 E. 24<sup>th</sup> Avenue, Denver, Colorado.

5 **Q. On whose behalf are you appearing in this proceeding?**

6 A. I appear here in my capacity as an expert witness on behalf of Florida Rising, Inc.  
7 (“FL Rising”), the League of United Latin American Citizens of Florida (“LULAC”),  
8 and the Environmental Confederation of Southwest Florida, Inc. (“ECOSWF”).

9 **Q. Are you the same Karl R. Rábago that previously submitted testimony in this  
10 proceeding on behalf of FL Rising, LULAC, and ECOSWF?**

11 A. Yes.

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

13 A. The purpose of my testimony is to share my evaluation of the motion for approval of  
14 the partial settlement agreement filed by Florida Power and Light Company  
15 (“Company”) in this proceeding, dated 10 August 2021. As a result of that evaluation,  
16 I conclude that the proposed settlement would constitute a fundamental injustice for  
17 the Company’s customers and should therefore be disapproved.

18 **II. OVERALL ASSESSMENT OF THE PROPOSED SETTLEMENT**

19 **Q. What is your overall assessment of the proposed non-unanimous settlement?**

20 A. My overall assessment of the proposed settlement is that it is fundamentally  
21 unreasonable, unjust, and unfair and should not be approved. The proposed settlement  
22 imposes excessive and unnecessary costs on residential and small business customers  
23 in order to: (1) unnecessarily and unreasonably inflate the bloated returns the  
24 Company already takes from customers, (2) add massive new solar generation and  
25 electric vehicle spending in a cynical manner that extracts monopoly rents from

1 customers in order to subsidize a relatively few customers that can well-afford paying  
2 their full share of voluntary programs, (3) manipulates depreciation rates and  
3 schedules to disguise the true current costs of spending and impose unjust burdens on  
4 future customers, and, (4) outrageously, seeks to ensure that customers lose  
5 significant control over their energy bills and reduced benefits from installing energy  
6 efficiency, distributed generation, or other distributed resources by surreptitiously  
7 mandating a new minimum bill for residential customers that was never even  
8 proposed in the original rate application. Overall, the settlement results in the unjust  
9 transfer of wealth of billions of dollars from residential customers, including low-  
10 income customers and small businesses, to large commercial and industrial  
11 customers.

12 **Q. What is the relationship between your testimony in response to the proposed**  
13 **settlement and your previously filed direct testimony in this proceeding or other**  
14 **proceedings?**

15 A. The settlement proposal builds on an unreasonable initial proposal by the Company.  
16 My direct testimony in this proceeding explains why the original application was  
17 deficient, unjust, unreasonable, and unfair. I attach that testimony to this testimony as  
18 a matter of administrative economy as Exhibit KRR-7, and to establish a foundation  
19 for this testimony. In addition, because the proposed settlement calls for a massive  
20 expansion of the solar cross-subsidy program that the Company calls  
21 “SolarTogether,” and which was the foundation of Duke Energy Florida’s similar  
22 program in Commission Docket No. 20200176-EI, I attach my testimony from that  
23 proceeding as well as Exhibit KRR-8. While the specific numbers in the proceedings  
24 differ, the fact that the Company proposes in this testimony an expansion of its  
25 program based on the socializing of voluntary program costs to non-participating

1 customers makes that testimony relevant here.

2 **Q. Are you aware that the proposed settlement is being supported by many of the**  
3 **litigant parties in this proceeding?**

4 A. Yes. And I am aware that there can be non-unanimous settlements in rate making and  
5 that in some cases a regulatory commission can determine that such settlement  
6 proposals are in the public interest and can be approved. However, as I will point out  
7 in my testimony, there are so many ways in which this settlement egregiously burdens  
8 residential customers and small businesses and requires them to fund massive  
9 handouts to the Company and to large commercial and industrial customers that the  
10 net result fails to meet the standard of just, reasonable, and fair.

11 **Q. In your opinion, how can all those parties be in support of a proposed settlement**  
12 **that contains as many terrible features as this one?**

13 A. As a public utility commissioner and as a regulatory party and an expert witness, I  
14 have ruled on, crafted, negotiated, and joined in or opposed many settlement  
15 proceedings. In all my experience, this is the only settlement proposal that I have ever  
16 seen that appears objectively worse for residential customers than the original rates  
17 proposed by the utility. I was not a part of the settlement negotiations in this  
18 proceeding. However, in general, the reasons a diverse set of non-unanimous parties  
19 supports and defends any settlement proposal are one or both of two: (1) they got  
20 what they wanted for themselves, and/or (2) they don't believe they can get any better  
21 results through a contested proceeding. None of the settling parties ever bears the full  
22 public interest obligation borne by the Commission and the exclusionary nature of a  
23 non-unanimous settlement ensures that the public interest was not reflected in the  
24 settlement negotiations. This combination of selfishness and/or fear at work in a  
25 proposed non-unanimous settlement is why regulators, who are obligated to protect

1           and advance the public interest, should be extremely wary of such proposals,  
2           rigorously test the underlying facts and implications of the agreement, and apply  
3           independent judgment on the reasonableness, fairness, and justice of the proposed  
4           results. A proposed non-unanimous settlement, especially one in which not every  
5           proper party with standing has had a full opportunity to participate, has the pernicious  
6           effect of inviting in-parties and the Commission to subjectively decide which other  
7           parties' or customer classes' legitimate and justiciable interests shall be completely  
8           ignored in deciding the case. The public interest is broader and more important than  
9           the interests of settling parties, and sometimes, as in this case, that limited subset of  
10          non-representative parties should not be allowed to dictate costs and impacts on  
11          millions of customers, and instead, the Commission itself should apply its objective,  
12          comprehensive, and independent judgement to the issues in this proceeding.

13   **Q.    What do you recommend that the Commission do in this case?**

14   A.    The Commission should reject the proposed settlement in its entirety and render a  
15          decision in this proceeding only after a full, fair, and balanced evaluation of a  
16          comprehensive evidentiary record—and not upon a secretive and opaquely selected  
17          subset of evidence and motivations as contained in the settlement proposal offered  
18          with this motion. In my opinion, the public interest deserves nothing less.

19   **III.   SELECTED ISSUES RAISED BY THE SETTLEMENT PROPOSAL**

20   **Q.    Have you fully reviewed the settlement proposal in this proceeding?**

21   A.    Not as fully as I would like. As I previously stated, I was not invited to take part in  
22          the settlement discussions. I received the settlement proposal shortly after it was filed  
23          on 10 August 2021. I worked with my attorneys to develop some discovery questions  
24          to improve my understanding of the operation and consequences of the proposal. On  
25          the basis of this limited review, I have identified several aspects of the proposed

1 settlement that support my overall recommendation that the Commission deny the  
2 motion for approval.

3 ***Rate of Return and Depreciation Reserve Profit Maximization Mechanism (RSAM)***

4 **Q. What return on equity (“ROE”) is contained in the settlement agreement**  
5 **proposal?**

6 A. The settling parties propose a nominal ROE midpoint of 10.6%. It appears the settling  
7 parties would also allow the Company to proceed with its proposed 59.60% equity  
8 ratio in the capital structure. As my testimony in this case explains,<sup>1</sup> any ROE above  
9 10.00% with an equity ratio above 52.93% is unreasonable and excessive and would  
10 pay the Company’s holding company returns that would result in rates that are not  
11 fair or just. While the proposed settlement nominally reduces the midpoint ROE from  
12 the original proposal, the settling parties support the continuation of the profit-  
13 maximizing Reserve Surplus Amortization Mechanism (“RSAM”), continued from  
14 the last rate case settlement, which practically guarantees that the Company will earn  
15 an 11.7% ROE—higher even than the originally proposed midpoint rate.

16 **Q. What are your concerns with an excessively high ROE?**

17 A. While the Company is fantastically and unreasonably profitable for its shareholders,  
18 and the settling parties would ensure that this continues for years to come, the people  
19 of Florida continue to suffer under high electricity bills and now face the added  
20 burdens of a pandemic that is resurgent across the state. Just as the people of  
21 Florida—especially the poor and people of color—were beginning to hope for a full  
22 economic and social recovery, the Company and the settling parties would gut-punch  
23 those hopes with an unnecessary increase in their electric rates and bills.<sup>2</sup> Economic  
24 justice demands a full evaluation of the proposed ROE for the Company and a  
25 reduction in both the allowed ROE and the equity ratio.

1 **Q. What are your concerns about the RSAM that the settling parties support?**

2 A. The RSAM is a rate making shell game which allows excessive capital spending to be  
3 deceptively masked in the appearance of savings today while increasing electric rate  
4 burdens and utility profits in decades to come. It includes an option, entirely  
5 controlled by the Company, to change rates not based on cost of service, but on profit  
6 maximization. Under it, the Company will decide the level at which it earns, and the  
7 Company is sure to decide that it will earn the most it can. Such a scheme is per se  
8 unreasonable and unlawful in a cost-of-service rate making environment and should  
9 not be continued by this Commission absent a full evaluation and consideration of the  
10 mechanism and its consequences. Residential customers have borne the burden of  
11 excessive rates in Florida for years under the improper and likely unlawful RSAM  
12 mechanism. A non-unanimous settlement proposal should not be used as the Trojan  
13 Horse in which continued economic abuse occurs.

14 *Allocation of Modified Revenue Requirement in the Settlement and Continued*

15 *Overcharging of Residential Customers*

16 **Q. Does the proposed settlement include proposals for revenue requirement**  
17 **reductions, and do these proposed reductions provide a basis for the**  
18 **Commission's approval of the settlement proposal?**

19 A. No. Settlement agreements can be in the public interest when they result in just and  
20 reasonable rates, administrative savings, and reduced risk of litigation. The proposed  
21 settlement in this proceeding is fundamentally unjust and worse, actually increases  
22 the injustice embedded in the Company's original rate proposals.

23 **Q. Please explain.**

24 A. At the highest level, the proposed settlement is essentially a monopoly-based pork-  
25 barrel agreement among a limited set of parties that aims to provide benefits for a few

1 customers on the backs of the vast majority of residential and small business  
 2 customers who will receive only the bills and vague, unsubstantiated promises of  
 3 future reductions in costs. Astoundingly, the proposed settlement is actually worse for  
 4 residential and small commercial customers than the unreasonable rates originally  
 5 proposed by the Company would have been if they had been set at parity (and will be  
 6 almost as bad as the actual rates proposed by the Company, with residential  
 7 customers facing a 19.1% increase in base rates under the settlement<sup>3</sup> instead of a  
 8 21% increase<sup>4</sup>). For 2022, the Company, with parity in rates, originally targeted the  
 9 residential RS-1 class for \$396,789,000 in increased revenue requirements, and small  
 10 non-demand GS-1 commercial customers for \$72,155,000 in increases.<sup>5</sup> The  
 11 proposed settlement would force residential customers to pay \$410,769,000 in  
 12 increased rates, and small commercial customers to pay \$73,346,000 more. By  
 13 comparison, the settlement proposal provides real benefits for larger customers.  
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15 Table KRR-1: Original Proposed Revenue Deficiency Under Parity vs. Settlement  
 16 Proposal Revenue Increases, 2022

	Rate Class					
	Res	GS	GSD	LD-1	LD-2	LD-3
Original Proposal Revenue Deficiency	\$ 396,789	\$ 72,155	\$ 334,812	\$ 187,642	\$ 65,554	\$ 11,554
Settlement Proposal Revenue Increase	\$ 410,769	\$ 73,346	\$ 127,750	\$ 40,094	\$ 11,840	\$ 2,455
Increase (Decrease)	\$ 13,980	\$ 1,191	\$ (207,062)	\$ (147,548)	\$ (53,714)	\$ (9,099)
Percent Change from Original Proposal to Settlement Proposal	3.5%	1.7%	-61.8%	-78.6%	-81.9%	-78.8%

22 **Q. What other evidence is there that the proposed settlement agreement is**  
 23 **fundamentally unjust?**

24 A. As tabulated by Company witness DuBose, the existing allocation of revenue  
 25 requirement burdens under the Company's existing and proposed rates is and would

1 be—if extended and increased with increased revenue requirement in this state—  
 2 fundamentally unjust. Even assuming everything the Company otherwise proposes is  
 3 reasonable, which I cannot, witness DuBose’ testimony shows that rates of return for  
 4 the classes under present rates are unfair.<sup>6</sup> Residential and non-demand general  
 5 service customers subsidize the largest industrial customers of the Company, and by a  
 6 huge amount. In fact, the amount of excess revenue requirement imposed on  
 7 residential and non-demand general service more than exceeds the subsidies received  
 8 by customers in the demand general service and large general service classes.<sup>7</sup> Table  
 9 KRR-2, below, summarizes Company witness DuBose’s analysis. The interclass  
 10 subsidies are massive and this should be seen as a problem to address in a general rate  
 11 case.

12  
 13 Table KRR-2: Excess Revenues and Subsidies under Present Rates, 2022, 2023

Current Rates \$ millions		
2022		
Class	Excess Revenue Requirement Burden	Revenue Requirement Subsidy
RS-1	\$ 252.4	
GS-1	\$ 9.3	
GSD-1		\$ (112.3)
GSLD-1		\$ (105.9)
GSLD-2		\$ (40.4)
GSLD-3		\$ (7.2)
<i>Sum</i>	<b>\$ 261.7</b>	<b>\$ (265.80)</b>

2023		
Class	Excess Revenue Requirement Burden	Revenue Requirement Subsidy
RS-1	\$ 256.9	
GS-1	\$ 8.1	
GSD-1		\$ (118.2)
GSLD-1		\$ (107.0)
GSLD-2		\$ (40.7)
GSLD-3		\$ (8.0)
<i>Sum</i>	<b>\$ 265.0</b>	<b>\$ (273.9)</b>

1 **Q. What is wrong with such massive interclass subsidies?**

2 A. Massive interclass subsidies are unjust, unreasonable, and unfair. The subsidies in the  
3 Company's rates make businesses in the Company's service area dependent on  
4 unearned benefits paid as a tax through unjust utility rates. They burden the most  
5 vulnerable members of society at a time when economic burdens are crushing,  
6 imposing unnecessary costs on customers least able to afford them. They violate free  
7 market principles as well as cost of service regulation principles. Going into this rate  
8 case, it should have been a high priority of the Company, the Commission staff, and  
9 anyone else purporting to care about the public interest to seek a correction in these  
10 subsidies as a first priority.

11 **Q. What did the Company propose to do about the interclass subsidies that require**  
12 **residential customers, including the poor, to subsidize large business customers?**

13 A. The Company proposed no meaningful change in the existing regime. The Company  
14 proposed a structure in which the largest customers would not bear their fair share of  
15 proposed increased revenue requirements and in which residential subsidies to large  
16 customers would continue in the hundreds of millions of dollars. Company witness  
17 DuBose also calculated what a fair allocation of the proposed rate increase burdens,  
18 called "deficiency" would be.<sup>8</sup> The revenue requirements originally proposed by the  
19 Company in this proceeding do not align with an equitable distribution of the  
20 proposed new costs. Table KRR-3 shows that rather than limit revenue requirement  
21 increases to the target amount to provide for rate fairness, the Company's proposed  
22 rates would continue to impose excessive burdens on residential customers in order to  
23 provide excessive subsidies to large general service customers.

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1           Table KRR-3: Originally Proposed Added Burdens and Subsidies by Class, 2022,  
 2           2023

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16   **Q.   How would the proposed settlement change the proposed allocation of excess**  
 17   **costs and subsidies proposed by the Company?**

18   A.

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Proposed Rates (\$ millions)					
2022					
Class	Revenue Requirement Deficiency	Proposed Increase	Added Burden (Subsidy) to Class	Added Burden (Subsidy) % of Deficiency	
RS-1	\$ 396.8	\$ 491.0	\$ 94.2	24%	
GS-1	\$ 72.2	\$ 79.8	\$ 7.6	11%	
GSD-1	\$ 334.8	\$ 332.6	\$ (2.2)	-1%	
GSLD-1	\$ 187.6	\$ 113.2	\$ (74.4)	-40%	
GSLD-2	\$ 65.6	\$ 36.9	\$ (28.7)	-44%	
GSLD-3	\$ 11.6	\$ 8.0	\$ (3.6)	-31%	

2023					
Class	Revenue Requirement Deficiency	Proposed Increase	Added Burden (Subsidy) to Class	Added Burden (Subsidy) % of Deficiency	
RS-1	\$ 747.5	\$ 815.2	\$ 67.7	9%	
GS-1	\$ 119.7	\$ 125.9	\$ 6.2	5%	
GSD-1	\$ 466.3	\$ 470.7	\$ 4.4	1%	
GSLD-1	\$ 234.1	\$ 174.8	\$ (59.3)	-25%	
GSLD-2	\$ 80.2	\$ 57.2	\$ (23.0)	-29%	
GSLD-3	\$ 14.9	\$ 12.4	\$ (2.5)	-17%	

1 customers.

2 **Q. Can you quantify the impact of the proposed settlement even without a record of**  
3 **the negotiations?**

4 A. Yes. Using the equalized share of revenue requirement values calculated by Company  
5 witness DuBose,<sup>9</sup> I determined a percentage equalized share of revenue requirement  
6 which I applied to the revised revenue requirement for each class included in the  
7 settlement proposal. By comparing the equalized share to the proposed share of  
8 revenue requirements, my simple calculations show that the current class subsidies  
9 will not only continue but also *increase* the added burden to residential and non-  
10 demand general service customers in order to ensure that the largest customers do not  
11 pay their fair share of the agreed-upon rate increase. Table KRR-4 shows these  
12 calculations. Company responses to Staff data requests confirm this outcome from the  
13 settlement negotiation process.<sup>10</sup> Table KRR-5 uses Company data to show the  
14 inequity inherent in the proposal from the settling parties. With a transfer of over  
15 \$250 million per year from residential customers to large commercial and industrial  
16 customers, this amounts to an over \$1 billion transfer of wealth across the 4-year term  
17 of the settlement.

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1 Table KRR-5: Impact of Proposed Settlement Reductions on Revenue Requirements,  
 2 2022, 2023

3 **Target Revenue Requirements by Rate Class**  
 4 \$ Millions

Rate Class	2022 As-Filed	2022 Settlement	\$ Difference	Percent Difference
GS(T)-1	\$659.8	\$646.1	(\$13.7)	-2.1%
GSD(T)-1	\$1,752.8	\$1,547.9	(\$204.9)	-11.7%
GSLD(T)-1	\$569.0	\$495.9	(\$73.2)	-12.9%
GSLD(T)-2	\$172.1	\$147.0	(\$25.1)	-14.6%
GSLD(T)-3	\$32.4	\$26.9	(\$5.5)	-17.0%
RS(T)-1	\$5,277.4	\$5,175.9	(\$101.5)	-1.9%
<b>Total Revenue from Sales</b>	<b>\$8,820.8</b>	<b>\$8,375.9</b>	<b>(\$445.0)</b>	<b>-5.0%</b>

Misc. Service Charges	\$100.1	\$100.1	\$0.0	0.0%
Other Operating Revenues	\$126.2	\$154.8	\$28.5	22.6%

<b>Total Operating Revenues</b>	<b>\$9,047.2</b>	<b>\$8,630.7</b>	<b>-\$416.4</b>	<b>-4.6%</b>
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8 *Settlement Benefit to GSD, GSLD Companies* (\$308.7) 69%  
 9 *Settlement Benefit to GS-1, Residential Customers* (\$115.2) 26%

Rate Class	2023 As-Filed	2023 Settlement	Difference	Percent Difference
GS(T)-1	\$714.5	\$703.0	(\$11.5)	-1.6%
GSD(T)-1	\$1,907.6	\$1,677.8	(\$229.8)	-12.0%
GSLD(T)-1	\$633.5	\$530.7	(\$102.8)	-16.2%
GSLD(T)-2	\$194.6	\$159.2	(\$35.4)	-18.2%
GSLD(T)-3	\$37.1	\$29.5	(\$7.6)	-20.5%
RS(T)-1	\$5,625.7	\$5,519.8	(\$106.0)	-1.9%
<b>Total Revenue from Sales</b>	<b>\$9,499.1</b>	<b>\$8,985.4</b>	<b>(\$513.8)</b>	<b>-5.4%</b>

Misc. Service Charges	\$101.3	\$101.3	0	0
Other Operating Revenues	\$118.9	\$162.1	\$43.2	36.3%

<b>Total Operating Revenues</b>	<b>\$9,719.3</b>	<b>\$9,248.7</b>	<b>-\$470.6</b>	<b>-4.8%</b>
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11 *Settlement Benefit to GSD, GSLD Companies* (\$375.6) 73%  
 12 *Settlement Benefit to GS-1, Residential Customers* (\$117.4) 23%

13 **Q. Is there any other evidence that the interclass subsidies are unfair?**

14 **A.** Yes. Another way to look at it would be to look at the ROE the Company will realize  
 15 from each customer class under the settlement proposal. Using MFR E-1, attachment  
 16 2, I was able to substitute the settlement revenue requirement proposals for those that  
 17 were originally contained in the document, as well as adjust the depreciation expense  
 18 to subtract \$68.3 million per year as indicated in the Company's response to Staff's  
 19 6th Data Request, request number 10 and adjust the subsequent income taxes, and to

1           then calculate a rate of return for each customer class. Although this is an  
2           approximation, using the Company’s filed MFR’s regarding their capital structure, I  
3           calculated what each rate of return for each class meant in terms of ROE for the  
4           Company. My calculations show that in both 2022 and 2023, residential customers  
5           and small businesses will be paying rates *as if* the Company’s ROE had been set at a  
6           mid-point of over 11.7. By contrast, the rates for the largest customers were set, under  
7           the settlement, as if the Company’s ROE had been set between 4.4% to 5.6%. The  
8           only reason those rates for the largest customers are so low, with an overall revenue  
9           requirement that is so high, is that residential customers are paying hundreds of  
10          millions of dollars more than they should be if rates were set at parity under the  
11          settlement.

12       **Q.    What should the Commission do in light of these proposed burdens and**  
13       **subsidies?**

14       A.    In my opinion, there is simply no way that the proposed allocation of revenue  
15           requirements in the settlement proposal can be found to be just, fair, reasonable, or in  
16           the public interest. The Commission should reject the settlement proposal entirely and  
17           use the hearing process to explore the development of rates that substantially reduce  
18           or eliminate the egregious interclass subsidies in the Company’s rate proposals.

19       *Unreasonable Increases in Rate Base for Voluntary Programs and Cross Subsidies from*  
20       *Non-Participating Customers*

21       **Q.    What are your concerns about new “SolarTogether” solar generation**  
22       **construction proposed by the settling parties?**

23       A.    The proposal for an additional 1,788 MW of solar generation added to customer bills  
24           through rate base adjustments comes out of the blue and is wholly untested and  
25           unexamined in this proceeding. It would increase the total program size from 1,490

1 MW to 3,278 MW.<sup>11</sup> Therefore, the proposed new solar plants suffer the same basic  
2 concerns that I expressed in my direct testimony.<sup>12</sup>

3 **Q. What is the revenue requirement impact of the proposed SolarTogether**  
4 **expansion?**

5 A. The impacts for the relatively few customers that get to participate are good. The  
6 Company proposes to continue to guarantee a flat subscription charge of \$6.76 per  
7 kW-month, while drastically increasing the originally approved credits, as well as a  
8 constantly escalating benefit rate to the customers that volunteer to participate.<sup>13</sup>  
9 Those guarantees are made on the backs of non-participating customers, violating the  
10 basic and well-accepted principle of avoiding forced cross subsidies of voluntary  
11 program participants by captive non-participant customers. In fact, the program is  
12 intentionally designed to achieve this result, allocating 55% of total program benefits  
13 to program participants. Moreover, the proposed program will nearly triple the burden  
14 imposed on non-participating customers.

15 **Q. What economic results does the Company assert from the SolarTogether**  
16 **program expansion?**

17 A. The Company asserts that the program expansion has net present value benefits of  
18 \$425 million when estimated out to the year 2060,<sup>14</sup> but this assertion is misleading  
19 and false. The Company calculation is based on an assumption that the authorized  
20 return on equity for the Company is 10.55%.<sup>15</sup> However, by the terms of the proposed  
21 settlement and in consideration of the profit-maximizing Reserve Surplus  
22 Amortization Mechanism, a more honest assumption would be an ROE of 11.7%—  
23 the maximum allowed under the settlement. At this rate, the cumulative present value  
24 of savings is about two-thirds less, or \$166 million for the Extension. Using an ROE  
25 of 11.7%, the SolarTogether program in its entirety, with the newly enhanced credits

1 proposed in the Settlement, has cumulative present value savings of \$216 million.  
2 However, \$310 million of present value payments are transferred to participants,  
3 leaving the general body with a present value *cost* of \$94.5 million (these projections  
4 based on the 11.7% ROE are attached as Exhibit KRR-11). The Company further  
5 justifies the program on the basis of both emissions savings and gas fuel price savings  
6 (which includes emissions control costs) that are mutually exclusive.<sup>16</sup> More honest  
7 accounting would only provide net savings between the two kinds of costs and would  
8 eliminate any net benefits to non-participating customers. Of course, the program is  
9 designed so that none of these corrections would reduce the benefits to participants,  
10 only the costs to the general body of customers. Further evidence of the flimsiness of  
11 FPL's projections can be seen by comparing the projections of the original program  
12 from just last year when it was approved in 2020, attached as Exhibit KRR-12, to the  
13 updated projects for the current program. Originally, over the life of the program, the  
14 general body of customers were promised \$112 million in present value savings over  
15 the 30-year life of the program. Now, just 1 year later and using the erroneous  
16 10.55% ROE, that has decreased to just \$68 million in savings. Correcting the ROE  
17 to 11.7%, decreases this further to a present value *cost* of \$85 million for the general  
18 body.

19 **Q. How are the economic burdens of the program allocated over time?**

20 A. The Company asserts that if everything the Company assumes comes true over the  
21 next thirty-plus years, the cumulative benefits will be positive.<sup>17</sup> For the next ten  
22 years, the evidence paints a completely different picture that will impose  
23 unreasonable and unjust burdens on non-participant customers. According to the  
24 Company, while the existing approved program would require all customers to  
25 subsidize program participants in the amount of \$375.3 million out to the year 2032.

1           This is clearly a result of prioritizing the benefits and payback value for the few at the  
2           expense of non-participants. Worse still, the non-unanimous settlement proposes to  
3           more than double the size of the program, but the revenue requirement burden  
4           imposed on the general body of customers nearly triples during the first ten years of  
5           the program, going from the \$375.3 million number up to \$975.2 million.<sup>18</sup> Just  
6           getting out of the hole created by subsidizing SolarTogether participants will take  
7           another decade or more. These numbers likely represent the least impact that  
8           customers will have to bear because the Company bases its projections on extremely  
9           optimistic assumptions that should be tested in a full hearing and not buried in a  
10          confidential non-unanimous settlement.

11       **Q.    How does the expansion of the SolarTogether program distribute burdens and**  
12       **benefits?**

13       A.    Again, 55% of total benefits accrue to program participants, who are guaranteed their  
14       participation credit regardless of whether the Company's unrealistic assumptions  
15       about carbon prices, gas savings, and other events actually occur. The program  
16       assigns 100% of the risk on these assumptions to captive, non-participating  
17       customers. Even more of the burden of ensuring the short-term payback and long-  
18       term savings for participant customers would rest unfairly on non-participant  
19       customers if the Commission were to approve the settlement proposal.

20       **Q.    Does the proposed SolarTogether program allocate any benefits to low-income**  
21       **customers?**

22       A.    The program envisions an overall expansion of 1,788 MW from the current 1,490  
23       MW size, for a total of 3,278 MW. Of this amount, a paltry 82.5 MW, or 2.5% of the  
24       program total is reserved for low-income participants. Ironically, the poverty rate in  
25       Florida almost exactly 5 times as high—at 12.7%<sup>19</sup>—as the low-income set aside in

1 the proposed SolarTogether program. Instead, if the Company were really concerned  
2 about low income customers it would drop the faux “community solar” scheme and  
3 simply build more utility solar. That way, if the Company were to build the same  
4 amount of solar as part of its total site plan, 100% of benefits would flow to 100% of  
5 customers.

6 **Q. Do you have any other concerns about the proposed SolarTogether program**  
7 **expansion?**

8 A. Yes. The only way the program will be “together” for the vast majority of residential  
9 customers is because they will be forced to “together” subsidize program credits for a  
10 relatively few, mostly large customers. As set forth in the Company’s application in  
11 Docket No. 20190061,<sup>20</sup> ensuring that voluntary program subscribers get healthy  
12 credits in excess of their subscription fees requires subsidies from non-participating  
13 customers for several years even under the best of circumstances. I addressed the  
14 problems with such mandated cross subsidization of voluntary programs, including  
15 the undue and unjust burdens on non-participating residential customers, many of  
16 whom struggle to pay just for the electricity they use, in my testimony in the similarly  
17 designed solar program proposed by Duke Energy Florida.<sup>21</sup> In sum, the settling  
18 parties would have the Commission bypass any rigorous review of the cost-  
19 effectiveness of the proposal and its impacts on customers as well as competitive  
20 markets for competition, all so that a few lucky customers can benefit at the expense  
21 of many others. The cross subsidies are not necessary and should not be snuck into  
22 rates through a confidential settlement rather than a full and transparent evaluation of  
23 the program on the merits. In fact, taking the Company’s response to LULAC,  
24 ECOSWF’s, and Florida Rising’s 4th POD No. 33, attached as Exhibit KRR-13, and  
25 extending the analysis to 2026 (when the Company’s next base rate increase would be

1 expected to come in), and ignoring the purported savings from avoiding the gas plant  
2 that the Company has stated it has no intention of building in 2026, and refuses to  
3 commit to not building if the settlement is approved, shows that the SolarTogether  
4 *expansion* that shows up in the settlement for the first time will increase residential  
5 bills by about \$1.69 per month per 1,000 kWh, as shown on Exhibit KRR-14, more  
6 than the \$1.47 that residential customers are “saving” in base rates in 2025 in the  
7 settlement as compared to the Company’s original proposal. Meaning, residential  
8 customers will likely be paying higher bills in 2026 as a result of the settlement than  
9 if the Company’s original proposal had been approved in toto.

10 **Q. What do you recommend that the Commission do?**

11 A. The Commission should reject the settlement proposal based on its solar generation  
12 expansion proposal which is unsupported in testimony and evidence. If the Company  
13 and its supporters among the settling parties want more solar options for large, or  
14 small, customers, they should go to the Commission with a well-documented public  
15 proposal, not a secretive adjustment in a settlement proposal.

16 ***Privatizing Environmental Benefits through REC Monetization***

17 **Q. How does the proposed settlement address RECs created as a result of**  
18 **renewable energy generation?**

19 A. The settlement proposal would allow the Company to monetize the value of the  
20 RECs, except from SolarTogether.

21 **Q. What does monetization mean?**

22 A. When qualified renewable energy generation operates and electricity is injected into  
23 the grid, RECs are created. In a simple sense, RECs are the “currency” that embody  
24 all the environmental and other non-energy attributes of renewable energy generation.  
25 RECs can be unbundled from the underlying energy and sold for value in liquid

1 markets that exist throughout the U.S. and the world. RECs can be “rebundled” with  
2 ordinary polluting electricity like that generated by methane gas-fired plants to  
3 “green” the electricity or sold to specific customers to enable them to make green  
4 claims. A data center that is served with ordinary grid mix electricity can offset the  
5 negative environmental impacts of their electricity by matching MWh-denominated  
6 RECs to their dirty electricity usage. Monetization is therefore about the Company  
7 selling the RECs from its renewable energy generation to private buyers for cash.

8 **Q. What is the chief concern with monetization of the RECs?**

9 A. The biggest concern is that double claims about the environmental benefits of  
10 renewable energy generation can only belong to—be claimed by—one person or  
11 entity. Making an environmental claim about one’s electricity mix or sales or the way  
12 in which one’s product is made that is not backed one-for-one with RECs is false,  
13 deceptive, and illegal. For example, if the Company were to tell its general body  
14 customers that their rates support new renewable energy generation while at the same  
15 time monetizing—selling off—the RECs to a private buyer or voluntary program  
16 participant, then the Company would be making a false and deceptive claim and  
17 would be misleading its customers that don’t hold any rights to the claims supported  
18 by the RECs.

19 **Q. Are there other concerns with monetizing RECs?**

20 A. Yes. The privatization of RECs created through rate base plant construction socializes  
21 costs while privatizing environmental benefits and thwarts sound public policy aimed  
22 at the transition away from fossil fuels. It can be another shell game in which private  
23 companies get the credit and ordinary customers get the bills. Wholesale monetization  
24 of RECs from generation paid for by captive rate paying customers distorts economic  
25 efficiency by externalizing costs and internalizing benefits and violates cost-of-

1 service and cost-causation principles and is therefore inconsistent with sound rate  
2 making principles as well. It relies upon the Commission to create an unnecessary and  
3 burdensome cross subsidy borne by the general body of customers and citizens.

4 **Q. Does the settlement proposal take account of these concerns?**

5 A. As far as I can tell, the proposed settlement benefits the settling parties and a limited  
6 subset of customers but takes no account of these impacts or the cross subsidy that  
7 monetization of RECs by ordinary customers would cause.

8 **Q. What should the Commission do regarding the settlement proposal to privatize  
9 RECs?**

10 A. The Commission can address the issue from several sides and should. It should  
11 disapprove of the proposed settlement agreement and in so doing, should provide  
12 explicit guidance to the Company regarding RECs, environmental performance  
13 claims, and the allocation of costs associated with renewable energy development.  
14 First, it should require the Company to affirmatively disclose to customers,  
15 shareholders, and the public exactly what it does with the RECs produced by  
16 generation that it owns or contracts with. Second, the Commission should require the  
17 Company to document how it is not making, supporting, or enabling any double  
18 claims regarding RECs produced by renewables. Third, the Commission should direct  
19 the Company to ensure that non-participating customers are never required to pay any  
20 of the costs of voluntary program participation in shared solar, community solar,  
21 green power, or other renewable energy-based products or programs.

22 ***The SoBRA Cost Reduction Incentive is Poorly Designed and Likely Ineffectual***

23 **Q. What is the cost cap in the proposed settlement for SoBRA solar development  
24 costs?**

25 A. The proposed settlement includes an “incentive” provision that would be comical if it

1           were not so cynical in burdening customers that do not get to participate in the  
2           program. On its face, the provision includes a sharing mechanism for savings realized  
3           when costs for new solar facilities are lower than the cap level of \$1,250 per kW<sub>AC</sub>.  
4           As explained by Company witness Barrett in his settlement testimony,<sup>22</sup> if the cost of  
5           new solar is lower than the cap, the amount of savings is split between the Company  
6           and customers at a ratio of 75 to 25. What Company witness Barrett fails to  
7           acknowledge is that there is absolutely no incentive for the Company to realize costs  
8           below the cap level. The settlement proposal includes outrageously high returns on  
9           capital investments that the Company would be irresponsible in denying to its  
10          shareholders. The return to those shareholders is lower if the cost of the facilities is  
11          lower than the cap. That is, for every dollar of cost below the cap, the Company  
12          realizes a 25-cent incentive, but loses \$1 worth of capex and associated return. The  
13          incentive is a fig-leaf, at best, on the excessive and unjustified rate burdens proposed.

14          *Economically Regressive Residential Minimum Bill Unsupported by Evidence*

15          **Q.     Please provide your comments on the new residential minimum bill proposed for**  
16          **the first time in the non-unanimous settlement proposal.**

17          A.     The non-unanimous settlement proposal includes a completely new and frankly  
18          outrageous residential minimum bill proposal of \$25 per customer per month. I can  
19          find no evidence in the record to support the proposal, so it appears to be completely  
20          the product of secret settlement negotiations between a subset of the parties to this  
21          proceeding.

22          **Q.     How would the minimum bill operate?**

23          A.     Again, detailed information is not available. However, I presume that if any customer  
24          manages to get his or her bill down to below \$25 in any month, the Company will  
25          jack up the bill total to \$25 for that month regardless of usage. The minimum bill is

1 the kind of price structure that the Company could not maintain in the absence of  
2 monopoly market power and it should not have the Commission's assistance in  
3 extracting these monopoly rents.

4 **Q. What are the mechanics of the proposed minimum bill rate design?**

5 A. The Company appears to intend to hold the fixed customer charge at a level of \$8.95  
6 per customer per month for residential customers, and \$12.51 for small commercial  
7 non-demand-billed customers. Under the minimum bill calculation, the Company  
8 assumes all additional revenues--\$16.05 per month for residential customers, and  
9 \$12.49 would be another fixed customer charge that applied to volumetric charges.  
10 For residential customers that would incur more than \$16.05 in volumetric charges in  
11 any month, and small commercial customers that would incur more than \$12.49 in  
12 volumetric charges, the minimum bill provision would have no direct impact on  
13 *charges* for energy use.<sup>23</sup>

14 **Q. How does the minimum bill proposal impact customers with lower electricity**  
15 **use?**

16 A. For residential customers using less than about 241 kWh in 2022 and 219 kWh in  
17 2023, and small commercial customers using less than 196 kWh in 2022 and 176  
18 kWh, the minimum bill structure would force those customers to pay for electricity  
19 that they did not use. Because of the way the minimum bill revenues would apply to  
20 total class revenue requirements, this means that the minimum bill proposal is  
21 economically regressive and monopolistic abuse—it would force low users of  
22 electricity to subsidize higher users of electricity within the class.

23 **Q. Aren't those usage levels rather low? How many customers actually use less than**  
24 **241 kWh per month?**

25 A. According to the data provided by the Company, it appears that more than 375,000

1 residential households could be “stung” by the minimum bill proposed by the  
2 Company and other parties to the non-unanimous settlement.

3 **Q. Why is forcing low users to subsidize high users through the proposed minimum**  
4 **bill structure in the settlement proposal a bad idea?**

5 A. The proposal insulates the monopoly utility from competitive market behavior—it  
6 creates a kilowatt-hour minimum on top of a customer “cover charge.” The proposal  
7 irredeemably violates a core principle of cost causation—that customers should pay  
8 for cost they create, and not more or less, to the extent possible. The proposal is  
9 unfair to customers that must already ration their electricity in these tough economic  
10 times. The proposal sends a powerful message of discouragement to customers that  
11 are considering investments in energy efficiency or distributed generation in an effort  
12 to manage their electric bills. The proposal sends a power incentive to customers to  
13 use more electricity than is efficient in order to avoid paying for electricity they do  
14 not use—it encourages economic waste.

15 **Q. What are the benefits of such a minimum bill structure?**

16 A. There are no real benefits for residential customers. The structure benefits the  
17 Company by allowing it to collect revenues that are not cost-based and achieve a  
18 guaranteed minimum level of residential revenues to support its excessive spending  
19 proposals. The structure benefits large commercial and industrial customers by  
20 increasing the share of revenue requirement paid by residential customers. It is  
21 inconceivable to me that any settling party had the legitimate concerns of small  
22 residential customers in mind when agreeing to such a rate.

23 **Q. Are there other concerns with a minimum bill?**

24 A. Yes. A large monthly minimum bill severely weakens the incentive for customers to  
25 adopt green building, energy management, energy efficiency, and distributed

1 generation and storage measures. A minimum bill strengthens the monopoly  
2 Company's control over the economic liberty of its customers and violates free  
3 market principles.

4 **Q. Are there other concerns with the minimum bill proposal?**

5 A. Yes. In addition to the problems already discussed, which render the minimum bill  
6 proposal unjust, unreasonable, and patently unfair, the introduction of such a major  
7 change in rate design by a subset of the parties in a non-unanimous settlement  
8 proposal violates due process rights of parties that were not part of the settlement  
9 negotiations and who were not part of the proceeding in general.

10 **Q. What do you recommend that the Commission do regarding the minimum bill  
11 proposal from the settling parties?**

12 A. The Commission should reject the non-unanimous settlement proposal in its entirety.  
13 In addition, in the full hearing on the Company proposal, it should order that the  
14 minimum bill proposal is out of time and that it would violate due process to consider  
15 the proposal in this proceeding. If the Company wants to propose such a confiscatory  
16 rate, it should be ordered to do so in its next rate case and support its proposal by  
17 evidence in the public record.

18 ***Intergenerational Injustice through Retired Plant Recovery Period Adjustments***

19 **Q. What do the settling parties propose regarding retired plant cost recovery?**

20 A. The proposed settlement agreement includes a provision to extend the amortization  
21 period—the total recovery period—for retired capital assets related to power plants  
22 and transmission lines. The proposal is to extend the amortization period from ten to  
23 twenty years. The Company had proposed in its application to charge future  
24 customers for the retirement costs of such assets over the ten years following  
25 approval of rates in this case. I addressed this issue in my direct testimony,

1 recommending that the Commission deny regulatory asset treatment for each planned  
2 retirement and to instead require that the Company demonstrate the cost-effectiveness  
3 of each proposed retirement.<sup>24</sup> In another act of sleight of hand, the settling parties  
4 propose to make the cost burdens of plant retirements *appear* to be lower by  
5 stretching out the payment term, the amortization period for recovery of these costs  
6 associated with plants no longer used or useful to rate payers.

7 **Q. Does the proposed settlement include any provisions to reduce the amount of**  
8 **revenue requirement imposed on customers associated with plant retirements?**

9 A. No. It appears that the Company got everything it wanted from the settling parties.

10 **Q. Does the proposed extension of the payment period for the retired assets actually**  
11 **save customers any money?**

12 A. No. Not only does the proposal increase the total amount of money collected from  
13 customers by spreading out the payments, it actually turns the retirement payments  
14 into a tidy nest-egg for the Company's shareholders—allowing recovery of the  
15 Company's inflated rate of return on every dollar of retired plants, all without any  
16 showing of cost-effectiveness or reasonableness.

17 **Q. Is there any way to calculate the precise financial and rate impact of the**  
18 **settlement proposal to extend the amortization period for retired plant?**

19 A. Not precisely but a simple calculation is revealing. The settling parties would grant  
20 the Company wide discretion to ignore actual cost of service and manipulate  
21 amortization expenses to maximize rate of return. I think it is safe to assume that the  
22 Company will earn a full 11.7% ROE on the retired plant costs. Using that ROE as  
23 the equivalent of an interest rate, and comparing a ten-year versus twenty-year term  
24 on the full \$1.553 billion in proposed regulatory asset recovery in the settlement  
25 proposal,<sup>25</sup> I used the "PAYMENT" formula in Excel and calculated a simple annual

1 payment of \$204 million for the twenty-year term, compared to an annual payment of  
2 \$271 million for the ten-year term.

3 **Q. Doesn't that show that the twenty-year amortization period will be better for**  
4 **customers?**

5 A. No. The cost of the extension of the amortization period from ten to twenty years in  
6 my simple example adds nearly \$1.4 billion in additional costs due to the 11.7%  
7 ROE.

8 **Q. Are there any policy concerns with using a longer amortization period to pay for**  
9 **the Company's retired and unused plant?**

10 A. Yes. First, the Company hasn't shown that the amounts in the proposed regulatory  
11 asset account for retirements is just and reasonable, nor have the settling parties  
12 required such a showing. Second, the *apparent* savings achieved by the amortization  
13 sleight of hand directly burden almost an entire generation of customers that have  
14 never received any electricity or electric service from any of those retired assets. The  
15 injustice of imposing the costs on future customers, and in increasing those costs  
16 through confidential settlement negotiations violates almost every principle of sound  
17 rate making. The proposal deviates from cost-based rates, provides excessive returns,  
18 and institutes intergenerational inequity in costs.

19 **Q. What should the Commission do in regard to the settlement proposal to increase**  
20 **the amortization term for regulatory assets created to recover retired plant?**

21 A. The Commission should reject the settlement proposal in full, and in the full hearing  
22 on the Company proposal, demand a full accounting for the cost-effectiveness and  
23 reasonableness of the proposed regulatory asset treatment for retired plant.  
24  
25

1 ***Rate Base Growth through Electric Vehicle Programs Subsidies***

2 **Q. What does the proposed settlement include regarding electric vehicle program**  
3 **subsidies?**

4 A. The proposed settlement would allow the Company to add \$205 million to revenue  
5 requirements over the period 2022 through 2025.<sup>26</sup> The proposals are unsupported by  
6 benefit-cost analysis, and essentially force the general body of customers to subsidize  
7 programs that will benefit only customers who voluntarily buy or lease electric  
8 vehicles, and, of course the Company.

9 **Q. Don't the EV programs require the Company to make substantial investments in**  
10 **EV facilities and incentives for customers?**

11 A. The programs force the general body of rate payers to fund the Company's load  
12 growth programs. In a competitive industry, businesses make investments on their  
13 own and recoup the costs through prices. That is supposed to be how cost-of-service  
14 regulation works as well. The proposed settlement turns that concept on its head by  
15 forcing customers to pay for investments that most will not use in order to increase  
16 sales for the utility.

17 **Q. Doesn't increased use of electric transportation offer benefits to Florida's**  
18 **environment?**

19 A. The Commission cannot tell and neither can I, because no benefit-cost assessment  
20 was performed to determine whether the investments would be cost-effective in  
21 reducing pollution or even encouraging electric transportation. There is no evidence  
22 of the use of the rate impact test, for example, to ensure that the proposed EV  
23 programs do not force non-participant customers to pay for the benefits that will be  
24 realized by relatively few customers.

25

1 **Q. What should the Commission do in regard to the settlement proposal to force**  
2 **customers to pay more than \$205 million for EV program spending?**

3 A. The Commission should reject the settlement proposal in full, and in the full hearing  
4 on the Company proposal, demand a full accounting for the cost-effectiveness and  
5 reasonableness of the proposed EV programs.

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

7 A. Yes.

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Direct Testimony of Karl R. Rábago  
On Motion to Approve Settlement  
FL RISING/LULAC/ECOSWF  
Florida PSC, Docket No. 20210015-EI

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<sup>1</sup> Rábago direct at 10 – 17.

<sup>2</sup> See Rábago direct at 17-24, addressing excessive capital spending proposals by the Company.

<sup>3</sup> Exhibit TCC-11, base rates of \$83.27 in 2025 versus base rates of \$69.90 in 2021 for 1,000 kWh of use (83.27 divided by 69.90).

<sup>4</sup> Exhibit TCC-3, base rates of \$84.74 in 2025 versus base rates of \$69.90 in 2021 for 1,000 kWh of use (84.74 divided by 69.90).

<sup>5</sup> Consolidated Test Year MFR E-1, Att. 2.

<sup>6</sup> Company witness DuBose direct at Exh. TBD-5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at Exh. TBD-6.

<sup>9</sup> *Id.*

<sup>10</sup> Company response to Staff's 5th Data Request, request number 6 Att., attached as Exhibit KRR-9.

<sup>11</sup> Stipulation and Settlement Agreement at para. 1.j., Exh. REB-15.

<sup>12</sup> Rábago direct at 17-24.

<sup>13</sup> Bores settlement at 4-8.

<sup>14</sup> Bores settlement testimony at 5.

<sup>15</sup> Company response Staff's 8th Data Request Number 6, attachment No. 1, attached as Exhibit KRR-10.

<sup>16</sup> Company response to Staff's 8th Data Request Number 6, attachment No. 1.

<sup>17</sup> Bores settlement testimony at 5.

<sup>18</sup> Bores settlement testimony at Exh. SRB-16.

<sup>19</sup> U.S. Census, <https://www.census.gov/quickfacts/fact/table/FL/IPE120219>.

<sup>20</sup> Company Exh. SRB-2, Docket No. 20190061-EI.

<sup>21</sup> Rábago direct in Docket No. 20200176-EI (2 Oct. 2020), Exhibit KRR-8.

<sup>22</sup> Barrett settlement testimony at 5-6.

<sup>23</sup> Company response to LULAC 4th POD, No. 39, Att. 1, attached as Exhibit KRR-15.

<sup>24</sup> Rábago direct at 19-26.

<sup>25</sup> Company settlement motion at Exh. D.

<sup>26</sup> Stipulation and Settlement Agreement at para. 22, Exh. REB-15.

1 BY MR. MARSHALL:

2 Q Did you prepare a summary of your testimony?

3 A Yes, I did.

4 Q Would you please go ahead and give us your  
5 summary.

6 A Yes, I will. Thank you.

7 Again, my name is Karl R. Rabago. I'm a  
8 principal of Rabago Energy, LLC, a Colorado limited  
9 liability company. I am appearing on behalf of Florida  
10 Rising, the League of Lat- -- United Latin American  
11 Citizens of Florida, and Environmental Confederation of  
12 Southwest Florida.

13 My testimony evaluates several key aspects of  
14 the non-unanimous partial settlement agreement filed by  
15 Florida Power & Light Company in this proceeding dated  
16 10 August, 2021.

17 As a result of that evaluation, I conclude  
18 that the proposed settlement would constitute a  
19 fundamental injustice for the company's cust- --  
20 customers and should, therefore, be disapproved.

21 My overall assessment of the proposed  
22 settlement is that it's fundamentally unjust- --  
23 unreasonable, unjust, and unfair. The proposed  
24 settlement imposes excessive and unnecessary costs on  
25 residential and small-business customers.

1           Specific points that I make in my testimony  
2 include, a proposed rate of return in combination with  
3 the depreciation reserve prop- -- profit-maximization  
4 mec- -- mechanism, or the RSAM -- which, itself, has  
5 never been fully reviewed by the Commission -- will  
6 reach an unjustified level of 11.7 percent, imposing  
7 unnecessary burdens on customers solely to enrich FPL's  
8 parent holding company and its shareholders.

9           The proposed settlement increases the cross-  
10 subsidies that residential customers must pay to support  
11 low rates for larger customers that can well afford to  
12 pay their fair share for the cost of electric service.  
13 To the extent that the proposed settlement reduces  
14 revenue requirements, a disproportionate share of the  
15 reduction goes to the largest customers.

16           The proposed settlement would require  
17 customers to pay a major portion of the costs of a  
18 voluntary solar program bene- -- that benefits a very  
19 few customers over the next ten years.

20           And, based on the highly-speculative and even  
21 outright-misleading estimates of benefits that might  
22 accrue over decades subsequent to that, the so-called  
23 SolarTogether program expansion, which spreads costs and  
24 privatizes benefits, was not even an element of the  
25 company's original rate proposal.

1           The proposed settlement goes further to  
2 privatize all the environmental benefits of solar  
3 development under the SolarTogether program and allows  
4 company to monetize all the environmental value of the  
5 base solar capacity that the company proposes to build.

6           Perhaps most outrageously, the proposed  
7 settlement introduces a radical new minimum bill of \$25  
8 per month for residential and small commercial  
9 customers. Based on company data, the new rate would  
10 force some 375,000 customers to pay the company for  
11 electricity that they do not even use.

12           The proposed settlement attempts to disguise  
13 the rate-increase impacts of customers being forced to  
14 pay for retired power plants and transmission lines by  
15 doubling the payment term from 10 to 20 years. The  
16 clever accounting device actually appears to cost  
17 customers an additional \$1.4 billion to pay unearned  
18 profits to the company.

19           Finally, the proposed settlement would allow  
20 the company to spend more than \$200 million in the years  
21 2022 through 2025 on electric-vehicle program activities  
22 and earn a profit for the company on the spending.

23           These load-growth programs are untested by  
24 benefit-cost analysis, including Florida's infamous rate  
25 impact measure test. It is inconceivable that the

1 spending would pass any such cost-effectiveness test  
2 used by the company.

3 Overall, the settlement results in the unjust  
4 and unreasonable transfer of hundreds of millions of  
5 dollars from residential customers, including low-income  
6 customers and small businesses, to large commercial and  
7 industrial customers.

8 As a public utility commissioner -- for me, a  
9 little less than 30 years ago. I'm the young one in the  
10 group -- and as a regulatory party and as an expert  
11 witness, I have ruled on, crafted, negotiated, or joined  
12 in or opposed many settlement agreements in proceedings.

13 In my experience -- in all my 30 years of  
14 experience, this is the only settlement proposal that I  
15 have ever seen that appears to be objectively worse for  
16 residential customers than the original rates proposed  
17 by the utility.

18 I was not part of the settlement negotiations  
19 in this proceeding. I don't know what the process was,  
20 nor does anybody but the private negotiators in the  
21 room, of course, but the result appears not to be in the  
22 public interest.

23 I would remind you that the public interest is  
24 broader and more important than the interests of the  
25 settling parties and, sometimes, in this case, that

1 limited subset of non-representative parties should not  
2 be allowed to dictate costs and impacts on millions of  
3 customers. Instead, the Commission, itself, should  
4 apply its objective, comprehensive, and independent  
5 judgment to the issues in this proceeding.

6 I, therefore, recommend that you reject the  
7 proposed settlement in its entirety and render a  
8 decision in this proceeding only after a full, fair, and  
9 balanced evaluation of a comprehensive evidentiary  
10 record.

11 That concludes my overview.

12 MR. MARSHALL: Thank you.

13 We tender the witness for cross-examination.

14 CHAIRMAN CLARK: Any party have any questions?  
15 Staff?

16 MS. BROWNLESS: No, sir.

17 CHAIRMAN CLARK: Commissioners.

18 Commissioner Fay.

19 COMMISSIONER FAY: Thank you, Mr. Chairman.

20 Thank you, Mr. Rabago, for your testimony.

21 Just a quick question of clarification of one of  
22 the last things you just said is -- is the  
23 settlement was negotiated with non-represented  
24 parties.

25 Can you just elaborate on -- on what you mean

1 by that?

2 THE WITNESS: Well, what I -- what I meant is  
3 that it did not include the representation all the  
4 parties who were -- who were part of -- and  
5 participation of all of the parties who were -- who  
6 earned standing and participated in this  
7 proceeding.

8 I understand that the parties that I am here  
9 speaking on behalf of, LULAC, Florida Rising, and  
10 Eco-Southwest Florida, were not, in any way, a part  
11 of that negotiation notwithstanding the fact that  
12 they had party status.

13 COMMISSIONER FAY: Great. Thank you.

14 CHAIRMAN CLARK: Commissioners, any other  
15 questions?

16 Mr. Marshall.

17 MR. MARSHALL: No redirect.

18 At this time, we'd like to enter Exhibits 485  
19 through 492 into the record.

20 CHAIRMAN CLARK: So ordered.

21 (Whereupon, Exhibit Nos. 485 through 492 were  
22 admitted into the record.)

23 MR. MARSHALL: And we'd also ask that the  
24 witness be excused.

25 CHAIRMAN CLARK: And you're excused,

1 Mr. Rabago. Thank you for your testimony today.

2 THE WITNESS: Thank you.

3 CHAIRMAN CLARK: All right. Does that  
4 concludes all of your witnesses, Mr. Marshall?

5 MR. MARSHALL: It does. Thank you,  
6 Mr. Chairman.

7 CHAIRMAN CLARK: All right. Next up, we will  
8 take the signatories. I believe we're taking this  
9 group as a panel; am I correct?

10 MS. BROWNLESS: We are. And if we could have  
11 about ten minutes to get everybody rearranged in  
12 the appropriate --

13 CHAIRMAN CLARK: All right. We're going to  
14 take a ten-minute recess.

15 (Brief recess.)

16 CHAIRMAN CLARK: All right. Mr. Litchfield.

17 MR. LITCHFIELD: Thank you, Mr. Chair. We've  
18 got five witnesses comprising our panel.

19 Ms. Moncada, for ease of -- well, for  
20 efficiency, is gonna lead them all through their  
21 direct as well as their oral rebuttal, but we've  
22 got Ms. Tiffany Cohen, Mr. Matt Valle, Mr. Jim  
23 Coyne, Mr. Scott Bores, and Mr. Robert Barrett.

24 CHAIRMAN CLARK: All right. Ms. Moncada.

25 MS. MONCADA: Thank you, Mr. Chairman. And

1           thank you for accommodating the panel. We think it  
2           will result in the best exposition of the  
3           settlement agreement. Thank you.

4                       We'll start with Mr. Barrett.

5                                       EXAMINATION

6   BY MS. MONCADA:

7           **Q     Mr. Barrett, you understand you're still under**  
8   **oath?**

9           A     I do.

10          **Q     Thank you.**

11          A     I do.

12          **Q     Have you prepared and caused to be filed 12**  
13 **pages of direct testimony in support of the settlement**  
14 **agreement?**

15          A     Yes.

16          **Q     Do you have any changes to make to that?**

17          A     No.

18          **Q     If I asked you the same questions today, would**  
19 **your answers be the same?**

20          A     Yes, they would.

21                       MS. MONCADA: Mr. Chairman, I would ask that  
22                       Mr. Barrett's prepared settlement testimony be  
23                       inserted into the record.

24                       CHAIRMAN CLARK: So ordered.

25                       (Whereupon, Witness Barrett's prefiled

1 settlement testimony was inserted into the record  
2 as though read.)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**FLORIDA POWER & LIGHT COMPANY**  
**PRE-FILED SETTLEMENT TESTIMONY OF ROBERT E. BARRETT**  
**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NO. 20210015-EI**  
**AUGUST 26, 2021**

**TABLE OF CONTENTS**

1

2

3 **I. INTRODUCTION AND SUMMARY.....3**

4 **II. SOLAR BASE RATE ADJUSTMENT MECHANISM.....5**

5 **III. RESERVE SURPLUS AMORTIZATION MECHANISM.....7**

6 **IV. STORM COST RECOVERY MECHANISM .....8**

7 **V. ROE TRIGGER MECHANISM .....9**

8 **VI. NATURAL GAS FINANCIAL HEDGING PROGRAM.....10**

9 **VII. CONCLUSION.....11**

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## I. INTRODUCTION AND SUMMARY

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

A. My name is Robert E. Barrett. My business address is Florida Power & Light Company (“FPL” or the “Company”), 700 Universe Boulevard, Juno Beach, Florida 33408-0420.

**Q. Did you previously submit direct and rebuttal testimony in this proceeding?**

A. Yes.

**Q. Are you sponsoring or co-sponsoring any additional exhibits in this case?**

A. Yes. I am co-sponsoring Exhibit REB-15, Stipulation and Settlement Agreement.

**Q. What is the purpose of your pre-filed settlement testimony?**

A. The purpose of my pre-filed settlement testimony is to explain why the Stipulation and Settlement filed on August 10, 2021 (the “Proposed Settlement Agreement”), taken as a whole, is in the public interest and should be approved by the Commission. My testimony also will discuss the following provisions contained in the Proposed Settlement Agreement and any key differences from those provisions in FPL’s petition filed March 12, 2021:

- Solar Base Rate Adjustment (“SoBRA”);
- Reserve Surplus Amortization Mechanism (“RSAM”);
- Storm Cost Recovery Mechanism (“SCRM”);
- Return on Equity (“ROE”) trigger mechanism (“ROE Trigger”); and

- 1           • Natural Gas Financial Hedging Program.

2   **Q. Please provide an overview of the Proposed Settlement Agreement and**  
3   **describe why it is in the public interest.**

4   A. The Proposed Settlement Agreement would resolve all issues in FPL’s base rate  
5   case filed March 12, 2021 in a manner that is supported by the Office of Public  
6   Counsel (“OPC”), the Florida Retail Federation, Florida Industrial Power Users  
7   Group, Southern Alliance for Clean Energy, Vote Solar, the CLEO Institute and  
8   FPL. The Settlement Agreement also is not opposed by Walmart. The  
9   Agreement, if approved, will promote the interests of customers in receiving  
10   low bills, high reliability, improved emissions, and excellent customer service  
11   while allowing FPL to maintain the financial strength to make investments it  
12   believes to be necessary to provide customers with safe and reliable power.

13

14   Through its terms, the Proposed Settlement Agreement provides for a reduction  
15   in FPL’s base rate request while allowing for scheduled rate increases in 2022  
16   and 2023, and the opportunity to adjust base rates for the addition of cost-  
17   effective solar additions in 2024 and 2025. Taken as a whole, the Proposed  
18   Settlement Agreement will provide for a high degree of base rate certainty for  
19   all parties and FPL customers for a minimum of four years, encourage  
20   management to continue its focus on improving service delivery, allow FPL to  
21   realize additional efficiencies in operations and to create stronger customer  
22   value, all while maintaining residential bills that are projected to remain among

1 the lowest in the nation. For these reasons, this negotiated outcome produces an  
2 overall result that is in the public interest.

3

4 **II. SOLAR BASE RATE ADJUSTMENT MECHANISM**

5

6 **Q. Is the SoBRA mechanism contained in the Proposed Settlement Agreement**  
7 **the same as the SoBRA mechanism contained in the Company's base rate**  
8 **filing?**

9 A. Most of the components of the SoBRA proposed in FPL's base rate filing  
10 remained unchanged in the Proposed Settlement Agreement. Among those are:

- 11 • The proposed MW additions remain 894 MW in each of 2024 and 2025 for  
12 a total of 1,788 MW with the ability to carryover any MWs not placed into  
13 service in 2024 into 2025;
- 14 • The SoBRA will be based upon the base revenue requirements for the first  
15 twelve months of operation of the cost-effective solar projects;
- 16 • Each solar project will be subject to a \$1,250 per kW<sub>AC</sub> cost cap; and
- 17 • Each SoBRA filing will be considered by the Commission as an issue in  
18 FPL's Fuel and Purchased Power Cost Recovery Clause docket.

19 **Q. Please describe any notable provisions of the SoBRA mechanism in the**  
20 **Proposed Settlement Agreement that have been modified or clarified as**  
21 **compared to the Company's base rate filing.**

22 A. The Proposed Settlement Agreement clarifies that a solar project, as that term  
23 is used in the agreement, may comprise more than one solar site, with a site

1 being understood by the parties to be one solar generating facility located on  
2 one geographic location with one interconnection point to the electric grid.

3

4 Consistent with FPL's practice with respect to the SoBRA provision of the 2016  
5 Settlement Agreement, the 2021 Proposed Settlement Agreement clarifies that  
6 if any SoBRA solar project includes land that is already included in base rates  
7 as Plant Held for Future Use as shown on FPL Exhibit MV-5, that land will be  
8 excluded from the calculation of base revenue requirements for the SoBRA  
9 increase.

10

11 The average cost of all SoBRA solar projects included in any filing for  
12 Commission approval will be subject to a \$1,250 per kW<sub>AC</sub> cost cap (the  
13 "Cap"), and the Cap will be adjusted to exclude any land that is already included  
14 in base rates as Plant Held for Future Use as shown on FPL Exhibit MV-5  
15 ("Adjusted Cap"). The Adjusted Cap will be compared to the actual average  
16 cost of the SoBRA solar projects included in that filing, excluding the  
17 associated land if applicable, to determine whether the actual costs are above or  
18 below the Cap or Adjusted Cap as appropriate.

19

20 The Proposed Settlement Agreement includes an incentive provision intended  
21 to encourage FPL to bring SoBRA sites in at a cost below the cap. To this end,  
22 the Agreement would allow customers and FPL to share in any savings in actual  
23 installed costs of the SoBRA solar generation (the "SoBRA Incentive"). The

1 SoBRA Incentive is calculated at the site level rather than the project level and  
2 utilizes the Cap or Adjusted Cap, as applicable. If actual costs are below the  
3 Cap/Adjusted Cap, the savings will be shared 75 percent to customers and 25  
4 percent to the Company. For example, assuming the application of the Cap to  
5 a particular site, if the actual installed cost of a solar generation site is \$1,150  
6 per kW<sub>AC</sub>, the cost to be used for purposes of computing the revenue  
7 requirement would be \$1,175 per kW<sub>AC</sub>, [0.25 x (\$1,250 - \$1,150) + \$1,150].

8 .

### 9 III. RESERVE SURPLUS AMORTIZATION MECHANISM

10

11 **Q. Does the Proposed Settlement Agreement contain any modifications to the**  
12 **RSAM as proposed in FPL's base rate filing?**

13 A. Yes. While the RSAM is substantially as proposed in FPL's base rate filing,  
14 the principal modifications contained in the Proposed Settlement Agreement  
15 are as follows:

- 16 • FPL's use of RSAM in 2022 is limited to a total net credit of \$200 million;
- 17 • The Proposed Settlement Agreement defines a "Carryover Amount" as the  
18 positive difference, if any, between the actual Reserve Amount remaining  
19 from the 2016 Settlement Agreement and \$346 million;
- 20 • The Carryover Amount will be utilized as follows: 1) 50 percent will be  
21 used to credit (i.e., increase) the storm reserve as an unfunded amount; 2)  
22 50 percent will be used to credit (i.e., decrease) the capital recovery assets  
23 identified on Exhibit D to the Proposed Settlement Agreement; and



1 required at any time to keep FPL from exceeding the top of its authorized ROE  
2 range if and when the Reserve Amount is at the ceiling of \$1.450 billion.

3 **Q. Does the Proposed Settlement Agreement contain any other changes to the**  
4 **SCRM contained in FPL’s base rate filing and depicted on Exhibit REB-**  
5 **10?**

6 A. Yes. The Proposed Settlement Agreement assumes the unification of rates for  
7 FPL and Gulf, therefore it does not contain the language found in Paragraphs  
8 4a and 4b of Exhibit REB-10.

9

## 10 **V. ROE TRIGGER MECHANISM**

11

12 **Q. Please summarize the ROE Trigger Mechanism.**

13 A. If at any time during the term of the Agreement, but only one time during the  
14 term, the average 30-Year United States Treasury Bond Yield (“30-Year  
15 Treasury Yield”) for any six (6) month consecutive period is at least 2.49  
16 percent (50 basis points higher than the 1.99 percent actual 30-Year Treasury  
17 Yield on August 10, 2021, the date of the filing of the Proposed Settlement  
18 Agreement), FPL may, at its option, petition the Commission based on the terms  
19 of the Settlement Agreement to increase the authorized midpoint ROE for all  
20 purposes to 10.8 percent and to be within an authorized range of 9.8 percent to  
21 11.8 percent. This revised authorized ROE and range will remain in effect until  
22 a new ROE is authorized by the Commission at the time base rates are next set.

1 **Q. Will base rates be affected upon implementation of the new authorized**  
2 **ROE pursuant to the ROE Trigger?**

3 A. No. Base rates will not be adjusted upon implementation of the ROE Trigger.  
4 However, the new ROE midpoint would be used for all other rate setting and  
5 regulatory purposes. This includes any base rate adjustment pursuant to the  
6 SoBRA, which will be calculated using the authorized ROE in effect at the time  
7 of the implementation of the SoBRA.

8

9 **VI. NATURAL GAS FINANCIAL HEDGING PROGRAM**

10

11 **Q. Has FPL agreed to terminate natural gas financial hedging prospectively**  
12 **for the Minimum Term of the Proposed Settlement Agreement?**

13 A. Yes. FPL has agreed to terminate natural gas financial hedging prospectively  
14 for the Minimum Term and any extensions thereof.

15 **Q. Within the overall context of the Proposed Settlement Agreement, is**  
16 **terminating natural gas financial hedging prospectively for the Minimum**  
17 **Term reasonable?**

18 A. Yes. In the 2016 Settlement Agreement, the parties for the first time agreed  
19 that FPL would discontinue its natural gas financial hedging program. Though  
20 FPL believes there is benefit to customers in reducing fuel price volatility  
21 through financial hedging, in consideration of the overall context of this  
22 Proposed Settlement Agreement FPL believes it is reasonable to continue not

1 to use natural gas financial hedges prospectively through the Minimum Term  
2 and any extensions thereof.

3 **Q. What does the Proposed Settlement Agreement provide with respect to**  
4 **hedging following the expiration of the Minimum Term?**

5 A. FPL is not prohibited from filing a petition and proposed risk management plan  
6 with the Commission to address natural gas financial hedging following  
7 expiration of the Minimum Term of the Settlement Agreement.

8

9

## VII. CONCLUSION

10

11 **Q. Should the Commission approve the Proposed Settlement Agreement and**  
12 **determine that it is in the public interest?**

13 A. Yes. The Proposed Settlement Agreement resolves all issues in FPL's base rate  
14 filing and is either directly supported or unopposed by most of the parties in  
15 this docket, including OPC. As with any settlement agreement, the parties have  
16 made concessions relative to their filed positions on a wide assortment of issues.  
17 The Proposed Settlement Agreement should be viewed and considered for  
18 approval by the Commission in its entirety and an overall package that meets  
19 the public interest, rather than on the basis of individual elements. The  
20 agreement provides customers with predictability and stability in their electric  
21 rates, while allowing FPL to maintain the financial strength to make  
22 investments it believes to be necessary to provide customers with safe and  
23 reliable power.

1           The agreement also significantly increases the amount of emissions-free solar  
2           that will be placed in service over the next four years – more than doubling the  
3           amount of solar currently in service at FPL.

4  
5           Lastly, as described by FPL witness Cohen, over the 2021 to 2025 period, the  
6           Proposed Settlement Agreement is projected to result in average annual  
7           increases in typical residential bills in the former FPL area of approximately 2.5  
8           percent. Over the same period, the typical residential bill in the former Gulf  
9           service area is actually projected to decrease by approximately 0.7 percent.  
10          Commercial and industrial customers in the former FPL service area will see  
11          minimal growth in their rates of 1.1 percent to 3.1 percent over the 2021 to 2025  
12          period. Similarly, over the same time frame, the commercial and industrial  
13          customers in the former Gulf service area will see an even lower level of growth  
14          in their rates of flat to 1.4 percent. Overall, these bill impacts compare very  
15          favorably to the average 2.3 percent projected inflation for that period in the  
16          IHS Markit June 2021 forecast referenced in FPL witness Bores' rebuttal  
17          testimony.

18  
19          For these reasons FPL submits that this Proposed Settlement Agreement taken  
20          as a whole is in the public interest and should be approved by the Commission.

21   **Q.    Does this conclude your pre-filed settlement testimony?**

22   **A.    Yes.**

1 BY MS. MONCADA:

2 Q Mr. Barrett, is the exhibit identified as  
3 REB-15, which contains the full settlement agreement,  
4 attached to your prepared testimony?

5 A Yes.

6 MS. MONCADA: Mr. Chairman, I would note that  
7 this exhibit has been pre-identified as Exhibit 483  
8 on the staff exhibit list.

9 CHAIRMAN CLARK: Noted.

10 MS. MONCADA: And, Mr. Chairman, I am going to  
11 ask Mr. Barrett to give a rebuttal on behalf of the  
12 entire panel. I understand, from your order, that  
13 each witness had five minutes, but in lieu of five  
14 minutes each, Mr. Barrett is going to take just a  
15 little bit more than five minutes on behalf of the  
16 whole panel.

17 CHAIRMAN CLARK: Agreed.

18 MS. MONCADA: Thank you.

19 BY MS. MONCADA:

20 Q Mr. Barrett, will you please provide a summary  
21 of the settlement for the Commission.

22 A Yes.

23 Commissioners, what -- what you've just heard  
24 is the testimony of two opponents to this broadly-  
25 supported settlement agreement; testimony that

1 essentially conveys two messages: first, a lengthy  
2 repeat of positions on specific issues they originally  
3 filed in the case; and, second, a wide variety of  
4 blatantly-misleading and incorrect conclusions about the  
5 impacts of the settlement.

6 I'd like to take a few minutes to provide some  
7 details about the contents of the settlement agreement  
8 that's before you and why it's in the best interest of  
9 customers.

10 First and foremost, the agreement is intended  
11 to offer a full and complete resolution of all issues in  
12 the case. It's also an agreement that has broad support  
13 from varied interests.

14 Signatories to the agreement include the  
15 Office of Public Counsel, Florida Retail Federation,  
16 Florida Industrial Power User's Group, Southern Alliance  
17 for Clean Energy, Federal Executive Agencies, Vote  
18 Solar, and the CLEO Institute. The settlement agreement  
19 also is not opposed by Walmart and the Florida Internet  
20 and Television Association.

21 This, I think, reflects the beneficial nature  
22 of the agreement and the willingness of parties to reach  
23 consensus on a wide spectrum of issues; a complicated  
24 and challenging task, to say the least.

25 The guiding objective of the agreement is to

1 benefit customers by enabling them to continue to  
2 receive low bills, high reliability, improved emissions  
3 and excellent customer service, while simultaneously  
4 allowing FPL to maintain the financial strength required  
5 to secure those benefits. We think the agreement does  
6 that.

7           The agreement would allow for the rates of FPL  
8 and Gulf Power customers to be unified. That, alone, is  
9 a significant transition and represents a recognition by  
10 the intervenors of the significant savings and  
11 efficiencies achieved thus far and that will continue to  
12 be achieved through the operational integration of the  
13 company.

14           I'd like to cover some of the key provisions  
15 of the agreement. To start, the agreement would set  
16 FPL's base rates for a minimum period of four years,  
17 from January 1st, 2022, through December 31st, 2025.

18           The agreement's terms also include a  
19 \$692-million base-rate increase effective January --  
20 January the 1st, 2022. This is a compromised position  
21 representing a \$383-million reduction from FPL's initial  
22 request; a \$560-million base-rate increase effective  
23 January the 1st, 2023, a \$45-million reduction from  
24 FPL's request.

25           It also includes solar base-rate adjustments

1 of up to 1,788 megawatts in solar projects in 2024 and  
2 2025. These adjustments would be subject to a cost cap  
3 of \$1,250 per kW and allow FPL to include battery  
4 storage in these projects.

5 FPL's allowed regulatory ROE would be  
6 10.6 percent for all purposes, with a range of  
7 9.7 percent to 11.7 percent.

8 Under the agreement, the ROE could potentially  
9 increase by 20 basis points if the average 30-year U.S.  
10 treasury bond yield for six consecutive months is at  
11 least 50 basis points greater than the rate of  
12 August 10th, 2021, but there would be no base-rate  
13 increase accompanying any such change to the ROE.

14 The agreement preserves the re- -- reserve  
15 surplus amortization mechanism -- the RSAM we've talked  
16 about -- that FPL has been authorized in prior  
17 settlements.

18 The agreement allows FPL to amortize up to  
19 \$1.45 billion of depreciation reserve surplus, including  
20 the projected 346-million balance remaining at the end  
21 of this year.

22 The agreement also continues, in a fashion  
23 similar to prior settlements, the storm-cost recovery  
24 mechanism. Per the agreement, recovery of storm costs  
25 would begin on an interim basis 60 days following the

1 filing of a cost-recovery petition and tariff with the  
2 Commission, based on a 12-month recovery period. There  
3 would be a \$4-per-month cap on the surcharge for the  
4 typical residential thousand-kilowatt-hour bill.

5 The agreement would also authorize FPL to  
6 extend its SolarTogether program, previously approved by  
7 this Commission, allowing the construction of an  
8 additional 1,788 megawatts of cost-effective solar  
9 through 2025.

10 The agreement also contains a tax-reform  
11 mechanism, allowing for the review and adjustment of  
12 base rates, should tax reform be enacted prior to or  
13 during the term of the agreement.

14 In addition to those key provisions I just  
15 described, the proposed settlement agreement also  
16 enables FPL to continue its track record of developing  
17 innovative resources and cutting-edge facilities and  
18 programs that benefit customers, including pilots  
19 related to green hydrogen, electric vehicles, and  
20 additional voluntary solar programs.

21 So, to summarize, the agreement provides for a  
22 reduction in FPL's base-rate request, while allowing for  
23 scheduled rate increases in '22 and '23, as well as the  
24 opportunity to adjust rates with the addition of cost-  
25 effective solar additions in '24 and '25.

1           The agreement will provide for a high degree  
2 of base-rate certainty for FPL customers for a minimum  
3 of four years, encourage FPL's management to continue  
4 its focus on improving service delivery, and allow FPL  
5 to realize additional efficiencies and operations and to  
6 create stronger customer value.

7           The agreement enables all of this to happen  
8 while, at the same time, maintaining typical residential  
9 bills that are projected to remain 20 percent below the  
10 national average and among the lowest in the state.

11           For these reasons, this negotiated outcome  
12 produces an overall result that is well-supportive of  
13 the public interest.

14           Thank you.

15           MS. MONCADA: Thank you, Mr. Barrett.

16           Mr. Chairman, we'll move on to live oral  
17 rebuttal.

18 BY MS. MONCADA:

19           **Q     Mr. Barrett, have you reviewed the**  
20 **supplemental testimony filed by the witnesses who oppose**  
21 **the settlement agreement?**

22           A     Yes, I have.

23           **Q     What is your general observation regarding**  
24 **that testimony?**

25           A     Well, for the -- for the most part, the

1 testimony filed by these four witnesses simply re-argues  
2 many of the same points that they raised in their direct  
3 testimony filed on June 21st, 2021; thus, our rebuttal  
4 testimony on those points, in general, remains  
5 applicable and should be viewed and read as responsive  
6 both to the direct testimony filed on June 21st and the  
7 supplemental testimony filed September 13th.

8           While we would not propose to repeat all of  
9 our prior rebuttal, there are a handful of incorrect  
10 contentions that we will address today.

11           **Q     Thank you.**

12                   **What is your response to Mr. Herndon's**  
13 **characterization of this as at largest rate increase in**  
14 **Florida history?**

15           A     Well, Mr. Herndon is referring to nominal  
16 numbers. FPL is, by far, the largest utility in the  
17 state of Florida; even more so now that we've added Gulf  
18 Power into the FPL company. It's almost three times the  
19 size of Duke, six times the size of TECO.

20                   So, if utility rates were adjusted annually,  
21 just at the rate of inflation, the nominal increase for  
22 FPL is always going to be higher because FPL is a bigger  
23 enterprise. That's simple math. And it's a bit  
24 disingenuous of Mr. Herndon to -- to put it in those --  
25 in those terms.

1           What Mr. Herndon's also fails to mention is  
2           that FPL's bills have consistently been among the  
3           lowest, if not the lowest, in the state for over a  
4           decade, and are expected to remain well-below the  
5           national average. Likewise, he fails to note that the  
6           FPL's reliability is the very best in Florida.

7           These are things that matter to our customers.

8           **Q     Thank you, Mr. Barrett.**

9           **You mentioned reliability, but Mr. Herndon**  
10          **contends that FPL has a duty to provide safe and**  
11          **reliable service at the lowest possible cost.**

12          **What is your response to that?**

13          A     Well, my understanding is that public  
14          utilities in Florida have a duty to provide reasonably-  
15          sufficient, adequate, and efficient service at fair and  
16          reasonable rates.

17          Further, in fixing fair and reasonable rates,  
18          my understanding is that the Commission is entitled to  
19          give consideration, among other things, to the  
20          efficiency, sufficiency, and adequacy of the facilities  
21          provided and the services rendered, the cost of  
22          providing such service, and the value of such service to  
23          the public, as well as the ability of the utility to  
24          improve such service and facilities.

25          **Q     What is the source you were just referencing?**

1           A     I'm referencing the terms and language used in  
2 Chapter 366 of the Florida Statutes.

3           **Q     Mr. Barrett, can you explain how FPL's**  
4 **performance measures up against those standards and the**  
5 **considerations that were just referenced?**

6           A     Well, we've submitted an enormous amount of  
7 material in this case documenting FPL's superior and, in  
8 many cases, best-in-class operational efficiency and  
9 FPL's superior performance in all -- almost all aspects  
10 of its service delivery; a standard of performance far  
11 beyond a mere, quote, "... sufficiency and adequacy of  
12 facilities and services."

13                     We've demonstrated that our approach has  
14 continued to yield even better overall service for our  
15 customers year after year. And FPL has done this and  
16 will continue to do -- do so at bills that are well-  
17 below the Florida and national averages.

18                     So, yes, I take issue with Mr. Herndon's  
19 contention, but perhaps even more problematic is his  
20 blatant disregard of all the relevant factors, factors  
21 that matter most to our customers. Mr. Herndon doesn't  
22 dispute FPL's performance; he improperly ignores it.

23           **Q     Thank you, Mr. Barrett.**

24                     **We'll move on to rebuttal of Mr. Mac Mathuna.**  
25 **FAIR Witness Mac Mathuna cites a Morningstar analyst,**

1 who opines on the regulatory treatment received by the  
2 company in comparison to peer utilities Duke Energy  
3 Florida and Tampa Electric.

4           Could you opine on the quote that Mr. Mac  
5 Mathuna chose to cite in his testimony?

6           A     Certainly. Mr. Mac Mathuna only provided a  
7 brief quotation from a larger section of that report  
8 which gives proper context for the point that's being  
9 made by the analyst.

10           Q     Could you provide the fuller context for the  
11 Commission, please.

12           A     Certainly. On BTM-10, Page 6 of 34, in the  
13 sentence right after the quote lifted by Mr. Mac  
14 Mathuna, the analyst continued: "We believe NextEra  
15 enjoys best-in-class regulation through its management  
16 execution and continued ability to deliver operating  
17 efficiencies.

18                     "NextEra parlayed this success into reducing  
19 costs and boosting investment at the recently-acquired  
20 Gulf Power. Residential bills should remain affordable;  
21 the average customer bill increasing 2.5 percent  
22 annually through the rate case. Customer bills will be  
23 20 percent below the national average.

24                     "Customer affordability is a crucial  
25 consideration for regulators, further supporting likely

1 regulator approval of the settlement agreement."

2           **Q     And, yet, witnesses who oppose the settlement**  
3 **continue to spend most of their time on individual**  
4 **elements of FPL's financial structure.**

5                   **What is your response to this type of**  
6 **testimony, in general?**

7           A     They continue to make many of the same  
8 arguments in their opposition to individual elements of  
9 the settlement agreement -- principally, the ROE and the  
10 capital structure -- that they made in response to the  
11 company's original-filed case.

12                   As I said earlier, we've responded to those  
13 arguments previously in our rebuttal testimony filed on  
14 July 14th, but to restate it in broad terms, our  
15 approach to the capitalization of FPL is core to our  
16 overall strategy; one that has worked exceptionally well  
17 and, in many respects, far better than the, quote,  
18 "industry average", which is where these witnesses seem  
19 to want to take us.

20                   Each settlement agreement that this Commission  
21 considers includes a balance of terms and conditions  
22 unique to the company and the participants in those  
23 proceedings.

24                   Similarly, each agreement should be reviewed  
25 individually, on its own merits, to determine whether

1 the agreement, as a whole -- not on isolated term here  
2 or there -- is in the public interest.

3 **Q In view of that, should the FPL settlement**  
4 **agreement be approved?**

5 A Yes. The FPL settlement agreement currently  
6 before this Commission is a carefully- and extensively-  
7 negotiated document that we believe will continue to  
8 position FPL to deliver the kind of industry-leading  
9 value our customers have come to expect.

10 It's supported or not opposed by every other  
11 intervenor in this proceeding. And we firmly believe it  
12 is in the public interest and should be approved as  
13 such.

14 **Q Thank you, Mr. Barrett.**  
15 **Does that conclude your rebuttal testimony?**

16 A Yes, it does.

17 MS. MONCADA: Thank you.

18 We'll move forward to Mr. Bores.

19 EXAMINATION

20 BY MS. MONCADA:

21 **Q Mr. Bores, have you been sworn?**

22 A Yes, I have.

23 **Q Thank you.**

24 **And you have not yet testified today or --**  
25 **anyway, as part of this proceeding, before the**

1 Commission. You have testified previously, but I will  
2 ask you to, for the record, state your full name and  
3 your business address.

4 A Scott Bores, 700 Universe Boulevard, Juno  
5 Beach, Florida 33408.

6 Q And by whom are you employed?

7 A Florida Power & Light.

8 Q In what capacity, sir?

9 A As the senior director of financial planning  
10 and analysis.

11 Q Have you prepared and caused to be filed 11  
12 pages of direct testimony in support of the settlement  
13 agreement?

14 A Yes, I have.

15 Q Do you have any changes to make to that  
16 testimony?

17 A No, I do not.

18 Q If I asked you the same questions today, would  
19 your answers be the same?

20 A Yes, they would.

21 MS. MONCADA: Mr. Chairman, I would ask that  
22 Mr. Bores' prefiled testimony in support of the  
23 settlement be inserted into the record as though  
24 read.

25 CHAIRMAN CLARK: So ordered.

1                   (Whereupon, Witness Bores' prefiled settlement  
2           testimony was inserted into the record as though  
3           read.)

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2                   **FLORIDA POWER & LIGHT COMPANY**  
3                   **PRE-FILED SETTLEMENT TESTIMONY OF SCOTT R. BORES**  
4                   **PROPOSED SETTLEMENT AGREEMENT**  
5                   **DOCKET NO. 20210015-EI**  
6                   **AUGUST 26, 2021**  
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**TABLE OF CONTENTS**

1

2

3 **I. INTRODUCTION AND SUMMARY.....3**

4 **II. FPL SOLARTOGETHER™ .....4**

5 **III. OTHER PROVISIONS .....8**

6

7

8

9

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11

12

13

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## I. INTRODUCTION AND SUMMARY

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

A. My name is Scott R. Bores. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

**Q. Did you previously submit direct and rebuttal testimony in this proceeding?**

A. Yes.

**Q. Are you sponsoring or co-sponsoring any additional exhibits in this case?**

A. Yes. I am sponsoring the following exhibits:

- SRB-14 FPL Extended SolarTogether Resource Plans
- SRB-15 FPL SolarTogether Extension System Costs and Benefits
- SRB-16 CPVRR Analysis for FPL’s Extended SolarTogether Program

I am co-sponsoring Exhibit REB-15 Stipulation and Settlement Agreement, filed with the pre-filed settlement testimony of FPL witness Barrett.

**Q. What is the purpose of your pre-filed settlement testimony?**

A. The purpose of my pre-filed settlement testimony is to explain several of the provisions contained in the Stipulation and Settlement Agreement filed on August 10, 2021 (“Proposed Settlement Agreement”) and, if applicable, how they differ from those provisions included in FPL’s petition filed on March 12, 2021. Specifically, I address the following:

- 1           • Cost effectiveness and pricing for FPL’s extended SolarTogether™  
2           Program;
- 3           • Regulatory asset amortization schedules on Exhibit D to the Proposed  
4           Settlement Agreement;
- 5           • Potential changes in tax legislation;
- 6           • Acceleration of unprotected excess accumulated deferred income taxes;
- 7           • Dismantlement accrual on Exhibit E to the Proposed Settlement  
8           Agreement; and,
- 9           • Future depreciation and dismantlement studies.

10

11

## II. FPL SOLARTOGETHER™

12

13 **Q. FPL witness Valle describes the extension of FPL’s SolarTogether**  
14 **Program that would be authorized through the approval of the Proposed**  
15 **Settlement Agreement. Please explain how FPL determined the cost**  
16 **effectiveness for the proposed solar facilities that would be constructed**  
17 **under the extension of SolarTogether.**

18 A. Under my supervision, FPL evaluated cost effectiveness using the same  
19 approach that it used for FPL’s original SolarTogether Program as well as its  
20 Solar Base Rate Adjustment (“SoBRA”) filings. FPL developed two resource  
21 plans as demonstrated on Exhibit SRB-14. The first plan, called the “No STE  
22 Plan,” assumes no new solar facilities were built other than those included in  
23 FPL’s rate petition. The second resource plan, called the “SolarTogether

1 Extension Plan” then added the additional 24 solar generating facilities  
2 proposed as part of the extension of SolarTogether.

3 **Q. What major assumptions are used in the No STE Plan and the**  
4 **SolarTogether Extension Plan?**

5 A. Both plans use the same major assumptions reflected in FPL’s rate petition and  
6 used in its 2021 Ten Year Site Plan, including the same long-term forecasts for  
7 load, fuel prices, and carbon compliance costs.

8 **Q. Is the SolarTogether Extension Plan cost-effective?**

9 A. Yes, as demonstrated on Exhibit SRB-15, which was prepared under my  
10 supervision, the 24 sites included in the SolarTogether extension are projected  
11 to provide \$425 million of cumulative present value of revenue requirements  
12 (“CPVRR”) benefit. To determine the CPVRR net benefit for the incremental  
13 24 sites, FPL subtracted the CPVRR of the No STE Plan from the CPVRR of  
14 the FPL SolarTogether Extension Plan.

15 **Q. Please provide the CPVRR results for the extended SolarTogether**  
16 **Program.**

17 A. As demonstrated on Exhibit SRB-16, which was prepared under my  
18 supervision, the CPVRR net benefit to FPL customers for the 44 sites included  
19 in the extended SolarTogether Program is projected to be \$648 million.

20 **Q. Please explain how the pricing for the extended program was developed?**

21 A. As reflected in the Proposed Settlement Agreement and described by FPL  
22 witness Valle, the extended SolarTogether Program was designed to maintain  
23 the sharing of the projected \$648 million in net benefits with 55% accruing to

1 participants and 45% accruing to the general body of customers. To achieve  
2 that objective, as well as provide an approximate 7-year simple payback for  
3 participants of the extended program, FPL designed the extended program  
4 pricing to maintain the \$6.76 per kW-month subscription charge.

5 **Q. How did FPL design the extended SolarTogether Program to maintain the**  
6 **\$6.76 per kW-month Subscription Charge?**

7 A. The extended SolarTogether Program is designed to recover 103.26% of the  
8 Program revenue requirements from the participants through a levelized  
9 Subscription Rate (“Subscription Rate”). Allocating more than 100% of the  
10 base revenue requirements to the participants allows for \$95 million of the  
11 benefits that accrue to the general body of customers to be fixed. These fixed  
12 base benefits will not be subject to future fuel or emissions cost fluctuations, a  
13 feature that will continue through the life of the Program. As a result,  
14 participants will contribute \$3.003 billion in equivalent CPVRR cost (103.26%  
15 of \$2.908 billion). FPL divided the \$3.003 billion by the present value of the  
16 available nameplate MW<sub>AC</sub> over the 35-year asset lives (37,187 MW<sub>AC</sub>) to  
17 develop a levelized annual rate, which FPL kept consistent with the original  
18 SolarTogether Program at \$6.76 per kW-month. The Subscription Rate is  
19 multiplied by the participant’s subscription level resulting in the total charge  
20 (“Subscription Charge”) that will appear on the participant’s bill.

21 **Q. How will FPL recover the base revenue requirements of the extended**  
22 **SolarTogether Program?**

23 A. Consistent with how FPL is recovering the revenue requirements of the original

1 SolarTogether Program, the net expanded Program base revenue requirements  
2 would be recovered through base rates. The difference between the levelized  
3 Subscription Charges and the actual base revenue requirements each month will  
4 be reflected as base rate recoverable costs or benefits included within FPL's  
5 earnings surveillance report. At the time of the next base rate review, revenue  
6 related to the projected levelized Subscription Charges from participants as well  
7 as the projected base revenue requirements will be recovered through base rates.

8 **Q. What percentage of the total CPVRR benefit is being allocated to**  
9 **participants in FPL's extended SolarTogether Program?**

10 A. Pursuant to the Proposed Settlement Agreement, SolarTogether maintains the  
11 45% allocation of the total CPVRR net benefit (\$292 million) to the general  
12 body of customers. The remaining 55% of the total CPVRR net benefit (\$357  
13 million) will be allocated to participants in the Program.

14 **Q. How are the system benefits translated into a Benefit Rate?**

15 A. Utilizing the expected annual energy generation from the 44 solar generating  
16 facilities included within the system impact analysis, FPL calculated the dollars  
17 per kWh benefit ("Benefit Rate") that allowed for the remaining 55% of the  
18 expected total CPVRR net benefit to be allocated to participants.

19 **Q. What is the resulting Benefit Rate being offered to FPL SolarTogether**  
20 **participants?**

21 A. In the first year of enrollment, participants would receive a Benefit Rate of  
22 \$0.0359792 for every kWh produced by their subscribed capacity. The Benefit  
23 Rate will then escalate at 1.50% annually.

1 **Q. Please explain how the escalation rate of 1.50% for the Benefit Rate was**  
2 **determined.**

3 A. The escalation rate for the Benefit Rate was determined through an iterative  
4 process performed to ensure that the Subscription Credit allowed participating  
5 customers in the extended Program to achieve an approximate 7-year simple  
6 payback, based on the projected kWh output for the 44 solar generating  
7 facilities, while allocating the remaining 55% of the total Program CPVRR  
8 benefit.

9

### 10 **III. OTHER PROVISIONS**

11

12 **Q. Please describe the regulatory asset amortization schedules set forth in**  
13 **Exhibit D for purposes of the Proposed Settlement Agreement.**

14 A. The amortization schedules set forth in Exhibit D to the Proposed Settlement  
15 Agreement reflect a 20-year amortization period, which reduces the annual  
16 amortization expense as a result of the change from the 10-year amortization  
17 period proposed in FPL's petition. In the context of the overall settlement,  
18 including the reduced level of revenue increases, the 20-year amortization  
19 period and associated revenue requirement reduction is reasonable.

20 **Q. Please explain how the Tax Reform mechanism that was agreed to in**  
21 **Paragraph 13 of the Proposed Settlement Agreement will work.**

22 A. If any permanent federal or state tax law is enacted and becomes effective  
23 during the term of the Proposed Settlement Agreement, FPL will calculate and

1 quantify the impact of that change by utilizing the forecasted earnings  
2 surveillance report (“FESR”) for the given calendar year. For example, if tax  
3 legislation becomes effective for the 2022 calendar year, FPL will utilize the  
4 2022 FESR to calculate the impact. This will be accomplished by preparing the  
5 FESR two ways: 1) under the current tax law as passed by the Tax Cuts and  
6 Jobs Act of 2017; and 2) utilizing the new law that may be enacted. The rate  
7 base, net operating income and the weighted average cost of capital will be used  
8 to calculate the base revenue requirements for each scenarios and the difference  
9 between the two base revenue requirements will determine the amount of the  
10 base rate adjustment.

11 **Q. Please explain the provisions of Paragraph 26 of the Proposed Settlement**  
12 **Agreement regarding the amortization of unprotected excess accumulated**  
13 **deferred income taxes (“EADIT”).**

14 A. Paragraph 26 of the Proposed Settlement Agreement would authorize FPL to  
15 accelerate the unprotected EADIT that were to be amortized in 2026 and 2027  
16 and instead allow for amortization in each year of 2022 through 2025. This  
17 would have the effect of accelerating approximately \$163 million of  
18 unprotected EADIT amortization over the settlement term, or approximately  
19 \$41 million annually. In the context of the overall settlement, including the  
20 reduced level of revenue increases, this acceleration of unprotected EADIT is  
21 reasonable and facilitates FPL’s ability to stay out for at least the Minimum  
22 Term of the Proposed Settlement Agreement.

1 **Q. Please explain the revision to the dismantlement accrual as shown on**  
2 **Exhibit E of the Proposed Settlement Agreement.**

3 A. FPL has revised the dismantlement accrual as shown on Exhibit E to account  
4 for the longer plant lives associated with the adoption of the Reserve Surplus  
5 Amortization Mechanism parameters. This change results in an approximate  
6 \$4 million annual reduction in the accrual related to base rates. In the context  
7 of the overall settlement, including the reduced level of revenue increases, this  
8 reduction in the dismantlement accrual is reasonable.

9 **Q. Why does the Proposed Settlement Agreement defer filing the depreciation**  
10 **and dismantlement studies until FPL files its next petition to change base**  
11 **rates?**

12 A. FPSC Rules 25-6.0436(4)(a) and 25-6.04364(3), which govern depreciation  
13 and dismantlement studies, require FPL to file studies at least once every four  
14 years “*or pursuant to Commission order and within the time specified in the*  
15 *order.*” [Emphasis added]. FPL’s next studies are currently due to be filed by  
16 March 12, 2025. Under the Proposed Settlement Agreement, these studies  
17 would not be due until the time that FPL petitions to reset its base rates in a  
18 general base rate proceeding. This timing aligns the review of FPL’s next  
19 depreciation and dismantlement studies with the review of FPL’s next base rate  
20 petition. The current due date for the studies of March 12, 2025 and the filing  
21 date for FPL’s next petition to change base rates may coincide if FPL decides  
22 to file for an adjustment in base rates at the end of the Proposed Settlement  
23 Agreement’s Minimum Term (i.e., to be effective January 1, 2026). However,

1 providing that the filing date for the studies could be deferred until FPL's next  
2 rate petition would help facilitate the possibility that the rate petition could be  
3 delayed to a later date.

4 **Q. Are these provisions reasonable in the context of the overall Proposed**  
5 **Settlement Agreement?**

6 A. Yes. The provisions described in my testimony are reasonable in the context of  
7 the overall proposed Settlement Agreement as they allow for a reduced level of  
8 cash revenue increases and support an outcome that is in the public interest and  
9 should be approved by the Commission.

10 **Q. Does this conclude your pre-filed settlement testimony?**

11 A. Yes.

1 BY MS. MONCADA:

2 Q Mr. Bores, were the exhibits identified as  
3 SRB-14 through SRB-16 attached to your prepared  
4 settlement testimony?

5 A Yes.

6 Q And were these exhibits prepared under your  
7 direction and supervision?

8 A Yes, they were.

9 MS. MONCADA: Mr. Chairman, these have been  
10 identified in staff's exhibit list as Exhibits 478  
11 through 480.

12 BY MS. MONCADA:

13 Q Mr. Bores, are you also co- -- co-sponsoring  
14 REB-15, which is the entire settlement agreement that  
15 was attached to Mr. Barrett's testimony?

16 A Yes, I am.

17 Q Thank you.

18 Have you reviewed the intervenor testimony in  
19 opposition to the settlement agreement to this matter?

20 A I have.

21 Q Do you have rebuttal testimony to provide?

22 A Yes, I do.

23 Q And, as part of that, do you have any rebuttal  
24 exhibits?

25 A Yes, I do, Exhibit SRB-17.

1 MS. MONCADA: Mr. Chairman, may we please  
2 obtain a number for this exhibit? And it has been  
3 passed around to everyone. We made the 40 copies  
4 and it has been circulated to all the parties and  
5 the Commission.

6 CHAIRMAN CLARK: Okay. Ms. Brownless, I --  
7 question --

8 MS. BROWNLESS: I think --

9 CHAIRMAN CLARK: We -- we picked up last time  
10 with 616. I am missing 607 through 615.

11 Where did I -- where did I lose those  
12 documents at?

13 MS. HELTON: Those were the Gulf Power ESRs,  
14 and we identified them as 607 through 615.

15 CHAIRMAN CLARK: Okay. Great.

16 616, 617 -- so, we are at No. 620; am I  
17 correct?

18 MS. BROWNLESS: Yes, sir.

19 MS. HELTON: Yes, sir.

20 CHAIRMAN CLARK: All right. That should be  
21 Exhibit Item No. 620.

22 What's the name of the document, Ms. Moncada?

23 MS. BROWNLESS: Is this the high-level 20- --

24 MS. MONCADA: High-level '24 -- 2024 and 2025  
25 revenue requirements - proposed settlement.

1 CHAIRMAN CLARK: Everyone have it?

2 (Whereupon, Exhibit 620 was marked for  
3 identification.)

4 CHAIRMAN CLARK: All right. Thank you.  
5 You may proceed.

6 BY MS. MONCADA:

7 Q Mr. Bores, what is the purpose of your  
8 rebuttal testimony?

9 A Good afternoon, Commissioners.

10 The purpose of my rebuttal testimony today is  
11 to rebut FAIR Witnesses Herndon and Devlin as well as  
12 Florida Rising, LULAC, and ECOSWF Witness Rabago.

13 My rebuttal testimony will address three key  
14 topics: one, the reserve surplus amortization mechanism,  
15 referred to as the RSAM; two, the amortization of the  
16 regulatory assets identified on Exhibit B to the  
17 settlement agreement; and, three, to address Witness  
18 Rabago's flawed calculations and misleading assertions  
19 regarding FPL's SolarTogether program.

20 Q Thank you.

21 So, I'd like to start with the RSAM.

22 Mr. Bores, you explained in the rebuttal testimony you  
23 filed, as part of the original rate petition, that FPL  
24 has not used the RSAM to earn near -- at or near the top  
25 of the range; however, Witnesses Herndon, Devlin, and

1 Rabago continue to insist in their September 13th  
2 settlement testimony that, if the settlement is  
3 approved, customers will be harmed by the RSAM.

4 Specifically, those witnesses say that FPL  
5 will use the settlement RSAM to earn 100 points above  
6 the mid-point.

7 Can you respond to that?

8 A Yes. The intervenor witnesses are mistaken.  
9 The fact is the RSAM is just as important, if not more  
10 important, under the settlement agreement than it was  
11 under FPL's four-year plan.

12 Without the RSAM, there is no four-year  
13 minimum term. And that four minimum -- four-year  
14 minimum term allows for no general base-rate increases  
15 in 2024 and 2025.

16 The fact that we're now asking for approval of  
17 a settlement agreement does not change the fact that FPL  
18 has demonstrated we project to have significant  
19 increasing revenue requirements in both 2024 and 2025,  
20 as we continue to invest for the benefit of customers.

21 Q Under the settlement, what will those  
22 incremental revenue requirements be for FPL in 2024 and  
23 2025?

24 A Under the settlement agreement, as Mr. Barrett  
25 mentioned in his opening, those revenue-requirement

1 increases will just be allowed for the SoBRA solar-  
2 generating facilities we plan to bring online in both of  
3 those years; however, we will not be entitled to any  
4 general base-rate increases over the four-year minimum  
5 term.

6 **Q So, exclusive of the SoBRA, what are the**  
7 **incremental revenue requirements needed in those years,**  
8 **2024 and 2025, in order for FPL to earn at the**  
9 **mid-point?**

10 A As demonstrated on Exhibit SRB-17 that was  
11 just passed out, we project to have \$411 million in  
12 incremental revenue requirements in 2024.

13 In addition, in 2025, we expect an incremental  
14 \$454 million of revenue requirements, for a total  
15 cumulative amount of 1.276 billion over the '24 and  
16 '25 period.

17 **Q And in terms of the RSAM and the company's use**  
18 **of the RSAM -- what does that mean?**

19 A In terms of the RSAM, it means we'll need  
20 approximately 90 percent of the RSAM just to be afforded  
21 the opportunity to earn the mid-point ROE on those  
22 investments in 2024 and 2025. That leaves just  
23 174 million, or just over 10 percent of the RSAM, to  
24 manage uncertainty in the business over the four-year  
25 period.

1           A great example of that uncertainty is the  
2 higher projected inflation that FPL will now have to  
3 contend with compared to the projections it just  
4 included in its MFRs a few months ago. On an average  
5 basis, it's roughly \$43 million of RSAM per year for  
6 just 10 basis points of ROE.

7           I think it's important, Commissioners, to  
8 remember, not a single dollar of the RSAM is in cash.

9           **Q     Thank you, Mr. Bores.**

10           **Does that mean that FPL's earnings will not**  
11 **exceed the mid-point, during the term, even though you**  
12 **have the RSAM?**

13           A     Not necessarily. I think it's incumbent on  
14 FPL to -- to find ways to run the business more  
15 efficiently while still improving the overall customer-  
16 value proposition, finding ways to deliver higher  
17 reliability, improve on our already best-in-class  
18 customer service, continue to oper- -- operate our  
19 plants efficiently and safely.

20           Any productivity improvements we do find over  
21 that period will accrue to benefit -- the benefit of  
22 customers for the foreseeable future.

23           **Q     FAIR Witness Devlin recommends that the RSAM,**  
24 **if it is awarded, be used only to achieve a mid-point**  
25 **ROE.**

1                   **How do you respond to that? Should that**  
2                   **recommendation be adopted?**

3           A       No. That is not the intent of the settlement  
4 agreement at all. As I just discussed previously, we  
5 project we need approximately 90 percent of the RSAM  
6 just to earn the mid-point ROE in 2024 and 2025.  
7 Therefore, it's gonna be incumbent on FPL to carefully  
8 manage the RSAM over the four-year period.

9                   However, I think it's very important to point  
10 out and be very clear that limiting FPL's use of the  
11 RSAM to just the mid-point ROE would serve as a very  
12 strong disincentive for us to go out and find  
13 productivity improvements, productivity improvements  
14 that have accrued to the benefit of customers.

15                   I think we've done a terrific job  
16 demonstrating, over the last few settlement agreements,  
17 our ability to go out and find productivity savings for  
18 customers. And those productivity savings are now  
19 accruing to the benefit of customers in the form of  
20 lower rates.

21                   I view this settlement agreement as no  
22 different. If FPL wants to be afforded the opportunity  
23 to earn near the top of the range, it's gonna have to go  
24 find significant productivity savings.

25                   And, again, those will accrue to the benefit

1 of customers for the foreseeable future.

2 **Q And does the RSAM have a rate or revenue**  
3 **requirement impact?**

4 A Yes, it has the impact of reducing cash rates  
5 by greater than \$2 billion over the four-year term.

6 **Q For the benefit of the Commission, can you**  
7 **break down how you came down with the \$2-billion figure?**

8 A Yes. First, without the RSAM, we would not  
9 adopt the alternative parameters and, instead, would  
10 revert to the filed depreciation study from FPL Witness  
11 Allis.

12 That depreciation study has the impact of  
13 increasing revenue requirements approximately \$200  
14 million per year over the four-year period; roughly  
15 \$800 million cumulatively.

16 As I discussed earlier, we project the 400 and  
17 million -- \$411 million increase in revenue requirements  
18 in 2024. In 2025, we still need that 411 million from  
19 the prior year plus an incremental 454 million.

20 Some of those -- all those changes over the  
21 period amounts to greater than \$2 billion.

22 **Q Thank you, Mr. Bores.**

23 **I'd like to move on, now, to your response to**  
24 **intervenor testimony regarding the amortization period**  
25 **for regulatory assets.**

1                   Witness Rabago refers to the amortization  
2 period for retired plant in his testimony. For clarity  
3 in the record, this refers to the regulatory assets  
4 identified in Exhibit D to the settlement agreement; is  
5 that right?

6           A       Yes, that's correct.

7           Q       So, in response to this portion of Witness  
8 Rabago's testimony, can you please address whether  
9 extending the amortization period from 10 years to 20  
10 years benefits today's customers, and whether it is fair  
11 to future customers?

12          A       Yes, it is both fair and beneficial to  
13 customers now and in the future. Extension of the  
14 amortization period to 20 years was one element of the  
15 multifaceted settlement agreement. It also allowed for  
16 a significant reduction in revenue requirements over the  
17 term.

18                   Also, I believe extending the -- the  
19 amortization period to 20 years better matches the  
20 recovery of assets that were retired on a customer-  
21 beneficial basis with the lives of those new assets that  
22 are going to unlock significant benefit for customers.

23                   Future customers will still be benefiting from  
24 the decision to retire the plants in question and  
25 replace them with much-more-efficient generation over

1 the years to come.

2 **Q Witness Rabago also contends that extending**  
3 **the period of amortization from 10 years to 20 years**  
4 **increases the costs to customers by more than**  
5 **\$1.4 billion.**

6 **Is he right about that?**

7 A No. Witness Rabago has numerous flaws in his  
8 calculation that greatly overstate his presented costs.  
9 First, Witness Rabago assumes 11 percent -- 11.7 percent  
10 is FPL's overall cost of capital in his simplified  
11 payment example.

12 This greatly overstates and misconstrues FPL's  
13 actual cost of capital, which includes items besides  
14 re- -- just return on equity, interest costs, customer  
15 deposits, deferred taxes. Using a more realistic  
16 overall cost of capital would significantly reduce that  
17 number.

18 Secondly, Witness Rabago presents his results  
19 on a nominal basis. The fact is customers should be  
20 relatively indifferent on a discounted basis between a  
21 10- and 20-year period that FPL both earns and discounts  
22 at the same overall cost of capital.

23 **Q Thank you, Mr. Bores.**

24 **And, finally, I'd like to ask you a few**  
25 **questions about the last topic you'll be covering in**

1    **this rebuttal testimony, which is the SolarTogether**  
2    **program.**

3                   **Can you respond to Mr. Rabago's testimony**  
4    **regarding the impact that the expanded SolarTogether**  
5    **program will have on the general body of FPL customers?**

6           A     Yes. Mr. Rabago's claim that the expanded  
7    SolarTogether program will impose a cost on the general  
8    body of customers is just another example of flawed math  
9    and is wrong.

10                   Referring to Exhibit SRB-16, you can clearly  
11    see that FPL projects \$292 million of general -- or  
12    benefits -- excuse me -- for the general body of  
13    customers. This is almost more than three times the  
14    \$112-million benefit for the general body of customers  
15    in FPL's original program.

16                   I also think it's important to note that  
17    roughly \$95 million of that benefit is projected to be  
18    fixed, which is also an increase in improvement from  
19    FPL's original program.

20           **Q     Mr. Rabago's claim that the expanded**  
21    **SolarTogether program imposes a cost on the general body**  
22    **as opposed to a benefit -- he says that in his prefiled**  
23    **testimony.**

24                   **Is that math right or wrong?**

25           A     No, it -- it's incorrect. Witness Rabago took

1 a model that was provided to him in discovery and simply  
2 changed one input in the model without any thought or  
3 regard to what else he would need to change in the model  
4 to have the answer make, what I would say, logical  
5 sense.

6 By changing the ROE to 11.7 percent, he  
7 imposed a cost on the general body of customers. The  
8 fact is, if the ROE increased to 11.7 percent, it would  
9 also increase the revenue requirement on the solar  
10 facilities that were being constructed.

11 One overall construct of the SolarTogether  
12 program is that the participants pay greater than the  
13 hundred percent of the base revenue requirement on those  
14 solar facilities.

15 If done correctly, Witness Rabago also should  
16 have changed the subscription charge, such that  
17 participants continued to pay greater than a hundred  
18 percent of the base revenue requirements on those solar  
19 facilities and, thus, still leaving a significant  
20 benefit for the general body of customers.

21 **Q Thank you, Mr. Bores.**

22 **Does this conclude your rebuttal testimony?**

23 **A** Yes, it does.

24 MS. MONCADA: Next, we have Mr. Coyne, who  
25 already has testified before you today.

1

## EXAMINATION

2 BY MS. MONCADA:

3 Q Mr. Coyne, you understand you're still under  
4 oath?

5 A Yes.

6 Q Thank you.

7 And you did not have any prefiled testimony  
8 supporting the settlement, but will you be providing  
9 live rebuttal testimony, responding to the testimony of  
10 witnesses who oppose the settlement?

11 A Yes, I will.

12 Q And what topics, generally, will your rebuttal  
13 testimony cover?

14 A I'll be -- I'll be covering the -- the  
15 evidence that has been submitted pertaining to the  
16 settlement provisions provided by Witnesses Herndon, Mac  
17 Mathuna, and Rabago.

18 Q And you have reviewed the -- their prepared  
19 testimony.

20 A Yes.

21 Q Is that correct?

22 A Yes, I have.

23 Q FAIR Witnesses Herndon and Mac Mathuna and  
24 LULAC/Florida Rising/ECOSWF Witness Rabago each  
25 criticize the ROE, to which the signatories agreed.

1                   **What is your general response to that?**

2           A       I disagree with Witnesses Herndon, Mac  
3 Mathuna, and Rabago on these issues. The 10.6 percent  
4 ROE mid-point included in the proposed settlement  
5 agreement is lower than I recommend, based on a  
6 comprehensive floor model, cost-of-equity analysis using  
7 a proxy group of companies with risks comparable to  
8 Florida Power & Light. And the 10.6 percent ROE is  
9 within the reasonable range established by those  
10 results.

11           **Q       Thank you.**

12                   **And moving to your specific responses to each**  
13 **of these witnesses' testimony -- let's start with FAIR**  
14 **Witness Mac Mathuna. He claims that FPL's higher credit**  
15 **ratings, in relation to Duke Energy Florida and Tampa**  
16 **Electric Company, suggest lower risk and, therefore, a**  
17 **lower required ROE.**

18                   **Does this argument have any merit?**

19           A       No, there's no merit in that argument;  
20 otherwise, we could simply use debt credit ratings to  
21 set the cost-of-equity. Credit ratings are useful for  
22 screening proxy group companies, but are only one  
23 consideration in assessing business or financial risks.

24                   And the risks for equity investors are not the  
25 same as the risks for bondholders. You cannot use

1 credit ratings as a basis for determining the cost of  
2 equity between utilities, and I'm not aware of any  
3 regulator that has done so.

4 **Q Mr. Mac Mathuna also references other U.S.**  
5 **decisions, including settlements approved or proposed in**  
6 **this state, the state of Florida, as a basis for judging**  
7 **the reasonableness of the FPL settlement.**

8 **How do you respond?**

9 A There are several problems with these  
10 comparisons. Of the 11 cases he cites, three were  
11 litigated and seven were settled and one is proposed.  
12 Each of these cases represents a specific utility and a  
13 specific set of circumstances which differ.

14 In the case of the settlements, these  
15 agreements represent a balancing of interests and  
16 trade-offs with gives-and-takes. And you cannot refer  
17 to just one element, the cost of capital, in isolation  
18 without considering all the other factors involved in  
19 these settlements.

20 You must also consider the risk profile of the  
21 utility, the years of the agreement, and the numerous  
22 other factors that go into the settlement between the  
23 parties.

24 FPL's proposed settlement is a comprehensive  
25 multi-year rate plan covering four or five years; and

1 only one of the cases cited by Mr. Mac Mathuna is for a  
2 multi-year rate plan.

3 **Q Do these same considerations apply to the**  
4 **recently-approved Duke Energy Florida settlement and the**  
5 **proposed TECO settlement?**

6 A Yes, these settlements reflect the specific  
7 circumstances of these two companies and the trade-offs  
8 reached by the parties involved.

9 I would also note that the risk profiles of  
10 these companies differ from that of FPL, with FPL having  
11 greater risk in terms of nuclear generation, the length  
12 of the rate plan, which is at least one or two years  
13 longer, the capital-expenditure levels, and storm risk.

14 And, on this latter point, I would note that  
15 Standard & Poor's just came out with a report that  
16 evaluates the exposure of U.S. utilities to physical  
17 climate risks. This came out just a few days ago.

18 And among the findings from S&P are the risks  
19 of acute extreme weather events for U.S. utilities are  
20 rising. NextEra Energy, Inc., is the most-exposed  
21 utility to unmitigated hurricane risk -- most in the  
22 nation.

23 This exposure is primarily due to the  
24 company's footprint in Florida through its utility  
25 subsidiary Florida Power & Light Company, where

1 hurricanes are commonplace.

2 **Q Thank you, Mr. Coyne.**

3 **Are you aware of any utility rate case that**  
4 **would serve as a fair comparison?**

5 A Well, as I mentioned, each case is specific to  
6 the utility and the specific sets of facts and  
7 circumstances; however, if Mr. Mac Mathuna was looking  
8 for a more-comparable settlement, he might have  
9 considered the most-recent settlement agreement approved  
10 for Georgia Power and Light.

11 And that settlement agree- -- agreement  
12 included an authorized ROE of 10.5 percent on a  
13 56-percent equity ratio as part of a three-year rate  
14 plan spanning the 2020 through 2022 period.

15 **Q Thank you, Mr. Coyne.**

16 **And now I'll move on to your response to FAIR**  
17 **Witness Herndon. Mr. Herndon compares the settlement**  
18 **proposed in this proceeding to FPL's 2016 settlement**  
19 **agreement.**

20 **Do you have any general observations regarding**  
21 **that comparison?**

22 A Yes. Mr. Herndon acknowledges that the ROE,  
23 the equity ratio, and the RSAM provisions are nearly  
24 identical to those in FPL's last settlement agreement in  
25 2016, but he goes on to take issue with the ROE and the

1 equity ratio proposed in the settlement.

2 I agree with Mr. Herndon that a settlement  
3 should be evaluated on its own merits, but his  
4 evaluation is seriously flawed.

5 **Q Can you describe the flaws for the Commission?**

6 A Yes. He argues that the market costs of  
7 capital are significant- -- significantly lower today  
8 than they were in 2016. As a basis for his argument, he  
9 cites the 30-year treasury bond yields from the two  
10 settlement periods, but this is an insufficient basis to  
11 judge the cost of equity capital for FPL today.

12 **Q Why is it an insufficient basis?**

13 A There are five principal reasons: first,  
14 government bond yields are being driven by the  
15 unprecedented actions of the Federal Reserve Bank  
16 designed to prop up an economy threatened by the  
17 COVID-19 pandemic;

18 Second, other risk factors indicate that the  
19 uncertainty and volatility in financial markets have  
20 caused equity investors to require a higher rate of  
21 return to compensate them for additional uncertainty and  
22 risk created by the COVID-19 pandemic and the  
23 corresponding economic fallout in the near term;

24 Third, one must also consider that longer term  
25 the industry faces complex structural challenges

1 associated with the climate change, decarbonization,  
2 cybersecurity, grid modernization, and shifting consumer  
3 preferences;

4 Fourth, the correlation between utility share  
5 prices and the broader market has increased, which  
6 reflects the fact that investors have not viewed the  
7 utility sector as a safe haven.

8 During the recent period, beta coefficients  
9 for electric utilities have increased substantially  
10 since 2016. And these beta coefficients are an  
11 objective measure of equity risk used in the CAPM  
12 analysis, which translates to a higher cost of equity to  
13 utility investors;

14 The fifth reason is inflation. The economic  
15 stimulus provided through monetary and fiscal policy  
16 increases the likelihood of higher inflation. This  
17 inflation risk is an important consideration in the  
18 Commission setting FPL's authorized ROE for the term of  
19 its proposed four-year rate plan.

20 In the most-recent 12 months, as you may have  
21 seen in the news recently, the CPI has increased at an  
22 annual rate of 5.3 percent.

23 For all these reasons, the cost of equity  
24 capital for FPL is at least as high as it was in 2016,  
25 if not higher.

1           **Q**     **Mr. Herndon also references recently-allowed**  
2     **ROEs and equity ratios from other settlements or**  
3     **national averages, generally, as a basis for his**  
4     **conclusions.**

5                     **Is his point similar to that that was made by**  
6     **Mr. Mac Mathuna?**

7           **A**     **M- -- yes, it's the same flawed reasoning.**  
8     **I've addressed the problems with those comparisons in**  
9     **response to Mr. Mac Mathuna.**

10           **Q**     **Thank you.**

11                     **And, finally, I'd like to ask you about**  
12     **Witness Rabago.**

13                     **Do you have any specific concerns with**  
14     **Mr. Rabago's settlement testimony regarding ROE?**

15           **A**     **Yes. Mr. Rabago stands by his initial**  
16     **recommendation of an ROE not to exceed 10 percent and an**  
17     **equity ratio of 52.93 percent. And I stand by my**  
18     **position that there is no fundamental support for these**  
19     **recommendations.**

20                     **He conducted no independent ROE analysis and,**  
21     **with respect to the equity ratio, simply selected the**  
22     **mid-point of my proxy group companies, but without any**  
23     **real consideration of FPL's risk profile in relationship**  
24     **to the proxy companies.**

25                     **There simply is no substantive support for**

1 these recommendations, either when he presented them  
2 under FPL's original petition or in response to the  
3 proposed settlement.

4 **Q Thank you, Mr. Coyne.**

5 **Does this conclude your rebuttal testimony?**

6 A Yes, it does. Thank you.

7 MS. MONCADA: Thank you.

8 We'll proceed to Mr. Valle.

9 EXAMINATION

10 BY MS. MONCADA:

11 **Q Good afternoon, Mr. Valle. Have you been**  
12 **sworn?**

13 A Yes.

14 **Q Would you please state your full name and**  
15 **business address for the record.**

16 A Sure. It's Matt Valle, 700 Universe  
17 Boulevard, Juno Beach, Florida 33408.

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

19 A Florida Power & Light, vice president of  
20 development.

21 **Q Did you prepare and cause to be filed eight**  
22 **pages of testimony in support of the settlement**  
23 **agreement?**

24 A I did.

25 **Q Do you have any changes to that testimony?**

1           A     No.

2           **Q     If I asked you those questions today, would**  
3 **your answers be the same?**

4           A     Yes.

5                   MS. MONCADA:  Mr. Chairman, I would ask that  
6 Mr. Valle's prefiled settlement testimony be  
7 inserted into the record as though read.

8                   CHAIRMAN CLARK:  So ordered.

9                           (Whereupon, Witness Valle's prefiled  
10 settlement testimony was inserted into the record  
11 as though read.)

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2                   **FLORIDA POWER & LIGHT COMPANY**  
3                   **PRE-FILED SETTLEMENT TESTIMONY OF MATTHEW VALLE**  
4                   **PROPOSED SETTLEMENT AGREEMENT**  
5                   **DOCKET NO. 20210015-EI**  
6                   **AUGUST 26, 2021**  
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**TABLE OF CONTENTS**

1

2

3 **I. INTRODUCTION AND SUMMARY..... 3**

4 **II. FPL SOLARTOGETHER™ ..... 4**

5 **III. EV PILOT PROGRAMS ..... 6**

6 **IV. SOLAR PILOT ..... 7**

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**I. INTRODUCTION AND SUMMARY**

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

A. My name is Matthew Valle. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

**Q. Did you previously submit direct and rebuttal testimony in this proceeding?**

A. Yes.

**Q. Are you sponsoring or co-sponsoring any additional exhibits in this case?**

A. I am co-sponsoring Exhibit REB-15 Stipulation and Settlement Agreement, filed with the pre-filed settlement testimony of FPL witness Barrett.

**Q. What is the purpose of your pre-filed settlement testimony?**

A. The purpose of my testimony is to explain certain aspects of the Stipulation and Settlement Agreement filed on August 10, 2021 (the “Proposed Settlement Agreement”). Specifically, my testimony discusses the expansion of the FPL SolarTogether™ program addressed in paragraph 20 of the Proposed Settlement Agreement; electric vehicle pilots addressed in paragraph 22 of the Proposed Settlement Agreement; and the solar pilot addressed in paragraph 23 of the Proposed Settlement Agreement.

**Q. Please summarize your testimony.**

A. In the Proposed Settlement Agreement, the signatories have agreed to the expansion of Florida Power & Light Company’s (“FPL”) SolarTogether program. My testimony describes this expansion along with the changes that

1 the signatories have agreed to regarding the participation allocations between  
2 customer classes and how the benefits of the program will be allocated.

3

4 My testimony further addresses electric vehicle (“EV”) programs included in  
5 the Proposed Settlement Agreement to include the EVolution pilot that FPL  
6 filed in its direct testimony along with new pilots for residential and commercial  
7 charging, expanded fast charger deployments, and EV technology and  
8 education pilots. Finally, my testimony discusses a new solar pilot that will  
9 allow customers to take advantage of optional solar offerings at their facilities.

10

11

## II. FPL SOLARTOGETHER™

12

13 **Q. What does the Proposed Settlement Agreement contain regarding FPL’s**  
14 **SolarTogether program?**

15 A. The Commission previously authorized FPL to construct 1,490 MW of solar  
16 facilities under the SolarTogether program. SolarTogether is fully subscribed  
17 and has a significant waiting list of customers who wish to enroll. The Proposed  
18 Settlement Agreement allows FPL to extend SolarTogether by constructing an  
19 additional 1,788 MW of cost-effective solar through 2025, such that the total  
20 capacity of SolarTogether will amount to 3,278 MW. Under the Proposed  
21 Settlement Agreement, 40% of the 1,788 MW of incremental capacity above  
22 the original 1,490 MW is allocated to residential and small business customers  
23 along with low income customers. Residential and small business capacity will

1 triple from the existing 335 MW to 1,005 MW while access to the program for  
2 low income customers will increase from 37.5 MW to 82.5 MW. The  
3 remaining 60% will be allocated to commercial, industrial, and governmental  
4 customers (20% of this capacity reserved for participants located in the former  
5 Gulf service area). Further, under the Proposed Settlement Agreement, the  
6 projected benefits of the 3,278 MW of SolarTogether will be allocated with  
7 55% to participants and 45% to the general body of customers, with the goal of  
8 an approximate seven-year simple payback period for program participants.  
9 FPL witness Bores discusses and supports the cost effectiveness and pricing for  
10 the expanded SolarTogether program.

11

12 If approved, this provision will allow FPL to make SolarTogether available to  
13 customers in the former Gulf service area and also will allow customers that are  
14 on the waiting list to participate in this popular program. Additionally, as  
15 recognized in Order No. PSC-2020-0084-S-EI, this program aligns with the  
16 Florida Legislature's intent in Section 366.92, F.S., and provides ample system-  
17 wide benefits, including: promoting the development of renewable energy,  
18 encouraging investment within the state, diversifying the types of fuel used to  
19 generate electricity, lessening the state's reliance on fossil fuels, and decreasing  
20 carbon emissions.

### III. EV PILOT PROGRAMS<sup>1</sup>

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**Q. Please describe the EV programs that are included in the Proposed Settlement Agreement.**

A. In addition to the EVolution pilot program that FPL filed in its direct testimony, the Proposed Settlement Agreement includes several new EV pilots that will further enhance the Company’s ability to serve customers with electric vehicles now and in the future. Consistent with the goals of the EVolution pilot, the Proposed Settlement Agreement expands the scope of FPL’s Public Fast Charging Program that provides access to public fast charging, including access in underserved areas and evacuation routes.

A portion of this investment will be offset by any revenues received under FPL’s Utility-Owned Public Charging for Electric Vehicles (“UEV”) tariff. The UEV tariff, approved by the Florida Public Service Commission in Docket No. 20200170-EI, establishes a rate for utility-owned public EV fast charging stations.

Additionally, the Proposed Settlement Agreement includes Residential and Commercial EV Charging Services Pilots that allow customers to have FPL-owned and maintained EV charging and metering equipment installed at their residence or business. The residential pilot will incent participating customers

---

<sup>1</sup> The costs of the EV programs described in this section are not incremental to the revenue requirements set forth in Paragraph 4 of the Proposed Settlement Agreement.

1 to charge their vehicles during off-peak times, and the commercial pilot will  
2 allow customers to deploy charging services for fleet vehicle operations. These  
3 pilots will help FPL better understand customer usage patterns and behaviors  
4 along with the impacts that they have on the electric grid.

5  
6 Finally, the Proposed Settlement Agreement includes new EV Technologies  
7 and Software and EV Education and Awareness programs that will allow FPL  
8 to evaluate emerging EV technologies and increase awareness and educate  
9 customers about the choice to go electric. These programs will help improve  
10 service and resiliency for customers and will help customers be more aware of  
11 the benefits of electric vehicles.

12

13

#### IV. SOLAR PILOT

14

15 **Q. Please explain the solar pilot contained in the Proposed Settlement**  
16 **Agreement.**

17 A. The Proposed Settlement Agreement contains a new, voluntary Solar Power  
18 Facilities Pilot Program that will allow commercial and industrial customers to  
19 have FPL install and maintain a solar facility on their site for a monthly tariffed  
20 charge. Along with traditional solar applications, this pilot also will allow for  
21 the installation of solar “trees,” solar canopies for walkways or parking garages,  
22 and solar outdoor benches. The installation of these solar arrays provides an

1 opportunity for customers to spread solar awareness and foster solar education.

2 This pilot is the next voluntary solar offering for customers.

3 **Q. Do you have any final comments on the provisions that you have discussed**  
4 **in your testimony?**

5 A. Yes. These provisions will allow FPL, and Florida, to continue leading the way  
6 for the deployment of cost-effective, fuel-free solar generation and will provide  
7 customers with new opportunities to participate in community solar facilities  
8 and to deploy innovative solar devices at their businesses. These provisions  
9 also will expand the availability of EV charging infrastructure and will allow  
10 FPL to continue to learn how to make its grid more resilient and optimized for  
11 electric vehicle use.

12 **Q. Does this conclude your pre-filed settlement testimony?**

13 A. Yes.

1 BY MS. MONCADA:

2 Q Mr. Valle, are you co-sponsoring  
3 Exhibit REB-15 that was included with Mr. Barrett's  
4 testimony?

5 A Yes.

6 Q And, Mr. Valle, have you reviewed the  
7 intervenor testimony in opposition to the settlement  
8 agreement?

9 A I have.

10 Q And are -- will you be providing oral rebuttal  
11 in response to that?

12 A Yes, I will.

13 Q What were the issues that you focused on,  
14 Mr. Valle?

15 A The issues I focused on were the arguments  
16 that Mr. Rabago made regarding the extension of FPL's  
17 SolarTogether program, his arguments on the electric-  
18 vehicle programs, and arguments on monetization of the  
19 renewable energy credits.

20 Q Thanks.

21 So, we'll start with the SolarTogether  
22 program. Regarding the extension of the SolarTogether  
23 program, what observations, if any, do you have in  
24 response to Mr. Rabago's testimony?

25 A So, Mr. Rabago had four fundamental criticisms

1 of the SolarTogether extension, which, in general terms,  
2 were: first, the extension should not be considered as  
3 part of the settlement; second, that the extended  
4 program is not designed fairly; third, that FPL should  
5 abandon the program in favor of standard universal  
6 solar; and, then, four, that the economics of the  
7 program are not justified.

8 So, I'll rebut the first three of these  
9 arguments, and Mr. Bores just covered the fourth.

10 **Q Thanks.**

11 **So, the first argument from Mr. Rabago is that**  
12 **the extension of the SolarTogether program should not be**  
13 **considered as part of this proceeding.**

14 **What responses do you have to that?**

15 A Well, he suggests that the proposed extension  
16 of the program is -- is, quote, "... wholly untested and  
17 unexamined in this proceeding". And he concludes this  
18 by suggesting that the evaluation of the extension of  
19 the program in the proceeding would bypass any rigorous  
20 review.

21 I disagree with that because he ignores the  
22 fact that this Commission approved the SolarTogether  
23 program just 18 months ago. And, in the settlement  
24 agreement at issue here, FPL has made only modest  
25 improvements to the program regarding the total amount

1 of megawatts and the allocation of those megawatts to  
2 different customer groups in the original program. And,  
3 otherwise, the program remains as it was approved 18  
4 months ago.

5 He also ignores the fact that much has already  
6 been provided in discovery responses over the last  
7 several weeks for the settlement agreement. And, as  
8 part of that, we've responded to dozens of those  
9 requests, including those of staff and -- and also  
10 providing the entire model for the new program.

11 **Q Thank you, Mr. Valle.**

12 **Mr. Rabago's second argument of the extension**  
13 **is that the SolarTogether program is not designed**  
14 **fairly.**

15 **Do you have any response to that contention?**

16 **A** I do. This is a -- a -- a same argument that  
17 he's made previously, in that the program is unfair  
18 because the participating customers receive 55 percent  
19 of the benefits of the program while bearing zero  
20 percent of the risk; that the program will not operate  
21 as expected -- that's his words.

22 The Commission heard and rejected similar  
23 arguments 18 months ago when FPL brought forward the  
24 original SolarTogether program and appropriately found  
25 that those arguments had no merit.

1           As was the case in the original program, the  
2 same is true for this proposed extension; that the  
3 general body of customers are not expected to pay  
4 anything for the SolarTogether program over the life of  
5 that program, but are projected to receive 45 percent of  
6 the net system savings, which is 45 percent of  
7 \$648 million in cumulative present value revenue  
8 requirements.

9           **Q     And, turning to the third argument from**  
10 **Mr. Rabago, he says that the company should build more**  
11 **universal solar rather than deploying extension -- I'm**  
12 **sorry -- an expansion of the SolarTogether program.**

13                   **Do you have any response to that?**

14           A     I do. This contention ignores the substantial  
15 demand that customers have for SolarTogether program;  
16 and it's, frankly, shortsighted. As I discussed in my  
17 settlement testimony and FPL's response to LULAC's sixth  
18 set of interrogatories, No. 60, FPL has a substantial  
19 waiting list still of customers who wish to participate  
20 in this program. And let's not forget Gulf customers  
21 who never had an opportunity to participate in the  
22 original program. Thus, this extension will help those  
23 customers meet their needs while also providing benefits  
24 to the general body, as discussed by Mr. Bores just a  
25 few minutes ago.

1           So, sim- -- said simply, this program is a  
2 win-win for both the participating customers -- for  
3 those customers who want to participate that are on the  
4 wait-list, and the general body.

5           **Q     Thanks, Mr. Valle.**

6           **Next, I'd like to move to Mr. Rab- -- Rabago's**  
7 **arguments regarding the EV, or electric vehicle,**  
8 **programs in the settlement agreement.**

9           **Do you have any observations about**  
10 **Mr. Rabago's testimony regarding EVs?**

11          A     Yes. He contends that the electric-vehicle  
12 programs in the proposed settlement are unsupported by  
13 any cost-benefit analysis and that the programs will  
14 force the general body to subsidize participating  
15 customers, but what he fails to recognize is that all of  
16 the electrical-vehicle programs in this agreement are  
17 extensions of the original FPL evolution pilots and are  
18 designed to continue to test and evaluate certain  
19 aspects so we can continue to learn about electric-  
20 vehicle usage on our system, the impact to our grid, and  
21 the impact to our customers.

22           In addition to those, there are several  
23 voluntary tariffs that come with that -- electric-  
24 vehicle programs that are giving customers additional  
25 choices that they didn't have previously.

1           **Q     And, finally, let's turn to Mr. Rabago's**  
2 **testimony regarding the monetization of renewable energy**  
3 **credits, or RECs.**

4                   **What observations, if any, do you have with**  
5 **respect to that part of Mr. Rabago's testimony?**

6           A     It appears that Mr. Rabago is concerned that  
7 we'd be double counting the renewable-energy credits  
8 that we would potentially monetize under the settlement  
9 agreement.

10                   I can commit here today that FPL will not  
11 double count those renewable-energy credits. We're very  
12 clear about how to do that. We've already been doing  
13 that with our SolarTogether program, and we would be  
14 just as careful and transparent in our universal solar  
15 projects.

16           **Q     Thank you, Mr. Valle.**

17                   **Does this conclude your rebuttal oral -- oral**  
18 **rebuttal?**

19           A     Yes, it does.

20                   MS. MONCADA: Thank you.

21                   And we saved the best for last, Ms. Tiffany  
22 Cohen.

23   EXAMINATION

24 BY MS. MONCADA:

25           **Q     Ms. Cohen, were you sworn with the rest of the**

1 **witnesses?**

2 A Yes.

3 **Q Would you please state your full name and your**  
4 **business address for the record.**

5 A It's Tiffany Cohen, 700 Universe Boulevard,  
6 Juno Beach, Florida 33408.

7 MS. MONCADA: I just want to make sure the  
8 court reporter can hear her.

9 (Discussion off the record.)

10 BY MS. MONCADA:

11 **Q Can you state the address again?**

12 A 700 Universe Boulevard, Juno Beach, Florida  
13 33408.

14 **Q Have you prepared and caused to be filed --**  
15 **I'm sorry.**

16 **By whom are you employed and in what capacity?**

17 A By Florida Power & Light Company. I'm the  
18 senior director of regulatory rates, cost of service,  
19 and systems.

20 **Q Thank you.**

21 **Did you prepare and cause to be filed 11 pages**  
22 **of direct testimony in support of the settlement**  
23 **agreement?**

24 A Yes.

25 **Q Do you have any changes to that testimony?**

1           A     No, I do not.

2           **Q     If I asked you those questions here today,**  
3 **would your answers be the same?**

4           A     Yes.

5                   MS. MONCADA: Mr. Chairman, I would ask that  
6 Ms. Cohen's prepared settlement testimony be  
7 inserted into the record as though read.

8                   COMMISSIONER GRAHAM: It will.

9                   MS. MONCADA: Thank you.

10                   (Whereupon, Witness Cohen's prefiled  
11 settlement testimony was inserted into the record  
12 as though read.)

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2                   **FLORIDA POWER & LIGHT COMPANY**  
3                   **PRE-FILED SETTLEMENT TESTIMONY OF TIFFANY C. COHEN**  
4                   **PROPOSED SETTLEMENT AGREEMENT**  
5                   **DOCKET NO. 20210015-EI**  
6                   **AUGUST 26, 2021**  
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23

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

2 A. My name is Tiffany C. Cohen. My business address is Florida Power & Light  
3 Company (“FPL” or the “Company”), 700 Universe Boulevard, Juno Beach,  
4 Florida 33408.

5 **Q. Did you previously submit direct and rebuttal testimony in this**  
6 **proceeding?**

7 A. Yes.

8 **Q. Are you sponsoring or co-sponsoring any additional exhibits in this case?**

9 A. Yes. I am sponsoring the following exhibits:

- 10 • TCC-11 Bills at Unified Rates (Current FPL Customers)  
11 • TCC-12 Bills at Unified Rates (Northwest Florida Customers)

12 I am also co-sponsoring Exhibit REB-15 Stipulation and Settlement  
13 Agreement, attached to the pre-filed settlement testimony of FPL witness  
14 Barrett.

15 **Q. What is the purpose of your pre-filed settlement testimony?**

16 A. The purpose of my pre-filed settlement testimony is to present the rates  
17 projected to result from the Stipulation and Settlement Agreement filed on  
18 August 10, 2021 (“Proposed Settlement Agreement”). Under the Proposed  
19 Settlement Agreement, the bills for all customers are projected to remain among  
20 the lowest in the nation. FPL’s projected 2022 typical residential 1,000-kWh  
21 bill would remain nearly 21% below the current national average and the  
22 projected 2025 typical residential 1,000-kWh bill would remain nearly 22%  
23 below the projected 2025 national average. The rates under the Proposed

1 Settlement Agreement were designed in accordance with the Florida Public  
2 Service Commission's ("Commission") gradualism principle. Additionally,  
3 my pre-filed settlement testimony supports the addition of a minimum bill  
4 provision and moving the Regulatory Assessment Fee on customer bills from  
5 base rates and clauses into the Gross Receipts Tax line.

6 **Q. Please summarize the base rate increases under the Proposed Settlement**  
7 **Agreement.**

8 A. Under the Proposed Settlement Agreement, base rates and service charges  
9 would increase by an amount intended to generate an additional \$692 million  
10 of annual revenues effective January 1, 2022, and an additional \$560 million of  
11 annual revenues effective January 1, 2023. The Proposed Settlement  
12 Agreement also provides for the implementation of Solar Base Rate  
13 Adjustments ("SoBRAs"), subject to certain conditions and requirements,  
14 intended to cover the incremental costs of new cost-effective solar generation.  
15 As shown on Exhibits TCC-11 and TCC-12, the SoBRAs are estimated at  
16 approximately \$140 million of annual revenues effective January 1, 2024, and  
17 an additional approximately \$140 million of annual revenues effective January  
18 1, 2025.

19 **Q. What are the projected bills for the major rate classes under the Proposed**  
20 **Settlement Agreement?**

21 A. The tariffs and rates provided in Exhibits B (2022) and C (2023) to the Proposed  
22 Settlement Agreement are based on unified rates for customers in the former  
23 FPL service area in Peninsular Florida and the former Gulf service area in

1 Northwest Florida. Exhibits TCC-11 and TCC-12 show the typical bills under  
2 the Proposed Settlement Agreement for customers in the former FPL service  
3 area and the former Gulf service area, respectively.

4  
5 As shown on page 1 of Exhibit TCC-11, under the Proposed Settlement  
6 Agreement, the five-year compound annual growth rate (“CAGR”) of the  
7 typical residential bill for customers in the former FPL service area is projected  
8 to increase from January 1, 2021 through December 31, 2025 by approximately  
9 2.5%, as compared to 3.4% under the original as-filed rates. Additionally,  
10 under the Proposed Settlement Agreement, the typical residential bill for  
11 customers in the former Gulf service area is projected to decrease by  
12 approximately 0.7% through 2025 as shown on page 1 of Exhibit TCC-12.

13  
14 Under the Proposed Settlement Agreement, and as shown on pages 2 through 5  
15 of Exhibit TCC-11, the typical commercial and industrial (“CI”) customers in  
16 the former FPL service area will see minimal growth in their rates of 1.1% to  
17 3.1% through 2025, as compared to 3.9% to 4.9% under the as-filed rates.  
18 Similarly, under the Proposed Settlement Agreement, the CI customers in the  
19 former Gulf service area will see even lower percentage increases in their rates  
20 of flat to 1.4% through 2025 as shown on pages 2 through 5 of Exhibit TCC-  
21 12.

1 **Q. Please describe the basis for allocation of the revenue increases under the**  
2 **Proposed Settlement Agreement.**

3 A. Multiple parties presented evidence in this case regarding revenue allocation,  
4 and each had different proposals for how to allocate the revenue increase to the  
5 customer classes. The revenue allocation under the Proposed Settlement  
6 Agreement reflects a negotiated compromise of differing and competing  
7 positions by parties representing a broad range of interests and customers.  
8 Although the signatory parties did not agree to a specific cost of service  
9 methodology under the Proposed Settlement Agreement, the signatory parties  
10 agreed to allocate the revenue increase to the customer classes consistent with  
11 prior settlements. The allocation of the revenue increase under the Proposed  
12 Settlement Agreement is provided in Exhibit A, Schedule E-5 to the Proposed  
13 Settlement Agreement included in Exhibit REB-15 attached to the pre-filed  
14 settlement testimony of FPL witness Barrett.

15  
16 All rates under the Proposed Settlement Agreement were designed in  
17 accordance with the Commission's gradualism principle. The concept of  
18 gradualism limits the revenue increase for each rate class to 1.5 times the total  
19 system average increase, including adjustment clauses, and provides that no rate  
20 class receives a decrease in rates.

21  
22 With respect to the residential class under the Proposed Settlement Agreement,  
23 the base revenue allocation is approximately 59%. This is higher than the as-

1 filed case but is slightly lower than it has been for the past fifteen years.  
2 Additionally, in the Commission-approved 2016 Settlement Agreement, the  
3 residential class received nearly a 66% allocation of the increase in base  
4 revenue. If the residential class allocation from the 2016 Settlement Agreement  
5 had been applied in this case, the residential class would have been allocated an  
6 additional \$45 million of revenues as compared to the allocation under the  
7 Proposed Settlement Agreement.

8  
9 As previously mentioned, under the Proposed Settlement Agreement, the  
10 signatory parties agreed to an allocation of the revenue increase rather than to a  
11 specific cost of service methodology. However, if alternative cost of service  
12 methodologies were adopted, such as the 4 coincident peak (4 CP) method  
13 proposed by parties in this proceeding and in a recent Florida IOU settlement  
14 and the Minimum Distribution System (MDS) method also proposed by parties  
15 in this proceeding and previously approved by the Commission for at least two  
16 other Florida IOUs, the residential class could have been allocated substantial  
17 additional revenue responsibility under the as-filed case. As explained in the  
18 rebuttal testimony of FPL witness Dubose, the incremental responsibility to the  
19 residential customers would have been approximately \$365.8 million in 2022  
20 and approximately \$390.5 million in 2023 under the as-filed case if these  
21 alternative cost of service methodologies were adopted. Customers would have  
22 been allocated approximately 69% of the total increase under these alternative

1 cost of service methodologies as compared to the 59% they were assigned under  
2 the Proposed Settlement Agreement.

3

4 Finally, I note that the Proposed Settlement Agreement reflects a negotiated  
5 compromise by the signatory parties that results in a reduction in the overall  
6 revenue requirement of \$383 million in 2022 and \$45 million in 2023 and  
7 continues to provide rate stability through the minimum four-year rate plan.  
8 FPL witness Barrett also describes additional benefits in his pre-filed settlement  
9 testimony.

10 **Q. Please explain the minimum bill provision included in the Proposed**  
11 **Settlement Agreement.**

12 A. The Proposed Settlement Agreement provides for the addition of a minimum  
13 base bill to better ensure all residential and general service non-demand  
14 customers contribute towards their fair share of fixed system costs, which do  
15 not vary with usage of electricity. FPL incurs fixed system costs to connect and  
16 serve a customer even if that customer's usage is low or zero, which could result  
17 in other customers subsidizing the customer with low or zero usage, including  
18 customers with second homes that may have no consumption during the off-  
19 season.

20

21 Under the Proposed Settlement Agreement, FPL's base charge (formerly the  
22 customer charge) in 2022 will be \$8.99, which is the lowest among all Florida  
23 investor-owned utilities and among the lower base charges in the state of

1 Florida. The Proposed Settlement Agreement provides a minimum base bill of  
2 \$25.00 for residential and general service non-demand customers. This will  
3 help better ensure that all customers contribute towards their fair share of fixed  
4 system costs. It also represents an alternative to increasing the base charge,  
5 which would impact all customers including low-income customers and not  
6 only those customers with low or zero usage. The vast majority of customers  
7 will have usage that exceeds the low threshold for the minimum base bill, and  
8 only a small number of customers who consume very little or no energy will be  
9 impacted by the new minimum bill provision. On average and over the term of  
10 the Proposed Settlement Agreement, approximately 360,000 residential and  
11 110,000 general service customers per month pay less than a \$25 base bill.  
12 These customers generally use less than 230 kWh and 180 kWh per month,  
13 respectively.

14

15 The minimum bill provision of the Proposed Settlement Agreement reflects a  
16 reasonable compromise of differing positions and negotiations. FPL submits  
17 that adding a proposed minimum bill will ensure that customers with little to no  
18 usage fairly and reasonably contribute to the fixed costs incurred to serve them  
19 and will reduce the potential for subsidization by other customers.

20

21 Because the minimum bill provision is the result of a settlement rather than part  
22 of FPL's original as-filed proposal, FPL will need some additional time to make

1 the billing system changes necessary to implement the minimum bill. FPL  
2 estimates that billing system modifications will be completed by June 1, 2022.

3 **Q. Please explain the modification to the Regulatory Assessment Fee (“RAF”)**  
4 **under the Proposed Settlement Agreement.**

5 A. In accordance with Section 350.113, Florida Statutes, and Rule 25-6.0131,  
6 Florida Administrative Code, FPL is required to remit to the Commission a  
7 RAF of 0.00072 of gross operating revenues. Today, base and clause rates are  
8 grossed up to include this amount. Under the Proposed Settlement Agreement,  
9 FPL will remove the RAF from base and clause rates and collect it in the Gross  
10 Receipts Tax line item, which appears as a separate line item on the customer  
11 bill. The proposed modification to the RAF on the customer bill will have no  
12 impact on the overall total customer bill. To provide further clarity to  
13 customers, the line item appearing on a customer bill will be renamed “Gross  
14 Receipts Tax and Regulatory Assessment Fee” or an appropriate variation  
15 thereof. FPL estimates this change will be made on January 1, 2022 consistent  
16 with the effective dates of new rates; provided, however, that if that  
17 modification is not complete by January 1, 2022, FPL will forgo cash collection  
18 from customers until such time as the modification is complete and FPL will  
19 fund the RAF during this interim period.

20

21 Starting January 1, 2022, FPL will no longer include RAF in its clauses. FPL  
22 will include any over-recovery associated with RAF in the actual/estimated and  
23 final true-up filings for each clause.

1 **Q. Have you submitted a correction to an exhibit to the proposed Settlement**  
2 **Agreement?**

3 A. Yes. During the course of responding to discovery on the Proposed Settlement  
4 Agreement, FPL determined that there was an inadvertent stenographic error  
5 on Line 49 of Exhibit A, Schedule E-5 to the Proposed Settlement Agreement.  
6 FPL provided a corrected Exhibit A, Schedule E-5 in response to Staff's Fifth  
7 Data Request No. 3. This correction has no impact on the revenue  
8 requirements, allocations, rates, or tariffs under the Proposed Settlement  
9 Agreement. The corrected Exhibit A, Schedule E-5 to the Proposed Settlement  
10 Agreement is included in Exhibit REB-15 attached to the pre-filed settlement  
11 testimony of FPL witness Barrett.

12 **Q. Please explain how FPL will address any corrections or updates to the**  
13 **consolidated tariffs provided in Exhibits B (2022) and C (2023) to the**  
14 **Proposed Settlement Agreement that may be identified during discovery.**

15 A. FPL will include any additional corrections or updates to Proposed Settlement  
16 Agreement Exhibits B and C in a final complete tariff book that will be  
17 submitted to Staff for administrative approval following the Commission's final  
18 approval of the Proposed Settlement Agreement.

19 **Q. Should the Proposed Settlement Agreement rates be approved?**

20 A. Yes. The rates under the Proposed Settlement Agreement are part of a multi-  
21 faceted agreement that reflects a carefully balanced compromise of differing  
22 and competing positions by parties representing a broad range of interests and  
23 customers. The Proposed Settlement Agreement rates are consistent with the

1 Commission's principle of gradualism, while still keeping typical residential  
2 bills 21% below the current national average and nearly 22% below the  
3 projected 2025 national average. Additionally, as further discussed in the pre-  
4 filed settlement testimony of FPL witness Barrett, the proposed rates provide  
5 customers with predictability and stability as part of the overall Proposed  
6 Settlement Agreement.

7 **Q. Does this conclude your pre-filed settlement testimony?**

8 A. Yes.

1 BY MS. MONCADA:

2 Q Ms. Cohen, in connection with that testimony,  
3 did you also include Exhibits TCC-11 and TCC-12?

4 A Yes.

5 Q And were those exhibits prepared under your  
6 direction and supervision?

7 A Yes.

8 MS. MONCADA: And, Chairman Graham, I would  
9 note that Exhibits TCC-11 and 12 -- I'm sorry,  
10 but -- they -- they passed the m- -- they passed  
11 the gavel for a second. I apologize.

12 COMMISSIONER GRAHAM: I understand the  
13 confusion.

14 (Laughter.)

15 MS. MONCADA: They passed the gavel for a  
16 second. It was -- I was trying to abide by the  
17 passing of the gavel.

18 Any- -- anyhow, those exhibits were marked as  
19 Ex- -- 481 and 482.

20 CHAIRMAN CLARK: Great.

21 BY MS. MONCADA:

22 Q And are you also co-sponsoring REB-15, which  
23 is the entire settlement agreement that was attached to  
24 Mr. Barrett's testimony?

25 A Yes.

1           Q     Thank you, Ms. Cohen.

2                     And did you review the intervenor testimony  
3 that was filed in opposition to the settlement  
4 agreement?

5           A     Yes.

6           Q     And will you have some oral rebuttal today in  
7 response to that?

8           A     I do.

9           Q     What areas of focus from that settlement  
10 agreement will you be addressing?

11          A     The purpose of my rebuttal is to respond to  
12 the supplemental testimony of Witness Rabago that was  
13 submitted on behalf of LULAC, ECOSWF, and Florida Rising  
14 in opposition to the proposed settlement agreement.

15                     My rebuttal testimony will demonstrate that  
16 Witness Rabago completely ignores and does not refute  
17 that residential bills will be lower under the proposed  
18 settlement agreement.

19                     I will also explain that Witness Rabago's  
20 al- -- analysis and conclusions regarding the revenue  
21 allocation under the proposed settlement agreement are  
22 wrong and misleading.

23                     Finally, I will explain that Witness Rabago's  
24 statements regarding the minimum-bill proposal are  
25 inaccurate and completely ignore that FPL must be ready,

1 willing, and able to serve a customer's entire load at  
2 any time.

3 **Q In his supplemental testimony, Witness Rabago**  
4 **suggests multiple times that the settlement rates are**  
5 **worse for residential customers than under FPL's**  
6 **originally-filed proposed rates.**

7 **Do you agree with this contention?**

8 A Absolutely not. Mr. Rabago completely ignores  
9 and does not refute a very basic statement of fact. As  
10 explained in my prefiled settlement testimony, under the  
11 settlement rates, the average annual growth rate of the  
12 typical residential bill for customers in the former FPL  
13 service area is projected to increase by approximately  
14 2.5 percent through 2025 as compared to 3.4 percent  
15 under the original as-filed rates. 2.5 percent is less  
16 than 3.4 percent. I note that these bill impacts  
17 compare favorably to the projected inflation for that  
18 period, as referenced in FPL's Witness Bores' rebuttal  
19 testimony.

20 Mr. Rab- -- Rabago also ignores that, under  
21 the settlement rates, a typical residential bill for  
22 customers in the former Gulf service area will decrease  
23 by approximately .7 percent through 2025, as explained  
24 in my prefiled settlement testimony.

25 **Q Do you have any additional observations about**

1 **Witness Rabago's assertion that the settlement rates are**  
2 **worse than the original-filed rates?**

3 A Yes. Mr. Rabago purports to rely on FPL's  
4 response to staff data request, set five, No. 6, which  
5 he attached as Exhibit KKR-9 to his testimony; however,  
6 he completely disregards that this response shows that  
7 the revenue allocated to the residential customers is,  
8 in fact, 101.1 -- .5 million less in 2022 under the  
9 settlement rates than the as-filed rates, and  
10 106 million less in 2023 under the settlement rates than  
11 the as-filed rates.

12 In fact, Mr. Rabago concedes, on Page 8,  
13 Lines 7 and 8, that the increase in base rates under the  
14 proposed settlement agreement is less for residential  
15 customers than under the original as-filed rates.

16 Q Thank you, Ms. Cohen.

17 Witness Rabago also claims that the revenue  
18 allocation under the settlement rates results in  
19 residential and non-demand general-service customers  
20 subsidizing the largest customers.

21 Do you agree with this?

22 A He is wrong. I think it is important to note  
23 that Mr. Rabago did not submit any cost-of-service  
24 testimony or exhibits in the litigated case; now,  
25 however, with the proposed settlement agreement

1 reflecting a negotiated compromise of competing cost-of-  
2 service methodologies, Mr. Rabago appears to accept and  
3 rely upon FPL's as-filed cost-of-service study at  
4 equalized revenues.

5 In other words, for the sake of reaching his  
6 position on revenue allocation, he has, for the first  
7 time, accepted FPL's as-filed cost-of-service study and  
8 uses it as his baseline; however, Mr. Rabago's analysis  
9 is misleading and fundamentally flawed.

10 First, Mr. Rabago is not using the correct FPL  
11 original revenue allocation; second, his comparison of  
12 present and settlement revenues is not a meaningful  
13 comparison; and, third, Mr. Rabago fails to account for  
14 the Commission's principle of gradualism.

15 **Q Please explain how Witness Rabago is not using**  
16 **the correct FPL original revenue allocation.**

17 A Mr. Rabago's analysis relies on the revenue  
18 allocation under FPL's as-filed cost of service at  
19 equalized revenues; however, he fails to recognize, or  
20 completely ignores, that the revenue allocation at  
21 equalized rates was not FPL's original revenue  
22 allocation.

23 The revenue allocation under the as-filed cost  
24 of service at equalized rates is prior to the  
25 application, the Commission's principle of gradualism,

1 which limits the revenue increase for each rate class to  
2 no more than one-and-a-half times the system average  
3 increase.

4 As explained in my direct and rebuttal  
5 testimonies, FPL applied gradualism to determine the  
6 proposed revenue allocation for each rate class, which  
7 is different than the revenue allocation under the cost  
8 of service at equalized rates.

9 Thus, Mr. Rabago's analysis is not even used  
10 in the correct FPL original allocation, even assuming it  
11 is the correct reference point, which it is not.

12 **Q Thank you.**

13 **Can you also explain why Witness Rabago's**  
14 **analysis does not provide a meaningful comparison?**

15 A In order to correctly do a comparison of  
16 present and proposed revenues, one must use the same  
17 cost-of-service methodology for both present and  
18 proposed revenues.

19 Mr. Rabago's analysis is flawed because he  
20 applies the results of FPL's as-filed cost-of-service  
21 study at present revenues and compares it with the  
22 results of the revenue allocation under the proposed  
23 settlement agreement.

24 Mr. Rabago's approach completely ignores that  
25 the revenue allocation under the proposed settlement

1 agreement was a compromise between FPL's as-filed cost-  
2 of-service methodology without MDS, and the intervenors'  
3 proposed cost-of-service methodology with MDS.

4 Under FPL's as-filed proposal, the residential  
5 class would have been allocated less than under the  
6 proposed settlement agreement; however, under the un- --  
7 the intervenors' proposal, the residential class would  
8 have been allocated more than under the proposed  
9 settlement agreement.

10 The revenue allocation under the proposed  
11 settlement agreement reflects a carefully-balanced  
12 compromise between these two divergent and competing  
13 positions.

14 Stated differently, the revenue allocation  
15 under FPL's original proposal and under the proposed  
16 settlement agreement are not based on the same cost-of-  
17 service methodology.

18 Mr. Rabago's analysis completely ignores this  
19 important fact and incorrectly compares present revenues  
20 using FPL's original cost-of-service study with the  
21 settlement revenues that were based on a compromise  
22 between two competing cost-of-service methodologies.  
23 This is an incorrect apples-to-oranges comparison.

24 **Q You stated that Mr. Rabago's analysis of the**  
25 **revenue allocation under the proposed settlement did not**

1 **account for gradualism.**

2 **Please explain.**

3 A As I previously stated, Mr. Rabago's analysis  
4 relies on FPL's as-filed cost of service at equalized  
5 rates, which is prior to the application of the  
6 Commission's principle of gradualism.

7 Additionally, Mr. Rabago's comparison of  
8 present revenues and settlement revenues fails to  
9 account for the fact that all rates under the proposed  
10 settlement agreement were designed in accordance with  
11 this Commission's principle of gradualism.

12 We were very conscious of the economic impact  
13 to customers and ensured we followed gradualism,  
14 limiting increases of revenue to each rate class to no  
15 more than one-and-a-half times the system average.

16 We also considered the total bill impact over  
17 the term of the proposed settlement agreement, which I  
18 previously stated is 2.5 percent through 2025 as  
19 compared to 3.4 percent under the original as-filed  
20 rates.

21 **Q Thank you.**

22 **Mr. Rabago suggests that the revenue**  
23 **allocation under the settlement is not moving the**  
24 **residential customers closer to parity.**

25 **Do you have any comments on that?**

1           A     Yes.  Again, his analysis is incorrect.  
2     Mr. Rabago is comparing parity at present rates under  
3     FPL's as-filed cost of service with the revenue  
4     allocation under the proposed settlement agreement.  
5     This comparison is not appropriate, for the reasons I  
6     previously explained.

7           **Q     Do you have any additional observations**  
8     **regarding Witness Rabago's position regarding parity?**

9           A     Yes.  In order to calculate parity, one must  
10    first determine the underlying methodologies and  
11    parameters to be used in the cost-of-service study.

12                    Although the settlement parties agreed to  
13    specific methodologies for allocating production and  
14    transmission plant, they agreed to a negotiated  
15    methodology for allocating distribution plant rather  
16    than a specific percent allocation.

17                    Because the settlement parties agreed to a  
18    negotiated methodology for allocating distribution,  
19    there was not a full settlement cost-of-service  
20    available to calculate parity at settlement rates;  
21    however, the settlement revenue allocation reflects a  
22    compromise of the parties' differing and competing  
23    positions on parity.

24                    In its as-filed case, FPL put forth a proposed  
25    methodology for allocating costs to customers and moving

1    them closer to parity, calculated under FPL's  
2    methodology.  And the intervenors put forth a different  
3    proposed methodology for allocating costs to customers  
4    and moving them closer to parity.

5                    The settlement rates reflect a negotiated  
6    compromise between FPL's as-filed position on parity and  
7    the intervenors' position on parity.

8            **Q     Witness Rabago claims that the minimum-bill  
9    proposal under the settlement violates the principle of  
10   cost cal-sation -- causation, I should say.**

11                   **Do you agree?**

12            A     No.  Mr. Rabago's statements completely ignore  
13    another basic principle that I explained in my prefiled  
14    settlement testimony.  Specifically, the minimum bill  
15    better ensures all residential and general-service non-  
16    demand customers contribute towards their fair share of  
17    fixed system costs that FPL must incur in order to be  
18    ready, willing, and able to serve the customer's entire  
19    load at any time, even if the customer has low or zero  
20    usage.

21            **Q     Thank you, Ms. Cohen.**

22                    **Can you provide an example of that.**

23            A     Yes.  A good example is a seasonal second-home  
24    owner that only occupies the premise for four to six  
25    months out of the year.  During six to eight months of

1 no usage, the owner of the second home would pay only  
2 the customer charge in absence of the minimum bill;  
3 however, the customer charge covers only billing,  
4 metering, and customer service costs.

5 It does not co- -- cover any portion of wires  
6 or poles that are still required in order for FPL to  
7 connect the customer to the system and be ready and  
8 available to serve the seasonal second-home owner when  
9 they return.

10 In the absence of a minimum bill, other  
11 customers are subsidizing the fixed costs incurred for  
12 such customers with no low or no usage.

13 **Q Mr. Rabago also claims that the minimum-bill**  
14 **proposal forces customers to pay for electricity that**  
15 **they do not use.**

16 **Do you agree with that?**

17 A No. The minimum bill is intended to cover a  
18 portion of fixed system costs, not the electricity used  
19 by another customer.

20 **Q Thank you.**

21 **Witness Rabago further claims that the minimum**  
22 **bill discourages customer investment in energy**  
23 **efficiency and distributi- -- distributed generation.**

24 **Do you agree?**

25 A No. Unless the customer goes off the grid and

1 completely disconnects from FPL's system, FPL must still  
2 incur fixed costs in order to be ready and able to serve  
3 the customer's entire load at any time, even if they  
4 have installed energy efficiency or distributed  
5 generation.

6 **Q Thank you, Ms. Cohen.**

7 **Can you provide an example.**

8 A Yes. A customer that installs distributed  
9 generation may still need FPL to serve all or a portion  
10 of the customer's load if the distributed generation  
11 resource fails, is taken out of service, or is only  
12 operational during certain times or conditions, such as  
13 during the day when the sun is shining.

14 The minimum bill will better ensure all  
15 customers pay their fair share of these fixed costs, and  
16 customers with low or no usage are not being subsidized  
17 by other customers.

18 Finally, even with energy-efficiency measures  
19 and distributed-generation resources, it is hard to  
20 imagine usage could be any more conserved than the small  
21 amount of kilowatt hours subject to the minimum bill.

22 **Q And, finally, Witness Rabago asserts that the**  
23 **minimum-bill proposal is unfair and out of time because**  
24 **it was not included in the original litigated**  
25 **proceeding.**

1                   **Do you have a response?**

2           A       Yes.  The minimum bill was part of a  
3 multifaceted comprehensive settlement agreement that  
4 resulted in a compromise and resolution of many  
5 different positions, issues, and proposals.

6                   The minimum bill proposal was included in the  
7 proposed settlement agreement served on the parties on  
8 August 10th, 2021.

9                   I specifically addressed and explained the  
10 minimum bill in my prefiled settlement testimony served  
11 on August 26th, 2021.

12                   FPL also responded to numerous sets of  
13 discovery on the proposed settlement agreement,  
14 including requests regarding the minimum-bill proposal.

15                   Mr. Rabago had the opportunity to and, in  
16 fact, has submitted testimony regarding the minimum-bill  
17 proposal.

18           **Q       Thank you, Ms. Cohen.**

19                   **Does this conclude your oral rebuttal?**

20           A       Yes.

21                   (Transcript continues in sequence in Volume  
22 13.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

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

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

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

DATED THIS 22nd day of September, 2021.



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