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b. 120015-EI

In Re: Petition for Increase in Rates by Florida Power & Light Company.

c. Document being filed on behalf of the Florida Retail Federation.

d. There are a total of 57 pages.

e. The document attached for electronic filing is The Florida Retail Federation's PostHearing Statement and Brief.

(see attached file: 120015.FRF.PHBrief.9-21-12.pdf)

Thank you for your attention and assistance in this matter.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Increase in Rates
By Florida Power & Light Company.

DOCKET NO. 120015-EI

FILED: SEPTEMBER 21, 2012

**THE FLORIDA RETAIL FEDERATION'S
POSTHEARING STATEMENT AND BRIEF**

The Florida Retail Federation (the "FRF"),¹ pursuant to the Prehearing Order in this docket, Order No. PSC-12-0428-PHO-EI, the Order Establishing Procedure, Order No. 12-0143-PCO-EI, as modified by the First Order Revising Order Establishing Procedure, Order No. PSC-12-0439-PCO-EI, and pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), hereby submits the FRF's Posthearing Statement and Brief.

SUMMARY OF THE FLORIDA RETAIL FEDERATION'S REQUESTED RELIEF

FPL claims that it needs base rate increases of \$516.5 million annually in January 2013 and another \$173.9 million annually in June 2013, to provide service. This case, however, is about Florida Power & Light Company's earnings, pure and simple. This fact is clearly demonstrated by Exhibit 235, which shows that the combined effect of *only two adjustments* to FPL's request – (a) reducing FPL's ROE to 9.0% and (b) reducing its equity ratio to 50.0%, without any other adjustments – *would reduce FPL's revenue requirements for the 2013 test year by \$547 million per year, which is more than FPL's requested base rate increase.* This fact is also demonstrated by FPL's own projections which indicate that FPL would earn

¹ In this Posthearing Statement and Brief, the following additional abbreviations are used: "Consumer Intervenors" or "Consumers" refers collectively to the FRF, the Citizens of the State of Florida, represented by the Office of Public Counsel ("Citizens" or "OPC"), South Florida Hospital and Healthcare Association ("SFHHA"), the Village of Pinecrest, the Florida Industrial Power Users Group ("FIPUG"), the Federal Executive Agencies ("FEA"), Thomas Saporito, and John W. Hendricks. "FPL" and "Company" refer to Florida Power & Light Company. "Commission" refers to the Florida Public Service Commission. Citations to the hearing transcript are in the form "TR (page number)," with the name of the witness preceding the TR cite where appropriate. Citations to hearing exhibits are in the form "EXH (Exhibit number) (page number)."

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approximately \$1.15 Billion in Net Operating Income in the 2013 test year (MFR A-1 and MFR C-1), after covering all of FPL's operating and maintenance costs, debt service costs, and depreciation expense, with *no* base rate increase in January 2013. Thus, FPL's requested increase would flow entirely to shareholder earnings.

Although FPL wants to portray the Commission's 2010 decision in Order No. PSC-10-0153-FOF-EI as having put FPL on the "bleeding edge" of low ROEs due to political considerations, the Commission's 2010 decision, as demonstrated by history since that decision, placed the Commission squarely and rightly on the leading edge of utility commission decisions that increasingly recognize that the low risks faced by regulated monopoly providers of electricity must be reflected in lower ROEs, particularly where long-term interest rates are low (and expected to remain that way). The Commission should recognize these facts and factors in making its decisions in this case as well; granting FPL's requests to further bloat its earnings would unnecessarily transfer billions of dollars – at the rate of \$690 million a year until the next rate case – from the pockets of FPL's customers to the shareholders of FPL's parent company, NextEra Energy, thus leaving already struggling Floridians on the bleeding edge of an already difficult, uncertain, challenging economy that is struggling to come out of the worst recession since the Great Depression.

The Florida Retail Federation, joined by the Citizens and several other parties representing consumers' interests, oppose FPL's request because FPL does not *need* additional revenues in 2013 in order to provide safe, reliable service at the lowest possible cost (including a reasonable return on its investment), which is its duty as a public utility (Chriss, TR 2929, see also EXH 485) enjoying its protected status as a monopoly provider of a necessity. To be clear, the FRF wants financially healthy utilities, and the FRF wants a financially healthy FPL. The FRF and other Consumer parties believe, however, that FPL can and will be healthy with the much lower revenues advocated by witnesses for the Citizens and by witnesses for several of the other Consumer parties to this case.

This conclusion is amply demonstrated by the historical record of the Commission's regulation of FPL. From 1985 until 2005, FPL had no base rate increases at all. EXH 486 In fact, between 1988 and 1991, FPL made significant refunds to ratepayers due to changes in federal tax laws. In 1999, FPL entered into a settlement by which it agreed to permanently reduce base rates by \$350 million per year, and subsequently made additional revenue-sharing refunds to its customers. EXH 486, EXH 488. Again in 2002, FPL agreed to settle a general rate proceeding by making additional permanent base rate reductions, this time of an additional \$250 million per year, with further revenue-sharing refunds. EXH 486, EXH 489. During this period, from 1985 to 2005, FPL thus made permanent base rate reductions of \$600 million while at the same time, FPL added more than 8,500 megawatts of generating capacity, representing more than one-third of its entire fleet. EXH 486, EXH 492, EXH 493; see TR 503-04. In 2005, FPL agreed to another settlement in which it froze its base rates but was allowed to increase its rates subsequently when new power plants came on line; it was in 2007 when the first such increase occurred, for Turkey Point Unit 5. Throughout this period, then, FPL reduced its base rates while providing safe and reliable service, attracting sufficient capital to construct more than one-third of its generating fleet, and earned healthy returns. (Exhibit EXH 456, which is Exhibit MD-8 to the rebuttal testimony of Moray Dewhurst, shows that FPL's ROEs during the 1999-2009 period ranged between 10.1 percent and 13 percent.)

Several sections of Chapter 366, Florida Statutes, make clear that the Commission is to regulate in the public interest and, in so doing, to ensure that the rates of public utilities are fair, just, and reasonable. See, e.g., Section 366.06(1), Florida Statutes.² In determining a utility's fair, just, and reasonable rates, the Commission generally has the legal ability to choose within the range of competing reasonable values on each cost-determining factor in dispute, provided that the Commission's decisions must be supported by competent, substantial evidence of record. United Tel. Co. v. Mayo, 345 So. 2d 648, 654 (Fla. 1977). To fulfill its statutory duty to protect

² All references to the Florida Statutes are to the 2012 edition.

the public interest by ensuring that FPL provides safe, adequate, reliable service to its customers at the lowest possible cost, the Commission should – arguably must – choose the lowest value supported by competent, substantial evidence for each cost-determining factor in the case.

FPL has historically agreed that its duties as a public utility include providing safe, adequate and reliable service at the lowest possible cost. See EXH 485 (testimony of former FPL President Armando Olivera presented in FPL's last rate case, Docket No. 080677-EI); this exhibit also includes the testimony of Vincent Dolan, the president of Progress Energy Florida, and Mark Crosswhite, the president of Gulf Power Company, agreeing that this is their companies' duty as well. Competent, substantial evidence of record demonstrates that FPL can, in fact, provide safe, adequate, reliable service, and recover all of its reasonable and prudent costs, and have an opportunity to earn a reasonable return on its investment, and maintain entirely acceptable financial integrity metrics, with no rate increases at all – and in fact with a substantial decrease in its base rates. Accordingly, based on the evidence, the Commission should deny FPL's request and should instead reduce FPL's rates by approximately \$253.4 Million per year in January 2013. EXH 270, TR 2761 The evidence also supports allowing FPL to increase its base rates by approximately \$121.5 million per year in June 2013, when its Cape Canaveral Modernization Project, a new gas-fired power plant, begins providing service to FPL's customers.

When the Commission follows this clear, statutorily based approach to regulating FPL in the public interest, the evidence shows that the Commission should not only deny FPL's overreaching request for an additional \$690 million per year of its customers' money, but that the Commission should in fact reduce FPL's base rates by approximately \$253.4 million per year (Ramas, TR 2761; EXH 270, Sched. A-1), for the reasons summarized here, and based on the competent, substantial record evidence cited in the body of this Posthearing Brief.

Return on Equity and Capital Structure. FPL's proposed base rates are based on its over-reaching, unreasonable requested rate of return on common equity ("ROE"), 11.50% after taxes, which corresponds to a return greater than 18% before taxes (11.50%, MFR D-1, times

NOI multiplier of $1.63188 = 18.77\%$). Chriss, TR 2931. The Citizens' witnesses support – by competent, substantial evidence – an after-tax ROE of 9.00%, with a capital structure including 50.0% equity from investors funds, Woolridge, TR 2304; O'Donnell, TR 2436-37, EXH 235. The SFHHA's witness Richard Baudino supports, also by competent, substantial evidence, an after-tax ROE of 9.0%, Baudino, TR 2992, and the FEA's witness Michael Gorman supports, also by competent, substantial evidence, an after-tax ROE of 9.25%. Gorman, TR 3281. Moreover, FPL's request for a "performance adder" of 25 basis points is wholly inappropriate and must be rejected, because it is not cost-based, Chriss, TR 2933, because it is unnecessary for FPL to fulfill its duty of providing safe and reliable service at the lowest possible cost, Lawton, TR 2864-65, because it does not provide appropriate incentives that are not already inherent in normal utility regulation, Gorman, TR 3347, and because it is inappropriate as a "one-off" measure for FPL in any event. Chriss, TR 2935-36. Choosing appropriate values – for ROE of 9.0% and for an equity ratio of 50.0% - supported by competent, substantial evidence reduces FPL's requested increase by approximately \$547 Million per year in January 2013.

Rate Base Adjustments. Competent, substantial evidence further supports reducing FPL's rate request to reflect overstated rate base items, including \$108 million in Plant Held for Future Use to remove the costs of power plant sites that FPL has no definite plan to use in the reasonably foreseeable future, to remove certain Construction Work in Progress from rate base because it is eligible for AFUDC treatment, to reduce FPL's claimed working capital in rate base, which is roughly ten times the amount included in FPL's rate base just 3 years ago, and to make a modest correction to the Company's claimed amortization of depreciation surplus.

Adjustment for Other Operating Revenues. The FRF believes that FPL's revenues are understated because they are based on an assumed 20-year average usage per customer. Incredibly, FPL's witness on load growth, Rosemary Morley, refused to acknowledge that the PSC should make its decisions on the basis of the best available information, sticking by her proposed 20-year average of cooling degree hours ("CDH"), which drives customer usage. Further incredibly, she also refused to acknowledge that the pattern of cooling degree hours

reflected in her own exhibit (EXH 395) indicated an upward-sloping trend over the past 20 years. Although apparent from casual observation, it is also possible to calculate the average for the first 6 years of her analysis period at approximately 1,942 CDH, and the average for the last 6 years of the 20-year period, approximately 2,034 CDH. These values obviously indicate that the pattern is upward-sloping, but FPL's witness refused to acknowledge this fact. Morley, TR 3468-70. The Commission should make an adjustment, perhaps by using one-half of the 1.64% adjustment advocated by SFHHA's witness Steve Baron, TR 3130-32, to increase FPL's test year revenues. This would have the effect of further reducing FPL's requested rate increase by approximately \$35 million. ($1.64\% \times \$4,266,616,000 \text{ in base revenues} \times 0.5 = \$34,986,251$)

Operating & Maintenance Expenses. The Citizens' witnesses, Donna Ramas, Helmuth Schultz, and David Vondle advocate a number of adjustments to FPL's O&M expenses that further reduce FPL's revenue requirements for the 2013 test year. The Company's excessive rate hike request reflects overloading of unsupported costs into the test year. The Commission should reject FPL's scheme to inflate O&M expenses in the test year and make the following adjustments to O&M expense. These include reductions to reflect FPL's historical pattern of overstating employee expenses (\$24.6 million per year) and related benefit expenses (\$14.8 million per year), to reflect the fact that FPL's non-executive incentive compensation proposals are not appropriate (\$22.4 million per year), to reflect FPL's pattern of overstating vegetation management expenses and pole inspection expenses relative to actuals (\$9.2 million and \$2.7 million per year, respectively), to remove from customer responsibility expenses for directors' and officer's insurance (\$1.4 million), to correct for FPL's dramatic jump in generation overhaul expenses from 2012 to 2013 (\$9.0 million per year), and to adjust for certain affiliate costs (\$34.5 million per year).

Regulating in the Public Interest: The Florida Economy and Ensuring Safe and Reliable Service at the Lowest Possible Cost

As discussed above, the Commission is statutorily charged to regulate Florida Power & Light Company in the public interest, and to ensure that FPL's rates are fair, just, and reasonable. Fla. Stat. § 366.06(1). As the Commission considers FPL's and the Consumer Intervenors' positions in light of its duty to regulate in the public interest, the Commission must also consider the current state of Florida's economy. While the fact that Florida is experiencing difficult economic times, see, e.g., TR 394, 409, 470, 596, EXH 472, does not and cannot, in and of itself, determine whether FPL's rates should be increased or decreased, these facts obviously relate to the public interest and the Commission must therefore be mindful of them, if only as a powerful reminder that the Commission must ensure that FPL provides safe, adequate, reliable service at the lowest possible cost. See EXH 485.

Even without regard to the present tough, uncertain, challenging, and struggling state of Florida's economy, see, e.g., TR 394, 409, 470, 596, and FPL's claims that it recognizes that there is "never a good time for a rate increase," TR 394, but considering only the economic and financial realities and minimal risks facing FPL, the Company's requested increase of \$690 million per year in additional base rate revenues is excessive, unreasonable, and contrary to the public interest, and would, if granted, result in rates that are unfair, unjust, unreasonable, and greater than necessary to be fairly compensatory to the utility.

FPL has attempted to make much of its claim that its current authorized rate of return on equity, 10.0 percent, ordered by the Commission in 2010 (Order No. PSC-10-0153-FOF-EI) and agreed to by FPL in the settlement embodied in Order No. PSC-11-0089-S-EI (EXH 491), is substandard, lower than for other utilities, and deleterious to FPL's ability to attract capital. The Commission should reject this argument: in fact, the Florida Public Service Commission was, when it made its demonstrably sound and historically vindicated decision to set FPL's rates using a 10.0% ROE in 2010, on the leading edge of utility commission decisions trending lower to reflect the facts that regulated utilities, particularly FPL, face low risk and that market interest

rates and required returns were low in 2010 (and remain low today). Moreover, in taking its leadership position on this critical public interest issue, the PSC did not in any way leave FPL on the "bleeding edge" of regulation that appropriately recognizes the risk-reward relationship for protected monopoly providers of necessities, electricity in this case. FPL has been able, and continues to be able to raise capital through bonds, and its parent, NextEra Energy, has been and continues to be able to increase its dividends – three times since the PSC's 2010 decision (EXH 495) and to sell its common stock at ever-increasing prices. EXH 496 In contrast, it is FPL's overreaching request for another \$690 million a year of its customers' money, in difficult economic times and when interest costs are significantly lower than they were in 2010, EXH 361, EXH 364, that would leave FPL's customers bleeding even worse than they already are.

The FRF respectfully asks the PSC to consider all of the evidence in this case, and having done so, to order FPL to reduce its base rates by approximately \$253.4 million per year in January 2013; the FRF believes, however, that FPL should be allowed to increase its base rates in June 2013, when its Cape Canaveral Modernization Project, a new gas-fired power plant, comes into commercial service, by approximately \$121.5 million per year. The net effect of the January reduction and the June increase would be that FPL's base rates would be approximately \$130 million per year lower as of June 2013 than they are today. The Commission should rest secure in the knowledge that these decisions will enable FPL to recover all of its reasonable and prudent costs, earn a reasonable rate of return on its investment, and provide safe, adequate, and reliable service, while providing FPL the ability to attract capital and to maintain healthy financial integrity "metrics."

THE STATUTORY CONTEXT AND STANDARD OF PROOF

The Commission regulates public utilities, including FPL, pursuant to several sections of Chapter 366, Florida Statutes. Section 366.01 provides:

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.

(Emphasis supplied.) Section 366.03 provides in pertinent part:

All rates and charges made, demanded, or received by any public utility for any service rendered . . . shall be fair and reasonable.

Section 366.041 provides in pertinent part:

In fixing the just, reasonable, and compensatory rates, charges

Section 366.05 provides in pertinent part:

In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges

Section 366.06(1) provides in pertinent part:

. . . the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service.

The standard of proof for the Commission's decisions in this case is a preponderance of the evidence. In Re: Petition of Florida Power & Light Co. for Authority to Increase Its Rates and Charges, FPSC Docket No. 810002-EU, Order No. 10306, 1981 WL 634490 at 7. The Commission's decisions must be supported by competent substantial evidence of record, but once thus supported, they are not subject to reversal on factual grounds. United Tel. Co. v. Mayo, 345 So. 2d 648, 654 (Fla. 1977).

Where there is competent substantial evidence of record supporting different positions, the Commission has discretion to decide on either position or, at least generally, on any position intermediate between the competing ends of a continuum. Id.; Gulf Power Co. v. Wilson, 597 So. 2d 270, 273 (Fla. 1992); In Re: Application of Gulf Power Company for Authority to Increase Its Rates and Charges, FPSC Docket No. 800001-EU, Order No. 9852, 1981 WL 634110 at 4; Gulf Power Co. v. Bevis, 296 So. 2d 482, 487 (Fla. 1974); City of Miami v. Florida Public Service Comm'n, 208 So. 2d 249, 253 (Fla. 1968).

STATEMENT OF THE CASE

These proceedings were initiated by Florida Power & Light Company when it filed its test year letter on January 17, 2012. FPL filed its petition and Minimum Filing Requirements for a general base rate increase in Docket No. 120015-EI on March 19, 2012.

Through its petition, FPL seeks the Commission's authority to increase its base rates by amounts sufficient to increase its total annual revenues from charging those base rates by approximately \$516.5 million per year, effective in January 2013, by an additional \$173.9 million per year effective in June 2013. All in all, FPL thus asks the Commission to approve base rates that would generate nearly \$700 million per year more in base rates than its customers are currently paying. FPL asserts, among other things, that it "needs" these revenues in order to produce an after-tax rate of return on its common equity investment of 11.5%, and that it "needs" all of these revenue increases in order to provide safe, adequate, reliable service, and to be able to attract capital based on healthy financial indicators, commonly known as "financial metrics."

The Florida Retail Federation, the Citizens of Florida, represented by their Public Counsel, the South Florida Hospital and Health Care Association ("SFHHA"), the Florida Industrial Power Users Group ("FIPUG"), the Federal Executive Agencies, represented by counsel serving in the United States Air Force, the Village of Pinecrest, and two individual customers, Thomas Saporito and John Hendricks, all intervened to oppose FPL's proposed rate hikes. With some differences in the specifics of their recommendations, all of these Consumer Intervenors believe that most or all of the Company's request should be denied. The FRF and the Citizens believe that FPL can provide safe, adequate, reliable service, earn a reasonable return, raise adequate capital at competitive borrowing rates, and enjoy healthy financial integrity metrics with a net rate decrease, after allowing for a step increase for the Cape Canaveral power plant, of approximately \$130 million per year. EXH 270

The Commission's statutory mandate is to regulate public utilities, such as FPL, in the public interest. Fla. Stat. § 366.01 (2012). As a public utility subject to the Commission's

plenary regulatory jurisdiction, FPL's rates must be fair, just, reasonable, compensatory, and not unduly discriminatory. Fla. Stat. §§ 366.03, 366.04, 366.041, 366.05(1), and 366.06(1). The Company is entitled to the opportunity to earn a reasonable return on its capital reasonably and prudently invested, and actually used and useful in providing the public utility electric service for which it has a legal monopoly within its service territory. Fla. Stat. § 366.06(1).

The ultimate issue before the Commission, then, is whether to approve part or all of FPL's proposed rate increases, to approve part or all of the Consumer Intervenors' proposed rate decreases, or to keep FPL's rates as they are. Of course, as set forth in the Prehearing Order, there are more than 100 issues that address specific components of the Company's revenue requirements, and the resolution of those component issues will produce the final determination of FPL's authorized revenue requirements and rates.

Taken together, the statutes and case law recognize that it is FPL's duty to provide safe, adequate, reliable service at the lowest possible cost, and it is the Commission's statutory mandate to set FPL's rates accordingly. Exercising its discretion to choose within ranges of cost-determining factors, the Commission must therefore base FPL's rates on the lowest possible values for each factor that will enable FPL to provide safe, adequate, reliable service to its customers at the lowest possible cost, provided that doing so does not (a) prevent FPL from recovering its reasonable and prudent costs, (b) prevent FPL from attracting sufficient capital to support necessary investment, or (c) preclude FPL from having an opportunity to earn a reasonable return on its prudent, used and useful investment. To allow FPL to charge rates any higher than that would be unfair, unjust, and unreasonable to FPL's customers; to force FPL to charge less than that would be unfair, unjust, and unreasonable to FPL.

RELEVANT HISTORY OF FPL'S RATES, REVENUES, AND EARNINGS

In light of FPL's frequent recitation that its rates are the lowest in Florida and lower today than they were in 2006, EXH 137, it is useful to examine the history of FPL's rates, rate increase requests, and performance over the past 30 years. At the outset, it is critical to note that it is not just the level of rates themselves that is at issue in a rate case, but rather it is the sufficiency of a

utility's rates to enable it to provide safe, adequate, reliable service while recovering its reasonable and prudent expenses, attracting sufficient capital, and earning a reasonable rate of return, assuming sound management. In other words, the fact that FPL has lower rates today than in 2006 is irrelevant to the issue in this case, which is whether FPL needs a rate increase to provide safe and reliable service at the lowest possible cost.

In fact, the history of FPL's rates, revenues, and profitability over the past 30 years shows that FPL had to make substantial refunds to its ratepayers between 1988 and 1991 to reflect tax savings realized during that time, and that it did not suffer from underearnings as a result. EXH 486; see also Orders Nos. 19158, 21143, 22334, 23349, 23727, and 24644. Additionally, FPL's authorized ROE was lowered twice during this time, first from 15.6% to 13.6%, Order No. 19158, and then from 13.6% to 12.8%, Order No. 23996. FPL's authorized ROE was further lowered to 12.0% in 1993, by Order No. PSC-93-1024-FOF-EI, and then lowered again to 11.0% by Order No. PSC-99-0519-AS-EI. FPL's authorized ROE was subsequently increased to 11.75% as part of the 2005 stipulation (EXH 490), and then reduced to 10.0% by the Commission's 2010 order, and that ROE of 10.0% was continued under the stipulation that FPL and the other parties agreed to later in 2010.

FPL's base rates were reduced by the stipulation approved by Order No. PSC-99-0519-AS-EI, by \$350 Million per year. FPL further reduced its rates by \$250 Million per year in 2002, pursuant to a stipulation approved by Commission Order No. PSC-02-0501-AS-EI, and FPL further made revenue-sharing refunds pursuant to the stipulation approved by that Order. FPL sought a \$430 Million per year increase in its base rates in 2005, but settled that case with a base rate freeze. During the period from 1999 through 2012, FPL's achieved ROEs ranged between 10.1% in 2008 and 13% between 2002 and 2005. EXH 456; EXH 630 Obviously, although FPL's base rates decreased over this period, FPL was not underearning and was, it must be concluded, providing adequate service and attracting capital.

Thus, this evidence – the Commission's orders and FPL's earnings surveillance reports – shows that FPL was obviously providing adequate service, attracting capital, and earning healthy

returns on its investment for most of the past 30 years without any base rate increases, and in fact with base rate reductions. FPL's touting of the fact that it has the lowest rates in Florida and that its rates are lower than they were in 2006 is irrelevant to the issue in this case, which is whether FPL needs any rate increase, at all, in order to provide safe and reliable service, attract sufficient capital, and earn a reasonable return on its investment. Certainly the historical record indicates that FPL probably doesn't need as much of an increase as it is seeking, if it needs any increase at all. Of course, the Florida Retail Federation, the Citizens of Florida, and other Consumer parties believe that FPL does not need any rate increases, and that, in fact, FPL can provide safe and reliable service, attract sufficient capital, and earn a healthy return on equity with a net rate decrease, after factoring in a step increase for the Cape Canaveral Modernization Project, of roughly \$130 million per year. This is the issue that the Commission is called upon to decide.

FPL's requested after-tax return on equity (ROE) of 11.5 percent equates to a before-tax return greater than 18 percent. This is excessive and unjustified relative to current capital market conditions and relative to the minimal risks that FPL faces as the monopoly provider of a necessity – electric service – pursuant to regulation by the Florida Public Service Commission under applicable Florida Statutes. In particular, the fact that FPL recovers approximately 58 percent of its total revenues through “cost recovery clauses” greatly reduces the risks that FPL faces, further demonstrating that FPL’s requested 11.5 percent ROE is unreasonable and overreaching. Additionally, FPL’s requested ROE is excessive relative to the risks that FPL faces and the returns on other low-risk investments in current capital markets. The fact that FPL’s request is unreasonable and excessive is further demonstrated by the fact that, since receiving a \$75.5 million annual rate increase in 2010, with its rates based on an allowed ROE of 10.0%, FPL’s stock price has increased significantly, FPL has increased its dividend on common stock shares three times, and FPL’s earnings have continued to grow substantially.

FPL’s requested 25-basis-point performance adder to its ROE is not cost-based and wholly unnecessary for FPL to provide safe, adequate, and reliable service, and accordingly, the Commission should reject this overreaching proposal.

In summary, the combined evidence submitted by witnesses for the consumer parties in this case shows that FPL can provide safe, adequate, and reliable service with a base rate decrease in January 2013 of \$253.4 million per year.

FPL also has the burden of demonstrating that it needs any increase at all in order to continue providing safe, adequate, and reliable service, while recovering its legitimate costs and earning a reasonable return on its prudent investments, after the Canaveral Modernization Project is placed into commercial service. The evidence submitted by the Citizens' witnesses demonstrates that FPL can continue to provide safe, adequate, and reliable service after the Canaveral Project comes on line with a base rate "step" increase of no more than \$121.5 million per year.

Accordingly, the Commission should require FPL to reduce its base rates as of January 2013 so as to produce \$253.4 million per year less in base rate revenues, and the Commission should allow FPL to subsequently increase its base rates – from the reduced levels implemented in January 2013 – by no more than \$121.5 million per year.

FPL'S MISLEADING CLAIMS

Through its testimony and exhibits, FPL has made a number of claims about its rates and its claimed concern about the plight of its customers in Florida's current struggling, challenging, and uncertain economy. However, as discussed below, its claims do not always jibe with reality, particularly the reality that FPL is seeking another \$690 million of its customers' money.

FPL's Attempts to Mask Its Base Rate Hike with Lower Fuel Costs. FPL has presented exhibits showing that, assuming that FPL's fuel charges are reduced in January 2013 as projected, FPL's total residential bill for 1,000 kWh would increase by only about \$1.71. EXH 136. However, this misses the point of the base rate case: FPL's bills would be significantly lower – by about \$3.52 per 1,000 kWh of residential service (the \$5.26 fuel cost decrease is offset by an increase in FPL's Nuclear Cost Recovery Charge of \$1.92 per 1,000 kWh, EXH 136) – with no base rate increase, and lower still with a base rate decrease as advocated by the

FRF, the Citizens, and other Consumer parties. Moreover, FPL is apparently attempting to mask its base rate increase with its lower fuel charges, which necessarily result from lower fuel costs.

The real point with respect to FPL's bills and the relative impacts of the base rate increase and the fuel charge decrease is that FPL is apparently trying to persuade its customers that they should accept the base rate increase because fuel costs are going down, such that the net result is an increase of only pennies a day, less than the cost of a cup of coffee or a slice of pizza. One problem with this suggestion is that FPL attempts to take credit for doing what it already must do – i.e., reduce its fuel charges to reflect current and currently projected fuel costs. The other, more significant problem with FPL's argument is that it is an attempt to persuade customers to simply accept an increase without reference to the real issue in this case, which is whether FPL *needs* any increase at all in order to provide safe and reliable service at the lowest possible cost. Even if the requested increase is “only” \$5.23 per 1,000 kWh of residential service (the base rate increase in January 2013) or \$6.97 per 1,000 kWh (the base increase from today to June 2013) (see EXH 136), that is still \$63 to \$70 a year that customers would rather have than give to FPL's shareholders, and it is still \$63 to \$70 a year that FPL's customers are entitled to keep unless FPL can sustain its burden of proving that it actually needs the rate increase to provide safe and reliable service. Obviously, the FRF and other Consumer parties believe that FPL does not need any such increases.

FPL's Claimed Concern About the Customers in Tough Economic Times. FPL would have the Commission, and apparently its customers, believe that it cares about their welfare in these difficult economic times, when Florida's unemployment rate is pushing 9% (EXH 472). For example, FPL's president, Eric Silagy, testified that “We know that there is never a good time for a rate increase,” TR 394, and acknowledges that current economic conditions are uncertain, challenging, and tough. TR 409, 394, 596.

FPL's claimed understanding of the plight of its customers, however, simply does not withstand scrutiny when the components of FPL's increase are examined, even in a cursory manner. FPL's claimed concern about the current economic climate is shown to be false by

FPL's overreaching requests to take nearly \$700 million a year out of its customers pockets based entirely on its desire to achieve an unreasonable return on equity – 11.5% after taxes, equivalent to more than 18% before taxes – on a capital structure that purports to use an unreasonable amount of high-cost equity capital, 59.6%. This return is out of line with returns recently authorized by utility commissions throughout the United States, Woolridge, TR 2421 (9.92% in the second half of 2011, with lower interest rates, TR 2422, EXH 361, EXH 364, and volatility, TR 2423, now), and FPL's proposed equity ratio is much higher than that employed by the utilities in the proxy groups of witnesses in this case (Gorman, EXH 352 – 45-48%; Woolridge, EXH 243 – 45%), including FPL's witness William Avera. EXH 208. Again, just setting FPL's ROE at 9.0% and the equity ratio to 50% would completely eliminate any need for a base rate increase in January 2013, demonstrating that FPL cares more about boosting its earnings than about its customers' ability to make ends meet in a struggling economy.

FPL's Claims That Its Rates Are Below the National Average. FPL repeatedly asserts that its rates are below the national average. This is partly true: FPL's bill for a residential customer using 1,000 kilowatt-hours per month is actually below the national average. However, FPL's overall average cost per kilowatt-hour for electric service is 2 percent greater than the national average. Exhibit 497 presents data from the U.S. Energy Information Administration that shows that the 2012 year-to-date U.S. average revenue for all customer sectors was 9.62 cents per kWh. However, dividing FPL's total revenues for 2012, \$10,018,841,000 (from MFR Schedule C-1, page 1 of 1 for the 2012 prior test year) by FPL's projected or estimated sales of 101,808 gigawatt-hours (equal to 101,808,000,000 kWh) for 2012 (EXH 497, which includes an excerpt from FPL's 2012 Ten-Year Site Plan) indicates that FPL's average revenue per kWh for 2012 is, in fact, 9.84 cents per kWh, which is 2.2 percent greater than the national average.

THE FLORIDA RETAIL FEDERATION'S BRIEF ON SPECIFIC ISSUES

Against the backdrop of FPL's claims and against the historical backdrop of FPL's high profitability over the past 30 years, including high profitability and returns (EXH 486, EXH 456, EXH 630), and the dividend increases of FPL's parent, NextEra Energy (EXH 495), as well as the skyrocketing NextEra stock price (EXH 496) *since* the PSC's 2010 decision decried by FPL, the Commission is asked to determine whether FPL really *needs* a rate increase at all. As explained below, FPL's request is easily shown to be based on its desire to achieve unreasonably high returns, including an unnecessary and non-cost-based performance adder, on an over-funded amount of common equity. Correcting only these two factors to reasonable levels, fully supported by competent substantial evidence of record, will reduce FPL's request by \$547 million per year, more than FPL's requested increase in January 2013. Additional adjustments for certain rate base items and overstated operating and maintenance expenses, including labor costs that are not likely to be incurred and incentive compensation that benefits shareholders far more than customers, further reduce the revenues that are reasonably necessary for FPL to provide safe, adequate, reliable service at the lowest possible cost. When the Commission considers all of the competent, substantial evidence of record, and makes its decision based on what FPL actually *needs* to provide safe and reliable service at the lowest possible cost, the Commission should order a base rate decrease of \$253.4 million (on an annual basis) in January 2013, but should then authorize FPL to increase its base rates by approximately \$121.5 million, on an annual basis, when the Cape Canaveral Project comes on line in June 2013, such that the ultimate net effect of these decisions would be a net base rate decrease of approximately \$130 million per year, as compared to FPL's rates today. These major subjects are discussed here in the FRF's Brief on Specific Issues, and the FRF's positions on all of the issues identified in the Prehearing Order follow in the FRF's Posthearing Statement of Issues and Positions.

SUMMARY

Florida Power & Light Company is requesting base rate increases that, if granted, would result in its customers paying nearly \$700 million per year more, by mid-2013, than they pay today. These rates will apply every year until a new rate case is initiated. Even without regard to the present challenging, uncertain, and tough state of Florida's economy, but considering only the economic and financial realities and minimal risks facing FPL, the Company's requested increase of \$690 million per year in additional base rate revenues is excessive and contrary to the public interest, and would, if granted, result in rates that are unfair, unjust, unreasonable, and greater than necessary to be fairly compensatory to FPL.

In fulfilling its statutory mandate to regulate public utilities in the public interest, the Commission must ensure that FPL provides safe, adequate, and reliable electric service to its customers at the lowest possible cost, and at least three presidents of Florida investor-owned electric companies agree that this is among the duties of public utilities in Florida. EXH 485; see also the testimony of Steve W. Chriss at TR 2929, and the testimony of Daniel J. Lawton at TR 2864. (FPL's current president Eric Silagy would not agree that this is a duty, but did agree that it is a "goal" of FPL to provide safe and reliable service at the lowest possible cost. TR 475-76)

Following this clear, statutorily based approach – recognizing that rates based on costs that are greater than necessary are inherently unreasonable – to regulating FPL's rates and service in the public interest, competent, substantial evidence of record demonstrates that FPL can, in fact, provide safe, adequate, reliable service, and have an opportunity to earn a reasonable return on its investment, and maintain entirely acceptable financial integrity metrics, with no rate increases at all – and in fact with a substantial decrease in its base rates. Accordingly, based on the evidence, the Commission should deny FPL's request and should instead reduce FPL's rates

by \$253.4 million per year in January 2013, followed by a step increase for the Cape Canaveral Project of \$121.5 million in June 2013.

The following sections of this posthearing brief address major issue areas, including:

- I. Rate of return on equity and capital structure, including the equity ratio, to be used in setting FPL's revenue requirements and rates in this case.
- II. Rate base issues, including Construction Work in Progress, Plant Held for Future Use, and Working Capital issues.
- III. Operating and Maintenance Expenses

I. FPL's Earnings: Return on Equity and Capital Structure (Issues 51, 54, 58 & 59)

FPL's proposed base rates are based on its over-reaching, unreasonable requested rate of return on common equity ("ROE"), 11.50% after taxes, which corresponds to a return of 18.7% before taxes. Chriss, TR 2931. The Public Counsel's witness, Professor Randall Woolridge, supports an after-tax ROE of 9.00% (TR 2304) in combination with an equity ratio of 50% as recommended by witness O'Donnell (TR 2436-37, EXH 235). The SFHHA's witness, Richard Baudino, also supports an after-tax ROE of 9.0% (TR 3029), and the FEA's witness Michael Gorman recommends an after-tax ROE of 9.25%, TR 3328. Both Mr. Baudino and Mr. Gorman opined that FPL's proposed equity ratio of 59.6% is excessive (TR 3029, TR 3295), but they did not recommend a different ratio in this case, apparently because their recommendations were rejected in Docket No. 080677-EI. Therefore, choosing the lowest values supported by competent, substantial evidence **reduces FPL's requested increase by approximately \$547 million per year.** EXH 235

Return on common equity, or "ROE," is the measure of return or profit to the utility's shareholders. It is essentially the amount "left over" as net operating income after all of the utility's expenses, including debt service, have been paid and also including recorded depreciation expense and taxes. In setting a utility's base rates, the Commission must use a value for ROE that is applied to the equity component of the utility's capital structure in order to compute the amount of return that the utility's customers will be responsible for. Once set, the

base rates remain unchanged until further order of the Commission, so between rate cases, the actually achieved ROE will fluctuate. See, e.g., EXH 456 and EXH 630.

The guiding principle that the Commission uses in determining what ROE to use in setting rates is whether it provides a fair return on investment and whether it provides the utility with sufficient capability to attract capital, without being greater than necessary. Naturally, the utility's shareholders desire higher returns, so they want the Commission to use a higher ROE in setting rates. Also naturally, customers want the Commission to use a lower ROE in setting rates, so that their rates will be less than with a higher ROE. As discussed throughout this brief, FPL's duty in operating its system, and the Commission's duty in setting FPL's rates, is to set rates at a level sufficient for FPL to provide safe, adequate, reliable service at the lowest possible cost. In the context of the ROE issue, then, the Commission must choose the lowest ROE value that enables FPL to provide safe, adequate, reliable service at the lowest possible cost, provided that that ROE value must be fair to FPL's equity investors and sufficient to enable FPL to raise capital.

FPL has earned substantial returns on common equity over the past thirteen years, ranging from a high of 13% over the period 2002-2005 to a low of 10.1% in 2009. EXH 630. Since its base rate increase in 1985 to reflect the commercial in-service status of the St. Lucie II nuclear unit, FPL refunded more than \$180 Million to its customers to reflect tax savings between 1988 and 1991. EXH, 486, Order Nos. 19158, 21143, 22334, 23349, 23727 and 24644. In 1999, FPL agreed to a settlement that resulted in permanent base rate reductions of \$350 Million per year, Order No. PSC-99-0519-AS-EI (the "1999 Settlement"), and in 2002, FPL agreed to further permanent base rate reductions of \$250 Million per year in settling an earnings review case, Order No. 02-0501-AS-EI (the "2002 Settlement"). Pursuant to the revenue-sharing provisions of the 1999 and 2002 Settlements, FPL further refunded more than \$230 Million to its customers between 1999 and 2003. In 2005, FPL filed for a base rate increase of \$430 Million per year, representing the second largest request in FPL's history and also the second largest request in the Commission's history as of that time. Despite its claims that it needed this huge

increase to continue providing adequate service, FPL settled the 2005 case with a base rate freeze. EXH 490, Order No. PSC-05-0902-S-EI (the "2005 Settlement"). Even so, throughout all of the years covered by these Settlements, FPL continued to earn generous, enviable after-tax returns between 10.1% and 13% (EXH 630), even while refunding more than \$230 Million to customers in addition to the rate decreases that it agreed to in the 1999 and 2002 Settlements. EXH 486

The Bluefield and Hope Cases Only Require Reasonable Returns. Although FPL and other utilities would have the Commission believe otherwise, the decisions of the United States Supreme Court in Bluefield and Hope³ do not require high or excessive ROEs. They simply require that rates be set at a level sufficient to cover the utility's legitimate operating costs and provide the utility with the opportunity, assuming prudent management, with sufficient funds to pay its debt service, provide a reasonable return on equity, maintain its credit at a satisfactory level and attract capital. Hope, 320 U.S. at 603. The return on equity must simply be commensurate with returns on investments in other enterprises with similar risks. Id.

The FRF and other Consumer parties are asking no more and no less than this. The FRF simply believes, based on competent substantial evidence, that FPL's risks are minimal and accordingly that its ROE does not have to be remotely close to its "ask" of 11.50% in order to attract capital. FPL competes in national capital markets; utilities operating in those national capital markets have been awarded ROEs below 10% recently. Woolridge, TR 2413. On cross-examination, Mr. Chriss referenced a recent Texas PUC decision granting Entergy Texas an ROE of 9.8%. Chriss, TR 2979-80. The Texas PUC has now issued its order, which the FRF filed under a Notice of Supplemental Authority. See Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs and Obtain Deferred Accounting Treatment, (P.U.C. Docket No. 39896) (Item No. 807) (Sept. 14, 2012). The utility's equity ratio approved by the Texas PUC in that case was 49.92%. Id. at 18. The current risk-free rate of return, which

³ Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of West Virginia, 262 U.S. 679 (1923).

is generally regarded as the rate on 20 or 30-year U.S. Treasury bonds, is approximately 3%, EXH 364; under a risk premium analysis, common sense would indicate that, where FPL recovers approximately 58% of its total revenues through cost recovery charges, MFR, Schedule C-1; Chriss, TR 2932, and other line item charges, with virtually no risk of disallowance (and no risk of disallowance for reasonable and prudent costs), the Commission should simply factor a risk premium comparable to that implicit in its 2010 decision onto the risk-free rate. In more sophisticated, Capital Asset Pricing Model analyses, Prof. Woolridge estimated a CAPM ROE of approximately 7.7% for his proxy group, Woolridge, TR 2352, and Mr. Gorman estimated a CAPM ROE of 8.32% for FPL, Gorman, TR 3327-28. This competent, substantial evidence could allow the Commission to set FPL's ROE even lower in this case, although both Woolridge and Gorman recommend modestly greater ROEs for FPL, 9.0% and 9.25%, respectively. TR 2304, 3281.

FPL Operates With Virtually No Risk of Not Recovering Its Expenses. Before proceeding with discussions of FPL's ability to attract equity and debt capital, it is important to note that, under Florida's constructive regulatory regime, FPL is blessed with a very, very high degree of certainty for recovering virtually all of its operating costs, as well as its debt service costs and its legitimately calculated "return of capital" through the recording of depreciation expense. Using the cost recovery clauses⁴ and charges, and other line-item charges, provided for by Commission practice and Florida Statutes, FPL recovers 58% of its total revenues through such charges. Chriss, TR 2931-32, EXH 278; see also MFR Schedule C-1, page 1. Correspondingly, FPL faces very, very low risks of cost disallowance for these cost items. The only actual exceptions have been minor instances where FPL has been denied recovery of

⁴ The cost recovery clauses and associated charges, and line item recovery charges, include: Fuel and Purchased Power Cost Recovery Clause, Capacity Cost Recovery Clause, Energy Conservation Cost Recovery Clause, Environmental Cost Recovery Clause, Nuclear Cost Recovery Clause (charges for which are recovered within the Capacity Cost Recovery Charge), Storm Charge, Franchise Fee line item recovery, and Gross Receipts Tax line item recovery.

expenses that the Commission found to be imprudent, e.g., certain replacement fuel costs of \$6.1 Million that were denied in Order No. 09-0024-FOF-EI, and certain storm restoration costs that were either disallowed as imprudent or as being appropriately assigned to capital accounts by Order No. 06-0464-FOF-EI.

FPL's requested ROE in this case, 11.50% after taxes, is unreasonable, unjustified, and not necessary for FPL to provide adequate service, to have an opportunity – with prudent management – to earn a reasonable return on its investment, and to attract capital. An abundance of competent substantial evidence supports this conclusion. Each full percentage point, or each 100 basis points, of FPL's after-tax ROE represents total revenue requirements of approximately \$160 million per year. See Chriss, EXH 279. Even though the after-tax ROE might be "only" 11.5%, that amount must be "grossed up" for the income taxes necessary to produce the after-tax return. This is accomplished using the Net Operating Income Multiplier (or "NOI Multiplier") of 1.63188, from FPL's MFR Schedule C-44. Thus, the pre-tax return necessary to produce the after-tax ROE of 11.5% is approximately 18.7%. TR 2931

FPL's ROE should reflect the minimal risks that FPL faces, as well as the volatility and uncertainty in capital markets. Although his analyses indicate that an appropriate ROE for FPL would be in the range of 7.7% to 8.7%, based on current conditions and FPL's favorable risk profile, Dr. Woolridge recommends that an ROE of 9.0%, in the high end of his range, is appropriate for FPL. TR 2352 This is competent substantial evidence, soundly bolstered by the testimony and exhibits of witnesses Baudino and Gorman, that FPL can attract equity capital with its rates set on this basis, and the Commission should follow this evidence in setting FPL's rates in this case.

No Departure from Constructive Regulation. The FRF is not advocating that the Commission depart from constructive regulation. The Commission provides highly constructive regulation to FPL and other public utilities by providing for them to recover, with virtual certainty, the substantial majority of their operating expenses through cost recovery charges, including new cost recovery charges such as the Nuclear Cost Recovery Charge authorized by

Section 366.93, Florida Statutes, and further including prompt recovery of extraordinary costs such as the storm restoration costs that FPL incurred in 2004 and 2005, as well as prompt access to a substantial storm reserve – presently greater than \$200 million - that FPL obtained through the issuance of PSC-approved storm recovery bonds (see Order No. PSC-06-0464-FOF-EI), which are in turn being paid off by FPL's customers through FPL's PSC-approved Storm Restoration Charges.

What the Consumer Intervenors are really asking is that the Commission's ROE decision appropriately reflect the very low risks that FPL faces. The issues before the Commission are not about abandoning the Commission's policies and practices of allowing Florida public utilities to recover the substantial majority of their total revenues through annually trued-up cost recovery charges and related line item charges (such as franchise fees and gross receipts taxes). Rather, the issues before the Commission are only about following the principles of Hope and Bluefield that utilities' returns are to reflect the risks that they actually face and to be sufficient for them to attract capital, while also resulting in rates that are fair, just, and reasonable to customers. FPL and other Florida utilities face minimal risk in Florida's regulatory environment, and the ROE values used to set their rates should reflect those minimal risks.

Rate of Return on Equity: Conclusion

Abundant competent substantial evidence supports setting FPL's rates using an ROE value far less than FPL's overreaching request of 11.50% after taxes. As discussed above, three other witnesses support ROEs of 9.0%, 9.0%, and 9.25%, respectively. The Florida Retail Federation and other Consumer parties believe that an after-tax ROE of 9.0% in current capital market conditions, and in the context of the Commission's and Florida Legislature's regulatory regime in which FPL faces very, very little risk that it will not recover its costs and covering its financial integrity requirements to a very healthy degree, is more than adequate.

Choosing the lowest ROE rate supported by competent substantial evidence would be Dr. Woolridge's CAPM result of 7.7%. However, even Dr. Woolridge and the FRF believe that this is too low, and accordingly, the FRF asks the Commission to apply Dr. Woolridge's

recommended 9.0%, along with witness O'Donnell's recommended equity ratio of 50%. This will enable FPL to have an opportunity to earn a reasonable rate of return on investment while being able to access capital markets, while preserving its financial integrity, see Gorman, TR 3282 and EXH 367, Lawton, TR 2877, and EXH 277, and while providing safe, adequate, reliable service to its customers. Accordingly, the Commission should use these values to determine FPL's revenue requirements and rates in this case.

FPL's assertion that, when the depreciation surplus amortization ceases after 2013, FPL will lose some ability to manage its earnings is specious. This event will occur in 2014, which is *outside the test year that FPL chose*, and thus completely irrelevant to the revenue requirements and rates to be set in this docket. If FPL believes it can justify additional rate relief in 2014, in order to provide safe and reliable service at the lowest possible cost, it can petition the Commission for what it believes it needs to fulfill its duty.

The Company's proposed capital structure includes 59.6% equity from investor sources; OPC's witness Kevin O'Donnell recommends 50.0%. Since equity costs more than debt, a higher proportion of equity (or "equity ratio") in a utility's capital structure will result in higher rates. There is an inherent tension between using more debt, which increases a utility's risk, and the fact that using more debt correspondingly reduces the utility's costs and thus its rates to consumers. Conversely, less debt results in less risk for the utility, and therefore, if a utility such as FPL is allowed to have a higher equity ratio in its capital structure, the authorized ROE must reflect the correspondingly lower risk.

Equity ratios for electric utilities typically range between 40% and 50%. The average amount of equity in the average capital structure for Dr. Woolridge's comparable group is about 45%. Woolridge, EXH 243; see also Gorman's EXH 352, showing equity ratios in the range of 45-48%. If a utility uses excessive equity financing, the regulatory authority can either impute a more reasonable capital structure or recognize the lower risk that accompanies the higher equity percentage. Prof. Woolridge recommends a 9.0% ROE with the lower equity ratio of 50.0% recommended by witness O'Donnell, but alternately, would recommend an ROE of 8.5% if the

Commission were to approve FPL's proposed (excessive, in the opinion of several witnesses, Gorman, TR 3295, Baudino, TR 3025-29) equity ratio of 59.6%. Wooldridge, TR 2305.

The average equity ratio for Mr. Gorman's group of comparable electric utilities is 45%-48%. Gorman, EXH 352 This is further evidence that FPL's proposed equity percentage of 59.6% is unreasonable, and that Mr. O'Donnell's recommended equity ratio of 50% is generous to FPL. Moreover, Mr. Baudino testified that NextEra Energy, FPL's parent company, cannot maintain its single-A bond rating without the support of an excessive FPL common equity ratio because NextEra Energy Resources is highly leveraged. Baudino, TR 3029 These facts demonstrate that allowing FPL to have an excessive equity ratio exposes FPL's customers to the risk of subsidizing FPL Group's unregulated activities. Baudino, TR 3029

Conclusion. FPL's proposed equity percentage is inconsistent with its duty to provide safe, adequate, reliable service at the lowest possible cost, and the Commission should accordingly reject this proposal in favor of an equity percentage of 50%, as recommended by Mr. O'Donnell. FPL will still be able to attract capital, earn a reasonable return, and provide safe and reliable service, with an equity percentage that is still higher than that of many utilities analyzed by Dr. Woolridge, Mr. Gorman, Dr. Avera, and Mr. O'Donnell (EXH 227).

II. Rate Base

Competent, substantial evidence further supports reducing FPL's rate request to reflect overstated rate base items, including \$108 million in Plant Held for Future Use to remove the costs of power plant sites that FPL has no definite plan to use in the reasonably foreseeable future (Ramas, TR 2761-2768); to remove certain Construction Work in Progress in the amount of \$4.2 million (jurisdictional) from rate base because it is eligible for AFUDC treatment (Ramas, TR 2771, EXH 270); to reduce FPL's claimed working capital in rate base, which is roughly ten times the amount included in FPL's rate base just 3 years ago (TR 2673), by \$364 million; and to make a \$20,275,000 correction to the Company's claimed amortization of depreciation surplus (EXH 267, EXH 270, page 2).

III. Operating & Maintenance Expenses

The Citizens' witnesses, Donna Ramas, Helmuth Schultz, and David Vondle advocate a number of adjustments to FPL's O&M expenses that further reduce FPL's revenue requirements for the 2013 test year. The Company's excessive rate hike request reflects overloading of unsupported costs into the test year. The Commission should reject FPL's scheme to inflate O&M expenses in the test year and make the following adjustments to O&M expense. These include reductions to reflect FPL's historical pattern of overstating employee expenses (\$24.6 million per year) and related benefit expenses (\$14.8 million per year), to reflect the fact that FPL's non-executive incentive compensation proposals are not appropriate (\$22.4 million per year), to reflect FPL's pattern of overstating vegetation management expenses and pole inspection expenses relative to actuals (\$9.2 million and \$2.7 million per year, respectively), to remove from customer responsibility expenses for directors' and officer's insurance (\$1.4 million), to correct for FPL's dramatic jump in generation overhaul expenses from 2012 to 2013 (\$9.0 million per year), and to adjust for certain affiliate costs (\$34.5 million per year).

THE FLORIDA RETAIL FEDERATION'S POSTHEARING STATEMENT
OF ISSUES AND POSITIONS

Legal

ISSUE 1: Absent a stipulation of parties in this case, does the Commission possess legal authority to grant FPL's proposal to continue utilizing the storm cost recovery mechanism that was one of the terms of the settlement agreement that the Commission approved in Order No. PSC-11-0089-S-EI?

POSITION: *No. Agree with the Citizens/Public Counsel.*

ISSUE 2: Does the Commission have the legal authority to approve FPL's requested base rate step increase for the Canaveral Modernization Project (CMP) if the CMP does not go into service until after the 2013 test year?

POSITION: *No position.*

ISSUE 3: Does Commission Rule 25-6.1351, "Cost Allocation and Affiliate Transactions," require FPL to implement and apply the criteria (greater of market price or fully allocated cost for charges to affiliates, lesser of market price or fully allocated cost for charges paid to affiliates) and related requirements of the rule to all affiliate transactions?

POSITION: *Yes.*

ISSUE 4: With respect to amounts that FPL charges or pays to affiliates, who has the burden of proof in this proceeding to demonstrate the amounts comply with Commission Rule 25-6.1351 and should be allowed in the cost of service borne by customers?

POSITION: *FPL, as the petitioner, has the burden of proof as to the reasonableness and prudence of all of its claimed costs and rates based thereon.*

ISSUE 5: Does the Commission possess the power to grant a 25 basis point performance incentive to FPL?

POSITION: *No position.*

ISSUE 6: DROPPED

ISSUE 7: DROPPED

ISSUE 8: DROPPED

TEST PERIOD AND FORECASTING

ISSUE 9: Is FPL's projected test period of the 12 months ending December 31, 2013 appropriate?

POSITION: *Yes.*

ISSUE 10: Are FPL's forecasts of Customers, KWH, and KW by Rate Class and Revenue Class, for the 2013 projected test year appropriate? If not, what forecasts of Customers, KWH, and KW by Rate Class and Revenue Class should the Commission use in determining revenues and setting rates in this case?

POSITION: *No. FPL's forecasts of sales and revenues are understated and should be adjusted to reflect more realistic weather forecasts and also to reflect more realistic values of usage per customer, as compared to FPL's actual experience over the last decade for which actual data are available.*

ISSUE 11: Are FPL's projected revenues from sales of electricity by rate class at present rates for the 2012 prior year and projected 2013 test year appropriate? If not, what are the appropriate projected amounts of revenues from sales of electricity for the 2012 prior year and projected 2013 test year?

POSITION: *No. FPL's projected revenues from sales of electricity for 2012 and 2013 are understated and should be adjusted to reflect more realistic weather assumptions, based on actual weather experience for 2012 and on reputable weather forecasts for the balance of 2012 and 2013, as well as to reflect more realistic values of usage per customer, as compared to FPL's actual experience over the last decade for which actual data are available.*

ISSUE 12: What, if any, provisions should the Commission make in setting FPL's rates for the 2013 test year to address uncertainty related to projected billing determinants and revenues?

POSITION: *FPL's projected sales and revenues for the 2013 test year are understated. If the Commission is not able to make appropriate adjustments for rates that will become effective in January 2013, then the Commission should make appropriate

provisions to protect FPL's customers from FPL over-earnings that will result if rates are set based on understated sales forecasts.*

ISSUE 13: What are the appropriate inflation, customer growth, and other trend factors for use in forecasting the 2013 test year budget?

POSITION: *FPL's usage per customer and overall sales values for the 2013 test year are understated. The Commissions should at least adjust FPL's test year revenues upward by 1.64% to reflect understated cooling degree hours in its forecasts.*

ISSUE 14: Is FPL's proposed separation of costs and revenues between the wholesale and retail jurisdictions appropriate?

POSITION: *STIPULATED. (CATEGORY 2)*

QUALITY OF SERVICE

ISSUE 15: Is the quality and reliability of electric service provided by FPL adequate?

POSITION: *Yes. The FRF agrees that the quality and reliability of service provided by FPL is adequate.*

RATE BASE

ISSUE 16: Should the revenue requirement associated with the West County Energy Center Unit 3 currently collected through the Capacity Cost Recovery Clause be included in base rates?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 17: Should FPL's adjustment to extend the amortization period of the new SAP general ledger system from 5 years to 20 years be approved?

POSITION: *Yes.*

ISSUE 18: Has FPL made the appropriate adjustments to remove all non-utility activities from Plant in Service, Accumulated Depreciation and Working Capital for the 2013 projected test year?

POSITION: *No position.*

ISSUE 19: Whether FPL's request for a base rate increase is needed to construct the poles, wires, and transformers needed to serve an anticipated 100,000 new customer accounts from the end of 2010 through the end of 2013?

POSITION: *No position.*

ISSUE 20: Are FPL's overhead costs (salaries, materials and supplies, benefits, etc.) related to in-house capital improvement projects properly recorded in rate base?

POSITION: *No position.*

ISSUE 21: Has FPL properly reduced rate base by contributions in aid of construction related to underground placement of distribution and transmission facilities?

POSITION: *No position.*

ISSUE 22: Is FPL's requested level of Plant in Service in the amount of \$30,424,227,000 (\$31,078,941,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *Yes. The appropriate amount of jurisdictional plant in service is \$30,424,227,000.*

ISSUE 23: Should capital recovery schedules be approved for Cutler Units 5 and 6, Sanford Unit 3, and Port Everglades? If so, what are the appropriate capital recovery schedules?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 24: Is FPL's requested level of Accumulated Depreciation in the amount of \$11,901,711,000 (\$12,970,028,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *The appropriate amount of jurisdictional accumulated depreciation is \$11,921,986,000, which reflects an increase to the reserve of \$20,275,000.*

ISSUE 25: For purposes of this rate case, should the Commission exercise its authority under Rule 25-6.0141(1)(g) to exclude a proportion of costs incurred by FPL to finance

projects during construction from Construction Work in Progress ("CWIP") to be recovered upfront in rate base, and instead treat that proportion of costs **subject to** an allowance for funds used during construction ("AFUDC") to be recovered over the lives of the underlying assets?

POSITION: *Yes.*

ISSUE 26: If the answer to Issue 25 is in the affirmative, what proportion of costs incurred by FPL to finance projects during construction should be treated as CWIP to be recovered upfront in rate base, and what proportion should be treated **subject to** AFUDC to be recovered over the lives of the underlying assets?

POSITION: *FPL's CWIP should be reduced by \$4.234 million (jurisdictional), because that amount is appropriately subject to AFUDC treatment.*

ISSUE 27: Is FPL's requested Construction Work in Progress in the amount of \$501,676,000 (\$514,978,000 system) for the 2013 projected test year appropriate?

POSITION: *No. FPL's CWIP should be reduced by \$4.234 million (jurisdictional), because that amount is appropriately subject to AFUDC treatment.*

ISSUE 28: Is FPL's proposed accrual of Nuclear End of Life Material and Supplies and Last Core Nuclear Fuel for the 2013 projected test year appropriate?

POSITION: *No position.*

ISSUE 29: Is FPL's requested level of Nuclear Fuel of \$565,229,000 (\$576,317,000 system) for the 2013 projected test year appropriate?

POSITION: *No position.*

ISSUE 30: Should the Commission approve FPL's request to include the Fort Drum, McDaniel, and Hendry County proposed generation sites in Plant Held For Future Use?

POSITION: *No. FPL has not met its burden of demonstrating either that the costs of these sites are reasonable and prudent and of demonstrating that they will be used to serve customers within a reasonable time. PHFFU should be reduced by \$104,805,000 (jurisdictional).*

ISSUE 31: Should the Commission approve FPL's request to include nine proposed transmission line sites for which projected in-service dates are either 2022-2023 or indeterminate ("TBA") within Plant Held For Future Use?

POSITION: *No. Agree with the Citizens/Public Counsel that PHFFU should be reduced by \$5,337,000 on a jurisdictional basis.*

ISSUE 32: Is FPL's requested level of Property Held for Future Use in the amount of \$230,192,000 (\$237,400,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. FPL's CWIP balance and PHFFU amounts should be reduced by \$110,142,000 on a jurisdictional basis in accordance with the adjustments recommended by the SFHHA and the Citizens in Issues 30 and 31.*

ISSUE 33: Should any adjustments be made to FPL's fossil fuel inventories for the 2013 projected test year?

POSITION: *No position.*

ISSUE 34: Should unamortized rate case expense be included in Working Capital?

POSITION: *No. Consistent with established Commission policy, unamortized rate case expense should be excluded from rate base for rate-setting purposes. Rate base should be reduced by \$4,826,000.*

ISSUE 35: Should Account 143, Other Accounts Receivable, be included in working capital for the 2013 test year?

POSITION: *No. Part of the amounts proposed by FPL should be excluded because FPL has not sustained its burden of proving (a) that a significant amount of accounts receivable actually relate to providing customer service and (b) that they should be included in rate base. Working capital should be reduced by \$88,680,327 on a jurisdictional basis.*

ISSUE 36: Should an adjustment be made to the amount of Account 182.3, Other Regulatory Assets, included in working capital for the 2013 test year?

POSITION: *Yes. FPL has failed to sustain its burden of proving that significant amounts of the subject regulatory assets actually relate to providing current service to

customers. Working capital should be reduced by \$266,850,000 on a jurisdictional basis.*

ISSUE 37: Should an adjustment be made to the amount of Account 186, Miscellaneous Deferred Debits, included in working capital for the 2013 test year?

POSITION: *Yes. FPL has failed to sustain its burden of proving that the subject amounts of deferred debts should be included in rate base because it has failed to establish that they actually relate to providing current service to customers. Working capital should be reduced by \$3,836,435 on a jurisdictional basis.*

ISSUE 38: Should unbilled revenues be included in working capital for the 2013 test year?

POSITION: *No position.*

ISSUE 39: Has FPL adhered to the Commission's policy of including net clause over-recoveries and excluding net clause under-recoveries in its calculation of working capital? If not, what adjustments should be made?

POSITION: *The Commission should follow its established practices and policies to projected over-recoveries and under-recoveries.*

ISSUE 40: What is the appropriate methodology for calculating FPL's Working Capital for the 2013 projected test year?

POSITION: *If the Commission continues to use the balance sheet approach to Working Capital, FPL must demonstrate that its applied this methodology correctly and that the projected working capital amounts that FPL proposed to include in rate base accurately reflect actual working capital that is necessary to provide service to customers.*

ISSUE 41: If FPL's balance sheet approach methodology for calculating its Working Capital is adopted, what adjustments, if any, should be made to FPL's proposed Working Capital?

POSITION: *The Commission should adjust Working Capital as recommended by the Citizens' witness Helmuth Schultz, reducing Working Capital by \$359,366,762 (jurisdictional), and also by reducing Working Capital by \$4,826,000 to remove unamortized rate case expense from the amounts proposed by FPL. Overall, FPL's working capital should be reduced by approximately \$364.2 million on a jurisdictional basis.*

ISSUE 42: Are FPL's adjustments to the Asset Retirement Obligation (ARO) revenue neutral as required by Commission rule?

POSITION: *No position.*

ISSUE 43: Should the nuclear maintenance reserve be modified to reflect post-paid reserve accounting in lieu of pre-paid reserve accounting? (SFHHA)

POSITION: *Yes. The nuclear maintenance reserve should be modified from a pre-paid to a post-paid variation of reserve accounting because the pre-paid variation is more expensive to customers and because the pre-paid variation can lead to stranded liabilities.*

ISSUE 44: Is FPL's requested level of Working Capital in the amount of \$1,217,209,000 (\$2,032,805,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. The appropriate amount of working capital is no more than \$853,016,000.*

ISSUE 45: Is FPL's requested rate base in the amount of \$21,036,823,000 (\$21,470,413,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. The appropriate amount of rate base is \$20,537,979,000 on a jurisdictional basis.*

COST OF CAPITAL

ISSUE 46: What is the appropriate amount of accumulated deferred taxes to include in the capital structure?

POSITION: *The appropriate amount of accumulated deferred taxes is \$4,365,176,000 prior to reconciliation, and \$4,261,665,000 after reconciliation to rate base.*

ISSUE 47: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure?

POSITION: *The appropriate amount of unamortized investment tax credits is \$923,000 before reconciliation and \$901,000 after reconciliation to rate base.*

ISSUE 48: What is the appropriate cost rate for short-term debt for the 2013 projected test year?

POSITION: *STIPULATED. (CATEGORY 1)*

ISSUE 49: What is the appropriate cost rate for long-term debt for the 2013 projected test year?

POSITION: *5.18%.*

ISSUE 50: What is the appropriate cost rate for customer deposits for the 2013 projected test year?

POSITION: *STIPULATED. (CATEGORY 1)*

ISSUE 51: What is the appropriate equity ratio that should be used for FPL for ratemaking purposes in this case?

POSITION: *A 50% equity ratio is appropriate, and indeed generous in FPL's favor. This 50% equity ratio is greater than the averages for the proxy groups used by witnesses in this case, and, consistent with its purpose of ensuring that FPL provides safe and reliable service at the lowest possible cost, the Commission should use this value to ensure that FPL does not over-use high-cost equity capital in financing its investments.*

ISSUE 52: DROPPED.

ISSUE 53: DROPPED.

ISSUE 54: Should FPL's request for a 25 basis point performance adder to the authorized return on equity and proposed annual review mechanism be approved?

POSITION: *No. FPL's proposed performance adder is not cost-based. Moreover, it is unnecessary and inherently inconsistent with FPL's duty to provide safe, adequate, and reliable service at the lowest possible cost. Moreover, attempting to develop and implement such a measure as a "one-off" application in a rate case is inappropriate.*

ISSUE 55: DROPPED.

ISSUE 56: DROPPED.

ISSUE 57: DROPPED.

ISSUE 58: What is the appropriate authorized return on equity (ROE) to use in establishing FPL's revenue requirement?

POSITION: *The appropriate ROE is necessarily related to the equity ratio used in setting FPL's rates. In this case, considering current capital market conditions and the minimal risks that FPL faces, FPL's rates should be set using an ROE of 9.0% in combination with the 50% equity ratio recommended by OPC witness O'Donnell. If the Commission uses FPL's proposed equity ratio of 59.6%, the Commission should set FPL's rates using an ROE of 8.5%.*

ISSUE 59: What is the appropriate capital structure that should be used by FPL for ratemaking purposes in this case?

POSITION: *The appropriate capital structure that the Commission should use in setting FPL's rates for the 2013 test year is that recommended by Citizens' witness Kevin O'Donnell.*

ISSUE 60: Is the combination of regulatory ROE, debt costs, capital structure and performance adder (if any) appropriate?

POSITION: *See the FRF's positions on Issues 48, 49, 54, 58, 59, and 61. No performance adder is appropriate under any circumstance. The appropriate combination of ROE, debt costs, and capital structure is: ROE of 9.0%, equity ratio (from investors funds) of 50.0%, yielding an equity percentage of total capital of 38.61%, and debt costs of 2.11% for short-term debt per Stipulated Issue 48 and 5.18% for long-term debt.*

ISSUE 61: What is the appropriate weighted average cost of capital?

POSITION: *The appropriate weighted average cost of capital is 5.45%, based on an equity ratio of 50% and an ROE of 9.0%. If the Commission decides to allow FPL's 59.6% equity ratio, then the appropriate WACC is 5.52%.*

NET OPERATING INCOME

ISSUE 62: Has FPL maximized the sources of net jurisdictional revenue that are projected to be reasonably available and technically viable for the 2013 test year? If not, what action, if any, should the Commission take in setting FPL's rates in this case? (For purposes of this issue, "net jurisdictional revenue" may include net revenue related to the supply of CO2 captured from an FPL facility.)

POSITION: *Consistent with its duty to provide safe and reliable service at the lowest possible cost, FPL should maximize all practicably available sources of revenue that would offset the amount that it needs to recover through base rates in order to fulfill that duty. No position on specific measures that FPL should undertake with respect to the 2013 test year.*

ISSUE 63: Does FPL properly account for revenues received from FPL Fibernet and other telecommunications companies for utilizing long-haul fiber optic facilities hosted by FPL's electric transmission system?

POSITION: *No. See position on Issue 79.*

ISSUE 64: What are the appropriate projected amounts of other operating revenues for the 2013 projected test year?

POSITION: *No position.*

ISSUE 65: Is FPL's projected level of Total Operating Revenues of \$4,407,253,000 (\$4,505,007,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. FPL's operating revenues should be adjusted to include additional revenues that FPL will likely realize when appropriate adjustments are made to usage levels to reflect upward-trending cooling degree hours.*

ISSUE 66: Has FPL made the appropriate test year adjustments to remove fuel revenues and fuel expenses recoverable through the Fuel Adjustment Clause?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 67: Should an adjustment be made to transfer incremental security costs from the Capacity Cost Recovery Clause to base rates?

POSITION: *Yes.*

ISSUE 68: If incremental security costs continue to be recovered in the Capacity Cost Recovery Clause, should the Commission approve FPL's adjustment to transfer incremental security payroll loadings from base rates to the Capacity Cost Recovery Clause?

POSITION: *No.*

ISSUE 69: Has FPL made the appropriate test year adjustments to remove capacity revenues and capacity expenses recoverable through the Capacity Cost Recovery Clause?

POSITION: *No position.*

ISSUE 70: Has FPL made the appropriate test year adjustments to remove environmental revenues and environmental expenses recoverable through the Environmental Cost Recovery Clause?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 71: Should FPL's adjustment to remove all costs for the Substation Pollution Discharge Prevention Program from base rates and include them in the Environmental Cost Recovery Clause be approved?

POSITION: *No position.*

ISSUE 72: Has FPL made the appropriate test year adjustments to remove conservation revenues and conservation expenses recoverable through the Energy Conservation Cost Recovery Clause?

POSITION: *STIPULATED. (CATEGORY 1)*

ISSUE 73: Should FPL's adjustment to remove ECCR clause related payroll loadings of \$1,815,000 for FICA and unemployment taxes from base rates and include them in the Energy Conservation Cost Recovery Clause be approved?

POSITION: *No.*

ISSUE 74: Has FPL made the appropriate adjustments to remove all non-utility activities from operating revenues and operating expenses for the 2013 projected test year?

POSITION: *The Commission should make the adjustments recommended by the Citizen's witness David Vondle to ensure that FPL's affiliate transactions are fully supported and justified, and that such transactions do not impose unnecessary or inappropriate costs on FPL's customers. This includes ensuring that payments by affiliates to FPL are demonstrated to be at fair, market-based costs.*

ISSUE 75: Is the percentage value used to allocate NextEra Energy, Inc. corporate costs and/or expenses to FPL appropriate?

POSITION: *No.*

ISSUE 76: Should the percentage value of NextEra Energy, Inc. corporate costs and/or expenses allocated to FPL be equal to the percentage value of NextEra Energy, Inc. corporate costs and/or expenses allocated to NextEra Energy Resources?

POSITION: *Any allocation methodology must ensure that, consistent with FPL's duty to provide safe and reliable service at the lowest possible cost, FPL's customers are not charged inappropriate amounts for NextEra Energy corporate costs or expenses and are only charged amounts that reflect the value provided to customers.*

ISSUE 77: Are the amounts of the NextEra Energy, Inc. corporate costs and/or expenses (including executive compensation and benefits) allocated to FPL fair, just, and reasonable?

POSITION: * Any allocation methodology must ensure that, consistent with FPL's duty to provide safe and reliable service at the lowest possible cost, FPL's customers are not charged inappropriate amounts for NextEra Energy corporate costs or expenses and are only charged amounts that reflect the value provided to customers.*

ISSUE 78: DROPPED.

ISSUE 79: Should any adjustments be made to FPL's operating revenues or operating expenses for the effects of transactions with affiliated companies for the 2013 projected test year?

POSITION: *Yes. FPL has failed to satisfy its burden of proving that costs and revenues associated with affiliate transactions are reasonable and prudent, and accordingly, the Commission should reduce FPL's test year O&M expenses by \$34.5 million consistent with the recommendations of Citizens' witness David Vondle.*

ISSUE 80: What additional action (including, but not limited to, establishing a separate investigatory docket), if any, should the Commission take related to affiliate transactions as a result of the evidence taken in this docket?

POSITION: *The Commission should open an investigatory docket to examine FPL's affiliate transactions. That docket should address the nine specific deficiencies identified by the Citizens' witness David Vondle, as well as any other issues appropriately raised as the docket progresses.*

ISSUE 81: Are FPL's overhead costs (salaries, materials and supplies, benefits, etc.) allocated to capital projects properly deducted from operating expenses?

POSITION: *No position.*

ISSUE 82: Has FPL made appropriate reductions in operating expenses where capital projects are not done in-house, but employee salaries and related overhead costs have been included in rate base?

POSITION: *No position.*

ISSUE 83: Has FPL properly reduced operating expenses in amounts equal to overheads reimbursed by third parties through contributions in aid of construction related to underground placement of distribution and transmission facilities?

POSITION: *No position.*

ISSUE 84: Has FPL properly reduced operating expenses in amounts equal to any overheads charged to third parties as contributions in aid of construction, fees or other payments to FPL?

POSITION: *No position.*

ISSUE 85: Should FPL salaries, costs and overheads for activities associated with (a) public relations or external affairs, (b) shareholder services, (c) attempted acquisitions of electric facilities, and (d) efforts opposing municipalizations pursuant to a franchise agreement be removed from operating expenses?

POSITION: *Costs that are incurred to provide service to customers are appropriately borne by customers, and costs that are incurred to provide value to shareholders, such as

public relations and image-enhancing advertising costs, are appropriately borne by FPL's shareholders.*

ISSUE 86: Should FPL costs to pay contractors for legal, public relations or other consulting services be borne by customers or FPL shareholders?

POSITION: *Costs that are incurred to provide service to customers are appropriately borne by customers, and costs that are incurred to provide value to shareholders, such as public relations and image-enhancing advertising costs, are appropriately borne by FPL's shareholders.*

ISSUE 87: What is the appropriate amount of FPL's tree trimming expense for the 2013 projected test year?

POSITION: *FPL's test year tree trimming expense should be reduced by \$9,236,000 on a jurisdictional basis to reflect FPL's historical pattern of under-spending its budgeted tree-trimming expense by an average of 13%.*

ISSUE 88: What is the appropriate amount of FPL's pole inspection expense for the 2013 projected test year?

POSITION: *FPL's pole inspection expense for the 2013 test year should be reduced by \$2,733,000 on a jurisdictional basis to reflect the Company's historical pattern of spending approximately 19.5% less, per year, than its budgeted pole inspection expense amounts.*

ISSUE 89: What is the appropriate amount of FPL's production plant O&M expense for the 2013 projected test year?

POSITION: *FPL's production plant O&M expense for the 2013 test year should be based on the normalized costs for generation overhaul costs using a four-year average of actual and projected costs for 2010 through 2013, modified to reflect retirements and additions. FPL's test year production plant O&M expense should thus be reduced by \$9,000,000 (jurisdictional).*

ISSUE 90: What is the appropriate amount of FPL's transmission O&M expense for the 2013 projected test year?

POSITION: *No position.*

ISSUE 91: What is the appropriate amount of FPL's distribution O&M expense for the 2013 projected test year?

POSITION: *No position.*

ISSUE 92: DROPPED.

ISSUE 93: DROPPED.

ISSUE 94: DROPPED.

ISSUE 95: If in its resolution of Legal Issue 1 the Commission determines it has legal authority to do so, should it approve FPL's proposed storm cost recovery mechanism?

POSITION: *No. The Commission should leave open the opportunity for the Commission itself, and for any substantially affected party, to challenge recovery of any amounts that the Commission, Commission Staff, or a party might assert to be inappropriate, including the timing of such recovery relative to FPL's alleged need for funds.*

ISSUE 96: What is the appropriate annual storm damage accrual and storm damage reserve for the 2013 projected test period?

POSITION: *The appropriate accrual is zero. FPL's existing storm damage reserve is greater than \$200 million, which is the amount previously approved for FPL, and there is no reason to change either the accrual or the target level for the storm damage reserve.*

ISSUE 97: DROPPED.

ISSUE 98: DROPPED.

ISSUE 99: Should an adjustment be made to FPL's level of executive compensation for the 2013 projected test year?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 100: Should an adjustment be made to FPL's level of non-executive compensation for the 2013 projected test year?

POSITION: *Yes. Non-executive incentive compensation should be reduced by \$22,371,000 for the test year.*

ISSUE 101: Are FPL's proposed increases to average salaries for the 2013 projected test year appropriate?

POSITION: *No position.*

ISSUE 102: Is FPL's projected level of employee positions for the 2013 projected test year appropriate?

POSITION: *No. The number of forecasted positions for the 2013 test year should be reduced from 10,147 positions to 9,766 positions based on FPL's history of not filling the forecasted or budgeted employee complement. This reduction in employee count will reduce total payroll by \$34.8 million, with a corresponding reduction in test year payroll expense of \$24.6 million (jurisdictional). Jurisdictional test year Benefits Expense should also be reduced by \$4.8 million.*

ISSUE 103: What is the appropriate amount of Other Post Employment Benefits Expense for the 2013 projected test year?

POSITION: *No position.*

ISSUE 104: What is the appropriate amount of FPL's requested level of Salaries and Employee Benefits for the 2013 projected test year? (Fallout Issue)

POSITION: *FPL's Salaries and Employee Benefits expense for the 2013 test year should be reduced by \$61,720,000 (jurisdictional).*

ISSUE 105: What is the appropriate amount of Pension Expense for the 2013 projected test year?

POSITION: *No position.*

ISSUE 106: Should an adjustment be made to the amount of the Directors and Officers Liability Insurance expense that FPL included in the 2013 projected test year?

POSITION: *Yes. Directors and Officers Liability Insurance expense for the 2013 test year should be reduced by \$1,369,000 (jurisdictional) consistent with Commission precedent to allocate this expense item evenly between shareholders and customers.*

ISSUE 107: What is the appropriate amount of accrual for the Injuries & Damages reserve for the 2013 projected test year?

POSITION: *No position.*

ISSUE 108: What is the appropriate amount and amortization period for Rate Case Expense for the 2013 projected test year?

POSITION: *FPL's rate case expense should be reduced by \$2,076,884, and the appropriate amortization period is four years.*

ISSUE 109: What is the appropriate amount of uncollectible expense and bad debt rate for the 2013 projected test year?

POSITION: *FPL's uncollectible expense should be reduced by \$1,760,000 to remove the accrual to increase the uncollectibles reserve.*

ISSUE 110: What is the appropriate accounting methodology for the Nuclear Outage Maintenance Expense?

POSITION: *The appropriate accounting methodology for Nuclear Outage Maintenance Expense is the post-paid variation of reserve accounting. This methodology is less costly to customers and avoids the prospect of creating stranded liability at the end of a unit's life.*

ISSUE 111: What is the appropriate amount of the Nuclear Outage Maintenance Expense and Nuclear Outage Maintenance Reserve for the 2013 test year?

POSITION: *The appropriate amount of Nuclear Outage Maintenance Expense for the 2013 test year is the average of the amounts for 2010, 2011, and 2012.*

ISSUE 112: Has FPL included the appropriate amount of expense associated with the AMI smart meters in the 2013 projected test year?

POSITION: *No. Test year expenses should be reduced by \$3,735,000 on a jurisdictional basis.*

ISSUE 113: Has FPL included the appropriate amount of savings associated with the AMI smart meters in the 2013 projected test year?

POSITION: *No. The Commission should use the value for AMI savings that FPL previously claimed it would realize in 2013, \$19,893,000 (jurisdictional), in determining FPL's rates for the 2013 test year.*

ISSUE 114: Is FPL's requested level of O&M Expense of \$1,542,322,000 (\$1,568,633,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. The appropriate level of O&M expense for rate-setting purposes is \$1,398,494,000 on a jurisdictional basis.*

ISSUE 115: What is the appropriate amount of depreciation and fossil dismantlement expense for the 2013 projected test year?

POSITION: *No position.*

ISSUE 116: Is FPL's requested amortization of \$191,000,000 the appropriate amount of the theoretical depreciation reserve surplus to be amortized for the 2013 projected test year?

POSITION: *No. Amortization of the depreciation reserve surplus should be increased by \$40,550,000 (jurisdictional) to reflect appropriate adjustments to 2012 projected revenue requirements.*

ISSUE 117: Given that in Order No. PSC-11-0089-S-EI the Commission directed FPL to complete the amortization of \$894 million of depreciation surplus during the period 2010-2013, and in light of the Commission's decision regarding the amount of remaining reserve surplus to be amortized in the 2013 test year in conjunction with the resolution of Issue 116, should the Commission direct FPL to discontinue recording amortization of reserve surplus on its books after 2013 unless authorized or directed by subsequent Commission order?

POSITION: *Yes. Once the prescribed amortization is complete, the intergenerational inequity that it was designed to remedy should have been corrected, and further amortization should therefore be discontinued until and unless the Commission

makes further determinations in future rate cases, based on new depreciation studies.*

ISSUE 118: Is FPL's requested level of Depreciation and Amortization Expense of \$802,761,000 (\$819,794,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. The appropriate amount of Depreciation and Amortization expense is \$762,211,000.*

ISSUE 119: Is FPL's requested level of Taxes Other Than Income of \$371,710,000 (\$378,853,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *The appropriate amount of Taxes Other Than Income Taxes is \$370,133,000 on a jurisdictional basis.*

ISSUE 120: Should the Commission adjust FPL's test year current state income taxes or rate base to recognize benefits, if any, that FPL has provided, or will provide, to any affiliates in furtherance of the affiliate's ability to elect to apportion adjusted Federal income tax under s.220.153, Florida Statutes (single sales factor)?

POSITION: *Yes. If and to the extent that FPL or any of its affiliates have utilized any projected rate base items to qualify affiliate profits for a reduction in state income taxes, the Commission should either reduce rate base correspondingly or adjust FPL's income tax expense for the 2013 test year.*

ISSUE 121: Is FPL's requested level of Income Taxes of \$513,276,000 (\$528,838,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. The appropriate amount of income tax expense for the 2013 test year is \$567,106,000 on a jurisdictional basis.*

ISSUE 122: Is FPL's requested level of (Gain)/Loss on Disposal of Plant of negative \$2,641,000 (negative \$2,641,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No position.*

ISSUE 123: Is FPL's requested level of Total Operating Expenses of \$3,250,894,000 (\$3,317,404,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. The appropriate level of Total Operating Expenses is \$3,118,769,000 (jurisdictional) for the 2013 test year.*

ISSUE 124: Is FPL's projected Net Operating Income of \$1,156,359,000 (\$1,187,603,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. The appropriate amount of Net Operating Income is at least \$1,288,484,000 (jurisdictional), and may be greater, depending on adjustments to FPL's sales forecasts.*

REVENUE REQUIREMENTS

ISSUE 125: What are the appropriate revenue expansion factor and the appropriate net operating income multiplier, including the appropriate elements and rates for FPL?

POSITION: *The appropriate NOI multiplier is 1.63188.*

ISSUE 126: Is FPL's requested annual operating revenue increase of \$516,521,000 for the 2013 projected test year appropriate? (Fallout Issue)

POSITION: *No. FPL's allowed test year revenue requirements should be reduced from current levels by \$253,446,000 per year, based on the primary recommendation of a 9.0% ROE and a 50% equity ratio for rate-setting purposes.*

ISSUE 127: What economic impact will FPL's request for a rate increase have on customers, businesses and communities in Florida, including economic development activities and raising capital in Florida?

POSITION: *Any rate increase granted to FPL will necessarily reduce the disposable income available to Florida residents and businesses, thereby likely reducing economic growth in Florida. Higher rates will also make it less attractive for businesses to locate in FPL's service area.*

BASE RATE STEP ADJUSTMENT

ISSUE 128: Should the Commission approve a base rate step adjustment for the Canaveral Modernization Project?

POSITION: *Yes, when the Cape Canaveral Modernization Project becomes used and useful in providing public service, FPL should be authorized to increase its base rates by \$121.5 million per year. (EXH 271)*

ISSUE 129: Should deferred taxes be included in the capital structure rather than as a reduction to rate base for the Canaveral Modernization Project base rate step adjustment?

POSITION: *Yes.*

ISSUE 130: Is FPL's requested rate base of \$821,325,000 (\$837,297,000 system) for the Canaveral Modernization Project appropriate?

POSITION: *No. Rate base for the Canaveral Project should be reduced by \$9,606,000 on a jurisdictional basis.*

ISSUE 131: What is the appropriate weighted average cost of capital, including the proper components, amounts and cost rates associated with the capital structure, to calculate the base rate step adjustment for the Canaveral Modernization Project?

POSITION: *The appropriate weighted average cost of capital is 5.45%, based on the primary capital structure and ROE recommendations of the Citizens' witnesses.*

ISSUE 132: Is FPL's requested net operating loss of \$32,092,000 (\$32,712,000 system) for the Canaveral Modernization Project appropriate?

POSITION: *No. The appropriate net operating loss is \$29,649,000.*

ISSUE 133: Is FPL's requested Net Operating Income Multiplier of 1.63188 for the Canaveral Modernization Project appropriate?

POSITION: *Yes.*

ISSUE 134: Is FPL's requested base rate step increase of \$173,851,000 for the Canaveral Modernization Project appropriate?

POSITION: *No. The appropriate base rate increase for the Cape Canaveral Modernization Project, when it comes into service, is \$121.5 million on an annual basis.*

ISSUE 135: What is the appropriate effective date for implementing FPL's requested base rate step increase for the Canaveral Modernization Project?

POSITION: *Any base rate increase associated with the Canaveral Modernization Project should be simultaneous with the in-service date of the Canaveral Project.*

COST OF SERVICE AND RATE DESIGN ISSUES

ISSUE 136: DROPPED.

ISSUE 137: DROPPED.

ISSUE 138: DROPPED.

ISSUE 139: Should FPL employ a minimum distribution system ("MDS") cost of service methodology to classify and allocate distribution costs; if not, what methodology should be used?

POSITION: *No position.*

ISSUE 140: What is the appropriate cost of service methodology to be used to allocate production costs to the rate classes?

POSITION: *No position.*

ISSUE 141: What is the appropriate cost of service methodology to be used to allocate transmission plant-related costs to the rate classes?

POSITION: *No position.*

ISSUE 142: Has FPL properly allocated costs to the rate classes?

POSITION: *The FRF takes no position regarding the *methodology* for allocating costs to rate classes. However, FPL's proposed costs are unjust, unfair, and unreasonable, and

accordingly, the amounts allocated to rate classes are unjust, unfair, and unreasonable.*

ISSUE 143: Is FPL's proposed allocation of the Cape Canaveral Modernization step increase reasonable?

POSITION: *No position.*

ISSUE 144: How should the change in revenue requirement be allocated among the customer classes?

POSITION: *No position.*

ISSUE 145: Should FPL's current time-of-use residential rate be closed to new customers, effective January 1, 2013?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 146: Should the Commission approve FPL's new Residential Time-of-Use Rider?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 147: Should FPL's proposal to credit the fuel charge for lighting customers who are required to turn off outside lights during turtle nesting season be approved?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 148: Should FPL's proposed change to the late payment charge be approved?

POSITION: *No position.*

ISSUE 149: DROPPED.

ISSUE 150: DROPPED.

ISSUE 151: DROPPED.

ISSUE 152: DROPPED.

ISSUE 153: DROPPED.

ISSUE 154: DROPPED.

ISSUE 155: DROPPED.

ISSUE 156: DROPPED.

ISSUE 157: Should FPL's proposed change to the temporary construction service rate be approved?

POSITION: *STIPULATED. (CATEGORY 2)*

ISSUE 158: Should FPL's proposed change to the Returned Payment Charge be approved?

POSITION: *No position.*

ISSUE 159: DROPPED.

ISSUE 160: DROPPED.

ISSUE 161: DROPPED.

ISSUE 162: DROPPED.

ISSUE 163: DROPPED.

ISSUE 164: DROPPED.

ISSUE 165: What is the appropriate monthly kW credit to be provided customers who own their own transformers pursuant to the Transformation Rider? (8.820)

POSITION: *No position.*

ISSUE 166: Has FPL correctly quantified the incentive payments associated with the Commercial/Industrial Load Control (CILC) classes?

POSITION: *No position.*

ISSUE 167: Should the CILC rate be reopened?

POSITION: *No position.*

ISSUE 168: Is FPL's proposed design of the demand and non-fuel energy charges for the CILC rate appropriate?

POSITION: *No position.*

ISSUE 169: Should the Commercial/Industrial Demand Reduction Credit Rider (CDR) credit be increased?

POSITION: *No position.*

ISSUE 170: Should CILC and CDR credits be allocated to non-firm loads?

POSITION: *No position.*

ISSUE 171: What is the appropriate level and design of the charges under the Standby and Supplemental Services (SST-1) rate schedule?

POSITION: *No position.*

ISSUE 172: What is the appropriate level and design of charges under the Interruptible Standby and Supplemental Services (ISST-1) rate schedule?

POSITION: *No position.*

ISSUE 173: What is the appropriate method of designing time of use rates for FPL?

POSITION: *No position.*

ISSUE 174: What are the appropriate customer charges for January 1, 2013?

POSITION: *FPL's appropriate customer charges for January 1, 2013 are those that will result from reducing FPL's total revenues by approximately \$253.4 million per year, as recommended by the Citizens' witnesses, and allocating those cost reductions according to the cost allocation and rate design methodologies approved by the Commission.*

ISSUE 175: DROPPED.

ISSUE 176: DROPPED.

ISSUE 177: DROPPED.

ISSUE 178: DROPPED.

ISSUE 179: DROPPED.

ISSUE 180: DROPPED.

ISSUE 181: DROPPED.

ISSUE 182: DROPPED.

ISSUE 183: What are the appropriate demand charges for January 1, 2013?

POSITION: *FPL's appropriate demand charges for January 1, 2013 are those that will result from reducing FPL's total revenues by approximately \$253.4 million per year, as recommended by the Citizens' witnesses, and allocating those cost reductions according to the cost allocation and rate design methodologies approved by the Commission.*

ISSUE 184: What are the appropriate energy charges for January 1, 2013?

POSITION: *FPL's appropriate energy charges for January 1, 2013 are those that will result from reducing FPL's total revenues by approximately \$253.4 million per year, as recommended by the Citizens' witnesses, and allocating those cost reductions according to the cost allocation and rate design methodologies approved by the Commission.*

ISSUE 185: What are the appropriate lighting rate charges for January 1, 2013?

POSITION: *FPL's appropriate lighting service charges for January 1, 2013 are those that will result from reducing FPL's total revenues by approximately \$253.4 million per year, as recommended by the Citizens' witnesses, and allocating those cost reductions according to the cost allocation and rate design methodologies approved by the Commission.*

ISSUE 186: What is the appropriate effective date for FPL's revised rates and charges, prior to a Base Rate Step adjustment, if any, associated with the Canaveral Modernization project?

POSITION: *The appropriate effective date for FPL's revised rates and charges, prior to any step adjustment associated with the Canaveral Modernization Project, is for service rendered on the first date of the first billing cycle of January 2013.*

ISSUE 187: What are the appropriate charges after the Canaveral Modernization Project comes on line?

POSITION: *The appropriate charges after the Canaveral Modernization Project are those that would result from allowing FPL to recover, through base rates, the revenue requirements of approximately \$121.5 million annually recommended by the Citizens' witnesses, provided that any increase in charges for the Canaveral Project revenue requirements should not be effective before the Project achieves commercial service.*

OTHER ISSUES

ISSUE 188: DROPPED.

ISSUE 189: DROPPED.

ISSUE 190: DROPPED.

ISSUE 191: DROPPED.

ISSUE 192: Should FPL be required to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, rate of return reports, and books and records which will be required as a result of the Commission's findings in this rate case?

POSITION: *STIPULATED. (CATEGORY 1)*

ISSUE 193: Should this docket be closed?

POSITION: *Yes. After the Commission's order or orders have become final and are no longer subject to appeal, this docket should be closed.*

Respectfully submitted this 21st day of September, 2012.



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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 21st day of September 2012, to the following:

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