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September 13, 2021

**VIA ELECTRONIC FILING**

Adam Teitzman, Commission Clerk  
Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

RE: Docket No. 20210015-EI  
Petition by FPL for Base Rate Increase and Rate Unification

Dear Mr. Teitzman:

Attached for filing on behalf of Floridians Against Increased Rates, Inc. ("FAIR") in the above-referenced docket are the Supplemental Direct Testimony and Exhibits re: Proposed Settlement Agreement of FAIR witness Timothy J. Devlin.

Please let me know if you should have any questions regarding this submission.

Cordially yours,

  
Robert Scheffel Wright

RSW:fyh  
Encl.

**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**

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

**SUPPLEMENTAL DIRECT TESTIMONY OF TIMOTHY J. DEVLIN  
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**

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**INTRODUCTION AND QUALIFICATIONS**

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

A. My name is Timothy J. Devlin, and my address is 21 Equine Drive,  
Crawfordville, Florida 32327.

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

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

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.

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**BACKGROUND**

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

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

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

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**Potential Earnings Difference between Maximum ROE  
and Midpoint ROE Under Settlement Agreement**

Year	
2022	\$200,000,000
2023	\$425,000,000
2024	\$454,000,000
2025	<u>\$486,000,000</u>
Total	\$1,565,000,000
Reserve Surplus	\$1,450,000,000

**Notes:**

1. 2022 amount is the maximum amount of the Reserve Surplus that can be used during 2022, based on the Settlement Agreement, which limits use of Reserve Surplus to \$200 million in 2022.
2. 2023 amount based on deposition of Robert Barrett, June 11, 2021, page 86 and adjusted for 110 basis point spread.
3. 2024 and 2025 amounts are based on a 7 percent growth rate, calculated using Robert Barrett's estimates of revenue requirements per 100 basis points for 2022 and 2023, given in his deposition, and adjusted for 110 basis point spread.
4. Reserve Surplus amount based on the Settlement Agreement.