BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Florida Power & Light Company	Docket No. 20250011-EI Filed: August 29, 2025

FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO THE JOINT MOTION OF OPC, FEL, AND FAIR FOR APPROVAL OF A STIPULATION AND SETTLEMENT

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby submits this Response in Opposition to the Joint Motion of the Office of Public Counsel, Florida Rising, Inc., LULAC Florida, Inc., Environmental Confederation of Southwest Florida, Inc., and Floridians Against Increased Rates, Inc. (collectively, herein referred to as the "Movants") requesting the Florida Public Service Commission ("Commission") approve a proposed Stipulation and Settlement ("Proposed Stipulation") that they claim would resolve all issues in the above-captioned petition for a general base rate proceeding requested by FPL.

Simply put, what the Movants have filed is not a settlement at all. Calling the documents that the Movants filed a settlement defies general common sense; walks dangerously close to a bad faith filing from a legal perspective; and, at best, is a ham-handed media stunt that attempts to turn this proceeding into a circus. What the Movants have actually filed is a three-party position paper that includes stipulations between the three of them on what positions they agree to take on the multiple issues that the Commission will decide in the forthcoming hearing in this matter. Notably, the Movants now appear to agree with and support several of the provisions in the proposed 2025 Stipulation and Settlement Agreement filed by FPL and the other settlement parties (the "FPL Settlement Agreement").

For these reasons, as further explained below, the Movants' Proposed Stipulation is an illusory and unenforceable settlement agreement and, therefore, the Movants' Motion and request

to treat their Proposed Stipulation as a settlement agreement should be denied. In further support, FPL states as follows.

I. BACKGROUND

1. On February 28, 2025, FPL petitioned the Commission for approval of a four-year rate plan to run from January 1, 2026 through December 31, 2029.

2. On August 8, 2025, FPL filed a notice of settlement in principle and joint motion to suspend the case schedule and amend the Order Establishing Procedure ("OEP"). The motion to suspend the schedule was granted in Order No. PSC-2025-0304-PCO-EI issued on August 12, 2025, and the request to amend the OEP was deferred pending review of the settlement.

3. On August 20, 2025, FPL, Florida Industrial Power Users Group, Florida Retail Federation, Florida Energy for Innovation Association, Inc., Walmart Inc., EVgo Services, LLC, Electrify America, LLC, Federal Executive Agencies, Armstrong World Industries, Inc., Southern Alliance for Clean Energy, and Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac Inc., and Wawa, Inc. (hereinafter, collectively referred to as the "Signatory Parties") filed a Joint Motion for approval of the FPL Settlement Agreement as full and complete resolution of all matters pending in Docket No. 20250011-EI in accordance with Section 120.57(4), Florida Statutes. Notably, the parties to the Settlement Agreement include both the petitioner, FPL, which has the burden of proof on the relief requested in this proceeding, and intervening parties that opposed all or some aspects of FPL's proposed four-year rate plan. Stated differently, FPL's Settlement Agreement includes adverse parties from both sides of the "versus" and not just parties aligned on the same side of the "versus."

4. The Movants each filed responses opposing the FPL Settlement Agreement.

5. On August 22, 2025, the Prehearing Officer issued Order No. PSC-2025-0323-PCO-EI revising the OEP with a new procedural schedule and discovery protocols for the Settlement Agreement.

6. On August 26, 2025, the Movants filed their Motion requesting Commission approval of their Proposed Stipulation. Therein, the Movants claim that they "entered into this [Proposed Stipulation] in compromise of positions taken" and "as part of the negotiated exchange of consideration among the [Movants] to the [Proposed Stipulation], each has agreed to concessions to the others…," and that "[a]pproval of this [Proposed Stipulation] in its entirety will resolve all matters and issues in Docket No. 20250011-EI."[1] Critically important, however, is that the alleged negotiations, agreement, and concessions purportedly reached and agreed to in the Proposed Stipulation were only among three intervenor groups that are aligned against FPL's proposed four-year rate plan. Stated differently, the Proposed Stipulation includes only parties from the same side of the "versus" and did not include parties from both sides of the "versus.[2]"

7. FPL herein files this Response in opposition to Movants' unprecedented request to allow aligned parties to settle with themselves and then somehow make that one-sided agreement legally enforceable and binding on the non-signatory petitioner. For the reasons explained below, the Commission must deny the Movants Motion and Proposed Stipulation.

II. MOVANTS' "SETTLEMENT" IS ILLUSORY AND UNENFORCEABLE

8. The Movants are requesting this Commission approve the Proposed Stipulation to unilaterally resolve and settle the issues in their favor without FPL being a party to and agreeing

[1] *See* Proposed Stipulation, pp. 2 and 27.

[2] It does not take a legal expert, or frankly a lawyer at all, to know that two parties cannot file a lawsuit against a defendant alleging injury and then settle with themselves to collect money from a defendant that is not part of that settlement. Nonetheless, that is exactly what the Movants are attempting to do in principle here.

to the terms of the Proposed Stipulation. The Movants so-called "settlement" is illusory and unenforceable.

9. This proceeding was initiated by the petition filed by FPL, pursuant to the provisions of Chapter 366, Florida Statutes, and Rules 25-6.0425, 25-6.043, 25-6.04364 and 25-6.0436, Florida Administrative Code. Section 366.06(1), Florida Statutes, provides, in relevant part, that the Commission "shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected **by any public utility** for its service." Section 366.06(1), Fla. Stat. (emphasis added). Further, Section 366.04, Florida Statutes, provides the Commission with "jurisdiction to regulate and supervise each **public utility** with respect to its rates and service," and "prescribe a rate structure for all electric utilities." Section 366.04(1)-(2), Fla. Stat. (emphasis added). Thus, through this proceeding, the Commission will determine and set the rates and terms of service and associated tariff rules and regulations to be offered **by FPL** to its customers. As made clear by these provisions, the Movants are not a public utility. They are not regulated by the Commission. They have no obligation to serve FPL's customers. They do not bear the burden of proof to justify any resulting rate change that the Commission may approve in this proceeding.[3] As such, they have no legal right to agree to things on FPL's behalf and deny FPL its statutory rights that are afforded to it under Florida law.

10. The Florida Supreme Court has stated that "[t]he 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) (quoting *Utilities Comm'n of New Smyrna Beach v. Fla. PSC*, 469

[3] "The burden of proof in ratemaking cases in which a utility seeks an increase in rates rests on the utility." *Fla. PSC. Fla. Waterworks Ass'n*, 731 So. 2d 836, 841 (Fla. 1st DCA 1999) (citing *So. Fla. Natural Gas Co. v. Fla. PSC*, 534 So. 2d 695 (Fla. 1988)). The burden of proof in a Commission proceeding is always on a utility seeking a new rate change. *Fla. Power Corp. v. Cresse*, 413 So.2d 1187, 1191 (Fla. 1982).

So. 2d 731, 732 (Fla. 1985) (emphasis added).[4] The Court has further explained that "[n]othing in our precedent or the language of the statute suggests that this general rule does not also apply in rate-setting cases." *Citizens v. Fla. PSC*, 146 So. 3d 1143, 1155 (Fla. 2014) (hereinafter "*Citizens I*"). The Court has also confirmed that a rate case may be resolved by non-unanimous settlement agreement upon a finding by the Commission that the settlement agreement, as a whole, is in the public interest and establishes fair, just and reasonable rates. *Id.* at 1153-54, 1164-65.[5] On its face, the Proposed Stipulation that the Movants have filed is not a "settlement of **disputes** by mutual agreement between the **contending** parties" and the Commission need not look any further for support to deny the Movants' motion. *See AmeriSteel, supra* (emphasis added).

11. Although the Commission has a long history of resolving contested matters through settlements, the Movants have notably failed to cite any authority or precedent to support the proposition that the Commission can resolve a contested matter by approving a settlement or stipulation that does not include the utility in question. In a convoluted footnote on page 5 of their Motion, the Movants attempt to justify their legally baseless request by stating that "[n]o Court has ruled that the public interest standard requires the utility to be a party to a non-unanimous rate case settlement." However, just because a court has never had occasion to issue an opinion on a nonsensical legal theory does not mean that the theory is valid or that it can be forwarded in good faith by the Movants, much less the members of the Florida Bar who represent them. Furthermore,

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[4] *See also Robbie v. Miami*, 469 So. 2d 1384, 1385 (Fla. 1985) ("settlements are highly favored and will be enforced whenever possible") (citations omitted).

[5] In *Citizens I*, FPL entered into a settlement with several intervening parties that opposed FPL's as filed rate case. Office of Public Counsel ("OPC") objected to the settlement and claimed that it could not be approved without OPC's involvement. *Id.* at 1149. The Court rejected OPC's argument finding it was without merit because the "Commission independently determines rates of public utilities subject to the conditions set forth in chapter 366; the Commission's authority to fix fair, just, and reasonable rates pursuant to section 366.06(1), Florida Statutes, is not conditioned on the OPC's approval or absence of the OPC's objections." *Id.* at 1150.

the Movants' request asks the Commission to deviate without justification from its prior practices in evaluating settlements, which could be reversable error under Section 120.68, Florida Statutes.

12. The fallacy of the Movants' premise is compounded in Commission proceedings where it is common for numerous parties to intervene in opposition to a utility's request for relief. Under the Movants' theory, two of these intervenors with a common interest or position could unilaterally resolve the case by simply settling with themselves. This approach, if permitted, would open the floodgates to multiple competing "settlements" among differently aligned intervenors that do not include the utility. In other words, intervenors representing endless combinations of aligned interests could settle with themselves – all in the same proceeding and without the utility, in multiple versions of "settlements." This approach to "settlement" defies logic because it does not result in the resolution of a dispute between opposing parties – it merely memorializes an agreement among aligned parties.

13. What should be common sense to the Movants – the fact that they cannot settle away FPL's statutory rights among themselves – is also recognized in fundamental precepts of civil litigation. Lawsuits can be dismissed for failing to include an indispensable party to the litigation.[6] This same bedrock principle that essential parties must be included in any resolution of a conflict applies equally here and is a fundamental aspect of the due process that FPL is afforded by law. In fact, the Commission has previously stated that an indispensable party is "one who has such an interest in the subject matter of the action that a final adjudication cannot be made without affecting the party's interest or without leaving the controversy in such a situation that its final resolution may be inequitable." *In re: Complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for alleged failure to pay intrastate access charges pursuant to its*

[6] *See, e.g., Greater Miami Expressway Agency v. Miami-Dade County Expressway Authority*, 388 So. 3d 138 (3d DCA 2023).

interconnection agreement and Sprint's tariffs and for alleged violation of Section 364.16(3)(a), F.S., by Sprint-Florida, Incorporated, Docket No. 041144-TP, Order No. PSC-04-1204-FOF-TP, 2004 Fla. PUC LEXIS 1121 (FPSC Dec. 3, 2004) (*citing W.R. Cooper, Inc. v. City of Miami Beach*, 512 So.2d 324, 326 (Fla. 3d DCA 1987)). Here, unlike OPC who the Florida Supreme Court has found is not an indispensable party in a settlement agreement in *Citizens I, supra*, FPL is clearly an indispensable party to any proposed settlement in this proceeding and no settlement is valid without FPL's consent.

14. Although a rate case may be resolved by a non-unanimous settlement, the Florida Supreme Court has underscored that a non-signatory "**has no rights or liabilities thereunder.**" *South Florida Hospital & Healthcare Ass'n v. Jaber*, 887 So. 2d 1210 (Fla. 2004) (emphasis added). Stated otherwise, non-unanimous settlements agreed to by a utility and other parties cannot take away the right for non-signatory **intervenors** to be heard at a hearing and state their positions, which is exactly what will happen here when the Movants get to present their views on FPL's proposed settlement. *See, e.g., In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company*, Docket No. 20180046-EI, Order No. PSC-2019-0225-FOF-EI, 2019 Fla. PUC LEXIS 186 (FPSC June 10, 2019) ("a settlement agreement is a **binding and enforceable agreement between the signatories**") (emphasis added). However, that legal principle has unique legal import when applied to the **petitioning utility** in a base rate case proceeding in that a purported settlement without the utility can **never bind** a utility that did not agree to it, under any circumstances. If the Commission were to approve the Proposed Stipulation, those rates and charges would not be binding on FPL because FPL is not a signatory to the Proposed Stipulation. *See Jaber, supra*. Meaning, there would be no binding final order on FPL's requested permanent rate schedules. Consequently, FPL's as-filed rates and charges would

become effective and permanent as a matter of law once the suspension period in Section 366.06(3), Florida Statutes, expired.[7]

15. Finally, the fatal flaws in the Movants' filing are further illustrated by the "stay out" provision of the Proposed Stipulation. In the Proposed Stipulation, the Movants have agreed among themselves that the base rates and charges established in the Proposed Stipulation cannot be changed and are "frozen" during the two-year minimum term of the Proposed Stipulation.[8] However, as OPC is well aware, the Commission cannot legally enforce such a provision absent a binding settlement **that FPL agrees to**. Indeed, in the Florida City Gas 2022 Rate Case in Docket No. 20220069-GU, the utility committed to a rate case stay out if their proposed rate plan was approved. In Order No. PSC-2023-0177-FOF-GU, the Commission agreed with OPC that, absent a settlement, the utility cannot agree to, and the Commission cannot legally enforce, a utility to stay out from requesting a new rate case. Thus, although the Movants' Proposed Stipulation includes a two-year rate case stay out, it is not binding on FPL pursuant to *Jaber*, *supra*, and according to the Florida City Gas 2022 Rate Case decision. The Commission has no authority to enforce this provision absent a binding agreement **with FPL**. Further, the Movants state in their filing that "**a party to this [Proposed Stipulation]** will neither seek nor support any change in

[7] Additionally, the Movants' Proposed Stipulation provides that FPL should be authorized to increase base rates and service charges to generate the revenue increases agreed to by the Movants. However, the Movants fail to provide those rates and charges and, instead, request that FPL, a non-signatory, be obligated to produce the tariffs necessary to implement those rate and charges. The Commission cannot make a finding that rates, charges, and tariffs required to implement the Proposed Stipulation are in the public interest if they are unknown at the time the decision is made and, under the Movant's theory, would only exist after the Proposed Stipulations are approved and FPL is directed to create them. Further the total revenues for 2026 provided on Exhibit B to the Movants' Motion do not match the proposed 2026 revenues in Paragraph 4(a) of their Proposed Stipulation. There is no explanation in the Motion or Proposed Stipulation for this shortfall. In short, the revenues and allocations under the Proposed Stipulation are incomplete and the Movants have simply *left it up to the Commission* to figure out how to deal with these legal infirmities. Again here, if the Commission were to accept this illusory filing and then be left with no way to issue a legally competent ruling, FPL's as-filed rates and charges would become effective and permanent as a matter of law once the suspension period in Section 366.06(3), Florida Statutes, expired.

[8] *See* Proposed Stipulation, pp. 3 and 7.

FPL's base rates or credits applied to customer bills, including limited, interim or any other rate decreases, that would take effect prior to expiration of the Minimum Term."[9] This provision, **on its face**, only applies to the Movants because FPL is not a party to the Proposed Stipulation.[10]

16. In short, the Movants' Proposed Stipulations are an illusory agreement that is not binding on anyone, and they cannot be legally enforced against FPL.

III. AT BEST, THE PROPOSED STIPULATION IS A STATEMENT OF JOINT POSITIONS

17. As explained above, the Proposed Stipulation is an illusory settlement agreement and, as a matter of law, is not binding on FPL. The practical effect is that parties other than the utility can stipulate to issues, concede positions, or align positions between themselves, but they cannot dispose of the regulatory matter as a whole without the utility's participation, because the Commission's final order must bind the utility.

18. Consequently, the Proposed Stipulation is, at best, a stipulation of joint positions among the Movants on the FPL Settlement Agreement submitted by the Signatory Parties. In fact, the Proposed Stipulation by Movants is a paragraph-by-paragraph response to the FPL Settlement Agreement submitted by the Signatory Parties that lays out the Movants' joint position on each part of the Agreement. While providing clarity on what positions parties take on the multiple disputed issues in this proceeding is helpful as a procedural matter during issue identification conferences and in narrowing the scope of a dispute in a proceeding, it is unorthodox and

[9] *See* Proposed Stipulation, p. 26 (emphasis added).

[10] Also illustrative of the non-binding effect is the Movants' attempt to obligate the Commission to establish workshops for large load tariffs and resource planning models. The Commission is certainly not a party to the Proposed Stipulation and the Movants have no authority to obligate the Commission to take or not take any action.

procedurally improper to file position statements with the Commission outside of the time set for such activity in an order governing procedure. Nonetheless, FPL does appreciate that the Movants appear to agree with several aspects of FPL's proposed settlement and FPL hopes that the Movants will redirect their legally misplaced efforts into further narrowing the issues that remain disputed for the forthcoming hearing in this matter.

19. To the extent that the Movants want the Commission to consider their joint stipulated positions on FPL's Settlement Agreement, they have multiple avenues available, including: amending their prehearing statements to reflect their stipulated positions; attaching their stipulated positions as an exhibit to their forthcoming settlement testimony; and further agreeing with FPL on issues that they do not contest.

20. Although the Movants' Proposed Stipulation is an illusory, incomplete, and unenforceable "settlement agreement," the Movants nonetheless have a full opportunity for their positions to be offered into the record in opposition to the FPL Settlement Agreement and considered by this Commission in making its final determination on the FPL Settlement Agreement.

IV. CONCLUSION

21. It is well established and logical that a settlement is a resolution of disputes by mutual agreement between the contending parties and that settlements are only binding on the signatory parties.

22. The Proposed Stipulation among the Movants who are aligned on every issue in this case is nothing but nonsense and spectacle, and the Movants' Motion should be denied.

WHEREFORE, Florida Power & Light Company respectfully requests the Commission deny the Movants' Motion and Proposed Stipulation consistent with this Response.

Respectfully submitted this 29th day of August 2025,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 29 day of August 2025:

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