BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO. 20250011-EI FILED: November 10, 2025

POST-HEARING BRIEF OF THE FLORIDA OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel ("Citizens" or "OPC"), submit this Post-Hearing Brief pursuant to the Order Establishing Procedure, No. PSC-2025-0075-PCO-EI, issued March 14, 2025, and the First Order Revising Order Establishing Procedure, No. PSC-2025-0323-PCO-EI, issued August 22, 2025.[1]

STATEMENT OF BASIC POSITION

The Commission must abide by its statutory obligation to protect the welfare of Florida Power & Light's ("FPL" or "Company") customers, not FPL, and reject the Special Interest Parties' Proposal ("SIPP"). FPL agrees that "uncertainties abound,"[2] but FPL and the Special Interest Parties[3] ("SIPs") are trying to guarantee rate increases for the next four years so that the risk from all of these uncertainties falls on residential and small commercial customers, not on

[1] On Friday, November 7, 2025, OPC learned that certain Case Center citations that OPC had been relying upon during cross-examination and incorporating into this brief had changed due to certain documents being added to Case Center. In preparing this brief, OPC has utilized the original numbering of exhibits consistent with how Case Center numbered the exhibits at the start of the hearing and as they are reflected throughout the transcript of the hearing. Commission staff informed the parties late Friday afternoon to continue to use the original page numbers. The parties were shortly thereafter advised that the issue had been resolved. However, it seems that certain page numbers are still incorrect. Pursuant to section 120.57(1)(b), OPC has a fundamental right to submit a brief that the Commission must consider. To the extent that the page numbering that OPC has relied upon impaired the Commission's consideration of this brief, the Commission must provide adequate time for any necessary corrections to be made so that the briefing that was done on reliance upon the Case Center page numbering was accurate. Since FPL waived the statutory timeframes provided in section 366.06, Florida Statutes, the deadline for the Commission's vote in this matter is secondary to ensuring the protection of the OPC's due process rights to challenge the SIPP.

[2] TR 4439.

[3] The Florida Industrial Power Users Group ("FIPUG"), Florida Retail Federation ("FRF"), Florida Energy for Innovation Association ("FEIA"), Walmart Inc. ("Walmart"), EVgo Services LLC ("EVgo"), Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac, Inc., Wawa, Inc., (Collectively "Fuel Retailers"), Electrify America LLC ("Electrify America"), Federal Executive Agencies ("FEA"), Armstrong World Industries, Inc. ("Armstrong"),and Southern Alliance for Clean Energy ("SACE").

FPL or FPL's large industrial or commercial customers. While OPC represents all FPL customers, OPC cannot stand idly by while certain customer groups undermine the statutory ratemaking process in a way that harms all customers. The growing uncertainties in this case include, but are not limited to: (1) various threats from data centers like stranded assets from unrealized projected growth and water overconsumption; (2) FPL's planned expensive, unnecessary, and decreasingly cost-effective solar energy facilities; (3) the future of production tax credits at a time when the federal government is making it harder and harder to qualify for them; (4) FPL's acquisition of the Vandolah Generating Facility ("Vandolah") and the planned resources it will offset over at least the next four years; (5) the Low Income Home Energy Assistance Program ("LIHEAP") and whether it will be fully-funded over the next four years; and (6) most recently, the federal government shutdown and what impacts it will have on FPL's customers.

To insulate themselves from all of these uncertainties, FPL and the SIPs have included many self-serving provisions in the SIPP. Several of these provisions function as poison pills, including the Rate Stabilization Mechanism's ("RSM") repackaged Tax Adjustment Mechanism ("TAM") to "recollect" or double-recover $1.155 billion of customer cash (plus carrying costs), the unreliable Stochastic Loss of Load Probability ("SLOLP") hastily conducted in this case in an attempt to justify FPL's expensive and unnecessary planned solar and battery additions, FPL's unconscionable 10.95% midpoint return on equity ("ROE") that will allow FPL to transfer even more customer cash to shareholders, FPL's historic and projected abuse of Plant Held for Future Use ("PHFU"), and more. These toxic provisions eliminate any possibility that the Commission could find that the SIPP, even when taken as a whole, is in the public interest.

The SIPP is not only contrary to the public interest of FPL's customers, but also harmful to the State of Florida. Data centers and the threats that they pose are a developing issue across the

state, and yet with the SIPP's lack of adequate guardrails, FPL and the SIPs are exposing the State and FPL's general body of ratepayers to increased risk by proposing even fewer restrictions on data centers compared to when FPL filed this case. Additionally, FPL is asking to add 72 *more* solar facilities over the next four years, and another 165 more after that. In total, FPL plans to cover at least 142,200 additional acres of our beautiful Florida land in solar panels over the next decade. Another way the SIPP is bad for the State of Florida is that in FPL CEO and President Armando Pimentel's testimony, he encouraged other utilities to pursue their own TAM, which other utilities will surely take him up on to the detriment of their customers if the Commission authorizes the double-recovery and matching principle violations inherent in the TAM.[4]

The Commission must protect the welfare of FPL's customers and the State of Florida by rejecting the invalid SIPP for all the reasons laid out in this post-hearing brief. The SIPP does not resolve all issues in the docket, it creates issues. The SIPP does not result in fair, just, and reasonable rates, it seeks to raise rates five times over the next four years to the detriment of all FPL customers. The SIPP is not in the public interest, just the special interest. On behalf of the welfare of FPL's customers, the Commission must reject the SIPP.

MAJOR ELEMENTS

MAJOR ELEMENT 1: Term: 1/1/2026 - 12/31/2029, unless extended per RSM

ARGUMENT:

Pursuant to paragraph 1 of the SIPP, the minimum term of the proposed SIPP is January 1, 2026, through December 31, 2029. EXH 1277, MPN K3. However, FPL included the following provision regarding a potential extension of the RSM:

> The RSM shall terminate upon the expiration of the Minimum Term of this Agreement and FPL may not amortize any portion of the

[4] TR 100-101.

> RSM past December 31, 2029 unless FPL provides notice to the Parties by no later than March 31, 2029 that it does not intend to seek a general base rate increase to be effective any earlier than January 1, 2030.

EXH 1277, MPN K25.

Unless this is a typo, and FPL and the SIPs intended for the last date in the above quotation to be "January 1, 2031," this provision is meaningless since FPL is already purportedly agreeing in the SIPP not to seek a general base rate increase to be effective prior to January 1, 2030 (except in circumstances described in paragraph 5 of the SIPP).

MAJOR ELEMENT 2: Cost of Capital: ROE 10.95; Capital Structure 59.6% Equity Ratio

ARGUMENT:

The 10.95% midpoint ROE with the 59.6% equity ratio in the SIPP does not reflect a true compromise. It reflects rather a still-inflated, overstated, and illegitimate claim of the required ROE and equity ratio necessary under current market conditions. These requests are 117 and 123 basis points greater than the authorized electric returns from major rate case decisions for 2024 and the first quarter of 2025, respectively, as shown in FPL witness James Coyne's exhibit. EXH 319. Moreover, aside from Alaska Electric Light Power's award, the ROE request is 45 basis points greater than the highest authorized ROE in the nation (10.5%) in the last two years. TR 3471, 2572; EXH 274, MPN C49-5359 - MPN C49-5361. For FPL, 100 basis points equates to approximately $500 million dollars in revenue requirement. TR 2394. This excessive 10.95% ROE request would result in excess revenues of approximately $225 million per year starting in 2026 (compared to the highest ROE approved anywhere in the lower 48) and $900 million over the four-year term of the SIPP. TR 2571, 4982, 5030.

In this portion of the post-hearing brief, OPC will address the legal standards for establishing an ROE and equity ratios. Then, OPC will discuss the selection of the proxy group of companies, followed by ROE modeling and equity ratio. Finally, OPC will address the Customer Majority Parties' Proposal ("CMPP") and its more realistic, while generous, ROE that maintains FPL's equity ratio as compared to the SIPP's still inflated, overstated, and illegitimate ROE on top of its already thick equity ratio.

Legal Standards

The United States Supreme Court set the legal standards for determining the appropriate rate of return in two landmark cases. TR 3112. In *Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923), the United States Supreme Court established the following general standards for the rate of return: the return should be sufficient for maintaining financial integrity and capital attraction, and a public utility is entitled to a return equal to that of its investments of comparable risks. TR 3112. Specifically,

> [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 undertaking 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. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield, 262 U.S. at 692-693.

When Mr. Coyne cited the *Bluefield* case, he omitted the language "but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures," which calls into question his use of non-dividend paying, high profit companies for his modeling. TR 1971, 4132. The second United States Supreme Court decision is *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944). In the *Hope* case, the *Bluefield* standards were affirmed and the Court further found that the methods employed for determining a return are not the test of reasonableness; rather, the result and impact of the result are controlling. *Hope,* 320 U.S. at 602. TR 3113.

Both the *Bluefield* and *Hope* cases require that the ROE be measured against returns for similar businesses with similar risks in the same part of the country. It is necessary to consider recent national average awarded ROEs as a benchmark when determining whether FPL's request comports with the *Bluefield* and *Hope* standards. The recently authorized, average ROEs for vertically integrated electric companies are 9.71% in 2023, 9.85% in 2024, and 9.83% through April 2025. TR 2156. The average ROE for vertically integrated utilities authorized from 2023 through April 29, 2025, is 9.78%. TR 2156. These returns show the actual average ROEs that will be earned for the companies that have similar risks and uncertainties. These proxy groups are established to reflect similar risks and uncertainties as non-publicly traded companies. Both FPL and intervenors used nearly the same companies for their proxy groups to determine FPL's ROE. Thus, they chose publicly traded companies for their proxy groups who have regulated revenue and net operating income from regulated electric operations that makes up at least 80% of the consolidated company's regulated revenue and net operating income (based on a 3-year average from 2021-2023). TR 1990.

Proxy Group/Risk

Mr. Coyne selected his proxy group of companies from over 36 investor-owned, publicly traded, domestic electric utilities based on screening criteria comparable to FPL. TR 1989. He opined that these companies were chosen because they possess a set of business and operating characteristics similar to FPL's vertically integrated electric utility operations and, therefore, provide a reasonable basis for estimating FPL's ROE. TR 1988. After reviewing Mr. Coyne's eight risk criteria used to choose the proxy group, OPC expert witness Daniel Lawton utilized the same proxy group but excluded TXNM Energy from his proxy group because TXNM was subject to a buy-out and merger at the time, leaving 14 companies in Mr. Lawton's group. TR 3130. Instead of merely removing TXNM from his proxy group in his rebuttal testimony, Mr. Coyne added two new companies, FirstEnergy Corp. and Dominion Energy Resources, to his proxy group. TR 4296-4297. Mr. Coyne characterized this as an "update" because these companies' recent merger and acquisition activity occurred more than six months prior to his update. TR 4297. Mr. Coyne did a "do-over" analysis when it became apparent that his initial analysis was facially absurd.

Although the proxy group was chosen by Mr. Coyne to be representative of comparable business and financial risk to FPL, both Mr. Coyne and FPL witness Scott Bores would have the Commission believe that FPL has greater business and financial risk than the proxy group, which is unsupported by the record evidence. As Mr. Coyne acknowledged on cross examination, nine out of fifteen companies in the rebuttal proxy group have nuclear power plants. TR 4371 Mr. Coyne also created a weather risk index, which is an unsubstantiated attempt to demonstrate that FPL has a significantly greater risk from weather events compared to the proxy group. EXH 317. This analysis takes unrelated FEMA risk information developed for a wholly different purpose and seeks to import it into this proceeding without sufficient clarity into its applicability. On cross-

examination, Mr. Coyne acknowledged that he was unaware whether any Commission has accepted this analysis. TR 4373-4374, 4377. At least four companies in Mr. Coyne's proxy group have exposure to hurricanes, and the other electric companies on the list have exposure to other potentially significant weather events. TR 4371-4372. Moreover, FPL is the beneficiary of hurricane mitigating mechanisms such as the Storm Protection Plan Cost Recovery Clause and Storm Cost Recovery Mechanism ("SCRM") that significantly reduce the cost impacts of hurricanes and the regulatory lag for post-hurricane cost recovery. TR 2286, 2385, 4136. It is unfair and unjust to use this supposed additional weather risk from hurricanes that FPL customers have already paid to significantly mitigate as a reason to extract additional profits for FPL's shareholders.

Mr. Bores suggests that FPL has a unique financial risk profile. TR 5160. He claims without proof that FPL's capitalization needs are not the same as every other utility in the country. TR 5160. However, if this risk due to FPL's excessive capitalization investment program is real, then FPL should decrease its capital spending plans and its requested ROE, not increase both as pointed out by FEL expert witness Karl Rábago. TR 3864. While Mr. Bores wants to suggest that only Mr. Coyne did a proper modeling analysis for FPL's ROE, he ignores the ROE modeling analyses of two intervenor witnesses – one of whom was Mr. Lawton. TR 5160. Mr. Bores implies that financial doom would ensue if the Commission approved the CMPP's 10.6% ROE or if the Commission chose from the intervenors' recommended ROE range of 9.2% to 10.5%. Mr. Bores' claimed that the result of FPL's 2010 rate case, which occasioned a one-notch downgrade from S&P from an A to A-minus (tempered by a post-decision settlement), would happen again. This claim is pure unsubstantiated speculation. Furthermore, this implies that if the Commission were

ever to attempt to reign in FPL's excessive ROE, it would ruin FPL, which is unsupported by the record. TR 4416.

In addition, Mr. Bores purposely conflates customers advocating for FPL's ROE to be more in-line with the average awarded ROEs for vertically-integrated electric companies (so customers are not paying excessive rates) with an implied threat that FPL would lower their service quality (i.e. lead to average levels of performance). TR 4416. Then Mr. Bores further argues that FPL is a "premier utility in the country in the metrics that matter to customers,"[5] but he fails to consider that captive customers should not have to pay a premium for the level of service they have a right to expect in exchange for monopoly service.

ROE Modeling

Of the seven witnesses that addressed ROE, only three of these witnesses actually conducted analyses using modeling. TR 4306, 4427. All three of these witnesses used a version of the discounted cash flow model ("DCF"), the Capital Asset Pricing Model ("CAPM") and Risk Premium Model; only Mr. Coyne used an Expected Earnings analysis. TR 3155, 4306, 4314, 4323, 4327. The recommended midpoint ROEs for the three witnesses who conducted modeling were 11.9% by Mr. Coyne, 9.2% by Mr. Lawton, and 9.5% by FEA expert witness Christopher Walters. TR 2023, 3099, 4107.

Both FAIR and FIPUG recommended that the authorized ROE be no greater than TECO's 10.5% ROE (the highest recently awarded ROE in Florida). TR 2504, 3471. FEL expert witness Karl Rábago and Walmart expert witness Lisa Perry recommended that the Commission consider the average of recently nationally awarded ROEs in setting FPL's ROE. Specifically, Mr. Rábago

[5] TR 4416.

recommends a 9.6% ROE and Ms. Perry recommends a 9.78%. ROE. TR 2158, 3866. These non-modeled recommendations, particularly those relying on the average national awarded ROE, should be considered as a sanity check on whether FPL's requested ROE of 10.95% in the SIPP is reasonable, which it is not.

As noted earlier, FPL essentially did a "do-over" in Mr. Coyne's rebuttal testimony after Mr. Lawton criticized him for ignoring that his CAPM 15.63% ROE result was 472 basis points above his next highest ROE result of 10.91% from his Expected Earnings modeling. TR 3152-3153. After Mr. Coyne's "do-over," his CAPM result came down by 310 basis points to 12.53%. TR 4297. Mr. Coyne's other modeling results went up by eight basis points (Risk Premium), 15 basis points (DCF), and 38 basis points (Expected Earnings), which is within the same range and directionally consistent with his chart showing a 36 basis point increase in U.S. 30-year Treasury bonds, a 41 basis point increase of Moody's Utility A Index, and a 41 basis point increase of Baa Index. TR 4297, 4300. Mr. Coyne's first CAPM result was an obvious outlier. His second CAPM attempt confirmed that the first was an outlier since the decreasing directional movement was inconsistent with all other indicators which increased over the same timeframe. TR 3153.

Another factor in Mr. Coyne's problematic CAPM was his use of constant growth DCF for the expected returns of the dividend paying stocks and non-dividend paying growth stocks in the S&P 500. TR 2047-2048, 3154-3155. Using non-dividend paying growth stocks can lead to absurdly high result for the Market Risk Premium used in the CAPM model. TR 3154. The Federal Energy Regulatory Commission, or FERC, does not use non-dividend paying stocks in its modeling. TR 4367-4368. Thus, Mr. Coyne's CAPM results should be given little weight as recommended by Mr. Lawton. TR 3153.

Despite the glaring problems with his CAPM modeling and his "do-over," Mr. Coyne was still recommending an 11.9% ROE for FPL. TR 4297. However, his 11.9% ROE recommendation was originally based on an 11.83% simple average of all his models plus a .09% floatation adder, rounded down. TR 2023. Yet, the simple average based on the "do-over" results would be a still-outrageous 11.3% (11.21% plus the .09% floatation adder). TR 4297, 4353-4354. Mr. Coyne attempts to justify his failure to update his recommendation by arguing that his other models had increased, and his recommendation was within his range. He also argues that FPL's risk profile and economic and capital market conditions justified it. TR 4299. However, this deliberately ignores that following Mr. Coyne's original simple averaging approach would recognize all these factors and would be consistent. As Mr. Lawton noted, Mr. Coyne's imbalanced approach to all his model results (such as his judgement used with his first CAPM, ignoring the lower end DCF results, and selecting the highest midpoint in the expected earnings analysis) are skewed to pick the high results. TR 3155. As such, this Commission should not consider results that do not reflect a balanced and fair weighing of such results and should give little weight to Mr. Coyne's proposals. TR 3155. However, if the Commission were to consider Mr. Coyne's results at all solely in an averaging analysis, it should reflect in its analysis the still-unreasonable 11.3% (the simple average of his model results from the rebuttal testimony) instead his original recommendation of 11.9%. TR 4353. The OPC does not support the use of an averaging analysis.

If an averaging analysis is to be used, the simple average of all the recommended ROEs (including the non-modeled approach results) would result in 10.1% (using Mr. Coyne's rebuttal average of 11.3%), and 10.14% (using Mr. Coyne's recommended 11.9%). TR 4353, 4427. The simple average of all the modeled ROEs would result in 10.0% (using Mr. Coyne's rebuttal average of 11.3%), and 10.2% (using Mr. Coyne's recommended 11.9%). TR 4353, 4427, 4677.

The SIPP's 10.95% ROE is 75 basis points above 10.2% (the highest average recommendation). This difference alone would cost FPL's ratepayers approximately $375 million per year.

Mr. Coyne attempts to justify the SIPP's excessive 10.95% ROE request by claiming it is at the lower end of his modeled results (10.28% to 15.65% - direct, 10.43% to 12.53% - rebuttal), which is problematic for the reasons discussed above. TR 4626. Mr. Coyne also claims the SIPP ROE request is within Mr. Walters' ROE modeling range results (7.24% to 11.12%) and was slightly higher than Mr. Lawton's ROE modeling range results (8.51% to 10.64%). TR 4626-4627. However, this is a specious attempt to misinterpret the other modeling results. Both Mr. Walters (9.5%) and Mr. Lawton (9.2%) recommend ROEs that are more than 100 basis points lower than the SIPP requested 10.95% ROE.

Mr. Coyne also attempts to justify this excessive ROE request by pointing to the mere 35-basis point requested increase in FPL's ROE versus the 290-basis point increase in U.S. Treasury bonds since the 2021 Settlement. TR 4627. Yet, Mr. Coyne recognized that authorized ROEs do not directly track the 30-year U.S. Treasury bonds. TR 4691, 5190. Under cross examination, Mr. Coyne also recognized that U.S. Treasury bonds as of October 14, 2025, were 4.63%, down by approximately 30 basis points since June 30, 2025. TR 4300, 4361. A 35-basis point ROE increase for FPL from 2021 does not support Mr. Coyne's claim that FPL's request is reasonable because the 10.6% ROE (10.8% after 2022 trigger) was already more than 120 basis points greater than the average awarded ROE of 9.39% for 2021 and 9.58% for 2022. EXH 319, MPN D5-350.

Equity Ratio

On top of the excessive SIPP ROE request, FPL asks for the 59.6% equity ratio. As Mr. Coyne acknowledged, the higher the equity ratio, the less risky a company, all else being equal. TR 4383. While Mr. Bores claims that "[a] greater equity component means safer returns for debt

investors, which translates to stronger credit ratings and lower borrowing costs," Mr. Lawton rightfully asks since this higher credit quality impacts rates, "[h]ow much credit quality does FPL need?" TR 2304, 3144. Mr. Lawton's comparison between Duke Energy Florida with a 53% equity ratio and the long-term debt costs of 4.49% for 2025 and 4.52% for 2026 versus FPL with a 59.6% equity ratio and long-term debt cost of 4.52% for 2025 and 4.64% for 2026, shows that FPL's long-term debt costs are higher. TR 3144. Mr. Lawton correctly concludes that "[i]t does not appear FPL customers are getting a lot of bang for the buck in paying for the additional equity in the capital structure – they also get to pay higher interest costs as well." TR 3144. Rather than adjust the equity ratio, Mr. Lawton made a 40-basis point downward adjustment to his ROE results to appropriately account for FPL's reduced financial risk compared to the proxy group's average equity ratio of 51.80%. TR 3147, 3149.

As Mr. Walters points out, Moody's, S&P, and Fitch credit analysts are focusing on rate affordability as an important factor needed to support strong credit standing. TR 4123-4127. Mr. Walters correctly testified that "customers must be able to afford to pay their utility bills in order for utilities to maintain their financial integrity and strong investment grade credit standing." TR 4126. While Mr. Walters did not make an adjustment to FPL's requested equity ratio, he did consider the fact that it exceeds the proxy group average equity ratio (42.6%) as well as industry averages (50.83%) and medians (51.46%) - excluding states with non-investor capital - in his ROE recommendation. TR 4111, 4131. The other intervenor witnesses noted that FPL's 59.6% equity ratio is substantially higher than similarly situated electric utilities and, in conjunction with a lower ROE, the equity ratio should be lower, which would reduce the annual revenue requirement by at least $1 billion. TR 3472, 3867.

CMPP/Conclusion

The SIPP's superficial, illusory reduction from an 11.9% ROE to a 10.95% ROE combined with the 59.6% equity ratio does not reflect a true compromise. When combined with the RSM (to keep FPL at the high end of the authorized range as discussed in Major Element 17), the result is an inflated, overstated, and illegitimate reflection of the required ROE and equity ratio. The SIPP's ROE is 117 and 123 basis points greater than the average authorized electric returns for 2024 and the first quarter of 2025, respectively, as reflected in Mr. Coyne's exhibit. EXH 319, MPN D5-350. Moreover, aside from Alaska Electric Light Power's award, the ROE request is 45 basis points greater than the highest authorized ROE in the nation (10.5%) in the last two years. TR 2572, 3471; EXH 274, MPN C49-5359 - MPN C49-5361. Additionally, with a 100-basis point range (9.95% to 11.95%), FPL has the potential to earn more than 200 basis points above the national average awarded ROE if the Commission approves the SIPP with the embedded RSM. EXH 1277. If approved, the bottom of the SIPP range would be 17 basis points above the 9.78% average authorized midpoint ROE approved for 2025 through April 29, 2025. TR 2156. For FPL, 100 basis points of ROE equates to approximately $500 million dollars in revenue requirement. TR 2394. This unconscionable 10.95% ROE request would result in excess revenues of approximately $225 million per year starting in 2026 (compared to the highest ROE approved anywhere in the lower 48) and $900 million over the four-year term of the SIPP. TR 2571. Using common sense, the SIPP's requested ROE and equity ratio, along with RSM and other terms, would distort the market rather than reflect the market. The excessive SIPP ROE and equity ratio will cost FPL customers more money than is required to attract capital on a reasonable basis; therefore, it cannot be in the public interest.

Purely as an alternative to the SIPP, the CMPP maintains FPL's 59.6% equity ratio request and proposes a 10.6% ROE. TR 2584-2585; EXH 1297, MPN L8-299. The CMPP's 10.6% ROE would be exceedingly generous given that it is substantially higher than the comparable U.S. utilities and the CMPs' recommended ROEs. TR 2584-2585, 5012. The CMPP is an effort to reign in FPL's excessive ROE and equity ratio without dependence on an amortization mechanism that is used to maintain the ROE at the highest ends of FPL's authorized range. EXH 538. Clearly, the Commission should reject the SIPPs' proposed ROE and equity ratio as excessive, inflated, and inaccurate reflections of the market.

MAJOR ELEMENT 3: 2026 Base Rate Adjustment $945M

ARGUMENT:

The SIPP's 2026 base rate increase of $945 million is driven by a variety of unreasonable cost drivers. Some of the largest of these cost drivers include expensive and unnecessary planned solar and battery additions, various overstated operating expenses, inflated cost of capital (*see Argument regarding Major Element 2),* and excessive PHFU (*see Argument regarding Major Element 20).* In this section, OPC will address the expensive and unnecessary proposed solar and battery additions as well as a variety of overstated projected expenses, none of which are in the public interest. The use of the SIPP to bypass any form of prudence review of the justification methodology and the billions of dollars in rate base additions is contrary to the public interest.

Expensive and Unnecessary Proposed Solar and Battery Additions

Overly Conservative Stochastic Loss of Load Probability Analysis

For the first time ever in a Florida rate case, FPL has attempted to justify its purported generation resource needs with the use of a stochastic loss of load probability (SLOLP) analysis. TR 972, 1065. While OPC conceptually agrees that the use of a SLOLP analysis is the most

appropriate theoretical approach for a utility system with such high levels of renewable (especially solar) generation, the specific SLOLP analysis performed in this case is based on inaccurate and biased inputs and assumptions provided by FPL and appears to be overly conservative and potentially significantly overstating FPL's capacity needs. TR 2971.

In 2024, FPL was experiencing operational concerns due to FPL's sole decision to add more solar generation to its system over the last few years. TR 1059, 1063-1064. Specifically, FPL had installed 3,750 MW of solar by the end of 2022, and was planning on adding approximately 2,500 MW per year. EXH 627, MPN F2-1312. FPL hired Energy and Environmental Economics ("E3") to conduct an operational study of FPL's system SLOLP analysis. TR 249. E3 described FPL's increase in solar energy penetration as "dramatic." EXH 627, MPN F2-1312. E3 determined that FPL's operational challenges resulting from this increase in solar penetration were "related to solar variability and forecast error including unit commitments, forecasting operating reserves needs, upward ramping requirements during early evening hours, and maintenance scheduling for thermal generators." EXH 627, MPN F2-1312. E3 warned that, "[t]hese challenges will grow in the coming years as the penetration of solar increases." EXH 627, MPN F2-1312. At the hearing, E3 agreed that FPL's solar additions have led to increased uncertainty on FPL's system, and that if FPL does not add any more solar to its system, then the operational challenges it is facing would not increase. TR 254-255, 260.

On October 14, 2024, E3 submitted a proposal to conduct a SLOLP analysis for FPL. EXH 627, MPN F2-1312. Despite knowing that there are other companies who can perform SLOLP analyses, FPL accepted E3's proposal without making any effort to determine if another company could conduct a stochastic analysis at a lower cost. TR 1069-1070. FPL also did not consider any alternatives to the SLOLP modeling. EXH 425, MPN E90995. E3 conducted a 2027 test year

SLOLP analysis for FPL using flawed and inaccurate inputs and assumptions provided by FPL. TR 1070, 3891. FPL did not ask E3 to conduct a SLOLP for 2026 at that time. The results of E3's 2027 SLOLP were completed sometime prior to February 28, 2025, because they were summarized and attached to FPL witness Andrew Whitley's testimony, which means that, at most, E3 had 4.5 months to prepare for, conduct, and report the findings of the study to FPL, a utility that has never before incorporated a SLOLP analysis into its resource planning process. TR 1065; EXH 64. Following an informal meeting called by Commission Staff regarding certain discovery responses provided on April 9, 2025, related to the SLOLP methodology, FPL provided a supplemental discovery response on May 2, 2025, that included a comparison document of a resource plan that does not add resources based on SLOLP modeling compared to a resource plan that does. EXH 425, MPN E91022. This supplemental discovery response indicated that even if FPL did not add any of the 2026 or 2027 solar or battery projects, FPL had sufficient resources to satisfy both the traditional and the stochastic LOLP analyses. EXH 425, MPN E91024. However, on May 8, 2025, FPL provided a corrected, supplemental discovery response that indicated that FPL has not, in fact, performed an analysis to determine whether or not adding any of the 2026 or 2027 solar or battery projects would satisfy a stochastic LOLP analysis. EXH 425, MPN E91029.

OPC retained nationally-known resource planning expert witness James Dauphinais to analyze the prudence, reasonableness, and cost-effectiveness of FPL's investments in FPL's 522 MW NWFL battery storage project and FPL's planned 2026 and 2027 solar and battery investments, as well as the SLOLP analysis that FPL seeks to use to predominantly justify these supply-side projects. TR 2964-2965. Mr. Dauphinais reviewed the testimony and depositions of FPL witnesses Ina Laney, Tim Oliver, and Andrew Whitley, as well as the deposition of E3's Senior Partner, Arne Olson, who had not yet filed testimony in this docket. TR 2966-2967. Mr.

Dauphinais also reviewed various discovery responses regarding resource adequacy, resource planning, investment tax credits ("ITCs"), production tax credits ("PTCs"), FPL's 522 NWFL battery storage project, and FPL's 2026 and 2027 proposed solar energy centers and battery storage facilities. TR 2966-2967.

In providing his expert opinion, Mr. Dauphinais reached several conclusions about FPL's planned generation additions and the quality of the SLOLP analysis. Mr. Dauphinais concluded that, based on the evidence he reviewed at that time, while there was a capacity need for the 522 MW NWFL battery storage project and (eventually) the 2026 and 2027 battery storage projects, there was neither a capacity need or an economic need for the 2026 or 2027 solar projects. TR 2987-2988, 3012. Therefore, Mr. Dauphinais recommends that the Commission reject FPL's planned 2026 and 2027 solar projects. TR 3012. Mr. Dauphinais also concluded that the SLOLP analysis that FPL is attempting to use to justify these resource additions appears to be overly conservative and potentially significantly overstating FPL's capacity needs. TR 2971. Mr. Dauphinais lists seven reasons for this conclusion, which include that:

- E3's results imply that FPL is already significantly short of capacity, but there is no evidence supporting that is the case given FPL has not declared any North American Electric Reliability Corporation ("NERC") Energy Emergency Alerts ("EEAs") on its system since 2017, and FPL has not needed to shed load anytime in the past ten years. EXH 162, MPN C19-2913.

- At the time Mr. Dauphinais filed his testimony, FPL had not indicated that there was either currently a resource adequacy problem on its system or that FPL expected there to be one on its system in 2026.[6]
- FPL's SLOLP analysis results for 2027 are not consistent with the 2026-2028 SLOLP analysis results of NERC and SERC, which indicate that the SERC-Florida Peninsula and SERC-Southeast areas only have a Normal Risk of loss of load not an Elevated Risk or a High Risk of loss of load.
- FPL's SLOLP analysis appears to be rushed because it did not commence until late-October 2024, was completed less than one month before FPL filed its case in this proceeding, did not examine FPL's current and projected 2026 SLOLP, and was not supported with direct testimony from E3.
- At least one of the assumptions in FPL's SLOLP analysis was overly conservative.[7]
- FPL did not in a timely manner provide all of the workpapers for its SLOLP analysis despite them being requested very early in the proceeding, limiting intervenor review of the reasonableness of the analysis.
- No FPL stakeholders, including the Commission Staff and OPC, were given an opportunity to provide any input, never mind meaningful input, with respect to the assumptions utilized in the analysis, despite the fact that FPL has an inherent incentive to grow its rate base to increase the returns to its shareholders.

  TR 2993-2999.

[6] FPL has also never requested E3 to conduct a SLOLP analysis for 2025. TR 272, 1076.
[7] OPC notes that FEL has identified even more flaws in the inputs and assumptions provided by FPL to E3. OPC incorporates those arguments by reference.

Due to the overly conservative SLOLP analysis as well as the acquisition of the Vandolah Generating Facility ("Vandolah"), then referred to as Project Commodore, Mr. Dauphinais also recommended that the Commission reject FPL's proposed 2028-2029 SoBRAs. TR 3003.

Unreliable Rebuttal Testimony

When FPL filed rebuttal testimony, they filed rebuttal testimony of both FPL's Andrew Whitley and E3's Arne Olson. FPL acknowledged that in response to intervenor testimony, FPL conducted a SLOLP analysis for 2026, which purportedly resulted in a .92 result, which if true, would represent a significant resource adequacy shortfall. TR 227. However, this number is not reliable for many reasons, including that FPL dictated to E3 which resources to reflect as being on FPL's system as of January 1, 2026, and FPL did not include as an input the 522 MW NWFL battery storage project that is planned to go into service by the end of 2025. TR 273, 276, 1038, 1164. On July 31, 2025 (after the discovery window during the as-filed petition case closed on July 23, 2025), FPL filed an errata to Mr. Olson's testimony that revised the 2026 SLOLP analysis from .92 to .76 result, and this amended number *still* does not include the 522 MW NWFL battery storage project as an input. TR 277-278. The errata also included 12 other values that were amended in Mr. Olson's exhibit AO-3. TR 271; EXH 293, MPN D13-873a.

FPL also never asked E3 to update the projected 2027 SLOLP to account for FPL's acquisition of Vandolah, which is expected to become an FPL system resource as early as June 1, 2027. TR 1037. That date was not known by OPC until FPL announced it on June 10, 2025 – one day after intervenor testimony was due. EXH 761, MPN F2-3797, MPN F2-3815. FPL's own expert witness, E3's Arne Olson, agreed that once FPL fully acquires Vandolah in or about June of 2027, it is possible that after that point in time, FPL will not need some of FPL's requested resources that FPL is seeking approval of in this case until potentially after the SIPP's proposed

four-year term. TR 280-281. FPL witness Andrew Whitley is only willing to acknowledge that just 400 MW of 2028 SoBRA battery storage additions and 475 MW of gas combustion turbines scheduled to enter service in 2032 could be displaced by the Vandolah acquisition. TR 1038. However, there are five 2027 batteries currently scheduled to come into service in 2027 after the expected date of the Vandolah acquisition, the capacity need for which could also be offset, or at least delayed. EXH 75, MPN C14-2022. If approved, the SIPP will raise base rates on January 1, 2027, based on revenue requirements that include those five batteries, even if the Vandolah acquisition offsets or delays the capacity need for those resources. Such overstated capacity would not be in the public interest.

Historical Trends Suggest In-Service Dates are Highly Doubtful

While OPC expert witness James Dauphinais' analyzed FPL's proposed capital additions from a resource planning perspective, OPC expert witness Helmuth Schultz also analyzed the capital additions from a historical trending perspective. Mr. Schultz concluded that given the historical trends regarding FPL's projected and actual capital expenditures, the likelihood that all of the projected capital additions will be in-service by the end of 2026 and/or 2027, is highly doubtful, regardless of whether there is a resource adequacy need or how prudent and cost-effective the projects may or may not otherwise be. TR 3245. His analysis and findings regarding the overly optimistic proposed capital additions, including the proposed solar and battery additions, are summarized on Exhibit 189, MPN C23-3460. Mr. Schultz's analysis further demonstrates how expensive and unnecessary these solar and battery additions are, and why the Commission must reject the SIPP. If the Commission approves the SIPP, FPL's customers will be forced to pay for FPL's overly optimistic proposed plant additions for at least the next four years

whether they are built or not. This is another reason why the Commission should not allow the SIPP to block the prudence analysis required by section 366. 06(1), Florida Statutes.

FPL Already Has Sufficient Solar for FPL's 2026-2029 Hybrid Batteries

According to FPL witness Tim Oliver, "[p]airing solar and battery storage investments allows for the most cost-effective integration with the existing power generation fleet." TR 1211. Of FPL's 40 proposed battery additions between 2026 and 2029, 38 are expected to be hybrid batteries, meaning they would be paired with solar. TR 1292. Mr. Oliver also agreed that FPL already has at least 54 existing, operational solar facilities where those 38 hybrid batteries could be located. TR 1294. If it's true that pairing solar and battery storage is the most cost-effective way to integrate with FPL's existing generation fleet, then FPL should place their new batteries at solar facilities they have already built. The fact that FPL is planning on building even more new solar facilities when it already has enough existing solar facilities to co-locate all of its planned battery additions is imprudent and serves as further proof that the FPL's planned 2026 and 2027 solar additions are unnecessary. This is yet another reason why the Commission should not allow the SIPP to block the prudence analysis required by section 366. 06(1), Florida Statutes.

Drastic Reductions in FPL's Ten-Year Site Plans

Another fact the Commission should consider when determining whether to increase customers' base rates to include all of FPL's planned 2026 and 2027 solar and battery storage additions is how drastically FPL's Ten-Year Site Plans ("TYSP") have recently changed. FPL's 2024 TYSP projected that FPL would be adding 30 solar facilities to the grid in the year 2026. TR 1085; EXH 779, MPN F2-9386. However, just one year later in FPL's 2025 TYSP, FPL drastically reduced the number of planned 2026 solar facilities to 12. TR 1086; EXH 783, MPN F2-10664. FPL is asking this Commission to increase base rates in 2026 and 2027 based on FPL's current

plans to build 28 solar and 24 battery projects during that same time. EXH 73; EXH 75. Customers will be forced to pay increased base rates that are set based upon what FPL says now, not after another potentially drastic change of plans. The hastily conducted SLOLP analysis and the large number of supplemental and corrected discovery responses and errata regarding the resource adequacy issue alone suggest that the risk of even more changes to FPL's resource adequacy plans is significant. Therefore, the Commission should reject the SIPP because customers should not have to bear this risk of inflated rate base that would be caused by sweeping this issue under the rug by adoption of the SIPP.

Carbon Emissions Fallacy

There are currently no federal or state carbon emission costs imposed on FPL. TR 1099. There were none imposed on FPL during the last administration, either. FPL agrees that the current administration is unlikely to impose carbon emission costs in the next few years, and FPL's consultant's projections are that there is a zero percent chance of them being imposed before 2036. TR 1100; EXH 67. On Inauguration Day, January 20, 2025, the President issued Executive Order 14154, entitled, "Unleashing American Energy," which stated that "high energy costs devastate American consumers by driving up the cost of transportation, heating, utilities, farming, and manufacturing." EXH 756, MPN F2-3781. The executive order also directed the heads of all federal agencies to identify agency actions which impose an undue burden on the identification, development, or use of domestic energy resources, "with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources," and to "develop and begin implementing action plans to suspend, revise, or rescind" all such agency actions. EXH 756, MPN F2-3782. It is clear that the risk of carbon emissions costs in the near future is low.

Nevertheless, FPL insists on including these non-existent and extremely unlikely carbon emissions costs in its cumulative present value revenue requirements ("CPVRR") analyses that purport to show that solar is cost-effective. This calls into question the reliability of FPL's CPVRR analyses because this skews the results and makes solar appear more cost-effective than it actually is. Relying upon skewed CPVRR results is not in the public interest. These skewed analyses are yet another reason why the Commission should not allow the SIPP to block the prudence analysis required by section 366. 06(1), Florida Statutes.

PTC Uncertainty

Another key data point in FPL's CPVRR analyses that purports to show that FPL's proposed solar additions are cost effective is the inclusion of PTCs. TR 1100. However, since FPL filed its petition on February 28, 2025, significant uncertainty regarding the availability of PTCs going forward has been introduced to FPL's business and this case. If FPL fails to satisfy the requirements for some or all of the PTCs, the effects of which are included in FPL's solar CPVRR analyses, then any loss of the PTCs would correspondingly further decrease the purported cost-effectiveness of FPL's 2026-2029 planned solar additions. TR 1107.

On July 4, 2025, Congress passed the "One Big, Beautiful Bill Act," which imposed new restrictions on utilities hoping to qualify for PTCs. EXH 753. On July 7, 2025, the President followed up with another Executive Order 14315, entitled "Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources." EXH 758, MPN F2-3793. This Executive Order stated:

> For too long, the Federal Government has forced American taxpayers to subsidize expensive and unreliable energy sources like wind and solar. The proliferation of these projects displaces affordable, reliable, dispatchable domestic energy sources, compromises our electric grid, and denigrates the beauty of our

> Nation's natural landscape….Ending the massive cost of taxpayer handouts to unreliable energy sources is vital to energy dominance, national security, economic growth, and the fiscal health of the Nation.

Although FPL "currently projects" that it will meet all of the requirements for the 2026-2029 solar additions, that statement is not competent, substantial evidence upon which the Commission can base a finding of fact. TR 1034. The reality is that a lot can happen in the next few years of the current administration, including further action to restrict and/or eliminate PTCs. The Commission must do all that it can to mitigate these risks to FPL's customers, which means that the Commission must reject the SIPP as it would, without any substantive review, lock customers in to paying for these solar additions even if they become a lot more expensive in the coming years due to a loss of PTCs.

Solar Degradation

The evidence is clear that in 2024, FPL was experiencing operational concerns due to FPL's sole decision to add more solar generation to its system over the last few years. TR 1059, 1063. Also, remember that E3 warned, "[t]hese challenges will grow in the coming years as the penetration of solar increases." EXH 624, MPN F2-1312. However, FPL claims that it intends to move full speed ahead and add 72 more solar facilities from 2026-2029, and that it has enough land in its PHFU portfolio to add 165 more beyond 2029. TR 1284, 1288.

FPL testified that utilities typically plan for resource adequacy by quantifying how much firm capacity is required to meet a specified reliability standard. TR 214. FPL has proposed adding battery storage in amounts that are sufficient to address its identified firm capacity need. TR 1029. In this case, this "need" assumes the validity of the untested SLOLP analysis that FPL proposed, and the SIPP signatories ignored in giving FPL what it wanted. Solar is not a meaningful firm

capacity resource, though. TR 991, 1013, 1031-1032, 1109, 1458, 2974. FPL acknowledged that it reduced the number of planned solar facilities "in favor of the reliable firm capacity provided by utility-scale battery storage." TR 980. When FPL purportedly recognized an immediate, SLOLP-driven "need" for available firm capacity on its system in 2024 and 2025, it turned to battery storage projects to solve it. TR 1025.

FPL also acknowledged that the "marginal level of 'firm' or 'perfect' capacity from solar facilities is diminishing on FPL's system." TR 1031. This can be seen in FPL's 2025 TYSP. On page 163 of that plan, all of FPL's planned 2026 solar facilities are listed. TR 1085; EXH 783, MPN F2-10664. Column 14 lists the net firm summer capacity that FPL expects to have at its disposal for each addition. FPL's battery storage firm capacity is expected to be approximately 997 MW. Some of the solar facilities on that same page have expected firm capacities of 4 MW each. The last line in the table is labeled "solar degradation," which refers to the fact that solar panels become less and less effective over time due to wear. TR 1086-1087. When asked, FPL witness Andrew Whitley admitted that the number "12" in parentheses means that, "the overall firm capacity values of FPL's solar fleet decreases by 12 [MW] in 2026." TR 1087. In other words, FPL's system-wide solar degradation in 2026 will offset the firm capacity value of at least three of the twelve brand new solar facilities that FPL will bring online (and that customers will pay millions for) in that same year. TR 1087-1088. Even worse, the more solar that is added to FPL's system, the more solar degradation will increase. TR 1088; EXH 783, MPN F2-10665. It is imprudent and unjust to force customers to pay for FPL's decision to add excessive amounts of solar to its system despite FPL knowing that solar provides increasingly less and less firm capacity to the system. FPL's own evidence in this case proves that FPL's expensive and unnecessary resource additions, especially solar, are the largest cost drivers in this case and in the SIPP. These

additions are misguided and unsupported. The Commission must reject the SIPP, which, if approved, would result in unfair, unjust, unreasonable rates, and would not be in the public interest due to these expensive and unnecessary planned resource additions. The Commission should not allow the SIPP to block the prudence analysis required by section 366. 06(1), Florida Statutes.

Overstated Expenses

The SIPP's 2026 base rate increase of $945 million is approximately $600,000,000 less than FPL's initial request of $1.545 billion. However, the Commission must look closely at this supposed reduction and understand what it does, and does not, represent. The overall reduction in 2026 is $599,780,000, but $483,837,000 of the reduction (or approximately 81%[8]) is solely a result in the ROE change. TR 4984, 4987, 5280; EXH 1295, MPN L8-209. Only $115,943,000 of the reduction is attributable to reductions other than ROE. The 2027 reduction reflects similar proportions. EXH 1295, MPN L8-210. These "reductions" are illusory.

Mr. Schultz recommended approximately $304,018,000 of necessary adjustments to FPL's original filing.

Adjustment Title	Witness/ Reference	Total Adjustment*	Jurisdictional Separation Factor	Jurisdictional Amount*
Payroll Adjustment	C-4	(129,285)	0.973274	$(125,830)
Excess Incentive Compensation Payroll Adjustment	C-5	(75,698)	0.962985	(72,896)
Long-Term Incentive Compensation	C-5	(15,067)	0.967790	(14,582)
SERP	OPC 1-25	(3,588)	0.967790	(3,472)
Pension & Benefit Adjustment	C-6	(12,491)	0.969171	(12,106)
Insurance Adjustment	C-7	(14,176)	0.962292	(13,642)
Injuries & Damages Adjustment	C-8	(28,862)	0.962292	(27,773)

[8] [$483,837,000 / $599,780,000 =0.8067].

Directors & Officers Liability Insurance	C-9	(4,820)	0.962292	(4,638)
Uncollectible Expense Reduction	C-11	(2,121)	1.000000	(2,121)
Uncollectible Expense Increase Associated w/ Revenue Adj.	C-11	146	1.000000	146
Planned Generation Maintenance	C-12	(11,400)	0.958490	(10,927)
Planned Transmission Maintenance	C-13	(11,528)	0.916533	(10,566)
Plant Daniel Adjustment	B-6 P. 5	(5,457)	0.968770	(5,287)
Dues - Non-Industry	C-17	(334)	0.969171	(324)
Dues - Economic Development	C-17	(4,159)	0.969171	(4,030)
Subtotal				**$(304,018)**

**Amounts in thousands of dollars.*
SOURCE: EXH 189, MPN C23-3474.

Other OPC expert witnesses also recommended a $248,793,000 adjustment to FPL's overstated depreciation & dismantlement expenses and a $133,032,000 adjustment to FPL's understated revenues. EXH 189, MPN C23-3474. If the Commission were to approve the SIPP, these well-reasoned and factually supported adjustments to FPL's 2026 base rate increase will be tragically swept under the rug and all customers would overpay while shareholders would be enriched. This should not be allowed.

MAJOR ELEMENT 4: 2027 Base Rate Adjustment $705M

ARGUMENT:

See Argument against Major Element 3.

MAJOR ELEMENT 5: Revenue Requirement Allocation

ARGUMENT:

The revenue requirement allocation in FPL's as-filed case included a cost of service study. TR 1442. The purpose of a cost of service study is to allocate costs to rate classes in a manner that

reflects the costs of providing service to each rate class. TR 1475. Aligning cost allocations with FPL's generation portfolio is intended to uphold the cost-causation principle by accurately reflecting the cost responsibilities of different rate classes based on their specific usage patterns and the generation resources that serve them. TR 1489. This approach promotes fairness, equity, and efficiency in cost allocations. TR 1489. As such, the filed cost of service study provided a guide for evaluating any proposed changes to the level of revenues by rate class. TR 2618.

FPL's current cost allocation methodology approved in the 2021 rate case is 12 CP and 1/13th for production plant, 12 CP for transmission plant, and a negotiated allocation for distribution plant. TR 5200. Since then, the rise in solar generation within FPL's portfolio has impacted how FPL plans and operates its system. TR 1458. To better align cost allocations with the significant solar generation already in FPL's system, as well as the solar generation additions planned through the 2027 Projected Test Year, FPL proposed to increase the energy weighting for fixed production cost allocations from 1/13th to 25% in its cost of service study. TR 1443, 1489. Therefore, the allocation methods proposed in FPL's as-filed case were 12 CP and 25% for production plant, 12 CP for transmission plant, and various specific methods for distribution plant owing to the unique nature of distribution plant. TR 1458-1461.

FPL's witnesses defended the as-filed case's cost of service study-supported revenue allocation in their as-filed rebuttal testimony. FPL witness Tara DuBose claimed that her recommended cost allocation methodologies for the cost of service study "were based on FPL's current and proposed generation portfolio, how FPL plans and operates its system, and how each customer group utilizes and benefits from these resources." TR 1475. FPL witness Tiffany Cohen stated that the rates proposed by FPL "appropriately reflect the allocated costs by rate class and move all classes closer to [parity]." TR 2643. Without agreeing that the as-filed case allocated

costs appropriately, one could at least understand what FPL's rationale was for its as-filed allocation decision-making.

In contrast, the only guide for the SIPP's revenue allocation is the purported negotiated compromise between the signatories. TR 5049. Because non-signatories, including the Commission, are not privy to these negotiations, it is impossible for non-signatories to judge the underlying rationale for how the SIPP allocates revenues to the rate classes. TR 5049. This alone prevents FPL from demonstrating there is competent and substantial evidence, let alone public interest, supporting its resulting rates.

Unsurprisingly, and likely because the settlement was not guided by a tool to allocate costs to rate classes in a manner that reflects the costs of providing service to that class, the SIPP revenue requirement allocation fails to move all rate classes towards parity. TR 5049. "Parity" is a basic ratemaking principle (TR 5264) and an important goal in setting rates. TR 2618-2619. It is achieved when all classes move towards an equalized rate of return (TR 2643), thereby reducing interclass subsidies. TR 2618-2619. As mentioned above, the as-filed case moved all rate classes closer to parity. EXH 142, MPN C5-1478. The SIPP's failure to move nearly 99% of customers towards parity (TR 5049) demonstrates that the SIPP's revenue allocation fails to meet a bedrock ratemaking principle and that it is divorced from cost causation. If the SIPP is adopted, the trend of customers moving away from parity would continue through 2027. TR 4887.

Understanding why the SIPP allocates revenues the way it does is important because some rate classes experienced incomprehensible swings going from the as-filed case to the SIPP. EXH 1343, MPN N50. The question occurs: why do large load customers experience a massive rate reduction from FPL's as-filed case (TR 5050; EXH 1343, MPN N50) while GS customers experience a more than three times increase? TR 5050; EXH 1343, MPN N50. The SIPP does

answer this question. Under the SIPP's black box methodology, the only possible, rational explanation for these shifts is, like foxes guarding the henhouse, the SIPs helped themselves to massive rate breaks at the expense of non-signatories. TR 5050-5051.

In attempting to defend the indefensible, Ms. Cohen sought to justify the black box methodology of the SIPP by referring back to the 2021 Settlement. TR 4634. Ms. Cohen concedes that the SIPP does not explicitly adopt any specific cost of service methodology. TR 4875-4876. If Ms. Cohen is correct that the SIPP does continue the 2021 Settlement's cost of service methodology, (TR 5198) this further demonstrates how divorced the SIPP is from traditional ratemaking principles because the 2021 Settlement methodology would not account for the increased solar generation on FPL's system, which was accounted for in the as-filed case. TR 1443-1444, 1489.

Ms. Cohen also attempts to deflect from the harmful impact of the revenue allocation on residential customers by claiming that the residential increase was capped at 95% and that the typical residential bill would remain below the national average. TR 4633-4634. Both comparisons are misleading. The Commission is only determining base rates in this docket. FPL's bill comparison incorporates the current storm charges in the customers' bills, which future comparisons do not. EXH 1285, MPN L2-40. This deceptive comparison artificially inflates the current bill when compared to potential future bills, especially considering that FPL's testimony demonstrates that hurricanes are increasing in frequency. EXH 128, MPN C2-1352. With regards to capping the residential increase to 95%, this is also misleading because every other cost of service study filed by SIPs demonstrated that residential customers were entitled to an even larger reduction. TR 5050. The cumulative effect of the settlement is that residential and small

commercial customers would bear over 68% of the base rate revenue allocation under the SIPP. TR 5251.

In conclusion, the revenue requirement allocation under the SIPP was negotiated under an inscrutable black box methodology. This was done to enrich the SIPs at the expense of the overwhelming majority of FPL's customers. FPL's approach does not provide the Commission with an alternative record basis that is supported by competent, substantial evidence to evaluate the SIPP's rationale for how it allocates revenue. Further, the SIPP revenue allocation methodology moves most of FPL's customers away from parity. The Commission should not only reject the SIPP's revenue allocation for not being in the public interest, it must also clearly reject FPL's attempt to impermissibly use a prior settlement for precedential value contrary to that settlement's explicit terms.

MAJOR ELEMENT 6: Commercial/Industrial Load Control and Demand Reduction Credits

ARGUMENT:

The CDR and CILC programs are FPL's largest Demand Side Management ("DSM") programs for commercial and industrial customers. TR 994. Voluntary participants in these programs agree to allow FPL to remotely lower a portion of the participant's served electric load as needed in exchange for the participant receiving a reduction in their monthly bill. TR 994. The CDR program is open to new participants while the CILC program was officially closed to new participants in the year 2000. TR 994. The revenues from the CILC/CDR credits are recovered through the Energy Conservation Cost Recovery clause and are paid for by all customers. TR 860, 3798, 4638, 4714.

In its as-filed case, FPL proposed lowering the CDR incentive from $8.76/kw (TR 995) to $6.22/kw. TR 2629. This value was intended by FPL to ensure that CDR is still beneficial to

participants while not overburdening non-participants with higher program costs required for the maintenance of the program. TR 1000. Although this constituted a reduction from the current incentive level, the proposed level according to FPL was still nearly 31% higher than the incentive level that was in place when the majority of CDR participants joined the program. TR 1001. This CILC reduction was supported by the as-filed case's cost of service study and brought CILC customers closer to parity. TR 2630. The savings associated with these reductions were approximately $22 million in 2026 and 2027. TR 1001.

FPL decided to lower the CDR/CILC incentives because it found that the current incentive levels barely pass the RIM test. TR 1000. According to FPL witness Andrew Whitley, although FPL uses three different tests to evaluate the cost-effectiveness of DSM programs, "the RIM test is the cost-effectiveness test used to set an appropriate incentive level" for programs such as CDR. TR 996. Under the RIM test, the current CDR/CILC incentive levels scored a 1.06 cost-to-benefit ratio using FPL's calculations. TR 1000. This score showed that, while the programs were beneficial to participants, they were "near" the point at which the general body of ratepayers would be indifferent to them. TR 996. In contrast, the proposed cuts to the incentive levels scored a significantly improved cost-to-benefit ratio of 1.49 using the same calculations. TR 996.

FPL did not rely on the two other tests commonly used to evaluate DSM programs because FPL found that they did not apply to the CDR/CILC changes. TR 996-997. The other two tests are the Total Resource Cost ("TRC") test and the Participant test. TR 996. According to Mr. Whitley, FPL did not rely on the TRC test because it "does not incorporate incentives into its calculation of costs, and therefore does not change as the value of incentive payments change." TR 996. As for the Participant test, FPL did not rely on it because "[f]or CDR, the participant does not incur any direct incremental costs to participate, resulting in an infinite cost-benefit ratio." TR 997.

As part of FPL's as-filed rebuttal case, Mr. Whitley and Ms. Cohen both defended the CDR/CILC incentive levels cuts. According to Ms. Cohen, "FPL correctly applied the Commission's gradualism guidelines and designed [CDR/CILC] rates accordingly." TR 2644. For his part, Mr. Whitley reaffirmed that the $6.22/kw incentive level was "an appropriate level that reflects the value the programs provide without requiring unnecessary contributions from customers who do not participate in the programs." TR 1042.

The SIPP would increase the CDR/CILC incentive level to $9.75/kW from the current monthly credit of $8.76/kw. TR 4637. Because CDR/CILC incentives are recoverable from all customers, this initial increase will cost the general body of ratepayers an additional $8.6 million per year above current levels. TR 4714. Over the four-year term of the proposed SIPP, it is expected to cost the general body of customers (primarily residential and small business customers) $122,482,584 as compared to FPL's original as-filed case, just in the cost of the CDR/CILC credits. TR 5027. Further, FPL's own calculations show that the SIPP's CDR/CILC hike will result in a RIM cost-effectiveness score of 0.96. TR 4896. This result demonstrates that only CDR/CILC customers will benefit from the program and not FPL's general body of ratepayers. TR 999, 5258.

To add insult to injury, in addition to the initial SIP settlement increase, the CDR/CILC credits will also be increased with each SOBRA during the settlement term. TR 4638. By July 2029, the CDR credit will have increased to $10.35/kW after increasing each year from 2026. EXH 1349, MPN N190. If the initial SIPP increase of $9.75/kw fails the RIM test, then it is likely so will each SOBRA increase. After considering the impact of the SoBRAs, all FPL customers would be responsible for the costs of escalating CDR/CILC incentives in each of the four years of the SIPP term. This would be expected to add an additional annual cost of over $5 million by the end

of the SIPP once all the SoBRAs are in place (total annual cost of CDR/CILC credits of $89,632,203 based on FPL's estimates of the SoBRA increases). TR 5027. Each credit increase places a greater burden on the general body of ratepayers who are not represented by the signatories to the SIPP.

FPL weakly attempts to defend the SIPP's CDR/CILC hikes failing the RIM test by claiming they at least passed the TRC test. TR 5209. This directly contradicts Mr. Whitley's testimony that the TRC test did not apply because the TRC test "does not incorporate incentives into its calculation of costs, and therefore does not change as the value of incentive payments change." TR 996. Even assuming that the TRC test was applicable, the Participant test still results in an inapplicable result of "infinite." EXH 1345, MPN N90. Assuming again *arguendo* that the TRC test applies, of the three tests the Commission uses to evaluate DSM programs, the SIPP's CDR/CILC hikes pass the TRC test, fail the RIM test, and cannot be applied to the Participant test. Under this charitable 1-1-1 win/loss scenario, the Commission cannot possibly find that FPL has met its burden to demonstrate that the SIPP's CDR/CILC incentive increases are in the public interest.

The only thing consistent throughout the SIPP is how costs for most of FPL's customers increase every year. The SIPP's CDR/CILC incentive level hikes will be borne by the general body of ratepayers for the primary benefit of the SIPs. The Commission should find the SIPP provisions concerning these increases are not in the public interest.

MAJOR ELEMENT 7: Large Load Contract Service

ARGUMENT:

The Large Load Contract Service-1 and 2 ("LLCS-1" and "LLCS-2", respectively) tariffs and associated LLCS Service Agreement proposed by FPL in the SIPP are untimely and fail to

offer sufficient protections to FPL's general body of ratepayers. The tariffs are untimely because FPL itself represents that it does not predict any LLCS customers on its system until 2028 at the earliest. TR 2624, 2747. In fact, it is also possible that even by 2028, FPL will have no large load customers. TR 2760. The tariffs are so untimely that the LLCS-2 tariff does not even give potential customers notice of what their potential incremental generation charge will be, unlike the LLCS-1 tariff. EXH 1279, MPN K246, MPN K249. Additionally, due to the speculative element of data center[9] construction (TR 4751) and enormous uncertainty about how the demand for the services data centers provide will grow, (TR 4749) it is unclear what impact, if any, data centers will have on Florida.

The proposed LLCS tariffs in FPL's as-filed case contained enough protections to at least attempt to get in front of the uncertainty posed by data centers. TR 4760-4761. Unfortunately, FPL chose to lower these protections as part of its as-filed rebuttal case. TR 2756-2758, 4763. The weakened rebuttal testimony tariffs, which ultimately were incorporated into the SIPP, additionally increase the uncertainty FPL's customers are facing by freeing any future owners of Florida data centers to focus their investments on other lower cost and lower risk exposure markets. TR 4764.

Because of the uncertainty surrounding these issues and due to the diminished protections for the general body of ratepayers afforded by the SIPP tariffs, the PSC should find that the LLCS element of the SIPP, and thus the SIPP itself, is not in the public interest. Instead of approving these tariffs, the PSC should host a workshop or initiate rulemaking to give greater clarity to these issues.

[9]Although the thresholds in the LLCS-1 and LLCS-2 tariffs in theory apply to any customer that meets them, FPL witness and President and CEO Armando Pimentel conceded that the tariffs were designed in part to entice data centers to come to this State. TR 95.

Untimely

The record in this matter demonstrates that FPL's proposed LLCS tariffs are untimely. Again, FPL itself does not predict any LLCS customers until 2028 at the earliest. TR 2624, 2747. As conceded by FPL witness Tiffany Cohen, no potential customers have accepted the results of an LLCS engineering study, and FPL could even end up with zero LLCS customers. TR 2748-2749. FPL has not received any firm commitments for loads through 2029. EXH 440, MPN E92501.

The above facts are unsurprising as FPL has only received "over 50" LLCS inquiries since 2023, and of these inquiries, only seven were committed enough to request an engineering study with FPL as of May 2025. TR 2743; EXH 416, MPN E90563.[10] Despite a requirement that all projects filing for an engineering study must demonstrate site control, only two of these seven customers demonstrated that they own their site property. TR 2764; EXH 416, MPN E90563. Even if an engineering study recipient were to accept the results of the study on January 1, 2026, their facility may not even finish until 2031 if it is a data center, as construction timelines for data centers typically vary by two to five years. EXH 442, MPN E92749. Notably, none of the biggest drivers of data center growth (Amazon, Google, Meta, and Microsoft) have intervened in this proceeding, nor has the national Data Center Coalition, which further demonstrates lack of data center interest in Florida. TR 4743.

How FPL has calculated the LLCS-1 rate further demonstrates the untimeliness of the tariff. FPL initially calculated the LLCS-1 charges with the assumption of building enough generation to serve three GW of load. TR 2750-2751. After conducting several engineering studies

[10] At the hearing, FPL witness Michael Jarro updated the number of customers to nine. TR 524.

and talking with customers, FPL realized that this amount of load was not going to materialize as quickly as FPL thought. TR 2751. Because the demand just does not exist, FPL recalculated the LLCS-1 incremental generation charge to assume that FPL would have no more than one gigawatt on the system by 2029. TR 2751.

Based on all the above, it should not be a surprise that as of July 10, 2025, FPL does not have any construction start dates for any of the battery storage units that will be added to the system due to the addition of LLCS customer loads. EXH 440, E92501. No matter what happens, the rate components under the LLCS-1 and LLCS-2 tariffs will be reset in a subsequent rate proceeding. TR 2676. This is further indication that the Commission's consideration of these tariffs is premature. The Commission should reject the tariffs and the SIPP and instead host a workshop or rulemaking to consider the issue of large load customers. This will help avoid putting FPL's customers at risk as FPL can always request an interim proceeding requesting tariff approval should any LLCS customer actually manifest in FPL's service territory before a workshop or rulemaking can be completed.

Economic Uncertainty

Future data center construction and the resulting electricity load growth is highly uncertain. TR 4740. Unforeseeable innovations in computing, such as quantum computing and the innovations that apparently resulted in the more energy-efficient DeepSeek AI model, could reduce the hardware and energy usages of data centers. TR 4748-4749. Regardless of potential optimization, companies have an incentive to build data centers just to stay in the AI race even if demand for the data centers does not immediately materialize. TR 4750. Around the country, this speculative element of data center construction has resulted in data center companies pursuing parallel sites in multiple locations. TR 4751. In other words, for every three data center sites

planned for connection by electric utilities, perhaps only one or two, if any, will ultimately manifest. TR 4751. This speculative element of data center construction is demonstrated in this docket as some of the applicants requesting engineering impact studies from FPL are not necessarily the end users who would install the large load equipment. TR 465. Instead, they are "developers who may or may not be associated with the larger entities that will use the energy." TR 465. This speculation, while perhaps lucrative for these developers, only increases the uncertainty surrounding the potential impacts of data centers on Florida.

Even when a data center enters operation, there is no guarantee that there will be sufficient demand for their services. TR 4752. To provide these services, data centers need to purchase and regularly replace expensive chips. TR 4752-4753. Since data center operators will only equip their data centers with expensive chips at a rate that reflects service demand and hardware availability, it is quite possible that data centers planned for the coming years will not reach contract power demand levels for many years. TR 4753.

Along with chips, data centers also have cooling requirements. TR 3363. Data centers typically operate efficiently with inlet air temperatures between 64°F and 80°F. TR 3359. This is well below typical Florida weather, which FPL's own forecasting demonstrates has been hotter in the past 10 years than it was in the prior decade. TR 2720. Unsurprisingly, a data center using traditional evaporative cooling systems consumes hundreds of millions to over a billion gallons of water annually. TR 3363. Although innovations in cooling may reduce this water requirement, there is nothing requiring data centers to take advantage of these opportunities. TR 3364.

The uncertainty about whether data center loads will ultimately manifest creates a risk of stranded costs should the anticipated loads not materialize. TR 4754. Utilities such as FPL might therefore attempt to recover such stranded costs from other customers. TR 4754. It is due to the

broad nature of these risks that the Commission should host a workshop or rulemaking on these issues. This would help to ensure that costs of data centers will not be borne by customers. In any event, these risks and uncertainties further prove why the Commission must reject the SIPP.

Other States' Experiences

The experiences of other states illustrate the issues resulting from data center precariousness. Data centers, as buildings full of servers and chips, directly employ very few people once in operation. TR 4744. Despite this fact, the exponential growth of data centers has resulted in capacity constraints in places where they are located. TR 3441. Localities encountering such resource constraints typically react by putting in place regulations or other stipulations that limit the growth of data centers. TR 3441.

For example, in the PJM wholesale market in the mid-Atlantic region, a 2024 forecast of further growth in data center demand spiked capacity prices. TR 4755. Despite these capacity prices more than tripling, resulting in increased revenues, PJM nonetheless anticipates falling short of its target reserve requirement over the coming years. TR 4755. PJM's Board has initiated an urgent, accelerated, "Critical Issue Fast Path" stakeholder process to attempt to address data center issues, but it may be too little, too late. TR 4760. In Georgia, in response to the "staggering" energy use of data centers and to "protect residential and small business customers from data center load financial impacts," the Georgia Public Service Commission ("GPSC") approved new rules concerning large load customers. EXH 770, MPN F2-9144. These rules would, among other things, allow Georgia Power to charge new data centers in a manner that will protect ratepayers from cost shifting and require Georgia Power to submit to the GPSC for review any contract with a company for more than 100 MW usage. EXH 770, MPN F2-9144.

In Texas, Senate Bill No. 6, which went into effect this year in response to data center growth in that state, mandates that the Public Utility Commission of Texas require entities serving transmission-voltage customers (i.e., data centers) develop curtailment protocols to allow such load to be curtailed during firm load shed. EXH 755, MPN F2-3775. Meanwhile, in North Carolina, locations that have already accommodated substantial new large load projects are at or near transmission capacity limits. EXH 772, F2-9152. This has prompted the North Carolina Utilities Commission to question Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, on the status of its negotiations with data centers. EXH 772, MPN F2-9151. As a result of these and many more issues, a range of practices are emerging around the country seeking to protect existing customers from the risks of data centers and other large load projects. TR 4756; EXH 772, MPN F2-9154. Again, the ongoing developments in other states demonstrate why generic Commission proceedings should occur and further prove why the Commission must reject the SIPP.

FPL's As-Filed LLCS Tariffs

FPL first proposed creation of the LLCS-1 and LLCS-2 tariffs in direct testimony as part of its as-filed case. TR 2624. Initially, these tariffs applied to customers with a projected new or incremental load of 25 MW or more and a load factor of 85%. TR 2624. In supporting these specific thresholds, FPL witness Cohen noted that a customer with a load of 25 MW or more and a load factor of 85% or more would have significant impacts on FPL's transmission system and generation resource plan. TR 2624. Therefore, to serve a customer of this magnitude, FPL would need to make significant investments in new incremental generation capacity that, but for the customer's request for service, would not otherwise be incurred or needed to serve the general body of customers. TR 2624. Ms. Cohen stated that the goals of the tariffs were to:

> (i) ensure that FPL has a tariff and service agreement available to serve customers of this magnitude should they request service in the future; (ii) ensure that the cost-causer bears primary responsibility and risk for the significant generation investments required to serve a customer of this size; and (iii) protect the general body of customers and mitigate risk of subsidization and stranded assets.

TR 2624-2625.

To recover the shared total system costs from these customers, the base, demand, and non-fuel energy charges for LLCS-l and LLCS-2 were set at unit cost equivalents for the GSLD(T)-3 rate class with certain adjustments to recognize the incremental generation that will be deployed to serve large load customers. TR 2626. With regard to the incremental generation that would not be deployed but for large load customers, both rate schedules included an Incremental Generation Charge ("IGC") designed to ensure recovery of the costs incurred by FPL for such incremental generation. TR 2626. LLCS-1's IGC included a stated rate for the costs of the incremental generation capacity necessary to serve the combined total load cap of three gigawatt ("GW"), an amount FPL derived from existing transmission facilities in the LLCS-1 service territory. TR 2625. Customers who wished to place their facilities outside of the LLCS-1 territory would have had to opt in to the LLCS-2 tariff, which was not capped at three GW at the cost of FPL being unable to provide a stated rate for the IGC. TR 2625-2626.

In addition to the IGC, FPL also proposed other protections for its customers. LLCS customers would have to enter a 20-year LLCS Service Agreement, which, among other things, would have required the customer to provide an upfront security amount equal to the total IGC to be paid by the customer over the 20 year-term of the LLCS Service Agreement. TR 2685. Customers would also have had a take-or-pay demand charge of 90% applied to each tariff's demand charge. TR 2686. This minimum demand charge would have ensured that the LLCS

customer paid for FPL's fixed costs, which would have already been incurred, in the event that the customer's contract demand failed to materialize or their demand subsequently dropped. TR 2686.

Absent the proposed LLCS tariffs, LLCS customers would take service under either FPL's GSLD-3 or GSLD(T)-3 tariffs. TR 2744. Unlike the LLCS tariffs, the GSLD-3 and GSLD(T)-3 tariffs do not have incremental generation charges. TR 2744. Therefore, the costs of the incremental generation needed to serve an LLCS customer, which would otherwise not be incurred and is not needed to serve FPL's general body of ratepayers, would fall on exactly such ratepayers. TR 2743-2744. The originally proposed LLCS tariffs were aligned with the principle of cost causation. TR 2683. Further, these LLCS provisions would have helped ensure that if the total data center capacity would have become overbuilt in the coming years, operators would have faced strong incentives to maintain loads at the FPL data centers and reduce loads elsewhere if such provisions were not in place or were weaker. TR 4762. The SIPP abandoned this level of protection seemingly in exchange for the signature of the data center SIPs. This weakening of customer protection is further evidence of why the Commission must reject the SIPP.

Rebuttal Regression

While premature, FPL's as-filed proposed LLCS tariffs still represented a wise attempt to get in front of the problems posed by large load customers. TR 4741. Unfortunately, at some point between its as-filed direct and rebuttal cases, FPL opted to diminish the protections offered by the tariffs. To begin with, in her as-filed rebuttal testimony, Ms. Cohen noted that the LLCS tariffs load threshold was increased from 25 MW to 50 MW. TR 2672-2673. In contrast, she stated in her as-filed direct testimony that a customer with a load of 25 MW or more and a load factor of 85% or more will have significant impacts on FPL's transmission system and generation resource plan. TR 2624. This change alone means that the LLCS tariffs will likely apply to fewer customers. TR

2752-2753. The risks associated with customers with loads from 25 to 49.9 MW, who the tariffs would have previously applied to, will instead be borne by FPL's general body of ratepayers. TR 462. FPL conducted no analysis to support this change. TR 2765-2766.

Another way FPL decreased the protections in the LLCS tariffs described in Ms. Cohen's as-filed rebuttal testimony was by decreasing the take-or-pay requirements from 90% to 70%. TR 2754. This change increases the level of risk faced by FPL's customers. TR 2756, 4762-4764. Further, lowering take-or-pay requirements could free future owners of Florida data centers to focus their investments in states where the cost of stronger consumer protections are higher. TR 4764. The record is absent any reason for FPL to lower this requirement other than to "consider concerns raised by the FEIA." EXH 748, MPN F2-3404. This intervenor apparently thought that a 90% take-or-pay requirement was "too strict," even though a recent review of similar tariffs found that the majority had 80% or 90% minimum bill thresholds for relevant load sizes. TR 2754, 4764. Apparently, FEIA's opinion and signature on the SIPP was worth more to FPL than protections for its existing body of ratepayers.

Similarly, FPL also opted to lower the LLCS collateral requirement as part of its as-filed rebuttal apparently because "some of the intervenors' filed testimony [saying] it was commercially unfeasible." TR 2747. Instead of requiring a security amount equal to the total IGC to be paid by the customer over the 20 year-term of the LLCS Service Agreement, the security amount would instead be based on and reflective of the Large Load Customer's credit rating relative to the investment. TR 2685-2686. Like the changes above, this new approach lessens the amount of protections afforded to FPL's existing body of ratepayers. TR 2758. Despite intervenors' criticisms, FPL defended the original collateral requirement as a "very conservative approach." TR 2685. It appears that this "conservative" provision of the LLCS agreement was weakened by

FPL simply because it "would not be commercially acceptable to data center customers." TR 2685, 2747. These weakened consumer protections in the SIPP are not in the public interest.

SIPP Adoption

Except for further refining the credit-based collateral requirements, the SIPP essentially adopts the LLCS tariffs as proposed in FPL's as-filed rebuttal case. TR 4717-4718; EXH 1346, MPN N135. This means the SIPP inherits the deficiencies of the LLCS rebuttal changes discussed above. Despite the fact that every major element of the LLCS tariffs that FPL changed after filing its as-filed direct case was changed by the time of FPL's as-filed rebuttal case, Ms. Cohen nonetheless claims that the LLCS tariffs in the SIPP are a reasonable compromise of multiple differing and competing positions. TR 4613. In fact, the lack of change in the LLCS tariffs from as-filed rebuttal to SIPP demonstrates the opposite. Little negotiation appears to have actually occurred. This lack of consideration or compromise undermines both the validity and the public interest of the SIPP and requires its rejection.

Alternatives

To further protect FPL's general body of ratepayers, an additional tariff could be defined for very large load customers that are willing to be fully interruptible or to accommodate very large loads that bring their own generation to the FPL system. TR 4765. FPL is already partway to supporting large load interruptibility. Despite Ms. Cohen's assertion that LLCS customers have little interest in being interrupted (TR 5217), LLCS-1 and LLCS-2 customers already must agree to the following language in the LLCS service agreement:

> The Parties agree that interruptions or partial interruptions may occur or electric service may be curtailed, become irregular, or fail as a result of a variety of events and circumstances, including: (i) a Force Majeure Event; (ii) fuel or capacity shortages; (iii) breakdown or damage to the Company's generation, transmission, or

> distribution facilities; (iv) repairs or changes in the Company generation, transmission, or distribution facilities; (v) events of an emergency or as necessary to maintain the safety and integrity of the Company System; and (vi) ordinary negligence of the Company's employees, servants, or agents.

EXH 1279, MPN K934.

The circumstances described above are the exact kinds of circumstances under which it could be beneficial to the grid for data center customers to be curtailed. With regard to customers bringing their own generation, FPL could set the rules and criteria for review and acceptance of any new generation planned to serve new, very large loads. TR 4766. This approach is already being considered in other jurisdictions as a way for utilities to avoid having to build incremental generation themselves for large load customers. TR 4766; EXH 772, MPN F2-9161. Finally, as FPL claims that it is "committed to environmentally sustainable water use" (EXH 779, MPN F2-9502), FPL could require in its LLCS service agreement that data centers use the most efficient technology possible if they are to be cooled by water. These outside-the-box approaches are just a few examples of other ways tariffs can protect existing customers from the risks of large load ones. These are yet more reasons to reject the SIPP and hold generic proceedings regarding the future of data centers in Florida.

Conclusion

A running trend demonstrated above is FPL capitulating to the demands of data center interests in its as-filed rebuttal case after supporting significantly stronger LLCS tariffs in its as-filed direct case. Despite conceding that economic development was not a utility's function (TR 2760), FPL's decisions to lower customer protections to entice data centers were apparently in response to off-the-record discussions with "customers" (TR 2751) and in response to the data center advocates intervened in this matter. EXH 748, MPN F2-3404. It appears that FPL seeks to

rush approval of a half-baked, major state policy on data center and hyperscalers via embedding it in a take-it-or-leave-it settlement proposal.

In reviewing FPL's LLCS as-filed rebuttal proposals, which have made it into the SIPP as described above, the Commission has a choice: to protect the welfare of FPL's existing general body of ratepayers or to acquiesce to the volatile technology and development insiders whose business may not even materialize. All gold rushes eventually end, and FPL's customers should not be the ones left bearing the stranded costs. The Commission should find that the SIPP's LLCS tariffs are not in the public interest, reject the SIPP, and instead host a workshop or conduct rulemaking to address large load customers in Florida. The Commission should not allow the special interests of these customers to supersede those of the general body of existing customers all forth the sake of a signature.

MAJOR ELEMENT 8: CIAC Tariff

ARGUMENT:

Like the LLCS tariffs discussed above, the customer protections in FPL's proposed Contributions in Aid of Construction ("CIAC") tariff modifications were promising as-filed, but they were ultimately diminished by the time they were adopted in the SIPP. By doubling a certain threshold of the tariff in the SIPP compared to the as-filed case, FPL granted special interest wishes in exchange for FPL profits rather than heeding the needs of its current customers. As such, the Commission should find the CIAC provisions of the SIPP is not in the public interest.

CIAC is the amount due from applicants who request new or upgraded facilities in order to receive electric service. TR 438. In general, the higher a customer's load, the higher the cost for a utility to extend service to that customer. TR 489. It can potentially cost millions of dollars to extend service to certain customers. TR 489-490. For example, a recent FPL potential large load

applicant's transmission infrastructure needs were estimated to cost $26.7 million for a 230 kV transmission substation, including approximately 1.5 miles of new transmission line and associated rights-of-way. TR 518-519; EXH 445, MPN E93043.

Ultimately, if the applicant's actual load meets or exceeds the projected load used to calculate the CIAC amount, then the utility will fully recover the cost to extend service to the applicant. TR 439. The utility recovers these costs through the CIAC amount and the base rates paid by the applicant over the initial four-year period used to calculate the CIAC amount due. TR 439. However, if the applicant's forecasted load does not fully materialize, there will be a revenue shortfall over that same four-year period and the burden for recovery of the remaining costs to extend service to the applicant will fall to the general body of customers. TR 439. In such a situation, the applicant will end up receiving a subsidy from the general body of customers. EXH 396, MPN E89364.

The CIAC tariff requirement proposed in FPL's as-filed cause would have applied to all non-governmental applicants with a total projected load of 15 MW or more or that required new or upgraded facilities with a total estimated cost of $25 million or more. TR 2632. As explained by Ms. Cohen:

> An applicant that meets or exceeds one or both of these thresholds will be required to advance the total estimated costs to extend service and will receive a refund of the advanced costs minus the CIAC amount due under Rule 25-6.064, Florida Administrative Code. Upon the in-service date, the applicant will receive the refund through monthly bill credits that are equal to the applicant's actual monthly base energy and base demand charges for that billing cycle. The total amount eligible for refund shall be limited to the total costs to extend service less the required CIAC amount.

TR 2632.

Under this system, it is the applicant, not FPL or the general body of customers, that controls whether the projected load that caused the costs to be incurred will actually materialize. TR 2634. The intent of FPL's as-filed CIAC modification then was that, rather than placing the interim risk on the general body of ratepayers that an applicant with large projected load will materialize, the proposed new CIAC tariff requirement shifts that risk to the cost-causing applicant. TR 2634.

FPL did not arbitrarily reach the 15 MW or $25 million thresholds described above. TR 491-492. FPL could, for example, power 10,000 homes with the power needed for just one 15 MW facility. TR 491. Instead, the thresholds were based on FPL's current customer base, FPL's engineering expertise, and on interest expressed by customers considering moving to FPL's service territory. TR 492. Specifically, FPL considered thresholds other than 15 MW but settled on that threshold because significant investments are necessary for new or upgraded transmission and distribution facilities at that threshold. EXH 393, MPN E89345. Other thresholds were also considered for the $25 million amount, but FPL settled on $25 million because large load applicants that require capital investment of $25 million or greater often involve the need to construct feeders, substations, and/or transmission lines. EXH 445, MPN E93042.

In their as-filed rebuttal testimony, FPL witnesses Michael Jarro and Tiffany Cohen both defended the 15 MW and $25 million thresholds. TR 462, 2656-2658. In defending the thresholds, Mr. Jarro stated, correctly, that it was "important to recognize that any increases to FPL's proposed thresholds increase the level of risk borne by FPL's general body of customers." TR 462. Ms. Cohen referred to Mr. Jarro's testimony on the threshold issue and also noted, in relevant part, that FPL's existing Performance Guarantee Agreement (PGA) was insufficient to protect current customers from large load ones because the CIAC tariff changes would address large load risk on

the front end rather than have the general body of customers bear that interim risk until year five of the applicant's service under the PGA. TR 2658.

To OPC's dismay, after at first defending the CIAC thresholds in rebuttal testimony, FPL simply abandoned the customer protection value in these thresholds in the SIPP. Specifically, the $25 million threshold was doubled to $50 million. TR 4639. This is despite the specific engineering reasons FPL picked the $25 million amount and FPL's own admission that any increasing of the CIAC thresholds would increase the risks borne by FPL's general body of ratepayers. TR 2658. Because this threshold is double what FPL initially proposed, customers are doubly at risk of subsidizing the transmission and distribution costs for large load customers who still require significant investments into FPL's grid.

This change in the CIAC tariffs in the SIPP to double the threshold to $50 million is not in the public interest. The Commission should reject the CIAC provisions of the SIPP, and the SIPP itself, for being outside of the public interest. Instead, like the LLCS tariffs, the Commission should host a workshop on this issue or consider rulemaking to modify Rule 25-6.064, Florida Administrative Code (F.A.C.), to address the issues of CIAC and large load customers.

MAJOR ELEMENT 9: Electric Vehicle Charging Programs

ARGUMENT:

The SIPP's inclusion of the "Electric Vehicles Programs," especially the proposed "Make Ready" program, are not in the public interest. The proposed "Make Ready" program was not included in FPL's original filing on February 28, 2025. TR 4672. In fact, FPL criticized EVgo's proposal of a "Make Ready" program when EVgo suggested it in their intervenor testimony. At the time, FPL stated:

> A "make-ready" program as proposed by EVgo is a program whereby a utility's general body of customers pays for some portion

> of the cost of utility infrastructure needed for a third party to install EV charging stations. However, if the EV charging station is not successful with its operation and utilization, there is a risk for utilities and customers. That is why FPL opposes these types of make-ready programs providing credits to third-party infrastructure developers.
>
> To mitigate this risk for make-ready programs, the utility must provide stringent oversight to prevent stranded assets. Further, in planning for assets that may never be energized, it is easy to conclude that EVgo's proposed program could also create unnecessary and expensive grid upgrades, **costs that would be subsidized by the general body of customers.** As a result, FPL has consistently, since 2020, supported its demand limiter program to incentivize third party investment in EV charging infrastructure, and our program has been successful in doing so, hence our request to make it a permanent offering in this rate case proceeding.

TR 1252, 1269-1270. (Emphasis added.)

It appears that FPL has no problem overlooking the defects in the "Make Ready" program as long as doing so would secure the signature of the electric vehicle charging SIPs. The risks described *by FPL* in rebuttal testimony did not go away. They remain true with regard to the "Make Ready" program included in the SIPP, especially since the general body of ratepayers would be at risk of having to subsidize unnecessary and expensive grid upgrades. FPL already had a much less risky program – the "demand limiter" program that FPL suggested when it filed this case – but nevertheless, FPL and the SIPs have chosen the option that poses a greater risk for the general body of ratepayers. TR 4673-4674. FPL seemingly traded the "Make Ready" program for the EV intervenors' signatures as this was the only substantive issue that those intervenors were engaged with in the docket. Under no circumstance can this be considered to be in the public interest.

Additionally, FPL's $20 million "investment" to enable the "Make Ready" program is really a subsidy that would be paid for by ratepayers, at least initially. TR 4650. Although FPL claims that "[a]ll costs for these EV charging services are expected to be paid for by program

revenues and not borne by FPL's general body of customers," there is no guarantee of that, and, by design, the general body of ratepayers could still end up subsidizing these programs. TR 4652. This new-found optimism about the "Make Ready" program is directly contradicted by FPL's own testimony offered in the as-filed phase of the case.

MAJOR ELEMENT 10: Cost Allocation Methodology for Cost Recovery Clause Factors

ARGUMENT:

The FPL and the SIP foxes guarding the henhouse, not content with shifting costs to benefit only themselves in this matter, propose in the SIPP to do likewise with each of the cost recovery clause dockets. EXH 1277, MPN K12. If the SIPP is approved, then effective January 1, 2026, all clause factors will be allocated using the 4CP and 12% Average Demand methodology for Production Plant and 4CP for Transmission Plant. EXH 1277, MPN K12. FPL has agreed to reflect this revised allocation methodology in the 2025 clause proceedings by filing revised clause factors that take effect January 1, 2026. EXH 1277, MPN K12.

These changes will increase rates for non-signatories to the SIPP. Specifically, rates will increase for the Residential Service, General Service, General Service Demand, Sports Field Service, Outdoor Lighting, Street Lighting, and Premium Lighting customer classes. EXH 1338, MPN M2-80. In other words, the non-signatories to the SIPP will all see their rates go up. TR 5066-5068. In contrast, every other rate class will see their rates either remain unchanged or decreased, with large load customers seeing the largest decreases. EXH 1338, MPN M2-80. In short, the SIPP signatories will see rates go down. TR 5066-5068. This is consistent with the trend in this case of SIPP signatories getting benefits for themselves at the cost of other rate classes.

It is bad enough that the SIPP already attempts to adjudicate the rights of the majority of FPL's customers who are not represented by SIPP signatories in this matter. It is unconscionable

that the SIPP also attempts to do so in other dockets that do not even have the same intervenors. The Commission should not allow the SIPP signatories to poison the well and try to build momentum for the SIPP by including provisions affecting the clause dockets. Instead, the Commission should find that the SIPP provisions concerning cost allocation methodology for cost recovery clause factors are not in the public interest.[11]

MAJOR ELEMENT 11: Storm Cost Recovery Mechanism

ARGUMENT:

In its as-filed case, FPL primarily relied on the terms in this provision that had been negotiated by the signatories to the 2021 Settlement[12] with slight modifications. EXH 129, MPN C2-1353.[13] The 2021 Settlement SCRM contained a $4.00/1,000 kWh limitation on interim surcharge in a 12-month period.[14] In its as-filed case, FPL requested to modify this to $5.00/1,000 kWh but allow FPL to petition for an increase without regard to whether costs and replenishment exceeded the $800 million in that year. TR 2308; EXH 129, MPN C2-1353. The 2021 Settlement set the storm reserve to no less than $150 million (currently $220 million), but in the as-filed case, the request was to increase the storm reserve to $300 million. TR 2308; EXH 129, MPN C2-1353.[15] OPC expert witness Helmuth Schultz testified that FPL did not provide any support to meet its burden of proof in either its petition or in its rebuttal to justify an increase of $80 million for the

[11] OPC also adopts and incorporates by reference OPC's basic position concerning FPL reflected in Orders Nos. PSC-2025-0407-PHO-EG; PSC-2025-0409-PHO-EI, and PSC-2025-0410-PHO-EI.
[12] A SCRM has been a negotiated provision of the previous settlement agreements since 2010. TR 2307.
[13] Order No. PSC-2021-0446-S-EI, as amended by Order No. PSC-2021-0446A-S-EI and supplemented by Order No. PSC-2024-0078-FOF-EI; Order No. PSC-2024-0078-FOF-EI, issued March 25, 2024, Docket No. 20210015-EI, p. 70-71, *In re: Petition for Rate Increase by Florida Power & Light Company*.
[14] Order No. PSC-2024-0078-FOF-EI, issued March 25, 2024, Docket No. 20210015-EI, p.70, *In re: Petition for Rate Increase by Florida Power & Light Company*.
[15] *Id.* at p. 70-71.

storm reserve. TR 5002. Paragraph 12 of the SIPP incorporated the requested terms from the as-filed case without any additional modifications. EXH 1277, MPN K13 - MPN K14.

The SCRM provision in the SIPP combines several elements of existing law with negotiated and agreed terms imported from the 2021 Settlement. It only partially piggybacks on the existing Rule 25-6.0143, F.A.C., for determination of cost-eligibility and the file-and-suspend time frames, and hearing and interim provisions as interpreted by the Florida Supreme Court.[16] There is no basis for requesting pre-approved interim values. As a rationale for these pre-approved amounts, FPL only cites the total cost of past storms. TR 2307-2308. These SCRM various thresholds and numeric values such as the maximum monthly recovery amount, the recovery period, and the storm reserve amounts, are solely the product of negotiation.

The SIPP seeks to rely on the very existence of Paragraph 10 from the 2021 Settlement with the modification introduced in FPL's as-filed case as the basis to approve the SCRM. Non-signatories should not be bound by the terms of a settlement that was signed by parties who lacked authorization to settle on behalf of all customer interests. However, this is exactly what the SIPs are asking the Commission to do. The Company's approach does not provide the Commission with a sufficient record basis that is supported by competent, substantial evidence to implement it. The Commission should reject efforts to restrict the legal rights of the vast majority of FPL customers who have not agreed to waive their legal rights to full determination of the costs under the negotiated provisions of the proposed SCRM.

[16] *Citizens of State v. Wilson,* 567 So. 2d 889 (Fla. 1990); *Citizens of State v. Wilson*, 571 So. 2d 1300 (Fla. 1990); *Citizens of State v. Wilson*, 568 So. 2d 904 (Fla. 1990).

MAJOR ELEMENT 12: SoBRA Base Rate Adjustments 2027, 2028, 2029

ARGUMENT:

The Commission must not pre-authorize the three SoBRA mechanisms requested by FPL and the SIPs. These three incremental base rate increases will further raise base rates by approximately $61 million in 2027, $316 million in 2028, and $247 million in 2029. EXH 1441, MPN O4-77. Combined with a general base rate increase in 2026 and another general base rate increase in 2027, FPL is seeking permission to raise base rates five times over the next four years. This is more often than FPL requested in their initial petition!

The SoBRAs are also dependent upon the purported resource adequacy needs that FPL attempted, but failed, to support with the SLOLP analysis, as explained in Major Element 3. FPL asks that as long as FPL is able to prove that there is either a so-called economic need or a capacity need for the resources in the SoBRA, FPL should be allowed to increase base rates to pay for those additions. FPL knows that it will never be able to prove that there is ever a capacity need for solar because solar does not provide meaningful firm capacity. TR 991, 1013, 1031-1032, 1109, 1458, 2974. Therefore, FPL wants to be able to qualify for solar SoBRAs by proving an economic need. In other words, FPL wants to increase base rates if it proves that solar is "cost-effective," even if FPL does not have a capacity need for more solar. TR 1084. One universal truth that represents a large flaw in this request is that even if something is cost effective, that does not mean you should buy it if you do not need it. Every day, when you walk into a grocery store, there are a dozen or so different buy-one-get-one deals to choose from, but that does not mean that you should buy any of them – especially not if you do not need them or if you are using someone else's money. However, this faulty logic is exactly what FPL is seeking permission to do by asking for these SoBRAs. FPL wants to make customers pay for investments in 2027, 2028, and 2029, even if those investments

are not needed to be able to provide safe, reliable electricity. At a time when affordability concerns of FPL's customers are growing, such imprudent investments must be prevented.

It is also imprudent of FPL to continue to seek authorization for these SoBRAs in light of all of the uncertainty surrounding the future of PTCs that has been introduced during the pendency of this case. However, FPL wants to lock in their ability to seek these SoBRAs under either the economic need or capacity need terms. It is unfair, unjust, unreasonable, and not in the public interest to allow FPL to dictate the terms and conditions for which they can increase base rates in the future. Although FPL alleges that rejection of the SIPP will require FPL to file another rate case in two years, FPL has the option of requesting a limited proceeding in 2028 or 2029 to evaluate the need for whatever rate base additions FPL believes are necessary at that time without having to file another rate case.[17]

Additionally, as phrased in the SIPP, there do not appear to be any limits on the amount of SoBRA additions or cost caps on the SoBRA additions. TR 4996. This open-ended SIPP provision presents an extremely expensive risk to FPL's customers, especially considering all of the uncertainty surrounding PTCs, which are essential to FPL's argument that solar is cost-effective. TR 2403. FPL admits that if FPL no longer qualifies for PTCs for these 2028 and 2029 solar additions, they will become much more expensive. TR 2400-2401. Whether or not they are cost-effective will be affected by the loss of this "important piece of the CPVRR economics of those facilities." TR 2402-2403. This is yet another expensive risk that the SIPP would force upon FPL's customers if approved by the Commission. To minimize the risk of unfair, unjust, and unreasonable rate increases to customers as a result of either a SoBRA proceeding or a limited

[17] Rule 25-6.0431, F.A.C.

proceeding, the Commission should mandate a capacity need requirement for any solar and battery storage additions as a public interest standard, too.

Another issue with the SoBRAs is that FPL admits that they have already started construction of the 2027 projects and started physical, off-site construction of all of the 2028 and 2029 SoBRA projects. TR 2401-2402. This shows that there is no up-front determination of the prudence of those projects before the investments are made. If the Commission approves the SIPP, this can lead to wasteful consequences if the Commission later determines during one of the SoBRA proceedings that it was imprudent to build some or all those projects. Customers could pay the price for the imprudence of these investments, which is another reason on a growing list of reasons why the Commission must reject the SIPP.

MAJOR ELEMENT 13: Federal or State Tax Law Changes

ARGUMENT:

Apart from the precedent of the Tax Change language in the 2021 Settlement, there is no basis for requesting a provision to implement tax law changes without regard to other changes that may have taken place since rates became effective. As FPL witness Scott Bores conceded, "[m]y Exhibit SRB-8 and pages 60 to 63 of my direct testimony describe a tax law change provision that largely mimics the language included in FPL's 2021 Rate Settlement." TR 5184. Paragraph 14 of the SIPP incorporated the requested terms from the as-filed case only modifying the TAM to the RSM. EXH 1277, MPN K18.The Parties to the 2021 Settlement gave up the right to contest the terms or to seek an earnings test regarding any tax law changes as part of bargained-for consideration set forth in Paragraph 13 of the 2021 Settlement. It would be inappropriate to seek to impose them on the customers who did not agree to the SIPP.

Nevertheless, the SIPP seeks to rely on the very existence of Paragraph 13 from the 2021 Settlement with the modifications introduced in FPL's as-filed case as the basis to approve the Tax Change provision. Non-signatories should not be bound by the terms of a settlement that was signed by parties who lacked authorization to settle on behalf of all customer interests. However, this is exactly what the SIPs are asking the Commission to do. FPL's approach does not provide the Commission with a sufficient record basis that is supported by competent, substantial evidence to implement it. The Commission should reject efforts to restrict the legal rights of the vast majority of customers who have not agreed to waive their legal rights to full determination of the cost impacts under the negotiated provisions of the proposed Tax Change Provision.

MAJOR ELEMENT 14: Capital Recovery Schedules

ARGUMENT:

The Commission should reject the SIPP because the twenty-year amortization period is not in the public interest. The CMPP's proposal is much more likely to be in the public interest because the capital recovery schedules, including the amortization of the Plant Daniel recovery costs pursuant to Order No. PSC-2025-0222-S-EI, would be amortized over a ten-year period. The benefits of a ten-year amortization period are supported by the direct testimony of FPL witness Keith Fergusion. TR 1555-1558. Additionally, a ten-year amortization period avoids increasing the accumulated carrying costs associated with a longer period and minimizes intergenerational inequity. TR 1599; EXH 1297, MPN L8-283.

MAJOR ELEMENT 15: Depreciation and Dismantlement

ARGUMENT:

The dismantlement and depreciation studies sponsored by FPL witnesses Ned Allis and Keith Ferguson, which are incorporated in the SIPP (EXH 1277, MPN K21), result in unjustified

and excessive annual expenses. The proposed adjustments are arbitrary, unsupported, and would improperly shift hundreds of millions of dollars of additional costs to ratepayers.

In contrast, OPC expert witnesses William Dunkel (dismantlement and depreciation) and Helmuth Schultz (regulatory accounting) presented a balanced and sound alternative that preserves fairness and adheres to the traditional ratemaking principles of dismantlement and depreciation. The Commission should reject the SIPP because it would ignore the defects in FPL's studies, sweep Mr. Dunkel's and Mr. Schultz's well-reasoned adjustments to dismantlement and depreciation expenses under the rug, and impose unfair, unjust, and unreasonable rates that are not in the public interest.

Dismantlement

The record demonstrates that accepting FPL's dismantlement study using the SIPP vehicle overstates dismantlement costs and understates salvage value and the cost of money – thereby inflating the annual dismantlement accruals by millions of dollars per year. Mr. Dunkel recommends a dismantlement expense reduction of $52,961,000 (jurisdictional) in 2026, and $52,974,000 (jurisdictional) in 2027. TR 3304, 3078; EXH 189, MPN C23-3474 – MPN C23-3475, MPN C23-3496; EXH 167.

FPL Approach to Dismantlement Imposes a Tax Penalty on Customers

This overstatement of capital recovery subjects ratepayers to a tax penalty in the form of an accumulated deferred income tax ("ADIT") asset, which reduces the cost-free liability ADIT reflected in the cost of capital and increases revenue requirements. The resulting penalty impact is compounded by increasing the capital structure ratio for other revenue requirements, which includes the return on rate base. TR 3238

Concurrent with the tax penalty, dismantlement accruals are non-restricted funds, and, once collected, they become part of the utility's cash flow and can be used for any corporate purpose. TR 1594. Mr. Allis admitted that he did not know what the money was used for, and Mr. Ferguson agreed that the accrual can be used for any valid corporate purpose. TR 748, 1594. This incentivizes the utility to overstate dismantlement accruals to create a windfall for shareholders at the expense of customers.

Both the tax penalty and shareholder windfall can be minimized by disallowing premature recovery of the speculative, uncertain, unknown, and unmeasurable dismantlement costs that Mr. Dunkel and Mr. Schultz have presented. TR 3238, 3303-3304; EXH 189, MPN C23-3474, 3475, 3496; EXH 167, MPN C21-3178. OPC's adjustments properly remove these speculative components and ensure that customers only pay for prudent and verifiable expenses.

Dismantlement Study is Not Based on Experience

The FPL Dismantlement Study was prepared by Mr. Allis who is not a dismantlement expert. TR 3081-3082; EXH 164, MPN C21-3147. Mr. Allis has never participated in a dismantlement project of any kind, nor has Mr. Allis sponsored a dismantlement study prior to this filing. TR 744, 3036-3039. Due to his lack of relevant experience, the Commission should give little weight to Mr. Allis's opinions on dismantlement matters and adopt all adjustments and conclusions presented by Mr. Dunkel, whose testimony is grounded in relevant technical and regulatory experience. EXH 163, MPN C21-3119-3134. Mr. Allis admitted "this is the first power plant dismantlement study" he had sponsored. TR 744. Nevertheless, in his dismantlement study Mr. Allis claimed to know how many labor hours it would take for each step in the dismantlement of each power plant. TR 3039; EXH 164, MPN C21-3147. However, Mr. Allis has never participated in a case or a project in which a plant was actually being dismantled. His firm has

never been in a case in which a production plant was actually being dismantled. TR 3082; EXH 164, C21-3147.

Mr. Allis is also not an engineer. TR 638-639. Neither Mr. Allis nor his co-author of the FPL dismantlement study have experience in participating in a project in which a plant was actually being dismantled. TR 3039; EXH 164, C21-3169. An illustration of this inexperience is found in Mr. Allis' estimates of how many labor hours it would take for each step in the dismantlement of each power plant. EXH 164, MPN C21-3147.

After the OPC testimony demonstrated that he was not a dismantlement expert, in his rebuttal testimony Mr. Allis, for the first time, claimed he had compared his dismantlement estimates to "FPL's experience dismantling generating facilities." He stated without substantiation "[m]oreover, in the aggregate, the results of the dismantlement study are not significantly higher than ….FPL's experience dismantling generating facilities…" TR 713. His is just a conclusionary claim; he failed to show the comparison, the results, or any supporting data to support the claim. In fact, when the OPC asked to obtain the data from FPL's experience dismantling generating facilities, FPL objected and provided data for only four recently retired units which were not yet dismantled. For most of these units the FPL response said, "the main structures, are still standing." EXH 343, MPN E3956.

Of course, when it is time to actually dismantle these plants, FPL will not rely upon the estimates made by Mr. Allis. When it is time to actually dismantle a production plant, FPL will hire an experienced dismantlement contractor, and that experience dismantlement contractor will control how the plant is dismantled. The only purpose of the dismantlement labor estimates made by the witness who has never participated in an actual dismantlement of a production unit, is to

collect money from ratepayers. TR 3039. Mr. Allis' dismantlement cost and expense estimate are not reliable and should be disregarded. Using his estimates would not be in the public interest.

Scrap Steel Estimates are Understated

The FPL dismantlement study filed by FPL and included in the SIPP would overcharge ratepayers by pretending structural scrap steel has a value of only $160 per ton, when Mr. Allis's own workpapers show structural steel has a scrap value of $315 per ton. TR 3046, 3052-3053, 3083; and EXH 164, MPN C21-3155. Mr. Allis undervalued other types of scrap, as well. TR 3048-3054, 3083; EXH 164, MPN C21-3156 – MPN C21-3164. The SIPP would accept this error. This is yet another reason for the Commission to disregard the SIPP.

Using the study, FPL would also overcharge ratepayers by double-charging them for transportation of the scrap. TR 3083. When he was asked why he was only crediting $160 as a value of scrap for structural steel when the real price was $315 per ton, Mr. Allis said this was "to account for transportation, contamination and other factors." TR 3045, 3083. However his own dismantlement cost study has a different line item that charges the ratepayers $59.24 per ton for transportation of the scrap from the site to the scrap dealer. TR 3083; EXH 164, C21-3142. This double-charge in the SIPP is an additional reason approval of the agreement would not be in the public interest.

FPL's dismantlement study arbitrarily discounts national scrap metal prices. Mr. Dunkel's expert testimony points out that FPL's assumed values are below current and historical averages. TR 3048-3054. The systemic undervaluation of salvage results in over accruals and shifts the excessive costs to the ratepayers. The Commission should reject the SIPP and adopt Mr. Dunkel's scrap metal adjustments as they are consistent with the current market conditions and scrap price

trajectories. Adjusting salvage values upward aligns with the modern market data and corrects the systematic undervaluation.

Contingency is Inflated

FPL's inclusion of a positive contingency inflates dismantlement costs by assuming unspecified "risks" with no justification. Mr. Dunkel's adjustment is a rational response to FPL's over-estimation of dismantlement expenses. Mr. Allis even admits that cost estimates and accruals for solar facilities, on a per unit basis, have become lower than the previous study when adjusted for inflation. TR 733. Given this trend and the lack of demonstrable cost overruns, applying a negative 25% contingency is a conservative corrective adjustment and protects customers from overpaying today for risks that may never materialize. TR 3055-3057.

Discount Rate is Inadequate

Although Rule 25-6.04364 F.A.C., does not explicitly state what discount rate should be applied, it does require that dismantlement costs are to be discounted in a manner that accrues the costs over the remaining lifespan of that unit. TR 1581. FPL's use of an inflation-only discount rate (3.6%) fails to reflect the time value of money and results in an excessive present value burden on ratepayers. TR 3043-3045.

FPL witness Ferguson correctly stated that the dismantlement studies include "present value" calculations. TR 1561. The definition of the "discount rate" used in "present value" is "the discount rate that would be the forgone rate of return." TR 3084-3085. Other FPL witness testimonies show FPL knows the discount rate in a present value calculation is a cost of money and not just an inflation rate. Through exhibits offered to support other elements of its case, FPL acknowledges the following:

> CPVRR [Cumulative Present Value Revenue Requirement] costs are in million $ and are discounted at 8.15% (FPL's most recent WACC [Weighted Average Cost of Capital]) for the years 2025 thru 2071.

EXH 68, C17-2316a; EXH 69, C17-2317a; EXH 70, C17-2318.

That "CPVRR" means Cumulative Present Value Revenue Requirement is shown in the testimony of FPL witness Andrew Whitley. TR 966. That "WACC" means Weighted Average Cost of Capital is shown in FPL witness Scott Bores' testimony. TR 2307.

In the present value calculations in the dismantlement studies, it is the ratepayers who are deprived of the use of their money. Sometimes money for dismantlement is taken from ratepayers' decades prior to the dismantlement (and also creating the potential ADIT penalty that is discussed above). Since it is the ratepayers' money, FPL suggests the time value of ratepayers' money is only 3.6% per year. However, ratepayer money is worth at least the open market value of any other money. TR 3042-3043. In fact, for almost one-half of all families, their marginal cost of money is at least 22% per year. The Federal Reserve Bulletin shows that 45% percent of families carry a credit card balance. The Federal Reserve states the average interest charged on credit card balances is approximately 22% percent. Every extra dollar that is taken from these families because of charges for dismantlement being higher than they should be is one less dollar they could have used to pay down their credit card balance, which is costing them nearly 22% per year in interest. TR 3043-3044; EXH 165; EXH 166, C21-3175.

Mr. Dunkel's proposed use of FPL's weighted average cost of capital is more appropriate by aligning dismantlement accruals with what FPL's shareholders say are the actual economic cost of deferred expenditures. FPL's proposal to use inflation as a discount rate front-loads dismantlement accruals, forcing current customers to pay for dismantlement expenses in advance. TR 3043. The Commission should reject this proposal. The cost of capital properly allocates costs

across generations and avoids providing an interest-free loan from ratepayers to FPL. The Commission should reject FPL's and the SIPP's proposed discount rate and use Mr. Dunkel's recommendation, or, at a minimum, use the current 30-day commercial paper rate.

Summary

When flowed through the FPL proposed calculations, the errors and "estimates" combined contributed to an inflated and unsupported total dismantlement cost of $6,480,548,295. EXH 167, MPN C21-3184; EXH 85, MPN C21-1115. Based in part on this inflated dismantlement cost, FPL proposes to collect $106 million per year from customers. EXH 167; EXH 85, MPN C1-1150. As discussed here, that estimate is overstated by nearly double if allowed to stand in the SIPP.

Depreciation

Overview

Paragraphs 16 of the SIPP adopts the depreciation study as-filed with Mr. Allis' direct testimony, except "the estimated retirement date for Scherer Plant shall be extended from 2035 as filed to 2047." EXH 1277; MPN K20. The depreciation analysis presented by Mr. Dunkel represents an evidence-based and sound approach that ensures fairness to ratepayers. Mr. Dunkel's position, as incorporated by Mr. Schultz, systematically integrates depreciation rates with financial modeling. TR 3300; EXH 189, MPN C23-3492.

The respective adjustments to accumulated depreciation are reflected on line 14 of exhibit HWS-2, Schedule C-14. EXH 189, MPN C23-3492. Projected accumulated depreciation, based on adjustment to projected expenses should be reduced by $82,251,000 in 2026, and $251,669,000 in 2027, on a jurisdictional basis. The 2026 adjustment includes 50% of the $164,501,000 expense adjustment for 2026. The 2027 adjustment is the $165,501,000 expense adjustment for 2026 plus 50% of the $174,336,000 2027 expense adjustment. EXH 189, MPN C23-3492.

Reserve Transfers Needlessly Inflate Depreciation Expense

Mr. Allis' proposed reallocations in Scherer Unit 3, Gulf Clean Energy Center Units 4 and 5, and the Ft Myers/Lauderdale GTS shifts reserves away from accounts with shorter remaining services lives to accounts with longer remaining service lives. These transfers increase the depreciation expense, even if the total accumulated depreciation reserve stays the same. TR 3061. Mr. Allis transferred $17.1 million out of the depreciation reserves of Steam Production units (which have shorter remaining lives) into the depreciation reserves of Other Production units (which have longer remaining lives). TR 684. These transfers needlessly and artificially impose higher revenue requirements on customers.

For example, the Gulf Clean Energy Center Unit 4 had a remaining life of 3.93 years. Mr. Allis transferred $12.9 million out of its reserve even though it was going to be fully paid off. It is the production unit which has the shortest remaining life in the FPL fleet. It is to retire soon and is fully depreciated. This means the ratepayers have fully paid off the investment in this unit. Mr. Allis transferred $12,923,007 out of the depreciation reserve of this unit. This transfer artificially created a $12 million deficiency which the ratepayers only have a few years to pay for, because of the short remaining life. TR. 3062. He then proposed a depreciation rate of 7.5%, which is more than double FPL's average depreciation rate of 3.42%. TR 3062. EXH 1282, MPN K1904.

Another unit which has a short remaining life and is fully depreciated is Lauderdale GTS. This means the ratepayers have fully paid off the investment in this unit. Mr. Allis transferred $8,289,576 out of the depreciation reserve of this unit. This transfer artificially created an $8 million deficiency which the ratepayers only have a few years to pay for because of the short remaining life. TR 3063. As a result the depreciation rate claimed in the SIPP for this unit is 6.39%,

which is above average. EXH 1282, MPN K1910. Again, the Commission should keep in mind that this unit is actually fully depreciated.

It is undisputed in the record that "[t]ransferring money out of an account which has a relatively short remaining life can increase the total depreciation expense, even if the total accumulated depreciation (depreciation reserve) stays the same." For example, if $8,000 is removed from the reserve of a unit which has a 5-year remaining life, that reduction must be recovered in only five years, which is a $1,600 per year increase in the depreciation expense. If that $8,000 is transferred to the reserve of a unit which has a 25-year remaining life, that impact is spread over 25 years, which is a $320 per year reduction in depreciation expense. TR 3060-3061.

Put another way, Mr. Allis' and FPL's approach to transfers enabled by the SIPP would be comparable to trying to pay down two loans with different payment periods. If you move money from the balance of a five-year loan to a twenty-year loan, the total amount of debt you owe does not change. However, your monthly payments would increase because the five-year loan now has less paid into it and a shorter time to finish repayment. The reserve transfers do exactly that. TR 3061-3063. These transfers needlessly cause higher expense and revenue requirements and are not in the public interest. The depreciation rates in the SIPP seek to take advantage of that effect and raise revenue requirements. Mr. Allis admits "[f]or example, the steam facilities have shorter remaining lives than the other production facilities." TR 718.

Mr. Allis had no valid reason to artificially create deficiencies (and the resulting high depreciation rates) in the fully depreciated units which would soon retire. If he needed a source from which to transfer reserve, he could have taken reserve from the Martin Combined Cycle, which has reserve surplus of $88 million, or from the Dania Beach Energy Center, for which Mr.

Allis shows a reserves surplus of $44 million, or from the Manatee Combined Cycle for which Mr. Allis shows a reserve surplus of $55 million. TR 3066.

The Proposed FPL Depreciation Study Does Not Have the Required Updated Information.

Apart from the substantive errors pointed out in this element, it needs to be pointed out that FPL's depreciation study is not in compliance with the rule and further undermines the filed request impact that is being masked by the SIPP.

Rule 25-6.0436(5)(f), F.A.C. includes the requirement that a depreciation study shall include:

> The explanation and justification shall discuss any proposed transfers of reserve between categories or accounts intended to correct deficient or surplus reserve balances.

Rule 25-6.0436(4)(e), F.A.C. states that:

> The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.

FPL did not provide in a timely manner the information about the proposed FPL reserve transfers needed under these Rules. Nothing in Mr. Allis' depreciation study, direct testimony, exhibits or anything in the FPL direct case, disclosed what specific reserve amounts Mr. Allis had transferred to or from specific units or accounts. When asked in discovery to provide "all workpapers" for the FPL direct filing, FPL still did not provide any document which disclosed what specific reserve amounts Mr. Allis had transferred to or from specific units or accounts. Only late in the case was this information, which must be provided by FPL and "investigated" by the Commission, made available in a discovery response TR 3067-3070.

Summary

When taken together, or independently, the resulting depreciation and dismantlement proposals are not in the public interest and are additional reasons why the Commission should reject SIPP.

MAJOR ELEMENT 16: Sale of Excess ITCs and PTCs

ARGUMENT:

OPC recognizes the potential estimated benefit of the sale of excess ITCs. However, FPL's proposed flow-through amortization of the non-excess ITCs in one year instead of over the remaining lives of the assets will likely wipe out this purported benefit.

MAJOR ELEMENT 17: Rate Stabilization Mechanism

ARGUMENT:

The Commission must reject FPL's unfair, unjust, and unreasonable Rate Stabilization Mechanism ("RSM"). The RSM is a poison pill in the SIPP, and there is no combination of settlement provisions that could overcome the harm that the RSM will inflict upon FPL's general body of ratepayers if the Commission were to approve it. The multitude of reasons why the Commission must unequivocally reject the RSM include, but are not limited to: (1) the RSM is unprecedented; (2) the RSM proposes to use improper and unjust funding sources; (3) the RSM would guarantee FPL's earnings at or near the top of the ROE range; (4) the RSM would not stabilize customer base rates or bills; and (5) the RSM would harm customers.

The RSM is Unprecedented

The Commission has never before seen, let alone approved, what FPL proposes for the RSM. Prior to FPL filing the SIPP on August 20, 2025, the highly controversial TAM request was being heavily litigated, the approximately $845 million remaining Reserve Amount from the 2021

Settlement was projected to be fully amortized by the end of 2025, and the $145 million of ITCs associated with the 522 MW NWFL battery storage project were to be flowed through to customers to offset revenue requirements. TR 1751; EXH 379, MPN E61693. Additionally, the Asset Optimization Program or ("AOP") was not even mentioned in the original filing. That provision was approved in the 2021 Settlement as an evergreen provision and would continue to provide crediting of $90.5 million of the first $150 million of designated asset sales revenues to customers.[18] TR 5001-5002.

Instead of letting the Commission address each of these RSM funding sources and the AOP individually on their merits (or lack thereof), FPL and the Special Interest Parties rolled these four issues into one tortured mechanism and re-branded it as the RSM. While the Commission has previously approved Reserve Surplus Amortization Mechanisms ("RSAMs") for FPL as provisions of settlement agreements, it has never before approved a special, discretionary pot of money that combines surplus depreciation expense, non-excess deferred income tax liabilities, ITCs, and the customer's portions of the AOP for the purpose of allowing FPL to manage its earnings to ensure that those earnings are at the top of the ROE range. To the extent that FPL relies in any way upon the 2021 Settlement as precedent for the RSM, OPC reminds FPL and the Commission of paragraph 30 of the 2021 Settlement, approved by the Commission and affirmed by the Florida Supreme Court, which states, in part:

> No party will assert in any proceeding before the Commission or any court that this Agreement or any of the terms in the Agreement shall have any precedential value, except to enforce the provisions of this Agreement.[19]

[18] Order No. PSC-2021-0446-S-EI, issued December 2, 2021, p. 48-49, *In re: Petition for rate increase by Florida Power & Light Company.*
[19] Order No. PSC-2021-0446-S-EI, issued December 2, 2021, p. 55, *In re: Petition for rate increase by Florida Power & Light Company.*

The RSM included in this so-called settlement agreement is an egregious, unprecedented, attempted cash grab from FPL's customers wallets, and it must be rejected.

The RSM Proposes to Use Improper and Unjust Funding Sources

In order to analyze the harm that the RSM will undoubtedly impose upon FPL's ratepayers, it is necessary to take a closer look at each of the proposed funding sources: (a) Unprotected, Non-Excess Deferred Tax Liabilities; (b) Carryover RSAM; and (c) 522 MW NWFL battery storage ITCs.

Unprotected, Non-Excess Deferred Tax Liabilities

See Arguments in Legal Issue 2.

Carryover RSAM

Paragraph 21(a)(ii) of the SIPP states that "[a]ny balance remaining as of January 1, 2026 in FPL's existing Reserve Surplus Amortization Mechanism ('RSAM') approved in the *2021 Rate Settlement Order* ('RSAM Carryover Amount')" shall be a funding source for the proposed RSM. EXH 1277, MPN K22. OPC was a signatory to the 2021 Settlement. Paragraph 16(g) of the 2021 Settlement stated:

> FPL may not amortize any portion of the Reserve Amount past December 31, 2025 unless it provides notice to the Parties by no later than March 31, 2025 that it does not intend to seek a general base rate increase to be effective any earlier than January 1, 2027, in which event the Minimum Term of this Agreement shall be extended by 12 months.[20]

FPL failed to provide notice prior to March 31, 2025, that FPL did not intend to seek a general base rate increase to be effective prior to January 1, 2027. To the contrary, on December 30, 2024,

[20] Order No. PSC-2021-0446-S-EI, issued December 2, 2021, p. 46, *In re: Petition for rate increase by Florida Power & Light Company.*

FPL filed a Test Year Notification letter informing the Commission that it would be seeking a general base rate increase to be effective beginning January 2026.[21]

The Commission order approving the 2021 Settlement was recently affirmed by the Florida Supreme Court.[22] As a signatory party to the 2021 Settlement, OPC demands that the Commission enforce the term of the 2021 Settlement that prohibits FPL from amortizing any portion of the Reserve Amount through either the RSAM or RSM after December 31, 2025. The Commission must reject the SIPP as it is not in the public interest to reward FPL for violating the Commission's own orders.

Another problem with allowing FPL to use the Carryover RSAM as a funding source for the RSM is because there wasn't supposed to be any Carryover RSAM. When FPL filed its Petition for Base Rate Increase and pre-filed direct testimony on February 28, 2025, FPL projected that it would fully amortize all of the remaining Reserve Amount of approximately $845 million by the end of 2025. TR 1751. When FPL filed the SIPP on August 20, 2025, FPL contradicted its own testimony by indicating that, in fact, FPL will not have amortized all of the Reserve Amount by December 31, 2025. In the event that a Reserve Amount exists after December 31, 2025, the Commission should order that it be returned to customers over the remaining life of the assets, not rolled up into an unprecedented and tortured mechanism that exists solely to maximize FPL's earnings. If the SIPP is approved and there are "Carryover RSM" funds on December 31, 2029, is FPL going to ask for this "non-cash" earnings-maximizing mechanism snowball to continue? The Commission must say "no" now by rejecting the SIPP.

[21] Document No. 00012-2025, Docket No. 20250011-EI, p. 2, 4.
[22] *Fla. Rising, Inc. v. Fla. Pub. Serv. Comm'n*, 415 So. 3d 135 (Fla. 2025).

ITCs Associated with 522 MW Battery Storage Project

The SIPP lists the third funding source for the RSM as "[t]he ITCs associated with the 522 MW NWFL battery storage project added during 2025, for which FPL is authorized to recognize a regulatory liability for the full amount of the ITCs." EXH 1277, MPN K22. The treatment of these ITC as proposed in the SIPP is not in the public interest, especially considering FPL's history of normalizing ITCs over the lives of the assets.

Historically, FPL fully normalized ITCs with the tax benefits spread over the book lives of assets. TR 1742. When FPL filed its petition on February 28, 2025, it proposed to opt out of normalization and flow through the full value of the ITCs in one year, thereby lowering revenue requirements, at least in the short term. TR 1742. FPL estimated that the ITCs associated with the 522 MW NWFL battery storage project were originally slated to offset approximately $145 million of 2026 Revenue Requirement. EXH 379, MPN E61693. Doing so would have resulted in another matching principle violation because only FPL customers in the year that the ITCs are being recognized would receive the benefits while FPL customers during the remaining approximately 19 years of the lives of the assets will not receive any benefits from the ITCs.

Rather than sticking with normalizing the ITCs as FPL has done historically or flowing-through the ITCs to a single-year of customers, the SIPP treatment of these ITCs is the most unfair, unjust, and unreasonable option of the three. Allowing the $145 million of 522 MW NWFL battery storage ITCs to be poured into the RSM pot ensures that no customers will receive the benefits of the ITCs. FPL's track record of using the RSAM to maximize shareholder profits will surely be repeated with the RSM, and neither current nor future customers will ever realize those ITC benefits if the Commission approves the SIPP.

Seizure of the $90.5 Million of the Customer Share of AOP Revenues

The RSM's euphemistic reference to a "sharing" of the gains generated by the AOP to the extent it exceeds $150 million appears to harm customers. EXH 1277, MPN K23. In the 2021 FPL Settlement, which was apparently continued pursuant to Paragraph 21 of that agreement, customers would receive the first $42.5 million of identified gains, 40% of gains between $42.5 million and $100 million, and 50% of the gains above $100 million.[23] Thus, for savings of $150 million, customers would normally receive $90.5 million of the overall gains.[24] The SIPP provision that 100% of the gains up to $150 million would be available to top off earnings up to the proposed 200-basis point upper limit of an 11.95% ROE and thus essentially flow the $90.5 million customer share through to shareholders is problematic to say the least as noted by OPC expert witness Helmuth Schultz. TR 5001-5002. Under the default of the 2021 Settlement formula for sharing, which FPL did not propose changing in its filed case, the $90.5 million should pass through to customers. The RSM brazenly seizes these customer dollars for shareholder benefit. This appropriation of customer funds is contrary to the public interest and must be rejected.

The RSM Would Guarantee FPL's Earnings at or Near the Top of the ROE Range

Throughout multiple FPL witness testimonies, FPL likens the RSAM to the TAM, and later the RSM.[25] FPL's track record of using the RSAM to maximize earnings over the last four years should inform the Commission of how FPL would likely use the proposed RSM to do the exact same thing for the next four years. FPL can attempt to minimize or deflect what their true intentions are for the RSM, but FPL's historic manipulation of the RSAM speaks for itself.

[23] Order No. PSC-2021-0446-S-EI, issued December 2, 2021, p. 48, *In re: Petition for rate increase by Florida Power & Light Company.*
[24] [$42.5 million + ($57.5 million *0.4) +($50 million /2) = $90.5 million].
[25] TR 1766, 1768, 1769, 1772, 2314; Document No. 01170-2025, Docket No. 20250011-EI, p. 27.

Below are two charts that OPC moved into evidence as exhibit 538. This exhibit consisted of FPL's responses to OPC's Fifth Set of Interrogatories, Nos. 115 and 116. The chart associated with Interrogatory No. 115 reflects what FPL's achieved ROEs would have been without an RSAM amortization credit, and the chart associated with Interrogatory No. 116 reflects what FPL's achieved ROEs would have been without an RSAM amortization debit.

FPL's Response to OPC's Fifth Set of Interrogatories No. 115

Line No.	Month/Year	FPSC Adjusted ROE(1)	FPSC Adjusted ROE without RSAM Amortization Credits
1	January-21	11.60%	11.01%
2	February-21	11.60%	11.36%
3	March-21	11.60%	11.30%
4	April-21	11.60%	11.42%
5	May-21	11.60%	11.58%
6	June-21	11.60%	11.45%
7	November-21	11.60%	11.20%
8	December-21	11.60%	11.42%
9	January-22	11.42%	11.22%
10	February-22	11.56%	11.28%
11	April-22	11.60%	11.56%
12	January-23	11.80%	11.34%
13	February-23	11.80%	11.45%
14	March-23	11.80%	11.60%
15	April-23	11.80%	11.76%
16	May-23	11.80%	11.71%
17	June-23	11.80%	11.73%
18	November-23	11.80%	11.77%
19	December-23	11.80%	11.74%
20	January-24	11.80%	11.24%
21	February-24	11.80%	11.25%
22	March-24	11.80%	11.50%
23	April-24	11.80%	11.55%

Note (1): Represents FPL's FPSC Adjusted ROE as reflected on Schedule 1.1 of the monthly Earnings Surveillance Report filed with FPSC.

FPL's Response to OPC's Fifth Set of Interrogatories, No. 116

Line No.	Month/Year	FPSC Adjusted ROE(1)	FPSC Adjusted ROE without RSAM Amortization Debits
1	July-21	11.60%	11.61%
2	August-21	11.60%	11.78%
3	September-21	11.60%	11.84%
4	October-21	11.60%	11.74%
5	March-22	11.60%	11.71%
6	May-22	11.60%	11.69%
7	June-22	11.60%	11.68%
8	July-22	11.60%	11.83%
9	August-22	11.70%	11.86%
10	July-23	11.80%	11.99%
11	August-23	11.80%	11.99%
12	September-23	11.80%	12.03%
13	October-23	11.80%	11.87%
14	May-24	11.80%	11.84%
15	June-24	11.80%	11.85%
16	July-24	11.80%	11.97%
17	August-24	11.80%	11.85%
18	September-24	11.80%	12.11%
19	October-24	11.65%	11.78%
20	November-24	11.55%	11.55%
21	December-24	11.40%	11.45%

Note (1): Represents FPL's FPSC Adjusted ROE as reflected on Schedule 1.1 of the monthly Earnings Surveillance Report filed with FPSC.

From January 2022 through August 2022, FPL's authorized midpoint ROE was 10.6%.[26] Since September 2022 to present, FPL's authorized midpoint ROE has been 10.8%.[27] FPL admits that the last step before determining FPL's adjusted ROE every month is to either credit or debit depreciation expense. TR 1904-1905. As these two charts show, FPL has intentionally used the RSAM with precision to ensure that FPL earns at or very near the exact top of FPL's 200-basis-

[26] Order No. PSC-2021-0446-FOF-EI, Docket No. 2021-0015-EI, issued December 2, 2021, p. 26, *In re: Petition for rate increase by Florida Power & Light Company.*
[27] PSC Order No. PSC-2022-0358-FOF-EI, Docket No. 20210015-EI, issued October 21, 2022, *In re: Petition for rate increase by Florida Power & Light Company.*

point ROE range of either 11.6% or 11.8% year-round for last four years. Even FPL admits that during the last four-year settlement term, FPL has never earned as low as at just the midpoint. TR 2381-2382. FPL also admitted that, all else equal, adjusting FPL's ROE upwards results in increased earnings for FPL. TR 1906. As OPC expert witness Tim Devlin's exhibit TJD-3 shows, FPL's use of the RSAM since 2021 has led to dramatic increases in both dividends and retained earnings for FPL's parent company over the last several years. TR 2929; EXH 151, MPN C20-3066. FPL's insistence on receiving approval of at first the TAM and now the RSM in this docket makes it inescapably clear that the company is obsessed with continuing to convert customer credits to shareholder benefit.

FPL attempts to minimize the earnings realities that these charts show with two arguments. First, FPL claims that the RSAM was designed to get FPL only to the midpoint. TR 1766, 1909, 4844. However, FPL witness Ina Laney was asked if she was aware of an instance when FPL had ever used the RSAM to bring the achieved reported earnings surveillance report ROE up to the midpoint of the range, and she said "[n]o." TR 1909. This is clear from exhibit 538, also. If the Commission approves the SIPP, FPL will use the RSM similarly to get to the top of the ROE range because despite FPL's repeated claims that the RSM will only allow FPL to get to the midpoint, FPL balked at the idea of limiting the RSM to just the midpoint. Commissioner Passidomo-Smith asked FPL witness Scott Bores if limiting the RSM to the midpoint would cause the settlement agreement to implode, and he responded, "I would say, yes. I think it would be a hard time for us to accept having that just limit us to the midpoint." TR 4948.

Ms. Laney also repeated FPL's second carefully curated explanation about why FPL believes the pre-RSAM-adjusted ROEs in exhibit 538 are misleading, which is that the reported ROEs contain 12 months of prior RSAM adjustments. TR 1908-1910. Using multiple hearing

record exhibits and calculations to further refute these claims, OPC analyzed what FPL's ROE results for calendar year 2024 would have been without any prior RSAM debits or credits. The results of this analysis, and citations to the record evidence, are included in Attachment A. This analysis shows that even removing all prior RSAM debits and credits from January 22 to December 2024, FPL would still have earned just two basis points below the midpoint ROE of 10.8% in 2024. There would have been no need for a mechanism to get FPL just to the midpoint since they would have essentially been able to achieve the midpoint even without an RSAM. The results of this analysis soundly dispel both of the Company's erroneous claims that the charts contained in the exhibit 538 are misleading.

Given FPL's proven track record of using the RSAM to maximize earnings and shareholder profits by billions of dollars over the last four years, it is no surprise that FPL has "hope" that FPL will achieve the same success if the Commission approves the RSM. TR 1912; EXH 151, C20-3066. The Commission must not approve the SIPP or allow FPL to maximize its earnings on the backs of customers, many of whom are already struggling under FPL's current rates.

The RSM Would Not Stabilize Customer Base Rates or Bills

Since February 28, 2025, FPL has been claiming that one of the biggest benefits of FPL's proposed four-year plan will be rate stability. TR 1728, 1766, 1768, 2268, 2293.[28] The SIPP repeats this claim. EXH 1277, MPN K2. FPL has gone so far as to name its newest earnings maximizing mechanism the "Rate Stabilization Mechanism." However, this repetitive claim reflects one of the biggest contradictions in the evidence in the case.

[28] Document No. 01170-2025, Docket No. 20250011-EI, p. 7.

The Merriam-Webster Dictionary defines the adjective "stable" as "firmly established" and "not changing or fluctuating."[29] Therefore, stable rates would be rates that were "firmly established" and did not "change or fluctuate." Even limiting the discussion to the rates proposed in the SIPP rather than the overall bill, it is clear that customers rates would not be "firmly established" and, in fact, would increase dramatically over *each* of the next four years.

If approved, the SIPP would authorize FPL to raise base rates by "an additional $945 million" starting January 1, 2026, and by "an additional $705 million" starting on January 1, 2027. EXH 127, MPN K4. The SIPP would also authorize "Solar and Battery Base Rate Adjustments" or "SoBRAs." FPL confirmed that "adjustment" means an upward adjustment, or increase. TR 1865-1866. This means that, if approved, these SoBRAs will further raise base rates by approximately $61 million in 2027, $316 million in 2028, and $247 million in 2029. EXH 1441, MPN O4-77. Since the 2027 SoBRA was not part of FPL's initial petition, its inclusion in the SIPP raises the number of incremental base rate increases to five over the next four years. In terms of rate stability, customers are *worse off* under the SIPP than they would have been if FPL's original petition had been approved. These five incremental base rate increases over the next four years will remain in effect until at least FPL's next base rate case, if approved. EXH 1277, MPN K18. The SIPP, with the embedded RSM, would stabilize nothing, especially not customers' base rates or total bills, since the RSM would be ineffective against overall bill (non-base rate) threats like natural gas price spikes.

Another reason why FPL's requested RSM is unnecessary is because FPL's current ROE *already* mitigates FPL's risk. FPL's current midpoint ROE of 10.80% is among the highest in the

[29] https://www.merriam-webster.com/dictionary/stable.

nation. If the SIPP is approved, its requested 10.95% midpoint ROE would move FPL even farther from any financial risk that the future may hold for FPL. The RSM would constitute surplus, expensive insulation from risks that FPL would be even less likely to encounter with such a rich midpoint ROE.

FPL's story also was a clever effort to change the narrative about what the midpoint means. FPL is asking to the Commission to believe that merely earning at the midpoint is some sort of poverty-stricken state that mandates the filing of a rate case. FPL would have the Commission also believe that top of the range earnings are needed to make investments. This element of the carefully curated story ignores the fact that the achieved earnings are *after* accounting for the full WACC-related costs of the investments. Clearly the RSAM credits have not been needed, and FPL has offered no evidence that needed investments have not been or could not be made by earning only at the highest midpoint in the lower 48 states.

The RSM Would Harm Customers

Finally, the evidence in this case is clear that the loss of the RSAM placed $336 million of additional upward pressure on the 2026 revenue requirements. TR 1747, 1751-1752; EXH 107, MPN C12-1933. FPL has also acknowledged that "there will be an impact" on 2030 revenue requirements because of the proposed TAM (now folded into the proposed RSM). EXH 439, MPN E92461. It cannot possibly be in the public interest for the Commission to approve something that even the utility acknowledges will harm current and future customers.

MAJOR ELEMENT 18: Asset Optimization Program

ARGUMENT:

The Asset Optimization Program ("AOP") was not part of the as-filed case. EXH 1346, MPN N133 - MPN N141. The SIPP at Paragraph 21(a) has only one sentence addressing the AOP which states:

> In addition to the RSM, during the Term, FPL will recognize in base rates the customers' share of the gains generated through the Asset Optimization Program (approved in 2021 Rate Settlement Order) in the month in which they are generated, and 100% of any annual gains in excess of $150 million will be provided to customers through the Fuel Cost Recovery Clause.

EXH 1277, MPN K23.

Mr. Bores has a single paragraph addressing the AOP in his settlement testimony, basically restating the same information from the single sentence in Paragraph 21(a) of the SIPP where the AOP from the 2021 Settlement was wholly adopted with only slight modifications. TR 4616. Those slight modifications are: 1) that the initial portion of the customers' gains will now be recovered in base rates instead of through the annual fuel clause; and 2) adds that only the gains over $150 million would be credited for customers' benefit through the annual fuel clause. TR 4616. Neither of these changes benefit the residential or small business customers and they have the effect of increasing their rates without the likelihood of any gains above $150 million (based on history) without the sale of solar renewable energy credits. EXH 1316, MPN L13-651. Mr. Bores claims that since there are no guaranteed gains FPL bears some risk. TR 5154, 5171. However, the move to base rates for gains below $150 million shifts all those potential benefits that were previously used to offset customer rates in the annual fuel clause to FPL. These aspects of the SIPP harm customers solely for the benefit of shareholders and are clearly not in the public interest.

OPC expert witness Helmuth Schultz testified that "[t]he SIPP provision that 100% of the gains up to $150 million would be available to top off earnings up to the proposed upper limit of 11.95% ROE and thus essentially flow the $90.5 million customer share through to shareholders is problematic to say the least." TR 5001-5002. FEL expert witness Karl Rábago testified that, in his opinion, "it should be considered that all $150 million will be going to FPL and therefore all should be considered as going toward the revenue requirement." TR 5065. As such, these changes are not concessions in the SIPP nor are they in the public interest.

MAJOR ELEMENT 19: Long Duration Battery Storage Pilot

ARGUMENT:

The Commission should reject the SIPP agreement because the proposed Long Term Battery Storage Pilot is not in the public interest and will cost ratepayers an extra $78 million on top of an already excessive ask. TR 1237. Even if ITC credits slightly offset this cost, ratepayers should not be forced to pay for a pilot that only has "expected learnings" but no demonstrated need or measurable benefits. TR 1236.

As this is an experimental project without known and measurable benefits, it is not in the public interest. If FPL wishes to pursue this project and "gather insights," it should be funded by shareholders rather than the captive ratepayers. TR 1236. Additionally, as argued in FEL's prehearing statement, FPL can rely on the research of others for long-duration battery rather than use ratepayer money to inflate rate base.[30] FPL has already shown that they are willing to use outside data and research to evaluate battery projects. TR 362. The public interest is not served by

[30]Order No. PSC-2025-0298-PHO-EI, issued August 7, 2025, Docket No. 20250011-EI, p. 78-79, *In re: Petition for rate increase by Florida Power & Light Company.*

the Long Duration Battery Storage Pilot, and this is another reason to reject the "take-it-or-leave-it" SIPP.

MAJOR ELEMENT 20: Land for Solar Facilities and Sale of Property Held for Future Use

ARGUMENT:

The SIPP's treatment of FPL's grossly excessive PHFU stockpile, especially for future solar facilities, is one of the most unfair, unjust, and unreasonable aspects of this case and is entirely contrary to the public interest. The Commission must scrutinize how this deceptively small provision of the SIPP disguises the tremendous harm that FPL intends to inflict upon FPL customers and the State of Florida while the Special Interest Parties look the other way.

As of December 31, 2024, FPL had 96 utility-scale solar facilities in service. EXH 783, MPN F2-10521. FPL expects to have 108 in service by the end of 2025. TR 664. They are currently spread out across 32 of Florida's 67 counties. TR 1214. Each solar facility requires approximately 600-650 acres, on average. TR 1286. FPL expects to build 72 new solar facilities between 2026-2029, and 165 additional solar facilities by mid-2035. TR 1257, 1288. This means that, conservatively, FPL intends to cover approximately 142,200 acres of Florida land in additional solar panels over the next 10 years.[31] FPL provided no testimony or evidence that it plans to reduce the number of solar facilities in light of the recent tightening of restrictions on PTCs, even though FPL has admitted that losing out on eligibility for some or all of the PTCs will reduce the purported cost-effectiveness of FPL's solar facilities. TR 1107, 2401.

FPL already either owns, or has purchase options, for all of the land that would be needed to locate these 237 solar facilities. TR 1257, 1289. Purchasing all of this land has made FPL the

[31] [(72+165)*600=142,200].

seventh-largest private landowner in the State of Florida. TR 1303; EXH 768, MPN F2-9109 - MPN F2-9110. FPL's own evidence shows that since December 31, 2024, FPL has purchased 730 acres from the sixth largest private landowner in Florida. TR 1304-1305; EXH 295, MPN D12-596; EXH 768, MPN F2-9109. Of the top 10 private landowners in Florida in 2025, FPL is the only regulated utility on the list and the only entity on the list that is specifically authorized by a government agency to charge customers a rate of return on PHFU. TR 1303-1304.

The cost to customers of this land stockpiling is something that the Commission must consider because the recovery sought is supposed to be based on a valid assumption that this property will be in service in the reasonably near future. Pursuant to FPL's original petition, FPL's PHFU request in 2026 was for $1,541,832,000. EXH 3, MPN J59. FPL requested a rate of return of 7.63% in that filing. EXH 7, MPN J953. This means that the 2026 rate of return cost to customers would have been $117,641,781 for FPL's PHFU balance. Under the SIPP, FPL's rate of return would be 7.15%, which means that even under the SIPP, customers would be paying $110,240,988 annually for PHFU.[32] EXH 1294, MPN L8-208. Neither of these amounts include property taxes or other expenses that FPL customers will have to pay annually on all of this property. TR 3222.

FPL has a financial incentive to buy as much land as possible as long as it can claim it has a "future use." Absent any direct Commission oversight, this incentive remains. Hiding the issue in the SIPP only continues the incentive unabated. This is not in the public interest.

How far into the future the stockpiling incentive continues would be up to FPL under the SIPP approach, which would be unfair, unjust, and unreasonable. FPL's customers have no say in

[32] ($1,542,832,000*.0715=$110,240,988.)

how much property FPL buys. From FPL's perspective, there is no downside to FPL to buying more and more and more property because FPL recovers all its expenses (property insurance, property taxes, etc.) from customers *plus* it can charge customers a rate of return on the balance. The higher FPL's PHFU balance is, the higher return FPL will receive from FPL's customers. It's clear that FPL has taken advantage of this incentive because when FPL filed its case on February 28, 2025, FPL provided a listing of all of the renewable PHFU use land, but over half of the targeted "in service" dates were listed as "TBD." EXH 77, MPN C14-2025 - MPN C14-2027. Even when responding to a discovery request in April for more details about FPL's PHFU, FPL continued to list several of the properties as either "TBD" or "various." EXH 568, MPN F2-1067. At the hearing, FPL conceded that was the best information FPL had to go on at the time FPL answered that discovery request in April. TR 1308. Only after criticism by OPC intervenor testimony[33] did FPL eventually provide an exhibit that purports to show "target" commercial operation dates for all solar and hybrid solar/battery projects. EXH 295, MPN D12-592 - MPN D-12-596.

Further proof that FPL has taken advantage of PHFU can be found in OPC expert witness Helmuth Schultz's exhibit HWS-4. Exhibit 191, MPN C23-3505. This exhibit identifies 40 pieces of property that FPL has held for future use for an average of 21.85 years, including some properties that have been held since 1977, 1978, and the late 1980's/early 1990's. Customers have been paying the property taxes, insurance, and a rate of return for those properties without ever receiving one electron of benefit from them. While FPL may think this is fair, the Citizens of the

[33] TR 3225. "If an in-service date is unknown, justification does not exist for allowing the property in PHFU."

State of Florida do not. TR 1313. Yet, this unfair, unjust, and unreasonable practice will certainly continue if the Commission approves the SIPP.

Turning to the language of the "Land Acquisition and Disposition" section in the SIPP, the entirety of the provision reads:

> FPL shall not be permitted to purchase any new land used exclusively for solar during the Minimum Term, with the exception of the property identified as the "Duda" property in Exhibit TO-7 to the rebuttal testimony of Tim Oliver. Upon approval of this Agreement, FPL will commit to best commercial efforts to sell property amounting to a total value of $200 million reflected in plant held for future use. All sales of property held for future use by FPL shall be at fair market value. Gains or losses will be treated in accordance with Commission policy.

EXH 1277, MPN K26.

In the first sentence, the language purports to restrict FPL from purchasing any new land "used exclusively for solar" during the term, with one exception – the $293 million and 25,762 acre Duda Property. EXH 295, MPN D12-596.[34] However, if FPL locates a new property that has even one acre that FPL plans to use for non-solar purposes, then FPL could still purchase the property without violating the agreement. TR 4658. Additionally, while FPL claims in testimony and discovery that the SIPP will prevent FPL from buying any land to be used exclusively for solar "or hybrid solar and battery storage projects," that additional language is nowhere to be found in the SIPP. TR 4647-4648; EXH 1396, MPN O1-2905. The SIPP language only prevents the purchase of new land "used exclusively for solar." EXH 1277, MPN K26. FPL also acknowledged that FPL constantly reevaluates the best purpose for its PHFU properties, so it is entirely possible that FPL could purchase land during the term of the SIPP that is not intended for future solar use,

[34] NOTE: In April 2025, FPL indicated that the purchase price of the Duda Property was $258,644,276.47. EXH 568, MPN F2-1067.

but then later determine that the land could be used for solar, and this would not breach the SIPP. TR 4659-4660. These facts significantly diminish whatever minimal public interest value, if any, that this provision held in the first place.

Another major loophole that would completely eliminate any potential public interest value in this provision is FPL's assertion that it will use "best commercial efforts" to try to sell up to $200 million worth of PHFU properties. FPL says this was included in the SIPP to "demonstrate our commitment to reasonable compromise with regard to the land portfolio." TR 4647. First, there is no guarantee that FPL will actually sell $200 million of PHFU. Second, this is no compromise when you consider that the Duda property that FPL specifically maintains the right to purchase has a $293 million price tag. EXH 295, MPN D12-596. This means that even if FPL is successful and sells $200 million of PHFU properties, it will still own at least $93 million more land at the end of the SIPP than it did when it filed this case. This is simply another attempt by FPL to appear reasonable without actually being reasonable. To call this a "compromise" is false, deceptive, and certainly not in the public interest.

Furthermore, FPL admits that while it has begun to identify which properties it will consider divesting of to satisfy this term of the SIPP (if approved), FPL admitted that none of the identified properties are among the 40 long-held properties reflected in OPC expert witness Helmuth Schultz's exhibit HWS-4. TR 4669-4672; EXH 191, MPN C23-3505. This further demonstrates that FPL is ambivalent about how long it takes to place any given property into service. FPL claims that it saves customers money by buying the properties when they are presumably cheaper, but there is no evidence in the record to support that those purported savings exceed how much customers have paid in taxes, insurance, and a rate of return every year that FPL holds that property before putting it into service. TR 1232. As a demonstrative example, FPL

purchased the Levee-South Dade property in July of 1977 for $2,324,541, and yet FPL is not expecting to put it into service until June of 2032, well after FPL's current four-year plan would expire. EXH 568, MPN F2-1065. Customers will have been paying property taxes, insurance, and a rate of return for *55 years* before they *might* begin to benefit from that property. If the Commission approves the SIPP, this injustice and many others will be swept under the rug, as well. In combination with the many other injustices included in the SIPP, this is further proof that the SIPP is not in the public interest and must be rejected.

MAJOR ELEMENT 21: Vandolah

ARGUMENT:

While paragraph 24 of the SIPP promises that FPL shall not use the capacity from Vandolah exclusively to serve data centers, this paragraph does not address the capacity need for resource additions in 2027 and beyond that the acquisition will offset. (*See further argument in Major Element 3.)*

MAJOR ELEMENT 22: Natural Gas Hedging

ARGUMENT:

While OPC agrees that refraining from natural gas hedging is appropriate, this provision does not offset all of the other harmful provisions in the SIPP.

MAJOR ELEMENT 23: Disconnection Policy

ARGUMENT:

The Disconnection Policy was not part of FPL's as-filed case. EXH 1346, MPN N133 - MPN N141. Paragraph 26 in the SIPP incorporated FPL's informal Disconnect Policy. EXH 1277, MPN K27. The Disconnect Policy essentially provides that FPL will not disconnect customers for non-payment during certain hot weather (95 and plus degree days) and cold weather (32 and colder degree days) conditions. TR 4605-4606. This policy had been in place at FPL for at least one year

prior to the SIPP. TR 4823-4824. FPL is cynically using this worthy provision as a reason why the overall settlement is in the public interest despite the fact it was already informal FPL policy. TR 4606.

Moreover, as FEL expert witness MacKenzie Marcelin points out, access to air conditioning in one of the hottest states in the country should not be a luxury, but rather a necessity. TR 5028. Mr. Marcelin rightly notes that FPL's policy is not protective enough for Floridians experiencing Florida's brutal summers in that it does not account for humidity and its effect on the body's ability to regulate itself. TR 5028. Since older adults are more likely to be on fixed incomes and are more at risk from heat-related problems that can occur from lack of indoor air conditioning, Mr. Marcelin suggests a more protective approach to keep Floridians safe from deadly heat. TR 5028-5029. He testifies that Arizona has a moratorium on disconnecting customers from June 1 through October 15. TR 5029.

Mr. Marcelin also testified that there were 1.2 million disconnects for FPL's residential customers in 2024 from June to September. In 2024, it was more likely for a residential customer to be without power due to disconnection rather than grid reliability, showing that grid reliability does customers little good if they cannot afford the grid. TR 5030.

In addition, instead of filing a tariff before this rate case to formalize this compassionate policy, FPL only opportunistically chose to incorporate this as part of a self-serving settlement agreement. TR 5029. The SIPP agreement includes in Paragraph 31 "no precedential value" language that states that "[n]o Party will assert in any proceeding before the Commission or any court that this Agreement or any of the terms in the Agreement shall have any precedential value, except to enforce the provisions of this Agreement." EXH 1277, MPN K29. The term of the SIPP is a minimum of four years or when base rates are next reset in a general base rate case, whichever

is later. EXH 1277, MPN K3. Despite the potential "evergreen" term provision, there is nothing that would compel the continuation of the Disconnection Policy beyond the expiration of the Term given the "no precedential value" language in the SIPP. The potentially temporary nature of this policy can lead to FPL customers developing a reliance on the Disconnection Policy and having it withdrawn a mere four years later. Mr. Bores concedes that "FPL is not under any requirement to suspend disconnections for non-payment," and this program is voluntary absent the SIPP. TR 5174.

MAJOR ELEMENT 24: Payment Assistance Contribution

ARGUMENT:

FPL witness Dawn Nichols testified that FPL supports low-income customers through programs such as LIHEAP, state and community action agencies, nonprofit groups, social service and faith-based organizations. TR 837. FPL sponsors its own Care to Share program funded by donations from NextEra Energy shareholders, employees, and customers. TR 837. While the Care to Share program is funded on a voluntary basis through multiple sources, the LIHEAP program is a federal assistance program. The future of federal funding for LIHEAP is uncertain for 2026 through 2029. TR 875-880; EXH 767, MPN F2-9098 - MPN F2-9106. Ms. Nichols testified that the projected MFR C-11 for 2026 and 2027 include projections with continued LIHEAP funding, and those bad debt factors could increase if LIHEAP funding is either reduced or eliminated. TR 878-879. If LIHEAP is reduced or eliminated, vulnerable customers who qualify for this income assistance would not have the "robust suite of customer support initiatives" that FPL witness Danielle Powers claimed are available. TR 879-880, 2530.

As part of the SIPP, FPL proposes to "fund" a one-time, $15 million contribution for customers who qualify for payment assistance based on Asset Limited, Income Constrained,

Employed ("ALICE") criteria. TR 4605. During the hearing, Mr. Bores admitted that this one-time funded, $15 million assistance program agreed upon in the SIPP will be borne by the general body of ratepayers and included in the revenue requirement if the Commission approves the SIPP. TR 4823. In fact, this one-time, $15 million fund is part of the more than $1.6 billion in extra charges included in the SIPP that these customers will have to bear. TR 5024. If this subsidized contribution were truly a benefit for residential customers and in the public interest, FPL could have made the additional, one-time, $15 million contribution from its own profits, instead of charging it to other (mostly residential) customers. TR 5024.

If the SIPP is approved, FPL's customers will be harmed by the excessive revenue requirements and base rate increases. Section 377.601(2)(a), Florida Statutes, requires the State of Florida's energy policy to be driven by a "cost-effective and affordable energy supply." As the Commission heard from FPL's customers concerning this rate increase, customers are struggling under the unaffordability of these rising FPL bills, whether they are low-income customers or not. These are a select few comments filed in the docket and admitted into evidence in this hearing:

> It is especially egregious to ask customers to pay more when FPL has reported more than $10 billion in profits over the last five years. This proposal does not reflect the needs of everyday Floridians—it reflects the priorities of corporate shareholders and executives looking to maximize returns at the expense of the public.
>
> The Public Service Commission has a duty to ensure that utility rates are just, reasonable, and in the public interest. I respectfully urge you to reject FPL's request to increase the monthly base rate and raise its return on equity. Floridians deserve fair and affordable energy—not price hikes that fuel corporate profits.

EXH 1368, MPN O1-2014.

> I am a widow with 2 children, 1 child diagnosed with Diabetes 2 years ago and has medical needs, in addition, I am also a Real Estate Professional. . . . Let me say, I keep my A/C at 77-78 degrees;

> Recently, over the last 2 months, I have been paying $400.00 and I just received a bill for $500.00, we are not even through August (the hottest month of the year) yet! I am terrified at what my bill will be at the end of August. I can not even wrap my head around a $500.00 bill, I am still in shock. I have NEVER paid a $400.00 electric bill, yet a $500.00 bill!. . .
>
> Somehow, FP&L always gets their way. I am asking for you to step in and step up to protect the citizens of Florida against this rate hike and FP&L to bring these costs down, not up with a rate hike and to back The Office of Public Counsil in defending us against FP&L.

EXH 1368, MPN O1-2112.

> We as FL residents on fixed income are opposed to FPL's historical rate hike set to be enacted in January 2026. I have attended public PSC hearing and was disgusted by witnessing all the paid FPL hacks that are in favor of this historical rate hike. We will be affected both by businesses passing additional utility costs unto us and our own residential rates. This is unrealistic and an unjust money grab from FPL. I am requesting you vote "NO" ON THIS RATE HIKE THAT WILL GRAVELY AFFECT MANY FL RESIDENTS.

EXH 1368, MPN O1-2012.

> Although you may have friends in high places and extraordinarily well paying salaries, I want you all to remember that we all are human and your fellow man is struggling. Nobody wants this stupid rate hike other than FPL. They might think it's only an Extra $10 or $20 but to a people that have been squeezed dry at every turn it's enough already. People are already struggling as it is and to strong arm the very people that are already overpaying for a service is wrong and unethical.

EXH 1368, MPN O1-2175.

> We've lived here for nearly 30 years and raised four children…We'd love to make some energy-efficient upgrades to our home, but we can't afford it with a power bill that exceeds our mortgage payment!

EXH 1368, MPN O1-406.

Clearly, a further overall reduction to the revenue requirement would provide greater assistance to all FPL customers, commercial and residential alike. As an alternative to the SIPP, for 2026, the CMPP would reduce the SIPP's $945 million base rate increase to $867 million. TR 4981. Similarly, for 2027, the CMPP would reduce the SIPP's $705 million base rate increase to $403 million. TR 4982. Comparatively, this result would be marginally better for all of FPL's customers and would directionally result in more affordable, fair, just, and reasonable rates. The SIPP revenue reductions from the as-filed case are illusory, as argued *supra*. The SIPP's Payment Assistance Contribution is not in the public interest because it is paid for by the general body of ratepayers, many of whom already need help to pay their current bills.[35] Unaffordable rates and resulting bills are unfair, unjust, and unreasonable rates and bills; therefore, the Commission must reject the SIPP.

MAJOR ELEMENT 25: **Support Proposal for Large Customer Opt-out of ECCR**

ARGUMENT:

The new energy efficiency opt-out feature for Large Customers ("Energy Opt-out") was not part of FPL's as-filed case. EXH 1346, MPN N133 - MPN N141. Paragraph 28 in the SIPP incorporated this Energy Opt-out program. EXH 1277, MPN K27. The Energy Opt-out provides that FPL will support a proposal before the Commission for commercial and industrial customers with greater than average usage of 15 million kWh per year by aggregating usage across all customer accounts, to opt-out of FPL's energy efficiency programs and measures if they deploy their own self-funded programs. EXH 1277, MPN K27 - MPN K28. Further, this Energy Opt-out

[35] OPC expert witness Roger Colton addressed the significant affordability challenges that FPL customers face. TR 2839-2910. The overall impact of the SIPP, which enriches FPL's shareholder and certain special interested parties at the expense of FPL's residential and small commercial businesses would exacerbate these challenges.

provision provides that it will not be subsidized by the general body of FPL ratepayers and these customers will have verification measures to allow FPL to reduce its otherwise applicable goals under the Florida Energy Efficiency and Conservation Act ("FEECA") in an amount equal to energy saving by those opt-out customers. EXH 1277, MPN K27 - MPN K28. These energy efficiency goals are established in the DSM docket at least every five years.[36]

In reviewing the DSM plans, the Commission determines whether the proposed programs are cost-effective and will meet the annual numeric goals set under FEECA. Under the current DSM plans, FPL may file for cost recovery of the programs included in its DSM plan in the ECCR clause proceeding.[37] Currently, all customers pay for the recovery of the approved programs under DSM that have passed the cost-effectiveness test. Of course, nothing prohibits FPL's customers from implementing their own energy efficiency programs, but they have not been exempted from paying for all DSM programs that have been shown to be cost-effective for the general body of ratepayers.[38] However, this new program would allow only large commercial and industrial customers to ask to be exempted from paying their fair share of these DSM approved programs because they have implemented their own energy efficiency programs. TR 4607. As FPL witness Scott Bores acknowledged these large customers are naturally incented to perform expensive efficiency measures on their own which is not currently subsidized by the general body of FPL's customers. TR 4607. The Energy Opt-out provision states that these commercial and industrial customers may "opt-out" of certain mandated energy efficiency programs (TR 4607). What this

[36] See, Section 366.82, Florida Statutes, Rule 25-17.0021(1), F.A.C., Order No. PSC-2025-0292-PAA-EG, issued July 29, 2025, in Docket No. 20250048-EG, *In re: Petition for Approval of Proposed Demand-Side Management Plan, by Florida Power & Light Company.*
[37] Order No. PSC-2025-0292-PAA-EG at p. 6.
[38] Order No. PSC-2024-0484-FOF-EG, issued November 25, 2024, in Docket No. 20240002-EG, *In re: Energy Conservation Cost Recovery Clause* at pp. 2, 4-5.

provision means is that certain of the SIPs may opt-out of the cost recovery for the DSM programs found to be cost-effective and recoverable from all of FPL's customers. Mr. Bores admitted that unrecovered costs from these mandated DSM programs due to any opt-out by large commercial or industrial customer would be passed on to the remaining customer bases. TR 4828-4829.

Section 366.03, Florida Statutes, states that "[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect." The Energy Opt-out provision in the SIPP would be contrary to the statute because it would allow only certain "large" customers to benefit from their own energy efficiency measures while creating a disadvantage for all non-qualifying customers who have implemented their own energy efficiency measures through increased revenue requirement burdens in the ECCR clause. This provision does not "enhance" the public interest because it will essentially shift costs from these large commercial and industrial customers to mainly residential and small commercial customers. This Energy Opt-out provision is not in the public interest; therefore, the Commission must reject the SIPP.

MAJOR ELEMENT 26: Minimum Bill (Exhibits B and C)

ARGUMENT:

OPC is generally supportive of the position adopted by FEL on this element.

LEGAL ISSUES FROM PREHEARING ORDER PSC-2025-0298-PHO-EI

LEGAL 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.

ARGUMENT:

All parties who petition to intervene must satisfy the requirements for standing in any given docket. As a jurisdictional requirement, standing can be raised at any time in litigation. The standing requirements are clearly specified and not subject to interpretation or waiver. Each determination by the Commission that a SIPP signatory lacks standing further erodes the support for the validity of the SIPP and constitutes yet another reason why the SIPP is not in the public interest. Upon a finding that a would-be intervenor has failed to meet the standing requirements, the Commission must strike all derivative evidence and participation from the consideration of the SIPP. In such an instance, rejection of the SIPP would provide the surest method for excising the tainted evidence from the hearing record.

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

ARGUMENT:

No. FPL does not have the authority to approve FPL's requested TAM or to use unprotected, non-excess deferred taxes as a funding source for the RSM because: (1) it would violate section 366.01, Florida Statutes; (2) it would violate bedrock regulatory accounting tenets;

(3) it is unprecedented; and (4) FPL has not satisfied its burden of proof that it is in the public interest.

Violates Section 366.01, Florida Statutes

Section 366.01, Florida Statutes declares the following:

> **The regulation of public utilities as defined herein is declared to be in the public interest** and this chapter shall be deemed to be an exercise of the police power of the state **for the protection of the public welfare** and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.[39]

(emphasis added)

The Florida Legislature has made it clear that the Commission's solemn responsibility is to regulate utilities for the purpose of protecting the public welfare – not the utility's welfare, not the utility's shareholders' welfare, not the utility's employees' welfare – the public welfare. In this case, that means the welfare of FPL's customers.

Approval of the SIPP and adherence to this statutory declaration are mutually exclusive. For the many reasons argued below, the inclusion of the TAM funding source in the RSM is contrary to the public interest and would harm the welfare of FPL's customers rather than protect it. The harm is so great that no settlement agreement that contains such a provision, even if the settlement agreement were taken as a whole, could be found to be in the public interest. On this basis alone, the Commission has no legal authority to approve FPL's requested use of the TAM as a funding source for the RSM. The TAM funding source of the RSM is a poison pill in the SIPP agreement, which the Commission must reject.

[39] § 366.01, Fla. Stat. (2025).

Violates the Matching Principle, the Prohibition Against Double-Recovery, and Commission Practice

Although FPL dropped the "TAM" abbreviation between the filing of its original petition and the filing of the SIPP, the funding source listed in paragraph 21(a)(i) of the SIPP is identical to the funding source of the originally-requested TAM, namely unprotected, non-excess tax repairs and mixed service deferred tax liabilities that have already been collected from customers for the future payment of federal income taxes. TR 1867-1868, 1876. In the SIPP, FPL and the SIPs ask that FPL be allowed to seize $1.155 billion of this already-collected customer cash and use it "flexibly at [FPL's] discretion" so that FPL can "manage its business such that its earnings fall within the authorized ROE range." EXH 1277, MPN K23-MPN K24.

Historically, FPL[40] has normalized these unprotected, non-excess deferred tax liabilities over the lives of the assets so that current ratepayers pay no more and no less of these taxes than they should, which is consistent with the bedrock regulatory accounting tenet known as the matching principle. The Commission has previously held that "the matching principle is an important concept to observe in the rate-making process."[41] The purpose of the matching principle is to avoid intergenerational inequity among the generations of ratepayers, since "[c]ustomers benefitting from the assets should be those who pay for the assets."[42] FPL agrees that intergenerational equity is "a legitimate regulatory principle." TR 1922; EXH 751, MPN F2-3412-3413.

[40] TR 1767.
[41] Order No. PSC-2017-0091-FOF-SU, issued March 13, 2017, Docket 2015-0071-SU, p. 66, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*
[42] Order No. PSC-2010-0153-FOF-EI, issued March 17, 2010, Docket Nos. 20080677-EI, 20090130-EI, p. 82 (footnote 25), *In re: Petition for increase in rates by Florida Power & Light Company; In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.*

Nevertheless, FPL is asking the Commission to set aside that "legitimate regulatory principle" and allow FPL, over the next four years, to amortize $1.155 billion of customer cash that FPL has already collected for the purpose of paying future income taxes, use that cash instead to "manage its business such that its earnings fall within the authorized ROE range," and then "recollect" that cash from customers over the next 30 years, plus carrying costs. TR 1876-1880, 1922-1923, 2374; EXH 1277, MPN K24.

FPL admits:

> [A]ssuming the full $1.155 billion regulatory liability is fully amortized through the end of 2029, there will be an impact going forward associated with the carrying cost and the amortization of the outstanding regulatory asset balance. The annual amortization expense of the regulatory asset is $38.5 million based on a 30-year amortization period.

EXH 1424, MPN O4-25.

If the Commission approves the SIPP, FPL's customers for the next 30 years will be forced to pay $38.5 million per year, every year, for the alleged benefits that only FPL's customers for the next four years will purportedly receive. This would create an intergenerational inequity amongst different generations of FPL's customers and, therefore, violate the matching principle.

Additionally, allowing FPL to "recollect" these unprotected, non-excess deferred tax liabilities as requested would violate another bedrock regulatory accounting tenet that FPL also acknowledges is a "legitimate regulatory principle" – the prohibition against double recovery. TR 1922-1923. Commission precedent is clear that, "[d]ouble recovery of expenses must be

avoided."[43] Double recovery is also prohibited in several places in Chapter 366, Florida Statutes.[44] This is because it is unlawful and counter to all notions of fairness and justice.

FPL admits that it has already collected the $1.155 billion of unprotected, non-excess deferred tax liabilities from customers to pay for future income taxes. TR 1876. FPL admits that FPL wants to use those funds, via the RSM, to "manage its business such that its earnings fall within the authorized ROE range." EXH 1277, MPN K24. FPL admits that it will have to "recollect" that $1.155 billion, plus carrying costs, from FPL customers over the next 30 years. TR 1876-1880, 1922-1923, 2374; EXH 1277, MPN K22; EXH 1424, MPN O4-25 – MPN O4-26. FPL admits that in the absence of this funding source for the RSM, there will be no need for FPL to "recollect" this $1.155 billion from customers. TR 1922. Despite admitting all of these facts, FPL denies that this would constitute double recovery. However, FPL does not have to admit it for that to be true. The undisputed facts speak for themselves. Considering this evidence and considering the simple math that one plus one equals two, it is clear that using the unprotected, non-excess deferred tax liabilities as a funding source for the RSM would constitute double recovery of $1.155 billion, plus carrying costs.

The Commission must not approve a settlement agreement that would authorize a utility to recover the same expense twice from customers. Doing so in this case would violate both the matching principle and the prohibition against double-recovery, both of which are cornerstones of Commission practice and traditional utility ratemaking. It is unfair, unjust, and unreasonable to

[43] Order No. PSC-1994-0044-FOF-EI, issued January 12, 1994, Docket No. 19930613-EI, p. 5, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 386.0825, Florida Statutes by Gulf Power Company.*
[44] §§ 366.8255(5); 366.96(8); and 366.999(1)(d), Fla. Stat.

"recollect" the same expense from customers. The Commission must reject the SIPP because with the inclusion of this provision alone, the SIPP cannot be found to be in the public interest.

No Precedent

The Commission has never approved the accelerated amortization of unprotected, non-excess deferred tax liabilities. FPL has historically amortized unprotected, non-excess deferred taxes over the lives of the related assets. TR 1767, 1870. As part of the 2021 Settlement, FPL was authorized to amortize only the *excess* deferred tax liabilities that resulted from the 2017 Tax Cuts and Jobs Act.[45] Not only does the 2021 Settlement prohibit any party from asserting in any proceeding that any term of the agreement holds precedential value as argued *supra*, but also, excess and non-excess deferred taxes are as different as apples and oranges. Excess deferred tax liabilities are tax expenses that were over-collected from customers, meaning that the Company collected more tax expense than will ultimately be necessary to pay the future income taxes. FPL will have fully amortized all *excess* deferred tax liabilities to customers by the end of 2025. TR 1869, 2928. As OPC expert witness Tim Devlin stated, "In contrast, the TAM would be unprecedented as it would represent accelerated amortization of otherwise normal [deferred tax liabilities] for the sole purpose of increasing earnings." TR 2928. The TAM's non-excess deferred taxes will remain owed to the federal government even after FPL's shareholders have taken them for themselves.

No utility company in Florida or any other state in the nation has ever been authorized to misuse non-excess deferred tax liabilities in the manner requested by FPL and the Special Interest Parties. FPL's citation to cases in Wisconsin and New Jersey as precedent is, at best, misleading.

[45] Order No. PSC-2021-0446-S-EI, issued December 2, 2021, p. 30-31, *In re: Petition for rate increase by Florida Power & Light.*

First, FPL admits that it was unaware of either of those cases when it filed its petition on February 28, 2025, and that FPL "did not rely" on them when deciding to propose the TAM (now rolled into the RSM) in this case. TR 1888. Obviously, these cases were not used as a precedential framework for what FPL and the SIPs are requesting.

Second, those cases appear to only involve the amortization of *excess* deferred taxes. The order that reflects Wisconsin's resolution of Dockets 5-UR-108 and 6690-UR-125 ("Wisconsin Order") was filed on September 8, 2017. EXH 439, MPN E92437; EXH 1102, MPN F10-15517. The Wisconsin Order authorized the utility to establish a regulatory asset that would either be eliminated following "federal tax reform that would produce additional tax benefits that could then be used to offset" the regulatory asset, or through the amortization of the regulatory asset over 50 years if the "federal tax reform" did not come to pass. EXH 1102, MPN F10-15541. Given that the federal "Tax Cuts and Jobs Act" did pass and become effective just a few months later on January 1, 2018, it is reasonable to assume that the Public Service Commission of Wisconsin was referring to expected excess deferred taxes that would be created by the impending enactment of the "Tax Cuts and Jobs Act." EXH 1105, MPN F10-15625. After all, that same legislation is what resulted in the excess deferred taxes that FPL fully amortized as part of the 2021 Settlement.[46] FPL presented no other evidence regarding which method of eliminating the regulatory asset described in the Wisconsin Order was ultimately used.

The only other cases referred to by FPL are the October 8, 2018, New Jersey Board of Public Utilities Order resolving Dockets ER18010029 and GR18010030 ("2018 New Jersey Order") and the October 9, 2024, New Jersey Board of Public Utilities Order resolving Dockets

[46] *Tax Cuts and Jobs Act of 2017*, Pub. L. No. 115-97, 131 Stat. 2054 (2017); Order No. PSC-2021-0446-S-EI, issued December 2, 2021, Docket No. 20210015-EI, p. 25, *In re: Petition for rate increase by Florida Power & Light Company.*

ER23120924 and GR 23120925 ("2024 New Jersey Order"). EXH 1106, MPN F10-15809; EXH 439, MPN E92439. The 2018 New Jersey Order refers to a "Tax Adjustment Credit" as a result of the "Tax Cuts and Jobs Act," and the only deferred taxes it refers to are *excess* deferred taxes. EXH 1106, MPN F10-15832 - F10-15838. In the 2024 New Jersey Order, the Board of Public Utilities explicitly authorized the "[c]ontinued refund of the protected excess deferred tax balance," and the "refund" of other tax expenses. EXH 439, MPN E92443–E92444. While somewhat unclear, OPC submits that by the use of the word "refund" in relation to the other tax expenses, this implies that they were either excess or otherwise over-collected tax expenses – not deferred tax expenses that the Company will one day have to pay to the Internal Revenue Service.

Third, all of the cases cited by FPL were resolved via settlement agreements, and even if they had been fully litigated, they provide no precedential bearing on the authority of the Commission to approve the accelerated amortization of unprotected, non-excess deferred tax liabilities that are the subject of this case, even if they were from this jurisdiction. EXH 439, MPN E92437.

Fails to Satisfy FPL's Burden of Proof

The "burden of proof in a commission proceeding is always on a utility seeking a rate change, and upon other parties seeking to change established rates."[47] Additionally, "[i]t is the Utility's burden to prove that costs are reasonable."[48] FPL has failed to satisfy its burden of proof that violating Florida law and Commission policy to enrich FPL at the expense of the welfare of FPL's customers would be in the public interest. FPL has failed to satisfy its burden of proof that

[47] *Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982).
[48] Order No. PSC-2009-0057-FOF-SU, issued January 27, 2009, Docket No. 20070293-SU, p. 11, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*

violating the matching principle, creating intergenerational inequities, or double-recovering $1.155 billion from customers, plus carrying costs, would be in the public interest. FPL has failed to satisfy its burden of proof that there is any relevant Commission practice or precedent for inflicting such unfair, unjust, and unreasonable costs on FPL's customers. In light of the severity of all of the legal flaws and injustices embedded in the proposal to use the unprotected, non-excess deferred tax liabilities as a funding source for the similarly flawed RSM, FPL has failed to satisfy its burden of proof that the settlement agreement, even when taken as a whole, is in the public interest. The intentional "recollection" of these deferred taxes in the manner requested by FPL and the SIPs is antithetical to cost-base ratemaking. The SIPP does not resolve all issues in the docket, it will not result in fair, just, or reasonable rates, and it is not in the public interest. Therefore, the Commission does not have the authority to approve it.

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

ARGUMENT:

See Argument against Major Element 12.

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

ARGUMENT:

See Argument against Major Element 11.

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

ARGUMENT:

See Argument against Major Element 13.

OPC LEGAL ISSUE: **Is the SIPP a valid agreement?**

ARGUMENT:

The OPC submits several grounds for rejection of the claim that the SIPP is a valid and enforceable settlement agreement.[49] This section demonstrates why the SIPP itself is invalid and why the SIPP fails to provide a basis for the Commission to even consider the agreement. Other portions of the brief demonstrate why the substance of the of the agreement should be rejected as unlawful or contrary to Commission precedent, regulatory principles, and the public interest.

Application of Contract Principles Invalidates the SIPP for Ratemaking and Public Interest

At the outset of this analysis, the OPC submits that the validity of the SIPP should be measured by the Commission's "well-established principles of contractual construction" analysis in interpreting putative contracts found in Order No. PSC-2019-0225-FOF-EI, issued June 10, 2019, Docket No. 20180046-EI, p. 9-12, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company.* ("2019 Tax Order"). This precedent provides a basis for the agency to not only interpret an agreement that has been found to be binding and effective, but also by implication to determine whether such a purported document is valid before commission action to approve it. "[A]lleged and after-the-fact misunderstandings do not invalidate or void an agreement that has been approved by the Commission and has become final."[50]

To the extent that the SIPP is intended to be a binding contract among the signatories and offered as a basis for setting rates, it fails. The SIPs have not formed a contract. On its face, the

[49] Order No. PSC-2025-0345-PCO-EI, issued September 12, 2025, Docket No. 20250011-EI, pp. 7-8, *In re: Petitions for rate increase by Florida Power & Light Company.* ("Accordingly, proposed element six will not be added to the list as a separate major element. This purely legal issue may be addressed in the post-hearing briefs.").
[50] *Id.* at 13

document does not form a contract despite the efforts to create the illusion of one. The document contains the following clauses:

> WHEREAS, the Parties have entered into this Agreement in compromise of their respective positions taken in accord with their rights and interests under Chapters 350, 366 and 120, Florida Statutes, as applicable; and
>
> WHEREAS, as a part of the negotiated exchange of consideration among the Parties to this Agreement, each Party has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission

EXH 1277, MPN K2.

The signatories plainly offer these two clauses as affirmative representations for the Commission to consider as a description or explanation of the nature and intent of the document.[51] They describe an intended formation of a contract, subject to Commission approval for its validity,[52] that would create enforceable provisions that the signatories expect to be able to rely upon through the action by the Commission.[53] The second of these two clauses, recites that all the signatories negotiated an "exchange of consideration." The language conveys the existence of an essential element of a valid contract. "The basic elements of an enforceable contract are offer, acceptance, consideration, and specification of essential terms. . . .It is well established that a meeting of the minds of the parties on all essential elements is a prerequisite to the existence of an enforceable contract.[54] (Citations omitted.) As discussed below the SIPP fails to meet the

[51] Such clauses are routinely included in the type of territorial agreement contracts upon which the Commission relied in resolving the 2019 tax case that is the subject of the 2019 Tax Order. *Id*. at 11.
[52] Paragraph 31 of the SIPP provides in relevant part: "The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification unless such modification is unanimously agreed to in writing by the Parties to this Agreement in their sole discretion."
[53] An example of such an expectation might be that certain parties expect to receive benefits in the form of lower rates through interruptible credits and an exemption from being charged the cost of the impact of those credits in a clause docket energy opt-out in exchange for FPL getting higher profits and cash benefits for the utility.
[54] *Moore v. Wagner*, 377 So. 3d 163, 167, 2023 (Fla. 2DCA 2023).

requirement of consideration and a meeting of the minds or mutuality of assent. In addition, the SIPP is contrary to public policy and the public interest in that is misrepresents the authority that is impliedly warranted when a contract is formed.

The SIPP contains a representation to the Commission that certain acts occurred – i.e., that consideration was exchanged and negotiated. Given the nature of many of the signatories, one might have reason to question or at least test the veracity of these statements, but the signatories and the Commission denied OPC, the representative of all customers, the ability to inquire into this.[55] The representation of the existence of consideration suggests that a bargain was struck and that the represented interests made concessions and compromises of the interests they validly represented. However, such negotiation activities undertaken in the formation of a contract would necessarily require that the negotiating parties *actually represent* interests among the affected customers for which they could give and receive this consideration and upon whose behalf they were authorized to both negotiate and settle such interests. The OPC was blocked from determining if this actually occurred.

The second WHEREAS clause also states that each signatory has "agreed to concessions to the others." This is an obvious representation of how the consideration in the form of concessions was exchanged – if it is true. Inquiry into this was denied by the Commission. TR 11-17. It is indisputable that one cannot make a concession or compromise on behalf of a party or interest that one does not represent. Since no authorized representative of residential customers was involved in the negotiations that led to the execution of the SIPP, these representations seem

[55] Document No. 09231-2025, Docket No. 20250011-EI; Order No. PSC-2025-0354-PCO-EI, issued September 18, 2025, Docket No. 20250011-EI, *In re: Petition for rate increase by Florida Power & Light Company.*

to be false as it relates to the determination of substantially affected interests of residential customers.

FPL astoundingly claims that it represented the interests of residential customers at the negotiating table. TR 5103; EXH 1425, MPN O4-27. In one brazen sworn discovery response made by witness Cohen, FPL states:

> FPL represented all rate classes throughout negotiations, including residential and small business customers served under the RS and GS rate schedules. Additionally, several signatory parties also maintain GS accounts as part of their operations, providing direct familiarity with small business rate impacts and practical insight into how the settlement provisions affect this segment. This demonstrates meaningful representation of customer interests, including residential and small business customers, achieved through multi-party consideration and compromise that benefits all customers.

EXH 1428, MPN O4-34 – MPN O4-36.

A similar sworn statement is found in exhibit 1425, MPN O4-27 – MPN O4-29. Not only does FPL claim to represent residential customers in the negotiations, but in this sworn statement by witness Bores and Cohen, they again represent that they did it through "multi-party consideration and compromise." FEA witness Gorman testified to the contrary, however, that he did "not believe that there is a specific party that is part of the settlement for the residential class specifically..." TR 3957. FPL's affirmative, contradicted and blatant claim of authority in the formation of the contract that is the SIPP is contrary to public policy and the public interest.

FPL witness Bores did not retreat from this position when it was pointed out by the CMPs during the hearing. If anything, witness Bores doubled down. TR 5155-5156. The company also admits that it has a fiduciary responsibility to its shareholders (TR 2375), but it concedes it does not have one to the customers, including the residential customers. TR 4918. Nowhere in the record

does FPL demonstrate that it had actual authority to represent residential customers in the case or in the negotiations. The State of Florida has expressly authorized the OPC to do that. As discussed below in detail, Florida law disfavors contracts that are based on a misrepresentation of representational authority or a breach of an implied warranty of authority.

It is obvious that the representations made in the SIPP's WHEREAS clauses are intended to create a misleading impression that the SIPP was created by diligent negotiations among genuine adversarial parties representing all customer interests. This is simply false. This misdirection does a disservice to the public interest as it is intended to subvert the legislative intent that utility ratemaking is intended to take place among adversarial parties and in hearings unless *all* the adversarial parties reach agreement. FPL and the SIPs created a false impression that all substantial interests in the case were represented at the negotiation table and that those interests were considered in a negotiated exchange of consideration through the compromise of actually represented interests. The evidence proves exactly otherwise. The SIPP is not the agreement that it purports to be.

Absent evidence that the SIPP signatories possessed the right to represent all customers in negotiations and make concessions on behalf of those customers who are affected by the contracted provisions, the agreement should not be approved or enforced by the Commission. There should be no presumption that all customers were represented in the negotiation or creation of the SIPP. Approval of the SIPP would signal that any collection of assorted customers could be assembled by the utility and appear in the case for the very narrow purpose of negotiating a contractual agreement that enriches each at the cost of those who they have no authority to represent and who are excluded from the negotiating table.

In Florida, contracts that misrepresent the nature of representational authority are disfavored. Florida law recognizes an implied warranty of authority to act as agent in making a contract.[56] While the related case law in Florida and around the country indicates that a breach of the warranty or misrepresentation of authority does not invalidate the contract, it does subject the wrongdoer to liability.[57] Specifically, in an action on an implied warranty of authority to act as agent in making a contract, the action is not on the contract purported to have been authorized, but it is on the unauthorized conduct of the supposed agent who acted under claim of authority.[58]

The OPC does not suggest that the Commission is required to make a decision regarding the award of damages. The point is that the law disfavors and provides consequences for the purported creation of a contract or binding agreement on behalf of an affected person by a negotiating party who lacks authority to represent that affected person. Even so, the 88.6574% of FPL's primarily residential customers whose rates and bills would be determined under this agreement did not authorize any of the SIPs to represent them or their interests. TR 5051. These customers were not represented in the negotiations by any signatory and any statement to the tribunal to the contrary is without validity. TR 4792, 4971, 5034, 5105.

The Florida Legislature created the Office of the Public Counsel and authorized it to represent customers, as recognized by the Florida Supreme Court when it observed:

> This is a consequence of the statutory nexus between the file and suspend procedures and the role prescribed for public counsel in rate regulation. Public counsel was authorized to represent the

[56] See, *Tedder v. Riggins,* 65 Fla. 153. (Where one, pretending to be an agent has contracted as such without authority from the principal, the party contracted with may hold the assumed agent responsible for damages to be measured, not by the contract, but by the injury resulting from the agent's want of power.)
[57] *Id.* at 157.
[58] Where one, pretending to be an agent has contracted as such without authority from the principal, the party contracted with may hold the assumed agent responsible for damages to be measured, not by the contract, but by the injury resulting from the agent's want of power. *White v. Madison,* 26 N.Y. 117 (NY 1862).

> citizens of the State of Florida in rate proceedings of this type. That office was created with the realization that the citizens of the state cannot adequately represent themselves in utility matters, and that the rate-setting function of the Commission is best performed when those who will pay utility rates are represented in an adversary proceeding by counsel at least as skilled as counsel for the utility company. The office of public counsel was created by the same enactment which brought the utilities accelerated rate relief.

Citizens v. Mayo, 333 So. 2d 1, 6-7 (Fla. 1976) (footnote omitted), as quoted in *Citizens of the State of Florida v. Florida Public Service Commission, et al,* 146 So.3d 1143, 1152 (Fla. 2014) *("Citizens').*[59] The OPC is not asserting that the Public Counsel is the only entity who can represent residential customers. For example, FEL through the advocacy of Earth Justice is specifically authorized to represent the FPL residential customers who are among the FEL members.[60] The recognition that this representation exists in the context of an adversarial proceeding further underscores that representation at the negotiation to resolve a $10 billion rate case is a serious matter that cannot be bargained away by unauthorized parties. It is patently obvious that FPL and the SIPs have presented a purportedly binding agreement in the form of a contract that contains misrepresentations as to its formation and validity. The Commission should reject it on this basis.

[59] While the Court rejected the OPC argument that the *Mayo* language gave the office a status as a "special intervenor," the rejection of the OPC position did not affect the Court's recognition that the OPC was the legislatively authorized representative of the customers in adversary proceeding. See, also, *Floridians Against Increased Rates, Inc.* v. *Clark*, 371 So. 3d 905, 909 n. 10 (Fla. 2023). ("The Office of Public Counsel is the 'statutorily created representative of all FPL ratepayers' in proceedings before the Commission.")

[60] See, Petition to Intervene by Florida Rising, League of United Latin American Citizens, & Environmental Confederation of Southwest Florida, at pp. 2,3, 5, and 7. Document No. 00945-2025, Docket No. 20250011-EI, filed February 12, 2025.

Citizens' *Distinction*

The agency cannot rely on *Citizens'* to approve the SIPP. Given the material differences between the document approved by the Court in that case and the SIPP, the Commission erred in considering the SIPP relative to the case that was filed according to chapter 366, Florida Statutes.

In the 2012 FPL rate case that was the subject of the *Citizens'* case, the Commission's decision reviewed by the Court did not contain the same type of contract language representations that are included in the SIPP.[61] In 2021, the OPC did enter into a settlement agreement with FPL that had similar contract formation language.[62] The 2021 agreement had a similar but not identical WHEREAS clause recitation. In that case, where all the customers were represented in a manner consistent with the representations, neither the Commission nor the Court were confronted with deciding whether the signatories were purporting to create a contract while lacking authority to act.[63] That issue is squarely presented in this case for the first time.

Since the Florida Supreme Court issued its order in *Citizens* in 2014, the Commission has had the opportunity to apply principles of contract law to interpret the 2016 FPL Settlement

---

[61] Order No. PSC-2013-0023-S-EI, issued January 14, 2013, Docket No. 20120015-EI, p. 10-11, *In re Petition of Florida Power & Light Company for a base rate increase*. See discussion *supra* and record at TR 5103, 5155-5156; EXH 1425, MPN O4-27.

[62] The relevant approved settlement clause reads:

> WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the Agreement as provided herein and upon approval in the public interest…

[63] The 2021 Settlement was challenged on separate grounds. See, Order PSC-2021-0446-S-EI as amended by Order PSC-2021-0446A-S-EI; remanded in *Floridians Against Increased Rates, Inc.* v. *Clark*, 371 So. 3d 905, 909 n. 10 (Fla. 2023). Initial order supplemented upon remand by Order PSC-2024-0078-FOF-EI and aff'd by *Fla. Rising, Inc. v. Fla. Pub. Serv. Comm 'n,* 415 So. 3d 135, (Fla. 2025).

Agreement[64] in 2019. Referring to case law from other states, the agency found that the 2016 agreement to essentially be a contract and subject to interpretation under rules applicable to contracts. In that case involving the disposition of an annual amount of federal income tax savings of between $650 million to $772 million, the Commission turned to contract law in thwarting OPC's ultimate effort to initiate a reverse-make-whole case (and ultimately its own staff's professional recommendation) to return those funds to the customers through an overearnings proceeding.[65] The order extensively discussed and approvingly cited Indiana appellate decisional law that opined that "regulatory settlements are distinguishable from agreements that are governed purely by contract law."

While acknowledging this concept in part, the Commission nevertheless proceeded to interpret that 2016 agreement by relying on contract law principles that had been applied to contracts containing utility territorial agreements, to interpret the document in a manner that enabled FPL's preferred interpretation. This meant that ultimately FPL was allowed to retain hundreds of millions of dollars in annual federal income tax savings for at least three years.[66] The Commission accomplished this by effectively treating the 2016 Settlement Agreement as a contract for interpretation purposes, opining that "a settlement agreement is a binding and enforceable agreement between the signatories."[67]

---

[64] 2019 Tax Order.
[65] 2019 Tax Order, pp. 9-12.
[66] Order No. PSC-2020-0193-FOF-EI, issued June 16, 2020, Docket No. 20180224-EI, *In re: Joint petition for rate reductions or alternative reverse make-whole rate case against Florida Power & Light Company, by Office of Public Counsel, Florida Industrial Power Users Group, and Florida Retail Federation.*
[67] 2019 Tax Order, p. 9.

No Meeting of the Minds

Significantly, the Commission declined to accept FIPUG's effort to apply the contract principle of a lack of a "meeting of the minds" to actions of the parties given that the agreement had already been in place for two and a half years.[68] It is this aspect of the 2019 Tax Order in combination with the Florida public policy against false representation or breached implied warranty of authority that the OPC primarily submits requires the Commission to determine that the SIPP should be rejected as invalid. In the instant case and unlike the situation facing the Commission in 2019, the SIPP is contingent on Commission approval and thus has not been in effect even one second. The Commission is free to, and should, refuse to approve the SIPP by applying contract law principles. These principles include a lack of a meeting of the minds. The SIPP should be rejected as being against public policy in that it subverts the statutory framework for setting rates.

As the Commission took pains to note in 2019, there is a "public interest gloss" on the contract (if one even exists) and that the application of the principles of contract construction should be cloaked or viewed through the public interest lens. Applying this standard, the SIPP is contrary to the public interest because it is the result of a process that was designed to subvert the fundamental law under which the case was filed – chapter 366, Florida Statutes. The evidence is clear that FPL never intended to take this case to hearing. Despite a ruling[69] on a 2023 petition by an FPL affiliate natural gas local distribution company (Florida City Gas Company) that the proposed four-year stay-out was unenforceable, FPL sought to implement a four-year agreement

[68] *Id.*
[69] PSC Order No. PSC-2023-0177-FOF-GU, issued June 9, 2023, Docket No. 20220069-GU, p. 6, *In re: Petition for rate increase by Florida City Gas.* This order is pending appeal at the Florida Supreme Court. See *Citizens of Florida v. Florida Public Service Com.*, SC2023-0988 (Fla. argued Dec. 10, 2024).

using a TAM in this case. OPC expert witness Helmuth Schultz also noted that this approach contains an element of absurdity:

> Although FPL Witness Scott Bores characterizes the TAM as one of the "essential" and "core" elements that will allow the Company to commit to a four-year plan and not request any additional general base rate increases effective prior to January 1, 2030, any such "commitment" would paradoxically be unknowable in its nature until after the Commission votes and even then if the Company could nevertheless live with the case outcome, it would still be unenforceable.

TR 3218.

The filing of the pending case nearly a year later with a component that the Commission said was "unenforceable" in the absence of a settlement agreement is a strong indicator that the company never intended to see the petition filing through. One might easily conclude that the filing of the petition was merely a vehicle for executing on a plan to force through a "settlement" that gave FPL the excessive revenue requirement, TAM, and ROE that they coveted. TR 1423-1424, 2427-2431; EXH 255C; EXH 267C. More specifically, the contents of these confidential incentive compensation documents are consistent with an outcome like the SIPP and an approach like FPL proposes here where a rate case was triggered, enormous public resources expended on the case, and a purported settlement surfaces that gives FPL 100% of its desired outcome as described by OPC expert Schultz and FEL expert Rábago. TR 4988; TR 5045-5046. The non-FPL SIPs who benefit from this approach exhibited no recognition that they were mere pawns in this game. None of them testified that they were aware that FPL was really getting everything they wanted without material – if any – concessions. As discussed in this section, beyond getting their specific special interest items, the SIPs admitted to being unaware of what concessions FPL made. In some

instances, the concession was simply that FPL's take was nominally less than the filed request. TR 5156. This is not a meeting of the minds or mutuality of assent.

The Commission should invoke the interpretation precedent cited in the 2019 Tax Order[70] and reject the SIPP because it lacks the required meeting of the minds. This defect was illustrated at the September 8, 2025, Prehearing Conference when counsel for FPL told the Commission that "[w]e can terminate this settlement and resort back to our as-filed case."[71] However, Paragraph 31 of the SIPP states:

> The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof;

EXH 1277; MPN K28 - MPN K29.

Despite this provision, FPL told the Commission that they control the SIPP. This does not demonstrate a meeting of the minds sufficient to form a contract. Even more telling is the testimony in Phase Two indicating the ignorance of the SIPs to the impacts of the provisions that they represented to the Commission "resolved the issues," and which were the result of compromise and consideration of the interests they represent and were balanced. In the settlement phase of the case, one very large party testified that FPL did not produce a cost of service study despite FPL's insistence to the contrary. TR 3959, 3773. The lack of awareness by at least one signatory of the workings of the RSM is additional evidence of the lack of mutuality of assent. TR 3960-3966. The lack of awareness of the details of the SIPP simply reinforce that it was a unilateral creation of

[70] *Gc,f v. Indian Lake Estates, Inc*., 178 So. 2d 910, 912 (Fla. 2d DCA 1965); *Perkins v. Simmons,* 153 Fla. 595 (Fla. 1943).
[71] Document No. 14020-2025, p. 55, Docket No. 20250011-EI.

FPL and not a mutually negotiated compromise evincing a true meeting of the minds. TR 5048-5049. As previously noted, one signatory witness testified that residential customers were NOT represented at the negotiations. The witness stated that he did "not believe that there is a specific party that is part of the settlement for the residential class specifically," under cross-examination. TR 3957. This is diametrically the opposite of FPL's claims.

This aspect of the SIPP demonstrates a failure to meet the public interest requirement and is not a basis for departing from the hearing process required in chapters 366 and 120, Florida Statutes.

Subversion of the Public Interest

Chapter 366, Florida Statutes, generally, and section 366.06, Florida Statutes, specifically, provide the recognized ratemaking formula for setting electric and gas utility rates. FPL acknowledged as much when it petitioned for relief in February 2025. As a part of this established process, the legislature designated an authorized representative, the OPC, to represent the customers of investor-owned utilities. The Commission granted intervention to numerous parties to represent varied specific customer interests, including residential, low-income customers like FEL.[72] The Florida Supreme Court noted the OPC's role in the legislative scheme in *Mayo.* Nothing in *Citizens'* undermined or diminished the OPC's role as the authorized representative of FPL customers in adversarial rate-setting proceedings or legitimate resulting negotiations.[73]

[72] Petition to Intervene by Florida Rising, League of United Latin American Citizens, & Environmental Confederation of Southwest Florida, at pp. 2,3, 5, and 7. Document No. 00945-2025, filed February 12, 2025. Petition granted in Order No. PSC-2025-0078-PCO-EI, issued March 17, 2025.

[73] The fact that the Public Counsel represents all FPL customers does not disable him in his roles of statutory representative of the customers who were excluded from negotiations or development of a settlement, or by a signatory. All subsets of customers who were affirmatively listed on the SIPP were represented by counsel. The OPC is obligated to advocated in the public interest on behalf of all customers as authorized in section 350.0611(1), Florida Statutes. This includes represented and unrepresented customers who would be forced to pay higher rates, pay twice for federal income tax expense, and incur excessive future deferred costs, among other things, because of the scheme put forward by FPL and other special interests that makes the provisions of chapter 366, Florida Statutes unavailable.

The Court further cited the case of *AmeriSteel Corp. v. Clark*, 691 So. 2d 4723, 478 (Fla. 1997)[74] to the effect that the legal system favors the settlement of disputes by mutual agreement between the contending parties. It is abundantly clear that OPC, FEL, and FAIR were not included in whatever discussion led to the final creation of the SIPP.[75] The legislatively established ratemaking scheme was thwarted in this case by the exclusionary negotiation of the SIPP by special interest representatives who found the hearing process to be inconvenient to achieving their individual goals. The evidence in the record is abundant that the SIPs were not "contending" parties and that their claimed representational interests are very narrow and self-serving. The SIPP is not a mutual agreement between *the* contending parties, as required by *AmeriSteel*. It is clear that the SIPs conducted little, if any, of the discovery in the case. TR 5074-5075. It is further evident that many of the SIPs did not take contrary positions to FPL. Ones who did largely just adopted OPC positions. TR 4994, 5075. However, merely adopting OPC positions does not authorize a party to represent those who OPC represents.

The legislature's intent was the adversarial hearing process is the place where fair, just and reasonable rates are established using the provisions of chapter 120, Florida Statutes, based on competent, substantial evidence or a *bona fide* settlement agreement between genuinely contending parties who are authorized to represent the interests on whose behalf they purport to negotiate and compromise. To be in the public interest, a settlement agreement must be valid. Since the SIPP is invalid for numerous reasons, it is moot, not in the public interest, and must be rejected.

---

[74] Quoting *Utilities Comm'n of New Smyrna Beach v. Fla. Pub. Serv. Comm'n*, 469 So. 2d 731, 732 (Fla. 1985).
[75] Paragraph 3 of the SIPP Abeyance Motion even expressly recognizes that there were intervenors who were not represented at the negotiation of the SIPP. ("Suspending the schedule may also provide the time necessary to allow additional intervenors to join in the development of beneficial settlement terms.")

POST-HEARING BRIEF CONCLUSION

In the final order approving 2021 Settlement, which OPC signed, the signatories to that agreement actually represented a broad section of FPL's customer classes and a large majority of the parties in that case. The Commission also noted that, "[s]ignificantly, OPC, the entity created by the Legislature to represent Florida's utility customers before the Commission, has conducted extensive discovery in this case and negotiated the terms of the 2021 Settlement."[76] If it was significant that OPC was a signatory to the 2021 Settlement, then it must also be significant that OPC is not a signatory to the SIPP. As discussed, the SIPP is not a valid agreement pursuant to Commission precedent, against public policy, and against the public interest. The SIPP clearly does not resolve all issues in this docket considering the opposition of five distinct parties (including OPC). It will result in unfair, unjust, and unaffordable, therefore unreasonable rates. Finally, the SIPP is in the special interest of a few rather than the requisite public interest. FPL's customers do not have the option of switching electric companies or saying "no" to FPL. The Commission must follow the law by protecting their welfare and say "no" on their behalf. Reject the SIPP.

[76] Order No. PSC-2021-0446-S-EI, issued December 2, 2021, Docket No. 20210015-EI, p. 21, *In re: Petition for rate increase by Florida Power & Light Company.*

Respectfully submitted,

Walt Trierweiler
Public Counsel
Florida Bar No.: 912468

/s/ Mary A. Wessling
Associate Public Counsel
Florida Bar No.: 93590

Patricia A. Christensen
Associate Public Counsel
Florida Bar No.: 0989789

Octavio Simoes-Ponce
Associate Public Counsel
Florida Bar No.: 96511

Austin A. Watrous
Associate Public Counsel
Florida Bar No.: 1044249

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, FL 32399-1400
(850) 488-9330

Attorneys for the Citizens of the State of Florida

Attachment A

2024 Estimated Achieved Return on Equity (ROE) without RSAM Debits and Credits			
Line No.	**Description**	**Amount/%**	**Source**
1	FPL's December 2024 ESR Reported Achieved ROE	11.40%	EXH 1246 MPN F11-594
2			
3	FPL's Authorized ROE Midpoint	10.80%	Order No. PSC-2021-0446-S-EI - Page 4
4			
5	2024 Average Rate of Return at 11.80% High Point	7.49%	EXH 1246 MPN F11-594
6	2024 Average Rate of Return at 10.80% Midpoint	6.99%	EXH 1246 MPN F11-594
7	Delta Between High Point and Midpoint	0.50%	Operation of Math (Line 5 - Line 6)
8	2024 Average Rate Base	$66,045,380,555	EXH 1246 MPN F11-594
9	Estimated Revenue Requirement Impact of 100 Basis Points on ROE Before Gross-Up	$330,226,903	Operation of Math (Line 7 * Line 8)
10	2026 Net Operating Income (NOI) Multiplier (1) as Proxy for 2024	1.34115	MFR Schedule C-44
11	2024 Estimated Revenue Requirement Impact of 100 Basis Points on ROE	$442 883 811	Operation of Math (Line 9 * Line 10)
12			
13	RSAM Reserve Amount Approved in 2021 Settlement	$1,450,000,000	Order No. PSC-2021-0446-S-EI - Page 44
14	RSAM Reserve Amount as of December 31, 2024	894 733 170	EXH 1246 MPN F11-593
15	RSAM Reserve Amount Amortized as of December 31, 2024	$555,266,830	Operation of Math (Line 13 - Line 14)
16	2024 Average Rate of Return	7.29%	EXH 1246 MPN F11-594
17	Return on Rate Base Increase through Accumulated Depreciation Reduction	($40,478,952)	Operation of Math (Negative Line 15 * Line 16)
18	2026 NOI Multiplier (1) as Proxy for 2024	1.34115	MFR Schedule C-44
19	2024 Estimated ROE Achieved Impact from Rate Base Effect	($54,288,346)	Operation of Math (Line 17 * Line 18)
20			
21	Calculated 12/31/23 Reserve Balance	$1,223,073,998	EXH 426 MPN E91067 to E91068
22	12/31/24 Reserve Balance	894,733,170	EXH 1246 MPN F11-593
23	2024 Actual Net Reserve Credit Amortization or Decrease to Depreciation Expense	$328,340,828	Operation of Math (Line 21- Line 22)
24	Composite Income Tax Rate [.055 + (.21*(1-.055))]	25.345%	MFR Schedule C-44
25	Income Tax Impact	($83,217,983)	Operation of Math (Negative Line 23 * Line 24)
26	2024 Depreciation Reduction Net of Income Taxes	$245,122,845	Operation of Math (Line 23 + Line 25)
27	2026 NOI Multiplier (1) as Proxy for 2024	1.34115	MFR Schedule C-44
28	2024 Estimated ROE Achieved Impact from NOI Effect	$328,746,504	Operation of Math (Line 26 * Line 27)
29			
30	2024 Estimated Incremental Achieved ROE with RSAM Debits and Credits in Dollars	$274,458,157	Operation of Math (Line 19 + Line 28)
31	2024 Estimated Incremental Achieved ROE with RSAM Debits and Credits in Basis Points	62	Operation of Math [(Line 30 / Line 11) * 100]
32			
33	2024 Estimated Achieved ROE without RSAM Debits and Credits	10.78%	Operation of Math [(Negative Line 31 /10000) - Line 1)
34			
35	Estimated Basis Points Under Authorized 10.80% ROE Midpoint	(2)	Operation of Math [(Line 33 - Line 3) * 10000]
36			
37	**Note: (1)** As reflected on MFR Schedule C-11, there is a deminis difference in the 2024 bad debt		
38	factor of 0.127% and the 2026 projected bad factor of 0.124% which was used to determine the		
39	2026 NOI Multiplier.		

2024 Actual Net Reserve Credit Amortization or Decrease to Depreciation Expense				
Line No.	Month & Year	Description	Amount	Source
1	24-Jan	Actual Credit Adjustment	($227,485,771)	EXH 426 MPN E91067
2	24-Feb	Actual Credit Adjustment	(218,821,023)	EXH 426 MPN E91067
3	24-Mar	Actual Credit Adjustment	(125,386,026)	EXH 426 MPN E91067
4	24-Apr	Actual Credit Adjustment	(103,202,779)	EXH 426 MPN E91067
5	24-May	Actual Debit Adjustment	17,049,049	EXH 426 MPN E91067
6	24-Jun	Actual Debit Adjustment	20,371,658	EXH 426 MPN E91067
7	24-Jul	Actual Debit Adjustment	72,955,762	EXH 426 MPN E91067
8	24-Aug	Actual Debit Adjustment	22,672,028	EXH 426 MPN E91067
9	24-Sep	Actual Debit Adjustment	135,405,596	EXH 426 MPN E91067
10	24-Oct	Projected Debit Adjustment	52,681,574	EXH 426 MPN E91067
11	24-Nov	Projected Credit Adjustment	(39,567,497)	EXH 426 MPN E91068
12	24-Dec	Projected Debit Adjustment	15,474,000	EXH 426 MPN E91068
13	-	2024 Net Credit Actual/Projected Adjustment	($377,853,429)	Operation of Math (Sum of Lines 1 to 12)
14	-			
15	-	RSAM Reserve Balance as 1/1/2022	$1,450,000,000	EXH 426 MPN E91067
16	22-Jan	Credit Adjustment	(65,705,450)	EXH 426 MPN E91067
17	22-Feb	Credit Adjustment	(89,529,146)	EXH 426 MPN E91067
18	22-Mar	Debit Adjustment	31,464,122	EXH 426 MPN E91067
19	22-Apr	Credit Adjustment	(14,559,962)	EXH 426 MPN E91067
20	22-May	Debit Adjustment	31,705,905	EXH 426 MPN E91067
21	22-Jun	Debit Adjustment	27,078,406	EXH 426 MPN E91067
22	22-Jul	Debit Adjustment	76,967,920	EXH 426 MPN E91067
23	22-Aug	Debit Adjustment	2,578,205	EXH 426 MPN E91067
24	22-Sep	-	0	EXH 426 MPN E91067
25	22-Oct	-	0	EXH 426 MPN E91067
26	22-Nov	-	0	EXH 426 MPN E91067
27	22-Dec	-	0	EXH 426 MPN E91067
28	23-Jan	Credit Adjustment	(167,105,350)	EXH 426 MPN E91067
29	23-Feb	Credit Adjustment	(127,890,358)	EXH 426 MPN E91067
30	23-Mar	Credit Adjustment	(77,916,091)	EXH 426 MPN E91067
31	23-Apr	Credit Adjustment	(13,834,391)	EXH 426 MPN E91067
32	23-May	Credit Adjustment	(39,931,241)	EXH 426 MPN E91067
33	23-Jun	Credit Adjustment	(24,300,809)	EXH 426 MPN E91067
34	23-Jul	Debit Adjustment	74,062,800	EXH 426 MPN E91067
35	23-Aug	Debit Adjustment	77,791,825	EXH 426 MPN E91067
36	23-Sep	Debit Adjustment	93,083,143	EXH 426 MPN E91067
37	23-Oct	Debit Adjustment	17,306,475	EXH 426 MPN E91067
38	23-Nov	Credit Adjustment	(13,926,506)	EXH 426 MPN E91067
39	23-Dec	Credit Adjustment	(24,265,499)	EXH 426 MPN E91067
40	-	RSAM Reserve Balance as 12/31/2023	$1,223,073,998	Operation of Math (Sum of Lines 15 to 39)
41	-	RSAM Reserve Balance as 12/31/2024	894,733,170	EXH 1246 MPN F11-593
42	-	2024 Net Credit Actual Adjustment	($328,340,828)	Operation of Math (Line 41 - Line 40)

CERTIFICATE OF SERVICE
DOCKET NO. 20250011-EI

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:

Adria Harper
Shaw Stiller
Timothy Sparks
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
aharper@psc.state.fl.us
sstiller@psc.state.fl.us
tsparks@psc.state.fl.us

Kenneth A. Hoffman
Florida Power & Light Company
134 West Jefferson Street
Tallahassee, FL 32301-1713
ken.hoffman@fpl.com

John T. Burnett
Maria Moncada
Christopher T. Wright
Joel Baker
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
john.t.burnett@fpl.com
maria.moncada@fpl.com
christopher.wright@fpl.com
joel.baker@fpl.com

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

James W. Brew
Laura Wynn Baker
Joseph R. Briscar
Sarah B. Newman
Stone Mattheis Xenopoulos & Brew
1025 Thomas Jefferson St., NW
Suite 800 West
Washington, D.C. 20007
jbrew@smxblaw.com
lwb@smxblaw.com
jrb@smxblaw.com
sbn@smxblaw.com

Stephen Bright
Jigar J. Shah
Electrify America, LLC
1950 Opportunity Way, Suite 1500
Reston, Virginia
steve.bright@electrifyamerica.com
jigar.shah@electrifyamerica.com

Leslie R. Newton
Ashley N. George
Thomas A. Jernigan
Michael A. Rivera
James B. Ely
Ebony M. Payton
Matthew R. Vondrasek
Federal Executive Agencies
139 Barnes Drive, Suite 1
Tyndall Air Force Base, FL 32403
leslie.newton.1@us.af.mil
ashley.george.4@us.af.mil
thomas.jernigan.3@us.af.mil
michael.rivera.51@us.af.mil
james.ely@us.af.mil
ebony.payton.ctr@us.af.mil
matthew.vondrasek.1@us.af.mil

Nikhil Vijaykar
Yonatan Moskowitz
Keyes & Fox LLP
580 California St., 12th Floor
San Francisco, CA 94104
nvijaykar@keyesfox.com
ymoskowitz@keyesfox.com

Katelyn Lee
Lindsey Stegall
EVgo Services, LLC
1661 E. Franklin Ave.
El Segundo, CA 90245
katelyn.lee@evgo.com
lindsey.stegall@evgo.com

Bradley Marshall
Jordan Luebkemann
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, FL 32301
bmarshall@earthjustice.org
jluebkemann@earthjustice.org
flcaseupdates@earthjustice.org

Danielle McManamon
Earthjustice
4500 Biscayne Blvd., Suite 201
Miami, FL 33137
dmcmanamon@earthjustice.org

Stephanie U. Eaton
Spilman Thomas & Battle
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
seaton@spilmanlaw.com

Steven W. Lee
Spilman Thomas & Battle
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
slee@spilmanlaw.com

William C. Garner
Law Office of William C. Garner
3425 Bannerman Road
Unit 105, No. 414
Tallahassee, FL 32312
bgarner@wcglawoffice.com

D. Bruce May
Kevin W. Cox
Kathryn Isted
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, FL 32301
bruce.may@hklaw.com
kevin.cox@hklaw.com
kathryn.isted@hklaw.com

Robert Scheffel Wright
John T. LaVia, III
Gardner, Bist, Bowden, Dee, LaVia,
Wright, Perry & Harper
1300 Thomaswood Drive
Tallahassee, FL 32308
schef@gbwlegal.com
jlavia@gbwlegal.com

Floyd R. Self
Ruth Vafek
Berger Singerman, LLP
313 N. Monroe Street, Suite 301
Tallahassee, FL 32301
fself@bergersingerman.com
rvafek@bergersingerman.com

Brian A. Ardire
Armstrong World Industries, Inc.
2500 Columbia Avenue
Lancaster, PA 17603
baardire@armstrongceilings.com

Robert E. Montejo
Duane Morris LLP
201 S Biscayne Blvd., Suite 3400
Miami, FL 33131-4325
remontejo@duanemorris.com

Alexander W. Judd
Duane Morris LLP
100 Pearl Street, 13th Floor
Hartford, CT 06103
ajudd@duanemorris.com

/s/ Mary A. Wessling
Mary A. Wessling
Associate Public Counsel
wessling.mary@leg.state.fl.us