

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Rate Increase by Florida  
Power & Light Company

Docket No. 20250011-EI

Filed: September 5, 2025

**FLORIDA POWER & LIGHT COMPANY’S RESPONSE IN OPPOSITION  
TO THE JOINT MOTION OF OPC, FEL, AND FAIR  
REQUESTING ADDITIONAL ROUNDS OF TESTIMONY**

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”) issue a scheduling order that allows the Movants to submit direct and rebuttal testimony and exhibits in support of Movants’ proposed Stipulation and Settlement (“Proposed Stipulation”) filed on August 26, 2025.<sup>1</sup> In support, the Movants assert that allowing them to introduce testimony and evidence to support their Proposed stipulation will allow the Commission to consider both “settlement agreements” and decide which is in the public interest.<sup>2</sup> Movants’ request is fundamentally misconceived as a matter of law.

Movant’s Procedural Motion and request for additional rounds of testimony and exhibits in this proceeding is incorrectly premised on the legally indefensible and unsustainable claim that Movants can unilaterally resolve the above-captioned petition for a general base rate by settling with themselves and without the petitioner, FPL. As fully developed in FPL’s August 29, 2025, response in opposition to Movants’ unprecedented request, the Movants’ Proposed Stipulation is

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<sup>1</sup> Hereinafter, the Movants’ joint motion is herein referred to as the Movants’ “Procedural Motion.”

<sup>2</sup> See Movants’ Procedural Motion, pp. 4 and 6.

an illusory “agreement” that cannot be legally enforced against FPL.<sup>3</sup> Further, the Movants are not the petitioner in this proceeding and the relief requested in the Proposed Stipulation is not properly before this Commission. Thus, the Movants are not entitled to additional rounds of testimony to support a request for relief that this Commission cannot legally grant and enforce in this proceeding.

At best, the Proposed Stipulation is nothing more than a statement of joint positions among the Movants on the proposed 2025 Stipulation and Settlement Agreement filed by FPL and the other settlement parties (the “FPL Settlement Agreement”). The Movants will be permitted to fully argue their respective positions in their testimony, cross-examination of FPL witnesses, and in briefs. Simply put, there is no need for additional rounds of testimony or exhibits for the Movants to argue their positions in this proceeding.

For these reasons, as further explained below, the Movants’ Procedural Motion and request for additional rounds of testimony and exhibits 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. The Parties filed voluminous pre-filed testimonies with accompanying exhibits and responded to extensive discovery, and all of FPL’s witnesses were deposed on their pre-filed testimonies.

3. On August 8, 2025, FPL filed a notice of settlement in principle and joint motion to suspend the schedule and amend the Order Establishing Procedure (“OEP”), Order No. PSC-

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<sup>3</sup> Hereinafter, FPL’s August 29, 2025, response is herein referred to as FPL’s “First Response.”

2025-0075-PCO-EI. 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.

4. 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.”

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

6. On August 22, 2025, the Prehearing Officer issued the First Order Revising Order Establishing Procedure (“First Revised OEP”), Order No. PSC-2025-0323-PCO-EI, that revised the procedural schedule and discovery protocols for the FPL Settlement Agreement. Pertinent to Movants’ Procedural Motion, the Revised OEP established the following dates for additional testimony on the FPL Settlement Agreement:

Testimony and Exhibits  
(*FPL & Signatory Parties*)

September 3, 2025

Testimony and Exhibits  
(*Movants*)

September 17, 2025

7. On August 26, 2025, the Movants filed a joint motion requesting Commission approval of their Proposed Stipulation. Therein, the Movants concede that the alleged negotiations, agreement, and concessions purportedly reached and agreed to in the Proposed Stipulation were only among the Movants themselves – three intervenor groups that are aligned against FPL’s proposed four-year rate plan.<sup>4</sup> 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. ”

8. On August 29, 2025, FPL filed its First 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. Therein, FPL explained that Movants’ Proposed Stipulation to settle among themselves should be denied because it is an illusory “agreement” and cannot be legally enforced against FPL.

9. On September 3, 2025, the Movants filed their Procedural Motion requesting that they be permitted to submit direct and rebuttal testimony and exhibits in support of the proposals set forth in the Movants’ Proposed Stipulation.

10. For the reasons explained below, the Commission must deny the Movants’ Procedural Motion.

**II. MOVANTS REQUEST IS INCORRECTLY PREMISED ON THE LEGALLY UNTENABLE CLAIM THAT MOVANTS CAN SETTLE WITH THEMSELVES**

11. The Movants are requesting this Commission allow direct and rebuttal testimony and exhibits to support their Proposed Stipulation to unilaterally resolve and settle FPL’s base rate

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<sup>4</sup> See Movants’ Proposed Stipulation, pp. 2 and 27.

case among themselves. Specifically, the Movants request the following additional testimony being added to the procedural schedule in this matter:

Direct on Proposed Stipulation ( <i>Movants</i> )	September 10, 2025
Response to Proposed Stipulation ( <i>FPL and Signatory Parties</i> )	September 24, 2025
Rebuttal on Proposed Stipulations ( <i>Movants</i> )	October 1, 2025

12. The Movants claim<sup>5</sup> that approving the requested additional rounds of testimony and exhibits will provide the Commission with the opportunity to review both the Proposed Stipulation and FPL Settlement Agreement to determine which agreement best serves the public interest.<sup>6</sup> In support, Movants allege that “this fair exchange of testimony and exhibits is exactly how Florida administrative law is supposed to work, that it will give the Commission a complete record of options available for its decisions herein, and that the dates proposed herein by the CMPs will not delay the proceeding or prejudice any party.”<sup>7</sup> The Movants’ request is legally flawed for multiple reasons.

13. As explained in FPL’s Response to Stipulation, the Movants 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.<sup>8</sup>

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<sup>5</sup> The majority of the Movants’ Procedural Motion does not address the need for the additional rounds of testimony but, rather, is dedicated to mischaracterizing the FPL Settlement Agreement and Signatory Parties thereto, as well as attempting to remediate Movants’ legally insufficient motion requesting approval of their Proposed Stipulation. FPL submits that Movants’ Procedural Motion is, in part, a procedurally improper attempt to “reply” to FPL’s First Response. See Fla. Admin. Code R. 28-106.204 (“No reply to the response shall be permitted unless leave is sought from and given by the presiding officer”).

<sup>6</sup> See Movants’ Procedural Motion, pp. 1 and 4.

<sup>7</sup> See Movants’ Procedural Motion, pp. 1 and 4.

<sup>8</sup> In fact, the Movants’ Procedural Motion is void of any legal authority or precedent, or any legal citation for that matter, that supports the proposition that aligned non-petitioner co-parties in interest are entitled to submit direct and rebuttal testimonies in support of their request to unilaterally resolve litigated proceedings in their favor without the primary adverse party and then somehow make that one-sided joint stipulation agreement legally enforceable and

Indeed, such a request is directly contrary to well-established law that a settlement resolves disputes between the contending parties,<sup>9</sup> and that any such settlement agreement is only binding on the signatory parties.<sup>10</sup> Meaning, there is no “agreement” and, even 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. Accordingly, there would be no binding final order on FPL’s requested permanent rate schedule and, 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.

14. Despite the fact that FPL raised this fundamental legal flaw in its First Response, Movants ignore this well-established precedent and, remarkably, argue that they are “are unaware of any pronouncement by the Florida Supreme Court that the Commission’s determination of the public interest when reviewing a non-unanimous, contested settlement requires the utility to be a party to the agreement.”<sup>11</sup> Not only is Movants’ position in direct conflict with both *Jaber* and *AmeriSteel*, *supra*, the Movants failed to identify one single regulatory matter before the Commission, let alone a base rate proceeding, that was settled as a whole without the utility’s participation – and rightfully so, because the Commission’s final order must bind the utility as explained in FPL’s First Response.

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binding on the non-signatory petitioner. Simply put, Movants have failed to offer any legal basis that they are entitled to the relief requested.

<sup>9</sup> 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 cf New Smyrna Beach v. Fla. PSC*, 469 So. 2d 731, 732 (Fla. 1985) (emphasis added).

<sup>10</sup> 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, settlements cannot bind non-signatories. 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).

<sup>11</sup> See Movants’ Procedural Motion, p. 3.

15. Despite the fact that the Movants' unprecedented attempt to settle with themselves is patently erroneous as a matter of law and even after the Movants had the benefit of reading FPL's First Response in opposition that is replete with legal authority showing that the Movant's Proposed Stipulation is a legal fiction, the Movants remarkably "double-down" on this legal infirmity and maintain their alleged ignorance of any legal authority contrary to their position and ask this Commission to allow Movants to present testimony and exhibits in support of the Proposed Stipulation.<sup>12</sup>

16. For these reasons, FPL requests that the Commission reject Movants' request to submit direct and rebuttal testimony and exhibits in support of their request for relief that cannot be granted with any legal effect in this proceeding – the sole purpose of which is to determine and set the rates and terms of service and associated tariffs to be offered by FPL to its customers.

**III. MOVANTS ARE NOT THE PETITIONER WITH THE BURDEN OF PROOF IIN THIS PROCEEDING**

17. Through their Procedural Motion requesting that they be permitted to present direct and rebuttal testimony to support their Proposed Stipulation, the Movants are essentially requesting that the Commission treat them as petitioners in this case with the burden of proof in this proceeding. The Movants request to be treated as the petitioners requesting relief is without factual support, is without legal merit, and further highlights the legal fallacy of their attempt to "settle" with themselves.

18. 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, 25-6.0436, and 28-106.201, Florida Administrative Code. Notably, Rule 28-106.201 requires proceedings before the Commission be initiated by written petition that, among other things, must

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<sup>12</sup> See Movants' Procedural Motion, p. 4.

include a “statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency’s proposed action.” Fla. Admin. Code R. 28-106.201(1) and (2)(g). Rule 28-106.201 further provides that “[u]pon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition.” Fla. Admin. Code R. 28-106.201(3) (emphasis added).

19. In this proceeding, FPL was the only party that filed a written petition setting forth a precise request for relief pursuant to Rule 28-106.201. Accordingly, there is only one petitioner, one petition, and one request for relief properly pending before this Commission. For this reason alone, the Commission need not reach Movants’ Proposed Stipulation and, therefore, should deny Movants’ Procedural Motion requesting that they be treated as petitioners in this proceeding and be afforded additional rounds of testimony to support the relief purportedly requested in their legally unenforceable Proposed Stipulation.

20. Even assuming, *arguendo*, that the relief requested in Movants’ Proposed Stipulation was properly before this Commission pursuant to Rule 28-106.201, which it is not for the reasons explained above, the Movants request to be treated as petitioners that are allowed to introduce evidence to support their Proposed Stipulation and rebut testimony of any opposing parties appears to be a request to shift the burden of proof in this proceeding from FPL to Movants. The fundamental legal flaw with this proposal is that, as this Commission has explained, “[i]t has been well established both by us and the State’s courts that the burden of proof lies with the utility who is seeking a rate change.” *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Order No. PSC-09-0024-FOF-EI, Docket No. 080001-EI, 2009 Fla. PUC LEXIS 161 (FPSC Jan. 7, 2009) (citing *Florida Power Corp. v. Cresse*, 413 So.2d 1187, 1191 (Fla. 1982); *In re: Application for increase in wastewater rates in Seven Springs*



*System in Pasco County by Aloha Utilities, Inc.*, Order No. PSC-01-0326-FOF-SU, Docket No. 991643-SU (FPSC Feb, 6, 2001); *In re: Investigation of Fuel Adjustment Clauses of Electric Utilities*, Order No. 12654, Docket No. 830001-EU (FPSC Nov. 3, 1983)).<sup>13</sup>

21. In FPL's petition, FPL requested Commission approval of a permanent base rate increase through a proposed four-year rate plan to run from 2026 through 2029. Through the proposed FPL Settlement Agreement, FPL has requested an alternative permanent base rate increase and four-year rate plan.<sup>14</sup> Thus, pursuant to Rule 28-106.201(3), Florida Administrative Code, the Commission must grant or deny the relief requested by the petitioner, FPL. If the Commission denies the alternative relief requested in the FPL Settlement Agreement, the Commission will then need to consider and decide the relief requested in FPL's original, as-filed base rate increase.

22. This legal requirement for the Commission to rule on the relief requested by the petitioner further highlights the legal fallacy of Movants request to be treated as petitioner and allowed additional testimony to support the relief requested in their Proposed Stipulation. Indeed, if the Commission declined to rule on the relief requested by FPL and, instead, treated Movants as petitioners and acted on the relief requested in their legally unenforceable Proposed Stipulation, there would be no valid final Commission order granting or denying the relief requested in FPL's

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<sup>13</sup> See also *Fla. PSC, Fla. Waterworks Ass'n*, 731 So. 2d 836, 841 (Fla. 1st DCA 1999) ("The burden of proof in ratemaking cases in which a utility seeks an increase in rates rests on the utility") (citing *So. Fla. Natural Gas Co. v. Fla. PSC*, 534 So. 2d 695 (Fla. 1988)).

<sup>14</sup> 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." 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. Thus, through this proceeding, the Commission will determine and set the rates and terms of service and associated tariffs to be offered by FPL to its customers.

written petition. Consequently, FPL's as-filed rates and tariffs would become permanent by operation of law once the rate suspension period expired.<sup>15</sup>

23. For these reasons, Movants request to be treated as petitioners and allowed to present direct and rebuttal testimony and exhibits to support the relief requested in their Proposed Stipulation should be denied.

**IV. MOVANTS HAVE A FULL OPPORTUNITY FOR THEIR STIPULATED POSITIONS TO BE OFFERED INTO THE RECORD AND CONSIDERED BY THIS COMMISSION**

24. The Movants claim that allowing additional testimony to support their Proposed Stipulation will allow the Movants "a meaningful opportunity to defend themselves" from the proposals set forth in the FPL Settlement Agreement submitted by the Signatory Parties.<sup>16</sup> This statement alone, concedes that the real intent and purpose of the Movants' Proposed Stipulation is to present arguments in opposition to FPL Settlement Agreement.

25. Further, as explained above, and more fully in FPL's First Response, the Proposed Stipulation is an illusory settlement agreement and, as a matter of law, is not binding on FPL. Thus, the only viable and legally enforceable "agreement" pending for this Commission's consideration is the FPL Settlement Agreement. Consequently, the Proposed Stipulation is nothing more than a statement of joint positions among the Movants on the proposed FPL Settlement.

26. The Florida Supreme Court in *Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905 (Fla. 2023) ("*FAIR*"), explained that the Commission does two things when it reviews a settlement agreement. First, the Commission makes factual findings based on the

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<sup>15</sup> See Section 366.06(3), Fla. Stat. ("The commission shall take final commission action in the docket and enter its final order within 12 months of the commencement date for final agency action. As used in this subsection, the "commencement date for final agency action" means the date upon which it has been determined by the commission or its designee that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.").

<sup>16</sup> See Movants' Procedural Motion, p. 4

evidence presented by the parties. Second, the Commission decides whether the settlement agreement, in light of its findings of fact, is in the public interest and results in rates that are fair, just, and reasonable. *Id.* at 901.

27. The Court further affirmed that “while the Commission need not ‘resolve every issue independently’ in its final order when it is reviewing a settlement agreement, it must nonetheless ‘discuss[] the major elements of the settlement agreement and explain[] why it [is] in the public interest.’” *Id.* at 912 (citing *Sierra Club v. Brown*, 243 So. 3d 903, 914 (Fla. 2018); *Citizens I*, 146 So. 3d at 1153). “That includes considering the competing arguments made by the parties below in light of the factors relevant to the Commission’s decision, and supplying, given these arguments and factors, an explanation of how the evidence presented led to its decision.” *Id.* (emphasis added). Notably, the Court in *FAIR* advised that the Commission is to consider “competing arguments” that are relevant to the Commission decision whether a settlement is in the public interest – not “competing settlements” that are not legally enforceable on the utility.

28. To the extent that the Movants are concerned about having “a meaningful opportunity to defend themselves” against the FPL Settlement Agreement and want their stipulated positions considered by the Commission in reaching a decision on whether the FPL Settlement Agreement is in the public interest, Movants already have the full opportunity to include their stipulated positions as part of the non-signatory testimony and exhibits that are due to be filed on September 17, 2025, under the First Revised OEP. Likewise, the Movants will have the opportunity to cross-examine witnesses at the hearing, as well as brief their respective positions, stipulated or otherwise, on whether the FPL Settlement Agreement is in the public interest and should be approved.

29. 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.

30. For these reasons, the Movants' request for additional testimony to support their Proposed Stipulation that cannot be legally enforced against FPL is entirely unnecessary and would needlessly increase the cost of litigation and waste everyone's time and resources, including the Commission's.

## **V. CONCLUSION**

31. As explained above and more fully in FPL's First Response, the Movants' attempt to fully resolve FPL's proposed base rate increase by settling with themselves is legally infirm and nonsensical because FPL, as a non-signatory, would not be bound the Proposed Stipulation. Therefore, FPL would have no legal obligation to implement the rates, charges, terms, and tariffs proposed by the Movants in their Proposed Stipulation. Such an outcome defeats the entire purpose of this proceeding – that is, to set the rates, charges, terms, and tariffs to be offered by FPL to its customers.

32. Although the Movants' Proposed Stipulation is an illusory and unenforceable settlement agreement, the Movants nonetheless have a full opportunity for their stipulated positions to be offered into the record and considered by this Commission as part of its final decision consistent with the requirements of *FAIR, supra*.

33. The Movants' Procedural Motion requesting additional testimony to support their Proposed Stipulation is founded on a demonstrably erroneous legal assumption and would needlessly increase the cost of litigation if approved.

34. For all these reasons, the Movants' Procedural Motion for additional testimony and exhibits to support their legally unenforceable Proposed Stipulations should be denied.

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

Respectfully submitted this 5th day of September 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 5th day of September 2025:

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