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June 9, 2025

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 20250011-EI- Petition for rate increase by Florida Power & Light Company

Dear Mr. Teitzman:

Please find enclosed for filing in the above referenced docket the Direct Testimony and Exhibits of Timothy J. Devlin. This filing is being made via the Florida Public Service Commission's web-based electronic filing portal.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,

Walt Trierweiler
Public Counsel

/s/ Mary A. Wessling
Mary A. Wessling
Associate Public Counsel
Florida Bar No.: 93590

CERTIFICATE OF SERVICE
DOCKET NO. 20250011-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 9th day of June, 2025, to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO.: 20250011-EI FILED: June 9, 2025

DIRECT TESTIMONY

OF

TIMOTHY J. DEVLIN

ON BEHALF

OF

THE CITIZENS OF THE STATE OF FLORIDA

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DIRECT TESTIMONY

OF

TIMOTHY J. DEVLIN

On Behalf of the Office of Public Counsel

Before the

Florida Public Service Commission

DOCKET NO. 20250011-EI

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Timothy J. Devlin. My business address is 21 Equine Dr., Crawfordville, FL 32327.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on behalf of the Office of Public Counsel. Its business address is 111 West Madison St., Room 812, Tallahassee, Florida 32399-1300.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I have a Bachelor of Business Administration degree from the University of South Florida, 1974, with a major in Finance. I was a Certified Public Accountant ("CPA") licensed in the State of Florida from 1977 to 2021. I was employed by the Florida Public Service Commission ("Commission") from 1976 to 2011. I held various positions with the Commission including Director of the Auditing & Finance Division, Director of the Economic Regulation Division, and Executive Director. I also served, under contract, with the Florida Department of Agriculture and Consumer Services' Office of Energy policy from 2011 to 2012.

Q. HAVE YOU TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION ("COMMISSION") BEFORE?

A. Yes, I have testified in rate cases as well as rulemaking proceedings before the Commission. I testified in FPL's most recent rate case, Docket No. 20210015-EI on behalf of Floridians Against Increased Rates, Inc. I have also authored and co-authored many recommendations to the Commissioners on accounting, financial, and ratemaking issues, and I participated in making verbal presentations of many of those recommendations to the Commissioners. I have also made several presentations to various Florida legislative committees upon request. These presentations included topics such as the Commission's budget and overviews of Commission proceedings as well as various technical presentations. I was involved in the Commission's training program for its staff. I made several presentations regarding the determination of revenue requirements in rate proceedings.

Q. ARE YOU SPONSORING ANY EXHIBITS IN THIS CASE?

A. Yes, I am sponsoring the following exhibits:

- TJD-1 Resume of Timothy J. Devlin
- TJD-2 Comparison of Authorized Midpoint Return on Equity (ROE) to the Achieved ROE
- TJD-3 Dividends and Retained Earnings
- TJD-4 Customer Impact of Earning above Midpoint

- TJD-5 Approximate Effect of the Amortization of $200 million of Unprotected Deferred Tax Liability (DTL) on Customer Rates for 2026 and 2027.

II. DISCUSSION

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address FPL's proposed Tax Adjustment Mechanism ("TAM"). I believe that the TAM would not be consistent with sound regulatory practice nor is it in the public interest; therefore, it should be rejected in its entirety.

Q. WHAT WOULD BE THE BASIS OF THE TAM?

A. The TAM would be based on the DTL that utilities book for income taxes on a stand-alone basis. The DTL is derived principally from certain tax preferences granted by Congress and administered by the Internal Revenue Service ("IRS"). DTLs are subject to a timing difference in amortization between book and tax expenses. For instance, the IRS allows accelerated depreciation rates for taxes, but the booked deprecation is based on Commission depreciation (straight remaining life) rates. The (higher) income taxes related to the (lower) book depreciation are collected from customers in rates. However, the acceleration of depreciation rates for tax purposes allows the company to decrease its current tax expense in the early years while collecting the taxes related to the book depreciation in rates. This difference creates the DTL. The book taxes are higher in early years of asset lives but lower in later years. This in turn creates deferred tax liabilities in early years of asset lives which "turnaround" in later years as the taxes are actually paid and should result in a zero balance for each asset at the end of the asset's life.

In 1969, Congress adopted what are known as "normalization" rules which require that the tax benefits from progressive tax policies such as accelerated depreciation be amortized (normalized) over the life of the related depreciable asset rather than pass directly (flow through) to ratepayers. As noted above, this difference results in the DTL which, in Florida, is recognized for ratemaking as a source of cost-free capital instead of a reduction of rate base as is done in most other states. Both methods yield essentially the same revenue requirement impact. Some describe it as a cost-free loan from the federal government.

Current tax law establishes two kinds of DTLs: protected and unprotected. The protected amounts, which are plant-related,[1] must be amortized (normalized) over the life of the related asset. The unprotected amounts, which are not considered plant-related, do not have this restriction and would be the basis for FPL's TAM.

Q. PLEASE EXPLAIN WHY YOU BELIEVE THAT THE TAM WOULD BE NEITHER CONSISTENT WITH SOUND REGULATORY PRACTICE NOR IN THE PUBLIC INTEREST?

A. The regulatory framework under which utilities and the Commission operate is the long-established practice commonly referred to as the Regulatory Compact. Under this practice, a regulated utility is granted the exclusive right to serve a designated territory and enjoy a monopoly status. In exchange for monopoly status, the utility agrees to provide utility service to all customers in its service area at fair and reasonable rates. Fair and reasonable rates are predicated on the reasonable and prudent costs of the utility including a fair rate of return on equity ("ROE"). In Florida, the midpoint ROE is used in determining fair and reasonable rates. The Commission typically approves a 100-basis point range on both sides of the midpoint ROE and within which the utility has the opportunity to earn its return on

[1] Plant-related assets include long term assets (asset lives greater than one year) and involve generation, transmission and distribution facilities.

equity. For example, FPL's current midpoint ROE is 10.8%, and FPL is authorized to earn up to 11.8% ROE without any regulatory interference. As proposed, the TAM would provide FPL with significant control over its earnings levels for the next four years. Rather than allowing FPL the opportunity to earn within a reasonable return on equity range, the TAM would provide FPL a method of, based on history, virtually ensuring that FPL can earn an ROE at the top of its authorized range for the next four years thereby rendering meaningless the midpoint ROE as a basis for establishing fair, just, and reasonable rates.

Q. HOW WOULD THE TAM BE SIMILAR TO THE RESERVE SURPLUS ADJUSTMENT MECHANISM ("RSAM") USED BY FPL IN PREVIOUS YEARS?

A. FPL admits that the TAM and the RSAM are similar in nature, and that the TAM will serve the same purpose as the RSAM.[2] With the RSAM, a portion of the depreciation reserve surplus (created from excess depreciation expense), referred to as the Reserve Amount, is accrued at the expense of ratepayers. Likewise, TAM involves identification of a subset of the collection from ratepayers for FPL's standalone tax expense before those taxes become due to the IRS and which are recorded as a DTL. FPL has selected two categories of unprotected DTLs: tax repairs and mixed service costs. The total balance for these two DTL categories is projected to be $2.041 billion in 2026, of which FPL has identified $1.717 billion to include in the proposed "TAM Amount" and use for its proposed TAM.[3] The total balance of unprotected DTLs is approximately $2.6 billion.

Q. ARE THERE ANY DIFFERENCES BETWEEN THE TAM AND THE PREVIOUS RSAM?

[2] Direct Testimony of FPL Witness Scott Bores, p.55, lines 21-22.
[3] Direct Testimony of FPL Witness Ina Laney, Exhibit IL-12 p. 1 of 1 - ERRATA.

A. Yes, there are three differences between the RSAM and the TAM. First, the RSAM Reserve Amount was based on a calculated depreciation reserve surplus and represented overpayment or excess depreciation charges based on a current depreciation study or stipulated parameters approved by the Commission. It is important to rectify overpayment or excess expense as soon as possible to better match the contributor of the expense and the recipient of subsequent credits. This is known as intergenerational equity. The functional equivalent, known as the TAM Amount, would not represent an overpayment or excess income taxes pay by ratepayers because the Excess Deferred Taxes from the 2017 federal income tax reduction will be fully amortized in 2025 as a result of the settlement in FPL's 2021 rate case. In contrast, the TAM would be unprecedented as it would represent accelerated amortization of otherwise normal DTLs for the sole purpose of increasing earnings. Second, unlike the depreciation reserve used with the RSAM, the DTLs in the TAM Amount that would be used for the TAM would be grossed up for income taxes in accordance with FPSC Rule 25-14.013, Florida Administrative Code. Third, unlike the RSAM, FPL proposes to use Regulatory Asset and Liability accounts in the application of the TAM.

Q. WHAT WOULD BE THE EXPECTED RATEPAYER IMPACT IF THE TAM IS APPROVED AS PROPOSED BY FPL?

A. Based on the past decisions by FPL with respect to the RSAM over the last four years, I expect that FPL will use the TAM, if approved, to achieve earnings over $1.7 billion dollars in excess of the midpoint ROEs. (See Exhibit TJD-2). This amount would flow to FPL's shareholders and would not be necessary for FPL to achieve a reasonable ROE. The ratepayers, who contributed to the DTLs will incur future rates significantly greater than they otherwise would be absent the TAM.

Q. HOW DID THE RSAM AFFECT SHAREHOLDERS?

A. Since the introduction of the current version of the RSAM in 2013, income transferred from FPL to its parent company, NextEra Energy (NEE), increased annually from approximately $1.5 billion in 2014 to $4.4 billion in 2024. This resulted in extraordinary increases in both dividend payments and retained earnings. (See Exhibit TJD-3). A significant portion of these increases is attributable to the unnecessary use of the RSAM.

Q. DO YOU BELIEVE THAT THE TAM PROPOSED IN THIS PETITION WOULD UNDERMINE THE STATUTORY OBLIGATION UNDER SECTION 366.05, FLORIDA STATUTES, FOR THE COMMISSION TO SET FAIR AND REASONABLE RATES?46

A. Yes, I believe the proposed TAM would undermine the statute as I understand it based on my decades of experience. Section 366.05, Florida Statutes, states that "the Commission shall have the power to prescribe fair and reasonable rates and charges." I believe that fair and reasonable rates are predicated on rates being set at the midpoint ROE. The TAM could be used to erode this expectation by the fact that rates may be set at a midpoint ROE, but with the TAM, the utility could virtually ensure earnings at the top of the range for an increase in earnings of as much as 100 basis points ($500 million is the value of 100 basis points on equity at FPL's requested ROE) by simply dipping into the designated unprotected DTL balance. I believe that the earned ROE is considered fair if it falls within the authorized range of plus or minus 100 basis points from the midpoint ROE or whatever range the Commission deems appropriate. As long as FPLs earnings fall within this range, its financial position will remain strong. It would be unfair to use the ratepayer provided DTL to needlessly allow FPL to practically ensure earnings at the top of the ROE range.

Q. DOES SECTION 366.071, FLORIDA STATUTES, ALREADY PROVIDE EARNINGS PROTECTION FOR UTILITIES?

A. Yes. Based on my decades of experience working with implementing this law, I am aware that Section 366.071, Florida Statutes, known as the interim statute, provides an expedited process wherein utilities with deficient earnings may seek to increase rates within 60 days on an interim basis, subject to refund, to a reasonable level known as the required rate of return. While the interim statute does not prescribe a particular range, a 100-basis point spread above and below the midpoint ROE is common practice. This statute lessons the need for a TAM as it provides a safeguard against deficient earnings. This statute was enacted in the late 1970's. Before then, utilities would usually have to undergo a full rate case proceeding before any rate relief for inadequate earnings.

Q WHAT OTHER FACTORS REDUCE RISK FOR FPL AND AFFORD EARNINGS PROTECTION?

A. A significant portion of FPL's operations are subject to various cost recovery clauses or similar mechanisms. These include the following: fuel costs, conservation costs, capacity costs, environmental costs, storm protection plan costs, and the storm damage recovery mechanism. These cost recovery clauses and mechanisms represent approximately 39% of FPL's total revenue base and significantly reduce earnings risk exposure.

Q. HOW MUCH CONTROL WOULD FPL HAVE OVER ITS ROE USING THE TAM?

A. Under FPL's proposal, it would have significant control of its reported, achieved ROE. FPL has requested to be able to use the TAM and unprotected DTLs of $1.717 billion in the TAM Amount over the four-year period to increase, at its sole discretion, its ROE even if it is earning above its midpoint ROE. It is the midpoint ROE that is used to establish and then measure fair and reasonable rates and afford FPL the opportunity to earn a reasonable ROE. This regulatory framework facilitates FPL's strong financial standing. FPL does not need to earn more than its authorized ROE to remain financially viable. The difference in revenue requirements between the midpoint ROE and top of the range ROE was about $1.54 billion over the past four years and will be in excess of $2 billion during the upcoming four-year period, 2026 through 2029.

Q. HAS FPL DESIGNED THE PROPOSED TAM TO BE USED TO ACHIEVE A MIDPOINT ROE?

A. Supposedly, FPL claims to have designed the TAM to achieve a mid-point ROE, but in practice, a similar mechanism (RSAM) has been used to achieve ROEs at the high end of its authorized range. It is my understanding that the TAM Amount of $1.717 billion would be based on FPL's requested midpoint ROE of 11.9%. It is my further understanding that based on its past practice, FPL wants the ability to use the TAM to achieve an ROE above the midpoint up to the top of the range ROE.[4] Presumably, FPL wants the ability to claim any cost efficiencies for the benefit of shareholders by reporting achieved ROEs at or near the top of the ROE range. History demonstrates that FPL would use the TAM as it did the RSAM to achieve top-of-the-range ROEs because of its loyalty to its parent company and shareholders, and FPL would merely use cost efficiency as its excuse to use the TAM to reach the top of the range.

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[4] See 2021 deposition of FPL Witness Ferguson, who is responsible for the Earnings Surveillance Report preparation, at page 109 where he testified that the use of the RSAM was the last step in finalizing the reported, achieved ROE. This demonstrates that to the extent that the RSAM is used to achieve the target ROE, it is not being used to achieve the mid-point ROE.

Q. DO YOU SEE ANY FLAWS WITH FPL'S CLAIM THAT IT IS TARGETING A MID-POINT ROE?

A. Yes. FPL's Witness Laney's Exhibit IL-13 purportedly shows that the TAM targets a mid-point ROE. However, in that exhibit, FPL uses a proposed ROE of 11.9%. Based on my experience, it seems inconceivable that the ultimate authorized ROE will not be substantially less given past Commission decisions. Unlike rate case-based forecasts, the forecast for 2028 and 2029 used to justify a TAM amount of $1.717 billion is based on abbreviated data and assumptions and could be prone to bias and inaccuracy.

Q. HOW DO YOU KNOW THAT FPL WOULD USE THE TAM TO INCREASE ROE TO THE TOP OF THE ROE RANGE?

A. History indicates that FPL intends to use the TAM in the same manner as the RSAM. This means FPL will use the TAM to increase earnings to the top or near the top of its authorized ROE range. As shown on Exhibit TJD-2, FPL used the RSAM to achieve an ROE at the top of the authorized range five of the eight years in FPL's past two rate cases and well above the midpoint ROE in all of these years. FPL Controller Keith Ferguson and FPL Witness Laney have testified that the RSAM was used to hit FPL's target ROE (which was usually the top of the range). For 2026 and 2027, it is estimated that the difference between the mid-point ROE and top of the range ROE is $503 million and $541 million, respectively. If we extrapolated these numbers to the four period 2026 through 2029, it is very possible that FPL will use all of its TAM Amount to achieve ROEs above the midpoint in all four years.

Q. HOW WOULD FPL'S CONTROL OVER THE PROPOSED TAM AMOUNT AFFECT RATEPAYERS?

A. To the extent FPL uses any part of the TAM Amount to increase earnings above what is necessary to maintain a strong financial position, it would be needlessly enriching shareowners to the detriment of ratepayers. Rates for ratepayers will be higher than otherwise in the future if FPL has complete control over the TAM Amount. As shown on Exhibit TJD-2, FPL used the RSAM with both deductions and increases in depreciation expense that led to at or near the top of its ROE range. Again, I would expect a similar pattern with the TAM, if approved.

Q. HOW DID FPL'S USE OF THE RSAM AFFECT RATEPAYERS IN THIS CASE?

A. FPLs depletion of the Reserve Amount to increase shareholder earnings has had the effect of increasing rate base and corresponding revenue requirements in this case. As shown on Exhibit TJD-4, FPL has increased its revenue requirements due to past RSAM usage by approximately $1.45 billion above its midpoint ROE over a four-year period based on the final order in its last rate case. This cost each ratepayer approximately $46 a year more than if FPL would have achieved the 'reasonable' mid-point ROE during this timeframe. The use of RSAM enabled FPL to charge each ratepayer about $46 a year more than needed to maintain a viable financial condition. Again, I expect similar outcomes with the TAM, if approved.

Q. ARE THERE BENEFITS ASSOCIATED WITH FPL'S PROPOSAL TO "STAY OUT" OF A RATE CASE FOR FOUR YEARS?

A. Any potential benefits would exist only if it could be demonstrated that without the use of the RSAM or proposed TAM, FPL would have been at significant risk of earning below the bottom of the authorized range. No compelling showing has been made by the Company that it is at significant risk of earning below it authorized range. From 2022 through 2025, ratepayers were deprived of $1.45 billion due to FPL's use of the RSAM. (See Exhibit TJD-4). Ratepayers will probably lose another $1.717 billion in revenue requirement benefits under the TAM. This will have dramatic effects on future rates just like the rates proposed by FPL in this case may be significantly higher because of the impact of the historical use of the RSAM. Those likely TAM impacts would be way too high a price for ratepayers in the future. Ratepayers would be better off with another rate case in two years than they would be if the Commission approves the proposed TAM.

Q. ARE THERE ANY OTHER REASONS YOU ARE OPPOSED TO THE TAM?

A. Yes. The proposed TAM is unnecessary given information provided by FPL. It makes no sense for it to apply to 2026 and 2027 because base rates will be fully vetted through full Minimum Filing Requirements and expert testimony in a comprehensive evidentiary proceeding so that base rates will provide the opportunity to earn at the authorized midpoint. Also, one of the primary benefits of the TAM touted by FPL is avoidance of a rate case filing but that does not apply to 2026 and 2027 since rate case filings have already been made. Regarding 2028 and 2029, the revenue requirements for those years are likely overstated by virtue of the use of FPL's proposed ROE of 11.90% because the ultimate authorized ROE will undoubtably be substantially lower. Thus, it would be unnecessary to use the $1.717 billion TAM Amount to achieve a proposed 11.90% ROE. Again, FPL's history shows that it would use the discretion of the TAM as it did with RSAM to achieve ROEs at or near the top of the range.

Q. SINCE THE TAM WOULD NOT DIRECTLY AFFECT RATES IN THIS CASE AND SINCE ANY RELATED TAM ACCOUNTING ENTRIES WILL BE MADE

AFTER RATES ARE SET, WHY IS THE AFTER-TAM ADJUSTED ROE IMPORTANT TO RATEPAYERS?

A. Any reduction in DTL for the exclusive benefit of FPL's shareholders deprives ratepayers of the future benefits provided by those DTLs through lower than otherwise customer rates.

Q. HOW DOES YOUR EXHIBIT TJD-4 RELATE TO WHAT YOU TESTIFIED TO IN DOCKET NO. 20210015-EI?

A. In that docket, I presented Exhibit TJD-5, that stated that the Revenue Requirement difference between Achieved ROE and Midpoint ROE was estimated to be $1.518 billion for the period 2022 through 2025. Four years later, it appears FPL did use the RSAM to report achieved ROEs at or near the top of the range and the effect is about $1.46 billion in increased revenue requirements. Coincidentally, FPL was authorized to use a $1.45 billion Reserve Amount for use of its RSAM for years 2022 through 2025. FPL did not need the RSAM to earn a reasonable ROE. I recommended in my testimony in FPL's 2021 rate case that the Commission reject the RSAM, and I recommend rejection of the TAM for the same reasons plus additional reasons.

Q. DO YOU HAVE ANY CONCERNS WITH FPL'S PROPOSED ACCOUNTING FOR THE TAM?

A. Yes, FPL proposes the use of a Regulatory Asset and Regulatory Liability for its TAM. Regulatory Assets and Liabilities need to be based on an order or rule by the regulator, the Florida PSC or FERC. FPL has not indicated what order or rule it is relying on for this accounting treatment. The proposed Regulatory Asset has a 30-year effect of $115 million a year. That comes out to be $3.45 billion, double the TAM amount. FPL has not explained why use of a Regulatory Asset or Regulatory Liability is necessary or why it doubled its proposed Regulatory Asset amortization from the total TAM Amount. The use of a Regulatory Asset needlessly increases revenue requirements in the future because of the associated annual amortization of $115 million over 30 years. Also, it is unclear whether FPL intends to include the Regulatory Asset in rate base which would entail additional costs to ratepayers.

The proposed Regulatory Liability is based on the unprotected DTLs for the Tax Repairs and Mixed Services Costs accounts but does not directly affect DTLs or Account 282-Accumulated Deferred Income Taxes. In FPL's proposal, the Regulatory Liability is the vehicle used to amortize tax credits primarily for the benefit of shareholders. This accounting method preserves DTLs at current balances and therefore, provides FPL the opportunity to request a TAM in the future by simply creating new Regulatory Asset and Liability accounts without concern over the depletion of DTLs. According to Witness Laney on page 48 of her testimony, the TAM Regulatory Asset and Liability has not been established yet and nor approved by the Commission. If the Commission approves the accounting for a Regulatory Asset and Liability for the TAM, it will probably result in a substantial increase in rate base amortized over 30 years as well as charges, not credits, to tax expense. The RSAM used in past cases did not involve Regulatory Assets or Liabilities. I do not believe that this accounting step is necessary with the TAM and is potentially very harmful to ratepayers. Unless FPL can prove that use of a Regulatory Asset and Liability is in the ratepayers' best interest, I propose that if a TAM is to be used, that it only involve the primary accounts for deferred taxes: Account 282-Accumulated Deferred Income Taxes and Account 411.1-Provision for Deferred Income Taxes-Credits, Utility Operating Income.

Q. DO YOU SEE ANY OTHER PROBLEMS WITH FPL USING THE TAM TO ACHIEVE EARNNGS ABOVE THE MIDPOINT ROE?

A. Yes, it appears that FPL's method assumes any efficiency measure should be reflected after the TAM brings the achieve ROE to the midpoint authorized ROE. However, this involves "color coding" dollars with the application of the TAM amortization first and then recognizing any alleged positive cost effects related to efficiency measures to enhance earnings. FPL would accomplish this by crediting income with additional TAM Amount amortization. Another problem with this approach is that there is no verification process proffered that the Commission could use to validate any cost savings that underlie the additional TAM amortization. What's more, at least for 2026 and 2027, FPL should have already "baked in" or reflected all efficiencies in the MFRs and not holding back on them to create shareholder windfalls.

Q. DO YOU BELIEVE THAT TAM SHOULD BE APPROVED?

A. No. Given the past use of RSAM which is analogous to TAM, I believe the consequences of the TAM far outweigh the purported benefits such as avoidance of a rate case for two years and alleged rate stability. Under the RSAM, FPL was able to earn ROEs far above what is necessary to achieve a reasonable ROE, and the cost to ratepayers was significant. (See Exhibit TJD-2). The difference between the mid-point ROE and top of the range ROE was about $484 million in 2025, and it is expected to grow in 2026 and 2027 to $503 million and $541 million. That staggering effect would exist even if somewhat lowered due to a reasonable ROE and would continue to grow in 2028 and 2029. Such returns only benefit shareholders, are not necessary to keep any company from filing a rate case, are not necessary for FPL to be financially viable, nor are they required to attract needed capital (debt & equity). In addition, unlike the RSAM, the TAM would not deal with excess expense which would lends itself to a short amortization period to address intergenerational equity concerns. Instead, the TAM would rely on regular "unprotected" DTLs, which have never been subject to accelerated amortization before. I believe any new accounting treatment for DTLs should be handled on a generic basis in a proceeding with all utilities and other interested parties involved.

Q. IF THE TAM IS APPROVED OVER OPC'S OBJECTIONS, SHOULD THE COST OF EQUITY BE ADJUSTED TO REFLECT THE LOWER RISK TO FPL?

A. Yes, the recommended ROE by OPC Witness Lawton should be further reduced by at least 50 basis points to reflect the lower risk provided to FPL by the TAM. The use of the TAM will afford FPL the ability to virtually guarantee that it will achieve a reasonable rate of return. The cost of capital models used by FPL and other parties include proxy companies that do not have that unique risk-reducing advantage of the TAM. The cost of capital impact of the analogous RSAM (of an FPL affiliate) was addressed by the Commission in Docket No. 20220069-GU, *Petition for rate increase by Florida City Gas*.[5] A 50 basis point reduction reflecting the risk-reduction benefits to the utility was recognized. Although that case is pending appeal, the risk-reduction ROE adjustment due to the RSAM is not a contested aspect of the appeal.

Q. IF THE TAM IS APPROVED OVER OPC'S OBJECTIONS, DO YOU BELIEVE THAT THE TAM SHOULD BE AVAILABLE TO BE USED FOR ALL FOUR YEARS (2026 THROUGH 2029)?

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[5] See Commission agenda conference transcript dated March 28, 2023. Document No. 02621-2003, PSC Docket No. 20220069-GU, p. 39 – 46, *In re: Petition for rate increase by Florida City Gas.*

A. No. If the Commission approved the TAM over OPC's objection, there is no reason for FPL to need the TAM in 2026 and 2027. Revenue requirements and base rates will be set in each of those years at a mid-point ROE using the most recent comprehensive financial forecast data. Additionally, if the primary benefit of the TAM is supposedly to avoid future rate cases, it should not apply to 2026 and 2027 because this rate case already involves those two years. Moreover, if FPL wants to earn a higher than mid-point ROE due to efficiency measures, than it needs to prove it in the main rate case as opposed to claiming such benefits at a later date when there is no opportunity for challenge by any party including the Commission. Also, FPL Witness Laney's own Exhibit IL-13 shows that the use of the TAM is only for years 2028 and 2029.

Q. WOULD YOU RECOMMEND THAT THE COMMISSION CONSIDER AN ACCELERATED AMORTIZATION OF ADDITIONAL UNPROTECTED DTLS?

A. No, not in this case. In the past, accelerated amortization of DTLs has been limited to Excess DTLs such as the 10-year amortization ordered by the Commission when the federal corporate tax rate was reduced from 35 percent to 21 percent in 2017. Other than cases of excess DTLs, accelerated amortization of DTL has not been approved by the Commission. I believe that if the Commission is considering accelerating amortization of unprotected DTLs then it should consider opening a generic docket that would explore the advantages and disadvantages of accelerated unprotected DTL with regards to all utilities. This is yet another reason to reject FPL's proposal in its entirety and further investigate whether acceleration of the amortization of DTLs is based on sound legal and accounting principles.

Q. IF THE TAM IS APPROVED OVER OPC'S OBJECTIONS, WHAT OTHER MODIFICATIONS TO THE TAM WOULD BE REQUIRED TO PROTECT RATEPAYERS?

A. I believe if a TAM is to be authorized over these objections, then ratepayers who paid the income taxes should be the primary beneficiaries. I would propose a two-step process to first use the proposed TAM Amount of $1.717 billion to offset revenue requirements over a four-year period commencing January 1, 2026. (See Exhibit TJD-5). Second, to enable genuine "stay out" flexibility, authorize FPL to use any part of the remaining balance of unprotected DTL to achieve an ROE no greater than the point halfway between the bottom of the ROE range and the midpoint ROE that is reflective of the lower risk to FPL by use of the TAM in years 2028 and 2029. This would leave approximately $917 million for FPL to use to ensure it stays within the reasonable ROE earnings range in years 2028 and 2029 while also providing some benefit to ratepayers. We must keep in mind that ratepayers paid the deferred taxes in the first place. Also, FPL should not be permitted to credit back to the DTL balance. FPL should only be permitted to debit entries, with corresponding credits to income tax expense.

III. CONCLUSION

Q. PLEASE SUMMARIZE YOUR DIRECT TESTIMONY?

A. I believe that FPL's proposed TAM is seriously flawed from the ratepayer's perspective. It is not needed for FPL to earn a reasonable mid-point ROE or to stay out from filing a rate case for the upcoming four-year period. My reason for this assertion is primarily based on the results from the previous, very analogous, RSAM where FPL needlessly achieved earnings above what is necessary to maintain financial viability to significant detriment of the ratepayers. This has resulted in customers paying about $46 a year or $184 over the previous four years more because of the RSAM. FPL did not need any part of the RSAM to achieve a reasonable rate of return for years 2022 through 2025 or to stay out of filing a rate case. (See Exhibit TJD-4). The Commission should not approve FPL's proposed TAM. If the Commission does approve the proposed TAM over OPC's objections, then I am suggesting certain modifications that should be made to ameliorate the negative impacts of the TAM and protect ratepayers.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

Exhibits

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Timothy J. Devlin

Overview

With over 35 years experience in utility regulation at the Florida Public Service Commission (PSC), I have acquired unique and extensive knowledge of the utility industry. This includes dealing with accounting, finance and other regulatory issues associated with electric utilities, local natural gas distribution companies, telecommunications companies and water/wastewater utilities. During the last 11 years with the PSC, the majority of my work centered on the energy needs for the State of Florida.

Professional Experience

I was employed by the Florida Public Service from February 1976 to July 2011. I worked for the Department of Agriculture and Consumer Services (Office of Energy) from October 2011 to March 2012.

Beginning Date	Ending Date	Position
February 1976	August 1984	Various positions involving auditing and finance.
August 1984	May 2000	Director, Auditing and Financial Analysis: Responsible for audits of utilities and regulatory issues involving finance, security applications, income taxes and depreciation.
May 2000	January 2010	Director, Economic Regulation: Responsible for utility rate cases, finance issues, certification of utility service, territorial disputes, rate structure, energy conservation, and power plant siting.
January 2010	July 2011	Executive Director: Responsible for technical staff, PSC budget and administrative functions.
October 2011	March 2012	Consultant for Office of Energy: Provide support for the Office in its development of legislative recommendations relating to energy policy.

Timothy J. Devlin

Education

January 1971-June 1974 University of South Florida in Tampa, Florida
Bachelor of Arts in Finance

Professional Certifications, Awards and Accomplishments

2010, Member of the National Association of Regulatory Commissions' Executive Management Subcommittee.
2008, Member of the Florida Cap and Trade Technical Working Group.
2004, Gunter Award for Distinguished Service, Florida Public Service Commission.
1997-2000, Chairman of the National Association of Regulatory Commissions' Accounting and Finance Subcommitee.
1994, Honored by the Florida Public Service Commission for management of the multi-state audit of BellSouth.
1985-1988, Member of the Southern Task Force formed under the Southeastern Association of Regulatory Commissions.
1983-1985, Member of the Federal/State Joint Board core staff working group on telephone cost separations reform and establishment of the Universal Service Fund.
1980, Developed the earnings surveillance program, which is an integral tool in the Florida Public Service Commission's regulatory oversight.
1976 to present, Certified Public Accountant in good standing.

Professional and Community Memberships

Certified Public Accountant licensed in Florida (1997 to 2021)
Warden of the Vestry and member of the Finance Committee for Christ Church Anglican
Accountant, The Farm Homeowners' Association
Vice Chairman, Wakulla Advisory Group for the Community Center
Treasurer for the Master Gardener program, Wakulla Extension Office
Treasurer for the 4-H program, Wakulla Extension Office
Tax preparer for AARP's Tax-Aide program

Year	Authorized Midpoint ROE	Achieved ROE
2017	10.6%	11.08%
2018	10.6%	11.6%
2019	10.6%	11.6%
2020	10.6%	11.6%
2021	10.6%	11.6%
2022	10.8%	11.74%
2023	10.8%	11.8%
2024	10.8%	11.4%
2025 (projected)	10.8%	11.68%

Year	Year End Retained Earnings	Balance Transferred from Income	Dividends Declared-Common Stock	From FERC AR Dividends	Capital Contributions NEE to FPL
2008	2,323,326,528				
2009	2,669,514,385	$831,187,837.00	($485,000,000.00)		
2010	3,364,107,964	$944,593,599.00	($250,000,000.00)		
2011	4,013,422,744	$1,068,164,598.00	($418,849,818.00)		
2012	5,253,866,114	$1,218,517,008.00	$0.00		
2013	5,532,381,180	$1,328,325,412.00	($1,070,000,000.00)		
2014	5,499,450,252	$1,494,481,671.00	($1,550,000,000.00)		
2015	6,447,361,050	$1,618,882,185.00	($700,000,000.00)		
2016	6,874,784,030	$1,710,332,055.00	($1,300,000,000.00)		
2017	7,375,694,560	$1,604,607,506.00	($1,450,000,000.00)		
2018	9,046,542,906	$2,055,698,249.00	($500,000,000.00)		
2019	9,180,354,076	$2,207,768,342.00	($2,200,000,000.00)		
2020	9,620,498,936	$2,538,945,212.00	($2,210,000,000.00)		
2021	12,215,567,802	$2,870,981,893.00	($340,000,000.00)		1,665,000,000
2022	14,250,983,344	$3,626,777,672.00	($2,000,000,000.00)	(3,352,000,000)	3,700,000,000
2023	14,257,563,085	$4,454,438,162.00	($4,545,000,000.00)	(3,782,000,000)	0
2024	15,100,381,680	$4,431,428,595.00	($3,700,000,000.00)	(4,235,000,000)	3,400,000,000

Years 2022-2024 dividends declared stock is from OPC's First Set of Interrogatories, No. 7
Source: Annual Reports for years 2009-2021 from PSC website and FERC website for years 2022-2024.

Customer Impact of Earning Above Midpoint

Year	Revenue Requirement above Midpoint	Base Rate Revenue	% Effect on Rates
2022	$381M	$9.3B	4.3%
2023	$404M	$9.5B	4.2%
2024	$273M	$10.2B	2.7%
2025	$484M	$9.8B	4.9%
Total	$1.54B	$38.8B	4.0%

	Residential Monthly Bill	Annual Effect
Present Rates	$101.68	$1220.16
Rates w/o RSAM	$97.82	$1173.84
Difference	$3.86	$46.32

Notes:

Assume 1250 monthly kwh usage.

The potential earnings difference between the Midpoint and Maximum ROEs for years 2022 through 2025 was predicted to be $1.565 billion-See Exhibit TJD-6 in Docket No. 20210015-EI.

The RSAM pursuant to the settlement in Docket No. 20210015-EI was $1.45 billion representing about 3.8% of base rate revenue over the four year period and is used in the calculation of Customer Impact.

Approximate Effect of the Amortization of $200 million of Unprotected DTLs on Customer Rates for 2026 and 2027

Year	FPL Requested Rate Increase	Amortization Effect	Adjusted Rate Increase Request
2026	$1.54 billion	($196 million)	$1.344 billion
2027	$927 million	($188 million)	$739 million