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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S POST-HEARING BRIEF IN SUPPORT OF THE SETTLEMENT AGREEMENT

The Florida Industrial Power Users Group ("FIPUG") respectfully submits its Post Hearing Brief in the above-styled matter. The issues to be addressed in the Post Hearing Brief were initially identified in Order No. PSC-2025-0075-PCO-EI, *Order Establishing Procedure.* These procedures were modified by Order No. PSC-2025-0323-PCO-EI, First Order Revising Order of Procedure. The scope of the Parties' Post-Hearing Briefs was orally modified on October 16, 2025, at the close of the contested evidentiary hearing held from October 6, 2025 through October 16, 2025. At that time Florida Public Service Commission ("PSC" or "Commission") staff stated:

> **The ultimate issue to be briefed is whether the August 25, 2025 Stipulation and Settlement Agreement, taken as a whole, is the public interest and establishes rates that are fair, just, and reasonable.** The parties' briefs must address the 26 major elements on pages three and four of Order No. PSC-2025-0345-PCO-EI. The parties shall also brief the five legal issues identified in the prehearing order, that's Order No. PSC-2025-0298-PHO-EI, in their post-hearing briefs. (emphasis added.)

See, Tr. Vol 23, p. 5286, l. 15-25.

FIPUG'S POSITIONS, ARGUMENT, AND POST HEARING BRIEF

Settlement Agreement Ultimate Issue: Whether the August 25 Stipulation and Proposed Settlement Agreement ("Settlement Agreement"), taken as a whole, is in the public interest and establishes rates that are fair, just, and reasonable.

FIPUG's Position on the Settlement Agreement's Ultimate Issue:

*Yes, for the reasons and argument set forth below, and based on the record evidence adduced in this case considered *in toto*, the Settlement Agreement, taken as a whole, is the public interest and establishes rates that are fair, just, and reasonable.*

Argument

A. FIPUG Position in Support of the Settlement Agreement

FIPUG fully supports the August 25, 2025 Settlement Agreement, taken as a whole. The Settlement Agreement is in the public interest. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997) (citing *Utilities Com'n of City of New Smyrna Beach v. Florida Pub. Serv. Com'n*, 469 So. 2d 731, 732 (Fla. 1985)).

The Settlement Agreement is fair, just, and reasonable.

FIPUG's plain statements above addressing the ultimate issue before the Commission are supported by reams of evidence adduced during the nine-day contested administrative hearing. The hearing was contested because not all parties signed the Settlement Agreement.[1] The non-signatories extensively cross-examined witnesses called by the signatories[2], submitted documentary and testimonial evidence in opposition to the Settlement Agreement, and have the opportunity to file briefs in opposition to the comprehensive Settlement Agreement. However, the record evidence is compelling. Weighed and considered as a whole, the signatories' evidence more than meets their collective burden of proof that the preponderance of the evidence supports a

[1] Of the 19 parties in the case 14 signed the Settlement Agreement. The five non-signatories are: Office of Public Council ("OPC) and Florida Rising, Environmental Confederation of Southwest Florida, League of United Latin American Citizens of Florida, and Floridians Against Increased Rates, Inc. (collectively referred to as "FEL") (the "non-signatories").

[2] The signatories are: FPL, Florida Industrial Power Users Group, Florida Retail Federation, Florida Energy for Innovation Association, Inc., Walmart, Inc., EVgo Services LLC, Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac, Inc., Wawa, Inc., Electrify America LLC, Federal Executive Agencies, Armstrong World Industries, Inc., and Southern Alliance for Clean Energy.

Commission determination that the Settlement Agreement is indeed in the public interest and contains rates that are fair, just, and reasonable.

Review of the prehearing statements and the initial and rebuttal testimony of FPL and the 18 intervening parties shows the plethora of disputed issues between the intervening parties, including FIPUG, and FPL. Specifically, comparing FPL's filed rate case to the differing positions taken by FIPUG and a host of other intervenors shows the extent of the contested "major" issues that ultimately were resolved by the "give and take" that characterizes good faith negotiations. The cumulative body of evidence demonstrates that the settling parties forged a wholistic, fair compromise as evidenced by the Settlement Agreement before the Commission. See Joint Motion for Approval of Settlement Agreement filed on August 20, 2025 with 2025 Stipulation and Settlement Agreement attached.

This Commission previously has made the determination of whether a settlement agreement promotes the "public interest and fair, just, and reasonable rates" a number of times in Florida Power and Light Company ("FPL") rate cases. Notably, the prior rate cases contained many of the same issues before the Commission in this rate case. A number of the Commission-approved, multi-year rate case settlement agreements were appealed to the Florida Supreme Court (the "Court"). After extensive briefing, review, oral argument, and consideration, the Court has affirmed these rate case settlement agreements. See, e.g., *Citizens v. Fla. PSC*, 146 So. 3d 1143 (Fla. 2014); Florida *Rising, Inc. v. Florida Public Service Commission,* 415 So. 3d 135 (Fla. 2025).

B. FIPUG's Support and Adoption of Positions on Issues Not Addressed in FIPUG's Post-Hearing Brief

With respect to the issues to be addressed in this proceeding as noted above, and in furtherance of its support of the Settlement Agreement in this case, FIPUG supports and adopts

FPL's post-hearing brief on all issues that FIPUG does not specifically address in its post hearing brief.

C. Issues on which FIPUG Expressly Takes a Position (not by Adoption)

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 Riding, 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.

FIPUG's Position on Legal Issue 1:

*FIPUG has standing to participate in this proceeding. As established by uncontroverted evidence, a substantial number of FIPUG members purchase electricity from FPL, have direct and substantial interests in the issues raised, and have actively participated for decades in regulatory and legal proceedings, including FPL rate cases, before the Commission. As established at hearing, FIPUG members are among the largest FPL customers and consume significant quantities of electricity to power their operations. *

Argument

A. FIPUG's Standing to Participate as an Intervenor in this Proceeding and Standards for Intervention

Standing to participate in an administrative proceeding is governed by the provisions of the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (the "APA"). A person has standing to participate as an intervenor if their "substantial interests" are (1) affected by the agency action and (2) within the scope of interests the agency's enabling statute is designed to protect, provided they file a timely petition or motion to intervene that sets forth the facts supporting intervention. § 120.52(13), Fla. Stat. (2025); Agrico Chem. Co. v. Dep't of Env't Reg., 406 So. 2d 478, 482 (Fla. 1st DCA 1981).

The APA, in pertinent part, defines "Party" to mean:

> (a) Specifically named persons whose substantial interests are being determined in the proceeding.
>
> (b) *Any other person* who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, ***or*** *whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.*
>
> (c) *Any other person*, including an agency staff member, *allowed by the agency to intervene or participate in the proceeding as a party.* An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

. . . .

§ 120.52(13), Fla. Stat. (2025) (emphasis added).

The APA defines "person" to mean "any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1)." § 120.52(14), Fla. Stat. (2025). Section 1.01(3), Florida Statutes further defines "person" to include "individuals, children, firms, *associations*, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, *and all other groups or combinations*":

> 1.01(3) Definitions.—In construing these statutes and each and every word, phrase, or part hereof, *where the context will permit*:
>
> . . .
>
> (3) The word "person" includes individuals, children, firms, *associations*, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, *and all other groups or combinations*.

§ 1.01(3), Fla. Stat. (emphasis added).

For purposes of applying the definition of "person" in section 1.01(3), Florida Statutes (2025) to this proceeding, the "context" is Chapter 366, Florida Statutes, which establishes the Commission's jurisdiction and power to regulate public utilities with respect to rates and services and to prescribe fair and reasonable rates. See §§ 366.04, 366.05, and 366.06, Florida Statutes (2025). Chapter 366, Florida Statutes, does not limit or restrict the definition of "person" established in section 1.01. Accordingly, "persons" as described in section 1.01, who demonstrate that their substantial interests are affected by an electric utility rate proceeding, are "parties" under the APA and may seek to participate as intervenors in electric utility rate proceedings. § 120.52(13)(b), Fla. Stat. (2025).

B. FIPUG is a Party Under the APA and is Entitled to Participate as an Intervenor in this Electric Utility Rate Proceeding

FIPUG is a longstanding, unincorporated association comprised of industrial and commercial electric and natural gas power users in Florida. FIPUG timely filed a petition to intervene in this proceeding on February 10, 2025, alleging that a substantial number of its members purchase large quantities of electricity from Florida Power & Light Company ("FPL"), and that the price of electricity materially contributes to their production and business operation costs. FIPUG's Petition to Intervene, p.2-4. FIPUG alleged that the outcome of this proceeding, which will determine FPL's electric utility rates and thus the cost of electricity for these members, affects the substantial interests of a substantial number of its members. FIPUG alleged that a substantial number of its members have a substantial interest in fair, just, and reasonable rates – precisely the type of interest that utility rate-setting proceedings under Chapter 366 are designed to protect.

On March 17, 2025, FIPUG's petition to intervene was granted in PSC Order No. PSC-2025-0080-PCO-EI (March 17, 2025). As noted by the Prehearing Officer in the Order, no party filed any opposition to FIPUG's petition to intervene and the time for doing so had expired. See PSC Order PSC-2025-0080-PCO-EI (March 17, 2025) at 1; Rule 28-106.205, Fla. Admin. Code.

The Prehearing Officer, upon review and analysis of FIPUG's petition, stated:

> In determining whether a party has standing to seek a formal administrative hearing, the allegations contained in the party's petition must be taken as true." Mid-Chattahoochee River Users v. Fla. Dep't of Env't Prot., 948 So. 2d 794, 796 (Fla. 1st DCA 2006). Taken as true, FIPUG's allegations are sufficient to support all elements of associational standing under Florida Home Builders. Therefore, FIPUG's petition to intervene shall be granted, subject to proof of standing or stipulations that there are sufficient facts to support all elements for standing. See Delgado v. Agency for Health Care Admin., 237 So. 3d 432, 437 (Fla. 1st DCA 2018).

At hearing, FIPUG presented uncontroverted evidence, admitted into the record without objection, supporting FIPUG's allegations of associational standing under <u>Florida Home Builders Ass'n v. Dep't of Labor & Employment Sec.</u>, 412 So. 2d 351 (Fla. 1982). The evidence reflects that FIPUG represents the interests of large commercial and industrial power users in Florida and that a substantial number of FIPUG members purchase electricity from FPL. Tr. p. 3469, l. 13-16. In addition, the uncontroverted evidence reflects that these FIPUG members are among the largest FPL customers and consume significant quantities of electricity, often around-the-clock, and that they require a reliable, affordably-priced supply of electricity to power their production and operations. (Tr, p. 3469, l. 16-18).

As an association of industrial and commercial power users, FIPUG qualifies as a "person" within the meaning of section 1.01(3), Florida Statutes. Because a substantial number of FIPUG's members will be substantially affected by the outcome of this proceeding, FIPUG is a "party" within the definition of section 120.52(13)(b), Florida Statutes, which grants party status to "[a]ny other person…whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party." The substantial interests of FIPUG's members who purchase electricity from FPL are the type of interests Chapter 366 rate proceedings are designed to protect. Accordingly, FIPUG is entitled to participate as an intervenor in this proceeding.

FIPUG has actively participated in electric utility rate proceedings for decades, representing its members' interests in regulatory and legal proceedings involving the Commission's regulation of public utilities for decades, including FPL rate cases, and related proceedings before the Florida Supreme Court. (Vol. 16, p. 3469-3470).

C. Opposition to FIPUG's Standing

As part of the Commission's structured issues identification process, Commission staff, in close collaboration with the parties, prepared a summary of issues of law and fact for determination and each party's position on each issue. Parties also have the ability to propose issues to staff and the Commission for consideration.

Issue of Law No. 1 asks whether each of the parties seeking to intervene in this proceeding has standing to intervene. FEL, an intervenor, took the following position: "No. Pursuant to the order granting intervention, it is the intervenor's burden to establish at hearing the evidence necessary to show standing." See Commission Prehearing Order No. PSC-2025-0298-PHO-EI entered August 7, 2025.

As noted above, FEL did not file any objection to FIPUG's petition to intervene. FIPUG was granted party status as an intervenor based on the allegations in its petition and subsequently offered competent, substantial evidence supporting each of its allegations, which was admitted without objection into the record. Accordingly, FIPUG met its burden of proof with respect to the issue of standing. This conclusion should be dispositive of the matter.

However, nearly a month after entry of the Prehearing Order in the case, FEL argued in a discovery dispute that FIPUG, as an unincorporated association, may not sue or be sued in its association name and "likely lacks standing." See FEL Response to FIPUG Motion to Quash Discovery filed on September 2, 2025, p. 2 and 3.

FEL's standing argument comes up short for a host of reasons.

1. FIPUG affirmatively plead and proved the legal requirements to establish associational standing under Florida Homebuilders, *supra*, consistent with the prehearing officer's Order Granting FIPUG's intervention subject to providing evidence to support its standing allegations, which FIPUG's witness Jeff Pollock did at hearing. (Vol. 16, p. 3469-3470). FIPUG's witness was not questioned or otherwise challenged about FIPUG's standing.

2. As discussed above, Chapter 120 and Chapter 366 govern standing in this electric utility rate proceeding. Sections 120.52(13) and (14), Florida Statutes, which define "party" for purposes of entitlement to participate in an administrative proceeding, incorporate the statutory definition of "person" set forth in section 1.01(3), Florida Statutes. Section 1.01(3) explicitly defines the term "person" to include several distinct categories, among them both "associations" and "corporations," as well as "all other groups or combinations." The plain language of these

statutes distinguishes associations and corporations as separate entities. Thus, "associations" are not a subset of "corporations" but are distinct categories included within the statutory definition of "person." Sections 120.52(13) and (14) and section 1.01(3) unambiguously support the conclusion that associations, corporations, and the other listed categories all fall squarely within the definition of "person" for purposes of administrative proceedings under Florida law.

3. The Commission's governing statute, Chapter 366, does not restrict the nature or classification of "persons" who have standing to intervene in electric utility rate proceedings. As discussed in more detail below, FEL's reliance on cases involving other agencies' governing statutes that contain explicit standing limitations is misplaced, as Chapter 366 does not contain comparable limiting language.

4. The Uniform Rules of Procedure addressing intervention in administrative proceedings state that opposition to a petition to intervene is to occur within seven (7) days of the filing of a petition to intervene. See Rule 28-106.204(1), Florida Administrative Code. FEL did not timely oppose FIPUG's intervention, waiving its right to do so later.

5. This Commission has granted FIPUG's requests to intervention for decades. The Commission's actions are consistent with Chapter 120 and Chapter 366 as detailed above. The Commission's longstanding and consistent administrative interpretation of Chapter 120 and Chapter 366 when considering FIPUG's intervention requests is telling and instructive.

6. FEL never identified or proposed an issue as to whether the capacity "to sue and be sued" is a legal prerequisite to participation as an intervenor in this administrative proceeding. It was raised as argument in response to FIPUG's motion to quash discovery, but never set forth as an issue clearly in dispute.

D. Cases and Orders Relied on by FEL Are Not Applicable

In pursuing its argument, FEL cited a number of cases in support of its suggestion that FIPUG, as an unincorporated association, "likely lacks standing." For reasons discussed below, all cases relied on FEL are either distinguishable, inapposite, or not relevant when analyzing FIPUG's standing in this case.

Standing to participate in an administrative proceeding is governed by broader criteria than traditional legal capacity rules. In contrast to common law rules relating to "legal capacity to sue and be sued" in Article V courts established by the Florida Constitution, the APA more broadly recognizes parties based on whether they have a substantial interest in the outcome of an administrative proceeding and whether that interest is one the agency's enabling statute is designed to protect. § 120.52(13) and (14), Florida Statutes (2025). Indeed, in Florida Home Builders, the Florida Supreme Court observed that "[e]xpansion of public access to the activities of governmental agencies was one of the major legislative purposes of the new Administrative Procedure Act." Florida Home Builders, 412 So. 2d at 352-353.

Accordingly, the cases pertaining to "legal capacity" relied on by FEL – Phillips & Co. v. Hall, 128 So. 635, 637 (Fla. 1930), where the court held that an agent signing a promissory note for an unincorporated association may be personally liable, Johnston v. Meredith, 840 So. 2d 315, 316 (Fla. 3d DCA 2003) where service of process on an unincorporated association was quashed, and Larkin v. Buranosky, 973 So. 2d 1286, 1287 (Fla. 4th DCA 2008), holding that a lawsuit against an unincorporated association was properly dismissed – are all inapposite, as none of the cases address standing or party status under the APA.

Similarly, Cape Cave Corp. v. State Dep't Envtl. Reg., 498 So. 2d 1309, 1310-11 (Fla. 1st DCA 1986) which arose under the Florida Environmental Protection Act ("EPA") does not address party status in an electric utility rate proceeding under Chapter 366. Moreover, the case did not substantively address standing, as the court found the challenge to the intervenor's standing under the EPA moot on appeal. Instead, the court's discussion, limited to dicta, mused abstractly on whether issues of "legal capacity" might be relevant to whether an entity qualifies as a "citizen" for purposes of "citizen standing" under the EPA as then enacted, which provided the legal and factual context of the case. The dicta in Cape Cave does not pertain to the standing of unincorporated associations seeking to intervene in administrative proceedings under Chapter 366, which does not prescribe "citizen standing." Simply put, determination of party status in this case is squarely governed by the Administrative Procedure Act and Chapter 366 – and Chapter 366 does not limit the definition of "party" established by the APA.

Similarly, the case of Palm Beach Cnty. Envtl. Coalition v. Dep't Community Affairs, DOAH Case No. 10-5608 (DOAH Recommended Order Sept. 16, 2010) (Dep't Community Affairs Final Order January 21, 2011), involving a challenge to a Comprehensive Plan Amendment, is inapposite. As noted by the agency in its Final Order in that case, standing to challenge a Comprehensive Plan Amendment was restricted by Chapter 163, Florida Statutes (2009). Specifically, section 163.319(1), Florida Statutes (2009) limited standing to "affected persons" as restrictively defined in section 163.3184(1), Florida Statutes (2009). The Agency Final Order concluded that none of the petitioners in that case alleged facts supporting standing as "affected persons" under Chapter 163. One petitioner, an unincorporated association, also failed to allege that a substantial number of its members were substantially affected by the agency action, thereby failing to meet the requirements for associational standing under Florida Home Builders. Palm Beach Cnty. Envtl. Coalition is thus readily distinguishable both legally and factually from the present matter.

In West Volusia Conservancy v. Arboretum Development Group, Inc., DOAH Case No. 86-2463 (Fla. Dep't Env. Reg. Mar. 20, 1987), the Department of Environmental Regulation rejected an ALJ's recommendation to dismiss a petition for lack of standing. In rejecting the ALJ's analysis, the Department concluded that the association had "citizen standing" under the Florida Environmental Protection Act, and in addition was a substantially affected party under section 120.52(13) of the APA. (Order of Remand, 1987 WL 62046, at *7). Again, the case is legally and factually distinguished from the present matter.

Similarly, the cases of In Mid-Chattahoochee River Users v. Fla. Dept. Envtl. Protec., 948 So. 2d 794 (Fla. 1st DCA 2006), Home Builders and Contractors Ass'n of Brevard, Inc. v. Dept, of Community Affairs, 585 So. 2d 965 (Fla. 1st DCA 1991); Delgado v. Agency for Health Care Administration, 237 So. 3d 432 (Fla. 1st DCA 2018), and In re: Energy Conservation Cost Recovery Clause, Order Denying Intervention, Order No. PSC-08-0596-PCO-GU (Fla. Pub. Serv. Comm'n Sept. 16, 2008) are distinguishable. The first two involve agency enabling acts neither relevant nor applicable to the instant proceeding. Additionally, all three cases focused on petitioners denied standing based on their failure to allege "substantial interests" within the scope of interests the applicable enabling act was designed to protect.

Finally, the Order Granting Conditional Intervention in In re: Petition to Determine Need for Polk Unit 6 Electrical Power Plant, by Tampa Electric Company, PSC Order No. PSC-07-0695-PCO-EI (Aug. 24, 2007) is also factually and legally distinguishable. In that proceeding, the prehearing officer granted intervention to a foreign corporation with the condition that the corporation renew its Florida certificate of authority. In short, the prehearing officer concluded that standing of the foreign corporation hinged on the meaning of the word "court" in section 617.1502, which the officer concluded was equivalent to "administrative proceeding." The prehearing order did not consider or address the provisions of the APA that determine party status in electric utility rate proceedings. See § 120.52(13), Florida Statutes, definition of "party."

As shown above, the cases that FEL relies on in support of its suggestion that FIPUG "likely lacks standing" do not support FEL's contention. Under the facts and law applicable to this proceeding, FIPUG is a "party" within the definition of section 120.52(13), Florida Statutes, and has demonstrated associational standing under the provisions of Florida Home Builders, *supra*. FIPUG thus is entitled to participate as an intervenor in this proceeding pursuant to section 120.52(13)(b), Florida Statutes (2025).

In addition to its statutory entitlement to participate as an intervenor in this administrative proceeding under section 120.52(13)(b), Florida Statutes, FIPUG may also participate at the Commission's discretion. Section 120.52(13)(c), Florida Statutes, grants party status to "any person" the Commission allows "to intervene or participate in the proceeding as a party." FIPUG is a longstanding association comprised of diverse industrial and commercial power users with an established history of active participation in Commission proceedings, including electric utility rate cases. Under section 120.52(13)(c), the Commission may exercise its discretion to permit FIPUG's intervention, particularly where FIPUG's involvement will assist the Commission in evaluating the substantive issues – namely, whether the August 25, 2025 Stipulation and Proposed Settlement Agreement, taken as a whole, is in the public interest and establishes fair, just, and reasonable rates. Accordingly, in addition to FIPUG's entitlement under section 120.52(13)(b), the significant and varied interests of FIPUG's members in the proceeding's outcome and FIPUG's ultimate interest in just and reasonable rates support the Commission's discretionary allowance of intervention under section 120.52(13)(c), Florida Statutes (2025).

MAJOR ELEMENTS

FIPUG specifically addresses five "Major Elements" listed below.

- Revenue Requirement Allocation
- Commercial/Industrial Load Control and Demand Reduction Credits
- Cost Allocation Methodology for Cost Recovery Clause Factors
- Natural Gas Hedging
- Support Proposal for Large Customer Opt-out of Environmental Cost Recovery Clause

Those positions addressed are set forth below.

Element 5: Revenue Requirement Allocation

Numerous parties, including FIPUG, disputed FPL's revenue allocation study, resulting in a compromise as set forth in the Settlement Agreement. To briefly summarize, FPL is required to submit a cost-of-service study as part of its Minimum Filing Requirements, and did so. However, upon review, FIPUG and its expert witnesses, Jeffry Pollock and Jonathan Ly, identified errors in and raised questions about FPL's cost of service study. Consequently, FIPUG, through its witnesses, recommended numerous changes. For example, FIPUG's witnesses Pollock and Ly recommended changes in FPL's allocation factors applied to various rate base and net income operating costs, corrections to production cost allocation to non-firm loads, allocation of production and transmission plant. FIPUG also questioned how distribution network costs should be classified and proposed corrections to FPL's gradualism calculation for revenue allocation purposes. Witness Pollock testimony, Tr. p. 3487, l. 1 to p. 3514 l. 10; Witness Ly testimony Tr. p. 3795 l. 1 to p. 3803, l. 12. Tony Georgis, an expert witness for the Florida Retail Federation ("FRF"), identified errors relating to the allocation of production costs to non-firm loads, functionalization of costs, and production operation and maintenance error and costs. Tr. 3943, l.

10 to 3737, l. 9. FEA witness Gorman suggested changes to the gradualism adjustment when determining revenue allocation. Tr. p. 3927, l. 1 to p. 3931, l. 9. In sum, FPL's cost of service study and resulting filed revenue allocation was questioned by several intervening parties or multiple issues, including FIPUG. The negotiated revenue allocation compromise was part and parcel of the major issues resolved by the parties in negotiating the overall Settlement Agreement.

Element 6: Commercial/Industrial Load Control and Demand Reduction Credits

Many FIPUG members receive electricity from FPL and use the Commercial-Industrial Load Control (CILC) rates and the Commercial-Industrial Demand Reduction (CDR) rider. In exchange for agreeing to be interrupted during times of critical peak need, these customers receive payments or credits ("interruptible credits") on their monthly bill, which help them manage their energy costs and remain competitive in their respective businesses. The CDR and CILC customers who agree to have their power disrupted during times of critical peak demand provide FPL with 900 MW of demand response that FPL can quickly deploy during generation capacity emergencies (and other critical events as stated in the tariffs) to avoid not serving or shedding firm load shed. As FPL projects significant load growth and has become increasingly dependent on more rate-base intensive intermittent solar resources, which elevate the risk of outages, demand response is becoming a much more critical resource. FPL has avoided installing 900 MW of capacity due to the CILC/CDR demand response programs. FPL's production capacity costs have increased by 40.7% since FPL's 2021 rate case. FPL's ability to quickly stop providing electricity to these interruptible customers during a critical peak load period by turning off the customers' supply of electricity has been analogized to a community fire station, which exists and serves a desired and worthy purpose (ideally infrequently) when a home or business is on fire. Tr. p. 3784.

FPL initially proposed a 29% reduction in the payments in the CDR and CILC payments that were previously negotiated and approved by the Commission. FPL's proposal to make this steep reduction from $8.76/kW-month to $6.22/kW-month was strongly opposed by FIPUG, FRF, and the Federal Executive Agencies ("FEA"). FIPUG argued that given FPL's projections of significant load growth, coupled with FPL's increased dependence on more rate-base intensive intermittent solar resources, which elevate the risk of outages, demand response is becoming a much more critical resource.

FPL has avoided installing 900 MW of capacity due to the CILC/CDR demand response programs. Importantly, FPL's production capacity costs have increased by 40.7% since FPL's 2021 rate case. Given that the CILC/CDR demand response program is a proven and valuable resource to FPL, and avoids the need for FPL to build additional generation for these 900 MW of avoided capacity, FIPUG witness Jonathan Ly recommended raising the CILC/CDR credits by 40.7%, from $8.76 to $12.32 per kW-month. Tr. p. 3794. The FIPUG proposed increase is linked directly to how much it now costs FPL to increase its production capacity.

In rebuttal testimony, FPL proposed increasing rather than decreasing the interruptible credits to $9.24/kW-month. FRF proposed increasing the interruptible credits to $9.63/kW-month. FRF expert witness Georgis recommended that the interruptible credits be increased to $9.63/kW-month. The settling parties eventually agreed that the compromise interruptible credit number would be $9.75/kW-month, a fair, just, and reasonable sum that is between the positions taken by the settling parties.

Element 10: Cost Allocation Methodology for Cost Recovery Clause Factors

In this case, many parties expressed differing views about a number of proposed cost allocation methodologies that should be used in this case. Specifically, for production costs, Issue 89, FIPUG and FRF advocated for the 4 Coincident Peak (4CP) methodology. Tr. p. 3473. FPL and the Southern Alliance for Clean Energy ("SACE") sought the 12 CP and 25% approach., FEA argued for the 4 CP and 13th approach. Walmart sought the 12 CP approach and 13th methodology. FEL suggested the 12 CP approach and an allocator assigning nuclear and solar costs to energy and other production plant to capacity.

For transmission costs, Issue 90, FIPUG again supported the 4 CP approach, with which FEA and FRF agreed and supported with expert witness testimony. FPL proposed the 12 CP approach, a position also supported by SACE and FEL.

To expand upon the reasons supporting the 4 CP approach, FIPUG witness Pollock identified a host of reasons for the allocation of production and transmission plant using the Four Coincident Peak (4 CP) approach. The 4 CP methodology is a recognized and accepted approach by the National Association of Utility Regulators ("NARUC"). FPL is a summer peaking utility and the four months with the hottest months in FPL's service territory are June, July, August, and September. The Commission approved the 4 CP methodology in the most recent TECO litigated rate case. Tr. p. 3474. Like TECO, FPL has a diverse mix of generation resources, including solar and battery energy storage systems. FIPUG presented evidence that the 4 CP cost of service methodology better reflects cost causation in relation to FPL's peak demands and ensures that the rate class which actually causes costs pays for those costs. Tr. p. 3490, l. 1 to p.3499, l. 21. The 4 CP approach is also consistent with the legislature's energy goal of promoting economic development.

Ultimately, as part of the give and take of the settlement negotiations, the settling parties agreed to use the 4 CP and 12% average demand approach during the term of the Settlement Agreement in the clause dockets. The settling parties agreed, effective January 1, 2026, all clause factors will be calculated and filed for approval using the 4 CP and 12 percent Average Demand methodology for Production Plant and 4 CP for Transmission Plant. This is a fair, just, and reasonable compromise of the array of views and arguments about cost methodology and the product of "give and take" negotiations that ultimately resulted in the Settlement Agreement.

Element 22: Natural Gas Hedging

As has been agreed to and approved by the Commission in every FPL investor-owned utility rate case settlement for more than a decade, the settling parties again agreed that FPL will not engage in natural gas financial hedging. FIPUG has historically argued and maintains its "no hedging for large users" position. FIPUG believes that it is best for its members to "pay at the pump" rather than in effect "bet" on the future of natural gas prices, given significant losses that customers suffered previously. The settling parties agreed to this provision during negotiations as part and parcel of the Settlement Agreement.

The non-settling parties also appear united in their opposition to financial hedging of natural gas, as reflected in their Joint Motion to Approve Customer Majority Parties' Stipulation and Settlement Agreement filed August 26, 2025, Document No. 08308-2025, p. 20. ("The CMP's [sic] agree that natural gas hedging shall be prohibited during the term of this agreement and any extension thereof.").

Element 25. Support Proposal for Large Customer Opt-out of Environmental Cost Recovery Clause

The settling parties agreed to support a proposed petition that commercial and industrial customers may file in the future to opt out of certain energy efficiency programs. A number of states have enacted policies which permit large commercial and industrial customers to opt out of state mandated energy efficiency programs.

Providing flexibility and options to encourage large users to pursue energy efficiency measures sets up a "win-win situation" that is in the public interest if large customers are properly incented to support energy efficiency measures. The non-settling parties did not file testimony in opposition to this negotiated provision, which is part and parcel of the overall Settlement Agreement.

CONCLUSION

For the reasons set forth by FIPUG in its Post Hearing Brief, and the reasons set forth by the other signatories to the Settlement Agreement, the Commission should approve the proposed Settlement Agreement at issue. The legal system favors the settlement of disputes by mutual agreement between the contending parties. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997) (citing *Utilities Com'n of City of New Smyrna Beach v. Florida Pub. Serv. Com'n*, 469 So. 2d 731, 732 (Fla. 1985)).

This Commission over the past decade has approved a number of proposed rate settlement agreements to resolve complex and vigorously contested rate case filings by FPL and other Florida utilities. These settlement agreements, after receipt and review of evidence, have been found to the public interest for many reasons, including, but not limited to establishing electric rates that are fair, just, and reasonable. The recently concluded nine day contested hearing, with a mountain of evidence, and the respective post hearing briefs filed by the parties, provide a compelling record that the Settlement Agreement should be approved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 10th day of November 2025 to the following:

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