**IN THE SUPREME COURT OF FLORIDA**

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| **CITIZENS OF THE STATE OF FLORIDA, ETC.,** | ) | |
| **Appellant(s),** | ) | |
| | ) | **Case No.: SC13-144** |
| **v.** | ) | **Lower Tribunal No.: 120015-EI** |
| **FLORIDA PUBLIC SERVICE COMMISSION,** | ) | |
| **Appellee(s).** | ) | |

**ON APPEAL FROM THE FLORIDA PUBLIC SERVICE COMMISSION**

# BRIEF AMICUS CURIAE OF AARP IN SUPPORT OF APPELLANTS CITIZENS OF THE STATE OF FLORIDA, ETC.


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## STATEMENT OF INTEREST OF AARP

AARP is a nonprofit, nonpartisan organization with a membership that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. As the leading organization representing the interests of people aged 50 and older, AARP advocates in states nationwide protecting older homeowners and tenants from excessive utility costs, which comprise a substantial portion of their housing expenses. The burden can be severe: even people who own their homes outright may pay over half their limited income for housing, due in large part to the high cost of utilities. Inability to pay utilities ranks as the second most common cause for eviction after inability to pay rent. AARP, therefore, intervenes in utility rate-setting cases and files amicus curiae briefs to protect the interests of older residential utility consumers. This appeal raises questions of significant importance to AARP: ensuring that the FPSC, in accordance with law, sets residential utility rates that are fair, just, and reasonable. AARP seeks to participate in this case to assist the Court in understanding the issues presented.

## STATEMENT OF FACTS

Amicus Curiae AARP adopts the Statement of Facts provided in the opening brief of the Office of Public Counsel ("OPC") Op. Br. at 1-8.[1]

## SUMMARY OF THE ARGUMENT

The Florida Public Service Commission ("FPSC") approved a non-unanimous settlement in this case, contrary to Florida law, because it failed to make findings based upon competent, substantial evidence on the record as a whole to address the objections raised by OPC, an intervenor representing the interests of residential ratepayers. When the FPSC considers a non-unanimous settlement, it must make findings "on the merits." *Mobil Oil Corp. v. Fed. Power Comm'n*, 417 U.S. 283, 314 (1974)). FPSC's failure to make necessary findings regarding the issues raised by the objections violates Florida law. § 350.05 and § 350.06(2), F.S.; §120.57(1)(b)8, F.S.; Rule 25-2.116(5), F.A.C. The FPSC has "frustrated" appellate review and committed reversible error by failing to provide the necessary factual findings to support its approval of the settlement.

Moreover, the FPSC approval of the settlement includes new matters that should not be included in this rate case because no public notice of them was provided, as required. *See* §366.06(1) (requiring written application for a change in rates). Failure to provide the required public notice is a due process failure that

[1] References to the OPC brief will be designated ("OPC Op. Br. at __").

has deprived interested parties, such as AARP, of an opportunity to intervene and participate in the proceeding on these matters. *See* § 366.06(3), F.S. Moreover, approval of such matters marks a significant and dangerous departure from normal rate making. As OPC argues, the FPSC should have rejected the settlement and opened a new docket for new items in order to provide the necessary public notice and meaningful opportunity for intervention and adjudication on those matters.

This Court, respectfully, should set aside the FPSC order approving the settlement in this case and remand it for findings addressing the objections raised by OPC.

## ARGUMENT

### I. FPSC Violated Florida Law By Approving A Non-Unanimous Settlement Without Making Required Findings Based Upon Substantial Competent Evidence To Address Objections Raised By OPC.

When the FPSC sets rates, whether by settlement or litigation, it must fulfill its obligation to ensure that the rates it approves are "fair, just, and reasonable." §§ 366.05 and 366.06(1), F.S. *See Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (finding the setting of "just and reasonable rates involves a balancing of the investor and the consumer interests."). OPC raised significant objections to the settlement that directly relate to whether the rates approved are fair, just, and reasonable. *See* OPC Op. Br. at 6-8. FPSC is required to address those objections on the merits to meet its obligation to set rates that are fair, just,

and reasonable. It may not approve the settlement based merely upon finding that the settlement is a "give and take" that "reasonably resolve[d] all issues" where it is clear that the OPC objections have not even been addressed, let alone resolved. *Cf. Crist v. Jaber*, 908 So. 2d 426, 431 (Fla. 2005) (approving agency decision that "cites extensive evidence supporting its findings" that are not clearly erroneous). The FPSC exceeded the limits of its authority by failing to make specific findings based on competent, substantial evidence on the record to support the rates as fair, just, and reasonable, which frustrates judicial review. *See* § 120.68(7)(e)(1), F.S.

### A. The Legislature Intended To Streamline Ratemaking And Better Protect Residential Consumers In Adjudicatory Proceedings.

The FPSC approval of the non-unanimous settlement, without making specific findings to address the objections filed by the OPC, is contrary to and undermines Florida law. The legislature's intent in passing the "file and suspend" provisions, Ch. 74-195 Laws of Fla., §366.06(3), F.S., was to streamline the regulatory process and to better protect consumers in response to rapidly rising utility rates and increased rate filings by utilities. *See* Stephan Kreiger, *Problems for Captive Ratepayers in Nonunanimous Settlements of Public Utility Rate Cases,* Yale J. on Reg., 12:257-343, 280-81 (1995) (noting "[a]s a result of the rapid growth in rate proceedings, electric rates rose ninety percent nationally in the five years after 1970."). The legislature augmented consumers' ability to participate in the adversarial rate-setting process, *inter alia,* by establishing the OPC to represent

them. *See* §350.0611, F.S.; *Citizens v. Mayo*, 333 So. 2d 1, 6-7 (Fla. 1976) (finding "the rate setting function of the Commission is best performed when those who will pay utility rates are represented in an adversary proceeding by counsel at least as skilled as counsel for the utility company").

Experts postulate that the streamlining achieved through settlements entered pursuant to the "file and suspend" provisions coupled with the intervention of the OPC provides benefits to all the interested parties. *See* Stephen Littlechild, *The Bird in Hand: stipulated settlements and electricity regulation in Florida,* 6 (2007).[2] Utilities benefit because they obtain more timely decisions and greater certainty, even in cases in which they are not awarded the full amount they request. Through litigation and through settlements the OPC has driven greater or earlier rate reductions or refunds and improved representation in rate cases that benefit ratepayers. *Id.* at 32-33 (crediting OPC for driving rate reductions worth $3 billion between 1986 and 2006).

In streamlining the process, however, the legislature did not alter the FPSC obligation to set fair, just, and reasonable rates. Nor did it abandon the adversarial regulatory process, wherein the interested parties present testimony, cross examine

[2] *Available at* http://www.eprg.group.cam.ac.uk/wp-content/uploads/2008/11/eprg0705.pdf.

witnesses, and obtain an independent decision from the regulator. *See* §120.57, F.S. (describing procedures for adjudicatory proceedings).

Thus, even with a unanimous settlement, the FPSC must find that the settlement established "fair, just, and reasonable rates" and that it is in the public interest. *See Mobil Oil Corp.*, 417 U.S. at 314 (noting "if a proposal enjoys unanimous support from all of the immediate parties, it could certainly be adopted as a settlement agreement if approved in the general interest of the public.").

### B. FPSC Must Still Ensure Rates Are "Fair, Just, And Reasonable" Where Settlements Are Not Unanimous.

The evolution of rate setting proceedings and the preference for settlements to resolve rate cases in Florida does not absolve the FPSC of its obligation to ensure that rates are fair, just, and reasonable, nor has it eliminated the obligation of FPSC to make specific findings on the merits when objections are raised. *Mobil Oil* held that a non-unanimous settlement could be adopted only if the regulator adopted it "*on the merits*, if [it] makes an independent finding supported by 'substantial evidence on the record as a whole' that the proposal will establish 'just and reasonable' rates for the area." *Id*. 417 U.S. at 314 (quoting *Placid Oil Co. v. Fed. Power Comm'n*, 483 F.2d 880, 893 (5th Cir. 1973) (emphasis in original). *See* §366.05 and 366.06(1), F.S.

The FPSC has explicitly recognized its ongoing obligation to ensure rates set are fair, just, and reasonable, even as it encourages and favors settlement. It stated, for example:

> It is the policy of the law to encourage and favor the compromise and settlement of controversies when such settlement is entered into fairly and in good faith by competent parties, and is not procured by fraud or overreaching. … It is in the interest of the state as well as the parties themselves that there should be an end to litigation. 10 Fla. Jur. 2d Compromise, Accord and Release, §9. To the above criteria we would add: Is the Stipulation in the public interest and *are the resulting rates fair and reasonable*?

Docket 870220-El. Order 18627, *In re: Request by Occidental Chemical Corporation for reduction of electric service rates charged by Florida Power Corporation.* Issued January 4, 1988, p. 2 (internal quotes omitted) (emphasis added). Indeed, even while acknowledging its history of approving settlements, the FPSC has declared that "[a]s with any settlement we approve, nothing in our approval of this Stipulation and Settlement diminishes this Commission's ongoing authority and *obligation* to ensure fair, just, and reasonable rates." Docket No. 050078 – EI. Order No. PSC-05-0945-S-EI. *In re: Petition for rate increase by Progress Energy Florida, Inc*. Issued: September 28, 2005 (emphasis added).

A settlement may legally contribute to expediting the process, but it cannot and does not eliminate the regulatory obligations of the FPSC. Ratemaking principles require "an examination of each element of a utility's revenue requirement—the rate base, rate of return, and operating expenses—and then a

separate consideration of the reasonableness of rate allocation among customer classes." Kreiger, 12 Yale J. on Reg. at 327. *See* OPC Op. Br. at 35.

The FPSC approval of a settlement as a "reasonable give and take settlement" does not satisfy its obligation to ensure that the rates set are fair, just, and reasonable. *See* OPC Op. Br. at 35. FPSC findings to support its conclusion must be based on competent, substantial evidence on the whole record and must not be clearly erroneous. *See* §120.68(10), F.S. (requiring "the court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent substantial evidence in the record."). The FPSC approval of this non-unanimous settlement without making findings regarding OPC objections, and without even a staff review of the issues, is an improper abdication of the FPSC obligations. *Contra* Docket No. 050078 – EI. Order No. PSC-05-0945-S-EI. (describing staff review of provisions prior to FPSC approval of unanimous settlement). Moreover, approval without making the necessary findings is improper because it frustrates this Court's appellate review. *See Florida Power & Light Co. v. Lorion,* 470 U.S. 729, 744 (1985) (explaining "If the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare

circumstances, is to remand to the agency for additional investigation or explanation."). "The requirement of explicit fact findings makes for more careful consideration by the Commission, helps assure that this Court does not usurp the PSC's fact finding prerogatives, and otherwise facilitates review of Commission orders by this Court." *Int'l Minerals & Chemical Corp. v. Mayo*, 336 So. 2d 548, 552-553 (Fla. 1976) (finding "both by statute [§ 120.57(1)(b)8, F.S.] and its own rules [Rule 25-2.116(5), F.A.C.] the PSC is required to make findings of fact in rate proceedings."); *Central Truck Lines, Inc. v. King*, 146 So. 2d 370 (Fla. 1962); *Village of North Palm Beach v. Mason*, 167 So. 2d 721, 728 (Fla. 1966) (finding order "is fatally defective in its failure to make separate and specific findings of facts upon which its ultimate conclusion is predicated").

This Court should set aside the order approving the settlement and remand with orders for the FPSC to make the required findings based on substantial evidence on the record as a whole. *See* § 120.68(7)(d), F.S. (requiring court to set aside agency action when it finds the agency has erroneously interpreted a provision of law).

## II. Approval Of The Settlement On Matters For Which Public Notice Is Required But Not Provided Deprived Consumers Of A Fair Opportunity To Participate In The Ratemaking In Violation of Florida Law And Is A Drastic Departure From Ratemaking Principles In Florida.

Substantial rate increases in the settlement demand public notice, which was never provided. Florida law requires public notice of matters such as future cost recovery, compensation, and accounting concessions, because they will have a significant impact on residential consumers. *See* §366.06(1), F.S. (requiring "[a]ll applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed"); Rule 25-6.043, F.A.C. (minimum filing requirements); Rule 25-6.140, F.A.C. (contents of test year notification application). Failure to provide the required public notice violates due process rights of interested parties, such as AARP, because it deprives them of an opportunity to intervene in and participate in the adjudication of these matters. *See* § 366.06(3), F.S. The approval of the settlement thus violated Florida law for failure to follow the proscribed procedure and should be set aside. *See* §120.68(7)(c), F.S. (requiring remand for further agency action if material error in procedure or a failure to follow proscribed procedure may have impaired the fairness or correctness of the action). Rate cases are not situations in which "anything can happen" because Florida law establishes the required contents of the

necessary public notice and the standards the FPSC commission must follow in setting rates. These requirements clearly were not met in this case.

### A. Failure To Provide Required Notice And An Opportunity To Be Heard Deprives Interested Parties Of The Opportunity To Intervene To Protect Their Interests And Address Important Policy Issues.

Florida law requires that advance public notice be provided for rate cases to permit interested parties to intervene. *See* Rule 25-22.039, F.A.C. (providing that persons who have a substantial interest in the proceedings, and who desire to become parties, may petition for leave to intervene). Absent the required public notice of matters at issue in the ratemaking case, FPSC is not authorized to include such matters in the settlement. *See* Rule 25-6.043, F.A.C., (minimum filing requirements); Rule 25-22.0406, F.A.C. (requiring utility to provide notice of case synopsis to its customers). Approval of the settlement deprived residential consumers of an opportunity to participate in the new matters and to address the drastic policy changes evidenced in FPSC approval of the settlement.

This case authorizes shockingly high, unfair rates and will have an enormous impact on residential consumer rates and how rates are set in general. *See* OPC Op. Br. at 16 (noting Florida Power and Light ("FPL") is the state's largest utility, serving over 4.1 million residential ratepayers). All classes of ratepayers are entitled to notice and an opportunity to be heard. That opportunity should not be denied here simply because the FPSC has executed an unexplained about-face

regarding its approach and requirements relating to the important rate setting principles and requirements at issue in this case.

Unless all ratepayers can trust that the FPSC will follow its own rules and carry out its obligation to set fair, just, and reasonable rates, they will be forced to intervene in many more rate cases in order to preserve their interests. If they do not intervene, they risk that the FPSC, as it did here, will approve outrageous settlements entered into during secret negotiations that increase rates on specific ratepayers, based upon matters that are required to be, but which were not the subject of public notice. Contrary to the intent of the legislature in enacting "file and suspend" provisions, this will result in an increase in time, expense, and delay, and will fail to protect ratepayers. The approval of this settlement, absent findings to address the objections raised by OPC, violates Florida law and sets a new and dangerous precedent that will undermine residential ratepayer protection and the rate-setting process the legislature established to streamline ratemaking and to ensure the ratepayers are represented in the proceedings. Rightly or wrongly, residential and other consumers may well conclude that the rate making process has been thwarted, that the FPSC does not protect the public interest, and cannot be relied upon to set fair, just, and reasonable rates.

### 1. Cost Recovery For Future Plants.

The public notice for this rate case did not indicate that cost recovery for power plants entering commercial service in 2014 or 2016 would even be considered. *See* OPC Op. Br. at 6. It indicated that only costs for a power plant entering commercial service in 2013 was under consideration. *Id.* These costs add up to more than $433.9 million. *See* OPC Op. Br. at 41 (explaining the settlement approved includes, *inter alia,* full cost recovery of $216 million for a power plant not scheduled to enter commercial service until 2014, and $217.9 million in full cost recovery for a plant not scheduled to enter commercial service until 2016). Not only were ratepayers not provided notice that such costs would be approved, but they reasonably expected that such cost would not and could not be considered because they were not included in the notice for this docket.

Moreover, FPSC approval for full cost recovery, years in advance of the plants entering into commercial service, is a drastic departure from the established FPSC approach to rate-setting related to such cost recovery. *See, e.g.* Order No. PSC-10-0153-FOF-EI pp 10-12 (rejecting future asset revenue request because the need to include the costs in base rates was "too speculative"). Normally, a utility would be required to support its request to recover such costs in a rate-making case, subject to full public notice requirements similar to those followed with

regard to the 2013 power plant. *See* §366.06(1) (requiring "[t]he commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service,. . . and [ ] the money [shall be] honestly and prudently invested by the public utility company in such property used and useful in serving the public"). The FPSC has not explained why it permitted the utility to completely disregard those notice provisions as to the 2014 and 2016 power plants. It also approved the rates without the required adjudicatory process, involving taking evidence and making specific findings to support its obligation to set rates that are fair, just, and reasonable, as it must.

These failures provide sufficient grounds to set aside the FPSC approval of this settlement. Policy reasons also compel setting aside the order. With this rate increase, the settlement relieves the utility of the oversight the FPSC would normally conduct to determine what power plant costs, if any, should be reimbursed through a rate increase. Failure to provide such scrutiny removes an important incentive for the utility to incur only prudent costs and to keep rates low. *Id.* Thus, approval of these costs in this manner sets a very dangerous precedent for future ratemaking cases. *See* OPC Br. at 41.

**2. Allocation of Rates Between Ratepayer Classes.**

Without notifying ratepayers in advance, and contrary to established practices, the settlement shifts the burden of paying for the substantial rate

increases between rate classes. *See* Rule 25-6.043, F.A.C. (establishing criteria governing the allocation of an increase within a base rate application). It is dangerous enough that this shift was not included in the public notice—and is in fact directly contrary to the public notice that was provided. What makes the shift even more outrageous is that the settlement provided concessions of $50 million for each signatory ratepayer class—including those who initially opposed the overall rate increase along with OPC—that is offset by a corresponding rate increase for residential consumers. *See* OPC Br. at 5. Considering the substantial testimony submitted in support of a rate *decrease*, FPSC should have made findings regarding the hypocrisy of and monetary incentive for the signatories who agreed to the rate increase. *See* OPC Op. Br. at 17 (describing testimony demonstrating that a rate decrease was appropriate).

Previously the FPSC has rejected settlements that shifted such burdens. For example, the FPSC chairman argued in a telephone rate case in which a proposed stipulation shifted a greater share of the cost allocation burden onto residential rate payers that "[t]he proposed settlement has the potential of creating an allocation methodology that puts a burden on, that could put a burden on, the residential consumer versus the large industrial consumer." Docket No. 010949, Prehearing conference. Issued February 15, 2002, p. 14. FPSC staff also argued against it,

because the proposed methodology would be inappropriate and inconsistent with FPSC practice, as well as an additional burden on residential consumers. *Id.*

The FPSC erroneously failed to make specific findings in response to the OPC objections to support how this rate shifting results in fair, just, and reasonable rates for the residential rate payers, when even the intervenors who signed the settlement submitted testimony demonstrating a decrease was more appropriate. The approval should be set aside because it is clearly erroneous and suffers procedural defects that make it unfair.

**3. Dismantlement Reserve and Cost Saving Measures.**

The public notice also failed to indicate that FPL would be granted significant rate concessions involving its dismantlement reserve and its existing obligation to procure inexpensive power. *See* OPC Op. Br. at 6-8, 43-47. The settlement permits FPL to increase its revenue by amortizing (reversing an expense carried on its books) $209 million in reserve expenses for dismantling fossil fuel generation plants for the express purpose of increasing its earnings. *Id*. at 6, 45. It also eliminated important FPSC scheduled oversight regarding such expenses without providing public notice that such oversight policies would be eliminated. *Id*. at 6, 45. In approving the reversal of the reserve account, FPL is permitted to convert to profit $209 million that ratepayers *already paid* for dismantlement. This profit is on top of the reasonable profit already awarded FPL.

Contrary to Florida law, future ratepayers eventually will be forced to pay the costs to dismantle the power plants, although they will not have received a benefit from such plants. *See* OPC Op. Br. at 44. This issue is important as a policy matter—in addition to its importance for ratepayer pocketbooks—because such intergenerational inequities violate Florida law. Consumers who are benefiting from the power plants should be the ones paying the cost for such power, including the cost to dismantle the power plant when it reaches the end of its usefulness. The importance of oversight on this issue cannot be overstated. Previously, for example, FPSC required FPL to amortize $894.6 million of depreciated reserve surplus for 4 years to correct a severe intergenerational inequity. *See id.*; Order No. PSC-10-0153-FOF-EI p 87.

FPSC must be required to explain how such intergenerational inequities, which are not permitted pursuant to well established rate-setting procedures, can possibly be fair, just, and reasonable in this case. If the cost of dismantlement is justified, it should be collected for the reserve account only, and if not, it should not be collected through rates at all. Either way, it should not be converted to pure profit above and beyond that already established as reasonable profit though prior rate cases.

The settlement also inexplicably rewards FPL monetarily for activities related to acquiring electricity from economical sources. *See* OPC Op. Br. at 7, 46.

FPL is currently required to do so without additional compensation. FPSC must specifically explain its flip-flop on this issue as well.

### B. Unreasonably High Utility Rates Endanger The Health And Wellbeing Of Older And Low Income Consumers.

Reasonable utility rates and service are essential for older people's health and financial wellbeing. "The customer's interest is self-evident. Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety." *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978) (noting "the uninterrupted continuity of [electric service] is essential to health and safety." *Id.* at 15 n.15.). FPSC's approval of the settlement that unjustifiably forces residential consumers to pay higher rates will force older and low income consumers to make choices—between cooling and eating, or lights and medication—that endanger their health and wellbeing. *See* Lynne Page Snyder & Christopher A. Baker, *Affordable Home Energy & Health: Making the Connections*, 14, AARP Pub. Pol. Inst., (2010) (finding "74 percent of households that include older adults report that they cut back on the purchase of household necessities because of high home energy bills.").

Utility costs typically comprise a large percentage of an older person's budget. The average low-income household, which tends to use less energy than higher income consumers, spends 16 percent of its annual income on home energy

costs and these costs are rising. *Id.* To reduce utility costs, lower income older people may reduce their heating and cooling to unsafe levels, increasing their risk of death. Between 1999 and 2003, for example, 40 percent of people nationwide who died from hyperthermia—exposure to extreme heat—were 65 or older.[3] In 2010, 71 percent of the 138 heat-related deaths occurred among people age 50 or older.[4] Heat-related deaths occur most often inside of permanent homes with little or no air conditioning. *Id*. This risk is greater based on age because older people tend to suffer disproportionately from diseases that are exacerbated by temperature extremes, such as heart disease, diabetes, and lung disease, and are physically more sensitive to extremes of heat and cold. They are less aware of and less able to maintain their body temperature.

The tradeoffs residential consumers are forced to make also extend to more mundane but equally important choices for financial wellbeing. The rates consumers are being forced to pay diverts money they could be saving for a rainy day, their retirement, or payment of debt. These are significant concerns for older people who may not have enough money to sustain them through their retirement

[3] Heat-Related Deaths—United States, 1999-2003, Morbidity and Mortality Weekly Rep., Ctr. For Disease Control & Prevention, Atlanta, Ga., Jul. 28, 2006, at 797, *available at* http://www.cdc.gov/mmwr/PDF/wk/mm5529.pdf.

[4] *See* National Oceanic and Atmospheric Administration, 2010 Heat-Related Fatalities, 2 (July 2011), *available at* http://www.nws.noaa.gov/om/hazstats/heat10.pdf.

years, or for the low income older Floridians who rely on Social Security for more than 75 percent of their income.[5]

## CONCLUSION

This Court should set aside the approval of the settlement and remand the case to the FPSC for specific findings addressing objections raised by OPC based on competent, substantial evidence on the record as a whole. FPSC should also be ordered to provide proper public notice of the full extent of the issues at stake in the ratemaking case in order to give interested ratepayers adequate notice and an opportunity both to be heard and intervene.

Dated: April 29, 2013

Respectfully Submitted,

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[5] *See* Gary Koenig, Lina Walker, Fact Sheet, *Why Social Security and Medicare are Vital to Florida's Seniors*, AARP Pub. Pol. Inst. (Oct. 2011), *available at* http://assets.aarp.org/rgcenter/ppi/econ-sec/2011-ss-medicare-stateprofiles/FL_SSandMedicare FS.pdf.

## CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Rule 9.100(1), Florida Rules of Appellate Procedure, the foregoing Brief Amicus Curiae of AARP in Support of Appellants Citizens of the State of Florida**,** Etc., was prepared utilizing Times New Roman, 14-point font in Microsoft Word.

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## CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of April, 2013, the foregoing Brief Amicus Curiae of AARP in Support of Appellants Citizens of the State of Florida**,** Etc., was filed electronically to the Florida Supreme Court and an original and a copy of the brief was served via First Class Postage prepaid U.S. mail to:

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