

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:
DOCKET NO. 20210015-EI
PETITION FOR RATE INCREASE
BY FLORIDA POWER & LIGHT
COMPANY.

_____ /

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

DATE: Tuesday, October 26, 2021
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS WRAY
Court Reporter and
Notary Public in and for
the State of Florida at Large

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

1 P R O C E E D I N G S

2 CHAIRMAN CLARK: Good morning. Welcome,
3 everyone, this morning. I'd like to call this
4 meeting to order.

5 I'm going to ask -- I lost her -- I'm looking
6 at the wrong side -- ask Ms. Brownless, if she
7 would, to give us the background of the case today.

8 MS. BROWNLESS: Thank you, sir.

9 FP&L filed a petition for a base-rate increase
10 on March 12th, 2021, and is seeking to put its
11 proposed rates into effect on January 1, 2022, and
12 consolidate its rates with Gulf Power Company,
13 recently acquired by FP&L's parent company,
14 NextEra.

15 OPC, FIPUG, FEA, FIT, FRF, SACE, Vote Solar,
16 Walmart, the Larsons, CLEO, Florida Rising, LULAC,
17 and ECOSWF have been granted intervention and
18 participated in this case.

19 FAIR has been granted provisional
20 associational standing in this case, over FPL's
21 objection, and has participated fully in the case
22 to date. A final ruling on FAIR's associational
23 status is one of the items at issue today.

24 On August 10th, 2021, FPL, OPC, FRF, FIPUG,
25 and SACE filed a joint motion for approval of the

1 stipulation and settlement agreement, which we'll
2 refer to as the 2021 settlement.

3 At the August 18th, 2021, final hearing, the
4 procedures for conducting a full hearing at a later
5 date on the petition for rate increase and the 2021
6 settlement testimony filing dates and a new hearing
7 date of September 20th through 22nd for the rate
8 case and settlement was set.

9 Final hearing on FP&L's base-rate increase
10 petition as well as the 2021 settlement was held on
11 September 20th, 2021. The testimony of 60
12 witnesses and 635 exhibits were admitted into the
13 record.

14 On October 11th, post-hearing briefs were
15 filed by FP&L, OPC, FIT, FIPUG, FRF, FEA, FAIR,
16 Florida Rising, LULAC, ECOSWF, Larsons, SACE, and
17 Walmart.

18 The issues to be decided today can be roughly
19 divided into three groups. The first group are
20 jurisdictional issues, Issues 1 through 6, whether
21 the Commission has the statutory authority to
22 approve certain proposed rate mechanisms as part of
23 the settlement agreement; for example, the RSAM and
24 the storm-cost recovery mechanism.

25 The second group of issues would be standing

1 issues: that's Issue No. 9, whether FAIR's request
2 to intervene in this case should be granted;

3 And, finally, whether the August 9th
4 settlement agreement should be approved; that is,
5 the settlement agreement, when taken as a whole --
6 does it resolve all issues, is it in the public
7 interest, and does it result in fair, just, and
8 reasonable rates. And that's identified as
9 Issue A.

10 Staff is available at this time to answer your
11 questions.

12 CHAIRMAN CLARK: All right. Let's take into
13 consideration -- I guess I'm going to suggest that
14 we vote on the standing issue, Issue No. 9, first.
15 Then we will take up the jurisdictional issues, 1
16 through 6. And then, finally, we will consider
17 Issue 8, the settlement agreement.

18 Everyone in agreement with that order? All
19 good?

20 All right. Standing issue: Has Floridians
21 Against Increased Rates demonstrated individual or
22 associational standing to intervene in this
23 proceeding.

24 Ms. Brownless, would you please discuss the
25 legal criteria.

1 MS. BROWNLESS: Yes, sir, the legal criteria
2 to determine standing for an association is found
3 in Florida Home Builders vs. the Department of
4 Labor and Employment Security, 412 So.2d, 351,
5 Florida 1982.

6 The three-prong test found in Florida Home
7 Builders requires an association to: One,
8 demonstrate that a substantial number of its
9 members may be substantially affected by the
10 Commission's decision in a docket; two, demonstrate
11 that the subject matter of the proceeding is within
12 the association's general scope and interest and
13 activity; and, three, demonstrate that the relief
14 requested is of a type appropriate for the
15 association to receive on behalf of its members.

16 CHAIRMAN CLARK: All right. Could you
17 summarize the record of evidence for us, please.

18 MS. BROWNLESS: And I'm going to turn this
19 over to Mr. Stiller at this time.

20 MR. STILLER: Good morning, Commissioners.
21 Shaw Stiller with the legal office.

22 Regarding the three criteria of the Florida
23 Home Builders, the following is the evidence -- the
24 record evidence submitted by FAIR.

25 As to the first prong of the test, the

1 substantial number of members, FAIR presented
2 evidence that they had 16 -- one-six -- members as
3 of May 4. That's the date the petition was filed.

4 FAIR also produced evidence that they had 513
5 members as of June 15th. That's the date prefiled
6 testimony was prepared.

7 FAIR also presented evidence that they had 770
8 members as of July 25th, 2021. That's the date on
9 which -- or the 27th is the date on which's FAIR's
10 board adopted the resolution admitting members.

11 At all times, at least 80 percent of the
12 members have been FPL ratepayers. And that -- and
13 FAIR has verified that each membership form
14 contains the required information and demonstrates
15 eligibility.

16 As to the second prong, the bylaws of FAIR
17 clearly place advocacy for lower utility rates
18 within the scope of interest of the association.

19 And with respect to the third prong, this
20 Commission has ruled previously that an association
21 is appropriate to receive relief on behalf of
22 ratepayers.

23 Now, FPL has raised several challenges, legal
24 challenges, to the sufficiency of that factual
25 demonstration. First, FPL alleges that FAIR was

1 required to and did not personally verify the
2 identity of every member.

3 Secondly, Florida Power & Light argues that
4 consideration of standing is limited to the facts
5 and the membership as they exist on the date the
6 petition was filed.

7 Third, Florida Power & Light contends that
8 FAIR did not comply with its bylaws and that, until
9 June -- July 27th, when the board took a vote to
10 admit members, there were no official members of
11 the organization.

12 And then, finally, Florida Power & Light takes
13 issue with the organizational -- the physical
14 organizational structure -- my words -- of FAIR;
15 that is: office space, phone line, and saying that
16 they -- they are not the, quote, "functional
17 equivalent" of an associating and, therefore, don't
18 have standing.

19 And with that, Commissioners, I'm available
20 for questions.

21 CHAIRMAN CLARK: All right. Commissioners,
22 any questions? Comments? Discussion?

23 Commissioner La Rosa. Commissioner?

24 COMMISSIONER La ROSA: Thank you, Chairman.

25 I'll just start with the comments. I think

1 intervening parties are incredibly important in
2 this process. You know, I've listened to the
3 evidence. I don't agree with everything that FP&L
4 has laid out for FAIR, but I do have to pay
5 attention to some of the contradictions that I see,
6 particularly in the first prong that's been
7 discussed today.

8 I -- I do not believe they should be granted
9 intervening status. I think there's a -- kind of a
10 lot to be questioned there, specifically when their
11 membership started.

12 So, with that, Chairman, I plan to not vote in
13 support of allowing them -- or granting them
14 status.

15 CHAIRMAN CLARK: Thank you, Commissioner La
16 Rosa.

17 Commissioner Graham.

18 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

19 My question is not necessarily granting them
20 or not granting them intervening status
21 (unintelligible).

22 I guess my question comes down to
23 (unintelligible) -- when they first filed -- can
24 you hear me now?

25 When they first filed to be intervenors, it

1 seemed -- well, it comes across, to me, that they
2 weren't necessarily a legitimate entity when they
3 made that filing.

4 And I guess my question is to staff: Do we
5 run into any sort of ethical issues for -- because
6 of that?

7 CHAIRMAN CLARK: Mr. Stiller.

8 MR. STILLER: Was that "ethical issues"?

9 COMMISSIONER GRAHAM: Yes.

10 MR. STILLER: Commissioner, let -- if I may
11 answer that in two -- two parts: Number one, the
12 very basic framework of an organization was there
13 at the beginning, bylaws, articles of
14 incorporation.

15 It was the membership -- and I believe maybe
16 that's what you're speaking to. And as far as
17 "ethical" for this Commission, I would defer to
18 your advisor, but I'm not aware of any.

19 If a party or an attorney re- -- you know,
20 brings a frivolous claim -- not saying this is that
21 at all -- but there are statutory remedies for
22 misplaced or other claims that are imposed for
23 purposes outlined in the statutes, but that's among
24 the parties.

25 To my knowledge, Commissioner, there is

1 nothing that would implicate this Commission in any
2 ethical or bad business or good business decision.
3 The Commission is just ruling on the record as it
4 stands.

5 COMMISSIONER GRAHAM: Did I misunderstand,
6 when they first came before us and they first
7 filed, did they or did they not have membership
8 other than the three board members?

9 MR. STILLER: They did have members. There
10 was an affidavit submitted by FAIR in response to
11 the motion for summary final order. And
12 Mr. Herndon, I believe -- the affidavit sets forth
13 that there were 16 -- one-six -- members; that he
14 reviewed the applications, reviewed the manner that
15 they were transmitted to the organization, and they
16 had been received before May 4th.

17 COMMISSIONER GRAHAM: And these 16 members
18 were currently Florida Power & Light customers?

19 MR. STILLER: That is correct.

20 There is an affidavit from one of those
21 members also attached to the mo- -- to the response
22 to the motion for summary final order.

23 COMMISSIONER GRAHAM: Anything else? Okay.

24 CHAIRMAN CLARK: Commissioner Fay.

25 COMMISSIONER FAY: Thank you, Mr. Chairman.

1 And I think Commissioner La Rosa commented on
2 what I believe is probably the main component of
3 this -- this issue. And it's -- it's a very
4 complex issue. I -- I think there's probably --
5 as -- as a lawyer, there's probably very few things
6 I take more seriously than -- than due process and
7 what is provided to the parties that come before
8 us.

9 And I think, when you start talking about a
10 docket that has an extremely broad and wide scope
11 and is inclusive of a lot of different issues, I
12 think that's relevant and -- to part of our
13 analysis as to -- if standing is satisfied or not.

14 It's been touched on a little bit. The legal
15 standing here is fairly clear. I -- the -- the
16 legal basis is very clear. The Home Builders case
17 has been around for a long time and that -- that
18 being the foundation is really not dis- -- argued
19 by the parties.

20 With that said, the -- the facts and the
21 implementation of it are, they're -- they're
22 debated pretty significantly and -- in all three
23 parts of that -- that test.

24 And I found the first component, as to what
25 Commissioner Graham has touched on, regarding the

1 members being a significant one because trying to
2 interpret clarity as to if that was relevant in
3 satisfying intervention requirements -- it's --
4 it's a tough analysis to make.

5 I will say that it's concerning not a single
6 board member of the organization is an actual FPL
7 ratepayer. That surprised me.

8 It's also concerning that there's no proper
9 e-mail and/or phone contact information for any of
10 the members of the organization to reach out to
11 FAIR and/or their -- their bar -- their board
12 members.

13 With that said, I don't think either of those
14 issues negate what's in the record here as -- in
15 regards to satisfying that standard. And I think,
16 when you look at the actual membership component,
17 the bylaws seem to be the main issue that is the
18 basis of that membership component in the first
19 part of there.

20 And I think -- I think our legal counsel here,
21 Mr. Stiller, did a good job of laying that out, but
22 I also think there's some pretty good case law
23 about not allowing retroactive standing in these
24 cases.

25 So, that first part of it is critical to

1 this -- this decision. And I think the bylaws
2 state fairly clearly, to me, that business
3 entities, as stated in the bylaws, require to be
4 voted in. And that's not clear to me as just for
5 individuals to be members.

6 And so, I think as -- as complex and as
7 convoluted as this may be and -- and knowing that
8 FAIR probably didn't do a lot of things that they
9 could have done better, I still found that they did
10 satisfy the standing requirements and -- and felt
11 that that would be what's appropriate going
12 forward, but those are my thoughts, Mr. Chairman.

13 Thank you.

14 CHAIRMAN CLARK: Thank you, Commissioner Fay.

15 Anyone else?

16 Commissioner Passidomo.

17 COMMISSIONER PASSIDOMO: Thank you, Mr. Chair.

18 I just want to sort of echo my fellow attorney
19 up here on the panel. Really, just a quick comment
20 of -- I agree, I think FAIR could have done a much
21 better job of presenting, you know, and including
22 in their board, you know, actual affected
23 customers, but that being said, looking at the Home
24 Builders, the legal standard, it's pretty -- it's
25 pretty broad, pretty low threshold for meeting that

1 criteria.

2 And I think I'm -- I'm leaning more towards,
3 you know, allowing intervention. Generally, I
4 think, as -- as Commissioner La Rosa said, it's --
5 you know, due process, we take very seriously and
6 we want the participants -- as many participants to
7 be involved in that.

8 CHAIRMAN CLARK: Thank you, Commissioner
9 Passidomo.

10 Any other questions or comments?

11 I'll entertain a motion.

12 Commissioner Fay.

13 COMMISSIONER FAY: Mr. Chairman, I would move
14 that, based on the record before us, I believe FAIR
15 has satisfied the -- the three-prong test laid out
16 in the Florida Home Builders and would be granted
17 full intervenor rights in this case.

18 CHAIRMAN CLARK: Is there a second to the
19 motion?

20 COMMISSIONER PASSIDOMO: Second.

21 CHAIRMAN CLARK: Motion and a second.

22 Any discussion?

23 On the motion, all in favor, say aye.

24 (Chorus of ayes.)

25 CHAIRMAN CLARK: All opposed?

1 COMMISSIONER La ROSA: No.

2 CHAIRMAN CLARK: Motion carries.

3 All right. We will move on to Issue Nos. 1
4 through 6. These are jurisdictional issues.

5 Ms. Brownless, can you summarize these for us,
6 please.

7 MS. BROWNLESS: Yes, sir. The legal issue
8 presented in these issues is whether the Commission
9 has the statutory authority to approve the
10 mechanisms identified, and those mechanisms are
11 part of a settlement agreement.

12 The mechanisms are storm-cost recovery
13 mechanism; the reserve surplus amortization
14 mechanism, which we call RSAM; the solar base-rate
15 adjustment, commonly known as SoBRA; the adjustment
16 of FPL's ROE based on its performance, including
17 non-electric transactions in the asset-optimization
18 incentive, creating a process to deal with any
19 federal income tax changes, and the four-year
20 planned stay-out provision.

21 CHAIRMAN CLARK: All right. Would you review
22 the legal standard, please.

23 MS. BROWNLESS: The standard to be applied is
24 whether the statutory language of Chapter 366 gives
25 the Commission the authority to approve these types

1 of mechanisms.

2 Chapter 366 is very broad and states that the
3 Commission shall have the authority to determine
4 and fix fair, just, and reasonable rates. In doing
5 so, the Commission shall consider the actual
6 legitimate costs of property of each utility
7 company that's actually used and useful in public
8 service and determined by the Commission to be
9 prudently invested by the IOU.

10 With regard to what is included in settlement
11 agreements, the Commission's standard is the
12 public-interest standard. A case-specific analysis
13 of the agreement as a whole, considerations used by
14 the Commission to determine public interest include
15 costs, effects on ratepayers, and ensuring the
16 reliability of service.

17 Each of these mechanisms has been previously
18 approved by the Commission as part of either
19 earlier FP&L settlement agreements or settlement
20 agreements of the other IOUs.

21 With the exception of the modification of the
22 asset-optimization incentive, each of those
23 mechanisms has been part of settlement agreements
24 that have been upheld by the Florida Supreme Court.

25 CHAIRMAN CLARK: All right. Thank you,

1 Ms. Brownless.

2 It appears all of these jurisdictional
3 questions are the same for each of the issues. I
4 will leave it to the Commissioners whether you
5 would prefer to vote on them individually or do
6 them collectively at one time -- or we can take
7 them as a group. Any objection?

8 Seeing none, I'll entertain a motion -- first
9 of all, any -- any question or discussion? No
10 questions.

11 I'll entertain a motion.

12 Commissioner Fay.

13 COMMISSIONER FAY: Thank you, Mr. Chairman.

14 If I could just have a quick comment and then
15 I'd be happy to make a motion.

16 I -- I took the issues, 1 through 6, related
17 to the jurisdiction very seriously. And I
18 approached them ind- -- individually; although I
19 think the legal question was one that was
20 consistent throughout those.

21 There -- there's a number of mechanisms here
22 in the settlement that -- that basically implement
23 different accounting and/or finance principles.
24 And I -- I hoped maybe when I graduated law school
25 that -- that the numbers were not going to follow

1 me around, but I'd say this docket, more than any,
2 uses extremely complex accounting and finance
3 provisions as to how these -- these rates are
4 implemented.

5 And I did find that, in some of these, that
6 the regulatory components of these mechanisms were
7 not exactly the same as some that had been in
8 previous settlements. And I do think that -- that
9 just having one of these mechanisms present, by
10 itself, in a previous rate case or settlement is --
11 is not sufficient to allow it to -- just by itself.
12 Doesn't mean it's in or out.

13 There are some that have been addressed in
14 Supreme Court rulings. And, for those, I think
15 there's a very sound basis and there's little
16 debate as to whether those are sufficient here.

17 But I found, going through each individual
18 one, that -- that all six of them met the legal
19 threshold as to stating that we do have statutory
20 authority to take -- take those up.

21 And so, with that, Mr. Chairman, I found
22 the -- the Issues 1 through 6 and the mechanisms
23 inherent in them to be within the public interest
24 and that the Commission does have the statutory
25 authority and/or jurisdiction to take up those

1 issues.

2 I would move.

3 CHAIRMAN CLARK: Commissioner Fay's motion.

4 Do I have a second?

5 COMMISSIONER GRAHAM: Second.

6 CHAIRMAN CLARK: Second.

7 Any discussion?

8 On the motion, all in favor, say aye.

9 (Chorus of ayes.)

10 CHAIRMAN CLARK: Opposed?

11 Motion is adopted.

12 All right. Now, we're going to take up
13 Issue A: Should the stipulation and settlement
14 agreement dated August 9, 2021, be approved.

15 Ms. Brownless.

16 MS. BROWNLESS: Yes, sir, the legal standard
17 to apply in consideration of whether to approve a
18 settlement agreement is whether this settlement
19 agreement, one, resolves all identified issues;
20 two, when taken as a whole, is in the public
21 interest; and, three, results in rates that are
22 fair, just, and reasonable.

23 A determination of public interest is case-
24 specific and must be based on competent,
25 substantial evidence of record.

1 CHAIRMAN CLARK: All right. Thank you very
2 much.

3 We will open the item up for discussion.
4 Commissioners? Who would like to go first?
5 Commissioner Fay.

6 COMMISSIONER FAY: Thank you, Mr. Chairman. I
7 feel like I'm hogging the mic here today, but I'll
8 do my best to -- to be brief.

9 I -- I did have a -- maybe a few quick
10 questions for -- for staff and/or some -- some
11 comments. So, with that, Mr. Chairman, can I just
12 direct my questions to them? I --

13 CHAIRMAN CLARK: Absolutely.

14 COMMISSIONER FAY: Thank -- thank you.

15 So, it's obviously a comprehensive settlement,
16 but in the initial filing, there was a component
17 for a 50-basis-point incentive in -- in the ROE
18 provision. Is -- is that component included in
19 this settlement ROE?

20 MR. MOURING: Good morning, Commissioners.
21 Curt Mouring with Commission staff.

22 You're correct, that adder was included in the
23 initial petition, but it is not included in the
24 settlement agreement.

25 COMMISSIONER FAY: Okay. So, then, is the

1 only -- the only trigger mechanism would be
2 essentially the 30-year treasury adjustment, that
3 20 basis points? There is no other adjustment
4 beyond that?

5 MR. MOURING: That's correct.

6 COMMISSIONER FAY: Okay. Great.

7 The next question I had was on the RSAM. This
8 might be -- might be more of an accounting
9 principle, but when I went through the record, I --
10 I did have trouble sort of understanding if the
11 RSAM, itself, was consistent with the general
12 accounting -- accepted accounting principles or if
13 it was -- it didn't appear to be in violation of
14 them, but can you, I guess, maybe address that one
15 way or another?

16 MR. MOURING: So, the accounting entries that
17 effectuate the reserve surplus amortization
18 mechanism are not inconsistent with generally-
19 accepted accounting principles.

20 Some of the issues raised by intervening
21 parties really go to different areas of concern
22 with the RSAM, but in terms of compliance with
23 generally-accepted accounting principles, staff
24 does not see an issue there.

25 COMMISSIONER FAY: So, it wasn't just that I'm

1 a lawyer and had trouble understanding that part.
2 That makes me feel better.

3 And then, just the last is the -- you know,
4 the settlement lays out a -- a four-year stay-out
5 provision, which is a -- is a very long time.
6 We've got other settlements around the country.
7 That is -- you know, that's a long time to stay
8 out.

9 Is there -- I guess, is -- is there any
10 procedure -- what would be the means, I guess,
11 within the four years, if -- if interest rates
12 change significantly in the next few years?

13 MS. BROWNLESS: If, in fact, interest rates
14 change significantly, such that Florida Power &
15 Light finds itself in an under-earning position --
16 is that the question you have?

17 COMMISSIONER FAY: Yes.

18 MS. BROWNLESS: Then, of course, they can come
19 in and petition to have their rates changed so that
20 they can earn at least at the bottom of their rate
21 of return.

22 COMMISSIONER FAY: Okay. So, just similar to,
23 if they exceed, it could initiate them coming in to
24 the Commission. If they go below, it's the same
25 pro- -- or similar process.

1 MS. BROWNLESS: Yes, sir.

2 COMMISSIONER FAY: Okay. Great.

3 Mr. Chairman, that -- that answers all my
4 questions. I'm prepared to move, but I'll let my
5 colleagues weigh in.

6 CHAIRMAN CLARK: Any other questions or
7 comments?

8 Commissioner La Rosa.

9 COMMISSIONER La ROSA: Thank you,
10 Mr. Chairman.

11 And -- and just really kind of, you know,
12 maybe a general comment. There's obviously a lot
13 before us and -- and this is a settlement, in
14 which -- what this means, to me, is that there's
15 been multiple parties, of course, we've seen before
16 us over the last few months have all had different
17 terms and -- and which have been important to them.
18 And I think it's important, of course, for us to
19 understand that this is truly a -- a settlement.
20 And that's what we're -- that's what we're looking
21 at.

22 I know what it's like to be in the middle of
23 understanding of what one side wants and what the
24 other side needs to get out of a deal, but that's
25 not exactly the way this process works here. So,

1 we don't necessarily know what some of the leverage
2 points are and what things are hinging on.

3 There is an element within this that I -- I do
4 want to bring up. And it has to do with electric
5 vehicles. And maybe this sort of just kind of
6 leads to a question, but I've certainly been paying
7 a lot of attention to what's been happening in the
8 marketplace, I've been paying attention to what's
9 been happening downtown over the last couple weeks
10 with when the Legislature has been meeting.

11 Both the House and Senate -- there have been
12 presentations on our behalf to them explaining what
13 we know about electric vehicles, and there's been a
14 lot of questions. Some of those questions are
15 not -- they're not answerable because the data is
16 not just there or -- or we're just too new in the
17 process.

18 So, I did notice the way -- the way this was
19 drafted. There wasn't necessarily a reporting
20 requirement. So, I guess my question would be
21 to -- maybe to Mary Anne -- and how we could
22 request reporting requirements to include it at
23 least in the order of -- of this.

24 And, obviously, I'm -- I'm speaking
25 specifically on the electric vehicles. And

1 there's -- there is an order -- a PSC 20200512 that
2 does have reporting requirements that do exist.
3 And I'm leaning on, you know, how can we include
4 something similar to that within this order.

5 MS. HELTON: Well, I think that it's within
6 your authority to request information or data as
7 the companies go forward, if you approve that with
8 the EV program.

9 With respect to what the information is that
10 you ask for, I would not be the right person to --
11 to tell you that. There's other people here
12 that -- that can do that, but I definitely think
13 that's within your authority, and you could make
14 that part of your motion.

15 MR. FUTRELL: And, Mr. Chairman, Mark Futrell
16 with staff.

17 Just to tag on to Mary Anne, the Commission
18 has, in approving other EV pilots or EV tariffs,
19 they've requested companies provide information,
20 typically annually.

21 Mr. Doehling from ENG can go into more depth,
22 if you'd like to explore some of that.

23 MR. DOEHLING: Good afternoon,
24 Commissioners -- or good morning, Commissioners.
25 Jeff Doehling with --

1 CHAIRMAN CLARK: Mr. Doehling, would you --
2 would you mind pulling your mask so we can --

3 MR. DOEHLING: Oh, no problem.

4 Similar to the reporting requirements that
5 were established in the order you referenced, we
6 would recommend that, for the EVolution program and
7 the public fast-charging program, that they would
8 continue to report on those metrics that they
9 outlined.

10 As far as the residential EV charging services
11 and the commercial EV charging services program, we
12 would recommend consistent metrics with those.

13 Of course, you know, we would like things such
14 as, you know, the total program, capital O & M
15 costs, any revenue requirements that change
16 throughout the program, revenues collected and,
17 more specifically, metrics such as, you know,
18 average cost per port, total number of installed
19 ports, monthly charging sessions, and it --
20 possibly any participating customer savings that
21 customers might see in those programs. We would
22 all suggest those metrics be reported on.

23 COMMISSIONER La ROSA: Okay. Thank -- thank
24 you. And I'm -- and I'm reading along with -- with
25 what you're -- what those reporting requirements

1 are. So, thank you.

2 And so, I guess my -- my comment would be is
3 that I -- I'd like to include that -- I'd like to
4 direct staff to include that in the order.

5 CHAIRMAN CLARK: I'm going to ask a couple of
6 quick questions here, related to that, Commissioner
7 La Rosa. We are -- we're con- -- our consideration
8 is a settlement agreement that the parties have
9 already come to.

10 Would it actually be appropriate for us to tag
11 something on to that settlement agreement? Or
12 could we just ask for a commitment from FPL here
13 for a voluntary compliance? Would that be simpler
14 without having to open the settlement agreement? I
15 do not want to do that, so I'm trying to --

16 COMMISSIONER La ROSA: And I agree. And I --
17 and I'm trying not to as well.

18 CHAIRMAN CLARK: Okay. Good.

19 COMMISSIONER La ROSA: So, thank you for
20 framing it that way.

21 MS. HELTON: I don't see it as inconsistent.
22 I mean, I think if you approve the settlement
23 agreement, you can do that. And, in addition to
24 that, under your authority in Chapter 366, you can
25 request whatever reporting that you want to

1 request. I don't see them as being inconsistent at
2 all.

3 CHAIRMAN CLARK: All right. Good. That's --
4 that clarifies that for me.

5 Is that good with you?

6 COMMISSIONER La ROSA: Very much so. Thank
7 you.

8 CHAIRMAN CLARK: Okay. Great.

9 All right. Anyone else? Any other comments?
10 Commissioner Graham.

11 COMMISSIONER GRAHAM: I have a question. I
12 guess I was following up on a question that
13 Commissioner Fay asked you about the ROE and the
14 adder.

15 And you said that there was a 50-basis-point
16 adder in their original request, but with the
17 settlement, there -- there was -- the adder just
18 wasn't included?

19 MR. MOURING: That's correct, Commissioner.
20 The 50-basis-point adder was to the mid-point ROE.
21 In the settlement agreement, the mid-point ROE is
22 just a negotiated term.

23 COMMISSIONER GRAHAM: So, it's possible --
24 because we don't know what's actually in the black-
25 box settlement. So, that adder could have been

1 included in what actually came out of that bo- --
2 that black box, correct?

3 MR. MOURING: That -- that is a possibility.
4 It is a black-box. The 10.6 is below the 11.5
5 requested in the initial petition, but it -- it
6 could have been a consideration.

7 COMMISSIONER GRAHAM: And the adder was
8 considered a performance adder?

9 MR. MOURING: Yes.

10 COMMISSIONER GRAHAM: Thank you.

11 CHAIRMAN CLARK: Commissioner Passidomo.

12 COMMISSIONER PASSIDOMO: Thank you,
13 Mr. Chairman.

14 I just -- if it's okay with staff, I kind of
15 want to divert to the expansion of the
16 SolarTogether program. I don't know if you recall,
17 during the settlement hearing, I asked FPL Witness
18 Valle about -- about the program and wondered
19 whether there was a need to increase the credit
20 when there wasn't a waiting list currently with
21 customers eager to participate in the program at
22 the current tariff rate.

23 And FPL Witness Valle explained that existing
24 participants would shift to the new -- the new
25 credit rate to -- for efficiencies in bridging

1 those two programs.

2 And I'm kind of wondering -- Mr. Ellis, I'll
3 direct it towards you -- whether if we keep the
4 credit as is from the inception of the program so
5 that there would not be as much of an immediate
6 impact in the general body of ratepayers that flows
7 to them through the clauses, would you get the same
8 result if we kept the current rate in effect for
9 current customers and the expansion of the program?

10 MR. ELLIS: There would be a seven-year
11 payback in both scenarios.

12 COMMISSIONER PASSIDOMO: Okay. That's what
13 I -- thank you.

14 CHAIRMAN CLARK: All right. Anyone else?

15 I want to make a couple of observations about
16 the settlement agreement and, I guess, probably
17 ramble just a minute about my views on the
18 settlement. There are a lot things in it that I
19 like. There are some things in it that I don't
20 like.

21 I think the fact that it establishes for us a
22 predictability of the rates going forward for the
23 next five years is certainly a plus. There are
24 things within that predictability that, I think,
25 give -- give homeowners, give businesses some -- a

1 surety going into the future that they have a -- a
2 stable rate climate. They can do their budgeting
3 accordingly. I think that is a very positive --
4 very positive thing.

5 A couple of things in it -- I appreciate the
6 work that was done in the transition into including
7 Gulf Power into the FPL system. This transition
8 rider was not what I originally anticipated when
9 the discussions began on incorporating these two
10 separate utilities into one, but I will commend
11 that -- the parties for negotiating this term.

12 I do look forward to seeing -- Gulf Power
13 customers that exist now will see a rate decrease
14 over the next five-year period. I think that's a
15 very positive thing for folks on the west side of
16 the river. The rates are actually going to be
17 coming down at the end of five years compared to
18 what they're paying now. That's a very positive --
19 very positive feature that came out of the
20 settlement agreement.

21 I think certainly there are advantages to the
22 existing FPL system by incorporating those
23 customers into the system. You get some of the
24 advantage of the transition-rate rider for the
25 five-year period. I also see some diversity that

1 is included in the system that I think certainly
2 will benefit the remainder of the FPL system as
3 well.

4 The Smart Panel pilot program was just one of
5 those highlights that I pulled out that I really
6 like. I think that's a huge plus. I think that's
7 the wave of the future. I think that's where we're
8 going to be able to have the most effect on energy
9 efficiency, on demand-side management, on allowing
10 consumers to control and manage energy within their
11 homes. My hat's off to you guys for putting that
12 particular portion in there.

13 The RSAM -- I'd made a note on the RSAM -- a
14 couple of the other folks talked about it. They
15 understood it a lot better than I did. They're a
16 lot smarter than I am. That's an extremely complex
17 mechanism and it seems to have the benefit of
18 contributing and adding to that rate stability that
19 is going forward in the future. And I think that's
20 a huge plus.

21 I think we're continuing to -- the things I
22 honestly just didn't like in the program: the
23 expansion of SolarTogether and the EV program.
24 We're continuing to subsidize these programs off
25 the back of residential ratepayers. To me, that --

1 that is a -- a negative in there.

2 But at the same time, I see where we're going
3 in this state. I see where the demand is moving to
4 and I certainly understand the need for it. And I
5 think that, altogether, that does incorporate
6 public interest. That does bring the public
7 interest into play. And I think that this answers
8 the public-interest component that I am most
9 concerned with.

10 I just want to address, finally, the consumer
11 input. It was amazing to me the amount of
12 correspondence that transpired during this rate
13 case. My office -- I think I had 11- -- I think
14 we -- last count we had was over 1,100 e-mails from
15 consumers in this rate case. I'm sure that you
16 guys received an equal number or probably more than
17 I did, but to me, the -- the amount of
18 correspondence that was contributed was
19 significant.

20 Not only that, but reviewing back -- looking
21 back at our rate hearings, looking at the customer
22 service hearings and the number of consumers that
23 we were taking into account each night that we had
24 the hearing, each day that we had a hearing, a
25 significant number of consumers that were

1 expressing how they felt about this, I really
2 believe, constitutes good solid public input,
3 consumer input.

4 And we did so -- and I'll take up two seconds
5 to commend staff again for their ability to manage
6 this in this new virtual world. We did virtual
7 customer hearings, and I -- I think that that
8 opened up a whole new avenue that we're going to be
9 exploring even further in the future.

10 I say all that to conclude with my overall
11 thoughts. I believe that all of the parties are to
12 be commended for the outstanding jobs that you did
13 negotiating on behalf of folks that you
14 represented. Pretty obvious some of you did a
15 little better job than others, but all of you are
16 to be commended for the input that you made into
17 this particular settlement agreement.

18 And with that, I would entertain a motion.

19 Commissioner Fay.

20 COMMISSIONER FAY: Thank you, Mr. Chairman.

21 I -- I'll make sure -- I'll see either Mary Anne or
22 Suzanne nod their head if I get this right, but

23 I -- I want to make sure --

24 CHAIRMAN CLARK: Good.

25 COMMISSIONER FAY: -- the motion is

1 appropriate.

2 So, based on the legal requirements, I believe
3 the settlement presented before us addresses all
4 issues, sets rates that are fair, just, and
5 reasonable, and is in the public interest with --
6 based on the comprehensive record that is before
7 us.

8 Is that sufficient?

9 CHAIRMAN CLARK: Meets my criteria.

10 Is that good with you guys?

11 I have a motion. Do I have a second?

12 COMMISSIONER GRAHAM: Second.

13 CHAIRMAN CLARK: I have a second.

14 Any discussion on the motion?

15 One second. Mr. Futrell, am I missing
16 something?

17 MR. FUTRELL: I'm sorry, Chairman. I just
18 wanted to check in with Commissioner La Rosa about
19 his question that he raised earlier.

20 COMMISSIONER La ROSA: Right. So, how -- how
21 could I add the reporting requirements into -- into
22 the order? That has to be made in motion?

23 MS. HELTON: I -- I think y'all could vote out
24 Commissioner Fay's motion and then Commissioner La
25 Rosa could -- could tack that on.

1 CHAIRMAN CLARK: Sounds good. Let's handle
2 that in two separate motions.

3 Any other discussion?

4 On the settlement agreement --

5 COMMISSIONER PASSIDOMO: Commissioner --
6 Mr. Chairman, could I just say -- I just want --
7 quickly, before we finalize this vote, again,
8 speaking towards the standard, when we're reviewing
9 the settlement agreements, it's taken as a whole.

10 And, in this context, in the -- taken as a
11 whole, there's a lot of benefits here, expansion of
12 renewables, solar, four-year stay-out providing
13 cer- -- rate certainty and, really importantly,
14 that the Office of Public Counsel, who's
15 statutorily charged with representing the consumers
16 of Florida Power & Light's custom- -- you know,
17 representing Florida Power & Light's customers,
18 signed on to the settlement agreement and asserted
19 that it is in the public interest.

20 And so, with that, I would second Commissioner
21 Fay's motion.

22 CHAIRMAN CLARK: All right. Any further
23 discussion?

24 On the motion all in favor, say aye.

25 (Chorus of ayes.)

1 CHAIRMAN CLARK: Any opposed?

2 Settlement agreement is approved.

3 Commissioner La Rosa, you're recognized for a
4 motion.

5 COMMISSIONER La ROSA: Thank you, Chairman.

6 I would -- I'd like the motion to add the
7 reporting requirements that are in the PSC
8 20200512, that we discussed earlier today, that are
9 in the EVolution case that's -- that those require
10 them to report back in the EV program -- I'd like
11 to include that as a motion.

12 CHAIRMAN CLARK: Do I have a second?

13 COMMISSIONER FAY: Second.

14 COMMISSIONER GRAHAM: Second.

15 CHAIRMAN CLARK: Motion and a second.

16 Any discussion?

17 Commissioner Graham.

18 COMMISSIONER GRAHAM: Does it say where those
19 reports are supposed to come back to and what time
20 frame?

21 MR. FUTRELL: Commissioner Graham, those
22 reports were required to be filed annually and
23 they're filed with the clerk's office. It would be
24 placed in -- they could be placed in the undocketed
25 file, but they'll be filed with the Commission,

1 with the clerk's office.

2 COMMISSIONER GRAHAM: I just want -- I just
3 want to make sure that we're clear about what we're
4 asking --

5 MR. FUTRELL: Yes, sir.

6 COMMISSIONER GRAHAM: -- and what frequency.

7 CHAIRMAN CLARK: Any other questions?

8 On the motion, all in favor, say aye.

9 (Chorus of ayes.)

10 CHAIRMAN CLARK: Opposed?

11 Motion carries.

12 All right. Staff, any additional matters that
13 need to be handled today?

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

15 CHAIRMAN CLARK: Commissioners, any other
16 questions or comments?

17 All right. Again, let me thank all of the
18 parties for the outstanding work that you did.

19 Thank you, all, for being here today.

20 And this special agenda is adjourned.

21 (Whereupon, the proceedings concluded at 10:13
22 a.m.)

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 9th day of November, 2021.



ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #HH 089181
EXPIRES February 9, 2025