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Attachments: Joint Position Statement on Settlement Agreement 9.24.12.pdf; Joint Position Statement on Settlement Agreement 9-24-12.doc

Electronic Filing

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b. Docket No. 120015 - EI
In re: Petition for rate increase by Florida Power & Light Company

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 24 pages

e. The document attached for electronic filing is Florida Power & Light Company's, The Florida Industrial Power Users Group's, The South Florida Hospital and Healthcare Association's and the Federal Executive Agencies' Position Statement Regarding Proposed Settlement Agreement

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company	Docket No. 120015-EI September 24, 2012

FLORIDA POWER & LIGHT COMPANY'S, THE FLORIDA INDUSTRIAL POWER USERS GROUP'S, THE SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION'S AND THE FEDERAL EXECUTIVE AGENCIES' POSITION STATEMENT REGARDING PROPOSED SETTLEMENT AGREEMENT

Florida Power & Light Company ("FPL" or the "Company"), the Florida Industrial Power Users Group ("FIPUG"), the South Florida Hospital and Healthcare Association ("SFHHA") and the Federal Executive Agencies ("FEA") (collectively referred to as the "Signatories"), in accordance with the Order Establishing Procedure PSC-12-0143-PCO-EI, as twice revised, hereby file with the Florida Public Service Commission ("FPSC" or the "Commission") their Position Statement in connection with the Settlement Agreement filed in the above-referenced docket and states:

I. The Commission should approve the Settlement Agreement, which benefits FPL's customers, FPL, and the state of Florida, and is fair, reasonable, and in the public interest.

On August 15, 2012, the Signatories filed with the Commission a Joint Motion for Approval of a Settlement Agreement. The Signatories requested that the Joint Motion be granted and the Settlement Agreement be approved, as the Settlement Agreement fairly and reasonably balances the various litigation positions of the parties on the relevant issues and serves the best interests of FPL's customers and the public interest in general.

Specifically, the Signatories believe that the Settlement Agreement is fair, reasonable and in the public interest for several key reasons, which are detailed below.

a. The Settlement Agreement Provides a Reasonable Base Rate Increase

The Settlement Agreement includes a reasonable base rate increase, considering: (i)

FPL's overall revenue request of $517 million is reduced in the Settlement Agreement by about 25%, or $139 million to $378 million, (ii) the recent increases approved by the Commission for other electric utilities (for example, on a comparative basis adjusted for the difference in the utilities' respective base revenues, the rate increase under the Settlement Agreement is substantially lower than the rate increase recently approved in the Gulf Power Company rate case[1]); and (iii) the depletion of the non-cash accounting credits (amortization of theoretical depreciation reserve surplus) under FPL's 2010 Settlement Agreement, the loss of which itself represents an increase of $367 million in revenue requirements between 2012 and the test year, or 97% of the proposed January 2013 base rate increase, and a subsequent $191 million cash deficit in 2014, just one year after new rates take effect. Notably, $191 million represents approximately 120 basis points of return, more than the 100 basis point band spread that the Commission would be expected to set below the established midpoint.

b. The Settlement Agreement Will Limit Future Increases and Continue to Provide FPL Customers with the Lowest Typical Bills in the state

FPL's residential customers currently enjoy typical bills that have decreased approximately 13% since 2006. FPL's typical residential bill has been the lowest among Florida's 55 electric providers for more than three years in a row and is currently 24% lower than the national average. Under the Settlement Agreement, the typical FPL residential customer using 1,000 kWh per month would see a net bill increase of less than 2 percent in 2013.

[1] The Commission recently authorized a base rate increase of approximately $68.1 million for Gulf, including a step increase. *See* Order No. PSC-12-0179-FOF-EI, Docket No. 110138-EI, *In re: Petition for increase in rates by Gulf Power Company* (F.P.S.C., April 3, 2012). Gulf's jurisdictional base operating revenues in 2012 were forecast to be approximately 11% of FPL's for that same year. Therefore, a base rate increase for FPL that is the same proportion of jurisdictional operating revenues as Gulf's $68.1 million increase would be approximately $619.1 million (*i.e.*, $68.1 million ÷ 0.11 = $691.1 million). This is $75.5 million more than the January 2013 base rate increase provided in FPL's proposed Settlement Agreement, plus the GBRA increase for Canaveral.

Specifically, the increase for the typical residential customer is limited to about 4¢ per day, including changes in base rates, fuel and other components of the bill. Under the Settlement Agreement, FPL customers are projected to continue to have moderate bills[2] - the lowest typical residential bills in the state - and most business customers will not see their bills increase in 2013.

c. The Settlement Agreement Will Promote Economic Development in Florida

The Settlement Agreement will promote economic development in the state of Florida by providing significant base rate reductions and reasonable, competitive rates for many of Florida's businesses as the state continues to recover from the recession. For small businesses on the general service non-demand rate – the vast majority of FPL's commercial customers – there would be no base rate increase in January 2013. In fact, their total bills would decrease. As part of the Settlement Agreement, FPL will increase its energy conservation credits to large commercial/industrial customers, including certain military bases, under the Commercial and Industrial Load Control ("CILC") and the Commercial and Industrial Demand Reduction ("CDR") programs for load interruptions. CILC credits will be established to enhance the incentive to participate in the program, and thereby enhance conservation and efficiency. The CILC and CDR programs benefit all customers by helping FPL avoid the necessity of building costly additional peaking facilities.

In addition, the business, commercial and industrial savings resulting from the Settlement

[2] In his rebuttal testimony regarding FPL's initial rate request, witness David DeRamus calculated that the median impact on residential customers would be approximately 10¢ per day and stated that "FPL residential customer bills, both presently and with the proposed base rate increase, are moderate." Tr. 4100-4101. He also noted that the increases proposed by FPL were well below increases in the Consumer Price Index and the rate at which retailers have increased their prices for goods and services. Tr. 4141. Under the Settlement Agreement, which includes rates for the typical residential customer of only about 4¢ per day, the rate impact is even more moderate.

Agreement, coupled with FPL's Commission-approved Economic Development Rate, will provide a catalyst for economic development and job growth in the state. With unemployment in Florida at 8.8%, this is a critical time to take actions that will spur economic growth and job creation, the benefits of which will redound to individual ratepayers and the Florida community as a whole.

d. The Settlement Agreement Will Encourage Additional Infrastructure Investment

FPL continues to be Florida's largest investor in infrastructure capital projects and the Settlement Agreement will encourage additional infrastructure investment by providing FPL, in the context of the agreement as a whole, with a reasonable rate of return on the beneficial capital investment that FPL plans to make during the term of the Settlement Agreement. Reliable and modern electric infrastructure provides an important economic platform for all businesses in Florida. FPL's continued and substantial investment in this infrastructure and base rate certainty will also help create and support thousands of jobs in Florida.

e. The Settlement Agreement Will Provide Rate Stability for FPL Customers

The Settlement Agreement provides for a four-year term beginning January 1, 2013, and ending December 31, 2016. During the four year term, FPL would not be permitted to seek another base rate increase other than as expressly provided in the Settlement Agreement. Therefore, the Settlement Agreement will provide a four-year period of rate stability, certainty and predictability for FPL customers. This period of rate stability has several important benefits for FPL, FPL customers, and the state of Florida. The period of rate stability will allow FPL to focus its energies on continuing to provide high quality service at affordable rates and will also send clear and proper signals to the investment community and credit rating agencies regarding the constructive regulatory environment and fair treatment of capital deployed in Florida. This

stability and predictability, coupled with low rates, high reliability and excellent customer service, will also enhance Florida's reputation as a good place to conduct business and will provide a strong incentive for out-of-state businesses to relocate here. Finally, having rate stability for four years will benefit all of FPL's customers, by giving them a clearer view of what electric rates will be over the term of the settlement and allowing them to plan accordingly. Employers considering expansions in FPL's service territory will know that their electric rates have been set with greater certainty. The stability and predictability that will result from four years of base rate price certainty will encourage infrastructure investment in Florida during the term of the Settlement Agreement.

f. The Settlement Agreement Will Provide a Mechanism to Avoid the Need for Lengthy and Costly Proceedings

The Settlement Agreement provides for the use of the Generation Base Rate Adjustment ("GBRA") mechanism for FPL's Cape Canaveral, Riviera Beach and Port Everglades Modernization Projects. These investments will provide significant benefits to customers and this well-tested mechanism – which the Office of Public Counsel ("OPC") and the Florida Retail Federation ("FRF") have previously embraced -- will help avoid lengthy, costly and disruptive rate proceedings during the term of the Settlement Agreement. Without such a mechanism, multiple rate proceedings within a short period of time and at significant expense would likely be required regarding these projects. Without rate relief, the revenue requirement of each project alone would cause a drop of between approximately 105 and 150 basis points of return, almost certainly requiring subsequent base rate proceedings. These multiple proceedings would tax the resources of ratepayers and this Commission.

g. The 10.7% Return on Equity, as a settlement figure, is in line with the ROE agreed to for PEF if repairs of Crystal River Unit 3 are completed and, under a four year term, imposes on FPL risks associated with interest rates, inflation and

storm-related lost revenues

The Settlement Agreement includes a reduction in FPL's return on equity ("ROE") from its request of 11.5% to 10.7%. This figure is the same ROE agreed to by key intervenors, including OPC, FRF and FIPUG, if Progress Energy Florida's ("PEF")Crystal River 3 nuclear power plant is returned to service. The Commission approved PEF's settlement earlier this year, including the ROE provisions. The four-year term of the Settlement Agreement imposes risks associated with interest rates and increased inflation on FPL. Interest rates are at all time lows; this Settlement offers protection against the potential that rates move higher. Inflation also remains a significant concern, particularly if the Federal Reserve expands the money supply as is currently projected. These factors will put upward pressure on FPL's costs, with no mechanism to recover such increases during the term of the Settlement Agreement unless FPL's earned ROE falls below 9.7%. Additionally, FPL will face the risk of storm-related lost revenues, which the 2004-05 storm seasons demonstrated can easily reach into the hundreds of millions of dollar during a single storm season. From FPL's standpoint, however, these risks are substantially mitigated by the positive benefits of a four-year compromise that will provide the opportunity for FPL to earn an ROE essentially at the mid-point of the Florida investor-owned utilities ("IOUs") and approximately 80 basis points below the average of major electric IOUs in the Southeast. *See* Rebuttal Testimony of Witness Moray Dewhurst, Tr. 4754, and Exhibit No. 451.

h. Summary

In summary, as with any settlement agreement, the proposed Settlement Agreement is a compromise of the various parties' interests. However, the Signatories believe that, taken as a whole and for the reasons outlined above, the Settlement Agreement is in the public interest and fully consistent with the Commission's long-standing practice of encouraging the settlement of

contested proceedings in a manner that benefits the utility's customers, the utility, and the state as a whole. *See e.g.*, Order No. PSC-12-0115-PCO-EI at page 1, Docket No. 100437-EI, *In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.* (F.P.S.C., March 14, 2012) ("Commission approval of the [PEF settlement agreement] ... is consistent with a long standing and strong Commission policy in favor of resolving disputes through settlement or stipulation."). And as discussed above, approving the Settlement Agreement is in the interests of not only FPL and its customers, but the state of Florida as a whole. By controlling, among other rates, increases in the GSD, CILC, CDR and GSLDT rate schedules, the settlement will contribute to greater employment in the State.

II. The Opposing Intervenors have shown no compelling reason or justification for not approving the Settlement Agreement.

In a flurry of written motions, as well as in oral comments before the Commission and to media outlets, OPC, the FRF and Thomas Saporito ("Saporito") (collectively referred to as the "Opposing Intervenors"), who are intervenors in the docket and who oppose the Settlement Agreement, have criticized the Settlement Agreement. The Opposing Intervenors have attempted to provide arguments as to why the FPSC cannot and/or should not approve the Settlement Agreement. The Signatories list and respond to the Opposing Intervenors' primary arguments below. None of those arguments provide a persuasive basis for the Commission to reject the Settlement Agreement.

a. OPC is Not a Necessary Party to the Settlement Agreement

OPC argues that the Settlement Agreement cannot be approved by the FPSC because it is not supported by OPC. OPC argues that it is the statutory representative of the people and that it

is therefore a necessary party to any settlement agreement. The Signatories respectfully disagree: OPC's argument is unsupported and must fail. There is nothing in Section 350.061, Florida Statutes (the provision that created the OPC), its legislative history,[3] or indeed, the entire chapter that accords any special or superior party status to OPC. Nothing in Florida law states that OPC must be a party to a settlement agreement. Nothing in Florida law gives OPC veto power over this Commission's actions, including its decision on approving a settlement. Research has not revealed any case in which the FPSC has disapproved a settlement on the ground that it was not supported by OPC. To the contrary, the Commission just recently has approved a settlement that was not supported by OPC. *See* Order PSC-99-1794-FOF-WS, Docket No. 950495-WS, *In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc.* (F.P.S.C., Sept. 14, 1999). *See also* Order No. PSC-12-0179-FOF-EI, Docket No. 110138-EI, *In re: Petition for increase in rates by Gulf Power Company* (F.P.S.C., April 3, 2012) (neither OPC nor FRF participated in portions of the settlement approved by the Commission). Further, parties to a rate case frequently stipulate to specific issues without OPC, including many of the issues in this docket. Finally, contrary to Saporito's assertion, *South Florida Hospital & Healthcare Association v. Jaber*, 887 So. 2d 1210 (Fla. 2004), does not stand for the proposition that OPC must be a signatory to a settlement agreement; in fact, nothing in that decision even discusses OPC's role in a settlement. Rather,

[3] A 1974 Staff Evaluation report for the Senate Standing Committee on Governmental Operations summarized an early version of the "Public Advocate" legislation, in part, as follows: ". . . the advocate's power and duties to include appearing on behalf of the public before the public service commission and the courts regarding any matter in which the Public Service Commission has original jurisdiction. The advocate will have all the rights of counsel which any other bona fide party to a suit would have . . . ." This language suggests that the Legislature intended for OPC to have the same rights – no more or no less – than any other party to a proceeding. It is also consistent with the recollections of the Commission's General Counsel, as presented to the Commission on August 30, 2012, during the technical hearing in this proceeding. Tr. 4620-4621.

the Florida Supreme Court's decision in *Jaber* confirms the authority of the Commission to approve a settlement that is opposed by one or more parties. *Id.* The fact that OPC in this instance opposes the settlement is an unavailing distinction. If the OPC has "all the rights of counsel which any other bona fide party to a suit would have . . . .", but no more, then OPC's opposition is not legally superior to the opposition of any other party. Any bona fide party has the right to negotiate or the right to refuse to negotiate, and the right to support or oppose a settlement. OPC has exercised the rights it has as a bona fide party, but should not be permitted to prevent others from negotiating or from presenting the results of those negotiations to the Commission for approval.

The proper standard for the Commission's approval of a settlement agreement is whether it is in the public interest. *See e.g.*, Order No. PSC-05-0902-S-EI, Docket Nos. 050045-EI and 050188-EI, *In re: Petition for rate increase by Florida Power & Light Company* (F.P.S.C., Sept. 14, 2005) ("In conclusion, we find that the Stipulation and Settlement establishes rates that are fair, just, and reasonable and that approval of the Stipulation and Settlement is in the public interest. Therefore, we approve the Stipulation and Settlement."). That is a determination that is within the exclusive purview of the Commission and not of OPC. Further, ". . . this Commission has a long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." *Id.* As outlined in Part I above, the Settlement Agreement is in the public interest and therefore it can and should be approved by the FPSC.

In a related argument, the Opposing Intervenors assert that because they are not signatories to the Settlement Agreement, it does not represent the interests of all customers and does not equally benefit all customers. As noted above, the *Jaber* decision illustrates that a

settlement agreement can be approved without all customer intervenors being signatories to the settlement agreement. 887 So. 2d 1210. Also, there are no statutory provisions that require settlements to benefit all customer classes equally. Indeed, there have been provisions in most, if not all, of the settlement agreements for electric utilities during the last 10 years (including settlement agreements that have been supported by OPC and FRF) that provide different benefits among customer classes. The Commission may approve utility settlements upon a finding that the resulting rates are not unduly discriminatory or unreasonably preferential. *See e.g.,* Order No. PSC-05-1242-PAA-WS, Docket Nos. 040951-WS and 040952-WS, *In re: Joint application for approval of sale of Florida Water Services Corporation's land, facilities, and certificates in Brevard, Highlands, Lake, Orange, Pasco, Polk, Putnam, a portion of Seminole, Volusia, and Washington counties to Aqua Utilities Florida, Inc.* (F.P.S.C., Dec. 20, 2005). Moreover, the Commission has expressly recognized that "some level of rate discrimination is inherent in all rate design." Order No. PSC-04-0417-PAA-EI, Docket No. 031135-EI, *In re: Petition for approval to implement consolidated fuel adjustment surcharge by Florida Public Utilities Company* (F.P.S.C., April 22, 2004) (denying petition to consolidate fuel adjustment as "unduly discriminatory").

The rates proposed under the Settlement Agreement are reasonable and not unduly discriminatory or unreasonably preferential, and include large reductions from FPL's initial request. As noted in Part I above, the Settlement Agreement will result in: (i) a limited increase for the typical residential customer of about 4¢ per day, (ii) FPL residential customers continuing to have the lowest typical bills in the state, and (iii) increases in credits under the CILC and CDR programs that benefit both the participants and all other FPL customers, credits that have not been increased in many years. Further, under the Settlement Agreement, small businesses

(which comprise a substantial majority of FRF's members) will experience a zero monthly rate increase in January 2013. That is hardly an outcome about which the FRF could reasonably complain.

b. The Settlement Agreement is Not a New Petition that Requires New Minimum Filing Requirements and Pre-Filed Testimony

The Opposing Intervenors argue that the Settlement Agreement filed by the Signatories is in essence a new rate petition because it contains elements that were not present in FPL's March 2012 filing and that the Settlement Agreement therefore necessitates the filing of new minimum filing requirements ("MFRs") and pre-filed testimony. This argument is not well-founded. Contrary to the Opposing Intervenors' assertion, there is no express legal requirement for the FPSC to treat the Settlement Agreement as a completely new request for general rate relief under Chapter 366, Florida Statutes. Further, legal research uncovered no cases in which new provisions in a rate case settlement were treated as a new filing. To the contrary, research revealed multiple examples of the FPSC approving settlements (both contested and uncontested) with new provisions that were not contemplated when the rate proceeding was initiated and none of these settlements triggered new filing requirements under Chapter 366 or were treated as a new rate request filing. *See* Order No. PSC-02-0501-AS-EI, Docket Nos. 001148-EI and 020001-EI, *In re: Review of the retail rates of Florida Power & Light Company* (F.P.S.C., April 11, 2002)[4] (approving a contested settlement); Order No. PSC-05-0902-S-EI, Docket Nos. 050045-EI and 050188-EI, *In re: Petition for rate increase by Florida Power & Light Company*

[4] The 2002 rate case stipulation and settlement included several elements that were not proposed in the initial filing, including the continuation of a revenue sharing plan, an option to amortize up to $125 million annually as a credit to depreciation expense and a debit to the bottom line depreciation reserve, and enhancements to regulated earnings. This settlement was agreed to be OPC and FRF, among other parties, and approved by the Commission.

(F.P.S.C., Sept. 14, 2005)[5] (approving an uncontested settlement); Order No. PSC-99-0519-AS-EI, Docket No. 990067-EI, *In re: Petition by the Citizens of the State of Florida for a full revenue requirements rate case for Florida Power & Light Company* (F.P.S.C., March 17, 1999)[6] (approving an uncontested settlement). *See also* Order No. PSC-12-0104-FOF-EI, Docket No. 120022-EI, *In re: Petition for limited proceeding to approve stipulation and settlement agreement by Progress Energy Florida, Inc.* (F.P.S.C., March 8, 2012) (approving a settlement resolving disputes in multiple dockets prior to MFRs being filed).

In a related assertion, the Opposing Intervenors have argued that the provisions in the Settlement Agreement regarding the GBRA and asset optimization mechanisms require separate additional rate cases with accompanying MFRs. This argument similarly fails based on the precedent cited in the paragraph above. Indeed, in the 2005 rate case stipulation and settlement, OPC and FRF supported what is essentially the identical GBRA mechanism as part of the settlement agreement. Order No. PSC-05-0902-S-EI. Further, as clarification and contrary to the Opposing Intervenors' assertions, FPL is not asking the Commission to approve revenue requirements for years in which FPL has not filed MFRs. The GBRA mechanism is not akin to a full revenue requirement that would typically be included as part of a traditional base rate increase request. Instead, the GBRAs would be based on cost levels that have already been established, either in FPL's evidence in this proceeding (for the Canaveral Modernization Project) or in prior need determination proceedings (for the Riviera and Everglades

[5] The 2005 rate case stipulation and settlement included several elements that were not proposed in the original rate petition, including the continuation of a revenue sharing plan, an option to amortize up to $125 million annually as a credit to depreciation expense and a debit to the bottom line depreciation reserve, clause recovery of incremental costs associated with a Regional Transmission Organization, suspension of FPL's nuclear decommissioning accrual, and a GBRA mechanism. This settlement was agreed to be OPC and FRF, among other parties, and approved by the Commission.

[6] The 1999 rate case stipulation and settlement included a revenue sharing plan that was not contemplated at the time the proceeding was initiated.

Modernization Projects). Moreover, the GBRA would be based on the 10.7% ROE mid-point included in the Settlement Agreement. In short, the GBRA would serve only to allow FPL an opportunity to recover revenue requirements that have already been shown to be reasonable, for plants that have already been shown to be needed, at an ROE that the Commission would have already approved in the Settlement Agreement as reasonable. Finally, when implemented a GBRA is mathematically incapable of increasing FPL's earned ROE above the authorized mid-point of 10.7%. Because the revenue requirements for each GBRA plant would be established to earn a 10.7% ROE, the inclusion of that plant in service would result in FPL's earned ROE moving toward 10.7% no matter what FPL was earning prior to the GBRA increase. This point was not disputed and, indeed, the arithmetic is indisputable.

c. *The FPSC's Procedure to Consider the Settlement Agreement Does Not Violate Due Process*

The Opposing Intervenors have suggested that the Commission's process and procedure to consider the Settlement Agreement, as outlined in the second revision to the procedural order, violates their due process rights[7] and yet the thrust of their position is geared more toward avoiding *any* process that could lead to the consideration and approval of the Settlement Agreement. These arguments must be recognized as such and accordingly should fail. As long as the Opposing Intervenors were given notice of and the opportunity to participate in the additional discovery and in the hearing on the Settlement Agreement (which they were), and they have been given every opportunity to request additional process to which they believe they are due (and have even *opposed* additional process), there is no basis to conclude that their due process or statutory rights have been violated. *See Jaber*, 887 So. 2d at 1213. *See also AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 479 (Fla. 1997) (upholding a Commission order

[7] While criticizing the Commission's process, the Opposing Intervenors opposed the formal administrative hearing on the Settlement Agreement requested by the Signatories.

rejecting AmeriSteel's claim that its due process rights had been violated, because AmeriSteel had not been precluded from exercising any of its procedural rights by the Commission process used in approving a settlement agreement); *Manatee County v. Florida Department of Environmental Protection,* 429 So.2d 360 (Fla. 1st DCA 1983) (upholding non-unanimous settlement between petitioner and agency staff over objection of intervenor that a separate hearing was not held on certain elements of the settlement agreement). Further, any assertion that their due process rights are somehow violated because their own resources and/or personnel are stretched thin by the process or by other commitments lacks support in law.

Ultimately, the FPSC has the discretion to provide the level of process that it deems necessary for the development of "competent, substantial evidence" to support a decision on whether to approve a settlement agreement. *See* Section 120.68(10), Florida Statutes. To this end, the Commission can rely on relevant evidence provided at the technical hearing and information provided at the September 27-28 settlement hearing in making a decision regarding the Settlement Agreement. Alternatively, if the Commission determines that it requires additional evidence or wishes to institute an additional procedural process through which to consider the Settlement Agreement within a reasonable period of time, the Signatories would support and participate in such a process.

By deciding to go ahead with the August 20-31 technical hearing as scheduled and to take up the Settlement Agreement afterwards, the Commission signaled on the first day of the technical hearing that it would be taking evidence and building a record upon which a final decision in the docket could be reached. That final decision may include consideration of a proposed Settlement Agreement, whether or not supported by all parties. Further, the FPSC decided to allow additional data requests and to continue the hearing specifically in order to

consider the Settlement Agreement. Thus, the Opposing Intervenors have been afforded more time to consider and respond to information concerning the Settlement Agreement than they would have been provided had the Commission taken up the Settlement during the technical hearing or if the information were provided for the first time at the September 27-28 settlement hearing.

d. The Settlement Agreement's 10.7% ROE is Warranted

OPC argues that the 10.7% ROE specified in the Settlement Agreement is higher than is warranted by current conditions. However, the proposed 10.7% ROE mid-point is slightly below the current average allowed ROE of 10.75% for the other Florida IOUs. The ROE is the same as that authorized for PEF in Docket No. 120022-EI, assuming PEF returns Crystal River Unit 3 to service. An ROE of 10.7% equates to an overall cost of capital of 6.63%, which is lower than PEF's overall cost of capital of 7.53% that was approved as a result of the settlement in Docket No. 120022-EI. A 10.7% ROE is within the range and is well below the 11.25% ROE mid-point requested by FPL and supported by FPL's witnesses in this proceeding. It is also well below the average allowed ROE of 11.52% for other IOUs in the southeastern coastal United States. Finally, a four-year agreement puts the risks of interest rates, inflation and storm-related lost revenues on FPL's shareholders, not on customers.

e. The Settlement Agreement Would Not Result in Double Recovery for West County Energy Center Unit 3 Revenue Requirements

The Opposing Intervenors suggest that the Settlement Agreement could allow double recovery of the revenue requirements for West County Energy Center Unit 3 ("WCEC-3"). This is false. In order to incorporate the WCEC-3 base revenues into the forecast of revenues at present rates, revenues under the present tariff rates were increased to include the WCEC-3 capacity clause revenues, and the proposed rates were then set to recover the target revenue

increase. In developing the rates that appear in the tariffs in Exhibit B to the Settlement Agreement, FPL used the current rates, which do not include any provision for recovery of WCEC-3 revenues. FPL then determined the proposed settlement rates to recover the settlement target increase by rate class as shown in Exhibit A to the Settlement Agreement, which does not include recovery of the WCEC-3 revenue requirements.

f. Other Issues

There are other minor and tangential arguments that have been advanced by OPC that misunderstand and/or mischaracterize the provisions of the Settlement Agreement. These are briefly addressed as follows:

- Paragraph 3(a) – OPC and FRF argue that the allocation of the base rate increase to rate classes that is reflected on Exhibits A and B to the Settlement Agreement would represent a substantial cost shift from large commercial and industrial customers to residential and small commercial customers. This is not true. The parity indices for the rates under which most small commercial customers take service (*i.e.*, GS(T)-1 and GSD(T)-1) would improve under the Settlement Agreement in comparison to FPL's present rates, while the parity index for residential customers (*i.e.*, the RS(T)-1 rate class) would remain very close to the ideal of 100%.

- Paragraph 3(b)(i) – OPC argues that increasing the minimum late payment charge from $5.00 to $6.00 would unfairly burden lower income customers. This criticism is unwarranted, for several reasons. First, OPC provides no support for its assertion that "late fees are frequently associated with customers who already have difficulty paying their bills timely." FPL's experience is that customers pay late for a variety of reasons other than household income. Second, the late payment charge is designed to incent better payment behavior by late-paying customers, which benefits all other customers regardless of their usage or income levels. Third, a minimum late payment charge of $6.00 is reasonable. Other industries use late payment charges greater than $10 to encourage customers to pay on time; some other Florida utilities charge a much higher fee than is proposed in the Settlement Agreement, such as City of Miramar Utilities ($15.00) and Lee County Electric Cooperative ($10.00). Finally, FPL provides a variety of programs to assist customers in making timely payments of their bills and thus avoid incurring late payment charges.

- Paragraph 10 – OPC argues that FPL's proposal regarding fossil plant dismantlement reserve is not appropriate. We disagree. This provision would benefit customers, in that allowing a portion of the dismantlement reserve to flow back to FPL's current customers as a credit against expenses, as prescribed in the Settlement Agreement, would provide rate stability over the term of the settlement. This proposal is similar to the flow-back

authorized for FPL in the 2010 Settlement Agreement, as well as for PEF for cost of removal under the settlement agreement approved by the Commission in Docket No. 120022-EI.

- Paragraph 12 – OPC argues that the proposed incentive mechanism in the fuel adjustment clause for gains on wholesale power and asset optimization provides a "bonus" to FPL for doing what the Company should already be doing. Again, OPC misses the mark. In reality, this provision adds incentives for FPL to create additional value for customers above the levels already being achieved. The proposal would result in FPL's customers receiving 100% of the benefits up to $46 million, or nearly $11 million more than FPL's 2013 projected benefits resulting from gains on sales and savings on purchases. In exchange for expanding its optimization strategies to try to deliver additional value, FPL will be entitled to recover reasonable and prudent related O&M costs. The Commission has recognized that a properly structured incentive may result in even greater benefits to customers. *See* Order No. PSC-00-1744-PAA-EI, Docket No. 991779-EI, *In re: Review of the appropriate application of incentives to wholesale power sales by investor-owned electric utilities* (F.P.S.C., Sept. 26, 2000).

The Signatories will be prepared and pleased to address these or any of the Settlement Agreement's other specific provisions, as well as any other arguments raised by the Opposing Intervenors, at the hearing scheduled for September 27-28, 2012.

III. Conclusion

In conclusion, the Settlement Agreement filed by the Signatories provides many important benefits to FPL customers, to FPL and to the state of Florida, and is in the public interest. Therefore, the Settlement Agreement should be approved by the Commission. None of the assertions made by OPC, FRF, or Saporito prohibit the Commission from following its long-standing policy of encouraging settlements or from approving the Settlement Agreement.

The Signatories look forward to participating in the Commission's upcoming hearing regarding the Settlement Agreement, and stand ready to provide additional information if needed by the Commission in its consideration of the Settlement Agreement.

Respectfully submitted this 24th day of September 2012,

[Signature pages follow.]

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CERTIFICATE OF SERVICE
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I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically this 24th day of September 2012, to the following:

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