BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for Base Rate Increase and Rate Unification	Docket No. 20210015-EI Filed: October 11, 2021

FLORIDA POWER & LIGHT COMPANY'S POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS REGARDING SETTLEMENT

Florida Power & Light Company ("FPL" or the "Company"), representing the merged and consolidated operations of FPL and the former Gulf Power Company ("Gulf"), pursuant to Order No. PSC-2021-0362-PHO-EI issued September 16, 2021 ("Order 0362"), hereby files this Post-Hearing Brief and Statement of Issues and Positions in support of the Joint Motion for Approval of the Stipulation and Settlement filed in the above docket on August 10, 2021 (the "Settlement Agreement" or "Agreement").

The Settlement Agreement is a comprehensive agreement providing a full resolution of all issues in this docket. It reflects the result of extensive negotiations and includes the compromise and resolution of many different positions, issues and proposals. FPL respectfully submits that the Agreement is in the public interest and, accordingly, should be approved, consistent with the Florida Public Service Commission's ("FPSC" or the "Commission") long-standing policy of encouraging settlements in contested proceedings when they are in the public interest.

The Settlement Agreement addresses a wide spectrum of FPL and intervenor issues and interests in a way that serves to promote the public interest. First, the Settlement Agreement provides all FPL customers (*i.e.*, those within both the former FPL and Gulf service areas) with stability and predictability with respect to their electricity rates, while allowing FPL to maintain the financial strength to make investments that are necessary to safely provide customers with the superior reliability and service that they have come to expect and which have been facilitated by previous multi-year rate agreements approved by this Commission. Second, the Agreement increases the amount of emissions-free and fuel-free solar energy that will be available to serve all of FPL's customers on a cost-effective basis. Third, the Settlement Agreement keeps bills for all FPL customers among the lowest in the nation, with FPL's projected 2022 typical residential 1,000-kilowatt-hour ("kWh") bill remaining nearly 21 percent below the current national average and the projected 2025 typical residential 1,000-kWh bill remaining nearly 22 percent below the projected 2025 national average. Finally, the Settlement Agreement provides a minimum term of four years without another general base rate case so that FPL can continue to focus on further improving reliability, service delivery, and operational efficiency. This is a model that FPL has successfully employed over prior settlement periods for the benefit of customers.

I. OVERVIEW AND SUMMARY

On March 12, 2021, FPL filed a petition and supporting testimony from 20 witnesses requesting approval of: (a) base rate increases pursuant to a four-year rate plan modeled after the series of multi-year plans that have served customers exceptionally well over the last 22 years and (b) unified rates for all customers in both peninsular and Northwest Florida, subject to a transition rider and credit intended to reflect initial cost of service differences that will diminish as the combination of the FPL and Gulf systems is completed. In its filing, FPL highlighted a number of significant performance measures and improvements that provide substantial customer value and benefits. Among those performance achievements:

- FPL's typical 1,000 kWh residential customer bill is about 30 percent lower than the national average[1] and nearly 10 percent lower than it was fifteen years ago.
- FPL's non-fuel operating and maintenance ("O&M") cost performance is the best in the industry by a wide margin. If FPL was an average cost performer, all else equal, its 2019 O&M costs would have been $2.6 billion higher and residential customer bills would be roughly $24 per month, or nearly $300 per year, higher.

[1] U.S. average ($136.95) is 2020 annual average number (Summer and Winter) from 175 utilities published by the Edison Electric Institute ("EEI").

- For the period 2016-2020, FPL's service reliability improved by more than 16 percent and for 2019, the latest date for which national comparisons are available, FPL's reliability is 58 percent better than the national average.

- For the fifth time in six years, PA Consulting recognized FPL in 2020 with its ReliabilityOne® National Reliability Excellence Award, which is awarded to the company that has demonstrated sustained leadership, innovation and achievement in the area of electric reliability.

- In 2020, FPL received the Regional ReliabilityOne® Award for the Southeast Region (Metropolitan), and Gulf received the Regional ReliabilityOne® Award for the Southeast Region (Suburban and Rural).

- FPL earned the ReliabilityOne® Award for Technology and Innovation in 2019.

- FPL and Gulf earned awards from EEI for their efforts during the 2016, 2017, 2018 and 2020 hurricane seasons. Gulf received EEI's "Emergency Recovery Award" for its outstanding power restoration efforts after Hurricane Sally in 2020.

- FPL's emissions profile is among the cleanest in the electric utility industry, and FPL leads the nation as the utility owner and operator having the most large-scale solar in the United States.

- Since 2017 FPL's improvements include: an 8 percent reduction in heat rate; a 64 percent reduction in equivalent forced outage rate ("EFOR"); significant reductions in emissions rates (carbon dioxide ("CO_2") - 13 percent, nitrogen oxides ("NO_x") - 54 percent, sulfur dioxide ("SO_2") - 80 percent); and a 16 percent reduction in non-fuel O&M.

September 20, 2021 Hearing Transcript ("Tr.") 2247-49 (Barrett).

The rate plan proposal set forth in FPL's filing was designed to enable the Company to continue to invest in its system and deliver exceptional customer value, both today and into the future. Tr. 53 (Silagy). The key elements of the requested four-year rate plan consisted of: (i) rates and charges sufficient to generate additional total annual revenues of $1,075 million to be effective January 1, 2022; (ii) a subsequent year adjustment of $605 million to be effective January 1, 2023; (iii) a Solar Base Rate Adjustment ("SoBRA") mechanism authorizing FPL to recover costs associated with the installation and operation of up to 1,788 megawatts ("MW") of cost-effective solar generation in 2024 and 2025; (iv) a mechanism to address the possibility that corporate tax laws might change during the four-year plan; (v) a reserve surplus amortization mechanism ("RSAM"); (vi) a storm cost recovery mechanism ("SCRM"); and (vii) the authority to accelerate amortization of unprotected excess accumulated deferred income taxes resulting from the 2017 Tax Cuts and Jobs Act.

Through the extensive litigation of this case, Commission Staff and the parties developed a thorough and comprehensive record upon which the Commission will rely in reaching its decision. The record developed in this proceeding includes pre-filed testimony from 60 witnesses, along with 635 filed exhibits. The discovery in the case was also extensive, with FPL responding to over 3,000 questions in discovery and producing more than 70,000 pages of documents. Commission Staff and intervenors also participated in 14 separate depositions of FPL witnesses.

On August 10, 2021, FPL, the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), Florida Retail Federation ("FRF"), and the Southern Alliance for Clean Energy ("SACE") finalized their agreement on the terms contained in the Settlement Agreement and jointly filed for Commission approval of the Agreement.[2] Vote Solar and the CLEO Institute, Inc. joined as Signatories to the Agreement on August 24, 2021. On August 27, 2021, the Federal Executive Agencies ("FEA") joined as a Signatory to the Settlement Agreement.[3] The Settlement Agreement is not opposed by Walmart (Tr. 2072; Tr. 2720 (Barrett)), or the Florida Internet and Television Association, Inc. The only parties to oppose the Settlement Agreement are Floridians Against Increased Rates, Inc. ("FAIR"); Mr. Daniel R. Larson and Mrs. Alexandria Larson; and joint intervenors the League of United Latin American Citizens of Florida,

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[2] The Settlement Agreement is included in the proceeding record as Exhibit ("Ex.") 483. Throughout this brief, Ex. 483 is cited to as the "Settlement Agreement," with citations reflecting the Agreement's original page or paragraph numbers.

[3] OPC, FIPUG, FRF, SACE, Vote Solar, the CLEO Institute, Inc., and FEA are collectively referred to as the "Signatories."

the Environmental Confederation of Southwest Florida, and Florida Rising ("LULAC et al.").[4]

For reasons discussed more fully below, the Settlement Agreement will deliver significant customer value and is in the public interest. Among other things, the Agreement provides:

- An effective date of January 1, 2022, continuing until the earlier of December 31, 2026 or when FPL's base rates are next reset in a general base rate proceeding (the "Term"), with the minimum term of the Agreement being four years through December 31, 2025 (the "Minimum Term").

- Effective January 1, 2022, unified FPL rates will apply to all customers throughout the former FPL and Gulf service areas. To accommodate for the initial but declining differences in the cost to serve the two utility systems, a transition rider to the bills of customers located in the former Gulf service area and a corresponding transition credit to the bills of customers located in FPL's peninsular service area will be applied over a period of 5 years.

- Base rate adjustments as follows:

    - A $692 million increase, effective January 1, 2022;

    - A $560 million increase, effective January 1, 2023;

    - Authority to implement SoBRAs in connection with the commercial operation of up to 1,788 MW of solar projects that FPL reasonably projects will be placed in service during 2024 and 2025, subject to a cap on installed costs of $1,250 per kW and a demonstration of cost effectiveness. Battery storage can be paired to the solar projects so long as total cost remains below the $1,250 per kW cap and the project is cost effective.

- FPL's authorized regulatory return on common equity ("ROE") will be 10.6 percent for all purposes, with an authorized ROE range of 9.7 percent to 11.7 percent. If, however, the average 30-year United States Treasury Bond yield rate for any period of six consecutive months during the Term is at least 50 basis points greater than the rate as of the date of the filing of the Joint Motion to Approve Settlement Agreement, the authorized ROE would, after an elective filing by FPL, be increased by 20 basis points from 10.6 percent to 10.8 percent, with a new authorized range of 9.8 percent to 11.8 percent, but without a corresponding adjustment to base rates at the time the trigger becomes effective.

- Authority to use an RSAM consistent with FPL's existing ability to flexibly amortize its depreciation reserve surplus. For purposes of the Settlement Agreement, FPL's depreciation reserve surplus will be $1.45 billion, inclusive of $346 million projected to be remaining at the end of 2021 (the "Reserve Amount"). FPL would be permitted to amortize the Reserve Amount flexibly using debits and/or credits, with the amounts to be amortized

[4] FAIR, Mr. Daniel R. Larson and Mrs. Alexandria Larson, and LULAC et al. are collectively referred to as the "Opposing Parties."

by the end of 2022 at FPL's discretion but not to exceed a year-end net credit of $200 million, and the amounts to be amortized in each remaining year of the Term using debits and/or credits left to FPL's discretion.

- The positive difference between the actual depreciation reserve surplus balance remaining at the end of 2021 and the $346 million projected balance is known as the "Carryover Amount" and is exclusive of the Reserve Amount. Fifty percent of the Carryover Amount will be applied to credit (decrease) the Regulatory Assets identified in the Agreement; and the remaining fifty percent of the Carryover Amount will be applied to credit (increase) FPL's storm reserve as an unfunded amount. The reserve surplus amortization used to effect these Carryover Amount transactions is not considered part of the $200 million limitation in 2022.

- Consistent with the current mechanism for the recovery of storm restoration costs, FPL's recovery of storm costs would begin, on an interim basis, sixty days following the filing of a cost recovery petition and tariff with the Commission and would be based on a 12-month recovery period but such initial recovery mechanism would be capped at an amount producing a $4 per month surcharge on a typical residential 1,000 kWh bill. Additional costs would be eligible for recovery pursuant to Commission order as set forth in the Settlement Agreement. Reflecting the combination of Gulf and FPL into a single system, the storm reserve could be replenished up to $150 million, not including other potential additions to the storm reserve contemplated by the Settlement Agreement.

- If federal or state permanent tax changes ("Tax Reform") are enacted effective for any of the tax years 2022 through the Term of the Agreement, the impact on FPL's base revenue requirements would be adjusted for retail customers within the later of 90 days from when the Tax Reform becomes law or the effective date of the law, through prospective adjustments to base rates, but no sooner than January 1, 2022. Any effects of Tax Reform on retail revenue requirements from the effective date through the date of the base rate adjustment would be flowed back or collected from customers through the Capacity Cost Recovery Clause.

- Termination of 100 percent of FPL's natural gas financial hedging prospectively for the Minimum Term, and any extension thereof.

- FPL will be authorized to recover the costs associated with electric vehicle ("EV") programs, including pilot programs, specified in the Settlement Agreement.

- FPL will be authorized to offer a voluntary Solar Power Facilities Pilot Program in which commercial and industrial customers on a metered rate may elect to have FPL install and maintain a solar facility on their site for a monthly tariff charge.

- FPL will be authorized to implement a Green Hydrogen pilot project as proposed in FPL's filed case.

- FPL will be authorized to implement a new residential customer pilot program to install and test up to 1,000 smart electrical panels.[5]

Following the filing of the Settlement Agreement, the Commission issued Order No. PSC-2021-0314-PCO-EI on August 20, 2021 ("Order 0314"), establishing the procedure for the Commission's review of the Agreement. Order 0362 was later issued, establishing that post-hearing briefs on the settlement would address only (i) modified Issues 1-6 and 9 of Order No. PSC-2021-0302-PHO-EI, issued August 10, 2021, and (ii) whether the Settlement Agreement should be approved. These issues are addressed individually in Section II below. Order 0314 also set September 20-22, 2021 as the date for the hearing on both the merits of FPL's initial March 12, 2021 petition and the Settlement Agreement.

The hearing commenced as scheduled on September 20, 2021. At the hearing, all FPL pre-filed direct and rebuttal testimony was entered into the record, as well as the pre-filed testimony of intervenors and Commission Staff. The Opposing Parties presented testimony at the hearing in opposition to the Settlement Agreement from witnesses Breandan T. Mac Mathuna, Timothy J. Devlin, and John Thomas Herndon (as LULAC et al.'s and FAIR's witnesses), as well as witness Karl R. Rábago (as LULAC et al.'s witness). Those witnesses' pre-filed testimony was entered into the record. Following the presentation of the Opposing Party witnesses, the pre-filed testimonies of FPL witnesses Robert E. Barrett, Scott R. Bores, Matthew Valle, and Tiffany C. Cohen, offered in support of the Settlement Agreement, were also entered into the record. At the hearing, FPL also presented witnesses Barrett, Bores, James M. Coyne, Valle, and Cohen, who offered rebuttal testimony to the testimony of the Opposing Party witnesses, and those FPL

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[5] Cost recovery for the EV programs, Green Hydrogen pilot project, the Solar Power Facilities Pilot Program, and the smart panel pilot program would not be incremental to the revenue requirements set forth in the Settlement Agreement. *See* Settlement Agreement at Paragraphs 22-25.

witnesses were made available as a panel for cross-examination. These witnesses were cross-examined by each of the Opposing Parties and responded to questions from the Commission.

II. FPL'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS

<u>Issue A:</u> **Should the Stipulation and Settlement Agreement dated August 9, 2021 be approved?**

> ***Yes.** The Settlement Agreement meets the public interest standard in that it provides: (i) stable, predictable and reasonable rates for customers of the unified utility systems; (ii) sufficient financial strength necessary for FPL to maintain quality service and reliability; (iii) reasonable safeguards for customers and investors; (iv) an agreeable resolution of all issues, backed by an extensive record; (v) efficient Commission regulation of the newly unified utility; and (vi) promotes and encourages continued investment in renewable energy.*

The Settlement Agreement, taken as a whole, is in the public interest. The Agreement enables FPL to continue to build upon its already established track record of success in delivering exceptional customer service and industry-leading customer value. As explained by FPL witness Barrett at hearing, the Agreement benefits customers by enabling them to continue to receive low bills, high reliability, improved emissions, and excellent customer service while simultaneously allowing FPL to maintain the financial strength required to secure those benefits. Tr. 2720, 2730-31 (Barrett). The Agreement provides for a reduction in FPL's base rate request while allowing for scheduled general base rate increases in 2022 and 2023, as well as the opportunity for limited base rates adjustments (SoBRAs) for the addition of cost-effective solar additions in 2024 and 2025. The Agreement will provide for a high degree of base rate certainty for FPL customers for a minimum of four years, enable FPL's management to continue its focus on improving service delivery, and allow FPL to realize additional efficiencies in operations and to create even stronger customer value. The Agreement enables all this to happen while at the same time maintaining typical residential customer bills that are projected to remain 20 percent below the national average and among the lowest in the state. Tr. 2734 (Barrett); Tr. 2793 (Cohen).

All told, and as demonstrated in the subsections that follow, the Agreement provides significant customer benefits and satisfies the Commission's long-held public interest standard that has been affirmed by the Florida Supreme Court.

A. Legal Standard – Settlement Agreements and the Public Interest

The legal system "favors the settlement of disputes by mutual agreement between the contending parties." *Ameristeel Corp. v. Clark*, 691 So.2d 473, 478 (Fla. 1997). This general rule applies equally to administrative proceedings within the context of utility rate cases. *See* Section 120.57(4), Florida Statutes ("Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order."); *In re Petition for rate increase by Florida Power & Light Company*, Docket No. 20160021-EI, Order No. PSC-16-0560-AS-EI, (F.P.S.C. Dec. 15, 2016). The 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." *In re Florida Power & Light Company*, Docket No. 050045-EI, Order No. PSC-05-0902-S-EI at 6 (F.P.S.C. Sept. 14, 2005).

The Florida Supreme Court has recognized that the legal standard for the Commission's approval of a rate case settlement is whether the specific settlement agreement at issue, taken as a whole, establishes rates that are fair, just, and reasonable, and that the agreement is in the public interest. *See Sierra Club v. Brown*, 243 So.3d 903, 909 (Fla. 2018) and Order No. PSC-16-0560-AS-EI at 4 ("A determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole."). That same Court found that approval of settlement agreements on the basis of the public interest is proper under the law and does not represent a deviation from the Commission's statutory mandates. *See Brown*, 243 So.3d at 910 ("[T]he Commission's standard for reviewing settlement agreements is the public interest standard; and it is neither a departure from the essential requirements of law nor a usurpation of legislative authority for the Commission to invoke its proper standard when no law precludes settlement.").

The Commission has broad discretion in deciding what is in the public interest, and it may consider a variety of factors in reaching its decision. *See Brown*, 243 So.3d at 910-11; *In re: The Woodlands of Lake Placid, L.P.*, Docket No. 030102-WS, Order No. PSC-04-1162-FOF-WS at 8 (F.P.S.C. Nov. 22, 2004); *In Re: Petition for approval of plan to bring generating units into compliance with the Clean Air Act by Gulf Power Co.*, Docket No. 921155-EI, Order No. PSC-93-1376-FOF-EI at 15 (F.P.S.C. Sept. 20, 1993). The Commission is also within its authority and discretion to approve settlements that are non-unanimous. *See Citizens of State v. Fla. Pub. Serv. Comm'n*, 146 So.3d 1143, 1150 (Fla. 2014) ("[T]he Commission is not clearly precluded by statute or case law from approving non-unanimous settlements.").

While each proposed settlement is evaluated on its distinct merits, all settlements share a common characteristic: they represent a series of interrelated compromises reached by independent parties with divergent interests, and thus should be considered as a whole, rather than focusing on any individual provision or subset of provisions in isolation.[6] This Settlement Agreement is no exception. The Signatories resourcefully assembled various elements in a way that provides significant benefits to FPL's customers.

[6] The Commission's rulings on base rate settlement agreements reflect a consistent policy of encouraging settlements by the approval of the same without modification, with only one exception. *See, e.g.*, Order Nos. PSC-2021-0202-AS-EI, PSC-2017-0178-S-EI, PSC-2017-0456-S-EI, PSC-2017-0451-AS-EU, PSC-2016-0560-AS-EI, PSC-2014-0517-S-EI, PSC-2013-0443-FOF-EI, PSC-2013-0670-S-EI, PSC-2012-0104-FOF-EI, PSC-2011-0089-S-EI, PSC-2005-0902-S-EI, PSC-2002-0501-AS-EI, PSC-1999-0519-AS-EI; *but see* Order No. PSC-2013-0023-S-EI.

B. The Settlement Agreement is in the Public Interest

There is no strict or exhaustive set of "public interest" criteria. *See Brown*, 243 So.3d at 910-11. However, in assessing whether a settlement is in the public interest, the Commission has considered the following factors:

- The overall reasonableness of the resulting rates;
- Rate stability and predictability;
- The resulting financial strength of the public utility and its ability (and encouragement) to make needed capital investments;
- The ability of the public utility to maintain or improve its quality of service and overall reliability;
- The existence of safeguards for the protection of customers and investors;
- The amount of information provided to make a reasoned decision; and
- Regulatory efficiency and the minimization of regulatory costs and burdens.[7]

See In re: Petition for increase in rates by Florida Power & Light Company, Docket No. 120015-EI, Order No. PSC-13-0023-S-EI at 7-8 (F.P.S.C. Jan. 14, 2013) (overall rate reasonableness, rate stability and predictability, financial strength and service quality); *In re: Petition for Rate Increase by Florida Power & Light Co.*, Docket Nos. 050045-EI and 050188-EI, Order No. PSC-05-0902-S-EI (F.P.S.C. Sept. 14, 2005) (same); *In re: Environmental cost recovery clause*, Docket No. 120007-EI, Order No. PSC-12-0425-PAA-EU (F.P.S.C. Aug. 16, 2012) (regulatory efficiency); *In re: Review of the retail rates of Florida Power & Light Co.*, Docket Nos. 001148-EI and 020001-

[7] The Florida Supreme Court expressly recognized in 2018, following a review of Commission final orders on settlement agreements, that "much of [the Commission's] focus regarding the public interest centers on costs, effect on ratepayers, and ensuring reliability of service" and added that "[t]his convention coincides with the purpose of the Commission." *Brown*, 243 So.3d at 911. The Court also referenced Sections 366.04, 366.05, 366.06, and 366.041 of the Florida Statutes as supporting the Commission's historical focus on costs, customers, and reliability in determining whether a settlement is in the public interest. *Id.*

EI, Order No. PSC-02-0501-AS-EI (F.P.S.C. Apr. 11, 2002) (Mar. 22, 2002 agenda, Tr. 55-57) (thorough record); and *In re: Petition for limited proceeding to approve stipulation and settlement agreement by Progress Energy Florida, Inc.*, Docket No. 120022-EI, Order No. PSC-12-0104-FOF-EI (F.P.S.C. Mar. 8, 2012) (Feb. 22, 2012 agenda, Tr. 101-02) (customer safeguards). The Florida Supreme Court also has noted that the Commission would be acting within its authority to consider and encourage investment in renewables in assessing the public interest. *See Brown*, 243 So.3d at 911 n.9.

Not every settlement presented to the Commission will satisfy all of these factors, nor are they required to do so in order to be approved. *See Brown*, 243 So.3d at 910-11. But in this case, the Settlement Agreement unequivocally and without question satisfies each factor.

i. *Public Interest - Stable, Predictable and Reasonable Rates*

The Settlement Agreement satisfies a key public interest objective by establishing rates that are low, stable, predictable, and reasonable for a minimum of four years.[8] The Settlement Agreement achieves this, in part, by providing for defined, limited step base rate increases. Specifically, the Agreement's terms include:

- A $692 million base rate increase effective January 1, 2022, representing a $383 million reduction from FPL's base rate request; and
- A $560 million base rate increase effective January 1, 2023, representing a $45 million reduction from FPL's request.

[8] While the minimum term specified in the Settlement Agreement is four years, if FPL's earned return on common equity falls below the bottom or exceeds the top of its authorized range while the Agreement is in effect, a request may be filed with the FPSC to amend FPL's base rates. *See* Settlement Agreement at Paragraph 14.

Settlement Agreement at Paragraphs 4(a)-(b). These reductions, cumulatively over the minimum four-year term of the Agreement, represent a reduction of $1.667 billion from FPL's base rate request.[9]

The Agreement also includes the authority to implement SoBRAs in 2024 and 2025, subject to satisfaction of certain conditions and requirements, to cover the incremental costs of new, cost-effective solar generation. The SoBRA mechanism will facilitate the addition of 1,788 MW of emissions free solar generation in 2024 and 2025. The SoBRA provision in the Agreement includes measures that enhance cost certainty. For example, the average cost of all solar projects will be subject to a $1,250 per kW_{AC} cost cap. Tr. 2722 (Barrett). Based on the cap, the SoBRAs are estimated to recover approximately $140 million of annual revenues effective January 1, 2024, and an additional approximately $140 million of annual revenues effective January 1, 2025. Tr. 1007, 2794 (Cohen). In the event that FPL constructs the solar facilities for less than the applicable cost cap, customers and FPL will share in the revenue requirement savings represented by the difference on a 75 percent-25 percent basis, respectively, still resulting in revenue requirements that fall below the estimated $140 million. Settlement Agreement at Paragraph 12(i). These known and predictable rate adjustments are set forth in the Settlement Agreement and governed by express conditions, greatly reducing the potential for controversy and litigation and adding to the predictability of customer rates in the subsequent years of the Agreement.

Under the Settlement Agreement, based on the record evidence reflecting the relevant data at that time, the bills for all FPL customers are projected to remain among the lowest in the nation. FPL's projected 2022 typical residential 1,000-kWh bill would remain nearly 21 percent below the current national average and the projected 2025 typical residential 1,000-kWh bill would

[9] Reductions represented are based on the recalculated revenue requirements shown in Ex. 369.

remain nearly 22 percent below the projected 2025 national average. Tr. 2793 (Cohen).[10] Under the Agreement, the five-year compound annual growth rate of the typical residential bill for customers in the former FPL service area is projected to increase from January 1, 2021 through December 31, 2025 by approximately 2.5 percent, as compared to 3.4 percent under FPL's original proposed rates. Ex. 481; Tr. 2795, 2805 (Cohen). Additionally, the typical residential bill for customers in the former Gulf service area is projected to decrease by approximately 0.7 percent through 2025. Ex. 482; Tr. 2795 (Cohen). Under the Settlement Agreement, the typical commercial and industrial customers in the former FPL service area will see minimal growth in their rates of 1.1 percent to 3.1 percent through 2025, as compared to 3.9 percent to 4.9 percent under the original proposed rates. Ex. 481; Tr. 2795 (Cohen). Similarly, commercial and industrial customers in the former Gulf service area will see even lower percentage increases in their rates of 0 percent to 1.4 percent through 2025. Ex. 482; Tr. 2795 (Cohen). These bill impacts compare very favorably to the average 2.3 percent projected inflation for that period. Tr. 2728 (Barrett).

The Settlement Agreement also enables a streamlined and coordinated transition of customers in the former FPL and Gulf service areas to a single unified FPL rate. Tr. 2731 (Barrett). To accommodate for the initial but declining differences in the cost to serve the two utility systems, while also acknowledging that the systems have been combined and will be operated as a single system going forward, FPL would be authorized under the Agreement to apply a transition rider to the bills of customers located in the former Gulf service area and a corresponding transition

[10] Attempts made by LULAC et al.'s counsel at hearing to posit that the "average bill" methodology is an appropriate metric to compare FPL's rates (Tr. 2874-78) should be rejected. As explained by FPL witness Cohen, the typical bill is the benchmark accepted and used by the industry and this Commission to compare bills at certain usage levels to other utilities. The average bill is not a meaningful comparison because average electric usage varies significantly across the country due to climate, weather, availability of gas or other alternatives to electricity, and many other characteristics. Tr. 1032-36, 2874-78 (Cohen).

credit to the bills of customers located in FPL's peninsular service area. These transition mechanisms would be ratably reduced annually over a five-year period. *See* Tr. 1002-05 (Cohen); Ex. 188; Settlement Agreement at Paragraph 5.

ii. *Public Interest - Financial Strength of Utility*

The Settlement Agreement allows FPL to maintain the financial strength it needs to make investments necessary to continue to provide customers with safe and reliable power. Tr. 2727 (Barrett). Over the last decade the Commission has approved three separate FPL base rate settlement agreements that, like the Settlement Agreement, have included provisions supportive of the Company's financial strength. Tr. 2261-64 (Barrett); *see also* Order Nos. PSC-16-0560-AS-EI, PSC-13-0023-S-EI, and PSC-11-0089-S-EI. Notably, each of these prior agreements has allowed for a capital structure reflective of the Company's actual capital structure and an authorized ROE midpoint and range that was reasonable. Tr. 2263 (Barrett). FPL's strong financial position and access to sufficient liquidity have historically enabled it to react to adverse or unforeseen events in ways that minimize negative consequences for customers. FPL's uninterrupted access to capital during periods of market turbulence is a product of the Company's financial strength that it has consistently maintained over an extended period. Tr. 2261 (Barrett). This has allowed FPL to make strategic investments to improve customer value, both directly through affording the Company access to capital and liquidity on attractive terms, and indirectly by enabling the Company to earn competitive financial returns that provide an incentive for investors to continue to provide the capital needed to further improve the customer value proposition. Tr. 2262 (Barrett).

Approval of the Settlement Agreement will continue to provide FPL the financial strength it needs to maintain and improve upon its already high level of performance. The rate of return parameters established in the Settlement Agreement are appropriate for FPL, preserving the Company's financial strength and enabling it to continue to attract capital on reasonable terms. The ROE set forth in the Settlement Agreement falls within the range that results from the application of multiple cost of equity models and will appropriately compensate investors for the contribution of their equity capital; particularly in light of the six key FPL risk factors identified in witness Barrett's testimony: (i) significant capital investment program; (ii) physical infrastructure, including transmission system, generation mix and fuel supply; (iii) weather, such as tropical storms and climate change; (iv) environmental; (v) regulatory and political; and (vi) competition, including the threat of deregulation. Tr. 2269 (Barrett).

The ROE established in the Agreement should not be lowered as Opposing Parties in the case have argued. From a macroeconomic perspective, there are five principal reasons that the ROE established in the Agreement is appropriate. First, government bond yields are being driven by the unprecedented actions of the Federal Reserve Bank. Tr. 2771 (Coyne). Second, other risk factors indicate that volatility in financial markets have caused equity investors to require a higher rate of return to compensate them for the additional uncertainty and risk created by the COVID-19 pandemic and the corresponding economic fallout. Tr. 2771 (Coyne). Third, the industry faces complex, long-term structural challenges associated with climate change, decarbonization, cybersecurity, grid modernization and shifting consumer preferences. Tr. 2771-72 (Coyne). Fourth, the correlation between the return on utility stocks and returns on the broader market, known as *beta*, has increased, which reflects the fact that investors have not viewed the utility sector as a safe haven during the recent period. Tr. 2772 (Coyne). The fifth reason is inflation. The economic stimulus provided through monetary and fiscal policy increases the likelihood of higher inflation. Tr. 2772 (Coyne). For all of these reasons, the cost of equity capital for FPL is at least as high as it was in 2016, if not higher. Tr. 2772 (Coyne).

The Settlement Agreement is a unique resolution of this specific case's facts and issues and the Agreement stands on its own merit. Contrary to the arguments of FAIR witness Mac Mathuna, recent settlements involving Duke Energy Florida ("DEF") (Docket No. 20210016-EI) and Tampa Electric Company ("TECO") (Docket No. 20210034-EI) do not serve as an appropriate basis upon which to determine what return is appropriate for FPL's investors. The DEF and TECO settlements reflect the specific circumstances of these two companies and the trade-offs reached by the parties involved in those cases. Tr. 2769 (Coyne). The risk profiles of DEF and TECO also differ from that of FPL, with FPL having greater risk in terms of nuclear generation, length of the rate plan (at least one or two years longer), capital expenditure levels, and storm risk. Tr. 2769 (Coyne); *see also* Ex. 363. In fact, a report recently issued by S&P concluded:

> [T]he risks of acute extreme weather events for U.S. utilities are rising. NextEra Energy, Inc., is the most-exposed utility to unmitigated hurricane risk – most in the nation. This exposure is primarily due to the company's footprint in Florida through its utility subsidiary Florida Power & Light Company, where hurricanes are commonplace.

Tr. 2769-70 (Coyne). Therefore, DEF and TECO's negotiated ROEs should not serve as a guide to determine the appropriateness of FPL's cost of capital, one of many negotiated components of this multi-faceted Settlement Agreement.

iii. *Public Interest - The ability of the public utility to maintain or improve its quality of service and overall reliability*

The Settlement Agreement includes many of the same features from prior settlements that have allowed FPL to effectively manage the utility to the benefit of its customers. Among those features are the RSAM, SCRM, SoBRA, and asset optimization mechanisms, which all have been present in FPL's prior base rate settlement agreements, endorsed at various times by OPC, approved by the Commission and affirmed by the Florida Supreme Court. The proof of the effectiveness of these features in encouraging FPL to operate at a high level of service quality and reliability is demonstrated by FPL's performance in operating under those settlement agreements.

FPL's performance under its previous multi-year rate settlements has allowed FPL to become the nation's preeminent utility in terms of a fundamental feature associated with electric service: cost. Testimony proffered in this proceeding demonstrates that FPL is the best performing utility in the nation from a cost efficiency perspective. Tr. 120-21 (Reed). As shown in Exhibit 160, FPL's performance has been extraordinarily good during the last 10 years – all years in which it has been operating under multi-year rate settlements – and FPL outperformed all of its national and Florida-based peers on a basis that considers both absolute productivity measures and the relative challenges faced. Tr. 121 (Reed). As witness Barrett described at the hearing, FPL's focus on cost structure spans across all facets of its business and is an integral part of the Company's culture. Tr. at 2928-29 (Barrett). This has led to savings for customers in nearly "every single function" FPL performs (Tr. 2928 (Barrett)) and has led to a decrease in O&M of 16 percent over the past four years. Tr. 2917 (Barrett). FPL's superior cost performance is so ingrained in its culture and widely recognized throughout the industry that no intervenor opposed the evidence presented by FPL with respect to its superior performance. Even exhibits offered by the Opposing Parties reflect the achievements that FPL has made in the area of cost performance; with one such exhibit stating specifically that:

> We believe NextEra enjoys best-in-class regulation through its management execution and continued ability to deliver operating efficiencies. NextEra parlayed this success into reducing costs and boosting investment at the recently acquired Gulf Power. Residential bills should remain affordable, with the average customer bill increasing 2.5% annually through the rate case. Customer bills will be 20% below the national average. Customer affordability is a crucial consideration for

> regulators, further supporting likely regulatory approval of the settlement agreement.

Ex. 496 at 6.

FPL's cost performance under prior settlement agreements has translated into substantial customer savings for its customers. For example, in 2019, FPL's non-fuel O&M expense was $264 per customer, which is $511 per customer less than what customers would have paid in 2019 if FPL's non-fuel O&M expense had been merely average at $775 per customer. Tr. 100 (Reed). This non-fuel O&M expense performance difference of $511 per customer, multiplied by FPL's 2019 average customer count of 5,011,428 customers, results in estimated savings of $2.6 billion for year 2019 alone. Tr. 100 (Reed). Since FPL's last rate case in 2016, FPL's non-fuel O&M savings over utility peer average performance total $9.3 billion. Tr. 100-01 (Reed). While future additional O&M savings cannot be known or quantified, FPL's track record of successful operation under its base rate settlement agreements that include enabling mechanisms such as the RSAM should give the Commission confidence that FPL will continue its industry-leading cost performance to the benefit of customers.

Aside from cost, FPL also has continued to improve its customer service performance over the course of its prior approved rate settlement agreements. For example, complaints recorded as "logged" in the Commission's Consumer Activity Report dropped from 346 in 2010 to 124 in 2019 – a 64 percent reduction for FPL. In addition, FPL recorded 0.02 complaints per 1,000 customers in 2019, compared to 0.08 complaints per 1,000 customers in 2010, a reduction of nearly 70 percent over the last decade. Tr. 646 (Chapel); Ex. 121. It should also be noted that FPL's financial strength combined with FPL's ability to employ the RSAM mechanism authorized in FPL's 2016 settlement agreement enabled FPL to implement a direct and immediate benefit to its customers during the COVID-19 pandemic. Specifically, FPL was able to utilize the flexibility afforded by the RSAM mechanism to offset millions of dollars in pandemic-related bad debt incurred after FPL suspended customer disconnections during the COVID-19 pandemic. Tr. 648 (Chapel); Tr. 2303-04 (Barrett). Efforts and achievements such as these have led FPL's superior customer service to be nationally recognized. In 2021, FPL was ranked one of the top digital experiences in the utility industry for the second consecutive year and in 2020, ranked first in residential and second in business electric utility customer satisfaction among peer utilities in the U.S. south region by a global leader in consumer insights, advisory services and data and analytics. Tr. 628 (Chapel).

FPL also has been able to maintain and even improve upon its already superior reliability metrics while operating within its prior multi-year rate agreements. Currently, FPL's reliability ranks best in the Southeast region on a SAIDI basis. Ex. 65 at 4. Also, FPL's SAIDI has improved each year since FPL's prior 2016 settlement agreement went into effect. Ex. 104 at 1. Looking back even further, FPL has been the top performer among Florida investor-owned utilities in reducing its distribution outage durations for nine of the ten years from 2010 through 2019. Tr. 123 (Reed). These reliability achievements have been recognized in the industry. In 2020, FPL was honored with the ReliabilityOne® National Reliability Excellence Award, presented by PA Consulting, for the fifth time in six years, and Gulf was honored with the ReliabilityOne® Award for Outstanding Reliability Performance in the Southeast (suburban/rural service) region. Tr. 538 (Spoor). This achievement is particularly impressive in light of the challenges faced by FPL in reaching these levels of reliability. These challenges include the following characteristics of FPL's service area: (1) Florida's susceptibility to major storms; (2) FPL's service area is the most storm-susceptible within Florida, as it has approximately 610 miles of coastline directly exposed to storms from the Atlantic Ocean and the Gulf of Mexico; (3) because the vast majority of FPL's customers live within 20 miles of the coast, a significant portion of its electric infrastructure is constantly exposed to the corrosive effects of salt spray and to the highest wind speeds when a storm hits; (4) Florida also experiences more thunderstorms and lightning strikes than any other U.S. region; and (5) Florida's subtropical climate promotes one of the fastest vegetation growth rates in the nation. Tr. 513-14 (Spoor). Despite these challenges, FPL has emerged as a reliability leader while operating under its prior multi-year settlement agreements.

FPL's generation fleet performance and other operational metrics have improved since FPL entered its last settlement agreement in 2016, all to the benefit of customers. FPL witness Broad testified that since FPL's last rate case, FPL has managed to improve its fossil and solar fleet performance by: (i) reducing heat rate by 8 percent; (ii) reducing EFOR by 64 percent; (iii) reducing air emission rates by 13 percent for CO_2, 54 percent for NOx and 80 percent for SO_2; and (iv) reducing total non-fuel O&M cost per kW by 16 percent. Tr. 581 (Broad). FPL's non-fuel O&M, heat rate, and EFOR performance essentially has been a best-in-class or top decile performer versus industry for 15 years. Ex. 112. These accomplishments are a testament to FPL's ability to operate at a very high level of effectiveness over the terms of its prior rate settlements.

Clearly, FPL has been successful in using prior multi-year settlement agreements to maintain and *even improve* its quality of service and overall reliability. In fact, as witness Barrett testified, "multi-year rate plans, enabled by an RSAM, have allowed FPL to focus on being the best performer among its peers delivering significant value to customers in the form of low bills, high reliability, low emissions and strong customer satisfaction." Tr. 2327 (Barrett). The Settlement Agreement is intended to serve as a mechanism to allow FPL to continue to deliver on its customer value proposition. Therefore, authorizing FPL to continue to operate within the same type of rate plan structure is in the public interest.

iv. *Public Interest - Safeguards for Customers and Investors*

The Settlement Agreement offers a variety of safeguards that effectively address the needs of FPL's customers and investors. As previously detailed, the Settlement Agreement locks in low bills for a minimum of four years and facilitates the continuation of FPL's best-in-class customer value and superior customer service. Tr. 2720, 2734 (Barrett).

Also, as with FPL's prior multi-year settlement agreements, the Commission retains full regulatory oversight with respect to FPL's rates and charges. In that regard, FPL will continue to submit earnings surveillance reports consistent with current regulatory requirements. Tr. 2307 (Barrett). As with prior FPL settlements, the settling parties would be authorized under the Settlement Agreement to initiate a rate review during the settlement term in the event that FPL's reported ROE exceeds the top of the allowed range in any of FPL's monthly earnings surveillance reports.[11] Settlement Agreement, Paragraph 14(b).

The RSAM is guided by specific parameters and provides FPL the flexibility to ensure its earnings do not track outside the range approved by the Commission. Under the Agreement, FPL must file an attachment to its monthly surveillance report for each month of each year under the term of the Agreement that shows the amount of amortization credit or debit to the Reserve Amount on a monthly basis and year-end total basis. Settlement Agreement at Paragraph 16(g). Consistent with prior multi-year settlement agreements and past practice, FPL will be permitted to amortize the Reserve Amount flexibly but with certain limitations. Amounts to be amortized by the end of 2022 will be at FPL's discretion but cannot exceed a year-end net credit of $200 million.

[11] Correspondingly, FPL would be authorized to petition for a rate adjustment in the event that its ROE in a monthly earnings surveillance report fell below the bottom of the allowed range, notwithstanding that FPL's has used the RSAM to the maximum extent available to maintain its ROE above the bottom of the range. Settlement Agreement at Paragraphs 14(a) and 16(f).

Additionally, amortization in each year of the Agreement's term will be subject to the following conditions: (i) for any surveillance reports on which its ROE would otherwise fall below the bottom of the authorized range, FPL must amortize at least the Reserve Amount necessary to maintain an ROE of at least the bottom of its authorized range; (ii) FPL may not amortize the reserve in an amount that results in FPL achieving an ROE greater than the top of the authorized range; and (iii) FPL must debit depreciation expense and credit the depreciation reserve in an amount to cause FPL to not exceed an ROE in excess of the top of the authorized range. Settlement Agreement at Paragraph 16(c).

The Settlement Agreement's tax reform provision also functions as a safeguard for both FPL's customers and investors. Under the Agreement, if any permanent federal or state tax law is enacted and becomes effective during the term of the Agreement, FPL will calculate and quantify the impact of that change by utilizing the forecasted earnings surveillance report ("FESR") for the given calendar year. Tr. 2750-51 (Bores); Settlement Agreement at Paragraph 13(a). For example, if tax legislation becomes effective for the 2022 calendar year, FPL will utilize the 2022 FESR to calculate the impact. This will be accomplished by preparing the FESR two ways: (1) under the current tax law as passed by the Tax Cuts and Jobs Act of 2017; and (2) utilizing the new law that may be enacted. Tr. 2750-51 (Bores); Settlement Agreement at Paragraph 13(b). The forecasted rate base, net operating income and the weighted average cost of capital will be used to calculate the base revenue requirements for each scenario and the difference between the two base revenue requirements will determine the amount of the base rate adjustment. Tr. 2751 (Bores). Having this provision established within the Agreement provides a pre-negotiated mechanism that provides predictability in how changes in tax obligations will be addressed through rate adjustments in either direction to reflect those changes.

The Settlement Agreement also continues the SCRM that has served customers well for over a decade. Tr. 2268 (Barrett). The SCRM allows recovery of prudently incurred storm costs under the framework prescribed by the 2010 Rate Settlement and continued in both the 2012 and 2016 Rate Settlements. Tr. 2295 (Barrett). Specifically, if FPL incurs storm costs related to a named tropical storm, the Company may begin collecting a charge based on an amount up to $4 per 1,000 kWh on monthly residential bills (roughly $430 million annually) beginning 60 days after filing a petition for recovery with the Commission. This interim recovery period will last up to 12 months. If costs related to named storms exceed $800 million in any one year, the Company also can request that the Commission increase the $4 per 1,000 kWh accordingly. Settlement Agreement at Paragraph 10(b). The SCRM would be used to replenish the Company's storm reserve in the event it was fully depleted by storm costs to a level of not less than $150 million. Tr. 2295-96, 2724-25 (Barrett); Settlement Agreement at Paragraph 10.

The Agreement also includes an ROE trigger mechanism to ensure FPL can continue to attract capital on reasonable terms should bond yield rates escalate during the term of the Agreement. Under the Settlement Agreement, FPL's authorized regulatory ROE would be 10.6 percent for all purposes, with an authorized ROE range of 9.7 percent to 11.7 percent. If, however, the average 30-year United States Treasury Bond yield rate for any period of six consecutive months during the Term is at least 50 basis points greater than the rate as of the date of the filing of the Settlement Agreement, the authorized ROE would, after an elective filing by FPL, be increased by 20 basis points from 10.6 percent to 10.8 percent, with a new authorized range of 9.8 percent to 11.8 percent, but without a corresponding adjustment to base rates at the time the trigger becomes effective. Settlement Agreement at Paragraph 3(b).

v. *<u>Public Interest - Record Information</u>*

The parties in this proceeding filed voluminous pre-filed testimonies with accompanying exhibits and responded to extensive discovery. Settlement Agreement at 2. The record in this case includes pre-filed testimony from 60 witnesses. FPL answered over 3,000 questions and produced over 70,000 pages of documents in response to discovery requests. 635 exhibits were admitted into the evidentiary record. In addition, each party opposing the Settlement Agreement had the opportunity to seek discovery on the Agreement, file testimony in opposition, and question FPL witnesses regarding its terms. FAIR and LULAC et al. exercised that opportunity. Additionally, Commission Staff generated significant additional information regarding the Settlement Agreement through 12 separate sets of Data Requests. In addition, Opposing Parties had the opportunity to cross-examine FPL witnesses supporting the Agreement. Each of the Opposing Parties availed themselves of these opportunities and the result is an abundant, comprehensive, and complete record on the Settlement Agreement and each of its contested terms. In sum, there is a substantial record in this proceeding that allows the Commission, as well as its staff and the parties, to review and analyze the factors to be considered in determining the substantial public interest served by the Settlement Agreement.

vi. *<u>Public Interest - Efficient Regulation</u>*

No different than previous Commission-approved settlement agreements covering a multi-year period, the Settlement Agreement ensures the Commission retains full regulatory oversight with respect to FPL's rates and charges. Building upon this existing oversight, the Agreement offers additional regulatory efficiencies related to the consolidation of FPL's and Gulf's rates. Specifically, the Commission's future regulation of FPL and Gulf will involve only one set of consolidated rates and a single tariff book. Even more, with approval of the Agreement FPL will file, beginning in the reporting period following January 1, 2022, unified earnings surveillance reports for the formerly separate utilities. Oversight efficiencies would be recognized well into the future by the Commission, its Staff, and intervenors, as FPL will in future years file only a single rate case for the unified FPL utility, as opposed to two separate ones for FPL and Gulf.

In addition to the efficiencies mentioned, the Settlement Agreement will provide for a high degree of base rate certainty for all parties and FPL customers for a minimum of four years (Tr. 2720 (Barrett)) and obviates the need to return to the Commission as early as 2023 for new, higher base rates in 2024. In addition to savings of approximately $2 billion for customers discussed by FPL witness Bores and described below (Tr. 2761 (Bores); Ex. 620), this multi-year agreement preserves the time and resources of the Commission, its Staff, the parties, and FPL, therefore leading to efficient regulation of FPL's rates.

Rate mechanisms contained within the Settlement Agreement also facilitate efficient regulation of FPL. With regard to the RSAM, the Commission's ability to monitor the mechanism's usage and balance is explicitly preserved by the Settlement Agreement. In accordance with the Settlement Agreement, FPL will file an attachment to its monthly earnings surveillance report for December 2021 that shows the final amount of the "rollover" surplus that remained at the end of 2021. Thereafter, FPL will file an attachment to its monthly surveillance report for each month of each year during the Agreement's term that shows the amount of amortization credit or debit to the reserve amount on a monthly basis and year-end total basis for that calendar year. Settlement Agreement at Paragraph 16(g).

The SoBRA mechanism included in the Agreement has been regularly reviewed by the Commission in recent years and is well known to the parties in this case. It will operate consistently with the methodology approved in Order No. PSC-16-0560-AS-EI and implemented in FPL's previous SoBRA filings in Docket Nos. 20170001-EI, 20180001-EI, and 20190001-EI. Tr. 482-83 (Valle); s*ee also* Settlement Agreement at Paragraph 12. Consistent with that methodology, FPL will file a request for cost recovery approval of a solar generation project at the time of its final true-up filing in the Fuel and Purchased Power Cost Recovery Clause docket in the year prior to the solar generation project going into service, and in that proceeding the Commission will determine whether the solar project lowers FPL's projected cumulative present value revenue requirements ("CPVRR") compared to the projected system CPVRR without the project, and the amount of revenue requirements and appropriate percentage increase in base rates needed to recover the cost. *Id.* The continued use of this methodology will enable efficient regulation of the SoBRA mechanism under an established and previously practiced methodology.

The terms of the Settlement Agreement will also preserve the Commission's oversight of FPL's continuation of the asset optimization program approved in Order No. PSC-13-0023-S-EI and modified by Order No. PSC-16-0560-AS-EI. *See* Settlement Agreement at Paragraph 21. Annual review in the fuel clause docket will enable the same Commission oversight of the program's performance and activities as it has previously had, thus preserving a program that generated $354.5 million in savings for FPL's customers between 2013 and 2020. Tr. 800 (Forrest).

vii. *Public Interest - Additional Provisions of the Settlement Agreement Promoting the Advancement of Renewable Energy Technologies*

In addition to the core public interest considerations previously addressed, the Settlement Agreement also enables and encourages FPL to continue its track record of developing renewable resources and cutting-edge facilities and programs that benefit customers.[12] For example, the

[12] The Florida legislature has previously determined that "it is in the public interest to promote the development of renewable energy resources in this state." Section 366.91(1), Florida Statutes.

Agreement contains an extension of FPL's extremely popular and fully subscribed SolarTogether™ Program, which in turn will allow for the expansion of solar generation in Florida and open the program for former Gulf customers. The Settlement Agreement allows FPL to extend SolarTogether by constructing an additional 1,788 MW of cost-effective solar through 2025, such that the total capacity of SolarTogether will amount to 3,278 MW. Tr. 2779 (Valle). Residential and small business capacity will triple from the existing 335 MW to 1,005 MW while access to the program for low income customers will increase from 37.5 MW to 82.5 MW. Tr. 2779-80 (Valle).

Also included in the Settlement Agreement is a Green Hydrogen pilot project that will allow FPL to evaluate how its combustion turbine units operate with a hydrogen fuel mix and to learn how a hydrogen fuel production and storage facility can be effectively used on site with combustion turbine units. Settlement Agreement at Paragraph 24.

FPL would also be authorized under the Settlement Agreement to offer a four-year voluntary pilot program pursuant to which commercial and industrial customers on a metered rate may elect to have FPL install and maintain a solar facility on their site for a monthly tariff charge. Settlement Agreement at Paragraph 23.

In addition, the Settlement Agreement authorizes FPL to create pilot programs directly supportive of EV advancement in Florida. The EV pilot programs include the following:

- *EVolution* – a pilot program that supports the growth of electric vehicles. The primary objective of this pilot program for FPL is to gather data and learnings ahead of mass EV adoption to better plan for and design possible future EV investments.
- *Public Fast Charging Program* – a pilot program that expands access to public fast charging, including access in underserved areas and evacuation routes.

- *Residential EV Charging Services Pilot* – a voluntary tariff for residential customers who desire EV charging service at their home, for a fixed rate during off-peak times, through the installation of a level 2 EV charger, owned, operated and maintained by FPL.
- *Commercial EV Charging Services Pilot* – a voluntary tariff for commercial customers who desire EV charging services at their facility for fleet vehicles through the installation of Company owned, operated, maintained electric vehicle supply equipment.
- *New Technologies and Software* – limited pilot initiatives designed to evaluate emerging EV technologies and enhance service and resiliency for customers.
- *Education and Awareness* - FPL will complement its EV programs by adding components that increase awareness and educate customers about the choice to go electric.

Settlement Agreement at Paragraph 22. All of the EV programs noted above are extensions of the original FPL EVolution pilots and are designed to continue to test certain aspects of electric vehicle use and how that usage impacts FPL's electric system as well as provide optional voluntary tariffs to meet customer interests. Tr. 2788 (Valle). Each of the programs allows FPL to gather information about emerging and developing technologies and continue to provide dynamic programs and solutions for FPL's customers, an outcome that further promotes the public interest.

C. Record Evidence Overwhelmingly Supports that the Settlement Agreement Is in the Public Interest, and Opposing Parties' Challenges to the Agreement Lack Merit

As set forth above and as further addressed below in response to the Opposing Parties' contentions, there is ample evidence supporting approval of the Settlement Agreement as being in the public interest. Notably, intervenors who represent all classes of customers strongly support the Agreement. Those who oppose the Settlement Agreement, at best, can claim to represent only a handful of customer accounts or other "hazy" interests. FPL will not respond in this brief to each and every assertion made by the Opposing Parties in their pre-filed testimony and at hearing, but instead has identified and will address the following five broad categories of issues that are central to the Opposing Parties' opposition to the Agreement: (i) rate of return; (ii) RSAM; (iii) SolarTogether; (iv) the distribution of rates across customer classes; and (v) the minimum bill.

i. *Rate of Return*

The ROE and its established range are critical components of the Agreement and serve to enable FPL to maintain the financial strength needed to make investments that are necessary to safely provide customers with superior reliability. Like many aspects of the Agreement, the ROE was a compromise among the parties, and the ROE agreed to in the Agreement is 90 basis points lower than what FPL proposed and supported in its direct case. In spite of this compromise, expert testimony from FPL witness Coyne concludes that the 10.6 percent ROE midpoint in the Settlement Agreement, with a range of 9.7 percent to 11.7 percent, is within a reasonable range, even though the ROE is lower than what his analysis supported. Tr. 2767 (Coyne).

The Opposing Parties nonetheless argue that the ROE is excessive. Tr. 2682 (Rábago); Tr. 2632 (Devlin); Tr. 2656 (Herndon). Opposing Parties' positions, however, are supported only by incomplete analysis and fail to take into account the risk factors unique to FPL as well as the high operational performance and customer value that FPL's financial strength has enabled. In short, they focus on a single element of FPL's low-cost structure and a single element of the Settlement Agreement to the exclusion of the overall value and public interest. For example, witness Rábago conducted no independent ROE analysis and, with respect to FPL's equity ratio, simply selected the midpoint of FPL witness Coyne's proxy group companies, but forwent any real consideration of FPL's risk profile in relation to the proxy companies. Tr. 2773 (Coyne). Separately, FAIR witness Mac Mathuna claims that FPL's higher credit ratings in relation to DEF and TECO suggest lower risk and therefore a lower required ROE. Tr. 2602-03 (Mac Mathuna). Credit ratings, however, while useful for screening proxy group companies, are only one consideration in assessing business or financial risk, and the risks for equity investors are not the same as the risks for bondholders. Tr. 2767 (Coyne). Moreover, no testimony was offered to refute the differences in FPL's risk profile compared to those of DEF and TECO. *See* Ex. 363. In assessing whether FPL's ROE is appropriate, none of the Opposing Parties' witnesses analyzes the extent to which FPL's ROE has served to enable FPL's exceptional performance; rather, they choose to ignore it by contending that all companies have the same opportunity, if not obligation, to provide superior levels of performance and service. Tr. 2657 (Herndon). And yet, the Opposing Parties offer no explanation for why other companies do not meet those standards or levels of performance.

Opposing Parties' opposition to the ROE contained in the Settlement Agreement is based on one element of an overall cost structure that is among the lowest in the industry and has led to industry leading performance and customer value. Tr. 2333-34 (Barrett). What Opposing Parties provide in testimony are statements that completely disregard FPL's need to maintain the financial strength that has led to FPL's superior operational performance and low rates. For example, witness Herndon's position that FPL should have an ROE and capital structure that is designed to elicit the "lowest possible cost" (Tr. 2657 (Herndon)) is not an accurate statement of law, although he purports to offer it as the governing standard.[13] Beyond being an incorrect statement, his

[13] "Lowest possible cost" is not the legal standard by which rates for public utilities in Florida are set, but rather "fair and reasonable" rates. *See* Section 366.06, Florida Statutes; *see also* Tr. 2736-37 (Barrett).

proposed outcome would have a damaging effect on FPL's ability to make needed investments on behalf of customers. Tr. 2335 (Barrett). With regard to the ROE's impact on rates, one witness goes as far as to say that the Agreement's ROE would "ensure" that "the people of Florida continue to suffer under high electricity bills." Tr. 2682 (Rábago). This is just one among many hyperbolic statements made by Mr. Rábago. It has no factual basis and is wholly unreflective both of the rates that, in fact, would be set by the Agreement and how FPL customer bills would compare nationally as well as to other Florida investor-owned utilities that have lower authorized ROEs. What the record in fact shows is that, under the ROE established by the Agreement, FPL's projected 2022 typical residential 1,000-kWh bill would remain nearly 21 percent below the current national average and the projected 2025 typical residential 1,000-kWh bill would remain nearly 22 percent below the projected 2025 national average. Tr. 2793 (Cohen). As FPL witness Barrett aptly stated at hearing, "customers do not pay ROE, they pay bills." Tr. 2910 (Barrett). A point of reference that emphasizes this is that FPL's bills are lower than both TECO's and DEF's, despite FPL having a higher authorized ROE. Tr. 2910 (Barrett).

Attempts by Opposing Parties to compare FPL's rate of return under the Agreement with other Florida and nationwide utility commission decisions fail to take into account the unique context in which those decisions were reached and should therefore be rejected. For example, Mr. Mac Mathuna references 11 other U.S. decisions, including settlements approved or proposed in Florida, as a basis for judging the reasonableness of the FPL settlement. Tr. 2601, 2603-07 (Mac Mathuna). However, as pointed out by FPL witness Coyne, there are problems with this comparison. Specifically, of the 11 cases Mr. Mac Mathuna cites, three were litigated, seven were settled, and one is proposed. Each of these cases represents a specific utility and set of circumstances which differ. In the case of settlements, these agreements represent a balancing of interests and trade-offs, with gives and takes. Tr. 2768 (Coyne). As witnesses Coyne testified, one cannot refer to just one element, the cost of capital, in isolation without consideration of the other factors involved. Tr. 2768 (Coyne). The risk profile of the utility, the years of the agreement, and the numerous other factors that go into the settlement between parties. Tr. 2768 (Coyne). And, Mr. Mac Mathuna's comparison group conspicuously ignores the recent decision by the Georgia Public Service Commission that approved Georgia Power's recent settlement agreement that included an authorized ROE of 10.50 percent on a 56 percent equity ratio. Tr. 2770 (Coyne). As explained by Mr. Coyne, the Georgia Power decision is more comparable because that utility's settlement comprised a three-year rate plan spanning 2020-2022 and the utility has a risk profile that shares several significant risk factors with FPL, such as nuclear and capital expenditure risks. Tr. 2925-2926 (Coyne). However, FPL's risk is even greater than Georgia Power's because of FPL's greater exposure to hurricanes and having an additional year of locked-in rates. Tr. 2925 (Coyne).

FPL's rate of return as provided in the Settlement Agreement allows FPL to maintain its financial strength, which is an outcome that supports the public interest considerations previously discussed. As FPL witness Barrett testified, if the Opposing Parties' recommendations concerning cost of capital and rate of return were accepted, FPL's financial strength would be meaningfully undermined and, over time, FPL's ability to continue delivering superior customer value would erode. Tr. 2335 (Barrett). Mr. Barrett succinctly summarized the risk: "Investors that have long supported the Company would direct their capital elsewhere as they assess the opportunity to earn a fair return and surmise that FPL's winning strategy is no longer supported." Tr. 2335 (Barrett). The Settlement Agreement's terms are designed to quash this possibility.

ii. *RSAM*

The RSAM is an accounting mechanism used by the Company to respond to changes in its underlying revenues and expenses in order to maintain an FPSC Adjusted ROE within the ROE range authorized by the Commission. This flexibility is key to the Agreement's four-year minimum term. An RSAM framework like the one contained in the Settlement Agreement was approved by the Commission as a core element in each of the last three FPL settlement agreements, *i.e.*, 2010, 2012, and 2016, and has been a constructive part of FPL's ability to continue to deliver value for customers over the last decade. Tr. 2298 (Barrett). In each earnings surveillance reporting period, the Company records increases to expense (debits) or decreases to expense (credits) such that the overall resulting ROE for that rolling period equals a pre-established ROE within the authorized range. Tr. 2299 (Barrett). The RSAM results only in non-cash earnings. In other words, the RSAM allows FPL to absorb changes primarily in cash revenues and expenses while maintaining a pre-established ROE within its authorized range without an increase in customer rates. *Id.*; Tr. 2930-31 (Barrett).

The RSAM contained in the Settlement Agreement has a direct and beneficial impact on customers. In total, the RSAM reduces cash rates for customers by greater than $2 billion over the four-year term of the Agreement. This is accomplished, in part, by the RSAM's separate set of depreciation parameters, which allow for a lower accrual and have the effect of reducing FPL's revenue requirement by almost $200 million annually over the four-year term of the agreement, representing an approximately $800 million total cash rate reduction. Tr. 2761, 2825-26 (Bores); Ex. 620. In addition, the RSAM obviates the need to collect incremental revenue requirements in cash rates of approximately $411 million in 2024 and approximately $865 million in 2025. *Id.* The rate benefits of the RSAM extend beyond the base rate component, however, and prior usage of the RSAM has proven to be a beneficial tool in mitigating unanticipated rate impacts during the terms of prior agreements. For example, FPL has been able to use the RSAM in the past to absorb the restoration costs associated with costly hurricanes (Hurricane Irma and Hurricane Dorian), as well as to extend the term of prior multi-year rate plans to the benefit of customers. Tr. 2911-12 (Bores).

In spite of FPL's track record of success in using the RSAM to enhance customer value, the Opposing Parties argue that the RSAM is a mechanism that over-favors shareholder interests. Tr. 2683 (Rábago); Tr. 2668 (Herndon); and Tr. 2646-47 (Devlin). This contention is unpersuasive and, more to the point, wrong. For the reasons previously detailed, the RSAM is a mechanism that *benefits* rather than burdens customers by allowing FPL to address financial contingencies within the bounds of the Settlement Agreement. Without the RSAM, there can be no four-year rate plan. Tr. 2757 (Bores). As described by FPL witness Bores, FPL anticipates it will have significant increasing revenue requirements in 2024 and 2025 as it continues to invest for the benefit of customers, despite agreeing to forgo general base rate increases in those years. With estimated incremental revenue requirements of $411 million in 2024 and 2025 and an additional $454 million in 2025 – or a total cumulative amount of $1,276 million – FPL projects that it will need approximately 90 percent of the RSAM reserve amount just to earn at its ROE mid-point in 2024 and 2025. Tr. 2758 (Bores). As such, the RSAM is correctly regarded as a mechanism that enables the very terms of the Settlement Agreement as opposed to a tool that is in place for FPL's shareholders.

Only about 10 percent of the Reserve Amount ($174 million) would be available for FPL to take on the responsibility to manage increases in the cost of doing business through each year of the settlement term. Costs may rise due to any number of factors, such as increases in inflation or interest, unexpected expenditures, revenue losses or other changes in the business over the Agreement's four years. Tr. 255, 2759 (Bores). There is also risk and uncertainty regarding the impact that recent economic turbulence may have on productivity, the labor force, and technological innovation – all factors which FPL relies on to drive further efficiency and execute its capital plan for the benefit of customers. Tr. 250 (Bores). In fact, the economic landscape already has started to change since the time FPL filed its rate petition, indicating that FPL likely understated its revenue requirements. Tr. 245 (Bores). As demonstrated in the record, IHS Markit, an independent source for economic projections, reflected much higher current and long-term inflation assumptions in their June 2021 forecast compared to the inflation rates FPL utilized in preparing its forecasts. Tr. 250 (Bores). For 2021 alone, the inflation rate *doubled* from 1.68% assumed in FPL's MFRs to 3.3%. Ex. 398. Additionally, on June 16, 2021 the Federal Open Market Committee, a committee that conducts monetary policy for the United States central bank, raised its inflation expectations and announced that it may need to increase interest rates earlier than expected. Tr. 250-51 (Bores). These market changes – all of which happened during the course of this proceeding – are significant and exemplify the nature of the risks and uncertainties the Company must manage during the settlement term. *Id*. Absent the RSAM, FPL could not commit to a multi-year settlement term in the face such substantial uncertainties.

It is also argued by Opposing Parties that, if allowed at all, the use of the RSAM should only allow FPL to achieve its mid-point ROE. Tr. 2630-33 (Devlin). The Opposing Parties ignore the fact that FPL projects it will need approximately 90 percent of the RSAM to achieve the midpoint ROE in 2024 and 2025, and the remaining balance must be used prudently to manage uncertainties in the business. Tr. 2760 (Bores). FPL has demonstrated through its prior settlement agreements that allowing for flexible use serves as an effective incentive for FPL to find further productivity savings. That incentive would be negatively affected by such a limitation. Tr. 2760 (Bores). The Opposing Parties also ignore the fact that the RSAM has a positive effect on rates: that is, it has the effect of reducing a cash revenue increase of greater than $2.0 billion over the settlement term. Tr. 2761 (Bores). Therefore, contentions from the Opposing Parties that the RSAM is somehow ill-fitting with the public interest are misplaced and fail to recognize the positive impact on customers that the RSAM provides.

iii. *SolarTogether*

FPL's existing SolarTogether program will be expanded under the Settlement Agreement to allow additional customers to participate in and benefit from the development of solar generation facilities in Florida. In its March 2020 order approving the program, Order No. PSC-2020-0084-S-EI ("Order 0084"), the Commission authorized FPL to construct 1,490 MW of solar facilities. Since that time and due to the very strong customer desire for the program, the program is now fully subscribed. The Settlement Agreement, however, re-opens the program by allowing FPL to extend SolarTogether through the construction of an additional 1,788 MW of cost-effective solar through 2025, such that the total capacity of SolarTogether will be 3,278 MW. Settlement Agreement at Paragraph 20. Under the Settlement Agreement, 40 percent of the 1,788 MW of incremental capacity above the original 1,490 MW will be allocated to residential and small business customers along with low income customers. Tr. 2779 (Valle). Residential and small business capacity will triple from the existing 335 MW to 1,005 MW while access to the program for low income customers will increase from 37.5 MW to 82.5 MW. Tr. 2779-80 (Valle). The remaining 60 percent will be allocated to commercial, industrial, and governmental customers (20 percent of this capacity is reserved for participants located in the former Gulf service area). Tr. 2780 (Valle).

Under the Settlement Agreement, the projected benefits of SolarTogether investments will be allocated with 55 percent to participants and 45 percent to the general body of customers, with the goal of an approximate seven-year simple payback period for program participants. Tr. 2780 (Valle). The net CPVRR benefit to FPL customers for the 44 sites included in the extended SolarTogether Program is projected to be $648 million. Tr. 2747 (Bores). Therefore, with the 45 percent benefit allocation to the general body of customers, the associated total CPVRR net benefit for that group will be $292 million. The remaining 55 percent of the total CPVRR net benefit ($357 million) will be allocated to participants in the program. Tr. 2749 (Bores). The proportional benefit allocation is no different than the one approved in Order 0084. With regard to the extended program, it is important to note that the participants in the SolarTogether extension will pay greater than 100 percent of the base revenue requirements associated with the program and will receive 55 percent of the overall benefits; whereas the non-participants will pay no specific program costs, but receive 45 percent of the benefit. Tr. 2871 (Bores).

As recognized in Order 0084, the program aligns with the Florida Legislature's intent in Section 366.92, Florida Statutes, and provides ample system-wide benefits, including: promoting the development of renewable energy, encouraging investment within the state, diversifying the types of fuel used to generate electricity, lessening the state's reliance on fossil fuels, and decreasing carbon emissions. Tr. 2780 (Valle); Order 0084 at 5.

Ignoring the significant CPVRR and clean energy benefits associated with the SolarTogether expansion, witness Rábago asserts four misplaced criticisms of the SolarTogether extension, which, in general terms, are: (1) That the extension of the program should not be considered in the context of a settlement (Tr. 2691, 2695 (Rábago)); (2) That the extended program is not designed fairly (Tr. 2692, 2694 (Rábago)); (3) That FPL should abandon the program in favor of standard, universal solar (Tr. 2695-96 (Rábago)); and (4) That the economics of the extended program are not justified (Tr. 2692-93 (Rábago)).

As to witness Mr. Rábago's first criticism, he incorrectly suggests that the proposed extension of the SolarTogether program is "wholly untested and unexamined in this proceeding." Tr. 2691 (Rábago). He concludes this argument by suggesting that evaluating the extension of the SolarTogether program in this proceeding would "bypass any rigorous review" of the proposal. Tr. 2695 (Rábago). Mr. Rábago ignores, however, the fact that the SolarTogether program was thoroughly reviewed, analyzed, and approved by the Commission in 2020 (Docket No. 20190061-EI). In the Settlement Agreement, FPL has made only modest changes to megawatt and benefit allocations which are improvements compared to those in the original program, but the extension of the program remains as approved in Order No. PSC-2020-0084-S-EI. Tr. 2785-86 (Valle). The adjustments to the program more than double the CPVRR benefits for the general body of customers over the life of the program. Mr. Rábago also ignores the review that has occurred since the Settlement Agreement was filed. In addition to the information provided as part of the Settlement Agreement, FPL has responded to dozens of requests, including questions from Commission Staff, seeking information concerning the extension of the SolarTogether program. Tr. 2786-87 (Valle).

Second, Mr. Rábago contends that the program is unfair out of the mistaken view that participating customers receive 55 percent of the benefits of the program while bearing 0 percent of the risk that the program will not operate as expected. Tr. 2692, 2694 (Rábago). The Commission heard and did not accept similar arguments in the original FPL SolarTogether docket.

See Order No. PSC-2020-0084-S-EI. As was the case in the original program and as is the case with the proposed extension of the program here, over the life of the program the general body of customers is not expected to bear any cost responsibilities but will share in almost half of the total projected net system savings (45 percent) of the $648 million in CPVRR. Tr. 2787 (Valle). At the hearing, LULAC et al.'s counsel pointed out that specific elements of the program, in specific years of the program, have costs that flow to the general body of customers (*see*, *e.g.*, Tr. 2848-2852), but such points do nothing to diminish the value of the program for both participants and non-participants. As witness Bores explained, the SolarTogether facilities are no different than any other utility investment in that the SolarTogether investments do not pay for themselves immediately; however, in the long-term, just as with FPL's other investments, there is significant benefit to customers. Tr. 2854-2855 (Bores). Witness Valle also pointed out that LULAC et al.'s counsel's "cherry-picking" of results in early years does nothing to refute the fact that, over the life of the program, "there is a significant amount of benefits that come back" to the general body of customers. Tr. 2852-2853 (Valle).

With regard to witness Rábago's third argument that the Company should build more universal solar rather than deploy an extension of the SolarTogether program (Tr. 2695-96 (Rábago)), Mr. Rábago simply ignores the undisputed demand that customers have for the SolarTogether program. FPL has a substantial waiting list of customers that wish to participate in the SolarTogether program in addition to Gulf customers who have not previously had a chance to participate. Tr. 2787 (Valle). More rate based solar does not meet this demand. *Id.* The SolarTogether program, and the extension proposed here, therefore is a win-win for participating and the general body of customers. Tr. 2787-88 (Valle).

Fourth, Mr. Rábago's claim that the expanded SolarTogether program imposes a cost on the general body is based on his flawed math and is simply wrong. Tr. 2691-96 (Rábago). In reaching his conclusion that the SolarTogether extension proposed in the Settlement Agreement will impose costs on the general body of customers, Mr. Rábago took the SolarTogether economic model that was provided by FPL in discovery and changed only one input without thought or regard for what else he would need to change to have the answer make logical sense. By simply increasing the ROE in the model to 11.7 percent, which is an improper assumption, he (not FPL) imposed a significant cost on the general body of customers in his calculations. Given the construct of the program, however, if there was a higher cost of capital (such as the 11.7 percent ROE that Mr. Rábago inappropriately assumed), and thus a higher revenue requirement for the SolarTogether facilities, Mr. Rábago also would have needed to adjust the subscription charge to ensure participants covered that higher cost of capital. By failing to make this adjustment, Mr. Rábago's results misrepresent the cost of the program to the general body of customers. Tr. 2764-2765 (Bores). When proper math and assumptions are used, the results show that the extended SolarTogether program is projected to provide $292 million in CPVRR benefits for the general body of customers, which is more than double the $112 million benefit projected in the original program. Tr. 2764 (Bores). Under the extended program, $95 million of the benefit allocated to the general body is "fixed," which is also higher than the fixed benefit included in the original program. *Id.*

In all, the record shows that the SolarTogether extension may properly be approved as part of the Settlement Agreement, is projected to provide $292 million in CPVRR benefits for the general body of customers, and fulfills customers' desire to participate in an approved program that is currently oversubscribed.

iv. *Revenue Allocation Across Customer Classes*

FIPUG, FRF, and FEA all presented evidence regarding revenue allocation under FPL's original rate petition, and each had different proposals for how to allocate the proposed revenue increase to the customer classes. The revenue allocation under the Settlement Agreement reflects a compromise between these differing and competing positions by parties representing a broad range of interests and customers. Tr. 2796 (Cohen). Although the signatory parties did not agree to a specific cost of service methodology under the Settlement Agreement, the Signatories agreed to allocate the revenue increase to the customer classes consistent with prior settlements and in accordance with the Commission's gradualism principle. Tr. 2796 (Cohen). The record evidence shows that the revenue allocation under the Settlement Agreement is fair and results in rates that are just and reasonable for all customer classes and should be approved.

Under the Settlement Agreement, the residential rates will be lower than the filed rates, and the bills for all customers are projected to remain among the lowest in the nation as explained above. Tr. 2793 (Cohen). The bill impacts over the four-year term of the Agreement compare very favorably to the projected inflation for that period. Tr. 2728 (Barrett); Tr. 2805 (Cohen). With respect to the residential class, the base revenue allocation under the Settlement Agreement is approximately 59 percent, which is higher than the filed case but is slightly lower than it has been for the past fifteen years. Tr. 2796-97 (Cohen). Indeed, if the revenue allocation from the Commission-approved 2016 Settlement Agreement had been applied, the residential class would have been allocated nearly 66 percent of the increase in base revenues, or an additional $45 million of revenues, as compared to the allocation under the Settlement Agreement. Tr. 2796-97 (Cohen).

The Opposing Parties' criticisms of the revenue allocation under the Settlement Agreement are misplaced and disregard the unrefuted record evidence. In support of the Opposing Parties' opposition to the revenue allocation under the Settlement Agreement witness Rábago claims that the settlement rates are worse for residential customers than FPL's originally proposed rates. Tr. 2680, 2684 (Rábago). As explained below, witness Rábago's statement is contrary to the unrefuted record evidence that the revenue allocation under the Settlement Agreement is in fact lower than under the filed rates. Witness Rábago also argues that the revenue allocation under the Settlement Agreement shifts revenues from the largest customers to the residential and non-demand general service customers and results in these customer classes subsidizing the largest customers. Tr. 2684-91 (Rábago). However, witness Rábago's argument relies on FPL's original cost of service study and ignores that the revenue allocation under the Settlement Agreement was a compromise between FPL's and intervenors' competing cost of service methodologies that had significantly different allocations to the residential class.

Contrary to witness Rábago's claim that the settlement rates are worse for residential customers than FPL's originally proposed rates, it is undisputed that the revenue allocated to the residential customers under the settlement rates is, in fact, $101.5 million less in 2022 under the settlement rates than the filed rates and $106 million less in 2023 under the settlement rates than the filed rates. Tr. 2806 (Cohen). In fact, witness Rábago concedes that the increase in base rates under the Settlement Agreement is less for residential customers than under the original as-filed rates. Tr. 2684 (Rábago). Further, as previously explained, the typical residential bill for customers in the former FPL service area is projected to increase by only about 2.5 percent through 2025, as compared to 3.4 percent under the rates originally proposed, and the typical residential bill for customers in the former Gulf service area will decrease by approximately 0.7 percent through 2025. Tr. 2805 (Cohen). Thus, witness Rábago's statement that residential rates are worse under the Settlement Agreement than under the originally filed rates is simply wrong, completely lacks any evidentiary support, and must be rejected.

Similarly, the Commission should also reject witness Rábago's argument that the Settlement Agreement results in an excessive amount of revenue requirement being imposed on the residential and non-demand general service customers and subsidizes the largest customers. Tr. 2685 (Rábago). According to witness Rábago, the revenue allocated to the residential and non-demand general service customers under the Settlement Agreement is unfair because it exceeds the equalized share of revenue requirement calculated by FPL's original cost of service study at equalized revenues. Tr. 2688-89 (Rábago). Witness Rábago's revenue allocation arguments are misleading and flawed for multiple reasons.

Notably, witness Rábago did not submit any cost of service testimony or exhibits in the litigated case. Notwithstanding, in his settlement testimony witness Rábago is, for the first time, critical of FPL's original cost of service study at equalized revenues and claims that it would impose excessive burdens on residential customers and provide subsidies to large general service customers. Tr. 2684-87 (Rábago). Despite his untimely criticisms of FPL's original cost of service study, witness Rábago relies upon the very same FPL original cost of service study at equalized revenues for the purpose of "supporting" his position on revenue allocation and uses it as his baseline to compare the revenue allocation under the Settlement Agreement. Tr. 2688-89 (Rábago). Witness Rábago cannot credibly reject the results of FPL's original cost of service study on one hand while on the other hand relying on the very same original cost of service study to support his position on revenue allocation.

Witness Rábago's argument on revenue allocation is based on his position that the share of revenues allocated to the residential and non-demand general service customers under the

Settlement Agreement are more than the share of revenues that would have been allocated to these customer classes under FPL's original cost of service study at equalized revenues. Tr. 2688-90 (Rábago). The flaw with witness Rábago's approach is that FPL's original cost of service study at equalized revenues was not used to allocate the revenues under the Settlement Agreement. Rather, the revenues under the Settlement Agreement were allocated based on a compromise between FPL's filed cost of service methodology without Minimum Distribution System ("MDS") and the cost of service methodology with MDS proposed by FIPUG, FRF, and FEA. Tr. 2808-09 (Cohen).

In the litigated proceeding, the Commission could have accepted FPL's filed cost of service methodology without MDS, which would have allocated less revenues to the residential class than under the Settlement Agreement. Alternatively, the Commission could have accepted the cost of service methodology with MDS proposed by FIPUG, FRF, and FEA, which would have allocated more revenues to the residential class than under the Settlement Agreement. Tr. 2808-09 (Cohen). In the Settlement Agreement, the Signatories agreed to a compromise that landed in between these two competing "book ends" on revenue allocation. This compromise in the Settlement Agreement fairly and fully resolved the dispute among the parties that actually took positions and submitted evidence on the appropriate cost of service methodology and revenue allocation to be applied in this case.

Witness Rábago, however, ignores this compromise and compares the results of FPL's filed cost of service study at equalized revenues with the results of the revenue allocation under the Settlement Agreement. Tr. 2688-89 (Rábago). The flaw with Mr. Rábago's approach is that FPL's original cost of service study at equalized revenues was not used to allocate the revenues under the Settlement Agreement as explained above. Further, even if FPL's original cost of service were the correct baseline, which it is not, Mr. Rábago's analysis does not use the correct FPL original revenue allocation. Mr. Rábago's analysis incorrectly relies on the revenue allocation under FPL's original cost of service at equalized revenues, which is prior to the application of the Commission's principle of gradualism. Thus, Mr. Rábago fails to recognize or completely ignores that the revenue allocation at equalized revenues was not FPL's original revenue allocation. Tr. 2807-08 (Cohen).

Further, witness Rábago's comparison of the revenue deficiency calculated at FPL's present revenues and with the revenue allocation under the Settlement Agreement is not a meaningful comparison. To perform a correct comparison of present and proposed revenues, one must use the same cost of service methodology for both present and proposed revenues. Witness Rábago, however, compares the results of FPL's filed cost of service study at present revenues with the results of the revenue allocation under the Settlement Agreement, which are based on entirely different cost of service methodologies as explained above. Witness Rábago's comparison of present and proposed revenues using different cost of service methodologies is an "apples-to-oranges" comparison and should be accorded no evidentiary weight.

Witness Rábago also fails to account for the Commission's principle of gradualism. As stated above, witness Rábago's analysis relies on FPL's filed cost of service at equalized revenues, which is prior to the application of the Commission's principle of gradualism. The settlement revenues, by contrast, are based on rates designed in accordance with the Commission's principle of gradualism. FPL ensured that rates under the Settlement Agreement followed gradualism and limited the revenue increases allocated to each rate class to no more than 1.5 times the system average. FPL also carefully considered the total bill impact over the term of the Settlement

Agreement, which averages 2.5 percent per year through 2025, as compared to 3.4 percent under the original filed rates. Tr. 2809-10 (Cohen).

Finally, witness Rábago's argument that the revenue allocation under the Settlement Agreement is not moving the residential customers closer to parity is inaccurate and disregards the terms of the Agreement. Witness Rábago attempts to compare parity at present rates under FPL's filed cost of service study with the revenue allocation under the Settlement Agreement, which is not a correct comparison for the reasons previously explained. Tr. 2810-11 (Cohen). Further, Mr. Rábago ignores that, because the settlement parties agreed to a negotiated methodology for allocating distribution, there was not a full settlement cost of service study available to calculate parity at settlement rates. Rather, the settlement rates reflect a negotiated compromise between FPL's as-filed position on parity and the intervenors' position on parity. Tr. 2811-12 (Cohen). Further, although there is no full settlement cost of service study to calculate parity, in agreement with Staff, FPL provided a response to a Staff Data Request showing parity at settlement rates using a full MDS cost of service study as a proxy. Ex. 470. Although it does not completely reflect parity at settlement rates, the results of the proxy MDS cost of service study indicate that customers will remain close to parity under the settlement rates. Ex. 470.

For these reasons, witness Rábago's criticisms of the revenue allocation under the Settlement Agreement are fundamentally flawed and should be accorded no evidentiary weight. The only parties that submitted testimony and evidence regarding cost of service and revenue allocation reached a compromise that fully resolved differing and competing positions raised by parties representing a broad range of interests and customers. The revenue allocation under the Settlement Agreement is within these competing positions on revenue allocation, is consistent with the Commission's principle of gradualism, and is consistent with prior Commission-approved settlement agreements. Taken as a whole, and considering the favorable bill impacts to all customers during the term of the Agreement, the revenue allocation and rates under the Settlement are fair, just, reasonable, and should be approved.

v. *Minimum Bill*

The Settlement Agreement provides for the addition of a minimum base bill of $25.00 for all residential and general service non-demand customers. The minimum bill will better ensure that all customers with little or no usage contribute towards their fair share of fixed system costs. The minimum bill provision is just one element of the Settlement Agreement, but it is reflective of the overall compromise reached through extensive negotiations. It also represents an alternative to increasing the base charge, which would impact all customers, including low-income customers, and not only those customers with low or zero usage. Tr. 2798-99 (Cohen).

The claim by witness Rábago that the minimum bill proposal violates the principle of cost causation (Tr. 2701 (Rábago)) improperly ignores the fact that FPL incurs fixed system costs to connect and serve a customer even if that customer's usage is low or zero. Without an appropriate adjustment such as a higher customer charge or a minimum bill, other customers are subsidizing the customer with low or zero usage. Tr. 2798 (Cohen). A good example is a seasonal, second homeowner that only occupies the premises four to six months out of the year. During the six to eight months of no usage, the owner of the second home would only pay the customer charge in absence of the minimum bill. However, the customer charge covers only the billing, metering, and customer service costs. It does not cover any portion of wires and poles that are still required for FPL to connect the customer to the system and to be ready and available to serve the seasonal second homeowner when they return. In the absence of a minimum bill, other customers are subsidizing the fixed costs incurred for such customers with low or no usage. Tr. 2812-13 (Cohen).

The minimum bill better ensures that all residential and general service non-demand customers contribute towards their fair share of fixed system costs FPL must incur to be ready, willing, and able to serve a customer's load at any time even if the customer has low or zero usage at any point. Tr. 2812 (Cohen).

Witness Rábago also incorrectly claims that the minimum bill proposal under the Settlement Agreement discourages customer investment in energy efficiency and distributed generation. Tr. 2701-02 (Rábago). This argument is factually incorrect because unless a customer goes "off the grid" and completely disconnects from FPL's system, FPL must still incur fixed costs in order to be ready and able to serve the customer's entire load at any time even if they have installed energy efficiency or distributed generation. Tr. 2813-14 (Cohen). For example, a customer that installs distributed generation may still need FPL to serve all or a portion of the customer's load if the distributed generation resource fails, is taken out of service, or is only operational during certain times or conditions, such as during the day when the sun is shining. The minimum bill will better ensure all customers pay their fair share of these fixed costs, and that customers with low or no usage are not being subsidized by other customers. Finally, even with energy efficiency measures and distributed generation resources, it is hard to imagine usage could be any more conserved than the small amount of kilowatt-hours subject to the minimum bill. Tr. 2814 (Cohen).

FPL submits that adding a proposed minimum bill will ensure that customers with little to no usage fairly and reasonably contribute to the fixed costs incurred to serve them and will reduce the potential for subsidization by other customers. Tr. 2799 (Cohen).

D. The Commission's Procedure for Reviewing and Considering the Agreement Has Recognized and Preserved Parties' Due Process Rights

The procedure undertaken by the Commission to review the merits of the Settlement Agreement was more than sufficient in preserving the due process rights of all parties. Fundamentally, due process requires that parties to a proceeding be given adequate notice and an opportunity to be heard on the issue or issues in the case. *Bresch v. Henderson*, 761 So.2d 449, 451 (Fla. 2nd DCA 2000). The concept of due process in an administrative proceeding is less stringent than in a judicial proceeding, although it nonetheless applies. *Hadley v. Department of Administratio*n, 411 So.2d 184, 187 (Fla. 1982). As stated in *Hadley*, "the extent of procedural due process protections varies with the character of the interest and nature of the proceeding involved." Thus, "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 187, citing *Mathew v. Eldridge*, 424 U.S. 319, 334 (U.S. 1976). Due process is satisfied if parties are provided notice of the hearing and an opportunity to be heard. *Jennings v. Dade County*, 589 So.2d 1337, 1340 (Fla. 3rd DCA 1991).

Here, the Settlement Agreement was filed by the Signatory Parties on August 10, 2021, and any party opposing the Agreement had until September 17, 2021 to seek discovery regarding the Agreement. *See* Order 0314. In addition, Opposing Parties had the opportunity to submit pre-filed testimony regarding the Agreement and cross-examine FPL witnesses supporting the Agreement in a properly noticed hearing. The Opposing Parties availed themselves of these opportunities and the result is a fulsome and complete record on the Settlement Agreement and each of its contested terms. All parties now have the opportunity to file a brief on the merits of the Agreement. These robust hearing procedures and process ordered by the Commission is more than enough to satisfy each party's due process rights.

Opposing Parties' claims that provisions contained within the Agreement somehow offend due process rights should be rejected. For example, witness Rábago's claim that inclusion of a minimum bill provision in the Agreement offends due process (Tr. 2702 (Rábago)) is severely misplaced. In making this claim, Mr. Rábago fails to take into account the opportunity that was afforded to LULAC et al. to seek discovery on, present testimony on, and brief the minimum bill provision. Under established law, this does not amount to a due process violation. The same can be said of any other provision contained in the Agreement.

E. Conclusion

In consideration of the record evidence, and taking into account the Commission's statutory and historical purposes (*i.e.*, to ensure that customer rates are just and reasonable, that service is efficient, safe, and reliable, and that the utility is able to attract capital on reasonable terms), and particularly in acknowledging the inter-relationship among these purposes, the Settlement Agreement is in the public interest. FPL's demonstrated ability to continuously deliver low bills and industry-leading customer value while operating within the structure of multi-year rate agreements clearly establishes that continuation of such a paradigm is in the public interest. Even witness Rábago, who opposes the Agreement, acknowledges in his sworn testimony that "Settlement agreements can be in the public interest when they result in just and reasonable rates, administrative savings, and reduced risk of litigation." Tr. 2683 (Rábago). For the reasons stated herein, the evidence shows that the Agreement does exactly that and can and should be approved by the Commission as being in the public interest.

<u>Issue 1:</u> **Does the Commission have the statutory authority to grant FPL's requested storm cost recovery mechanism as part of the Stipulation and Settlement Agreement?**

*****Yes. The Commission has approved substantially the same mechanism in settlements of FPL's last three rate cases. The Florida Supreme Court has rejected challenges to the last two of those settlements and affirmed they were in the public interest. Further, the proposed mechanism is consistent with the Commission's rule on storm cost recovery, and the calculation of amounts to be recovered would be performed in accordance with the Commission's Incremental Cost and Capitalization Approach methodology.*

There is substantial statutory authority and precedent allowing for the Commission to approve the SCRM presented in the Settlement Agreement, whether approved via settlement or through a litigated outcome. The statutory standard imposed upon the Commission is to fix "fair, just and reasonable rates." Sections 366.06(2), 366.05(1), Florida Statutes. The Florida Supreme Court has consistently recognized the broad legislative grant of authority which these statutes confer and the considerable license the Commission enjoys as a result of this delegation. *Citizens of State v. Pub. Serv. Comm'n*, 425 So.2d 534, 540 (Fla. 1982).[14] The authority to approve the SCRM resides well within the broad legislative authority afforded to the Commission.

As proposed in the Agreement, and consistent with the currently approved mechanism for the recovery of storm restoration costs, FPL would recover storm costs beginning on an interim basis, 60 days following the filing of a cost recovery petition and tariff with the Commission, and

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[14] The Florida Supreme Court has recognized that "the Commission has the authority to adopt rules for the determination of rates in full revenue requirement proceedings… [and] adjustments of rates based on revenues and costs during the period new rates are to be in effect and for incremental adjustments in rates for subsequent periods." *Citizens*, 146 So.3d at 1157. Under this authority, the Commission adopted Rule 25–6.0425, F.A.C., which provides that "[t]he Commission may in a full revenue requirements proceeding approve incremental adjustments in rates for periods subsequent to the initial period in which new rates will be in effect." *See id*. Therefore, the Commission's governing statutes and its existing rules authorize approval of a mechanism like the SCRM. Moreover, the authority conferred upon the Commission by Section 366.076, Florida Statutes, related to limited proceedings, certainly would include the authority to authorize the SCRM; so to suggest the Commission were not able to do so in this proceeding would be at odds with this specific delegation of authority.

the initial recovery mechanism would be capped at an amount producing a $4 per month surcharge on a typical residential 1,000 kWh bill. The Agreement states that additional costs would be eligible for recovery pursuant to Commission order. Settlement Agreement at Paragraph 10(b). The SCRM therefore allows FPL to effectively address storm restoration needs while preserving lower rates for customers and ensuring effective Commission oversight of costs.

There is substantial Commission precedent for prompt recovery of costs on an interim or projected basis, subject to subsequent true-up. *See, e.g.*, *In re: General investigation of fuel adjustment clauses of electric companies*, Docket No. 74680-CI, Order No. 6357 at 7 (F.P.S.C. Nov. 26, 1974); *In re Florida Power* & *Light Company*, Docket No. 041291-EI, Order No. PSC-050937-FOF-EI at 34-35 (F.P.S.C. Sept. 21, 2005). Further, there is no statute that prohibits the Commission's approval of the SCRM and the Commission has approved substantially the same mechanism in settlements of FPL's last three rate cases. *See* Order Nos. PSC-2016-0560-AS-EI, PSC-2013-0023-S-EI, and PSC-2011-0089-S-EI. The Florida Supreme Court also has rejected challenges to the last two of those settlements and affirmed them as being in the public interest. *See Brown*, 243 So.3d at 916 and *Citizens*, 146 So.3d at 1173. The storm cost recovery mechanisms approved in those settlements have been implemented to provide prompt storm cost recovery for multiple hurricanes over the past several years, and they have worked effectively for that purpose. Tr. 2363-64 (Barrett). Nowhere in any of the above-referenced Commission Orders or Florida Supreme Court opinions has there been any indication that the SCRM contravenes state statute – because it does not.

The SCRM also is designed to comply with existing Commission rules. The calculation of amounts to be recovered under the SCRM would be performed in accordance with the Incremental Cost and Capitalization Approach methodology specified in Rule 25-6.0143, F.A.C.

Settlement Agreement at Paragraph 10(a). Moreover, subsection (1)(j) of that rule specifically permits utilities to petition for "recovery of a debit balance in Account No. 182.3 discussed in paragraph (1)(i) plus an amount to replenish the storm reserve through a surcharge, securitization or other cost recovery mechanism." This is exactly what FPL would seek to recover under its proposed mechanism. FPL's testimony in this case contains an abundance of competent, substantial evidence supporting the SCRM, and it is an essential element of the Settlement Agreement which is in the public interest.

Issue 2: **Does the Commission have the statutory authority to approve FPL's requested Reserve Surplus Amortization Mechanism (RSAM) as part of the Stipulation and Settlement Agreement?**

*****Yes. The Commission has approved substantially the same mechanism in settlements of FPL's last three rate cases. The Florida Supreme Court has affirmed the settlements in the last two of those cases as being in the public interest. In its opinion affirming FPL's 2012 rate case settlement, the Court specifically considered and rejected a contention that the variable-amortization mechanism at issue there was not reasonable and would result in unfair rates.*

The Commission has the statutory authority to approve the RSAM presented in the Settlement Agreement. One of the Commission's fundamental, broad, and overriding statutory rate-setting responsibilities is to ensure that rates are just and reasonable for services rendered. *See* Sections 366.05, 366.06, Florida Statutes, and *Citizens*, 425 So.2d at 540 (noting that the Florida Supreme Court "has consistently recognized the broad legislative grant of authority [Sections 366.05 and 366.06, Florida Statutes] confer and the considerable license the Commission enjoys as a result of this delegation."). The RSAM is consistent with, and in fact furthers that statutory mandate. Under the express terms of the Settlement Agreement, the RSAM provides that FPL would be permitted to use variable amortization only to stay within its Commission-approved ROE range. Settlement Agreement at Paragraph 16(c). This allows FPL to operate within the rate structure supported by the Agreement's Signatories and does nothing to interfere with the

Commission's authority to monitor FPL's earnings. Thus, the RSAM is entirely consistent with this fundamental statutory element of the Commission's rate-setting process.

Moreover, the Commission has approved substantially the same mechanism in settlements of FPL's last three rate cases, and the Florida Supreme Court has affirmed the settlements in the last two of those cases as being in the public interest. *Brown*, 243 So.3d 903 (approving FPL's 2016 rate settlement which included an RSAM); *Citizens*, 146 So.3d at 1149 (approving FPL's 2012 rate settlement which included an RSAM). In its order affirming FPL's 2012 rate case settlement, the Court specifically considered and rejected the contention that the variable-amortization mechanism at issue was not reasonable and would result in unfair rates. *Citizens*, 146 So.3d at 1171.

The record in this proceeding demonstrates how the RSAM has been successfully employed by FPL to the benefit of customers. Foundationally, the RSAM is an accounting mechanism used by the Company to respond to changes in its underlying revenues and expenses in order to maintain an ROE within the ROE range authorized by the Commission and results only in non-cash earnings. Tr. 2299 (Barrett). This supports FPL's ability to operate within the multi-year rate agreement that is supported by the Agreement's Signatories. The RSAM has been in place since 2010 and has provided rate stability over three separate multi-year rate periods, while at the same time enabling the Company to provide additional benefits to customers that otherwise would not have been available. Tr. 2268 (Barrett). FPL proposed in its initial filing the same basic structure and framework as contained in FPL's 2016 Settlement Agreement, updated for assumptions and projections (Tr. 2300 (Barrett)), and the RSAM contained in the Settlement Agreement is substantially similar to that proposed in FPL's initial filing. Tr. 2723 (Barrett). FPL's testimony in this case likewise contains an abundance of competent, substantial evidence supporting the RSAM, and it is an essential element of the Settlement Agreement which is in the public interest.

Issue 3: **Does the Commission have the statutory authority to approve FPL's requested Solar Base Rate Adjustment mechanism for 2024 and 2025 as part of the Stipulation and Settlement Agreement?**

***** Yes. The Commission approved a similar mechanism in FPL's last case, and the Florida Supreme Court affirmed that settlement. The Commission's statutory obligation is to set rates based on actual costs a utility prudently incurs for facilities that are used and useful in providing service. The SoBRA projects clearly will be "used and useful." And, because FPL may only recover the costs for such facilities if they are cost-effective, they are likewise prudent investments.*

There is ample statutory authorization, as well as supportive rulings from the Florida Supreme Court, that assures the Commission of its authority to approve the SoBRA mechanism contained within the Settlement Agreement. The Commission's statutory obligation is to ensure that rates are set on the basis of actual costs a utility prudently incurs for facilities that are used and useful in serving the public. *See* Section 366.06(1), Florida Statutes. Solar projects, which are not dependent on fossil fuels and provide emission-free energy to FPL's customers, clearly are "used and useful in serving the public." And, because FPL may only recover the costs for such facilities if they are demonstrated to be cost-effective, they are likewise prudent investments.

The Commission previously approved a substantially similar SoBRA mechanism in FPL's prior rate proceeding, and the settlement reached in that case (containing the SoBRA mechanism) was affirmed by the Florida Supreme Court as being in the public interest. *See* Order No. PSC-2016-0560-AS-EI and *Brown*, 243 So.3d at 916 ("We conclude that the Commission's finding that the settlement agreement is in the public interest is necessarily supported by competent, substantial evidence.”).[15] The Commission has also approved similar SoBRA mechanisms for other jurisdictional investor-owned utilities. *See, e.g.*, Order Nos. PSC-2017-0456-S-EI (TECO) and PSC-2017-0451-AS-EU (DEF).

The SoBRA mechanism initially proposed by FPL in this case was similar to the SoBRA mechanism approved in Order No. PSC-16-0560-AS-EI and affirmed by the Florida Supreme Court (Tr. 473 (Valle)), and the SoBRA mechanism presented in the Settlement Agreement is mostly unchanged from FPL’s original proposal. Tr. 2721 (Barrett). Like the prior approved SoBRAs, the Agreement’s SoBRA mechanism contains specific requirements that FPL must meet in order to recover any costs for 2024 and 2025 solar projects. Among those requirements are that the project costs are below established cost caps and that the projects can be demonstrated to be cost-effective. Settlement Agreement at Paragraph 12. If these tests are met, then FPL is permitted to recover the actual costs of the projects.

The Settlement Agreement mirrors the structure of the prior SoBRAs, giving FPL authority to implement SoBRA in connection with the commercial operation of up to 1,788 MW of solar projects that FPL reasonably projects will be placed in service during 2024 and 2025, subject to a cap on installed costs of $1,250 per kW and a demonstration of cost effectiveness, all as set forth in the Settlement Agreement. Battery storage can be paired to the solar projects so long as total cost remains below the $1,250 per kW cap and the project is cost effective. Settlement Agreement at Paragraph 12(d). In the event that FPL constructs the SoBRA facilities for less than the

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[15]As previously referenced, the Florida Supreme Court has recognized that “the Commission has the authority to adopt rules for the determination of rates in full revenue requirement proceedings… [and] adjustments of rates based on revenues and costs during the period new rates are to be in effect and for incremental adjustments in rates for subsequent periods.” *Citizens*, 146 So.3d at 1157. Under this authority, the Commission adopted Rule 25–6.0425, F.A.C., which authorizes approval of incremental rate adjustments in subsequent periods. *See id*.

applicable cost cap, customers and FPL will share in the revenue requirement savings represented by the difference on a 75 percent-25 percent basis, respectively. Settlement Agreement at Paragraph 12(i). FPL's testimony in this case contains an abundance of competent, substantial evidence supporting the SoBRA mechanism and it an essential element of the Settlement Agreement which is in the public interest.

Issue 4: **Does the Commission have the statutory authority to adjust FPL's authorized return on equity based on FPL's performance as part of the Stipulation and Settlement Agreement?**

> *****This issue is inapplicable. Although the negotiated ROE does not include a performance incentive adjustment as requested by FPL in its filed case, setting rates, the Commission may "give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and **the value of such service to the public**." Section 366.041(l), Florida Statutes (emphasis added); see also Order No. PSC-02-0787-FOF-EI at 35 (Commission awarded Gulf a 25-basis point ROE adder in recognition of its past performance and as incentive for future performance.)*****

By statute, the Commission may, in setting rates, "give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and **the value of such service to the public**." Section 366.041(l), Florida Statutes (emphasis added); *see also* Section 366.06(1), Florida Statutes ("In fixing fair, just, and reasonable rates for each customer class, the [C]ommission shall… consider the cost of providing service to the class, as well as the rate history, *value of service*, and experience of the public utility.") (emphasis added). The statute's inclusion of the phrase "value of such service to the public" enables the Commission to base utility rates not just on the cost to provide service costs, but also value-related considerations such as performance.

There is also Commission precedent supporting the Commission's authority to adjust ROE on the basis of a utility's performance. In a 2002 Gulf rate proceeding, the Commission added 25 basis points to Gulf's ROE midpoint in recognition of Gulf's high level of past performance and with the expectation that a similar level of performance would continue into the future. *In re Request for rate increase by Gulf Power Company*, Docket No. 010949-EI, Order No. PSC-02-0787-FOF-EI at 35 (F.P.S.C. June 10, 2002); *see also* Tr. 2288 (Barrett). Thus, whether through a settlement or not, the Commission possesses the statutory authority award a performance-based ROE incentive, as it has done previously.

In the Settlement Agreement, however, FPL's proposed authorized ROE has been negotiated and determined as part of the overall, comprehensive settlement. The negotiated ROE does not contain a separate performance adder. Thus, this issue is inapplicable.

<u>Issue 5:</u> **Does the Commission have the statutory authority to include non-electric transactions in an asset optimization incentive mechanism as part of the Stipulation and Settlement Agreement?**

> *****Yes. In 2016, the Florida Supreme Court specifically confirmed the Commission's "authority to examine fuel cost expenditures and approve cost recovery to compensate for utilities' fuel expenses through the fuel clause." The proposed incentive mechanism relates to ways in which FPL can help to reduce and offset fuel expenses that are currently being recovered through the fuel adjustment clause. It does not involve cost recovery for the ownership of any non-electric assets.*

The Florida Supreme Court has affirmed that the Commission has authority to include non-electric transactions in FPL's optimization incentive mechanism. In 2016, the Florida Supreme Court specifically confirmed the Commission's "authority to examine fuel cost expenditures and approve cost recovery to compensate for utilities' fuel expenses through the fuel clause." *Citizens of State v. Graham*, 191 So.3d 897, 901 (Fla. 2016). The incentive mechanism contained in the Settlement Agreement falls squarely within that authority. The mechanism incentivizes FPL to reduce and offset fuel expenses that are currently being recovered through the fuel adjustment clause. Tr. 801-02 (Forrest). It does not involve cost recovery for the ownership of any non-electric assets.

The asset optimization incentive included in the Settlement Agreement would continue to incentivize FPL to seek out transactions and utilize assets to bring increased value to FPL's customers. Tr. 798-799 (Forrest); Settlement Agreement at Paragraph 21. The incentive mechanism follows a long history of using incentives to encourage utilities to find fuel and power optimization opportunities. The Commission has had an incentive mechanism in place since 2001 to encourage FPL and other utilities to minimize their costs for wholesale electric power, which are recovered through the fuel adjustment clause. *See In re Calculation of gains and appropriate regulatory treatment for non-separated wholesale energy sales by investor-owned electric utilities*, Docket No. 010283-EI, Order No. PSC-01-2371-FOF-EI (F.P.S.C. Dec. 7, 2001). As part of the settlement of FPL's 2012 rate case, the Commission authorized FPL to expand the incentive mechanism to include other forms of asset optimization, including but not limited to gas storage utilization, delivered city-gate gas sales using existing transportation, production (upstream) gas sales, capacity release of gas transportation and electric transmission, and asset management agreements. The Florida Supreme Court affirmed the Commission order, finding that there was competent, substantial evidence that the expanded incentive mechanism was in the public interest. *Citizens*, 146 So.3d at 1164-65. With minor modification, the expanded incentive mechanism was incorporated into the settlement of FPL's 2016 rate case, which the Commission approved and the Florida Supreme Court affirmed. *See Brown*, 243 So.3d 903. The optimization mechanism that is contained in the Settlement Agreement is built upon the mechanism approved in FPL's 2016 case, with minor modifications that are provided in the Agreement. FPL's testimony in this case contains an abundance of competent, substantial evidence supporting the asset optimization mechanism, and it is an essential element of the Settlement Agreement which is in the public interest.

<u>Issue 5(a):</u> **Does the Commission have the authority to approve FPL's requested proposal for a federal corporate income tax adjustment that addresses a change in tax if any occurs during or after the pendency of this proceeding as part of the Stipulation and Settlement Agreement?**

*****Yes. The Commission has approved substantially the same mechanism in four settlements that establish rates for three investor-owned utilities. One of the Commission's fundamental and overriding statutory rate-setting responsibilities is to ensure that rates and just and reasonable for services rendered. The Commission's earnings surveillance process monitors each rate-regulated electric utility's earned ROE, to ensure that it remains within the ROE range last approved for that utility.*

The Commission has ample statutory authority to approve the tax adjustment mechanism included in the Settlement Agreement. One of the Commission's fundamental, broad, and overriding statutory rate-setting responsibilities is to ensure that rates are just and reasonable for services rendered. *See* Sections 366.05, 366.06(1)-(2), Florida Statutes (2020) and *Citizens*, 425 So.2d at 540 (noting that the Florida Supreme Court "has consistently recognized the broad legislative grant of authority [Sections 366.05 and 366.06, Florida Statutes] confer and the considerable license the Commission enjoys as a result of this delegation.").[16] The Commission's earnings surveillance process monitors each rate-regulated electric utility's earned ROE to ensure that it remains within the ROE range last approved for that utility. Additionally, by its own terms, the adjustment under the proposed tax mechanism will be calculated based on FPL's Commission-approved ROE and is therefore mid-point seeking and will not cause FPL to over earn.

[16] As previously referenced, the Florida Supreme Court has recognized that "the Commission has the authority to adopt rules for the determination of rates in full revenue requirement proceedings… [and] adjustments of rates based on revenues and costs during the period new rates are to be in effect and for incremental adjustments in rates for subsequent periods." *Citizens*, 146 So.3d at 1157. Under this authority, the Commission adopted Rule 25–6.0425, F.A.C., which authorizes approval of incremental rate adjustments in subsequent periods. *See id*.

The Commission also has approved substantially the same mechanism in four settlements that establish rates for three investor-owned utilities. *See* Order No. PSC-2021-0202-AS-EI (approving DEF's 2021 settlement agreement, subsequently amended by Order No. PSC-2021-0202A-AS-EI); Order No. PSC-2017-0456-S-EI (approving TECO's 2017 settlement agreement); Order No. PSC-2017-0451-AS-EU (approving DEF's 2017 settlement agreement); Order No. PSC-2017-0178-S-EI (approving Gulf's 2017 settlement agreement).

In sum, there is no statutory prohibition that would serve to bar or limit the Commission's authority to approve the tax adjustment mechanism included in the Agreement and substantial precedent for approving that mechanism. FPL's testimony in this case contains an abundance of competent, substantial evidence supporting the tax adjustment, and it is an essential element of the Settlement Agreement which is in the public interest.

Issue 6: **Does the Commission have the statutory authority to grant FPL's requested four-year plan as part of the Stipulation and Settlement Agreement?**

*****Yes. The Commission has approved a series of six multi-year rate settlements in resolution of FPL's rate cases over the last 22 years. One of the Commission's fundamental statutory rate-setting responsibilities is ensuring that rates are just and reasonable for services rendered. The settlement does not interfere with that authority and does not compromise the Commission's authority or ability to monitor FPL's earnings.*

The Commission has approved a series of six multi-year rate settlements in resolution of FPL's rate cases over the last 22 years. As discussed above, one of the Commission's most fundamental, broad, and overriding statutory rate-setting responsibilities is to ensure that rates are just and reasonable for services rendered. *See* Sections 366.05, 366.06(1-2), Florida Statutes and *Citizens*, 425 So.2d at 540 (noting that the Florida Supreme Court "has consistently recognized the broad legislative grant of authority [Sections 366.05 and 366.06, Florida Statutes] confer and the considerable license the Commission enjoys as a result of this delegation."). The Commission uses its earnings surveillance process to monitor each rate-regulated electric utility's earned ROE, to ensure that it remains within the ROE range last approved for that utility. So long as that is the case, then the utility's rates are presumptively within the parameters contemplated by Section 366.06(2), Florida Statutes, and do not need to be adjusted up or down.

The Agreement's multi-year rate plan does not interfere with that authority. By its terms, the plan remains in effect only so long as FPL (through effective management and with the assistance of the RSAM) is able to maintain its ROE within the range authorized by the Commission. *See* Settlement Agreement at Paragraph 14(a)-(b). Should FPL be able to "stay within the boundaries" of the authorized ROE range, there would be no reason for the Commission to exercise its statutory rate setting authority. On the other hand, should FPL be unable to keep its ROE within the authorized range during the Agreement's Term, then a rate review in accordance with the Commission's existing statutory authority and policies would be appropriate and unfettered by the Agreement.

FPL's testimony in this case contains an abundance of competent, substantial evidence supporting the four-year plan set forth in the Settlement Agreement, and it is a fundamental element of the Agreement which is in the public interest.

<u>Issue 9:</u> **Has Floridians Against Increased Rates, Inc. demonstrated individual and/or associational standing to intervene in this proceeding?**

*****No. Floridians Against Increased Rates ("FAIR") is not an FPL customer, and has not attempted to prove that it has individual standing in this matter. FAIR also lacks associational standing because it has not proven that is has actual members; has improperly attempted to obtain members with standing after moving to intervene and after filing testimony; and has failed to demonstrate that it is a true membership association.*

FAIR does not have individual standing to participate in this rate proceeding because it is not a customer of FPL. Further, FAIR and its so-called members fail to meet the standards required for associational standing. As explained below, FAIR witnesses admitted that pursuant to the requirements of FAIR's bylaws, the organization had no members when it filed its Motion to Intervene, nor did it have members when it filed intervenor testimony in this proceeding. Also, when FAIR "voted in" individuals that had allegedly applied to be members on July 27, 2021, FAIR had only confirmed that 14 of those applicants were indeed real people and FAIR further failed to confirm that any of those applicants met all of the requirements to become a member of FAIR. Therefore, FAIR cannot properly participate in this proceeding as a membership association where, as here, it has failed to prove that it has members that actually exist and meet all of FAIR's membership requirements. Further, even if FAIR did have members that actually exist and meet all the requirements for membership, FAIR is not the type of organization that qualifies for associational standing. FAIR witnesses admitted that FAIR is not the functional equivalent of a traditional membership association, but rather is a shell organization controlled by a small group of people who are not FPL customers and who are not accountable to the persons who purport to be members. Additionally, FAIR's witnesses admitted that FAIR has none of the indicia of a legitimate membership association (such as having an office, employees, a telephone number, or an e-mail address), and these facts are also fatal to FAIR's request to intervene in this proceeding.

The seminal case concerning standing in administrative proceedings is *Agrico Chemical Company v. Department of Environmental Regulation,* 406 So.2d 478, 482 (Fla. 2nd DCA 1981). *Agrico* and its progeny established the following two-prong test required for individual standing: (1) the party will suffer injury in fact that is of sufficient immediacy to entitle them to a Section 120.57, Florida Statutes, hearing; and (2) this substantial injury is of a type or nature that the proceeding is designed to protect. The first prong of the test addresses the degree of injury. The second addresses the nature of the injury. The "injury in fact" under the *Agrico* test must be both real and immediate and not speculative or conjectural. *International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission*, 561 So.2d 1224, 1225-26 (Fla. 3rd DCA 1990); *see also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation*, 506 So.2d 426, 434 (Fla. 1st DCA 1987), *rev. den.*, 513 So.2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

FAIR makes no effort to establish individual standing. Its witnesses admit that it is not a customer of FPL. Ex. 619 (Herndon Dep.) at 16:25-17:2. In fact, FAIR apparently is not the customer of *any* electric utility, because FAIR witnesses admitted that FAIR does not have an office or employees. Ex. 619 (Herndon Dep.) at 16:4-24, 17:6-7. Accordingly, FAIR cannot establish standing under the *Agrico* test as an individual customer that will be immediately impacted or injured by the Commission's decision in this rate proceeding. *See, e.g., In re: Petition for increase in rates by Florida Power & Light Company*, Docket No. 080677-EI; Order No. PSC-09-0280-PCO-EI (F.P.S.C. April 29, 2009) (holding that an organization failed to establish individual standing in a rate proceeding under the *Agrico* test where the organization failed to allege it was a customer of the utility).

Instead, FAIR attempts to demonstrate associational standing by claiming in its Motion to Intervene that it has "members who are retail electric customers [of] FPL," and that "Commission approval of any rate increase will adversely affect FAIR's members who are FPL customers." Motion to Intervene of Floridians Against Increased Rates, Inc. at 4, ¶ 6, Docket No. 20210015-EI (filed May 4, 2021). The Florida Supreme Court held that "trade and professional associations," and "any similarly situated association," can establish standing through their members. *Florida Home Builders v. Dept. of Labor and Employment Security*, 412 So.2d 351, 353 (Fla. 1982). But there is a three-part test for associational standing: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a proceeding; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members. *Id.*

FAIR was incorporated after FPL filed its rate petition for the purpose of intervening in this proceeding. Ex. 619 (Herndon Dep.) at 34:6-9, 34:16-19, 35:11-14. Although FAIR told the Commission that it had members who were FPL customers at the time its Motion to Intervene was filed, that representation was not accurate. FAIR witness Nancy Watkins admitted under oath in her deposition that FAIR had no members when it filed its Motion on May 4, 2021, and in fact did not even receive any membership applications until June 2021. Ex. 618 (Watkins Dep.) at 60:17-20. Although Ms. Watkins changed her deposition testimony by filing errata on August 26, 2021, and now contends that FAIR had applications from 16 individuals "in hand" on May 4, 2021 when FAIR moved to intervene in this proceeding, Ms. Watkins was careful to make clear in her errata filing that these 16 applicants were still "technically" not members of FAIR because they had not been "voted in" as members under the requirements of FAIR's bylaws. Further, even though FAIR voted to admit its alleged applicants to membership on July 27, 2021 (Ex. 618 (Watkins Dep.) at 67:16-23), which vote is required by the FAIR bylaws before a person can become a member, FAIR's witnesses admit that FAIR did not then and does not now know whether 96 percent of the applicants that FAIR's board "voted in" on July 27 are real people. Also, before voting them in, FAIR did not confirm that any of those applicants met all of the requirements to become a FAIR member. Ex. 619 (Herndon Dep.) at 39:10-23.[17] FAIR's bylaws provide that only persons 18 years or older are eligible to become members, but FAIR has never asked any of the applicants their age. Ex. 619 (Herndon Dep.) at 42:1-9, 67:14-16; Ex. 618 (Watkins Dep.) at 70:13-16. Moreover, it appears that no one from FAIR has actually spoken with the "people" on FAIR's membership roster. Ex. 618 (Watkins Dep.) at 47:17-20. In fact, even when a FAIR representative sent emails to the "people" on FAIR's membership roster in June 2021, only 17 out of 507 individuals (4 percent) of the roster responded.[18] Ex. 618 (Watkins Dep.) at 42:1-17. The person who purportedly verified the roster, FAIR witness Watkins, testified that she did not know if the people who failed to respond are even real people. Ex. 618 (Watkins Dep.) at 44:1-19. FAIR simply cannot carry its burden of demonstrating standing if it lacks basic information that its purported members exist and, if they do, whether they are even eligible to be a member. Accordingly, based on its admissions, FAIR did not have standing when it filed its Motion to Intervene; it did not have standing when it filed testimony in this matter; and it continued to lack standing throughout this proceeding because it never verified whether its alleged membership applicants were real people that met its requirements for membership. The law is very clear that a party cannot acquire standing after the fact, and FAIR has lacked standing throughout the course of this proceeding. *See LaFrance v. U.S. Nat'l Bank Ass'n*, 141 So.3d 754, 756 (Fla. 4th DCA 2014) ("A 'plaintiff's lack of standing at the inception of the case is not a defect that can be cured

[17] In fact, the FAIR Board of Directors did not vote to admit anyone as a member until after FPL took the deposition of John Herndon on July 19, 2021 and realized that the Board of Directors had never admitted any members as required by the organization's bylaws. Ex. 619 (Herndon Dep.) at 80:9-14. This is particularly remarkable given that, in her direct testimony submitted on June 21, 2021, FAIR witness Watkins testified that she "verified" FAIR's membership. Tr. 1840-1843 (Watkins).

[18] According to Ms. Watkins, 3 of these 17 respondents stated that they did not intend to become members of FAIR and 14 confirmed that they did. Ex. 618 (Watkins Dep.) at 41:1-15.

by the acquisition of standing after the case has been filed' and cannot be established 'retroactively by acquiring standing to file a lawsuit after the fact.'") (quoting *McLean v. JP Morgan Chase Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012)).

In addition to the issues discussed above, FAIR is not an association or the functional equivalent of one as required for associational standing. The Florida Supreme Court limited the doctrine of associational standing to trade associations and "similarly situated associations." *Florida Home Builders*, 417 So.2d at 353. The U.S. Supreme Court case that is the basis of *Florida Home Builders, Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), held that where an organization lacked formal members it could still have associational standing if it "performs the functions of a traditional trade association" and its constituents "possess[ed] all of the indicia of membership in an organization." *Id.*, at 344-45. To establish indicia of membership, an organization must show that its purported members: (i) elect the organization's leadership; (ii) serve as the organization's leadership; (iii) finance the organization's activities, including the costs of litigation; and (iv) represent a "specialized segment" of the community. *Id.*

FAIR admits that it is not an association. Ex. 619 (Herndon Dep.) at 10:11-12. FAIR is also not the functional equivalent of a traditional association because it is structured in such a way that it represents the control group of the corporation and their undisclosed third-party funders, not the members. First, FAIR lacks basic indicia of being an actual operating entity or business of any type. Indeed, it has no office, no employees, no telephone number, and no email address. Ex. 619 (Herndon Dep.) at 16:4-21, 17:6-9, 19:24-20:10. Second, FAIR is controlled by people that do not live in the FPL service area and who are not members of FAIR.[19] Ex. 618 (Watkins Dep.) at

[19] Federal courts have found this factor weighs against finding an organization to be the functional equivalent of a traditional trade association. *Hunt*, 432 U.S. at 344 (holding that a commission was the functional equivalent of a trade association where members "alone may serve on the

13:17-21, 64:6-65:6; Ex. 619 (Herndon Dep.) at 8:9-24, 35:19-36:3. Third, FAIR's directors choose themselves and the members have no right to elect or remove directors.[20] Ex. 619 (Herndon Dep.) at 43:6-13, Herndon Dep. Ex. 2 (Bylaws, Art. II, § 3). Fourth, FAIR is funded by undisclosed third parties and not by its members.[21] Ex. 619 (Herndon Dep.) at 52:16-53:4, 55:13-20. Fifth, there is virtually no communication between FAIR's members and its control group because the organization does not have a phone or email address, which makes it impossible for the FAIR board to represent the members' interests. Ex. 619 (Herndon Dep.) at 17:6-7, 19:24-20:14, 46:13-24, 66:10-67:2. Under these admitted facts, FAIR is not an association that qualifies for associational standing in this proceeding.

Commission"); *Washington Legal Found. v. Leavitt*, 477 F.Supp.2d 202, 208-10 (D.D.C. 2007) (members "serving in the entity" is one of the essential "indicia of membership" for an organization to be the functional equivalent of a membership association).

[20] Federal courts have also found that this factor weighs against finding an organization to represent members for purposes of standing. *See, e.g., Gettman v. Drug Enforcement Admin.*, 290 F.3d 430, 435 (D.C. Cir. 2002) (no associational standing for individual and magazine where there was no showing that alleged members "played any role in selecting its leadership"); *American Legal Found. v. FCC*, 808 F.2d 84, 90 (D.C. Cir. 1987) (holding that foundation did not qualify for associational standing, in part because "it does not appear from the record that ALF's 'supporters' play any role in selecting ALF's leadership"); *Washington Legal Found.*, 477 F.Supp.2d at 208-10 (D.D.C. 2007) (members "electing the entity's leadership" is one of the essential "indicia of membership" for an organization to be the functional equivalent of a membership association; lack of this factor weighed against finding associational standing).

[21] Federal courts have held that the source of funding of an organization is important to whether the organization is a true membership organization. *Hunt*, 432 U.S. at 344-45 (noting that Commission's members "alone finance its activities, including the costs of this lawsuit"); *Fund Democracy LLC v. SEC*, 278 F.3d 21, 26 (D.C. Cir. 2002) (fact that organization did not receive funding from purported members weighed against claim of associational standing); *American Legal Found.*, 808 F.2d at 90 (foundation did not quality for associational standing in part because "it does not appear from the record that ALF's 'supporters' play any role in … financing [the organization's] activities"); *Washington Legal Found.*, 477 F.Supp.2d at 208-10 (D.D.C. 2007) (members "financing the entity's activities" is one of the essential "indicia of membership" for an organization to be the functional equivalent of a membership association).

[21] At least one Federal court has found that an organization does not qualify for associational standing in part because "it does not appear from the record that [the organization's] 'supporters' play any role in … guiding [its] activities." *American Legal Found.*, 808 F.2d at 90.

FAIR's representation in this proceeding also would be duplicative and unnecessary as the alleged interests of its purported members are already represented by OPC. FAIR does not represent a specialized segment of the community like a trade or professional association but, rather, FAIR purports to represent any customer of an investor-owned utility in Florida. Indeed, FAIR's Articles of Incorporation state that its purpose is as follows:

> The purposes for which the corporation is organized are: to advance the welfare of the State of Florida, residential, business, institutional, an governmental customers served by investor-owned electric utilities whose rate are set by the Florida Public Service Commission, and all of Florida citizens, business, institutional and governmental entities generally, by advocating for and providing analyses to the general public concerning State of Florida governmental polices and regulatory or administrative actions that will lead to retail electric rates that are as low as possible while ensuring safe and reliable electric service.

Ex. 619 (Herndon Dep.) at Herndon Dep. Ex. 2 (Bylaws, Art. III). Thus, FAIR is not a specialized group of people who have a unique perspective to offer the Commission. Rather, FAIR purports to be the public at large that is already adequately represented in this proceeding by OPC. Federal courts addressing organizations with similar sweeping assertions of membership have found them not to be the equivalent of traditional membership associations.[22] In effect, FAIR has attempted to set itself up as a second "Office of Public Counsel," but funded by undisclosed financial interests rather than by its members. FAIR is not a bona fide membership association. For these reasons, not only does FAIR lack standing, its participation in this proceeding is duplicative and unnecessary because the interests of its so-called members are already being represented.

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[22] *See, e.g.*, *American Legal Found.*, 808 F.2d at 90 (finding no associational standing in part because "ALF's constituency of members is completely open-ended"); *Washington Legal Found.*, 477 F.Supp.2d at 208-10 (D.D.C. 2007) (finding no associational standing in part because the plaintiff served "no discrete, stable group of persons with a definable set of common interests").

Based on the foregoing, FAIR has not met the legal thresholds required to establish individual or associational standing in this proceeding. Although FAIR lacks standing, the interests of its alleged members will be and have been fully represented by OPC, which has been tasked by the Florida Legislature to provide legal representation for the people of the state in utility related matters and proceedings before the Commission.[23]

III. CONCLUSION

In conclusion, the Settlement Agreement taken as a whole is in the public interest, is supported by record evidence and resolves all of the issues in this docket. The Settlement Agreement provides customers a four-year minimum period of rate predictability; by expressly prescribing FPL's limited ability to increase rates, and establishing mechanisms to manage rate and revenue contingencies, customers will know the amount and timing of base rate increases over at least the next four years. FPL must "stay out" from seeking additional base rate relief during the Term and instead must continue to seek out and implement efficiency measures. Moreover, as described above, the Settlement Agreement includes provisions that improve the diversity of FPL's fleet, through zero-fuel cost, zero-emissions and cost-effective generation. The Settlement Agreement includes green hydrogen, smart electrical panel, and electric vehicle programs that will allow FPL – and its customers – to remain on the forefront of those technologies. Finally, the Settlement Agreement promotes efficiency both in terms of conserving regulatory resources as well as further incenting FPL to seek out and implement productivity improvements.

[23] *See* Section 350.061, Florida Statutes.

For these reasons, FPL respectfully requests that the Commission approve the Settlement Agreement and issue an order finding that the Agreement: (i) is in the public interest; (ii) results in base rates and charges that are fair, just and reasonable; and (iii) resolves all the issues in Docket No. 20210015-EI.

Respectfully submitted,

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CERTIFICATE OF SERVICE
20210015-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 11th day of October 2021 to the following parties:

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