BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Florida Power & Light Company	Docket No. 20250011-EI Filed: September 26, 2025

FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO THE JOINT MOTION OF OPC, FEL, AND FAIR FOR RECONSIDERATION OF THE ORDER DENYING THEIR SELF-SETTLEMENT

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.060(4), Florida Administrative Code, hereby submits this Response in opposition to the Joint Motion of the Office of Public Counsel, Florida Rising, Inc., LULAC Florida, Inc., Environmental Confederation of Southwest Florida, Inc., and Floridians Against Increased Rates, Inc. (collectively, herein referred to as the "Non-Settling Parties" or "NSPs") requesting the Florida Public Service Commission ("Commission") reconsider Order No. PSC-2025-0345-PCO-EI that, pertinent to this Response, denied their Joint Motion for Approval of the Stipulation and Settlement Agreement ("Proposed Stipulation") to unilaterally resolve the above-captioned petition for a general base rate by settling with themselves and without the petitioner, FPL (hereinafter, the "Dismissal Order").[1]

The NSPs' request for reconsideration collapses under even the most cursory scrutiny and falls far beneath the legal threshold required to warrant reconsideration before this Commission. Moreover, even assuming, *arguendo*, that their request met the standard required for reconsideration, which it does not, the NSPs' arguments are legally indefensible and wholly without merit. Further, the NSPs have not suffered any harm from the Dismissal Order, and reconsideration, even if it were warranted, would not change this fact. For these reasons, as further

[1] The Dismissal Order also (i) denied the NSPs' Joint Motion for a Scheduling Order requesting that they be allowed to introduce testimony and evidence to support their proposal to settle with themselves, and (ii) rejected NSPs' additional proposed settlement issues as subsumed or fall-out issues under the major settlement elements to be addressed in this proceeding. The NSPs do not seek reconsideration of these aspects of the Dismissal Order and, as such, FPL will not address those issues herein.

explained below, the NSPs' request for reconsideration should be denied and the well-reasoned Dismissal Order should be affirmed. In further support, FPL states as follows.

I. BACKGROUND

1. On February 28, 2025, FPL petitioned the Commission for approval of a four-year rate plan to run from January 1, 2026 through December 31, 2029.

2. The Parties filed voluminous pre-filed testimonies with accompanying exhibits and FPL responded to extensive discovery, and all of FPL's witnesses were deposed on their pre-filed testimonies. Other than FPL, there were a total of eighteen parties and Staff who participated in this proceeding, none of which fully supported or agreed with FPL's as-filed four-year rate plan.

3. On August 20, 2025, FPL, Florida Industrial Power Users Group, Florida Retail Federation, Florida Energy for Innovation Association, Inc., Walmart Inc., EVgo Services, LLC, Electrify America, LLC, Federal Executive Agencies, Armstrong World Industries, Inc., Southern Alliance for Clean Energy, and Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac Inc., and Wawa, Inc. (hereinafter, collectively referred to as the "Settling Parties") filed a Joint Motion for approval of a proposed 2025 Stipulation and Settlement Agreement ("FPL Settlement Agreement") as full and complete resolution of all matters pending in Docket No. 20250011-EI in accordance with Section 120.57(4), Florida Statutes. Notably, the parties to the FPL Settlement Agreement include both the petitioner, FPL, which has the burden of proof on the relief requested in this proceeding, and intervening parties that opposed all or some aspects of FPL's proposed four-year rate plan. Stated differently, the FPL Settlement Agreement includes adverse parties from both sides of the "versus" (*i.e.*, the petitioner requesting affirmative relief and parties opposing that requested relief in full or part) and not just parties aligned on the same side of the "versus."

4. The NSPs each filed responses opposing the FPL Settlement Agreement.

5. On August 26, 2025, the NSPs filed a joint motion requesting Commission approval of their Proposed Stipulation ("Stipulation Motion"). Therein, the NSPs concede that the alleged negotiations, agreement, and concessions purportedly reached and agreed to in the Proposed Stipulation were only among the NSPs themselves – three intervenor groups that are aligned against and opposed FPL's proposed four-year rate plan.[2] Stated differently, the Proposed Stipulation includes only parties from the same side of the "versus" and did not include parties from both sides of the "versus."

6. On August 29, 2025, FPL filed its response in opposition to NSPs' unprecedented request to allow aligned parties to settle with themselves and then somehow make that one-sided agreement legally enforceable and binding on the non-signatory petitioner (hereinafter, FPL's "First Response"). Therein, FPL explained that the NSPs' Proposed Stipulation to settle among themselves should be denied because, consistent with existing controlling precedent, it is an illusory "settlement agreement" that cannot be legally enforced against FPL and, therefore, FPL is an indispensable party to any proposed settlement in this proceeding.

7. On September 3, 2025, the NSPs filed a joint motion requesting a scheduling order that permitted them to submit direct and rebuttal testimony and exhibits in support of the proposals set forth in the NSPs' Proposed Stipulation ("Scheduling Motion").[3]

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[2] *See* NPSs' Proposed Stipulation, pp. 2 and 27.

[3] The majority of the NPSs' Scheduling Motion did not address the need for the additional rounds of testimony but, rather, was dedicated to mischaracterizing the FPL Settlement Agreement and the Settling Parties thereto, as well as attempting to remediate the NPSs' legally insufficient Stipulation Motion. FPL submits that the NPSs' Scheduling Motion was, in part, a procedurally improper attempt to "reply" to FPL's First Response. *See* Fla. Admin. Code R. 28-106.204 ("No reply to the response shall be permitted unless leave is sought from and given by the presiding officer").

8. On September 5, 2025, FPL filed its response in opposition to the NSPs' Scheduling Motion (hereinafter, FPL's "Second Response"). Therein, FPL explained that the NSPs request for a scheduling order was incorrectly premised on the legally flawed claim that the NSPs can settle this base rate case with themselves and without FPL, and that the NSPs already have the full opportunity to put their stipulated positions into the record through their settlement testimony.

9. On September 2, 2025, the Commission issued a notice of Prehearing Conference for September 8, 2025, to address, among other things, the NSPs' Stipulation Motion.

10. At the Prehearing Conference held on September 8, 2025, the Prehearing Officer heard oral argument from the parties on, among other things, the NSPs' Stipulation Motion and Scheduling Motion.

11. On September 12, 2025, the Prehearing Officer issued the Dismissal Order. Therein, the Dismissal Order denied the NSPs' Stipulation Motion on the following grounds: (a) an agreement among parties that does not include the party that commenced the proceeding with a request for affirmative relief will not end that proceeding and, therefore, by definition is not a settlement; (b) under Chapter 120, Florida Statutes, the Commission must dispose of the original claim for relief and the party who made this original claim is an indispensable party to any settlement of that claim; (c) the NSPs' Proposed Stipulation functions essentially as a position paper; and (d) the NSPs can submit their joint stipulated positions for Commission consideration and present support for those positions as part of their testimony and exhibits. *See* Dismissal Order, p. 6. Because the NSPs' Stipulation Motion was rejected, the Dismissal Order found the associated request for a scheduling order was moot and denied the request in the Scheduling Motion. *See* Dismissal Order, p. 6.

12. On September 19, 2025, the NSPs filed their joint motion requesting reconsideration of the Dismissal Order ("Motion for Reconsideration").

13. FPL herein files this Response to the NSPs' request to reconsider the Prehearing Officer's denial of their Stipulation Motion. For the reasons explained below, the Commission must deny the NSPs Scheduling Motion.

II. THE NON-SIGNATORIES REQUEST TO *NOT* APPLY THE STANDARD OF REVIEW FOR RECONSIDERATION MUST BE REJECTED

14. In their Motion for Reconsideration, the NSPs briefly acknowledge, in part, the standard required for reconsideration but argue, without any legal support or authority, that this standard does not apply to the decision of a single Commissioner.[4] The NSPs request to depart from the well-established standard required to trigger reconsideration before this Commission is wholly unsupported and must be rejected. Before addressing the NSPs' request to ignore existing law on the applicability of the standard for reconsideration, FPL will first address and explain the existing standards required for reconsideration before this Commission.

15. Pursuant to Rule 25-22.0376, Florida Administrative Code, "[a]ny party who is adversely affected by a non-final order may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after issuance of the order."

16. The Commission has explained the well-established standard required for reconsideration as follows:

> The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering the order under review. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.

[4] *See* NPSs' Motion for Reconsideration, p. 2.

> 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc.*, 294 So. 2d at 317.

In re: Petition for rate increase by Florida City Gas, Docket No. 20220069-GU, Order No. PSC-2023-0299-FOF-GU at 3, 2023 FLA. PUC LEXIS 290 (FPSC Oct. 2, 2023).[5]

17. Thus, a motion for reconsideration must "be based upon specific factual matters set forth in the record and susceptible to review." *In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.*, Docket No. 001305-TP, Order No. PSC-02-0878-FOF-TP, 2002 Fla. PUC LEXIS 622 at *24 (FPSC July 1, 2022) (quoting *Stewart Bonded*, 294 So. 2d at 317). However, the "mere fact that a party disagrees with the order is not a basis for rearguing the case" and "reweighing the evidence is not a sufficient rationale for granting reconsideration." *In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.*, Docket No. 040156-TP, Order No. PSC-06-0078-FOF-TP, 2006 Fla. PUC LEXIS 51 at *3 (FPSC Feb 03, 2006) (citing *Diamond Cab*, 146 So. 2d 889 and *Jaytex Realty Co.*, 105 So. 2d 817).

[5] *See also In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC*, Docket No. 20200226-SU, Order No.PSC-2021-0240-FOF-SU at 2, (FPSC July 1, 2021) (same); *In re: Petition for rate increase by Florida Power & Light Company*, Docket No. 20210015-EI, Order No. PSC-2021-0364-FOF-EI at 2 (FPSC Sept. 17, 2021) (same).

18. Further, a motion for reconsideration is not a vehicle to raise new arguments or issues not previously raised by the moving party. *In Re: Application for rate increase in Flagler County by Palm Coast Utility Corporation*, Docket No. 951056-WS, Order No. PSC-97-0388-FOF-WS, 1997 Fla. PUC LEXIS 402 at*25 (FPSC Apr. 7, 1997) (citing *Diamond Cab*). A party that raises an argument or issue for the first time in a motion for reconsideration has not identified anything that the Commission overlooked or failed to consider in rendering its decision.[6]

19. In their Motion for Reconsideration, the NSPs argue that the well-established standard for reconsideration does not apply to their pending request for reconsideration because the Dismissal Order was issued by a single Commissioner sitting as a prehearing officer and the majority of the Commission has not reviewed, considered, or ruled upon the NSPs' Stipulation Motion in any hearing or public deliberation.[7]

20. In support for their argument, the NSPs cite *Citizens of State v. Clark*, 373 So. 3d 1128, 1132 (Fla. 2023), which they claim stands for the proposition that "when alleged errors first appear in an order, it is necessary to provide the Commission a fair opportunity to address the alleged errors." *See* NSPs Motion for Reconsideration, p. 1. The NSPs reliance on *Clark*, *supra*, is not only misplaced, but also a mischaracterization of the Court's holding. In short, as the Office of Public Counsel ("OPC") well knows, there is nothing in *Clark* that addresses the standard

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[6] *See In re: Request for arbitration concerning complaint of American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. against BellSouth Telecommunications, Inc. regarding reciprocal compensation for traffic terminated to internet service providers*, Docket No. 981008-TP, Order No. PSC-99-1453-FOF-TP, 1999 Fla. PUC LEXIS 1143 at *23 (FPSC Jul. 26, 1999) (having raised an argument for the first time in a motion for reconsideration, the party had "not identified anything that [the Commission] overlooked or failed to consider in rendering [its] decision"); *In re: Petition for arbitration of certain terms and conditions of an interconnection agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC*, Docket No. 090501-TP, Order No. PSC-11-0141-FOF-TP, 2011 Fla. PUC LEXIS 110 at *9 (FPSC Mar. 1, 2011) (a new argument cannot be raised for the first time as a grounds for reconsideration).

[7] *See* NPSs' Motion for Reconsideration, p. 2.

required for reconsideration or whether it applies to the review of a non-final order issued by a single Commissioner.[8]

21. The only other support for their argument is a reference to OPC's enabling legislation in Section 350.0611, Florida Statutes, that authorizes the OPC to appear and take positions before this Commission.[9] However, there is nothing in Section 350.0611 that addresses or supports the NSPs' position that the standard for reconsideration does not apply to the review of a non-final order issued by a single Commissioner. Indeed, the Commission has routinely applied the standard for reconsideration of non-final orders issued by a single Commissioner. *See, e.g., In re: Petition for rate increase by Tampa Electric*, Docket No. 20240026-EI, Order No. PSC-2024-0189-FOF-EI, 2024 FLA. PUC LEXIS 187 (FPSC Jun. 11, 2024) (Commission panel rejected OPC's argument that a *de novo* standard of review applies to a prehearing order that has not been issued by the full Commission or been subject of a hearing); *In re: Petition to determine need for Hines Unit 3 in Polk County by Florida Power Corporation*, Docket No. 020953-EI, Order No. PSC-02-1754-FOF-EI, 2002 Fla. PUC LEXIS 1115 (FPSC Dec. 12, 2022) (Commission panel rejected argument that a *de novo* review applies to a non-final order issued by a single Commissioner, and applied the traditional standard of review for reconsideration).

22. FPL acknowledges that, pursuant to Rule 25-22.0376, any party adversely affected by a non-final order may seek reconsideration by the full Commission. However, the NSPs cite no statute, rule, precedent, or other authority to support their position that the Commission should

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[8] In *Clark*, the Florida Supreme Court concluded that appellant OPC failed to properly preserve its issues for appeal when a claimed legal error appeared for the first time in a Commission's final order and OPC filed a motion for reconsideration and then voluntarily "withdrew the motion without giving the Commission a fair opportunity to correct the alleged errors raised in the motion." *Clark*, at 1132. The Court concluded that OPC's conduct failed to properly preserve the claimed legal error for appeal. *Id.*

[9] *See* NPSs' Motion for Reconsideration, p. 2.

not apply the standard for reconsideration to the review of a non-final order issued by a single Commissioner.

23. Perhaps the NSPs correctly recognize that their Motion for Reconsideration is facially insufficient to meet the standard required for reconsideration before this Commission, and that is why they ask the Commission to ignore this controlling standard. However, that is not a sufficient factual or legal basis for this Commission depart from the well-established standard and, *sue sponte*, create new law on the applicability of the standard for reconsideration.

24. Based on the foregoing, the Commission should reject the NSPs' argument that the standard for reconsideration does not apply to their request for reconsideration of the Dismissal Order. Instead, the Commission should appropriately apply this well-established standard of review for reconsideration of a non-final order and reject the NSPs' Motion for Reconsideration for failing to meet the minimum thresholds required to trigger reconsideration before this Commission as further explained below.

III. THE NON-SIGNATORIES' ARGUMENTS FAIL TO MEET THE THRESHOLD FOR RECONSIDERATION AND LACK LEGAL MERIT

25. The NSPs claim the Dismissal Order erred in rejecting their Stipulation Motion for the following reasons they claim:

a. The Prehearing Officer purportedly overlooked that no statute, caselaw, or legal authority requires the utility to be a party to a settlement agreement. *See* NSPs' Motion for Reconsideration, pp. 5-6.

b. The Prehearing Officer purportedly overlooked that no party filed a motion to dismiss the Stipulation Motion and, therefore, the NSPs claim that the Prehearing Officer erred in dismissing the Stipulation Motion rather than granting or denying it. *See* NSPs' Motion for Reconsideration, pp. 6-9.

c. In concluding that FPL is an indispensable party to any settlement of its affirmative claim for relief in this proceeding, the Prehearing Officer allegedly overlooked that that this assertion has never been presented to or

decided by the Florida Supreme Court. *See* NSPs' Motion for Reconsideration, pp. 9-10.

d. By rejecting the Stipulation Motion, the Prehearing Officer allegedly overlooked the asymmetrical treatment of the NSPs' Proposed Stipulation and the FPL Settlement Agreement. *See* NSPs' Motion for Reconsideration, p. 10.

e. The Prehearing Officer purportedly overlooked or failed to consider that the NSPs' Proposed Settlement would end the proceeding. *See* NSPs' Motion for Reconsideration, pp. 11-13.

26. As explained below, the NSPs have failed to meet the threshold required to trigger reconsideration before this Commission on each of these claims and, therefore, their request for reconsideration of the Dismissal Order should be denied. Further, even assuming, *arguendo*, that their Motion for Reconsideration met the standard required for reconsideration on one or more of these arguments, which it does not, the NSPs' arguments are wholly without merit and contrary to legally binding precedent. FPL will separately address each of the NSPs claims below.

A. The Prehearing Officer Properly Concluded that FPL is Required to be a Party to a Settlement in this Proceeding

27. The NSPs' argument that there is no legal authority that requires a utility to be a party to a settlement is nothing more than an attempt to rehash the same argument that was fully considered and rejected by the Prehearing Officer in denying the NSPs' Stipulation Motion. Further, the NSPs' argument is, in fact, directly contrary to controlling legal precedent.

28. This argument was raised three times by the NSPs: first, in footnote 5 on page 4 of their Stipulation Motion; second, on page 3 of their Scheduling Motion; and third, during oral argument at the Prehearing Conference held on September 8, 2025. The Prehearing Officer explicitly considered this argument in reaching the determination that the NSPs' Proposed Stipulation to settle with themselves and without FPL is not a settlement:

> All parties readily acknowledge that the Florida Public Service Commission has never before considered a settlement agreement

> filed in a rate case that does not include as a party the utility that has requested the rate increase. The [NSPs] assert that this historical absence leaves the door open for the Commission to consider the Alternate Settlement because "[n]o Court has ruled that the public interest standard requires the utility to be a party to a nonunanimous rate case settlement agreement." Settlement Motion at 4, n. 5. At the Prehearing Conference conducted September 8, 2025, the [NSPs] further argued that because entities other than a public utility can file a request with the Commission to establish rates for that utility, the utility is not an indispensable party to a settlement agreement in a rate case. Neither argument is persuasive.

See Dismissal Order, p. 5.

29. Thus, contrary to the claim by the NSPs, the Prehearing Officer did not overlook this argument and, in fact, considered and rejected it for the reasons further explained on pages 5-6 of the Dismissal Order. Accordingly, the NSPs have failed to meet the threshold required for reconsideration on this point and, therefore, their request for reconsideration should be denied.

30. Even assuming, *arguendo*, that the NSPs' Motion for Reconsideration met the threshold required for reconsideration, which it does not, their argument is directly contrary to well-established law and should be rejected on the merits.

31. The NSPs are attempting to argue that because there is no order stating a utility must be a party to a base rate case settlement agreement, this must mean, according to the NSPs, that the Commission has authority to approve a base rate settlement agreement without the petitioner utility. The NSPs argument is a logical fallacy that asserts a statement is true because it hasn't been proven false. However, the NSPs overlook one critical point – the Commission operates as a creature of statute, meaning its authority is limited to powers expressly or impliedly granted by the legislature. *Telco Communications Co. v. Clark*, 695 So. 2d 304 (Fla. 1997; *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So.2d 493 (1973). This is fatal to the NSPs' argument because there simply is no authority or precedent to support the proposition that the Commission can resolve a contested matter by approving a settlement or stipulation that does not

include the utility in question.[10] Moreover, the NSPs' negation fallacy argument is simply incorrect. Indeed, as FPL explained in its First Response, Second Response, and during oral argument at the September 9, 2025 Prehearing Conference, the request in the NSPs' Stipulation Motion is directly contrary to established law.

32. The Florida Supreme Court has stated that "[t]he legal system favors the settlement of disputes by mutual agreement between the contending parties." *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997) (quoting *Utilities Comm'n of New Smyrna Beach v. Fla. PSC*, 469 So. 2d 731, 732 (Fla. 1985) (emphasis added). The Court has further explained that "[n]othing in our precedent or the language of the statute suggests that this general rule does not also apply in rate-setting cases." *Citizens v. Fla. PSC*, 146 So. 3d 1143, 1155 (Fla. 2014) (hereinafter "*Citizens I*").

33. The Florida Supreme Court has also confirmed that a rate case may be resolved by non-unanimous settlement agreement upon a finding by the Commission that the settlement agreement, as a whole, is in the public interest. *Id.* at 1153-54, 1164-65.[11] However, the Court has also underscored that a non-signatory is not legally bound by the terms of a settlement agreement *South Florida Hospital & Healthcare Ass'n v. Jaber*, 887 So. 2d 1210 (Fla. 2004) ("SFHHA is not a signatory to the settlement agreement, has no rights or liabilities thereunder, and cannot be

[10] Nowhere in their Stipulation Motion, Scheduling Motion, or at oral argument were the NPSs capable of citing or offering any authority or precedent to support the proposition that the Commission can resolve a contested matter by approving a settlement or stipulation that does not include the utility in question. The NPSs' Motion for Reconsideration is likewise void of any legal authority or precedent that supports the proposition that non-petitioner co-parties can unilaterally resolve and settle litigated proceedings in their favor without the petitioner requesting the relief and then somehow make that one-sided agreement legally enforceable and binding on the non-signatory petitioner. Simply put, the NPSs have failed to offer any legal basis that they are entitled to the relief requested in their Stipulation Motion.

[11] In *Citizens I*, FPL entered into a settlement with several intervening parties that opposed FPL's as filed rate case. OPC objected to the settlement and claimed that it could not be approved without OPC's involvement. *Id.* at 1149. The Court rejected OPC's argument finding it was without merit because the "Commission independently determines rates of public utilities subject to the conditions set forth in chapter 366; the Commission's authority to fix fair, just, and reasonable rates pursuant to section 366.06(1), Florida Statutes, is not conditioned on the OPC's approval or absence of the OPC's objections." *Id.* at 1150.

precluded by its terms from petitioning for an even greater rate reduction") (emphasis added). Stated otherwise, settlements cannot bind non-signatories. *See, e.g., In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company*, Docket No. 20180046-EI, Order No. PSC-2019-0225-FOF-EI, 2019 Fla. PUC LEXIS 186 (FPSC June 10, 2019) ("a settlement agreement is a binding and enforceable agreement between the signatories") (emphasis added).[12] That principle necessarily runs both ways; that is, a settlement cannot bind a utility that did not agree to and sign a settlement.

34. Thus, based on this existing and binding precedent from the Florida Supreme Court, a settlement resolves disputes between the contending parties, *AmeriSteel*, *supra*, and any such settlement agreement is only binding on the signatory parties, *Jaber*, *supra*. Meaning, the Proposed Stipulation attached to the NSPs' Stipulation Motion is not an "agreement" and, even if the Commission were to approve the Proposed Stipulation, those rates and charges would not be binding on FPL because FPL is not a signatory to the Proposed Stipulation.[13]

35. This fatal legal flaw is demonstrated by the NSPs' own Proposed Stipulation. In the Proposed Stipulation, the NSPs have agreed among themselves that the base rates and charges established in the Proposed Stipulation cannot be changed and are "frozen" during the two-year minimum term of the Proposed Stipulation.[14] However, as OPC is well aware, the Commission cannot legally enforce such a provision absent a binding settlement that FPL agrees to. Indeed, in the Florida City Gas 2022 Rate Case in Docket No. 20220069-GU, the utility committed to a rate

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[12] Even FEL's own witness acknowledges this legal limitation on the binding effect of settlements before this Commission. *See* Settlement Testimony of FEL witness Rabago filed September 9, 2025, p. 4, ln. 17-21 (noting that FEL did not join FPL's 2021 rate case settlement and, therefore, is not bound by the terms of that settlement).

[13] FPL acknowledges that a final Commission order is binding on the applicable utility petitioner; however, the pertinent issue is whether the Commission can legally approve a unilateral settlement among non-petitioner co-parties and without the petitioner requesting the affirmative relief – and the answer to that question is "no" as correctly found by the Dismissal Order and explained in this Response.

[14] *See* NPSs' Proposed Stipulation, pp. 3 and 7.

case stay out as part of its as-filed case if the proposed rate plan was approved. In Order No. PSC-2023-0177-FOF-GU, the Commission agreed with OPC that, absent a settlement, the utility cannot agree to, and the Commission cannot legally enforce, a stay out from requesting a new rate case.[15] Thus, although the NSPs' Proposed Stipulation includes a two-year rate case stay out, it is not binding on FPL pursuant to *Jaber*, *supra*, and according to the Commission's decision in the Florida City Gas 2022 Rate Case. Thus, the Commission has no authority to enforce this provision absent a binding agreement with FPL.

36. Also illustrative is the representation and agreement by the NSPs that "a party to this [Proposed Stipulation] will neither seek nor support any change in FPL's base rates or credits applied to customer bills, including limited, interim or any other rate decreases, that would take effect prior to expiration of the Minimum Term."[16] This provision, on its face, only applies to the NSPs because FPL is not a party to the Proposed Stipulation.[17]

37. Consistent with this established legal precedent, the Prehearing Officer noted that "FPL correctly asserts that non-signatories are not bound by the terms of settlement agreements,"[18] and went on to properly conclude:

> By extension, a settlement of a proceeding must be an agreement that ends that proceeding.[] As evidenced by the record activity in this docket, an agreement among parties that does not include the party that commenced the proceeding with a request for affirmative relief will not end that proceeding. Such a settlement, as the [Proposed Stipulation] in this proceeding, constitutes a new and different request for affirmative relief, which is not agreed to by the

[15] Certainly, however, a utility could nonetheless honor a stay out commitment even if it was not agreed to in a settlement.

[16] *See* NPSs' Proposed Stipulation, p. 26 (emphasis added).

[17] Also illustrative of the non-binding effect is the NPSs' attempt to obligate the Commission to establish workshops for large load tariffs and resource planning models. *See* NPSs' Proposed Stipulation, p. 26. The Commission is certainly not a party to the Proposed Stipulation and the NPSs have no authority to obligate the Commission to take or not take any action.

[18] *See* Dismissal Order, p. 6, fn. 9.

> party who has requested relief. Therefore, by definition, such a proposal is not a settlement.
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> Additionally, a docket before the Florida Public Service Commission is opened to address an affirmative claim for relief. Any settlement of a docket - a "proceeding," under Chapter 120, F.S. - must dispose of the original claim for relief. The party who made this original claim is an indispensable party to any settlement of that claim.[] In this docket, FPL is an indispensable party to any settlement. For this additional reason, the document submitted by the [NSPs] is not a settlement.

See Dismissal Order, p. 6 (emphasis added, footnotes omitted).

38. Not only is the conclusion reached in the Dismissal Order consistent with Florida Supreme Court precedent, but it also appropriate reflects the complexity of Commission proceedings where it is common for numerous parties to intervene in opposition to a utility's request for relief. Under the NSPs' flawed settlement theory, two of these intervenors with a common interest or position could unilaterally resolve the case by simply settling with themselves. This approach, if permitted, would open the floodgates to multiple competing "settlements" among differently aligned intervenors that do not include the utility. In other words, intervenors representing endless combinations of aligned interests could settle with themselves – all in the same proceeding and without the utility – in multiple versions of "settlements." This approach to "settlement" defies logic because it does not result in the resolution of a dispute between opposing parties – it merely memorializes an agreement among aligned parties.[19]

39. Despite the fact that FPL raised this fundamental legal flaw on three different occasions,[20] the NSPs remarkably failed to acknowledge the precedent established by the Florida

[19] This approach is even more nonsensical when applied to clause proceedings before the Commission where the clauses for multiple utilities are decided in a single docket. Under the NPSs' theory that non-adverse parties can resolve a case by settling with themselves, the utilities to these single clause dockets could all resolve their proposed clauses by simply settling with themselves and without any intervenors being a party to those settlements.

[20] *See* FPL's First Response, Second Response, and oral argument at the September 9, 2025 Prehearing Conference.

Supreme Court in *Jaber* and *AmeriSteel*, let alone make any effort to distinguish or otherwise explain why these cases are inapplicable to their Proposed Stipulation. Although litigants are certainly free to attempt to argue for changes to or reversal of existing law, this Commission has previously found that that:

> An argument for a reasonable extension, modification, or reversal of existing law, requires the party to acknowledge before the presiding officer that they are seeking such a change in the law. To be reasonable, an argument must be made in good faith; to be in good faith an argument must, in part, acknowledge the state of the current law.

In *In re: Application for original certificates for proposed water and wastewater system, in Hernando and Pasco Counties, and request for initial rates and charges, by Skyland Utilities, LLC*, Docket No. 090478-WS, Order No. PSC-10-0088-PCO-WS, 2010 Fla. PUC LEXIS 107 at *9 (FPSC Feb. 22, 2010) (emphasis added) (citing *Gopman v Department of Education*, 974 So. 2d 1208 (Fla. 1st DCA 2008); *De Vaux v. Westwood Baptist Church*, 953 So. 2d 677, 684 (Fla. 1st DCA 2007); and *Mercury Ins. Co. of Fla. v. Coatner*, 910 So. 2d 925, 927 (Fla. 1st DCA 2005)). FPL submits that the NSPs' persistent refusal to acknowledge and address the adverse precedent in *Jaber* and *AmeriSteel* in any of their filings or arguments before this Commission falls short of this threshold for reasonableness.[21] Moreover, the NPSs' failure to previously raise such a change in law argument does not warrant reconsideration because, as this Commission has explained, a motion for reconsideration is not a vehicle to raise new arguments or issues not previously raised by the moving party.[22]

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[21] The only filing where the NPSs appear to acknowledge controlling adverse law is in footnote 5 on page 4 of their Stipulation Motion where they appear to question the applicability of the conclusion in *Citizens I* that the Commission's approval of a settlement is not conditioned on OPC's approval or absence of OPC's objections.

[22] *In Re: Application for rate increase in Flagler County by Palm Coast Utility Corporation*, Docket No. 951056-WS, Order No. PSC-97-0388-FOF-WS, 1997 Fla. PUC LEXIS 402 at*25 (FPSC Apr. 7, 1997) (citing *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962)).

40. In reality, the NSPs are improperly asking this Commission to do something it legally cannot do – create new law in Florida that is directly contrary the Florida Supreme Court's decisions in *Jaber* and *AmeriSteel*, *supra*. However, unless and until this precedent is either distinguished, modified, or reversed, it is the "law of the land" and is binding on both this Commission and the parties before it.

41. Based on the foregoing, the NSPs are incorrect that the Prehearing Officer overlooked or failed to consider their argument that that there is no authority that a utility must be a party to a settlement agreement in a base rate proceeding initiated by the utility and, therefore, the NSPs have failed to meet the threshold required for reconsideration. Moreover, even if they had met the threshold, which they did not, the NSPs' argument is directly contrary to law and their continued ignorance of this binding precent is not a legal basis for this Commission to grant reconsideration or otherwise reverse the well-reason findings by the Prehearing Officer in the Dismissal Order.

B. The Prehearing Officer's Use of the Term Dismissal Rather Than Denied or Rejected was Harmless Error

42. The NSPs spend multiple pages arguing that the Prehearing Officer purportedly overlooked that no party filed a motion to dismiss the Proposed Stipulation and, therefore, the NSPs claim that the Prehearing Officer erred in dismissing the Stipulation Motion rather than granting or denying it.[23] The NSPs argument, even if accepted, amounts to harmless error that would not impact or change the overall conclusion reached in the Dismissal Order – that a settlement that does not include the party that commenced the proceeding with a request for affirmative relief will not end the proceeding and, therefore, is not a settlement agreement.

[23] *See* NPSs' Motion for Reconsideration, pp. 6-9.

43. The NSPs argue that the Commission may not dismiss a pleading in the absence of a motion to dismiss and adequate notice and opportunity to be heard on that motion. The NSPs then proceed to argue that, to the extent that the Commission treats their Stipulation Motion as a pleading, the Prehearing Officer erred in dismissing the Proposed Stipulation because there was no motion to dismiss or notice that dismissal was under consideration.[24]

44. FPL agrees that no party filed a motion to dismiss, nor is there anything in the Dismissal Order that suggests that the Stipulation Motion was being treated as a pleading. In response to the Stipulation Motion at issue, FPL filed its First Response requesting that it be denied because the NSPs' Proposed Stipulation is an illusory agreement that is not binding on anyone but the NSPs and cannot be legally enforced against FPL. In reality, this is exactly what the Prehearing Officer did.

45. The Prehearing Officer considered the arguments made by all the parties, both written and oral, and found that the Proposed Stipulation submitted by the NSPs is not a settlement and, instead, functions essentially as a position paper. *See* Dismissal Order, p. 6. Thus, in application, the Prehearing Officer denied the request in the Stipulation Motion to approve the NSPs' proposal to settle this base rate proceeding with themselves and without the petitioner utility, FPL.

46. Although the Dismissal Order used the term "dismissed," FPL submits this was a mere inadvertent technicality that would not have any impact on the well-reasoned findings and conclusions reached by the Prehearing Officer in the Dismissal Order. At best, this was harmless error that does not warrant reconsideration by the Commission.[25] Indeed, there was no motion to

[24] *See* NSPs' Motion for Reconsideration, pp. 6-7.

[25] Even if the Commission were to accept the NPSs' non-sensical technicality argument, it is easily remedied by simply replacing the term "dismissed" with "denied" without any impact to any of the well-reasoned findings and conclusions reached in the Dismissal Order.

dismiss so there is no need to re-review the underlying motions, responses, and arguments under the standard applicable to a motions to dismiss. In other words, a scrivener's error using the word "dismissed" when the technically more accurate word should have been "denied" has absolutely no bearing on the merits of the decision at issue.

47. Based on the foregoing, the NSPs' Motion for Reconsideration fails to identify a point of law or fact that was overlooked or not considered by the Prehearing Officer. Moreover, the NSPs argument, even if accepted, amounts to harmless error and would not change the outcome or ultimate conclusion reached in the Dismissal Order.

C. The Prehearing Officer Properly Concluded that FPL is an Indispensable Party to Any Settlement in this Proceeding.

48. The NSPs claim that the Prehearing Officer allegedly overlooked that the Florida Supreme Court has not decided whether a utility is an indispensable party to a settlement of its own affirmative claim for relief.[26] The NSPs' argument is nothing more than a restatement of their claim addressed in section III.A above that, according to them, there is no legal authority that requires a utility to be a party to a settlement. The NSPs have failed to identify any fact or law that was overlooked or not considered by the Prehearing Officer and, moreover, their argument is legally flawed.

49. As explained in section III.A above, the NSPs' proposition that the Commission can resolve a contested matter by approving a settlement or stipulation that does not include the utility in question is directly contrary to well-established law that a settlement resolves disputes between the contending parties, *AmeriSteel*, *supra*, and that any such settlement agreement is only binding on the signatory parties, *Jaber*, *supra*.

[26] *See* NPSs' Motion for Reconsideration, pp. 9-10.

50. This proceeding was initiated by the petition filed by FPL, pursuant to the provisions of Chapter 366, Florida Statutes, and Rules 25-6.0425, 25-6.043, 25-6.04364, 25-6.0436, and 28-106.201, Florida Administrative Code. Section 366.06(1) provides, in relevant part, that the Commission "shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service." Section 366.06(1), Fla. Stat. (emphasis added). Further, Section 366.04 provides the Commission with "jurisdiction to regulate and supervise each public utility with respect to its rates and service," and "prescribe a rate structure for all electric utilities." Section 366.04(1)-(2), Fla. Stat. (emphasis added). Thus, through this proceeding, the Commission will determine and set the rates and terms of service and associated tariff rules and regulations to be offered by FPL to its customers.[27]

51. Notably, Rule 28-106.201 requires proceedings before the Commission be initiated by written petition that, among other things, must include a "statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action." Fla. Admin. Code R. 28-106.201(1) and (2)(g). Rule 28-106.201 further provides that "[u]pon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition." Fla. Admin. Code R. 28-106.201(3) (emphasis added).

52. In FPL's petition, FPL requested Commission approval of a permanent base rate increase through a proposed four-year rate plan to run from 2026 through 2029. Through the proposed FPL Settlement Agreement, FPL has requested an alternative permanent base rate

[27] As made clear by these provisions, the NPSs are not a public utility. They are not regulated by the Commission, nor do they have no obligation to serve FPL's customers. They do not bear the burden of proof to justify any resulting rate change that the Commission may approve in this proceeding. *Fla. Power Corp. v. Cresse*, 413 So.2d 1187, 1191 (Fla. 1982) (the burden of proof in a Commission proceeding is always on a utility seeking a new rate change). As such, they have no legal right to agree to things on FPL's behalf and deny FPL its statutory rights that are afforded to it under Florida law.

increase and four-year rate plan. Thus, pursuant to Rule 28-106.201(3), Florida Administrative Code, the Commission must grant or deny the relief requested by the petitioner, FPL.

53. Importantly, if the Commission must rule on the relief requested by the petitioner (FPL) pursuant to Rule 28-106.201(3) and a settlement is only binding and legally enforceable on the signatory parties pursuant to *Jaber*, one need not possess more than a rudimentary legal acumen to understand that a petitioner utility is necessarily an indispensable party to any settlement of its own affirmative claim seeking a change in base rates.[28] Here, unlike OPC who the Florida Supreme Court has found is not an indispensable party in a settlement agreement in *Citizens I,* FPL is clearly an indispensable party to any proposed settlement in this proceeding and no settlement is valid without FPL's consent. This is the sort of conclusion that reveals itself without effort to anyone not determined to ignore the law.

54. The Prehearing Officer correctly considered this issue in reaching the conclusion that:

> Additionally, a docket before the Florida Public Service Commission is opened to address an affirmative claim for relief. Any settlement of a docket - a "proceeding," under Chapter 120, F.S. - must dispose of the original claim for relief. The party who made this original claim is an indispensable party to any settlement of that claim.[] In this docket, FPL is an indispensable party to any settlement. For this additional reason, the document submitted by the [NPSs] is not a settlement.

See Dismissal Order, p. 6 (emphasis added, footnote omitted).

[28] In fact, the Commission has previously stated that an indispensable party is "one who has such an interest in the subject matter of the action that a final adjudication cannot be made without affecting the party's interest or without leaving the controversy in such a situation that its final resolution may be inequitable." *In re: Complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs and for alleged violation of Section 364.16(3)(a), F.S., by Sprint-Florida, Incorporated*, Docket No. 041144-TP, Order No. PSC-04-1204-FOF-TP, 2004 Fla. PUC LEXIS 1121 (FPSC Dec. 3, 2004) (*citing W.R. Cooper, Inc. v. City of Miami Beach,* 512 So.2d 324, 326 (Fla. 3d DCA 1987)).

55. Clearly, the Prehearing Officer did not overlook or fail to consider these existing well-established legal principles in reaching the conclusion that FPL is an indispensable party to any settlement in this docket and, therefore, the NSPs have failed to meet the threshold required for reconsideration. Moreover, even if they had met the threshold, which they did not, the NSPs' argument is directly contrary to law and their continued ignorance of this binding precedent is not a legal basis for this Commission to grant reconsideration or otherwise reverse the well-reasoned findings by the Prehearing Officer in the Dismissal Order.

D. The Prehearing Officer's Denial of the Stipulation Motion was Not Arbitrary, Capricious, or Prejudicial as Claimed by the NSPs

56. The NSPs argue that the Prehearing Officer overlooked or failed to consider the "unfair asymmetrical treatment" of denying their Stipulation Motion and not the FPL Settlement Agreement.[29] In support, the NSPs assert that the Prehearing Officer's alleged "asymmetry of the summary dismissal of the [Stipulation Motion] in contrast to the preferential treatment of the [FPL Settlement Agreement] is arbitrary and capricious and is *prima facie* evidence of prejudice in the form of denial of due process to the [NSPs]."[30] *See* NSPs' Motion for Reconsideration, p. 10. The NSPs' argument is without merit and should be denied.

57. The NSPs incorrectly imply that the Prehearing Officer's failure to rule on the FPL Settlement Agreement at the same time it ruled on the NSPs' Stipulation Motion was, according to them, arbitrary and capricious and somehow resulted in unfair asymmetrical treatment. The fundamental flaw with this argument is that the only "agreement" that was the subject of their own Stipulation Motion being considered by the Prehearing Officer was the NSPs' Proposed Stipulation – not the FPL Settlement Agreement.

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[29] *See* NPSs' Motion for Reconsideration, p. 10.

[30] The NPSs have offered no such evidence to support this baseless and improper allegation.

58. Further, the FPL Settlement Agreement has no impact on the fundamental and fatal legal flaw of the NSPs' unprecedented request to allow aligned parties to settle with themselves and then somehow make that one-sided agreement legally enforceable and binding on the non-signatory petitioner, FPL. Stated otherwise, the Prehearing Officer did not overlook or fail to consider the FPL Settlement Agreement because it is simply not relevant to the Prehearing Officer's findings and conclusion that the NSPs' Proposed Stipulation is "not a settlement."

59. Thus, contrary to their assertion otherwise, the Prehearing Officer did not overlook anything about the FPL Settlement Agreement because it was not at issue or necessary to the disposition of their Stipulation Motion. Further, there was no "asymmetry" with the treatment of the Stipulation Motion and the FPL Settlement Agreement because the two things are not the same and, therefore, are not entitled to "symmetrical" treatment.

60. Finally, to the extent that the NSPs claim that Prehearing Officer's rejection of their Proposed Stipulation as a settlement is a denial of due process, any such argument is a proverbial red herring. First, a party cannot credibly claim that it has been denied due process because its alleged "settlement" is non-binding and legally unenforceable against FPL whose rates and terms of service are to be set in this proceeding as further explained in Section III.A and III.C above. Second, the NSPs in fact had notice and the opportunity to be heard on the issues related to their Stipulation Motion, including: filing the Stipulation Motion at issue, reviewing the arguments made in FPL's First Response, filing their Scheduling Motion with an improper attempt to reply the arguments in FPL's First Response, reviewing FPL's Second Response, and oral argument at the September 9, 2025 Prehearing Conference. Under these circumstances, one cannot reasonably argue with any credibility that they were somehow denied due process on the NSPs' Stipulation Motion.

61. Based on the foregoing, NSPs' arguments are without merit and their request for reconsideration on this point should be denied.

E. The Prehearing Officer Correctly Concluded that the NSPs' Proposed Stipulation would Not End the Proceeding

62. The NSPs claim that the Prehearing Officer overlooked or failed to consider that their Proposed Stipulation would end the proceeding to the same extent that approval of the FPL Settlement Agreement would end the proceeding.[31] This argument is nothing more than another example of the NSPs continued refusal to acknowledge controlling adverse precedent. The NSPs have failed to identify any fact or law that was overlooked or not considered by the Prehearing Officer and, moreover, their argument is without legal merit.

63. In support of their argument, the NSPs state that they do not dispute parties to an administrative proceeding may enter into settlement agreement, and note that OPC and FEL agreed to a settlement agreement in the Duke Energy Florida, LLC 2024 rate case and that OPC agreed to a settlement agreement in the Peoples Gas System, Inc. ongoing 2025 rate case.[32] Simply put, this is an argument in search of a point. The facts that (i) adversary intervenors, such as OPC and FEL, entered into a settlement agreement with the petitioner utility seeking a base rate increase and (ii) the Commission's approval of that settlement among the contending parties would end those base rate proceedings provide absolutely no support for the NSPs' claim that their proposed settlement with themselves and without FPL would end the proceeding. If anything, the NSPs' argument supports the opposite – namely, that the petitioner utility must be a party to a settlement of a base rate case proceeding in order for the settlement to be valid and end the proceeding.

[31] *See* NPSs' Motion for Reconsideration, pp. 11-13.

[32] *See* NPSs' Motion for Reconsideration, pp. 11-12.

64. In further support of their claim, the NSPs argue that a general base rate proceeding involves complex issues and is not a civil litigation with directly adverse parties asserting claims based on civil law.[33] The claim that there are no adverse or opposing parties in a base rate proceeding because it involves complex issues is so absurd it verges on parody and is without the need of rebuttal. Moreover, even assuming it was realistically plausible to have no adverse parties that opposed a utility's base rate request, this does not change the well-established law that the settlement of that utility's base rate request must include the utility as a party.

65. As explained above in Sections III.A and III.C, the NSPs' attempt to fully resolve FPL's proposed base rate increase by settling with themselves is legally infirm and nonsensical because FPL, as a non-signatory, would not be bound the Proposed Stipulation. Therefore, even assuming, *arguendo*, that the Commission were to approve the NSPs' Proposed Stipulation, FPL would have no legal obligation to implement the rates, charges, terms, and tariffs proposed by the Movants in their Proposed Stipulation. Such an outcome defeats the entire purpose of this proceeding – that is, to set the rates, charges, terms, and tariffs to be offered by FPL to its customers.

66. Indeed, if the Commission declined to rule on the relief requested by FPL as required by Rule 28-106.201(3), Florida Administrative Code, and instead approved the NSPs' legally unenforceable Proposed Stipulation, there would be no viable final Commission order granting or denying the relief requested in FPL's written petition. Consequently, FPL's as-filed rates and tariffs would necessarily become permanent by operation of law once the rate suspension period expired.[34]

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[33] *See* NPSs' Motion for Reconsideration, p. 12.

[34] *See* Section 366.06(3), Fla. Stat. ("The commission shall take final commission action in the docket and enter its final order within 12 months of the commencement date for final agency action. As used in this subsection, the "commencement date for final agency action" means the date upon which it has been determined by the commission

67. The Prehearing Officer correctly considered this established law in reaching the conclusion that the NSPs' Proposed Stipulation would not end this proceeding:

> Short of a full hearing on disputed factual and legal issues, the parties to an administrative proceeding may enter into a settlement.[] In its most basic terms, a "settlement" is "[a]n agreement ending a dispute or lawsuit."[] By extension, a settlement of a proceeding must be an agreement that ends that proceeding. As evidenced by the record activity in this docket, an agreement among parties that does not include the party that commenced the proceeding with a request for affirmative relief will not end that proceeding. Such a settlement, as the [Proposed Stipulation] in this proceeding, constitutes a new and different request for affirmative relief, which is not agreed to by the party who has requested relief. Therefore, by definition, such a proposal is not a settlement.

See Dismissal Order, p. 6 (emphasis added, footnotes omitted).

68. The conclusion reached by the Prehearing Officer is further demonstrated by the fact that the NSPs' Proposed Stipulation is incomplete. For example, the Proposed Stipulation provides that FPL should be authorized to increase base rates and service charges to generate the revenue increases agreed to by the NSPs. However, the Proposed Stipulation failed to provide those rates and charges and, instead, requests that FPL, a non-signatory, be obligated to produce the tariffs necessary to implement those rate and charges if the Proposed Stipulation is approved.[35] It is entirely unclear how the Commission could make a finding that the rate, charges, and tariffs required to implement the Proposed Stipulation are just, fair, reasonable, and in the public interest if they are unknown at the time the decision is made and, under the NSPs' approach, would only exist after the Proposed Stipulations are approved and FPL is directed to create them.

69. Another example is that the total revenues for 2026 provided on Exhibit B to the NSPs' Stipulation Motion does not match the proposed 2026 revenues in Paragraph 4(a) of the

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or its designee that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.").

[35] *See* NPSs' Proposed Stipulation, pp. 4-5.

Proposed Stipulation. There is no explanation in the Stipulation Motion or Proposed Stipulation for this shortfall. Additionally, the revenue allocation in Exhibit B to the NSPs' Stipulation Motion does not address all rate classes or gradualism. In short, the revenues and allocations under the Proposed Settlement are incomplete and the NSPs have simply left it up to the Commission to figure out.[36]

70. The above-described examples of the incomplete nature of the proposals set forth in the Proposed Stipulation further demonstrate that the NSPs' Proposed Stipulation would not end this proceeding as correctly found by the Prehearing Officer.

71. Thus, contrary to the claim by the NSPs, the Prehearing Officer did not overlook this argument and, in fact, considered and rejected it for the reasons further explained on page 6 of the Dismissal Order. Accordingly, the NSPs have failed to meet the threshold required for reconsideration on this point and, therefore, their request for reconsideration should be denied.

IV. THE NPSs HAVE NOT SUFFERED ANY HARM BECAUSE THEIR STIPULATED POSITIONS ARE ALREADY PART OF THE RECORD AND WILL BE CONSIDERED BY THIS COMMISSION

72. For the reasons explained above, the Prehearing Officer correctly concluded that the NSPs' Proposed Stipulation was not a "settlement." Thus, the only viable and legally enforceable "agreement" pending for this Commission's consideration is the FPL Settlement Agreement. Nonetheless, the NSPs have the full opportunity for the positions set forth in their

[36] Another example is the NPSs' attempt to request that the costs to remediate the damage to the Kayak Solar Energy Center site be charged below-the-line. These remediation costs are being incurred in 2025, and the purpose of the pending rate request is to set rates prospectively to take effect starting in 2026 and beyond. Putting aside that there is no record evidence in this proceeding to support the NPSs' proposal, they have failed to explain how their proposed disallowance of these 2025 costs would apply or be reflected in the prospective rates to be set in this proceeding.

Proposed Stipulations to be considered by the Commission in determining whether the FPL Settlement Agreement is in the public interest and should be approved.

73. Preliminarily, FPL notes that the NSPs are not harmed by the denial of their Proposed Stipulation because they are not the petitioner requesting affirmative relief, nor are they the party with the burden of proof in this proceeding.[37] A party cannot credibly claim they have been harmed by not granting affirmative relief that was not properly requested and pending for disposition. As explained above, proceedings before the Commission must be initiated by written petition that includes an affirmative statement of the relief sought and the Commission must grant or deny the relief requested by the petitioner. Fla. Admin. Code R. 28-106.201(1), (2)(g) and (3).[38]

74. In FPL's petition, FPL requested Commission approval of a permanent base rate increase through a proposed four-year rate plan to run from 2026 through 2029. Through the proposed FPL Settlement Agreement, FPL has requested an alternative permanent base rate increase and four-year rate plan. Thus, pursuant to Rule 28-106.201(3), Florida Administrative Code, the Commission must grant or deny the relief requested by the petitioner

75. Notably, in their Scheduling Motion, the NSPs claimed that allowing additional testimony to support their Proposed Stipulation will allow the NSPs "a meaningful opportunity to

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[37] "It has been well established both by us and the State's courts that the burden of proof lies with the utility who is seeking a rate change." *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Order No. PSC-09-0024-FOF-EI, Docket No. 080001-EI, 2009 Fla. PUC LEXIS 161 (FPSC Jan. 7, 2009) (citing *Florida Power Corp. v. Cresse*, 413 So.2d 1187, 1191 (Fla. 1982); *In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.*, Order No. PSC-01-0326-FOF-SU, Docket No. 991643-SU (FPSC Feb, 6, 2001); *In re: Investigation of Fuel Adjustment Clauses of Electric Utilities*, Order No. 12654, Docket No. 830001-EU (FPSC Nov. 3, 1983)); *see also Fla. PSC. Fla. Waterworks Ass'n*, 731 So. 2d 836, 841 (Fla. 1st DCA 1999) ("The burden of proof in ratemaking cases in which a utility seeks an increase in rates rests on the utility)" (citing *So. Fla. Natural Gas Co. v. Fla. PSC*, 534 So. 2d 695 (Fla. 1988)).

[38] FPL acknowledges that the NSPs would be entitled to be treated as a petitioner with the burden of proof if they initiated a proceeding by filing a written petition pursuant to Rule 28-106.21 and requested a change to FPL's existing rates. *See Fla. Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982) (the burden of proof in a Commission proceeding "is always on a utility seeking a new rate change, [or] upon other parties seeking to change established rates) (emphasis added and citation omitted). However, those are not the facts before this Commission.

defend themselves" from the proposals set forth in the FPL Settlement Agreement.[39] This statement alone, concedes that the real intent and purpose of the NSPs' Proposed Stipulation is to present arguments in opposition to FPL Settlement Agreement.

76. In the Dismissal Order, the Prehearing Office concluded:

> While not properly presented to the Commission as a settlement agreement, the [Proposed Stipulation] functions essentially as a position paper. Nothing precludes intervenors from presenting a stipulation for the Commission's consideration. In fact, FPL has expressed its general agreement with the [NSPs] including their stipulated positions as part of the testimony and exhibits currently due to be filed on September 17, 2025.

See Dismissal Order, p. 6. Notably, the NSPs each submitted the Proposed Stipulation as an exhibit to their respective settlement testimonies consistent with the Dismissal Order.

77. The Florida Supreme Court in *Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905 (Fla. 2023) ("*FAIR*"), explained that the Commission does two things when it reviews a settlement agreement. First, the Commission makes factual findings based on the evidence presented by the parties. Second, the Commission decides whether the settlement agreement, in light of its findings of fact, is in the public interest and results in rates that are fair, just, and reasonable. *Id*. at 901.

78. The Court further affirmed that "while the Commission need not 'resolve every issue independently' in its final order when it is reviewing a settlement agreement, it must nonetheless 'discuss[] the major elements of the settlement agreement and explain[] why it [is] in the public interest.'" *Id*. at 912 (citing *Sierra Club v. Brown*, 243 So. 3d 903, 914 (Fla. 2018); *Citizens I*, 146 So. 3d at 1153). "That includes considering the competing arguments made by the parties below in light of the factors relevant to the Commission's decision, and supplying, given

[39] *See* NPSs' Movants' Procedural Motion, p. 4

these arguments and factors, an explanation of how the evidence presented led to its decision." *Id* (emphasis added). Notably, the Court in *FAIR* advised that the Commission is to consider "competing arguments" that are relevant to the Commission's decision whether a settlement is in the public interest – not competing settlements that are not legally enforceable on the utility.

79. To the extent that the NSPs were concerned about having "a meaningful opportunity to defend themselves" against the FPL Settlement Agreement as claimed in their Scheduling Motion and wanted their stipulated positions considered by the Commission in reaching a decision on whether the FPL Settlement Agreement is in the public interest, the NSPs have already submitted those stipulated positions by attaching them as an exhibit to their respective settlement testimonies filed on September 19, 2025. Additionally, the NSPs have actively taken written discovery and depositions on the FPL Settlement Agreement and will have the opportunity to cross-examine witnesses at the hearing, as well as brief their respective positions, stipulated or otherwise, on whether they believe the FPL Settlement Agreement is in the public interest.

80. All parties to this proceeding have notice and will have the opportunity to be heard on the issues and proposals related to FPL's as filed four-year rate plan, as well as the issues and proposals set forth in the FPL Settlement Agreement. All parties will have the full opportunity to present evidence and arguments regarding whether the Settlement Agreement is in the public interest, including the stipulated positions attached to the NSPs' settlement testimonies. Consistent with the directive in *FAIR*, this record evidence will be considered by the Commission in determining whether the FPL Settlement is in the public interest and should be approved. In every possible scenario, the Commission will consider the same record evidence, including the stipulated positions attached to the NSPs' settlement testimonies, in reaching a final decision in this proceeding.

81. Accordingly, the NSPs' request for reconsideration of the Dismissal Order finding that their Proposed Stipulation is not a settlement is unnecessary and should be denied because they have not been and will not be harmed in any way.

V. CONCLUSION

82. As explained above, the Dismissal Order correctly concluded that the NSPs' attempt to fully resolve FPL's proposed base rate increase by settling with themselves is legally infirm and nonsensical because FPL, as a non-signatory, would not be bound the Proposed Stipulation. Therefore, FPL would have no legal obligation to implement the rates, charges, terms, and tariffs proposed by the NSPs in their Proposed Stipulation. Such an outcome defeats the entire purpose of this proceeding.

83. The NSPs' Motion for Reconsideration fails to identify a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Dismissal Order. Rather, the NSPs are improperly attempting to reargue matters that have already been considered. The fact that the NSPs disagree with the conclusion reached in the Dismissal Order, is not a sufficient basis for reconsideration.

84. Although the NSPs' Proposed Stipulation is an illusory and unenforceable settlement agreement, the NSPs nonetheless have offered their stipulated positions by attaching the Proposed Stipulation to their settlement testimony and, as such, those positions will be considered by this Commission as part of its final decision consistent with the requirements of *FAIR*, *supra*.

85. For all these reasons, the NSPs' Motion for Reconsideration should be denied. Provided, however, in the event the Commission deems it is appropriate to further clarify the

findings and conclusions set forth in the Dismissal Order, any such clarifications should be consistent with existing law as more fully set forth in this Response.

WHEREFORE, Florida Power & Light Company respectfully requests the Commission deny the NSPs' Motion for Reconsideration.

Respectfully submitted this 26th day of September 2025,

By: */s Christopher T. Wright*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 26th day of September 2025:

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