

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Florida Power & Light)
Company for Base Rate Increase)

FILED: NOVEMBER 10, 2025
DOCKET NO. 20250011-EI

FLORIDIANS AGAINST INCREASED RATES, INC.’S
POST-HEARING BRIEF

Floridians Against Increased Rates, Inc. (“FAIR”), pursuant to the First Order Revising Order Establishing Procedure, Order No. 2025-0323-PCO-EI, issued on August 22, 2025 and instructions given at the conclusion of the hearing in this docket, hereby respectfully submits its Post-Hearing Brief. Consistent with FAIR’s commitment to the public interest and the best interests of its approximately 1,000 members who are FPL customers, FAIR first tackles the issues of most importance to FPL’s customers, namely, whether to approve the proposed stipulation and settlement agreement filed by FPL and certain parties representing the special interests of large commercial and industrial customers and electric vehicle charging businesses on August 26, 2025, herein identified as the “Special Interest Parties’ Settlement” or “SIPs’ Settlement.” The SIPs’ Settlement would: first, give FPL nearly \$7 Billion of customers’ money in direct base rate increases over the next four years; and next, through the mis-named and mischaracterized “Rate Stabilization Mechanism” (“RSM), deprive customers of the value, probably exceeding an additional \$1.1 Billion, of monies that customers have already paid to FPL to cover FPL’s future tax liabilities, by using customers’ payments to support FPL’s earnings; and

finally, to recover the same amounts of customers' money already used by FPL to support its earnings from its customers over the following 30 years. Finally, the rates proposed in the SIPs' Settlement are unfair, unjust, and unreasonable because they are excessive, and further, the proposed rates are unduly discriminatory because they unfairly and disproportionately allocate the burden of FPL's revenue increases onto residential and small business customers to the benefit of FPL's commercial and industrial customers who are represented by other SIPs. Accordingly, in the public interest and to ensure that FPL charges only fair, just, and reasonable rates that are sufficient to enable FPL to provide safe and reliable service at the lowest possible cost, the Commission must reject the SIPs' Settlement.

Discussions of the 26 major elements of the proposed Special Interest Parties Settlement Agreement identified in Order No. 2025-0345-PCO-EI are next addressed, and finally, FAIR addresses the five legal issues identified in the original Prehearing Order, Order No. 2025-0298-PHO-EI.

SUMMARY

The Special Interest Settlement Parties' Settlement, much like the settlement agreement approved over the objections of FAIR and other parties representing the interests of residential customers in FPL's 2021 rate case, would, if approved, yet again give FPL the largest rate increase in the history of Florida utility regulation: nearly \$7 billion in direct base revenue increases over the 2026-2029 period. The SIPs' Settlement

would also enable FPL to appropriate – *most inappropriately* – at least an additional \$1.1 billion of money, over and above the \$7 billion in additional base rate increases, already paid in by FPL’s customers that FPL would use to support FPL’s earnings over the next four years, just as it has used similar mechanisms over the past eight-and-one-half years, to achieve returns on equity (“ROE”) at or near the ceiling of its authorized range. The proposal by which FPL hopes to achieve these additional excessive earnings is called the “Rate Stabilization Mechanism,” which includes up to \$1.155 billion of charges already paid by FPL’s customers in FPL’s retail base rates to cover FPL’s future tax liabilities. (These monies would be taken from “deferred tax liabilities” already paid in by FPL’s customers using a mechanism identical to the Tax Adjustment Mechanism (“TAM”) that FPL proposed in its original case filed on February 28. Therefore, it is referred to herein as the “RSM/TAM.”)¹ Since FPL has a demonstrated track record of using similar mechanisms, including the Reserve Surplus Amortization Mechanism, or “RSAM,” approved as part of the settlement in FPL’s 2021 rate case to achieve earnings at or near the ceiling of its authorized return range *over the past eight-and-one-half years*, FAIR and the other parties who represent the real interests of FPL’s residential customers believe that it is highly likely that FPL will do the same again. Since 100 basis points of ROE translates into approximately \$500 million in revenue requirements, TR 4480, these additional earnings would likely approach an additional \$500 million per year, or \$2

¹ The reference to “rate stabilization” is a misnomer. The actual purpose of the mechanism, as demonstrated by FPL’s use of comparable mechanisms since 2017, is earnings maximization.

billion, in excess earnings for FPL above its approved midpoint ROE, over the next four years. Adding insult to the economic injury caused by the direct excessive rate increases imposed on its customers, FPL would then collect in its future base rates over the next thirty (30) years the amounts of customer-paid future taxes – likely more than \$1.1 billion – from its customers to replenish what it will likely appropriate from them between 2026 through 2029. This RSM/TAM “mechanism” – unique in the United States – violates all reasonable norms of equity and all accepted principles of fair, just, and reasonable rate-setting.

The public interest means the general welfare of the public as a whole. The concept is closely related to the Regulatory Compact, the set of principles followed by regulators by which monopoly utilities are required to provide safe and reliable service at the lowest possible cost, in return for which they are assured recovery of their reasonable and prudent expenses and investments that are used and useful in serving their customers, including a reasonable return on their investments. TR 2490-91 Accordingly, the Commission is charged by Section 366.01, Florida Statutes, to regulate public utilities in the public interest, and the public interest is the key criterion considered in evaluating proposed settlements.

The SIPs’ Settlement presented to the Commission is directly contrary to the public interest of Floridians and the Florida economy as a whole because it would, if approved, unnecessarily transfer billions of dollars of customers’ money to FPL and its

parent company, NextEra Energy (“NEE”), thereby suppressing individuals’ purchasing power and increasing the cost of doing business for commercial, industrial, and institutional customers. TR 2573, 2586-87 Moreover, increasing the cost of electric service, a necessity, puts upward pressure on individuals’ cost of living, particularly on low-income-customers, and inflationary pressure on the cost of goods and services provided by business customers. Colton, TR 2883-84

The nationally recognized standard for what constitutes a reasonable return on a utility’s investment was established by the U.S. Supreme Court a century ago in *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) (“*Bluefield*”):

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding, risks and uncertainties, but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.

Id. at 692-93 (emphasis supplied).

The ROE provisions of the SIPs’ Settlement violate the *Bluefield* standard in two ways: First, the SIPs’ Settlement would set FPL’s midpoint ROE at 10.95 percent; this ROE greatly exceeds the *Bluefield* standard, by approximately 90 basis points, which equates to excessive returns of approximately \$450 million per year, or approximately \$1.8 billion over the 2026-2029 period covered by the SIPs’ Settlement. By itself, this

provision justifies rejecting the SIPs' Settlement.

The SIPs' Settlement should also be rejected because it would impose unfair, unjust, unreasonable, and unduly discriminatory rates on FPL's customers. Rates that provide excessive revenues to a utility – more than it needs to provide its service, including a reasonable return – are excessive are unfair, unjust, and unreasonable to customers, just as rates that are insufficient to enable the utility to provide its service and earn a reasonable return are unfair and confiscatory to the utility. The rates proposed in the SIPs' Settlement are excessive in large part because of the excessive revenues and ROE provided to FPL. Further, the revenue responsibility and rates paid by a utility's various customer classes must also be fair and not unduly discriminatory as between rate classes. The class revenue allocations and the rates agreed to by FPL and the other SIPs unfairly and unduly discriminate against residential and small business customers because they disproportionately allocate more cost responsibility onto residential and small business customers and less to the large commercial and industrial customers represented by a number of the SIPs. The most egregious example of this undue discrimination would be imposed on FPL's small business customers served under FPL's General Service (GS) tariff, whose overall rate increases under the SIPs' Settlement would be more than three times the increase proposed by FPL in its original case. And finally, FPL's claim that it represented the interests of residential customers in the settlement negotiations that produced the SIPs' Settlement is simply false.

The SIPs' Settlement would then provide FPL with a proven mechanism by which FPL can – and based on its history almost certainly will, TR 2574-75, 2927, continue to maximize its earnings and, as it has over the past eight-plus years, earn ROEs that are close to 100 basis points greater than the already excessive midpoint ROE. Allowing this to occur will provide FPL with an ROE even more excessive – up to 190 basis points above the *Bluefield* standard, and then saddling FPL's customers with higher rates for the next 30 years to cover FPL's re-recovery of FPL's deferred tax liabilities that its customers have already paid for, plus recovery of some depreciation payments (also paid by customers) that FPL has used for the past four years through the RSAM approved in 2021 until the underlying assets are fully amortized. (As a result of the directly comparable RSAM approved in the FPL 2021 Settlement, FPL's customers will be paying between \$100 million and \$145 million a year more over the remaining lives of FPL's assets because FPL's "Reserve Surplus" is now a "Reserve Deficit" of \$1.9 billion, TR 681, resulting in FPL's rate base being greater by the amount of the previous reserve surplus actually used as of the end of 2025.)

Five parties in this case represent the real economic interests of FPL's residential customers: the Public Counsel, Florida Rising, Inc., LULAC, ECOSWF, and FAIR. Since these are the only parties representing the real interests of residential customers, who themselves comprise 89 percent of FPL's total customer accounts, FAIR and the other four identify themselves collectively as the Customer Majority Parties or the

“CMPs.” FPL’s argument that it represented residential customers’ interests in the negotiating the SIPs’ Settlement is simply false and contradicted by the testimony of Zayne Smith, the Senior Director of Advocacy for AARP Florida. TR 5100

On August 26, 2025, the CMPs filed a separate proposed Stipulation and Settlement Agreement, hereinafter the “CMPs’ Proposal,” that is structured almost identically to the SIPs’ Settlement and that addresses all issues in the SIPs’ Settlement. The CMPs’ Proposal provides competent substantial evidence upon which the Commission can base its decisions in this case. As to the major critical issues that would determine FPL’s revenue requirements and rates, the terms proffered in the CMPs’ Proposal are generous to FPL as a reasonable package of compromises in order to settle the case: the CMPs’ Proposal would give FPL the opportunity to realize total additional base revenues of \$5.241 billion over the 2026-2029 period, with a midpoint ROE of 10.60 percent; these values compare to the \$6.903 billion in total additional base revenues and the 10.95 percent ROE in the SIPs’ Settlement. The CMPs’ Proposal would not allow for the RSM/TAM proposed in the SIPs’ Settlement. While these key financial terms of the CMPs’ Proposal are generous to FPL, the CMPs believed that they offered all parties a balanced package of compromises that would enable FPL to provide safe and reliable service at fair, just, and reasonable rates, and that, as a compromise resolving all issues in the case, approval of the CMPs’ Proposal would serve the public interest. However, as discussed hereinbelow, the Commission denied the CMP’s motion for approval of the

CMPs' proposed Stipulation and Settlement as filed.

In considering the criteria applicable to settlements, to fulfill its statutory mandate to regulate public utilities in the public interest and to ensure that rates paid by FPL's customers are fair, just, and reasonable, the Commission must reject the Special Interest Parties' Settlement. Instead, the Commission should either adopt the specific proposals proffered in the settlement proposal filed by the CMPs on August 26, 2025 and supported by the CMPs' witnesses and exhibits in the evidentiary record of this case, or simply decide the case by voting on the approximately 120 substantive issues identified in the original Prehearing Order in this docket. Prehearing Order at 40-204. Alternatively, the Commission can also consider following the example or precedent that it set in 2012, when it refused to approve an analogous settlement agreement filed by FPL and three other large commercial and industrial parties. In 2012, the PSC strongly suggested to the settling parties in that case that they should modify the settlement to make it more fair to customers; FPL and its settling "partners" took the suggestion and made modest reductions in the amount of money taken from FPL's customers by the rates in that settlement. By comparison, the modifications required to make the SIPs' Settlement consistent with the public interest would require significant additional reductions in FPL's revenues and rates and changes in cost allocation and rate design to produce rates that are fair, just, reasonable, and not unduly discriminatory.

FAIR and the other Customer Majority Parties, including the Public Counsel, believe that the Commission erred in denying the CMPs' motion for approval of the CMP's Proposal. Regardless, the Commission made clear that the CMPs were and are authorized to submit their proposals into evidence in the hearing record of this proceeding, stating:

Based on the above, the Joint Motion for Approval of Stipulation and Settlement Agreement filed by the Non-Signatories is dismissed. This dismissal is without prejudice to the FPL Non-Signatories submitting the terms contained in the Alternate SSA as a proposed stipulation, joint position statement, or similar document for Commission consideration, rather than as a motion seeking affirmative relief. The FPL Non-Signatories may present support for those positions as part of the testimony and exhibits currently due to be filed on September 17, 2025.

Order No. 2025-0345-PCO-EI at 6. (While the Commission later changed the word "dismissal" to "denial," TR 16, this alternate word choice does not change the fact that the CMPs were authorized to present their witnesses' testimony and exhibits supporting their specific positions regarding the issues in the SIPs' Settlement.)

The CMPs accordingly submitted their proposed stipulation and settlement agreement ("CMPs' Proposal") as exhibits to their witnesses' testimonies. Before going further, to be clear, FAIR is not asking the Commission to approve the CMPs' Proposal as a stand-alone settlement agreement. FAIR asserts that the specific elements set forth in the CMPs' Proposal, while generous to FPL, provide a balanced package of compromises on the critical issues in this case that would serve the public interest and result in fair, just, and reasonable rates for FPL's customers while ensuring that FPL has sufficient

revenues to make all necessary investments, cover all reasonable and prudent operating and maintenance expenses, and realize an ROE greater than any ROE approved by any public utility regulatory authority in the United States in the last two years. Thus, notwithstanding the Commission's denial of the CMPs' motion for approval of the CMPs' Proposal, the Commission has the absolute jurisdiction and authority (pursuant to Sections 366.06 and 366.07, Florida Statutes), to set FPL's revenue requirements and FPL's retail rates based on the proposed values advocated in the CMPs' Proposal.

If the Commission were to reject the SIPs' Settlement and then decide the case by voting on the issues set forth in the original Prehearing Order, the preponderance of the competent, substantial evidence of record supports decisions that would:

1. deny FPL's requested rate increase for 2026 and instead reduce FPL's revenue requirements by \$620 million per year in 2026;
2. grant FPL a revenue requirements increase of \$35 million per year in 2027;
3. set FPL's midpoint ROE at 10.04 percent, consistent with the standard articulated by the U.S. Supreme Court in *Bluefield*;
4. deny FPL's proposed Rate Stabilization Mechanism, which includes up to \$1.155 billion of funds already paid by customers to cover future FPL federal tax liabilities; and
5. deny FPL's Solar and Battery Base Rate Adjustment proposals requested in its originally filed case.

PRELIMINARY STATEMENT

As used herein, the following abbreviated terms or acronyms have the meanings given below.

PSC, Florida PSC, or Commission – the Florida Public Service Commission

FPL – Florida Power & Light Company

NEE – NextEra Energy, Inc.

Fuel Retailers – Americans for Affordable Clean Energy, Inc. (“AACE”), Circle K Stores, Inc., RaceTrac, Inc., and Wawa, Inc.

Electrify America – Electrify America

EVgo – EVgo Services, LLC

FEA – Federal Executive Agencies

FEIA – Florida Energy for Innovation Association

FIPUG – Florida Industrial Power Users Group

FRF – Florida Retail Federation

SACE – Southern Alliance for Clean Energy

Special Interest Parties or SIPs – FPL, Fuel Retailers, EVgo, Electrify America, FEA, FEIA, FIPUG, FRF, and SACE

“Special Interest Parties’ Settlement” and “SIPs’ Settlement” refers to the proposed Stipulation and Settlement Agreement dated August 20, 2025 and included as Exhibit 1277 in the record of this docket.

OPC – the Office of Public Counsel

FAIR – Floridians’ Against Increased Rates, Inc.

Florida Rising – Florida Rising, Inc.

LULAC – League of United Latin American Citizens of Florida

ECOSWF – Environmental Confederation of Southwest Florida

FEL – collectively, Florida Rising, LULAC, and ECOSWF

CMPs or Customer Majority Parties – OPC, FAIR, Florida Rising, LULAC, and ECOSWF

CMPs’ Proposal refers to the proposed Stipulation and Settlement Agreement dated August 26, 2025 and included as Exhibit 1297 and Exhibit 1325 in the record of this docket.

Orders are cited in the form Order No. PSC-YEAR-####-XX-YY, where the hash tags signify the specific order number and the suffixes XX and YY are those applicable to the type of order and the industry designation. Citations to the hearing transcript are in the form TR abc, where abc is the page number in the continuous numeration of the transcript. Exhibits are cited in the form EXH xyz, page number, where xyz is the number assigned to the exhibit either in the Comprehensive Exhibit List or at the hearing, and the page number is the number within the cited exhibit. Citations to the Florida Statutes are to the 2024 edition.

STATEMENT OF THE CASE AND FACTS

FPL initiated this general rate case by submitting its Test Year Notification letter (“Test Year Letter”) to the Commission dated December 30, 2024. FPL subsequently filed its petition (“Petition”), direct testimony and exhibits, and Minimum Filing Requirements (“MFRs”) on February 28, 2025. The Prehearing Officer issued the Order

Establishing Procedure, Order No. PSC-2025-0075-PCO-EI (“OEP”), on March 14, 2025. Included among the usual provisions of such orders, the OEP established hearing dates of August 11-22, 2025 for the docket. OEP at 12. The Commission subsequently issued its Order No. 2025-0323, PCO-EI, on August 22, 2025.

Intervenor Parties

The OPC filed its Notice of Intervention on January 7, 2025, which was acknowledged by an order of the Commission dated January 15, 2025. The following parties subsequently filed for and were granted intervenor status, subject to proof of standing or stipulations to sufficient facts to establish their standing: Americans for Affordable Clean Energy, Circle K Stores, Inc., RaceTrac, Inc., and Wawa, Inc.; Electrify America, LLC; EVgo Services, LLC; Federal Executive Agencies; Florida Energy for Innovation Association; Florida Industrial Power Users Group; Florida Retail Federation; Florida Rising, Inc., the League of United Latin American Citizens Florida, Inc., and the Environmental Confederation of Southwest Florida; FAIR; the Southern Alliance for Clean Energy; Walmart, Inc.; and Armstrong World Industries, Inc.

Of the intervenors, only the Office of Public Counsel, Florida Rising, LULAC, ECOSWF, and FAIR represent predominantly residential customers. Residential customers are projected to account for 89 percent of FPL’s total customer accounts and for approximately 63 percent of FPL’s total base rate revenues in 2026. EXH 8, MFR Schedule E-1, pages 1 of 4 and 4 of 4. With the exception of SACE, the other intervenors

represent either large commercial or industrial customer interests (FIPUG, FRF, FEA, Armstrong, and Walmart) or the interests of customers with particular interests in electric vehicle charging (AACE, Circle K, RaceTrac, Wawa, Electrify America, and EVgo). (The data centers represented by FEIA are considered large commercial loads, in that their typical usage characteristics include a peak billing peak demand of 50 megawatts (“MW”) or more, and they typically operate with load factors greater than 85 percent.)

FPL’s Original Case - Revenue Requirements & Related Financial Factors

By its Petition, FPL originally sought the largest rate increases in the history of Florida utility regulation, a base revenue and rate increase of \$1.545 billion per year starting in 2026, an additional base revenue and rate increase of \$907 million per year starting in 2027, plus additional increases for Solar and Battery Base Rate Adjustment increases in 2028 and 2029. FPL’s Petition at 1. Together, FPL’s proposed base revenue and rate increases totaled approximately \$9.8 billion in direct base revenue increases over the period 2026 through 2029. TR 2596. Other major elements of FPL’s petition included a rate of return on common equity (“ROE”) of 11.90 percent, Petition at 23-24; an equity ratio of 59.6 percent, Petition at 23; and a “Tax Adjustment Mechanism,” Petition at 27-30, by which FPL proposed to use up to \$1.717 billion of money already paid by its customers (currently identified as deferred tax liabilities in FPL’s accounting) to cover future FPL tax liabilities to support its earnings at any time in the period 2026-2029, and then to recover the amount thus used from its customers through amortization

of the amount used over the following 30 years.

To summarize the overall positions of the intervenor parties, including many of the Special Interest Parties, the intervenors who addressed the financial and economic issues recommended greatly reduced increases, or even decreases, in FPL's revenue requirements for 2026 and 2027. For example, the Public Counsel's team of seven expert witnesses recommended a base revenue reduction of \$620 million per year in 2026, to be followed by a base revenue increase of \$35 million per year in 2027.

FPL's Original Case – Key Cost Allocation & Rate Design Proposals

Key cost allocation and rate design elements of FPL's originally filed case included the following:

- A. Allocating production plant rate base using a methodology known as the "12 Coincident Peak and 25 Percent Average Demand" method, commonly abbreviated as the "12CP & 25% AD" method, TR 1457-58; reducing credits applied to loads of large commercial and industrial customers that those customers agree to have curtailed or interrupted under defined conditions; increasing the minimum bill applicable to residential electric service. EXH 8, MFR E-14, Attachment 1 at page 22 of 217 The 12CP & 25% AD cost allocation method is a recognized method that has the effect of allocating more costs to customers who use more energy relative to their peak billing demand (i.e., customer with higher load factors) and less costs

to customers, such as residential and small business customers.

- B. FPL proposed to reduce the interruptible credits applicable to customers served under FPL's Commercial Industrial Load Control ("CILC") and Contract Demand Reduction ("CDR") tariffs from \$8.76 to \$6.22 per kilowatt ("kW") of controlled load per month, EXH 8, MFR E-13c at page 9 of 51, TR 2629, with total reductions in those credits of approximately \$22 million per year in 2026; this reduction in credits would increase the total contribution by the CILC and CDR customers to FPL's overall revenue requirements by \$22 million, EXH 8, MFR E-14, Attachment 7 at page 1 of 1, thereby reducing the contribution by all of FPL's other customers by almost the same \$22 million per year.
- C. FPL proposed to increase the minimum bill for residential customers from \$25.00 per month to \$30.00 per month, EXH 8, MFR E-14, Attachment 1 at page 22 of 217; this increase would enable FPL to recover a portion of fixed costs from seasonal customers even in months when those customers were not residing in FPL's service area, but it would also cause some very-low-usage residential customers to pay higher bills than they would under FPL's current residential rates.
- D. FPL's original case did not include a "make ready" program for electric vehicle charging operations that would be paid for by FPL's general body

of customers.

- E. FPL's original case included provisions set forth in FPL's proposed "Large Load Contract Service" ("LLCS") tariffs that would require large new electric loads, with the general load characteristics of data centers, to commit to twenty-year take-or-pay contracts for demand charges applicable to 90 percent of such a customer's maximum load and strict security provisions to ensure payment if a customer terminates service before the twenty year minimum term has been fulfilled. EXH 8, MFR E-14A at pages 131 and 134 of 217.

The Special Interest Parties' Settlement Filed on August 20, 2025

The case progressed in accordance with the OEP until August 8, 2025, when FPL filed a Notice of Proposed Settlement and Motion to Suspend Procedural Schedule. No proposed settlement document was included with FPL's Notice and Motion, apparently because the parties to the settlement – the Special Interest Parties' Settlement defined above – had not yet been fully reduced to an executed document.² FPL's Motion asked the Commission to suspend the hearings scheduled to start 3 days later, on August 11, to allow it to have until August 20 to submit a complete settlement document, and to schedule dates for hearings on the original case and on the settlement at later dates. Over objections by the Customer Majority Parties identified above, when the hearing convened

² FAIR was excluded from any meaningful participation in the settlement negotiations.

on August 11, the Commission granted FPL's Motion to Suspend.

On August 20, 2025, FPL and the Special Interest Parties (as defined above) submitted their joint motion for approval of the SIPs' Settlement. EXH 1277 Like other settlements of FPL rate cases in 2012 and 2021,³ the base revenue requirements and ROE were somewhat less than those proposed by FPL in its original rate case filings. While the rate increases provided to FPL by the SIPs' Settlement are approximately \$2.9 billion less than the increases proposed by FPL in its original filing on February 28, those increases would still impose the largest rate increases in Florida utility history on FPL's customers. TR 2486, EXH 263. Together, the increases provided in the SIPs' Settlement would cost FPL's customers approximately \$6.903 Billion over the same 2026-2029 period. TR 2583.

Further, the SIPs' Settlement proposes a somewhat revised "mechanism" by which it seeks the Commission's authority to use FPL's customers' money to support FPL's earnings over the 2026-2029 period. The newly incarnated version is dubbed the "Rate Stabilization Mechanism" (abbreviated as "RSM," a misleading misnomer in its own right, as discussed below), which includes \$1.155 billion of deferred tax liabilities already

³ *In re: Petition for Increase in Rates by Florida Power & Light Company*, Docket No. 20120015-EI, Order No. PSC-2013-0023-S-EI (January 14, 2013) (hereinafter the "2013 Settlement Order" and the "2012 FPL Settlement"); *In re: Petition for Rate Increase by Florida Power & Light Company*, Docket No. 20210015-EI, Order No. 2024-0078-FOF-EI, Supplemental Order, (the resulting settlement hereinafter the "2021 FPL Settlement"). The Commission ultimately approved both the 2012 FPL Settlement and the 2021 FPL Settlement over the objections by parties representing FPL's customers.

paid for by FPL customers; this is directly comparable to the Tax Adjustment Mechanism included in FPL's February 28 filings, the only difference being the lesser amount of \$1.155 billion of customers' money that FPL would mis-appropriate instead of the originally proposed \$1.717 billion.

The ROE provided by the SIPs' Settlement would be 10.95 percent, less than FPL's originally proposed 11.90 percent, but still significantly higher than any ROE approved by any public utility regulatory authority in the U.S. since 2023, and FPL's equity ratio would remain at 59.6 percent, also among the highest in the nation.

Relevant comparative facts regarding the ROE and equity ratio provided for FPL's benefit in the SIPs' Settlement include the following: The highest ROEs approved by any state regulatory authorities since 2023 are the 10.5 percent approved by the Florida PSC for Tampa Electric Company in 2024⁴ and the 10.5 percent approved by the Georgia Public Service Commission for Georgia Power Company in July 2025. EXHs 1241 & 1242 The average of ROEs approved for vertically integrated electric utilities (like FPL) – either by a litigated decision by the regulatory body or by approval of a settlement by the regulator – in the United States for 2024 was 9.85 percent and for the most recent information available for 2025 is 9.83 percent (EXH 274 page 4 of 4); the corresponding average ROE approved by regulatory authorities for vertically integrated electric utilities in the southeast U.S. for 2024 and 2025 is 10.04 percent. (calculated from values in EXH

⁴ In re: Petition for Rate Increase by Tampa Electric Company, Docket No. 20240026-EI, Order No. PSC-2025-0038-FOF-EI (February 3, 2025).

274) The average equity ratio for vertically integrated electric utilities in the entire U.S. was 49.12 percent for 2024 and for the most recent information available for cases decided in 2025, the average is 47.36 percent. Exh 274 The average equity ratio for the “proxy group” of electric utilities used by FPL’s cost of capital witness James Coyne for 2022-2024 is 51.27 percent at the parent company level and 46.56 percent at the operating company level preferred by Mr. Coyne. TR 4333-34, EXH 316, pages 1 of 6 and 3 of 6

The most relevant facts relative to FPL’s proposed Rate Stabilization Mechanism are these. First, operating with similar mechanisms since January 2017, FPL has consistently used such similar mechanisms to achieve earnings that were at or near the ceiling of its authorized ROE range. FPL’s achieved ROEs from January 2017 through December 2021 were very close to the ceiling of FPL’s range, and FPL’s achieved ROEs from January 2022 through May 2025 (the most recent data available) were also at or near the ceiling of FPL’s authorized ROE range, averaging more than 90 basis points above FPL’s authorized midpoint ROE for this period. EXHs 1244-1250, 1516-1520; TR 2435 (at the top except for 2024 at 11.40 percent). Second, FPL achieved earnings that were greater than its approved midpoint ROEs by more than the entire amount of the RSAM approved in the 2021 FPL Settlement, Devlin, EXH 152, demonstrating that FPL did not need any of the RSAM to achieve the fair and reasonable midpoint ROE approved in the 2021 FPL Settlement.

With respect to the cost allocation and rate design issues summarized above for FPL's original filing, the SIPs' Settlement contains the following provisions that are much more favorable to the large commercial and industrial customer interests represented by the SIPs and correspondingly adverse to the interests of FPL's residential and small business customers served under FPL's GS rate schedule:

- A. Shift to a more demand-intensive allocation factor, the 4 Coincident Peak and 1/13th Average Demand factor, for certain costs recovered through the cost recovery clauses such as the Fuel and Purchased Power Cost Recovery Clause. EXH 1277
- B. Disproportionate allocation of the reduction in revenue requirements in favor of large commercial and industrial customers.
- C. Increases in the CILC and CDR credits to an amount greater than the level in current rates, which level does not pass the standard Rate Impact Measure Test ("RIM Test") applied to load reduction programs in the Commission's evaluation of energy conservation programs. See Rule 25-17.0021(3), F.A.C.
- D. An increase in the total revenue responsibility of FPL's General Service rate class by more than three times the increase proposed in FPL's original case filed on February 28.
- E. For service under its proposed Large Load Contract Service tariff (LLCS-

1), FPL reduced the Incremental Generation Charge from \$28.07 per kW to \$12.18 per kW, reduced the take-or-pay percentage applicable to the separate demand charges to 70 percent from 90 percent, and provided the opportunity for security based on creditworthiness.

The Customer Majority Parties' Settlement

The Customer Majority Parties, the Public Counsel, Florida Rising, Inc., LULAC, ECOSWF, and FAIR, are the only parties in this case that represent the real economic interests of FPL's residential customers. The CMPs' Proposal, EXH 1325, was offered as a reasonable package of compromises, very generous to FPL as compared to the CMPs' litigation positions, in order to settle the case. The CMPs' Proposal includes terms that would give FPL the opportunity to realize total additional base revenues of \$5.241 billion over the 2026-2029 period, with a midpoint ROE of 10.60 percent; these values compare to the \$6.903 billion in total additional base revenues and the 10.95 percent ROE in the SIPs' Settlement. The CMPs' Proposal would give FPL a base revenue increase of \$837 million per year in 2026 plus \$403 million per year in 2027, and through a "Generation Base Rate Adjustment" mechanism the opportunity to increase FPL's base rates by \$195 million per year in 2028 and by \$174 million per year in 2029; these increases would provide FPL with up to \$5.241 billion in additional base revenues over the 2026-2029 period. The CMPs' Proposal would not allow for the RSM proposed in the SIPs' Settlement.

These key financial and economic terms are demonstrably generous to FPL. The 10.60 percent ROE is (a) greater than any ROE approved in the United States since 2023, (b) greater than the average ROE approved by state utility regulatory authorities in the United States in 2024 and 2025 by approximately 75 basis points, and (c) greater than the average ROE approved by utility regulators in the southeast U.S. in 2024 and 2025 by 56 basis points. The CMP's Proposal would have provided FPL the opportunity to realize \$5.241 billion in additional base rate revenues over the 2026-2029 period, which represents more than 75 percent of the revenues provided by the SIPs' Settlement; moreover, where the SIPs' Settlement would give FPL approximately 70 percent of its original request, the CMPs' Proposal would have given FPL more than 53 percent of FPL's original request. Compared to the rate reduction of \$620 million per year recommended by the OPC's team of seven witnesses addressing FPL's original request, and where many of the adjustments recommended by the OPC's witnesses were also supported in direct testimony by witnesses for the Special Interest Parties,⁵ the financial terms of the CMPs' Proposal are extremely generous in favor of FPL.

While these key financial terms of the CMPs' Proposal are generous to FPL, the CMPs believed that they offered all parties a balanced package of compromises that would enable FPL to provide safe and reliable service at fair, just, and reasonable rates, and that, as a compromise resolving all issues in the case, approval of the CMPs'

⁵ See, e.g., the testimony of FEA's witness Christopher Walters, TR 4107, who recommended an ROE of 9.5 percent.

Proposal would serve the public interest. However, the Commission denied the CMP's motion for approval of the CMPs' Proposal.

The CMPs' Proposal would also shift some of the cost responsibility away from FPL's residential (RS) and small business (GS) rate classes and back to the rate classes under which FPL's large commercial and industrial customers are served. The CMPs proposed that FPL's credits for CDR and CILC customers would remain at current levels (rather than reduced as originally proposed by FPL), and that the allocation of production plant costs in the cost recovery clauses be made using the 12 CP & 1/13th AD method instead of the 4CP & 1/13th AD method in the SIPs' Settlement.

Legal Standards for Commission Revenue and Rate Decisions

In a non-settled general rate case, the Commission is called on to decide many – often more than 100 – separate issues relating to the utility's sales, operations, expenses, financial structure, and rates. See, e.g., Order No. 2025-0298-PHO-EI at 40-204, the Prehearing Order in this docket, which identifies 130 issues, roughly 120 of which are substantive as opposed to procedural issues, to be decided. In the normal course of such cases, the parties file post-hearing briefs addressing these issues, the PSC Staff prepare a lengthy written recommendation, and the Commission votes on the issues. The criteria for the Commission's decisions are that rates must be fair, just, and reasonable and neither excessive nor insufficient to enable a public utility to recover its reasonable and prudent costs incurred in providing service, including a reasonable return on its

reasonable and prudent investments in assets that are used and useful in providing service. Fla. Stat. § 366.06 (1-2).

In a case where two or more parties propose to resolve the case by a settlement, the issues are whether the proposed settlement is in the public interest, resolves all issues, and results in fair, just, and reasonable rates. *Sierra Club v. Brown*, 243 So. 3d 903, 909 (Fla. 2018).

The “reasonable return” issue embodied in Major Element 2 of the elements to be addressed in briefs addresses the question as to the ROE that FPL needs to attract capital, support its credit, and assure confidence in the utility’s financial soundness, *Bluefield* at 693, likely has the highest impact of any issue in these proceedings on the rates that FPL’s customers will have to pay going forward. The United States Supreme Court’s *Bluefield* standard is widely recognized and applied by regulatory commissions, including this Commission, and courts throughout the country. Applied to the facts and record evidence in this case, the *Bluefield* standard is the average ROE approved by regulatory commissions in the southeast U.S. – the same part of the country as contemplated in *Bluefield* – in 2024 and 2025, *i.e.*, the same time period as contemplated in *Bluefield*. The applicable value for vertically integrated electric utilities in the southeast U.S. in 2023-2025 was 9.94 percent, and the applicable value for 2024-2025 is 10.04 percent. (Calculated from values in EXH 274, pages 2 of 4 and 3 of 4.) For purposes of this Brief, FAIR uses the higher value of 10.04 percent as being more favorable to FPL.

Regardless whether a case is decided by a Commission vote on all issues or by a settlement, the *Bluefield* standard applies.

ARGUMENT

In the Commission’s final order in FPL’s 2021 rate case, Order No. 2024-0078-FOF-EI, the Commission began its discussion of the public interest criteria applied to settlement agreements as follows:

After making factual findings, the second step in our analysis of a settlement agreement is for us to “decide[] whether the settlement agreement, in light of [our] findings of fact, is in the public interest and results in rates that are fair, just, and reasonable.”⁶ We review settlement agreements as a whole to determine whether to approve them as being in the public interest.⁷

Consistent with Section 366.01, Florida Statutes, FAIR agrees that the public interest is the over-arching, ultimate issue that should be applied to settlement agreements and to all other Commission decisions. The public interest and fair, just, and reasonable rates are inextricably linked. Rates that are fair, just, and reasonable are inherently, and probably by definition, in the public interest. Correspondingly, rates that are “insufficient” or “excessive,” the relevant criteria set forth in Section 366.06(2), Florida Statutes, cannot be in the public interest. Rates that are too low are insufficient and confiscatory to the utility; rates that are too high are excessive and unfair (and arguably confiscatory, as well) to the utility’s captive customers. Recognizing these close relations between the public interest and FPL’s rates, the first section of FAIR’s argument below

⁶ *Floridians Against Increased Rates v. Clark*, 371 So. 3d 905, 910 (Fla. 2023).

⁷ *See Sierra Club v. Brown*, 243 So. 3d 903, 909 (Fla. 2018).

addresses these interrelated issues in the same section. FAIR strongly believes that the rates provided by the SIPs' Settlement are grossly excessive; moreover, FAIR believes that the SIPs' Settlement rates are unduly discriminatory to FPL's residential and small business customers.

I. The Special Interest Parties' Settlement is Contrary to the Public Interest, and Accordingly, the Commission Must Reject the SIPs' Settlement As Proposed.

FPL provides electric service to more than half the state: approximately 5.6 million customer accounts and approximately twelve million Floridians throughout both peninsular and northwest Florida receive their electric service from FPL. FPL's Petition at 3-4. The public interest refers to the general welfare of the public – here, the citizens of Florida, or at least the majority of whom receive their electric service from FPL, and the Florida economy as a whole. The public interest is served where a utility receives sufficient revenues to enable it to provide safe and reliable service and where those revenues are not excessive, such that customers receive their service at the lowest possible cost and where individual Floridians and businesses retain the maximum amount of their money to participate in the Florida economy. This is the essence of the Regulatory Compact and the essence of the standards set forth in Chapter 366.

In the real world, where the twelve million Floridians who receive their electric service from FPL work and live, this case is about whether the Commission will allow FPL to take more of its customers' money than it needs via approval of the SIPs'

Settlement; the excess amounts sought by FPL total at least \$1.8 billion⁸ in excessive returns over the 2026-2029 period, and probably exceed \$3 billion in total over the longer term, depending on how much of FPL's proposed RSM/TAM FPL uses and then recollects from customers in future rates. (The excess of revenues above what FPL needs to provide safe and reliable service would be dramatically greater if the Commission were to give full weight and consideration to the revenue requirements advocated by the Public Counsel's witnesses: a 2026 revenue reduction of \$620 million per year, Schultz, TR 3215, TR 3325, EXH 189, times 4 years equals \$2.48 billion.) FAIR strongly believes that FPL does not need anything close to its original request or the amounts provided by the SIPs' Settlement in order to fulfill its duty to provide safe and reliable service. In other words, this case is about the amount of revenues that FPL actually needs to provide safe and reliable service, not about whether FPL's revenues pursuant to the SIPs' Settlement can somehow be deemed "reasonable."

The SIPs' Settlement will, if approved, impose grossly excessive rates on FPL's customers due to the excessive ROE that violates the *Bluefield* standard and the companion RSM/TAM provisions that would require FPL's customers to pay a higher revenue requirement, by approximately \$36 million per year, over the next 30 years as the

⁸ The *Bluefield* ROE standard of 10.04 percent is 91 basis points less than the ROE in the SIPs' Settlement, and 100 basis points translates to \$500 million per year in FPL's revenue requirements. Multiplying 91 basis points times \$500 million indicates that the ROE in the SIPs' Settlement would generate approximately \$455 million per year in revenues above those indicated by the *Bluefield* standard; multiplying that value by the four-year term of the SIPs' Settlement equals \$1.82 billion.

associated regulatory liability is amortized. Bores, TR 4851 These grossly excessive rates will directly harm the approximately twelve million Floridians who receive their electric service from FPL by forcing them to pay more than necessary for their electric service, will harm small businesses who receive their electric service from FPL, and put upward inflationary pressure on the costs to commercial, industrial, and institutional customers of doing business. This will thus harm the Florida economy as a whole by unnecessarily transferring billions of dollars of customers' money to FPL and its parent, NEE, and in so doing, will harm the Florida economy by reducing consumer spending, substantially by lower-income customers, and by impairing the economic viability of small businesses in FPL's service area.

These impacts are directly contrary to the public interest, and the Commission must therefore deny the SIPs' motion for approval of the SIPs' Settlement.

Moreover, the rates proposed in the SIPs' Settlement are unfair, unjust, unreasonable, and unduly discriminatory because of the cost allocation provisions that would overwhelmingly benefit the large commercial and industrial customers represented by several of the SIPs and unfairly discriminate against FPL's residential and small business customers.

A. The Public Interest and The Regulatory Compact.

As stated by former Commissioner John Thomas "Tom" Herndon, the "public interest" can be defined as the general welfare or well-being of the public, or society as a

whole. TR 2586-87 With respect to regulated utilities that provide necessary services (such as electricity or potable water), the public interest is served and promoted where the utility provides safe and reliable service at rates, and under terms and conditions, that are fair, just, and reasonable. TR 2586-87 For any regulatory decision to be in the public interest, it must provide for fair, just, and reasonable rates and, like the fundamental principles embodied in the Regulatory Compact, must provide for fair treatment of both the utility and the utility's customers. TR 2568

Former Commissioner Tom Herndon testified that the "public interest" means the public welfare generally, and this includes considerations of the overall health of the Florida economy and the welfare of all Florida citizens. TR 2586 With respect to FPL, the utility that serves more than half of Florida's electric customers, this means at least the welfare of all of the people served and directly affected by the utility's service. This includes considerations of the economic impacts of a utility's rates and rate increase requests on individuals, households, and businesses. The PSC must consider the overall impacts on the Florida economy and on all customers in making its decisions on rate increases, whether pursuant to a rate increase petition or pursuant to a settlement agreement. TR 2587

B. The Settlement Agreement Is Contrary to the Public Interest Because It Would Unnecessarily Transfer Extraordinary Amounts of Purchasing Power – Billions of Dollars – from FPL’s Customers to FPL and Its Parent Company, Thereby Injuring Millions of Individual Floridians and Florida Businesses, and the Florida Economy as a Whole.

The harm to the public interest of Floridians and the Florida economy that the SIPs’ Settlement would cause is the imposition of unfair, unjust, and unreasonable rates on more than half of all the electric customers in Florida, and the directly resulting harm to the Florida economy of *unnecessarily* depriving those Floridians and Florida businesses, who would be forced to pay those billions of dollars in excessive rates, of purchasing power that would be transferred through the SIPs’ Settlement to FPL and its parent, NextEra Energy. This unnecessary, unfair, unjust, and unreasonable transfer of purchasing power from FPL’s customers to FPL and NEE would result first, from excessive rates, driven by excessive earnings flowing from those rates to FPL, and second, from the – probably unlawful⁹ – deprivation of customer-paid-for value through the proposed RSM/TAM that would enrich FPL and NEE and deprive customers of the value that they created for FPL by paying for FPL’s future tax liabilities in advance. FPL’s arguments to the contrary are misleading and self-serving. In the public interest, the Commission must reject the SIPs’ Settlement as proposed.

Excessive rates are inherently unfair, unjust, and unreasonable because they provide the utility with more revenues than it needs to fulfill its duty to provide safe and

⁹ Please note that, by addressing the substantive issue of the RSM in its Brief, FAIR does not concede that approval of the RSM is lawful in any event.

reliable service. Moreover, excessive rates violate the express terms of Section 366.06(2), Florida Statutes. Record evidence in this case shows that FPL does not need any of the \$945 million per year of customers' money that the SIPs' Settlement would transfer to FPL in 2026, 2027, 2028, and 2029, just as FPL did not need any of the \$1.545 billion per year of its customers' money that it originally requested that would have carried forward throughout the entire period 2026-2029. Schultz, TR 3215 FPL can recover all of its reasonable and prudent costs, including interest expense, depreciation expense, and O&M costs, make all of its planned 2026 investments, and earn a reasonable return on a reasonable amount of common equity in its capital structure with no increase at all in 2026. Schultz, TR 3215. Thus, it was and is FPL's desire to maximize its earnings that drove its original Petition and that is now driving its requested revenues and rates as one of the Special Interest Parties to the SIPs' Settlement. Its earnings are, of course, driven by its proposed rate of return on common equity ("ROE") – 11.90 percent in its original Petition and 10.95 percent in the SIPs' Settlement – and its financial equity ratio of 59.60 percent. Again, this is "where the money is" – in these critical earnings drivers.

In fact, the Public Counsel's evidence, through its witness Bill Schultz, shows that FPL should be required to reduce its rates by approximately \$620 million per year effective on January 1, 2026. Schultz, TR 3215.

C. A Substantial Proportion of the Excess Revenues in the SIPs' Settlement Results from the Excessive ROE in the SIPs' Settlement.

One principal driver of the excessive rates in the SIPs' Settlement is the proposed ROE of 10.95 percent. The preponderance of the record evidence in this proceeding supports a finding that an ROE somewhere between 9.20 percent and 10.50 percent would be fair and reasonable. The lowest ROE recommended in testimony is the 9.20 percent by OPC's witness Daniel Lawton, TR 3099; the 10.50 percent value is the highest approved by any regulatory commission in the United States in the past two years. FEA's witness Christopher Walters recommended an ROE of 9.50 percent based on methodological analyses very similar to those performed by FPL's witness James Coyne. TR 4107 The FRF and SACE adopted the position – an ROE of 9.20 percent – of the Public Counsel. Prehearing Order at 103. FEL's Witness Rabago recommended 9.60 percent. TR 2158 Other parties' witnesses supported ROEs of less than 10.0 percent, generally by reference to national averages. Bryant, TR 2487-88; Pollock, TR 3562; *see also* Prehearing Order at 103

Not surprisingly, Mr. Coyne is the distant outlier among the ROE witnesses, advocating for an ROE of 11.90 percent. In this context, it is worth noting that 100 basis points on ROE represents about \$500 million per year in revenue requirements. TR 1965, 4480 Thus, comparing Mr. Coyne's 11.90 percent to the 2025 national average of 9.83 percent, EXH 274 at page 4 of 4, produces a result of about \$1 billion a year (207 basis points times \$500 million per year = \$1.035 billion), or \$4.1 Billion over four years, in

excess earnings for his client. Similarly, comparing the 10.95 percent ROE in the SIPs' Settlement to the 2025 national average indicates excess earnings for FPL of about \$55 million per year (110 basis points times \$500 million per year = \$550 million) or \$2.2 billion over the 2026-2029 period covered by the SIPs' Settlement.

Also unsurprisingly, Mr. Coyne's proposed ROE was much greater than the utilities in his proxy group over the period 2023-2025 reported in Hearing Exhibit 274. Similarly, the SIPs' Settlement ROE of 10.95 percent, which Mr. Coyne supports, exceeds all other recommendations. Mr. Coyne's claims that FPL is so much riskier than other utilities are simply not credible: FPL's track record of earning **at or near the ceiling of its authorized range consistently over the past eight-and-one-half years** demonstrates that FPL's risk of failing to realize sufficient revenues, under virtually any conceivable circumstances, including returns adequate to protect its credit and attract capital, to provide safe and reliable service must be regarded as negligible.

With respect to FPL's self-serving attempts to justify an excessive ROE on the basis of allegedly extreme riskiness, the Commission should consider the Florida Supreme Court's opinion in *United Tel. Co. v. Mann*, 403 So. 2d 962, 966 (Fla. 1981) where the Court stated

Therefore, the purpose of establishing a fair or reasonable rate of return is to "fairly compensate investors for the risks they have assumed . . ." (*citing Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968)).

This holding completely negates Mr. Coyne's argument that FPL's risk is greater than

that of other utilities, because of its exposure to hurricanes and tropical storms, see TR 4288, because through its orders and ratemaking decisions, the Commission has long protected FPL from storm risks by providing for a storm reserve, by approving virtually immediate recovery of storm restoration costs through storm restoration cost recovery charges, and by approving storm protection and storm hardening costs, which reduce the risk of future restoration expenses, through the Storm Protection Plan Cost Recovery Clause. In short, FPL has not assumed any significant risk against which it is not already protected. FPL's storm risk argument is no more than a specious sound-bite – FPL's storm risk is illusory and is fully protected by the Commission's existing practices. Mr. Coyne's attempts to hang his hat on FPL's storm risk exposure due to the large coastline areas in its service territory, should be rejected.

The widely accepted standard set forth in *Bluefield* – that a fair return is equal to that realized by comparable companies operating in the same general part of the country during the same time period – leads, objectively, to the average ROE recently approved by regulatory commissions in the southeast United States. That average ROE for 2024 and 2025 is 10.04 percent (calculated using data in Exhibit 274), including the 10.50 percent recently approved by the Georgia Public Service Commission for Georgia Power Company, EXHs 1241 & 1242, which was not included in prefiled exhibits. Again, the 2024-2025 average ROE was chosen here because it yields a higher average ROE, 10.04 percent, than if the average for 2023-2025 (9.94 percent) were used.

The revenue and rate impact of the alternative ROEs are summarized here. Considering all of the evidence, FAIR believes that the straightforward application of the *Bluefield* standard defines an ROE of 10.04 percent as most appropriate for FPL in this case. This value is the calculated average of the ROEs approved for vertically integrated utilities in the southeast U.S. in 2024 and 2025, including the ROE of 10.50 percent for Georgia Power Company approved by the Georgia PSC in July 2025, EXHs 1241 & 1242. The base rate revenue requirements for FPL using this ROE, even allowing for FPL's excessive equity ratio, would be approximately \$1.8 billion less than the \$6.903 billion proposed in the SIPs' Settlement. The calculation is straightforward: 10.95 percent minus 10.04 percent equals 91 basis points; 91 basis points times \$500 million equals \$455 million per year; and \$455 million per year times four years equals the cumulative revenue requirement impact of \$1.82 billion over the 2026-2029 period.

The revenue requirements difference using the 9.50 percent ROE recommended by FEA's witness Walters and the SIPs' ROE is approximately \$725 million per year, or \$2.9 billion over the 2026-2029 period. The revenue requirements difference using Witness Rabago's 9.60 percent and the SIPs' ROE is approximately \$675 million per year, or \$2.7 billion over the four-year term of the SIPs' Settlement. The difference resulting from using the 9.20 percent ROE recommended by OPC's witness Lawton and the SIPs' ROE is about \$875 million per year or \$3.5 billion over 2026-2029. The difference that would result from using the national average ROE approved by U.S.

regulatory commissions in 2025, 9.83 percent (EXH 274, page 4 of 4), is about \$560 million per year, or \$2.24 billion over the four years.

The Commission must note that it has previously acknowledged the relevance of national average ROEs in its consideration of appropriate ROEs for public utilities. In Docket No. 20080677-EI, Order No. 2010-0153-FOF-EI at 131, the Commission rejected FPL's proposed ROE of 12.5 percent and approved an ROE of 10.0 percent. With respect to consideration of national average ROE information, the Commission stated the following:

While we do not believe the authorized ROE for FPL should be based upon the average return set by other Commissions during 2009, we do not believe returns significantly above or below this level are indicative of the investor-required return for FPL, either.

Order No. 2010-0153 at 131.

In this context, Mr. Coyne's recommended 11.90 percent ROE is more than 200 basis points above the recent national average, which is not remotely within the range surrounding national average returns contemplated by the Commission in the 2010 FPL Rate Case Order.

Considered in the light most favorable to FPL, and even without adjusting for FPL's excessive equity ratio, the base revenues proposed in the SIPs' Settlement are overstated by somewhere between \$1.82 billion (using the straightforward *Bluefield* standard of 10.04 percent based on ROEs approved by other regulatory commissions in the southeast U.S. in 2024 and 2025) and \$3.5 billion (calculated using the 9.20 percent

ROE recommended by OPC's witness Lawton). As discussed above, FPL's argument for the 10.95 percent that it negotiated with the other Special Interest Parties is specious and readily belied by objective evidence: (1) that FPL's earnings are consistently at or near the ceiling of its range and (2) that its storm risk argument is negated by the PSC's extraordinary protection of FPL against such risks.

D. The Rates Proposed in the SIPs' Settlement Are Unfair, Unjust, Unreasonable, and Unduly Discriminatory.

Over and above the broad economic harm to Floridians and the Florida economy that would result from the excessive revenues provided by the SIPs' Settlement, the rates that the SIPs' Settlement would allow FPL to charge and collect from its customers are unfair, unjust, and unreasonable because they are excessive; further, the SIPs' Settlement rates are unduly discriminatory because they unfairly and unjustly allocate the burdens of FPL's revenues in favor of FPL's large commercial and industrial customers and impose revenue responsibility disproportionately onto the backs of residential customers and small businesses. Rabago, TR 5050-52.

At the outset, the Commission must note that when FPL joined the SIPs' Settlement, it abandoned its originally proposed cost of service study, which one can reasonably expect to have been based on the cost allocation methodologies that FPL believed most appropriate. Without a cost of service study for the revenue requirements proposed in the SIPs' Settlement, FPL claims that it resorted to using the method used to allocate the revenue increases in the 2021 FPL Settlement. Cohen, TR 4875-76 The

SIPs' Settlement allocates the settlement revenues associated with production plant costs on an across-the-board basis, with a 5 percent discount to residential customers, instead of using the 12 Coincident Peak and 25 Percent Average Demand ("12CP & 25%AD") method proposed in its originally filed case. For cost recovery clauses, the SIPs' Settlement requires FPL to apply a 4 Coincident Peak and 12 Percent Average Demand allocation method for production plant costs. EXH 1277 at page 12 Both of these methods significantly favor large high-load-factor commercial and industrial customers.

Further, in agreeing to the SIPs' Settlement, FPL abandoned its proposal to reduce the credits provided to CILC and CDR customers and instead provided those customers with an increase from the current levels, from \$8.76 per kW to \$9.75 per kW, TR 5208, with further increases programmed to take effect when FPL brings future solar and battery storage units on line. EXH 1277 at page 18 This shift in FPL's position would have the effect of shifting approximately \$31 million per year of revenue responsibility away from the CILC and CDR customers, who are large commercial and industrial customers, and onto FPL's other customers, predominantly FPL's residential customers because they account for more than 63 percent of FPL's base revenues..¹⁰ Moreover, FPL acknowledges that the higher credit level does not pass the Rate Impact Measure Test

¹⁰ While it is true that some of the \$31 million of increased CDR/CILC credit costs would, in fact, be borne by customers in FPL's large demand-metered classes, General Service Large Demand and Commercial Industrial Load Control, the total revenues provided by those classes only account for less than 10 percent of FPL's total 2026 base revenues (calculated from MFR E-1, Attachment 3 at page 1 of 4) and therefore, their share of this shift would be small.

(“RIM Test”) that is applied to other energy conservation programs, TR 4896. This fact further demonstrates the discriminatory treatment in favor of large commercial and industrial customers provided by the SIPs’ Settlement.

Beyond the benefits conferred upon large commercial and industrial customers by abandoning its original production plant cost allocation proposals and its original proposed reductions in credits for CILC and CDR customers, the SIPs’ Settlement would, if approved, disproportionately allocate the \$600 million revenue reductions provided in the SIPs’ Settlement to rate classes dominated by the large commercial and industrial customers who either are themselves a Special Interest Party, or are represented by the Special Interest Parties. The total 2026 base revenue requirements reduction provided by the SIPs’ Settlement is approximately \$600 million annually, from \$1.545 million per year to \$945 million per year. Petition at 1, EXH 1277 at 2 However, this \$600 million revenue reduction will be allocated disproportionately to the large commercial and industrial customers represented by a number of the SIPs. Rabago, TR 5050-52, EXH 1314

These facts add up to one thing: unduly discriminatory treatment in favor of the large commercial and industrial customers represented by the Special Interest Parties to the SIPs’ Settlement and unduly discriminatory treatment to the detriment of FPL’s residential customers. The treatment of FPL’s small business customers is so egregiously discriminatory that it warrants the following separate discussion.

Finally, the cost allocation proposed in the SIPs' Settlement imposes an unfair, unjust, unreasonable, and unduly discriminatory – not to mention illogical and indefensible – allocation of cost responsibility onto FPL's General Service (GS) class. The GS rate class is populated predominantly by small businesses and similar customers. GS customers are not demand-metered and have peak demands no greater than 25 kW. EXH 8, MFR Schedule E-14, Attachment 1, page 13 of 15, GS Tariff Sheet No. 8.101. Not only does the SIPs' Settlement deprive the GS class from sharing in any of the \$600 million in revenue reductions from FPL's original case provided by the SIPs' Settlement, but it also actually imposes an increase in the GS class's revenue responsibility – and thus in the class's rates – that is dramatically greater than the revenue increase that FPL proposed for the GS class in its original filings. In its originally filed case, FPL proposed a total increase in the GS class's revenue responsibility of \$24.9 million per year in 2026, MFR E-5, Revenues at Present and Proposed Rates, page 1 of 2130, Settlement Schedule E-5; inexplicably, if the Commission approves the SIPs' Settlement, notwithstanding an overall decrease of about 30 percent in FPL's total revenue requirements as compared to its original request, the GS class will be asked to pay more than three times FPL's originally proposed increase - \$77.4 million per year in 2026. TR 5050

FPL's argument that the GS customer class is projected to have a relatively low average annual percentage increase in its rates, *see* TR 4891, is, like numerous other FPL arguments, specious and misleading. A low percentage increase from rates that are

excessive *ab initio* does not cure the initial unfairness and injustice of such rates. FPL's shift of approximately \$52 million per year of revenue responsibility onto the small business customers served under its GS tariff, a total rate increase greater than proposed in FPL's originally filed case, simply defies belief and reason, not to mention respect for principles of fair, just, and reasonable ratemaking.

FPL's argument that RS and GS customers will have lower total rate increases or lower annual percentage growth rates over the 2026-2029 period, TR 4631-32, is misleading, specious and speculative. The real issue is whether the rates are appropriately cost-based; given that FPL has changed its allocation methodology significantly from its originally filed case, apparently now speaking out of the "settlement" side of its corporate mouth, the Commission has to decide for itself what the appropriate class cost allocations are.

Regardless of how it was baked, this "pudding" clearly and convincingly demonstrates that the rates proposed in the SIPs' Settlement are **not** consistent with principles of fair, just, and reasonable rate-setting, and the Commission should/must reject the SIPs' Settlement.

FPL's claim that it represented the interests of residential customers in the settlement negotiations is false and belied by the results of FPL's purported "representation." FPL claims that it – the utility whose revenues were being determined in the SIPs' Settlement – represented the interests of its residential and small business

customers who would have to pay the rates that will produce a majority of FPL's total base revenues if the SIPs' Settlement is approved. TR 4914, EXH 1315 Aside from admitting a facial conflict of interest, FPL's claim is false. As FAIR's witness Zayne Smith, the Senior Director of Advocacy for AARP Florida, testified,

FPL's claim, which it expressed in both written discovery responses and in the deposition testimony of its Vice President of Finance, Scott Bores, is false. I am an FPL customer, and I work and interact with many FPL customers who are members of AARP Florida. No one from FPL ever consulted me, either as an FPL customer or as AARP Florida's Senior Director of Advocacy, to ask my position or AARP Florida's position on the rate increases or any other terms that would be imposed on me and other FPL ratepayers by the SIPs' Proposed Settlement. To spell it out for the PSC and for the public, no one from FPL ever even asked me or AARP Florida for the authority to represent the interests of me or AARP Florida's members in any such negotiations.

In my work, relationships, and interactions with AARP Florida members who are FPL customers, no FPL customer has told me that any FPL representative ever asked his or her opinion regarding any aspect of the SIPs' Proposed Settlement, nor has anyone told me that any FPL representative ever asked for the authority to represent his or her interests in any such negotiations.

TR 5102-03

Ms. Smith also testified that, in her opinion, the impacts of "the substantive provisions of the SIPs' Settlement are economically harmful" to the 12 million Floridians who receive their electric service from FPL and that proposals in the SIP's Settlement are unjustified. She noted specifically that the rates resulting from the SIPs' Settlement would be based on a return on equity higher than any approved by any public service commission in the U.S. in 2024 or 2025, as well as much higher than the national average

ROE approved by U.S. regulatory commissions over the past three years. TR 5101 (That national ROE value is 9.83 percent. EXH 274) Ms. Smith further noted that the impact of the excessive ROE alone, as compared to the recent national average, would be \$2.2 billion in excess revenues. TR 5101

Ms. Smith further testified that AARP members submitted 21,459 petitions opposing FPL's original requested rate increases, TR 5104, *see also* EXH 1330, and that 14,844 "tear-off" mailer cards were also delivered to the Commission opposing FPL's original requests. TR 5104, *see also* EXH 1331. With regard to the SIPs' Settlement, Ms. Smith testified that

Many AARP Florida members have reached out to me in my capacity as Senior Director of Advocacy to express their frustration regarding the SIPs' Proposed Settlement and to question how FPL could possibly move forward with a proposed settlement that did not include residential customers' voices. Every FPL customer with whom I have spoken since the SIPs' Proposed Settlement was submitted to the PSC opposes it. Since the SIPs' Proposed Settlement was only filed on August 20, following secret negotiations, AARP Florida and its members have only recently become aware of the SIPs' Proposed Settlement.

TR 5104

Further reflecting the opposition of AARP members to the SIPs' Settlement, Ms. Smith testified that, as of the date on which she filed her testimony, AARP Florida's records showed that more than 3,800 AARP Florida members had submitted email correspondence stating their opposition to the SIPs' Settlement and confirming that they were not represented by FPL in the settlement negotiations between and among FPL and

the other Special Interest Parties. TR 5105, *see also* EXH 1332.

Ms. Smith went on to testify that, speaking for herself “as an FPL customer and in the best interests of the 1.59 million AARP Florida members who are FPL’s residential customers,” her overwhelming first choice would be for the PSC to simply reject the SIPs’ Settlement and FPL’s original requests. TR 5111-12 She went on to state that, presented with a choice between the SIPs’ Settlement and the CMPs’ Proposal, she believes that while “the CMPs’ Proposal is overly generous to FPL, particularly in light of the fact that it would allow FPL to have rates set using the highest ROE in the country approved since 2023,” TR 5112, she believes that the CMPs’ Proposal is the more reasonable of the two proposals. TR 5112

One might reasonably expect that Ms. Cohen, FPL’s Vice President of Financial Planning and Rate Strategy, would have been aware of opposition to the SIPs’ Settlement. However, when asked whether she was aware of whether any customers opposed the settlement, she responded “I am not aware of any customer feedback.” TR 4914-15 Further, when asked whether she was aware of any correspondence that the PSC received opposing the SIPs’ Settlement, she responded, “There is likely some. I have not seen it.” TR 4915

In summary, the increases in FPL’s revenue requirements and rates under the proposed SIPs’ Settlement are excessive and contrary to the public interest. Specifically, considering the excessive rates factor alone, the SIPs’ Settlement is contrary to the public

interest of Florida and Floridians because, if approved, it will unnecessarily transfer unreasonable amounts of purchasing power – likely several billion dollars – from the pockets and pocketbooks of hard-working Floridians and businesses to FPL and NEE over the next four years. This will hurt the Florida economy by reducing consumers' purchasing power and by the inflationary effects of raising individuals' overall cost of living and increasing the costs of doing business for FPL's commercial and industrial customers. Moreover, competent substantial evidence of record shows that, if the Commission were to simply apply the *Bluefield* standard applicable to utility ROEs, any allowed increases would be much less than those under the SIPs' Settlement, further demonstrating that the rates in the SIPs' Settlement are unfair, unjust, and unreasonable. Further, the SIPs' Settlement results in further inequities and injustice by disproportionately allocating costs onto FPL's residential and small business customers with corresponding reductions in revenue responsibility and rates imposed on large commercial and industrial customers represented by several of the Special Interest Parties to the SIPs' Settlement.

Finally, while the Customer Majority Parties are the only parties in this proceeding who represent the real economic interests of FPL's residential customers, FPL's claims that it represented the interests of residential customers in the settlement negotiations that produced the SIPs' Settlement not only admits that FPL was acting with an obvious conflict of interest, FPL's claim is simply false. In the public interest, and to ensure fair,

just, and reasonable rates for FPL's customers, the Commission must reject the SIPs' Settlement as filed.

E. The Rate Stabilization Mechanism is Contrary to the Public Interest and Unfair to FPL's Current and Future Customers.¹¹ For any regulatory decision to be in the public interest, it must provide for fair, just, and reasonable rates and, consistent with the fundamental principles embodied in the Regulatory Compact, it must provide for fair treatment of both the utility and the utility's customers. TR 2624. By these widely accepted standards, the SIPs' Settlement is contrary to the public interest and the Commission should reject it. The SIPs' Settlement is contrary to the public interest because, in addition to the excessive rates described above, the RSM/TAM included in the SIPs' Settlement would deprive FPL's customers of an unknown amount, likely between \$1.155 billion and \$1.5 billion, of customer-created value that has resulted from customers paying in advance for FPL's tax liabilities (now deferred tax liabilities in accounting terms) plus an unknown amount of money created by customers' overpayment of depreciation expense in the past that now remains as an unamortized balance in the RSAM approved in the 2021 FPL Settlement. The transfer of the customer-created deferred tax liabilities and any remaining funds in the 2021 RSAM to FPL and NEE is contrary to the public interest, contrary to the individual interests of FPL's residential and

¹¹ For emphasis and avoidance of any doubt, FAIR again asks the Commission to please note that, by addressing the RSM issue substantively in its Brief, FAIR does not concede that approval of the RSM is lawful.

business customers, and contrary to the public interest of the Florida economy. Additionally, no RSM or TAM or similar scheme has been approved and used by any other regulated utility or regulatory authority in the U.S.

The SIPs' Settlement would also cause customer rates to be unfair, unjust, and unreasonable in the longer run, because the TAM component of the RSM/TAM will force FPL's customers to repay FPL for the deferred tax liability funds used by FPL at a rate of approximately \$36 million to \$38 million per year for the next thirty years.

The Commission should reject the RSM/TAM outright, but if it is allowed in any form, then it is critical – in order to ensure that the rates that FPL charges its customers are fair, just, and reasonable as required by Florida law and fundamental regulatory policy – that FPL only be allowed to use any surplus amounts to achieve an ROE no greater than the *midpoint* of its authorized range. This is undeniably fair to FPL, because it will ensure that FPL earns the “fair and reasonable” ROE approved by the PSC (whatever value is actually approved). Further, this would provide FPL extraordinarily strong protection of its financial integrity while ensuring that its risk of under-earning is virtually zero, and it would result in customer rates that are fair, just, and reasonable, consistent with the PSC's determination of whatever ROE it ultimately approves. TR 2630-31.

FPL's Proposed RSM. The proposed RSM would operate like the RSAM accounts in the 2016 FPL Settlement and the 2021 FPL Settlement. TR 4841, 4844 The RSM would include up to \$1.155 billion in deferred tax liabilities treated as TAM funds

proposed in FPL's originally filed case. EXH 1277 at page 19 Therefore, this mechanism is often referred to herein as the RSM/TAM. The total amount of funds available is presently unknown, because it depends on the amount of unamortized RSAM funds remaining at the end of 2025. Having said that, the TAM component would be \$1.155 billion, and there are also Investment Tax Credits (amount confidential), EXH 1277 at page 4, to be included, plus the remaining RSAM funds. At present, the end-of-year RSAM balance is unknown; recent values have been in the range of \$1 billion to \$1.4 billion.

The RSM Is Inconsistent with the Regulatory Compact. In Florida, the *midpoint* ROE is the fair and reasonable ROE used in determining the utility's allowed revenue requirements and in calculating rates that are fair, just, and reasonable. TR 2926 In Order No. PSC-2010-0153, at page 32, the Commission recognized that, considering all factors, a midpoint ROE of 10.0 percent would provide FPL with "the opportunity to earn a fair and reasonable return" for providing its regulated service. In *Gulf Power Co. v. Wilson*, 597 So. 2d 270 (Fla. 1992), the Court recognized that a "specific rate of return" is used in setting utility rates, and that within a range surrounding such midpoint, normal fluctuations would occur. However, the Court went on to state the following:

Thus the purpose of having a range is to give the commission some flexibility in deciding whether a public utility's rates should be changed. *The existence of the range does not limit the commission's authority to adjust rates even though a public utility's rate of return may fall within the authorized range.* For example, if a public utility is consistently earning a rate of return at or near the ceiling of its authorized rate of return range, the commission may find that its rates are unjust and unreasonable even though

the presumption lies with the utility that the rates are reasonable and just. *The commission's discretion in this matter is not annulled by the establishing of a rate of return range.*

(emphasis in original, *citing United Tel. Co. v. Mayo*, 403 So. 2d 648 at 967-68 (Fla. 1977)). FPL's use of the RSAM has obviously enabled FPL to earn "at or near the ceiling of its authorized rate of return range." FPL's consistently high ROE results over the past eight-plus years are not at all consistent with the purpose of having a rate of return range – "to give the commission some flexibility" – stated by the Court; FPL has taken advantage of the range to achieve exactly the excessive earnings results – earning returns "at or near the ceiling of its authorized rate of return range" – that the Court cautioned against.

FPL's Use of the RSM/TAM. As FPL has used the RSAM for the past eight-plus years, since January 2017, there is every reason to believe that FPL will use the funds paid by its customers through its proposed RSM/TAM to increase its ROE to the top of the range. *See* Devlin, 2927-31 (discussing the TAM, which comprises more than half of the total RSM/TAM funds) The settlement agreements approved in FPL's 2016 rate case and in FPL's 2021 rate case operate almost identically to that proposed by FPL in this case. The PSC's order approving the 2016 FPL Settlement became effective on January 1, 2017, and the 2021 FPL Settlement became effective on January 1, 2022. If history is an indicator of FPL's future intentions, and its track record of eight plus years is a strong indicator that it is, then it appears that FPL will use the RSM to increase its earnings to

the top or near the top of its ROE range. As shown on EXH 150, FPL achieved an ROE at the very top of the authorized range three of the four years since the 2016 FPL Settlement became effective, and FPL's achieved ROEs have averaged more than 90 basis points above the midpoint ROEs approved in the 2021 FPL Settlement since January 2022.

In practical terms, FPL wants to use the RSM/TAM funds to “manage” its ROE to be at or near the maximum of its authorized ROE range. In this case, the top of its range would be 11.95 percent, i.e., 100 basis points above the midpoint ROE proposed in the SIPs’ Settlement. FPL has successfully – for FPL and NEE - executed this strategy over the past eight-plus years by using significant portions of the surpluses available under the 2016 FPL Settlement and the 2021 FPL Settlement to make its ROE hit the top or near the top of its allowed return. If its ROE in any given month is calculated to exceed the top of the ROE range, then FPL uses the reserve surplus to avoid over-earning. This accounting manipulation has allowed FPL to use the RSAM as a “slush fund” to avoid triggering an earnings investigation or inquiry, e.g., through a “show cause” order issued by the Commission, and it is highly likely that the RSM/TAM would function in the same way. *See TR 2575 (citing Mr. Pimentel’s deposition testimony that “TAM, to me, is the same as RSAM.”)*

It is the midpoint ROE that is used to define fair, just and reasonable rates that will afford FPL the opportunity to earn that fair, just and reasonable ROE as established by the

Commission. FPL does not need to earn more than the mid-point of the authorized ROE to remain financially healthy, attract capital, and support its credit. FPL's parent, NextEra Energy, is the sole provider of equity capital to FPL, and NEE has not told FPL that it must be awarded any particular ROE or have its RSM approved in order for NEE to continue to provide needed equity. EXH 1236, FPL's Responses to FAIR's Interrogatories Nos. 7-9. The record evidence shows that if FPL is allowed to use the RSM to achieve the top of the proposed ROE range in the SIPs' Settlement, it would be able to use at least the \$1.155 billion in deferred tax payments made by its customers (the TAM monies), plus whatever amounts of RSAM are left from the 2021 FPL Settlement. (Although the ultimate amount of RSAM funds from the 2021 FPL Settlement is not yet final, it appears that the amount of RSAM used will be in the range of \$1.1 billion to \$1.4 billion, leaving between \$50 million and \$350 million available for use as part of the RSM.)

In other words, FPL can potentially use up the entire amount of funds available in the RSM/TAM for its benefit and the benefit of its sole shareholder, NEE. However much it uses will be taken away from FPL's customers, resulting in those customers paying higher rates following any future rate cases. *See* TR 1895-97 (amortization of the original TAM amount of \$1.717 billion would be amortized and increase revenue requirements by about \$57 million per year for the next thirty years, TR 4923; this would correspond to approximately- \$36 million to \$38 million per year for the \$1.155 billion of

TAM deferred tax liabilities in the SIPs' Settlement; TR 4850-51). Any amount of remaining RSAM funds used would reduce FPL's depreciation reserve and thereby increase FPL's rate base in any future rate case. TR 2363

Still addressing the midpoint ROE, Mr. Bores acknowledged that FPL can provide safe and reliable service with a *Bluefield*-compliant ROE. TR 4528 However, he attempted to deflect this consideration by asserting that FPL might not be able to address possible risk contingencies, TR 4529-30, and by asserting that the RSM/TAM gives FPL an incentive to create additional efficiencies. TR 4531 This is a false and misleading argument: in the first instance, it is FPL's job to seek out and implement efficiency improvements, which it could surely do with revenues and rates set using a *Bluefield*-compliant ROE. Further, and significantly, language in the Supreme Court's *Bluefield* opinion makes clear that regulators are to assume "efficient and economical management" when setting a utility's authorized return. *Bluefield* at 693 Mr. Bores could not say whether there would be any investments that FPL could not make if it were operating with a *Bluefield*-compliant ROE. TR 4531

Similarly, FPL's previous use of the 2021 RSAM will cost FPL's customers somewhere between \$100 million and \$140 million per year in higher rates going forward from this rate case because FPL's rate base will be somewhere between \$1 billion and \$1.4 billion greater following this case than it would have been had it not used the RSAM funds. This is directly because FPL's Accumulated Depreciation Reserve, which is

subtracted from Plant in Service in calculating rate base, will be between \$1 billion and \$1.4 billion less than it would have been. Using Mr. Bores's "rule of thumb" estimate of 10 percent for the revenue requirements impact of rate base, TR 2446, yields the \$100 million to \$140 million per year estimated base revenue and rate impacts stated above. The Commission should note that FPL's 2021 RSAM was based on an estimated theoretical depreciation reserve surplus of \$1.45 billion, but now, due in no small part to FPL's using up that surplus to support its earnings, the former surplus has turned into a \$1.9 billion deficit. TR 681

Worse still, competent substantial evidence in the record of this case shows that FPL could have and would have achieved total earnings greater than those necessary to achieve its approved midpoint ROE had it not used any of the RSAM at all. Hearing Exhibit 152 is Mr. Devlin's estimate of FPL's actual earnings per its Earnings Surveillance Reports: \$1.59 billion. EXH 152. Thus, FPL could have exceeded its approved midpoint ROE without using any RSAM funds over the 2022-2025 settlement period of the 2021 FPL Settlement.

Impacts on FPL's Customers. The rates proposed by FPL in this case are already higher than necessary due to the way FPL has used its current RSAM. If FPL had earned a fair and reasonable midpoint ROE since 2022, it would not have needed any of the RSAM, EXH 152, and the revenue requirements in this proceeding would be approximately \$140 million per year less than proposed because FPL's rate base would be

approximately \$1.45 billion greater than it is. If FPL is allowed to use the RSM/TAM for the purpose of managing its ROE, it is likely that FPL's customers will be paying FPL for allowing FPL to use the \$1.155 billion of TAM funds at approximately \$36 million per year for the next 30 years. TR 4851

Contrary to these basic principles, FPL's proposed RSM/TAM would provide FPL with significant control over its earnings levels for the next four years by using deferred tax liabilities – funds paid in by FPL's customers to cover FPL's future tax payment liabilities – to increase its earnings to the top of its range. TR 2926-27, 2929, 2932

In response to Mr. Bores's argument that the TAM is basically an issue of "pay me now or pay me later," where FPL has inserted itself into the role of decision maker for the 12 million Floridians it serves, FAIR asserts the following. It would clearly be inconsistent with sound public policy, the public interest, and norms of utility rate-setting to allow a utility to collect funds from its customers for a specific purpose – here, the future tax payments paid by FPL's customers – and then allow the utility to usurp those funds to support its earnings via a forced loan from its customers at FPL's cost of capital. This is deceptive, because FPL's customers paid for FPL's future tax liabilities in good faith, thinking that they had fulfilled their obligation. It is also contrary to any reasonable norms of good government or public policy.

If, contrary to the facts and principles of fair, just, and reasonable ratemaking, as well as to the law, any RSM, TAM, or similar mechanism were to be approved in this

case, it is critical – in order to ensure that the rates that FPL charges its customers are fair, just, and reasonable as required by Florida law and fundamental regulatory policy – that FPL only be allowed to use any customer-provided funds to achieve an ROE no greater than the *midpoint* of its authorized range. *See* TR 2937, TR 5000 FPL cannot credibly or legitimately claim that earning the *midpoint* ROE, especially with the RSM/TAM funds available to ensure that it does, is unfair to FPL or its shareholder. Allowing FPL to use the RSM/TAM to earn the *midpoint* ROE would provide FPL extraordinarily strong protection of its financial integrity while ensuring that its risk of under-earning is virtually zero, and it would result in customer rates that are fair, just, and reasonable, consistent with the PSC’s determination of whatever ROE it ultimately approves. *See* TR 2938, 2940 (FPL’s risk reduced if TAM allowed) Additionally, limiting the use of the RSM to the *midpoint* ROE, will still accommodate FPL’s agreement to a four-year stay-out provision. *See* TR 2940, 2945 To this point, FPL’s rates can be stable – and fair, just, and reasonable – both for FPL’s benefit and for the benefit of its customers if rates are set using the *midpoint* ROE.

FPL’s argument that it somehow needs additional funds – whether via RSAM, RSM, or TAM – to realize efficiency improvements, TR 4531, is specious and misleading. It is FPL’s job, as a public utility committed to providing safe and reliable service at the lowest possible cost, to seek and implement efficiency improvements. Moreover, regulatory authorities must assume “efficient and economical management” by

the utility in setting the rate of return used to determine its rates and revenues requirements. *Bluefield* at 693.

F. Prayer for Relief: The PSC Should Reject the Settlement Agreement as Submitted. In the Alternative, the PSC Should Demand Substantial Modifications of the Settlement Agreement in the Public Interest; With This Approach, the Commission Should Give Significant Consideration and Weight to the CMPs' Proposal.

As demonstrated above, the proposed SIPs' Settlement is contrary to the public interest because it would unnecessarily take billions of dollars of customers' money out of their pockets, wallets, and checking accounts and give their money, as excessive earnings, to FPL and NEE through unfair, unjust, and unreasonable rates that would be imposed from 2026 through 2029. The SIPs' Settlement would further transfer additional amounts – likely more than \$1 billion – of customer-paid-for value to FPL and NEE through the RSM/TAM, including both the deferred tax liabilities already paid for by FPL's customers and likely some portion of the RSAM funds (created by customers' overpayments of depreciation) remaining from the 2021 FPL Settlement's RSAM. This would thereby deprive FPL's customers of the value that their payments create in future FPL rate case or cases, in further violation of the fundamental regulatory principles of the Regulatory Compact. Moreover, the impacts of the class revenue allocation and rate design provisions of the SIPs' Settlement result in rates that unfair, unjust, unreasonable, and unduly discriminatory in favor of large commercial and industrial customers and to the detriment of residential and small business customers. Accordingly, to protect the public interest, and to ensure that FPL's rates are fair, just, and reasonable to all

customers, the Commission must reject the SIPs' Settlement as proposed. Alternatively, at a minimum and consistent with directly applicable (albeit not binding) Commission precedent, the Commission has the discretion to demand that FPL and the other SIPs agree to modifications to the SIPs' Settlement in order to win the Commission's approval.

Precedent. The Florida PSC has established precedent for encouraging parties to a proposed settlement to modify such a settlement in order to achieve a result more in line with the public interest. *In re: Petition for Increase in Rates by Florida Power & Light Company*, Docket No. 20120015-EI, Order No. PSC-2013-0023-S-EI (January 14, 2013) ("2013 Settlement Order"). In that earlier FPL rate case, FPL and some other parties had requested PSC approval of a non-unanimous settlement, but the Commission had concerns with the settlement as proposed. The Commission described the situation and its handling of it as follows:

At the Special Agenda Conference, we expressed our concerns with the proposed Settlement Agreement. We engaged in an extensive discussion of the benefits and detriments associated with provisions of the proposed Settlement Agreement, and whether the agreement as filed was in the public interest. Upon completion of our discussion, all parties were given an opportunity to engage in further settlement negotiations. Upon reconvening the Special Agenda Conference, the signatories filed a revised Stipulation and Settlement and the non-signatories reiterated their continued objections to our consideration of the proposed and modified agreements. **The modified agreement incorporates changes based on our extensive discussion.**

2013 Settlement Order at 5. (Emphasis supplied.) The Commission went on to approve the revised Stipulation and Settlement. *Id.* at 8. It is clear that the Commission's

expression of its concerns regarding the terms of the proposed settlement in that case led to the modifications ultimately approved.

What a Fairer Deal Might Look Like. The Commission must not mistake the following discussion for agreement that the terms suggested hereinbelow are necessarily appropriate. However, FAIR offers the following based on evidence in the record that would at least be less onerous to FPL's customers and less harmful to the Florida economy and the public interest:

- ▶ Limit FPL's ROE to an ROE between the 10.04 percent calculated consistent with the *Bluefield* standard and the 10.60 percent proffered in the CMP's Proposal;
- ▶ Limit FPL's financial equity ratio to the equity ratio of 53.0 percent proposed by the FEA's witness Christopher Walters or to the average equity ratio of 51.27 percent for the parent companies in Mr. Coyne's proxy group, which is significantly greater than the 46.56 percent average equity ratio for all of the operating utilities owned by the parent companies in his proxy group (which Mr. Coyne asserts is more appropriate than the parent companies' ratio); and
- ▶ Limit the use of any RSM to only an amount sufficient for FPL to earn at a "fair and reasonable" *midpoint* ROE approved by the PSC, e.g., the 10.04 percent calculated consistent with the *Bluefield* standard, or the 10.50

percent recently approved for Georgia Power and Tampa Electric, which is the highest ROE approved in the U.S. since 2023, or the 10.60 percent proffered in the CMPs' Settlement.

In summary, these terms would impose much lower revenue demands and rates on FPL's customers while still allowing FPL to recover all of its reasonable and prudent costs and do its job of providing safe and reliable service. These terms would thus also take less customer money out of the Florida economy to enrich FPL and NEE, put less pressure on Floridians' cost of living, and preserve much if not all of the customer-paid-for deferred tax liabilities for the benefit of FPL's customers in a future rate case.

Reductions to the highest ROE approved by any state regulatory authority in 2024 or 2025, i.e., the 10.50 percent approved for Georgia Power and Tampa Electric, would save FPL's customers approximately \$900 million from the \$6.903 billion that the SIPs' Settlement would otherwise take from them. Reductions to the exact *Bluefield* standard – the average ROE of 10.04 percent approved by utility regulatory authorities in the southeast U.S. in 2024 and 2025 – would save FPL's customers approximately \$1.82 billion from the \$6.903 billion that the SIPs' Settlement would otherwise take from customers. (Four years of the difference of 91 basis points times \$500 million per year is \$455 million per year times 4 years, which equals \$1.82 billion.)

Additionally, limiting FPL's ability to use the RSM to a *midpoint* ROE of 10.5 percent – again, the highest approved in the United States in 2024 or 2025, or even the

midpoint ROE of 10.6 percent proffered in the CMPs' Proposal – will almost certainly preserve the customer-paid-for value of \$1.155 billion of deferred tax liabilities, and likely some portion of the RSAM funds left over from the \$1.45 billion in the 2021 FPL Settlement that would, following standard regulatory accounting, then be applied to reduce FPL's rate base in its next rate case. With these lower rates, FAIR would suggest that the Commission at least consider realigning the allocation of cost responsibility to ensure an equitable allocation across all customer classes.

II. Major Elements of the Special Interest Parties' Settlement

As instructed by Order No. 2025-0345 and verbally at the conclusion of the hearing, FAIR provides the following positions on the 26 major elements identified in Order No. 2025-0345. Several of these issues are covered extensively in the foregoing sections of FAIR's Brief.

1. Term: 1/1/26-12/31/29, unless extended per RSM

FAIR is generally supportive of the OPC's position on Major Element 1.

2. Cost of Capital: ROE 10.95; Capital Structure 59.6% equity ratio

FAIR's position on Major Element 2 is set forth Section I.C of this Brief.

3. 2026 Base Rate Adjustment \$945M

FAIR is generally supportive of the OPC's position on Major Element 3.

4. 2027 Base Rate Adjustment \$705M

FAIR is generally supportive of the OPC's position on Major Element 4.

5. Revenue Requirement Allocation

FAIR's positions on Major Element 5 are set forth Section I.D of this Brief.

6. Commercial/Industrial Load Control and Demand Reduction Credits

FAIR is generally supportive of the OPC's position on Major Element 6.

7. Large Load Contract Service

FAIR is generally supportive of the OPC's position on Major Element 7.

8. CIAC Tariff

FAIR is generally supportive of the OPC's position on Major Element 8.

9. Electric Vehicle Charging Programs

FAIR is generally supportive of the OPC's position on Major Element 9.

10. Cost Allocation Methodology for Cost Recovery Clause Factors

FAIR is generally supportive of FEL's position on Major Element 10.

11. Storm Cost Recovery Mechanism

FAIR is generally supportive of the OPC's position on Major Element 11.

12. SoBRA Base Rate Adjustments 2027, 2028, 2029

FAIR is generally supportive of FEL's position on Major Element 12.

13. Federal or State Tax Law Changes

FAIR is generally supportive of the OPC's position on Major Element 13.

14. Capital Recovery Schedules

FAIR is generally supportive of the OPC's position on Major Element 14.

15. Depreciation and Dismantlement

FAIR is generally supportive of the OPC's position on Major Element 15.

16. Sale of Excess ITCs and PTCs

FAIR is generally supportive of the OPC's position on Major Element 16.

17. Rate Stabilization Mechanism

FAIR's positions on Major Element 5 are set forth Section I.E of this Brief.

18. Asset Optimization Program

FAIR is generally supportive of the OPC's position on Major Element 18.

19. Long Duration Battery Storage Pilot

FAIR is generally supportive of FEL's position on Major Element 19.

20. Land for Solar Facilities and Sale of Property Held for Future Use

FAIR is generally supportive of the OPC's position on Major Element 20.

21. Vandolah

FAIR is generally supportive of the OPC's position on Major Element 21.

22. Natural Gas Hedging

FAIR is generally supportive of the OPC's position on Major Element 22.

23. Disconnection Policy

FAIR is generally supportive of FEL's position on Major Element 23.

24. Payment Assistance Contribution

FAIR is generally supportive of FEL's position on Major Element 24.

25. Support Proposal for Large Customer Opt-out of ECCR

FAIR is generally supportive of the OPC's position on Major Element 25.

26. Minimum Bill (Exhibits B and C)

FAIR is generally supportive of FEL's position on Major Element 26.

III. Legal Issues Relating to the Commission's Statutory Authority.

ISSUE 1: Whether the following persons have standing to intervene in this proceeding:

- a. **League of United Latin American Citizens of Florida**
- b. **Environmental Confederation of Southwest Florida, Inc.**
- c. **Florida Rising, Inc.**
- d. **Florida Industrial Power Users Group**
- e. **Federal Executive Agencies**
- f. **Southern Alliance for Clean Energy**

- g. EVgo Services, LLC**
- h. Electrify America, LLC**
- i. Florida Retail Federation**
- j. Walmart, Inc.**
- k. Florida Energy for Innovation Association**
- l. Floridians Against Increased Rates, Inc.**
- m. Americans for Affordable Clean Energy, Inc.**
- n. Wawa, Inc.**
- o. RaceTrac, Inc.**
- p. Circle K Stores, Inc.**
- q. Armstrong World Industries, Inc.**

FAIR:

The testimony and exhibits of Nancy H. Watkins and Frederick M. Bryant, whose testimony was not challenged by any party, establish that Floridians Against Increased Rates, Inc., satisfies all applicable standing criteria of Chapter 120, Florida Statutes, and relevant case law, including *Agrico Chemical Co. v. Dep't of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981), *rev. denied*, 415 So. 2d 1359 (Fla. 1982). and *Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982).

Specifically, these witnesses and their exhibits describe FAIR's purposes as set forth in FAIR's Articles of Incorporation, EXH 270, which are included as exhibits to both Ms. Watkins's and Mr. Bryant's testimony. FAIR's purposes include advocating for decisions made by the PSC that will result in the retail electric rates charged by Florida's investor-owned electric utilities being as low as possible while ensuring that the utilities are able to provide safe and reliable electric service. Ms. Watkins' testimony establishes

that, based on appropriate sampling techniques and statistical analyses, she verified that FAIR had, as of June 6, 2025, 1,136 members, nearly all of whom were residential customers, and that 986 of FAIR's members were customers of FPL. Watkins Direct at 7-10, TR 4218-21. Her Exhibit NHW-3, EXH 271, is a roster of FAIR's members as of June 6, 2025. These facts establish that FAIR satisfies all applicable standing criteria of *Agrico* and *Florida Home Builders*.

FAIR takes no position regarding the standing of other parties.

ISSUE 2: Does the Commission have the authority to approve FPL's requested Tax Adjustment Mechanism (TAM)?

FAIR: No. FAIR adopts and concurs with the position and arguments of the Office of Public Counsel on this issue.

ISSUE 3: Does the Commission have the authority to approve FPL's requested Solar Base Rate Adjustment mechanisms in 2028 and 2029?

FAIR: No. FAIR adopts and concurs with the position and arguments of the Office of Public Counsel on this issue.

ISSUE 4: Does the Commission have the authority to approve FPL's proposed Storm Cost Recovery mechanism?

FAIR: No. FAIR adopts and concurs with the position and arguments of the Office of Public Counsel on this issue.

ISSUE 5: Does the Commission have the authority to approve modification FPL's proposed mechanism for addressing a change in tax law?

FAIR: No. FAIR adopts and concurs with the position and arguments of the Office of

Public Counsel on this issue.

FINAL CONCLUSIONS AND RELIEF REQUESTED

The SIPs' Settlement Agreement. The evidence in this case demonstrates that FPL does not need any rate increase at all in 2026 in order to provide safe and reliable service, recover all of its reasonable and prudent costs including O&M costs, depreciation expense, and interest expense, and earn a reasonable rate of return on a reasonable amount of common equity capital in its capital structure. Accordingly, the 2026 rate increases - \$945 million per year – proposed in the SIPs' Settlement, which would carry forward through 2027, 2028, and 2029, are excessive and would result in FPL's rates being unfair, unjust, and unreasonable. Such rates are contrary to the public interest because they would unnecessarily take upwards of \$3.5 Billion out of the pockets and checking accounts of Floridians and Florida businesses, transferring this vast amount of purchasing power to FPL and NEE, thereby injuring the Florida economy. Such excessive rates are also contrary to the specific criterion regarding rates recognized by the Florida Supreme Court in *Sierra Club v. Brown*, i.e., that rates resulting from any settlement agreement must be fair, just, and reasonable. Moreover, FPL's proposed RSM would unfairly, unjustly, and unreasonably deprive customers of value – likely exceeding the \$1.155 billion of FPL's deferred tax liabilities for which its customers have already paid; this unfair additional transfer of value and (future) purchasing power to FPL and NEE is also contrary to the public interest, as well as contrary to Florida law.

Accordingly, the Commission must reject the Special Interest Parties' Settlement as proposed to the Commission. If the Commission wishes to seek a compromise resolution of this case that truly promotes the public interest, based on the settlement vehicle, then the Commission might consider following its precedent (again, non-binding) from the resolution of the 2012 FPL rate case by suggesting, or even demanding, that FPL and the other SIPs must, in order to win Commission approval of any settlement, make the terms thereof fairer to FPL's customers. FAIR submits that, based on the evidence, including the terms proffered in the CMPs' Proposal, the following outcomes are reasonable and in the public interest:

- ▶ Limit FPL's ROE to the ROE of 10.04 percent that directly tracks the standard set forth by the U.S. Supreme Court in *Bluefield*;
- ▶ Reallocate the class revenue responsibility in a fair, just, and reasonable manner that does not unduly discriminate against FPL's residential and small business customers; and
- ▶ Limit the use of any RSM to only an amount sufficient for FPL to earn at the "fair and reasonable" *midpoint* ROE approved by the PSC, e.g., the 10.04 percent ROE that embodies the Bluefield standard or the 10.60 percent proffered in the CMPs' Proposal.

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/s/Robert Scheffel 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 on this 10th day of November, 2025, to the following:

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