BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Petition for rate increase by Florida Power & Light Company. | DOCKET NO. 20210015-EI  ORDER NO. PSC-2021-0362-PHO-EI  ISSUED: September 16, 2021 |

SECOND PREHEARING ORDER

**I. Background**

On March 12, 2021, Florida Power & Light Company (FPL) filed a petition, minimum filing requirements, and testimony for a base rate increase effective January 2022. As part of its request, FPL is seeking to consolidate its rates with those of Gulf Power Company (Gulf), recently acquired by FPL’s parent company. Pursuant to Order No. PSC-2021-0116-PCO-EI, issued March 24, 2021, the hearing for the FPL rate case was scheduled for August 16 through August 27, 2021.

OPC’s intervention has been acknowledged.[[1]](#footnote-1) Florida Executive Agencies (FEA), Florida Industrial Power Users Group (FIPUG), Florida Internet & Television, Inc. (FIT), Florida Retail Federation (FRF), Southern Alliance for Clean Energy (SACE) and Vote Solar have been granted intervention on an associational standing basis.[[2]](#footnote-2) Walmart, Inc. (Walmart) and Daniel and Alexandria Larson (Larsons) have been granted intervention on an individual standing basis.[[3]](#footnote-3) CLEO Institute, Inc. (CLEO) and Florida Rising (Fla. Rising) have been granted intervention on an individual standing basis and provisional intervention on an associational standing basis.[[4]](#footnote-4) Floridians Against Increased Rates, Inc. (FAIR), League of United Latin American Citizens (LULAC) and Environmental Confederation of Southwest Florida (ECOSWF) have been granted provisional intervention on an associational standing basis.

On August 10, 2021, FPL, OPC, FRF, FIPUG, and SACE, filed a Joint Motion for Approval of Stipulation and Settlement Agreement (2021 Settlement). On August 12, 2021, the hearing scheduled to commence on August 16 was continued until Wednesday, August 18, 2021, in order to allow FPL and Gulf to appropriately respond to service issues associated with Tropical Storm Fred’s landfall in its Panhandle service area.[[5]](#footnote-5) At the August 18, 2021, hearing the procedures for conducting a full hearing at a later date on the petition for rate increase and the 2021 Settlement were discussed. Order No. PSC-2021-0314-PCO-EI, issued on August 20, 2021, set 2021 Settlement testimony filing dates and a new hearing date of September 20-22, 2021, for the rate case and the 2021 Settlement.

**II. Jurisdiction**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 120 and 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

**III. Conduct of Proceedings**

The hearing will be conducted in two parts: the first will address FPL’s petition for rate increase (Rate Case); the second will address the joint motion for approval of the 2021 Settlement (Settlement Case). If both the Rate Case and the Settlement Case cannot be concluded in the time set aside in September, the hearing will be continued at the conclusion of the Rate Case and reconvened at a later date for full presentation of the Settlement Case.

The FPL witnesses in the Rate Case will testify to both their prefiled Rate Case direct and rebuttal testimony filed on March 12 and July 12, 2021, respectively. The Intervenor witnesses in the Rate Case will testify to their direct testimony filed on June 21, 2021. At the conclusion of the Rate Case portion of the hearing, all exhibits associated with the Rate Case, not already stipulated to by all the parties or admitted into the record, shall be tendered for inclusion in the record. In the Settlement Case, all Intervenor witnesses will testify to their testimony filed on September 13, 2021, and all FPL witnesses will testify to their testimony filed on August 26, 2021, and give oral rebuttal to the September 13, 2021 Intervenor testimony. At the conclusion of the Settlement Case portion of the hearing, all exhibits associated with the Settlement Case not already stipulated to by all the parties or admitted into the record, shall be tendered for inclusion in the record and ruled upon.

Summaries of prefiled testimony in the Rate Case, if any, shall be limited to five minutes for each witness. Summaries of prefiled testimony and oral rebuttal in the Settlement Case, if any, shall be limited to five minutes for each witness.

**IV. Order of Witnesses**

**Rate Case**

Witness Proffered By Issues

Direct/Rebuttal

Eric Silagy FPL 25\*

James M. Coyne FPL 70, 72

Robert E. Barrett FPL 31, 67, 68, 70-73, 90, 130, 131, 133, 134, 137

Intervenor

John Thomas Herndon FAIR/FL Rising 9, 29, 70-72, 107, 122-127

Nancy H. Watkins FAIR/FL Rising 9

Breandan Mac Mathuna FAIR/FL Rising 65-73, 107

Timothy J. Devlin FAIR/FL Rising 2, 29, 30, 130

\* These issues are listed in the Prehearing Order, Order No. PSC-2021-0302-PHO-EI, issued August 10, 2021, on pages 41-208.

**Settlement Case**

Intervenor

Breandan Mac Mathuna FAIR/FL Rising Paragraph 3 - ROE

John Thomas Herndon FAIR/FL Rising Paragraph 3 – ROE; Paragraph 4 – Rate increases; Paragraph 16 – RSAM

Timothy J. Devlin FAIR/FL Rising Paragraph 16 –RSAM;

Karl Rabago FL Rising, LULAC Paragraph 3 – ROE; Paragraph 16- & ECOSWF RSAM; Paragraph 4 – Rate increases; Paragraph 20 – SolarTogether; Paragraph 22 – Solar programs, monetizing RECs; Paragraph 6 - $25 minimum fee; Paragraph 26 – Amortization period

extension Direct/Rebuttal

Robert E. Barrett FPL Paragraph 12 – Solar Base Rate Adjustment Mechanism; Paragraph 16 – Reserve Surplus Amortization Mechanism; Paragraph 10 – Storm Cost Recovery Mechanism; Paragraph 3 – ROE Trigger Mechanism; Paragraph 27 – Natural Gas Hedging

Scott R. Bores FPL Paragraph 20- Extended Solar Together Program; Paragraph 26 – Amortization of Accumulated Deferred Income Taxes; Paragraph 13- Tax Reform Mechanism; Paragraph 26 – EADIT; Exhibit E – revised Dismantlement Accrual; Paragraphs 17-18 –Depreciation and Dismantlement Studies

Matthew Valle FPL Paragraph 20 – Solar Together Program; Paragraph 22 – EV Programs; Paragraph 23 –Solar Power Facilities Pilot Program

Tiffany C. Cohen FPL Rates

FPL reserves the right to add additional oral rebuttal witnesses to the Settlement Case panel.

**V. Exhibit List[[6]](#footnote-6)**

**Rate Case**

| Witness | Proffered By |  | Description |
| --- | --- | --- | --- |
| Direct/Rebuttal |  |  |  |
| Eric Silagy | FPL | ES-1 | Eric Silagy Biography |
| Eric Silagy | FPL | ES-2 | Value Provided to FPL Customers |
| Eric Silagy | FPL | ES-3 | Typical Residential 1,000 kWh Bill Comparisons |
| Eric Silagy | FPL | ES-4 | Gulf Power Operational  Improvements |
| Eric Silagy | FPL | ES-5 | Gulf Power Adjusted O&M  Improvements |
| James M. Coyne | FPL | JMC-1 | Resume and Testimony Listing of James M. Coyne |
| James M. Coyne | FPL | JMC-2 | Comprehensive Summary of ROE Results |
| James M. Coyne | FPL | JMC-3 | Proxy Group Screening Analysis |
| James M. Coyne | FPL | JMC-4 | Constant Growth DCF Analysis |
| James M. Coyne | FPL | JMC-5.1 | Market Risk Premium |
| James M. Coyne | FPL | JMC-5.2 | CAPM Analysis |
| James M. Coyne | FPL | JMC-6 | Risk Premium Analysis |
| James M. Coyne | FPL | JMC-7 | Expected Earnings Analysis |
| James M. Coyne | FPL | JMC-8 | Capital Expenditures Analysis |
| James M. Coyne | FPL | JMC-9 | Regulatory Risk Assessment |
| James M. Coyne | FPL | JMC-10 | Flotation Cost Analysis |
| James M. Coyne | FPL | JMC-11 | Capital Structure Analysis |
| Robert E. Barrett | FPL | REB-1 | Consolidated MFRs Sponsored or Co-sponsored by Robert E. Barrett |
| Robert E. Barrett | FPL | REB-2 | Supplemental FPL and Gulf  Standalone Information in MFR Format Sponsored or Co-Sponsored by Robert E. Barrett |
| Robert E. Barrett | FPL | REB-3 | FPL’s Virtuous Circle |
| Robert E. Barrett | FPL | REB-4 | Average Annual Capital  Expenditures by Industry |
| Robert E. Barrett | FPL | REB-5 | PP&E Replenishment Profile |
| Robert E. Barrett | FPL | REB-6 | Historical Hurricane Probabilities by State |
| Robert E. Barrett | FPL | REB-7 | Annual Average Number of Storms by Decade |
| Robert E. Barrett | FPL | REB-8 | Regional Comparison: Key  Performance Metrics |
| Robert E. Barrett | FPL | REB-9 | Non-Fuel O&M per Retail MWh |
| Robert E. Barrett | FPL | REB-10 | Storm Cost Recovery Mechanism |
| Robert E. Barrett  Keith Ferguson | FPL | REB-11 | Reserve Surplus Amortization  Mechanism |
| Robert E. Barrett  Liz Fuentes,  Matthew Valle,  Tiffany C. Cohen | FPL | REB-12 | Solar Base Rate Adjustment  Mechanism |
| Intervenor |  |  |  |
| John Thomas Herndon | FAIR/FL Rising | JTH-1 | Résumé of John Thomas Herndon |
| John Thomas Herndon | FAIR/FL Rising | JTH-2 | PSC Rate Case History Report |
| John Thomas Herndon | FAIR/FL Rising | JTH-3 | FAIR’s Articles of Incorporation |
| John Thomas Herndon | FAIR/FL Rising | JTH-4 | FAIR’s Membership Application |
| John Thomas Herndon | FAIR/FL Rising | JTH-5 | FPL’s Proposed Rate Increases, Annually and Cumulative 2022-2025 |
| Nancy H. Watkins | FAIR/FL Rising | NHW-1 | Résumé of Nancy H. Watkins |
| Nancy H. Watkins | FAIR/FL Rising | NHW-2 | FAIR’s Articles of Incorporation |
| Nancy H. Watkins | FAIR/FL Rising | NHW-3 | FAIR’s Membership Roster as of June 15, 2021 (REDACTED) |
| Nancy H. Watkins | FAIR/FL Rising | NHW-4 | Sample Form of FAIR’s Membership Application (Paper) |
| Nancy H. Watkins | FAIR/FL Rising | NHW-5 | Sample Form of FAIR’s Membership Application (Electronic) |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-1 | Professional Qualifications of Breandan T. Mac Mathuna |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-2 | DCF Model Analysis |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-3 | Sensitivity DCF Analysis |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-4 | Market-to-Book Ratios |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-5 | Modifications to Exhibit JMC-5.2 |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-6 | Common Equity Ratio Analysis |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-7.1 | Credit Metrics ROE 8.56% |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-7.2 | Credit Metrics ROE 8.56% Eq. Ratio 55.4% |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-7.3 | Credit Metrics ROE 11.50% Eq. Ratio 55.4% |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-7.4 | Credit Metrics ROE 8.56% Eq. Ratio 55.4% COD+0.28% |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-8.1 | Data Verification Workpapers |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-8.2 | Other Workpapers |
| Timothy J. Devlin | FAIR/FL Rising | TJD-1 | Résumé of Timothy J. Devlin |
| Timothy J. Devlin | FAIR/FL Rising | TJD-2 | Comparison of Authorized ROE to Achieved ROE, 2017-2021 (YTD) |
| Timothy J. Devlin | FAIR/FL Rising | TJD-3 | FPL’s Past Use of the RSAM, 2017-2021 (YTD) |
| Timothy J. Devlin | FAIR/FL Rising | TJD-4 | Effects of RSAM on FPL’s Revenue Requirements, 2017-2020 |
| Timothy J. Devlin | FAIR/FL Rising | TJD-5 | Effects of RSAM on Future FPL Revenue Requirements, 2022-2025 |

**Settlement Case**

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| --- | --- | --- | --- |
| Witness | Proffered By |  | Description |
| Non-signatories |  |  |  |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-9 | Revenue Requirement Analysis |
| Breandan Mac Mathuna | FAIR/FL Rising | BTM-10 | Referenced Articles and Reports |
| John Thomas Herndon | FAIR/FL Rising | JTH-6 | FPL’s Test Year Notification Letter |
| John Thomas Herndon | FAIR/FL Rising | JTH-7 | U.S. Treasury Bond Yield Rates, October 2016 and August 2021 |
| Timothy J. Devlin | FAIR/FL Rising | TTD-6 | Revised Effects of RSAM on Further FPL Earnings, 2022-2025 |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-7 | Direct testimony and exhibits of Karl R. Rabago – Docket No. 20210015-EI |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-8 | Direct testimony and exhibits of Karl R. Rabago – Docket No. 20200176-EI |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-9 | Staff’s Fifth Data Request No. 6 with Attachment |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-10 | Staff’s Eighth Data Request No. 6, Attachment 1 |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-11 | Staff’s Eighth Data Request No. 6, Attachment 1 with 11.7% ROE by KRR |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-12 | SolarTogether CPVRR Summary from Docket No. 20190061-EI |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-13 | LULAC, et al. 4th POD, No. 33 – SolarTogether –High Level Bill Impacts |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-14 | LULAC, et al. 4th POD, No. 33 – SolarTogether –High Level Bill Impacts extended to 2026 by KRR |
| Karl Rabago | FL Rising/  LULAC/  ECOSWF | KRR-15 | LULAC et al. 4th POD, No. 39 – Attachment 1 – Minimum Bill |
| Signatories |  |  |  |
| Robert E. Barrett | FPL | REB-15 | 2021 Stipulation and Settlement Agreement |
| Scott R. Bores | FPL | SRB-14 | Extended SolarTogether Resource Plans |
| Scott R. Bores | FPL | SRB-15 | FPL SolarTogether Extension System Costs and Benefits |
| Scott R. Bores | FPL | SRB-16 | CPVRR Analysis for FPL’s Extended SolarTogether Program |
| Matthew Valle | FPL | REB-15 | Co-sponsor 2021 Stipulation and Settlement Agreement |
| Tiffany C. Cohen | FPL | TCC-11 | Bills at Unified Rates (current FPL customers) |
| Tiffany C. Cohen | FPL | TCC-12 | Bills at Unified Rates (Northwest Florida customers) |

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

**VI. Issues**

The following issues associated with the Settlement Case will be briefed at the conclusion of the hearing and considered by the Commission at the October 26, 2021 Special Agenda. Should the Commission vote to reject the 2021 Settlement on October 26, the issues identified in Order No. PSC-2021-0302-PHO-EI, pages 41-208, shall be briefed for consideration by the Commission at a later date.

ISSUE 1: Does the Commission have the statutory authority to grant FPL’s requested storm cost recovery mechanism as part of the Stipulation and Settlement Agreement?

ISSUE 2: Does the Commission have the statutory authority to approve FPL’s requested Reserve Surplus Amortization Mechanism (RSAM) as part of the Stipulation and Settlement Agreement?

ISSUE 3: Does the Commission have the statutory authority to approve FPL’s requested Solar Base Rate Adjustment mechanism for 2024 and 2025 as part of the Stipulation and Settlement Agreement?

ISSUE 4: Does the Commission have the statutory authority to adjust FPL’s authorized return on equity based on FPL’s performance as part of the Stipulation and Settlement Agreement?

ISSUE 5: Does the Commission have the statutory authority to include non-electric transactions in an asset optimization incentive mechanism as part of the Stipulation and Settlement Agreement?

ISSUE 5(a): Does the Commission have the authority to approve FPL’s requested proposal for a federal corporate income tax adjustment that addresses a change in tax if any occurs during or after the pendency of this proceeding as part of the Stipulation and Settlement Agreement?

ISSUE 6: Does the Commission have the statutory authority to grant FPL’s requested four year plan as part of the Stipulation and Settlement Agreement?

ISSUE 9: Has Floridians Against Increased Rates, Inc. demonstrated individual and/or associational standing to intervene in this proceeding?

ISSUE A: Should the Stipulation and Settlement Agreement dated August 9, 2021, be approved?

**VII. Opening Statements**

Opening statements, if any, shall be limited to 15 minutes for FPL and seven minutes each for the remaining parties. Any party may split their allotted time and make opening statements at the commencement of both the Rate Case and Settlement Case, or may use all their time to make an opening statement for either.

It is therefore,

ORDERED by Chairman Gary F. Clark, as Prehearing Officer, that this Second Prehearing Order shall govern the conduct of the proceeding to be held on September 20, 2021, unless modified by the Commission. It is further

ORDERED that Order No. PSC-2021-0302-PHO-EI, issued August 10, 2021, is hereby reaffirmed to the extent not inconsistent with this Order.

By ORDER of Chairman Gary F. Clark, as Presiding Officer, this 16th day of September, 2021.

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|  | /s/ Gary F. Clark |
|  | GARY F. CLARK  Chairman and Presiding Officer |

Florida Public Service Commission

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

1. Order No. PSC-2021-0062-PCO-EI, issued January 29, 2021. [↑](#footnote-ref-1)
2. Order No. PSC-2021-0132-PCO-EI, issued April 16, 2021; Order No. PSC-2021-0133-PCO-EI, issued April 16, 2021; Order No. PSC-2021-0255-PCO-EI, issued July 13, 2021; Order No. PSC-2021-0134-PCO-EI, issued April 16, 2021; Order No. PSC-2021-0136-PCO-EI, issued April 16, 2021; and Order No. PSC-2021-0179-PCO-EI, issued May 19, 2021. [↑](#footnote-ref-2)
3. Order No. PSC-2021-0189-PCO-EI, issued May 26, 2021 and Order No. PSC-0135-PCO-EI, issued April 16, 2021. [↑](#footnote-ref-3)
4. Order No. PSC-2021-0184-PCO-EI, issued May 20, 2021 and Order No. PSC-2021-0139-PCO-EI, issued April 20, 2021. [↑](#footnote-ref-4)
5. Order NO. PSC-2021-0305-PCO-EI, issued August 12, 2021. [↑](#footnote-ref-5)
6. The listed exhibits are only those associated with the witnesses who will appear in person at the Rate Case and Settlement Case hearing. Additional Rate Case exhibits are listed on pages 5-9 of Order No. PSC-2021-0302-PHO-EI. [↑](#footnote-ref-6)