

IN THE SUPREME COURT OF FLORIDA

FLORIDA RISING, INC., ET AL.,

Case No: SC2024-0485

L.T. No.: 20210015-EI

Appellants,

v.

FLORIDA PUBLIC SERVICE
COMMISSION, ET AL.,

Appellees.

**ANSWER BRIEF OF APPELLEE
FLORIDA PUBLIC SERVICE COMMISSION**

KEITH C. HETRICK
Florida Bar No. 0564168
khetrick@psc.state.fl.us

SAMANTHA M. CIBULA
Florida Bar No. 0116599
scibula@psc.state.fl.us

SUSAN SAPOZNIKOFF
Florida Bar No. 0855987
ssapozni@psc.state.fl.us

CAROLINE G. DIKE
Florida Bar No. 1050160
cdike@psc.state.fl.us

DOUGLAS D. SUNSHINE
Florida Bar No. 0935263
dsunshin@psc.state.fl.us

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0862
850-413-6199

TABLE OF CONTENTS

TABLE OF CITATIONS..... iii

STATEMENT OF THE CASE AND FACTS..... 1

 Statement of the Case 1

 Statement of the Facts 3

SUMMARY OF THE ARGUMENT 25

STANDARD OF REVIEW..... 27

ARGUMENT 28

I. THE EXPANSION OF THE SOLARTOGETHER PROGRAM COMPORTS WITH SECTION 366.03, FLORIDA STATUTES, AND IS SUPPORTED BY COMPETENT, SUBSTANTIAL RECORD EVIDENCE..... 28

 A. Florida Rising misstates the proper standard of review..... 28

 B. The Commission’s determinations that SolarTogether is not “unduly discriminatory” and is in the public interest are supported by competent, substantial record evidence..... 30

 C. Florida Rising is improperly asking this Court to consider matters outside the record and reweigh the evidence 36

II.	THE SUPPLEMENTAL FINAL ORDER COMPORTS WITH THIS COURT’S DIRECTIVE IN <i>FAIR</i> AND IS SUPPORTED BY COMPETENT, SUBSTANTIAL RECORD EVIDENCE.....	38
	A. The Commission’s findings that the Return on Equity (ROE), Equity to Debt Ratio, and Reserve Surplus Amortization Mechanism (RSAM) are in the public interest are supported by competent, substantial record evidence.....	41
	B. Other mechanisms approved by the Commission are in the public interest on balance and are supported by competent, substantial record evidence.....	44
	C. The Commission’s findings that the other elements of the 2021 Settlement are in the public interest are supported by competent, substantial record evidence.....	50
III.	THE COMMISSION APPROPRIATELY CONSIDERED FPL’S FEECA PERFORMANCE IN ACCORDANCE WITH THIS COURT’S OPINION IN <i>FAIR</i> AND DID NOT ABUSE ITS DISCRETION IN DENYING FLORIDA RISING’S MOTION TO REOPEN THE RECORD	52
	CONCLUSION	55
	CERTIFICATE OF SERVICE.....	57
	CERTIFICATE OF COMPLIANCE	62

TABLE OF CITATIONS

CASES

<i>Alston v. Shiver</i> , 105 So. 2d 785 (Fla. 1958).....	37
<i>Canakarlis v. Canakarlis</i> , 382 So. 2d 1197 (Fla. 1980).....	28, 55
<i>Citizens of State v. Fla. Pub. Serv. Comm’n</i> , 146 So. 3d 1143 (Fla. 2014)	passim
<i>City of Miami v. Fla. Pub. Serv. Comm’n</i> , 208 So. 2d 249 (Fla. 1968).....	27, 30, 52
<i>Crist v. Jaber</i> , 908 So. 2d 426 (Fla. 2005).....	27
<i>Demichael v. Dep’t of Mgmt. Servs., Div. of Retirement</i> , 334 So. 3d 691 (Fla. 1st DCA 2022)	52
<i>Federal Trade Comm’n v. Brown Shoe Co., Inc.</i> , 384 U.S. 316 (1966)	29, 30
<i>Federal Trade Comm’n v. Gratz</i> , 253 U.S. 421 (1920)	29
<i>Floridians Against Increased Rates, Inc. v. Clark</i> 371 So. 3d 905 (Fla. 2023)	passim
<i>Florida Power Corp. v. Mayo</i> , 203 So. 2d 614 (Fla. 1967).....	30
<i>Gross v. Dep’t of Health</i> , 819 So. 2d 997 (Fla. 5th DCA 2002)	52
<i>Gulf Power Co. v. Bevis</i> , 296 So. 2d 482 (Fla. 1974)	27, 30, 52
<i>Gulf Power Co. v. Fla. Pub. Serv. Comm’n</i> , 453 So. 2d 799 (Fla. 1984)	28, 35, 52
<i>Harris v. State</i> , 843 So. 2d 856 (Fla. 2003)	37

<i>Interstate Comm. Comm’n v. Ala. Midland Ry. Co.</i> , 168 U.S. 144 (1897)	29
<i>Pennsylvania Co. v. United States</i> , 236 U.S. 351 (1915)	29
<i>Seaboard Air Line Ry. Co. v. United States</i> , 254 U.S. 57 (1920)	29
<i>Sierra Club v. Brown</i> , 243 So. 3d 903 (Fla. 2018).....	passim
<i>Southern Alliance for Clean Energy v. Graham</i> , 113 So. 3d 742 (Fla. 2013)	35
<i>Texas & P. Ry. Co. v. Interstate Comm. Comm’n</i> , 162 U.S. 197 (1896)	29
<i>West Fla. Elect. Co-op. Ass’n v. Jacobs</i> , 887 So. 2d 1200 (Fla. 2004)	27, 55

FLORIDA CONSTITUTION

Article V, Section 3(b)(2)	3
----------------------------------	---

FLORIDA STATUTES

Section 120.68(4), Florida Statutes	36
Section 120.68(7)(b), Florida Statutes.....	29
Section 120.68(7)(e), Florida Statutes	35, 38
Section 120.68(7)(e)1., Florida Statutes	28
Section 120.68(10), Florida Statutes.....	29
Section 350.128(1), Florida Statutes.....	3
Section 366.03, Florida Statutes	passim
Section 366.06, Florida Statutes	32

Section 366.06(1), Florida Statutes	8, 53
Section 366.10, Florida Statutes	3
Section 366.82(2), Florida Statutes	54
Section 366.82(7), Florida Statutes	54
Section 366.82(10), Florida Statutes.....	53
Section 366.8255(3), Florida Statutes.....	53
Section 366.91(6), Florida Statutes	33, 47
Section 366.92, Florida Statutes	32

FLORIDA ADMINISTRATIVE CODE RULES

Florida Administrative Code Rule 25-17.015	53
Florida Administrative Code Rule 25-17.0021(1)	53, 54

PROCEDURAL RULES

Florida Rule of Appellate Procedure 9.045(b)	62
Florida Rule of Appellate Procedure 9.045(e).....	62
Florida Rule of Appellate Procedure 9.190(c)(1).....	36
Florida Rule of Appellate Procedure 9.210(a)(2)(B)	62

FLORIDA PUBLIC SERVICE COMMISSION ORDERS

<i>In re: Petition for approval of FPL SolarTogether program and tariff, by Fla. Power & Light Co., Order No. PSC-2020-0084-S-EI, 2020 WL 1431943 (Fla. P.S.C. Mar. 20, 2020)</i>	13, 32, 33
---	------------

<i>In re: Petition for approval of optional electric vehicle public charging pilot tariffs, by Fla. Power & Light Co., Order No. PSC-2020-0512-TRF-EI, 2020 WL 7658073 (Fla. P.S.C. Dec. 21, 2020)</i>	15, 16
--	--------

In re: Petition for Approval to Implement Consolidated Fuel Adjustment Surcharge by Fla. Pub. Utils. Co., Order No. PSC-04-0417-PAA-EI, 2004 WL 895894 (Fla. P.S.C. Apr. 22, 2004) 30

In re: Petition for increase in rates by Fla. Power & Light Co., Order No. PSC-11-0089-S-EI, 2011 WL 344916 (Fla. P.S.C. Feb. 11, 2011) 11, 21

In re: Petition for Increase in Rates by Fla. Power & Light Co., Order No. PSC-13-0023-S-EI, 2013 WL 209584 (Fla. P.S.C. Jan. 14, 2013) passim

In re: Petition for rate increase by Fla. Power & Light Co., Order No. PSC-16-0560-AS-EI, 2016 WL 7335779 (Fla. P.S.C. Dec. 15, 2016) passim

In re: Petition for rate increase by Fla. Power & Light Co., PSC-2021-0446-S-EI, 2021 WL 5865564 (Fla. P.S.C. Dec. 2, 2021) 2

In re: Petition for rate increase by Fla. Power & Light Co., PSC-2024-0078-FOF-EI, 2024 WL 1363693 (Fla. P.S.C. Mar. 25, 2024) 1, 3

STATEMENT OF THE CASE AND FACTS

Statement of the Case

This case is a direct appeal by Appellants, Florida Rising, Inc.; Environmental Confederation of Southwest Florida, Inc.; and LULAC Florida Educational Fund, Inc. (collectively referred to as Florida Rising),¹ of the Supplemental Final Order² rendered by the Florida Public Service Commission (Commission) approving the 2021 rate case settlement of Florida Power & Light Company (FPL) (2021 Settlement). (R. 499-590, 7340)

The case began when FPL filed a petition for rate increase with the Commission in March 2021. (R. 271539) Numerous parties intervened, including Florida Rising. (R. 262930, 271465, 271492, 271516, 290752, 290774, 290792, 290807) One week before the start of the administrative hearing on that petition, FPL and several intervening parties filed a Joint Motion for Approval of Settlement Agreement, with a copy of the 2021 Settlement, resolving all issues in the case. (R. 52697) The 2021 Settlement

¹ Citation to the Record on Appeal is designated as (R. [Page #]). Appellant Florida Rising's Initial Brief is cited as (I.B. [Page #]).

² *In re: Petition for rate increase by Fla. Power & Light Co.*, PSC-2024-0078-FOF-EI, 2024 WL 1363693 (Fla. P.S.C. Mar. 25, 2024)

was signed by a diverse group of the intervenors who represent all customer classes: the Office of Public Counsel, Florida Industrial Power Users Group, Florida Retail Federation, Southern Alliance for Clean Energy, Vote Solar, CLEO Institute, Inc., and Federal Executive Agencies. (R. 519, 52697) Neither Florida Rising nor Floridians Against Increased Rates (FAIR) signed the 2021 Settlement. The Commission approved the 2021 Settlement by Final Order.³

Florida Rising and FAIR appealed the Final Order to this Court. (R. 2218-22, 6034-38) After full briefing and oral argument, this Court remanded the Final Order to the Commission for supplemental findings of fact and explanation of the rationale supporting the Commission's conclusion that the 2021 Settlement is in the public interest. *See Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905, 914 (Fla. 2023) (FAIR).

³ *In re: Petition for rate increase by Fla. Power & Light Co.*, PSC-2021-0446-S-EI, 2021 WL 5865564 (Fla. P.S.C. Dec. 2, 2021) (R. 7340)

On March 25, 2024, the Commission issued its Supplemental Final Order⁴ in response this Court's remand in *FAIR*. Florida Rising appealed the Supplemental Final Order (R. 380) and this appeal commenced.

This Court has mandatory jurisdiction pursuant to article V, section 3(b)(2) of the Florida Constitution, and sections 350.128(1) and 366.10, Florida Statutes.

Statement of the Facts

The Court's Remand and Identification of Issues

The 2021 Settlement authorizes FPL to employ a number of tools, mechanisms, and accounting practices in establishing and maintaining rates. In *FAIR*, this Court did not question the Commission's statutory authority to consider and approve those various tools, mechanisms, and accounting approaches. *FAIR*, 371 So. 3d at 907, n.2. Rather, this Court indicated that further explanation was needed as to how the Commission considered nine

⁴ *In re: Petition for rate increase by Fla. Power & Light Co.*, PSC-2024-0078-FOF-EI, 2024 WL 1363693 (Fla. P.S.C. Mar. 25, 2024). (R. 7340)

main disagreements between the parties⁵ in determining the 2021 Settlement is in the public interest and fixes fair, just, and reasonable rates. *Id.* at 908-09, 912, 914.

Commission staff identified six additional disagreements between, or arguments by, the parties that were not identified by this Court.⁶ (R. 493-94) Commission staff conducted an informal meeting with the parties who were part of the prior appeal regarding the issues and determined the parties agreed on the fifteen issues

⁵ (1) The need for the rate increase contained in the 2021 Settlement; (2) whether the range for return on equity is excessive; (3) whether the equity-to-debt ratio is excessive; (4) whether the Reserve Surplus Amortization Mechanism (RSAM) unfairly deprives customers of a surplus created by the funds supplied; (5) whether Solar Base Rate Adjustments (SoBRA) are reasonable; (6) whether the expansion of the SolarTogether Program favored commercial and industrial customers at the expense of residential and small business customers, or created undue preferences for program participants in violation of section 366.03, Florida Statutes; (7) whether approval of pilot programs was reasonable; (8) whether implementation of a \$25.00 minimum bill favored commercial and industrial customers at the expense of residential and small business customers; and (9) whether the extension of time to recover retirement costs leads to increased costs and forces ratepayers to pay for an obsolete asset.

⁶ (1) Whether revenue increases are properly allocated between customer classes, (2) whether FPL's system is overbuilt, (3) whether the storm cost recovery mechanism is appropriate, (4) whether the self-determined federal tax adjustment is appropriate, (5) whether FPL's asset optimization program with an incentive should be continued, and (6) whether the solar cost cap incentive is appropriate.

that should be addressed by the Supplemental Final Order. (R. 493-94, 1189)

Motion to Reopen the Record

In remanding this matter, this Court specifically left it to the Commission's discretion whether to reopen the record. *FAIR*, 371 So. 3d at 914. The existing record included transcripts from twelve customer service hearings in which testimony was taken from over 370 customers and public officials regarding the rates and service provided,⁷ testimony from 60 witnesses at the hearing to consider the rate base petition and proposed settlement,⁸ almost 35,000 pages of exhibits,⁹ and written arguments from all parties.¹⁰

FAIR moved to reopen the record to add the Commission's Annual Report of Activities pursuant to the Florida Energy Efficiency and Conservation Act for 2021 (2021 FEECA Report). (R. 495, 1082-90) Thereafter, Florida Rising moved for an evidentiary hearing, seeking to admit not only the 2021 FEECA Report, but

⁷ R. 55474-652, 56616-830, 56869-957, 57021-119, 57141-194, 57298-388, 58690-783, 58814-927, 59007-106.

⁸ R. 44989-45021, 45043-164, 45171-623, 45827-46111, 46117-47995; *see also FAIR*, 371 So. 3d at 913.

⁹ R. 10199-44988.

¹⁰ R. 9887-10177, 10180-88, 10191-95.

also the Commission's FEECA reports from 2020 and 2023, FPL's Demand Side Management Reports for those same three years, and certain United States Energy Information Agency data from 2020, 2021, and 2022. (R. 496, 735-746) The Commission declined to reopen the record, finding that nearly all the evidence Florida Rising sought to admit was not in existence at the time the Commission made its decision in 2021 or was available, but not offered into evidence at the time of the original hearing. (R. 495-497) To the extent those reports did not exist at the time of the prior proceeding, the Commission reasoned that were it to allow their inclusion, the Commission would likewise need to allow other parties to supplement the record. (R. 496-97) To the extent information was available at the time of the prior proceeding, the Commission determined it should have been moved into evidence at that time by any party believing it to be relevant. (R. 495-97)

The Supplemental Final Order

The Commission issued a Supplemental Final Order addressing the parties' competing arguments regarding the fifteen issues in dispute and explaining how the Commission reached its determination that the 2021 Settlement established rates that were

just, fair, and reasonable and was in the public interest. (R. 489-590) The Commission's consideration of and findings regarding the disputed issues, and its public interest determination as set forth in the Supplemental Final Order, are summarized as follows:

The Need for the Rate Increases Contained in the 2021 Settlement

The Commission determined that the rate increases proposed in the 2021 Settlement are necessary "to maintain an ROE in the authorized range, are based on a sound analysis of current and projected conditions in light of historical performance, and result in rates that are fair, just, and reasonable." (R. 500, 47945-70) The requested rate increases are primarily based on capital initiatives, but also consider inflation, customer growth, and changes in the weighted cost of capital. (R. 47945-70) The capital initiatives include improvements to reliability, upgrades and additions to the generation fleet, and hardening of the infrastructure. (R. 498, 47946-52)

FPL presented testimony that its 2022 test year jurisdictional adjusted ROE was projected to be 8.4 percent and its projected 2023 jurisdictional ROE was projected to be 7.3 percent, both of which are below the bottom of the currently-authorized ROE range.

(R. 498, 47171-72) The Commission noted that the rate increases in the 2021 Settlement are less than what was requested in the rate filing and are the result of compromise between the signatories of the 2021 Settlement. (R. 500, 45319) The 2021 Settlement base rate increases are \$383 million less than the originally requested 2022 base rates and \$45 million less than the originally requested 2023 base rates. (R. 498-99, 45319)

The Commission noted that section 366.06(1), Florida Statutes, requires it to consider not only the *cost* of providing service, but also the *value* of service. (R. 499) The Commission determined that FPL's residential rates are approximately 21 to 22 percent below the national average and lower than rates charged by other Florida investor-owned utilities, demonstrating that FPL delivers a value to its customers at a relatively low cost and with high reliability. (R. 500, 45322-28)

The Range for Return on Equity (ROE)

In determining whether the regulatory ROE of 10.6 percent, with an authorized ROE range of 9.7 to 11.7 percent, was in the public interest, the Commission examined whether certain risk factors made it more difficult for FPL to attract equity, thereby

justifying a higher return. (R. 501-03) The Commission found that FPL's infrastructure risk profile is higher than that of most other utilities. (R. 501-03) FPL presented testimony that its infrastructure risk profile is higher based on geography, its territory, and its generation composition, and that the higher ROE is necessary to attract investment. (R. 501, 45149-52, 45356, 45629, 45735-43) In addition, 22 percent of FPL's energy mix is nuclear generation, which investors perceive as a risk. (R. 501, 45357, 45720)

FPL witness Coyne presented extensive evidence based on detailed, generally accepted models used to determine the required ROE, and FPL witness Barrett testified that FPL's financial strength has demonstrated a proven ability to succeed despite global challenges, such as the COVID-19 pandemic and volatility of utility investments. (R. 501-02, 45354-62, 45313-14, 45706, 45717-32, 45794-98)

The 2021 Settlement also contains provisions allowing an ROE adjustment, if necessary, to match the market. (R. 7366, 45313-14, 45320) Specifically, if the average 30-year U.S. Treasury Bond yield increases by 50 basis points for six consecutive months, FPL may increase its authorized ROE by 20 basis points to remain within a

range of 9 percent to 11.8 percent with a midpoint of 10.8 percent and the revised authorized ROE range and midpoint would then be used prospectively for all regulatory purposes. (R. 7366, 45313-14, 45320) The ROE adjustment would not increase base rates. (R. 7366 , 41299, 45313-14, 45320)

The Equity to Debt Ratio

The Commission noted that similar to the ROE, the capital structure works as part of the 2021 Settlement as a whole to further the public interest and result in rates that are fair, just, and reasonable. (R. 504) FPL presented testimony that the equity to debt ratio is part of its overall strategy to maintain financial strength and flexibility in light of its unique risk profile. (R. 504; 45732-35, 46027-32) In particular, FPL witness Coyne discussed several risk factors specific to FPL that justify a higher equity ratio, including FPL's capital expenditure program, nuclear generation ownership, severe weather risk, regulatory risk, and flotation costs. (R. 45125-37, 45880-901)

The equity to debt ratio of 59.6 percent proposed in the 2021 Settlement is consistent with the ratios the Commission has approved for FPL over the past 20 years. (R. 504, 45716) The

Commission determined that the preponderance of the evidence supported continuing that ratio. (R. 504)

The Reserve Surplus Amortization Mechanism (RSAM)

The RSAM is an accounting mechanism used by FPL to respond to changes in its underlying revenues and expenses to maintain an adjusted ROE within the range authorized by the Commission and has been approved by the Commission (and upheld by this Court) as a core element of the last three FPL rate case settlements.¹¹ (R. 505, 45746). Without the RSAM in the 2021 Settlement there would be no provision for a four-year minimum term which provides for no general base-rate increases in 2024 and 2025. (R. 505, 45051-52, 45139, 45345, 45775) The Commission found that the RSAM benefits customers by providing rate stability and allowing FPL to address financial contingencies within the bounds of the 2021 Settlement. (R. 505-06, 45137-39, 45746-52)

¹¹ 2010 (*In re: Petition for increase in rates by Fla. Power & Light Co.*, Order No. PSC-11-0089-S-EI, 2011 WL 344916 (Fla. P.S.C. Feb. 11, 2011)); 2012 (*In re: Petition of Fla. Power & Light Co.*, Order No. PSC-13-0023-S-EI, 2013 WL 209584 (Fla. P.S.C. Jan. 14, 2013), *aff'd sub nom Citizens of State v. Fla. Pub. Serv. Comm'n*, 146 So. 3d 1143 (Fla. 2014)); and 2016 (*In re: Petition for rate increase by Fla. Power & Light Co.*, Order No. PSC-16-0560-AS-EI, 2016 WL 7335779 (Fla. P.S.C. Dec. 15, 2016), *aff'd sub nom Sierra Club v. Brown*, 243 So. 3d 903 (Fla. 2018)).

Solar Base Rate Adjustments (SoBRA)

The SoBRA mechanism contained in the 2021 Settlement is the same mechanism approved by the Commission in FPL's rate cases in 2012 and 2016 and upheld by this Court.¹² (R. 507) The 2021 Settlement authorizes FPL to construct solar facilities generating 1,788 megawatts (MW) to go into service in 2024 or 2025 (or within one year following the expiration of the minimum term) and make solar base rate adjustments to recover the costs. (R. 506, 47716) The SoBRA mechanism allows FPL to increase solar incrementally and cost-effectively over a defined term, providing savings to customers while bringing a considerable number of solar projects into service. (R. 507, 47705) The Commission found that the development of renewable energy generation and cost savings to customers made possible by the SoBRA mechanism are in the public interest. (R. 507)

¹² *In re: Petition for Increase in Rates by Fla. Power & Light Co.*, Order No. PSC-13-0023-S-EI, 2013 WL 209584 (Fla. P.S.C. Jan. 14, 2013), *aff'd sub nom Citizens*, 146 So. 3d at 1143; *In re: Petition for rate increase by Fla. Power & Light Co.*, Order No. PSC-16-0560-AS-EI, 2016 WL 7335779 (Fla. P.S.C. Dec. 15, 2016), *aff'd sub nom Sierra Club*, 243 So. 3d at 903.

Expansion of the SolarTogether Program

SolarTogether is a voluntary program that provides FPL customers with the opportunity to subscribe to a portion of new solar capacity. (R. 506, 573-74) The subscription charges cover the revenue requirement associated with constructing the facilities and are recorded by FPL in base revenues as sales from electricity, and participants receive a subscription credit which is recovered through the Fuel Clause. (R. 507-08, 45335-36) The Commission initially approved the SolarTogether program in 2020. *See In re: Petition for approval of FPL SolarTogether program and tariff, by Fla. Power & Light Co.*, Order No. PSC-2020-0084-S-EI, 2020 WL 1431943, at *4 (Fla. P.S.C. Mar. 20, 2020).¹³

The initial SolarTogether program authorized 20 solar generating facilities producing 1,490 MW. (R. 45335, 45337) The 2021 Settlement adds 24 additional solar generating facilities, which expands the program by another 1,788 MW through 2025. (R. 45309, 45335) The expansion provides more capacity to

¹³ The Commission's initial approval of the SolarTogether program was part of a settlement presented by FPL, Vote Solar, SACE, and Walmart. Florida Rising did not move to intervene in that docket and no party appealed the approval of the program. (R. 507)

residential and small business customers than the original program did, while providing the same allocation of benefits.¹⁴ (R. 508) Under the expansion, 60 percent of capacity is allocated to commercial, industrial, and governmental customers, and 40 percent is allocated to residential and small business customers. (R. 508-09, 573-74, 45367-68) In the original program, 75 percent of capacity was allocated to commercial, industrial, and governmental customers and 25 percent was allocated to residential and small business customers. (R. 508-09, 573-74, 45367-68)

The Commission agreed with FPL that the costs and benefits must be examined over the life of the program and compared with the costs and benefits of continuing to construct non-solar power generation facilities. (R. 509, 45334-35, 45375) The current present value of the revenue requirement (CPVRR)¹⁵ calculations demonstrate that the expansion of the SolarTogether program is projected to provide \$425 million in savings, and a total projected

¹⁴ 55 percent of benefits is allocated to participants and 45 percent of benefits is allocated to the general body of customers. (R. 509, 573-74, 45367-68)

¹⁵ CPVRR means the total amount of revenue over the relevant term needed to cover capital and other expenses, operations and maintenance, depreciation, and the regulatory return on equity, discounted to present value. (R. 506)

CPVRR for the entire program of \$648 million in savings, as compared to the same time period without having SolarTogether. (R. 509, 30477-81, 45079-80, 45083-85, 45335)

The Commission further found the expansion of the SolarTogether program to be in the public interest because it distributes benefits to participants and non-participants almost equally, more solar generation is available to residential and small business customers, and the program increases development of renewable energy in the state. (R. 507-09)

Approval of Pilot Programs

The 2021 Settlement authorized several pilot programs, including Electric Vehicle (EV) programs, Green Hydrogen, and Solar Power Facilities. (R. 509-12) With regard to the EV programs, the Commission found that much of the cost of these pilot programs will be offset by revenues received under the EV public charging pilot program that the Commission approved in 2020¹⁶ and the revenue requirements for the public fast charging program will be partially offset by the revenue received under FPL's tariff

¹⁶ See *In re: Petition for approval of optional electric vehicle public charging pilot tariffs, by Fla. Power & Light Co.*, Order No. PSC-2020-0512-TRF-EI, 2020 WL 7658073 (Fla. P.S.C. Dec. 21, 2020).

approved in Docket 20200170-EI, which establishes a rate for utility-owned public fast charging stations. (R. 510-11, 575-77, 45369-70)¹⁷ Moreover, the EV program allows the Commission to gather information on the impact of EVs on the local grid and allows FPL to increase its awareness of the impacts of EV charging on grid reliability and customer usage patterns. (R. 510-11, 45370) The Commission found it is in the public interest to gain data on the particularities of these programs, such as the impacts of EV charging on grid reliability and customer usage. (R. 510-11)

The Green Hydrogen pilot program included in the 2021 Settlement evaluates how FPL’s “combustion turbine units operate with a hydrogen fuel mix and . . . how a hydrogen fuel production facility can be effectively used on-site with combustion materials.” (R. 511; 578-79, 47722-23) The pilot program will use these peaks of solar energy to split water molecules into hydrogen and oxygen, with the hydrogen then being used as up to 5 percent of the fuel for one combustion turbine. (R. 511, 47722-23)

¹⁷ *In re: Petition for approval of optional electric vehicle public charging pilot tariffs, by Fla. Power & Light Co.*, Order No. PSC-2020-0512-TRF-EI, 2020 WL 2020 WL 7658073 (Fla. P.S.C. Dec. 21, 2020).

FPL witness Valle testified that the Green Hydrogen pilot program is designed, in part, to address the “curtailment” problem with solar energy, meaning that there is more instantaneous solar generation available at any given time than there is customer demand. (R. 511, 47722-23) The Commission found this pilot program serves the public interest because it develops renewable energy resources and the benefits flowing from the pilot program outweigh the small costs. (R. 511)

Under the Solar Power Facilities pilot program, FPL would offer commercial and industrial customers on a metered rate the option to have FPL install and maintain a solar facility on their site for a monthly tariff charge. (R. 512, 577-78, 30268-69) All project costs and expenses are covered by the participants over a ten-year term. (R. 512, 578, 30268-69) The Commission found this pilot program to be in the public interest because it promotes renewable energy resources and energy diversification. (R. 512)

Implementation of a \$25.00 Minimum Bill

The purpose of the \$25.00 minimum bill is to ensure that all customers pay their fair share towards fixed system costs. (R. 512-13, 45386-87, 45400-03) There are costs associated with having all

ratepayers connected to a system, even if the customer's bill is low due to having a second home, using solar panels to lower their bill, or having generally low usage. (R. 45114, 45386-87, 45400-03) When the base charge¹⁸ and the volumetric (usage) charges are less than \$25.00, the 2021 Settlement allows for a minimum base bill of \$25.00 for all residential and general service non-demand customers. (R. 512, 45386-87) The base charge only covers billing, metering, and customer service charges, and does not contribute to fixed transmission and distribution costs. (R. 512, 45386, 45400-01) The minimum bill ensures that all customers contribute their fair share to fixed system costs that do not vary with usage of electricity. (R. 512-13, 45386-87, 45400-03) The Commission found that the minimum bill was in the public interest because it allocates fixed costs more fairly among customers. (R. Vol 1, 512-13)

Extension of Time to Recover Retirement Costs

The 2021 Settlement extends the amortization period for retired power plants and transmission facilities from 10 to 20 years

¹⁸ Base charge is the new name for customer charge. (R. 512, 45386) FPL's base charge for residential customers is \$8.99 per month, which is the lowest of all Florida's investor-owned utilities. (R. 512, 45386) The same charge for small commercial, non-demand customers is \$12.51. (R. 512, 45386)

to reduce the revenue requirements over time. (R. 513, 45350) The Commission found that the extension benefits ratepayers because it results in more efficient, lower-emission generation. (R. 513, 45350-51) The extension would have a nominal rate impact over the 10-20 year period. (R. 513, 35744-45, 45351, 45066) The Commission further found the extension to be fair and to the benefit of the general body of ratepayers, while also resulting in rates that are fair, just, and reasonable. (R. 513)

Revenue Allocation Between Customer Classes

The 2021 Settlement allocates 59 percent of the revenue increase to the residential classes. (R. 513, 45384-85) This amount was negotiated by the Signatories and while it is slightly higher than what was proposed in the rate petition, it is lower than the 66 percent allocation that was approved in the 2016 Settlement. (R. 513, 45384-85)

Moreover, the allocation is consistent with prior settlements and complies with the principle of gradualism. (R, 513, 45384-85, 46885-87) Gradualism is a policy principle of utility regulation that “limits the revenue increase for each rate class to 1.5 times the total system average increase, including adjustment clauses, and

provides that no rate class receives a decrease in rate,” while rates for other classes are being increased. (R. 513-14, 45384)

The Commission found the revenue allocations to be reasonable as they are consistent with allocations approved in prior settlements and comply with its principle of gradualism. (R. 514) In addition, the rate impact is lower than what was initially sought in FPL’s petition for rate increase. (R. 514, 45383, 47756-57) The Commission found that all of these considerations indicate that the allocation will result in fair, just, and reasonable rates and is in the public interest. (R. 514)

A Determination of Whether FPL’s System is Overbuilt

The Commission determined that the 2021 Settlement and its expansion of programs reinforces FPL’s reliable generation, transmission, and distribution system. (R. 514) The Commission rejected Florida Rising’s arguments that the system was overbuilt and overly dependent on natural gas for generation. (R. 514) The Commission found that natural gas is a reliable and primary means of providing base load generation. (R. 514) In addition, FPL has committed to a substantial expansion of its solar generation and

the Green Hydrogen pilot program specifically to address generation diversity. (R. 514, 45088, 47730-31, 47766-68)

The Appropriateness of the Storm Cost Recovery Mechanism

Consistent with mechanisms approved by the Commission and upheld by this Court in FPL's last three rate cases,¹⁹ the 2021 Settlement allows FPL to begin its recovery of storm costs within 60 days of filing a petition for cost recovery without satisfying an earnings test, irrespective of previous or current base rate earnings, or the existence of any remaining unamortized storm reserve. (R. 515, 558-60) The mechanism has demonstrated it is in the public interest by its successful application over time. (R. 515, 10024, 45743-46) The Commission found that the storm cost recovery mechanism is in the public interest because it "reduces regulatory lag and creates a more stable post-storm financial environment." (R. 515) The Commission also noted that the surcharge is subject to a

¹⁹ See *In re: Petition for increase in rates by Fla. Power & Light Co.*, Order No. PSC-11-0089-S-EI, 2011 WL 344916 (Fla. P.S.C. Feb. 11, 2011); *In re: Petition for Increase in Rates by Fla. Power & Light Co.*, Order No. PSC-13-0023-S-EI, 2013 WL 209584 (Fla. P.S.C. Jan. 14, 2013), *aff'd sub nom Citizens*, 146 So. 3d at 1143, and *In re: Petition for rate increase by Fla. Power & Light Co.*, Order No. PSC-16-0560-AS-EI, 2016 WL 7335779 (Fla. P.S.C. Dec. 15, 2016), *aff'd sub nom Sierra Club*, 243 So. 3d at 903.

final true-up to verify the correct amounts have been assessed, and to order appropriate treatment of any over- or under-recovery, which also provides substantially affected entities with a point-of-entry to contest recovery. (R. 515, 558-560)

Whether to Continue FPL's Asset Optimization Program with an Incentive

The Commission initially approved the asset optimization program as a four-year pilot program in FPL's 2012 rate settlement. (R. 516) This Court affirmed the Commission's order approving that settlement. *See In re: Petition for Increase in Rates by Fla. Power & Light Co.*, Order No. PSC-13-0023-S-EI, 2013 WL 209584 (Fla. P.S.C. Jan. 14, 2013), *aff'd sub nom Citizens*, 146 So. 3d at 1143. In 2016, the Commission approved an extension of the program as part of that rate increase settlement (R. 516) and this Court again affirmed the Commission's order. *See In re: Petition for rate increase by Fla. Power & Light Co.*, Order No. PSC-16-0560-AS-EI, 2016 WL 7335779 (Fla. P.S.C. Dec. 15, 2016), *aff'd sub nom Sierra*, 243 So. 3d at 903.

While the prior optimization programs were limited to natural gas, the asset optimization program contained in the 2021

Settlement applies to all fuel sources when reasonable to do so and in the customers' best interests based on system requirements, market demand, and the current market price of fuel or capacity. (R. 516-17, 47089-90) The savings thresholds and ratios in the 2021 Settlement are essentially the same as those set forth in the 2016 rate settlement. (R. 516-17, 47089-90) From 2013-2022, the program netted a benefit of \$406.7 million, of which customers received \$354.5 million (87 percent) and FPL received \$52.2 million (13 percent), demonstrating its clear value to FPL's customers. (R. 517, 47089-90)

The Commission determined that the slight modifications of the program do not change its basic structure and operation, which have proven to provide significant savings for customers, and that the program is in the public interest. (R. 518)

The Appropriateness of the Solar Cost Cap Incentive

The "solar cost cap incentive" is part of the SoBRA program and provides a mechanism for customers to share reduced installation costs with FPL, with customers receiving 75 percent of the savings and FPL receiving 25 percent. (R. 518, 45309-10) The Commission determined that any savings from the incentive will

reduce revenue requirements and that the cost cap will not cause an increase in revenues. (R. 519, 45309-10)

The Commission determined that this incentive encourages FPL to construct solar facilities in the most cost-efficient manner. (R. 519) The Commission further determined that customers benefit from this incentive due to both the lower overall cost and the shared savings. (R. 519) Accordingly, the Commission found this incentive to be in the public interest. (R. 519)

Overall Public Interest Determination

After considering the competing arguments made by all parties and the evidence presented regarding the various components of the 2021 Settlement, and based on relevant factors articulated in this Court's opinion in *FAIR*, the Commission again determined that the 2021 Settlement is in the public interest and results in rates that are fair, just, and reasonable. (R. 519-24) The Commission specifically noted that a majority of the party participants, representing a wide range of ratepayers and interests, joined in the 2021 Settlement. (R. 519)

The Commission stated that while it considered each of the matters set forth by this Court, its ultimate consideration is

whether the 2021 Settlement results in rates that are fair, just, and reasonable, and whether, when considered as a whole, it is in the public interest. (R. 519-20) The main factors underlying the Commission's determination were that FPL provided relatively low rates when compared both nationally and within the state, rate stability and predictability, increased renewable energy, and the development of future renewable energy programs. (R. 524-25)

SUMMARY OF THE ARGUMENT

In *FAIR*, this Court did not reverse any of the findings and conclusions in the Final Order and went so far as to expressly acknowledge the Commission's broad legal authority to approve the mechanisms contained in the 2021 Settlement. *FAIR*, 371 So. 3d at 907, n.2, 910-11. Rather, this Court remanded the original Final Order to the Commission for the limited purpose of providing additional factual findings to support the conclusion that the 2021 Settlement Agreement is in the public interest and a further explanation of the Commission's rationale. *Id.* at 914. The Supplemental Final Order complies with that directive.

The expansion of the SolarTogether program comports with section 366.03, Florida Statutes. There is competent, substantial

record evidence supporting the Commission findings that the program is not unduly discriminatory and is in the public interest. Florida Rising's arguments on the SolarTogether program should be rejected. Florida Rising not only misstates the standard of review, it also improperly asks this Court to consider matters outside the record and reweigh the evidence.

The Supplemental Final Order sufficiently explains the Commission's determinations and factual findings on the 2021 Settlement consistent with this Court's opinion in *FAIR*, and the Commission's ultimate finding that the 2021 Settlement, when taken as a whole, is in the public interest is supported by competent, substantial record evidence. Just like its arguments on SolarTogether, Florida Rising's arguments on the Commission's determinations and factual findings on the 2021 Settlement are inappropriate, thinly veiled attempts to have this Court reweigh the Commission's factual findings and should be rejected.

The Commission provided a full explanation of how FPL's FEECA performance was considered in establishing rates in accordance with this Court's opinion in *FAIR* and did not abuse its discretion in denying Florida Rising's motion to reopen the record.

Thus, this Court should affirm the Commission's Supplemental Final Order.

STANDARD OF REVIEW

“Commission orders come to this Court clothed with the presumption that they are reasonable and just.” *Sierra Club v. Brown*, 243 So. 3d 903, 907 (Fla. 2018) (quoting *West Fla. Elect. Co-op. Ass'n v. Jacobs*, 887 So. 2d 1200, 1204 (Fla. 2004)). To overcome this presumption, a party challenging an order of the Commission on appeal has the burden of showing a departure from the essential requirements of law and the legislation controlling the issue, or that the findings of the Commission are not supported by competent, substantial record evidence. *Sierra Club*, 243 So. 3d at 907-08 (quoting *Crist v. Jaber*, 908 So. 2d 426, 430 (Fla. 2005)). This Court has long recognized that the Commission “has considerable discretion and latitude” in ratemaking. *Gulf Power Co. v. Bevis*, 296 So. 2d 482, 487 (Fla. 1974); *City of Miami v. Fla. Pub. Serv. Comm'n*, 208 So. 2d 249, 253 (Fla. 1968).

This Court affords great deference to the Commission's findings and will not overturn a Commission order because it would have arrived at a different result had it made the initial decision

and will not reweigh the evidence. *Id.*; see also § 120.68(7)(e)1., Fla. Stat. (“the court shall not substitute its judgment for that of the agency on an issue of discretion”); *Gulf Power Co. v. Fla. Pub. Serv. Comm’n*, 453 So. 2d 799, 803 (Fla. 1984).

The Commission’s exercise of discretion is reviewed to determine if it was outside the range of discretion delegated to the agency by law. § 120.68(7)(e)1., Fla. Stat. “If reasonable people could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion.” *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980).

ARGUMENT

I. THE EXPANSION OF THE SOLARTOGETHER PROGRAM COMPORTS WITH SECTION 366.03, FLORIDA STATUTES, AND IS SUPPORTED BY COMPETENT, SUBSTANTIAL RECORD EVIDENCE.

A. Florida Rising misstates the proper standard of review.

Florida Rising asserts the expansion of the SolarTogether program creates discriminatory rates and provides undue preferences in violation of section 366.03, Florida Statutes. (I.B. 8-27) Florida Rising mischaracterizes this issue as one involving the

agency's interpretation of law requiring a *de novo* review by the Court. (I.B. 8)

Section 366.03, Florida Statutes, prohibits *undue* or *unreasonable* preference, prejudice, or advantage in rates. A regulatory determination of what is “undue or unreasonable preference or advantage is a question not of law, but of fact.” *Pennsylvania Co. v. United States*, 236 U.S. 351, 361 (1915), *Texas & P. Ry. Co. v. Interstate Comm. Comm’n*, 162 U.S. 197, 220 (1896); *Interstate Comm. Comm’n v. Ala. Midland Ry. Co.*, 168 U.S. 144, 170 (1897); *Seaboard Air Line Ry. Co. v. United States*, 254 U.S. 57, 62 (1920); *Federal Trade Comm’n v. Gratz*, 253 U.S. 421, 431 (1920).²⁰ Thus, contrary to the standard of review cited by Florida Rising, the proper standard of review is whether there is competent, substantial record evidence supporting the Commission’s finding that SolarTogether is not unduly discriminatory. §§ 120.68(7)(b) and (10), Fla. Stat.

²⁰ While many of these long-established cases have been distinguished on other grounds, the proposition for which the Commission relies on these cases has not been overturned. See, e.g., *Federal Trade Comm’n v. Brown Shoe Co., Inc.*, 384 U.S. 316, 320 (1966).

B. The Commission’s determinations that SolarTogether is not “unduly discriminatory” and is in the public interest are supported by competent, substantial record evidence.

Rate discrimination is inherent in any rate design. *See In re: Petition for Approval to Implement Consolidated Fuel Adjustment Surcharge by Fla. Pub. Utils. Co.*, Order No. PSC-04-0417-PAA-EI, 2004 WL 895894 (Fla. P.S.C. Apr. 22, 2004). As discussed above, section 366.03, Florida Statutes, only prohibits *undue* or *unreasonable* preference, prejudice, or advantage, and a determination of undue preference is a finding of fact. *See, e.g., Brown Shoe Co.*, 384 U.S. at 320. It is within the sound discretion of the Commission to allow different treatment among otherwise like customers if there is a reasonable basis to differentiate between the customers based on record evidence. *See Florida Power Corp. v. Mayo*, 203 So. 2d 614, 615 (Fla. 1967). This Court has long recognized that the Commission “has considerable discretion and latitude” in ratemaking. *Bevis*, 296 So. 2d at 487; *City of Miami*, 208 So. 2d at 253.

The Commission found that the expansion of the SolarTogether program does not result in unduly discriminatory

rates because it fairly distributes generation and benefits among ratepayers (R. 509, 45072-74, 45334-38) and increases the availability for new solar generation for residential and small business customers. (R. 509, 573-74, 45141-42, 45337, 45367-68, 45352-53, 45367-68) Moreover, the Commission held that program participants completely fund the program, but the benefits are shared by all ratepayers. (R. 523, 45076-81, 45336-38)

Here, the Commission found that the calculations relied upon by Florida Rising's witness to assert an unduly discriminatory rate structure were based on a flawed assumption, and that he had manipulated the model by changing the ROE to impose a cost on the customers, but had failed to also adjust the subscription charge. (R. 509, 45080-81, 45351-53)

Florida Rising's assertion that the expansion of the SolarTogether program is against the public interest, based on the ROE FPL *might* realize and the *possible* bill impact in 2026 of \$1.69 per 1,000 kWh, is also meritless. (I.B. 25-26) Florida Rising continues to rely on their incorrect assertion that non-participants are funding the expansion. (I.B. 25-26)

A public interest determination “is a fact dependent inquiry generally focused upon—but not limited to—the Commission’s historical and statutory role.” *Sierra Club*, 243 So. 3d at 903, 907, 911. A public interest determination also rests on policy judgments made by the Commission based on its specialized knowledge and expertise. *See FAIR*, 371 So. 3d at 910. In initially approving the SolarTogether program, the Commission found it to be in the public interest because it:

[A]ligns with the Florida Legislature’s intent in Section 366.92, F.S., and provides ample system-wide benefits, including: promoting the development of renewable energy, encouraging investment within the state, diversifying the types of fuel used to generate electricity, lessening the state’s reliance on fossil fuels, and decreasing carbon emissions [and] comports with Section 366.06, F.S., by providing fair, just, and reasonable rates without undue preference.

In re: Petition for approval of FPL SolarTogether program and tariff, by Fla Power & Light Co., Order No. PSC-2020-0084-S-EI, 2020 WL 1431943, *4 (Mar. 20, 2020). The Commission determined the expansion of SolarTogether continued those benefits. (R. 507-09, 523)

The Commission noted that expansion of the SolarTogether program was contemplated when the program was initially

approved. (R. 509)²¹ The Commission further found that the expansion of the SolarTogether program distributes benefits to participants and non-participants almost equally, more solar generation is available to residential and small business customers, and the program increases development of renewable energy in the state. (R. 507-09) As such, the Commission properly exercised its delegated legislative authority in determining that the expansion of the SolarTogether program continues to serve “the public interest to promote the development of renewable energy resources in this state.” § 366.91(6), Fla. Stat. (R. 509, 523)

FPL used the same cost-effectiveness analysis for this expansion of the SolarTogether program as it did for the original program previously approved by the Commission. (R. 509, 45335) This analysis continues to support the Commission’s conclusion that the total CPVRR of the extended program alone is projected to provide \$425 million of CPVRR savings compared to the same

²¹ *In re: Petition for approval of FPL SolarTogether program and tariff, by Fla Power & Light Co.*, Order No. PSC-2020-0084-S-EI, 2020 WL 1431943, *3 and 7 (Mar. 20, 2020).

period without the expansion of SolarTogether.²² (R. 509, 30477-81, 45079-80, 45083-85, 45335)

The Commission found that the allocation of the CPVRR benefits “to be in the public interest and . . . to be part of a framework that results in fair, just, and reasonable rates.” (R. 509) The Commission additionally found that the participants in the SolarTogether extension will pay 103.26 percent of the base revenue requirements for the program²³ for which they will receive an allocation of just 55 percent of the overall benefits, and the non-participants, while paying no subscription fees, will receive 45 percent of the overall benefits. (R. 508, 45080, 45336-38, 45367-68) Just like the originally approved program, over the life of the program the general body of FPL’s customers is not expected to bear any cost responsibilities, but will share 45 percent of the total projected net system savings of the \$648 million in CPVRR. (R. 509,

²² Total CPVRR for the entire program is \$648 million. (R. 509, 45335)

²³ Florida Rising falsely claims repeatedly that the participants merely have to figuratively raise their hand and, in exchange for nothing, receive bill credits paid for by everyone else. (I.B. 6, 8, 11-12, 23)

45072-74, 45334-38)²⁴ The Commission found that FPL’s “comprehensive analysis performed over the life of the extended SolarTogether program . . . and its conclusion regarding the CPVRR benefits to be more persuasive than mathematical snapshots offered by [Florida Rising] as impeachment of that analysis.” (R. 509, 45352-53)

This Court affords great deference to the Commission’s findings and will not overturn a Commission order because it would have arrived at a different result had it made the initial decision and will not reweigh the evidence. *Sierra Club*, 243 So. 3d at 907; *Southern All. for Clean Energy v. Graham*, 113 So. 3d 742, 752 (Fla. 2013); *Gulf Power*, 453 So. 2d at 803; *see also* § 120.68(7)(e), Fla. Stat. (“The court shall not substitute its judgment for that of the agency on an issue of discretion.”). As demonstrated above, the Commission’s findings are supported by competent, substantial record evidence.

²⁴ In addition, the expansion of the program provides \$292 million of benefits, almost three times the amount contained in the original program. (R. 45073-75)

C. Florida Rising is improperly asking this Court to consider matters outside the record and reweigh the evidence.

It is a well-established maxim that an appellate court's review is limited to the record on appeal. See Fla. R. App. P. 9.190(c)(1); § 120.68(4), Fla. Stat. However, Florida Rising includes three newly-created tables²⁵ in its Initial Brief in an attempt to further its arguments. (I.B. 16-18) Florida Rising's use of these tables is not just placing its argument in a visual format, it also inappropriately uses only certain portions of hearing exhibits and combines data sets without explanation or justification.²⁶

The newly-created tables contain missing data, add new data, use new column headings rather than the headings in the tables in evidence, and combine information without citing to any record evidence or legal authority that such combination is appropriate.

²⁵ Tables which were neither used, nor listed as or introduced into evidence, at the Commission proceeding below.

²⁶ Table 1 (I.B. 16) purports to be the same table reflected at Appendix 113, which in turn is the third of three tables contained in Exhibit SRB-16. (R. 30481) Table 2 (I.B. 17) purports to be the same table reflected at Appendix 112, which in turn is the third of three tables contained in Exhibit SRB-16. (R. 30480) Table 3 (I.B. 18) purports to be the same table reflected at Appendix 111, which in turn is the first of three tables contained in Exhibit SRB-16. (R. 30479) However, they are *not* the same tables.

Florida Rising provides no citations to the record to substantiate or justify the changes. Florida Rising's witnesses could have created these tables for use at hearing which would have provided the parties an opportunity to question their legitimacy and for the Commission to consider their appropriateness, reliability, and persuasiveness.

Because these tables were not introduced into evidence at the hearing, they are merely demonstrative aids. Use of demonstrative aids is only appropriate before a trier of fact and, even then, good reason must be given for their use. *See Alston v. Shiver*, 105 So. 2d 785, 791 (Fla. 1958). Before they are used, demonstrative aids must be presented to the fact-finder to assess relevance and accuracy. *See id.*; *see also Harris v. State*, 843 So. 2d 856, 863-64 (Fla. 2003). As Florida Rising failed to introduce these tables into evidence in the proceeding below, it is improper for them to attempt to now inject them into this appeal and expect this Court to rely upon them.

Florida Rising's arguments inappropriately request this Court to reweigh the evidence and substitute its judgment for that of the Commission. Thus, their arguments should be rejected. *See Sierra*

Club, 243 So. 3d at 907; *see also* § 120.68(7)(e), Fla. Stat. (“The court shall not substitute its judgment for that of the agency on an issue of discretion.”).

II. THE SUPPLEMENTAL FINAL ORDER COMPORTS WITH THIS COURT’S DIRECTIVE IN *FAIR* AND IS SUPPORTED BY COMPETENT, SUBSTANTIAL RECORD EVIDENCE.

Florida Rising asserts in Point II of its Initial Brief that the Supplemental Final Order fails to cite to competent, substantial evidence in the record and fails to consider how the components of the 2021 Settlement, working together, make the settlement in the public interest when considered as a whole. (I.B. 26-53) This argument is both meritless and disingenuous.

Not only does the Supplemental Final Order cite extensively to the record (R. 501-02, 504, 512, 514), it also cites to prior Commission orders, precedential case law, and Florida Statutes to demonstrate how approval of the 2021 Settlement continues to further policies of the Commission in furtherance of established statutory goals established by the Legislature. (R. 491-92, 495-504, 506-07, 509-11, 514-524)²⁷

²⁷ A public interest determination is not only “a fact dependent inquiry generally focused upon—but not limited to—the

Moreover, the Supplemental Final Order, in accordance with this Court's direction in *FAIR*, first sets forth supplemental findings of fact and conclusions of law on the specific issues. (R. 497-519) *See also FAIR*, 371 So. 3d at 907. The Supplemental Final Order then examines whether the 2021 Settlement as a whole is in the public interest, with an explanation of the Commission's rationale. (R. 519-25)

Even assuming Florida Rising established that individual portions of the settlement are not in the public interest (an assertion the Commission disputes), the Commission assessed the 2021 Settlement as a whole, as is required under controlling case law and Commission policy. (R. 519-25) *See Sierra Club*, 243 So. 3d at 914. The public interest encompasses many policy considerations and the Commission acknowledges the 2021 Settlement may not be the best for every ratepayer in every situation. (R. 519-20) Ultimately, the Commission determined that overall the 2021 Settlement is in the public interest. (R. 519-25)

Commission's historical and statutory role,"²⁷ it also rests on policy judgments made by the Commission based on its specialized knowledge and expertise. *See FAIR*, 371 So. 3d at 910.

In this regard, the Commission determined that on balance the rate stability of the RSAM, accompanied by low base rates and long-term bill stability, is in the public interest. (R. 498-500, 504-06, 520-21) As part of the settlement compromise, both the proposed rate increase and ROE were reduced from what was requested in FPL's petition for rate increase, and renewable energy development was expanded. (R. 45319) Overall, the Commission found the expansion of renewable energy benefits society, and FPL's favorable rate history, history of excellent service, electric grid reliability, and lower-than-average customer bills, demonstrate that the 2021 Settlement as a whole is in the public interest. (R. 520, 45308)

In *FAIR*, this Court did not reverse any of the findings and conclusions in the Final Order and went so far as to expressly acknowledge the Commission's broad legal authority to approve the mechanisms contained in the 2021 Settlement. *FAIR*, 371 So. 3d at 907, n.2, 910-11. Rather, this Court remanded the Final Order to the Commission for the limited purpose of providing additional factual findings to support the conclusion that the 2021 Settlement Agreement is in the public interest and a further explanation of the

Commission's rationale. *Id.* at 914. The Supplemental Final Order complies with that directive.

A. The Commission's findings that the Return on Equity (ROE), Equity to Debt Ratio, and Reserve Surplus Amortization Mechanism (RSAM) are in the public interest are supported by competent, substantial record evidence.

Despite Florida Rising's assertions to the contrary (I.B. 27-39), the Commission's finding that a 10.6 percent ROE (with a range of 9.7 to 11.7 percent) is reasonable is supported by competent, substantial record evidence. (R. 501, 45149-52, 45356, 45629)²⁸ Florida Rising disputes the ROE because it is higher than national averages of ROEs over the last twenty years. (I.B. 28-29) However, that is not the standard by which the Commission assesses ROE. The required return is a function of the risk the investment is exposed to, not a function of what other states' regulators allow. (R. 58051-52) As FPL "has a different risk profile than other electric utility companies for which returns were set in other jurisdictions[,] FPL's cost of equity is higher." (R. 58057)

²⁸ The ROE approved in the 2021 Settlement is lower than the ROE approved in FPL's 2012 settlement. See *Citizens* 146 So. 3d at 1147 (Fla. 2014) (upholding an ROE of 10.7 percent).

Not only is the ROE in the 2021 Settlement 90 basis points below that in FPL's petition, but also the record shows that FPL's infrastructure risk is much higher than other utilities due to hurricanes in Florida and the low-lying coastline in its territory. (R. 501, 45149-52, 45272, 45356, 45629) The Commission was persuaded by testimony from FPL witness Coyne which showed that the established ROE range is reasonable, that the economy has been experiencing high volatility and uncertainty that is expected to continue, and that there is persistent inflation affecting the price of services, all of which necessitate a higher rate of return than Florida Rising suggests is appropriate. (R. 501, 45354, 45705-06, 45717, 46027-29, 46037-47)

The Commission was further persuaded by FPL witness testimony that the utility industry as a whole is experiencing complex changes due to climate change, decarbonization, and grid modernization. (R. 10081, 45359-60) To attain a reliable return on investment, the utility needs a higher ROE than that which was suggested by Florida Rising. (R. 10081, 45359-60, 45717) FPL presented testimony that it must have an ROE adequate to attract

capital, which in turn benefits customers on the whole. (R. 10081, 45359-60, 45717)

The Commission's findings on the equity to debt ratio are also supported by competent, substantial record evidence. The record shows that when considered alongside the ROE, the established equity to debt ratio provides a financial structure as a whole that furthers the public interest by enabling FPL to maintain financial strength and flexibility. (R. 10081, 45709-12) Moreover, the ratio of 59.6 percent is consistent with the ratios that the Commission has approved over the last twenty years. (R. 10081, 45182)

Florida Rising's contention that the Commission failed to show in the Supplemental Final Order how the RSAM operates in the public interest (I.B. 32) is simply incorrect. The Commission authorized the RSAM to ensure that FPL will abide by a four-year minimum term during which no general base rate increases can be made. (R. 505, 45051-52, 45139, 45345, 45775) FPL witnesses testified that without this capability, FPL would have to come back for a rate increase two years sooner. (R. 45052) With this capability, FPL can manage cost fluctuations, which the record reflects results in lower rates, high reliability, low emissions, and high customer

satisfaction. (R. 505, 36386, 38892, 45713, 45051-52, 45137-39, 45345, 45716, 45751-52, 45775) FPL witnesses further testified that the RSAM utilized during the 2017-2021 settlement period allowed FPL to absorb hurricane restoration costs and offset millions of dollars in pandemic-related bad debt. (R. 10084-85, 10100, 45138-19, 458751-52, 47409)

Overall, the Commission was persuaded that the ROE, equity to debt ratio, and RSAM together provide a sound financial structure upon which FPL may rely to provide rate stability to customers. (R. 520-21, 10082-89, 34332-34, 34377, 34380, 34382, 34404, 45752-56) As demonstrated above, the Commission's findings are supported by competent, substantial record evidence.

B. Other mechanisms approved by the Commission are in the public interest on balance and are supported by competent, substantial record evidence.

Florida Rising's argument that the base rate increases, system overbuilding, extension of asset recovery time, incentive mechanisms, and pilot programs are not in the public interest is baseless. (I.B. 39-47) This argument is merely another bid for this Court to reweigh evidence and assume the role of fact-finder on appeal and should be rejected.

The Commission found the base rate increases are necessary “to maintain an ROE in the authorized range, are based on a sound analysis of current and projected conditions in light of historical performance, and result in rates that are fair, just, and reasonable.” (R. 500) In making this determination, the Commission found that infrastructure hardening, improvements to reliability, and upgrades and additions to the generation fleet all contributed to a necessary base rate increase. (R. 498, 47946) In addition, almost all portions of the 2021 Settlement simply continue, expand, or modify a previously existing mechanism. (R. 505, 507-08, 515-16, 45335-37, 45746, 47089-90, 47716)²⁹

Considering the increased costs of goods and services due to inflation, the increase in base rates has occurred at a much lower rate. FPL witnesses Silagy, Park, and Cohen testified that over the past 15 years, inflation has increased by more than 28 percent, food and housing costs have increased by more than 33 percent, the cost of medical care has increased by 54 percent, and the

²⁹ In affirming FPL’s 2012 settlement, this Court specifically noted that “the asset optimization incentive program is in the public interest and part of a reasonable resolution of the disputed issues.” *Citizens*, 146 So. 3d at 1172.

national average of a typical residential electric bill has increased by nearly 30 percent. (R. 47753, 47772) In contrast, over the same period, FPL's typical residential bill decreased by 10 percent, and is approximately 10 percent below the state average and 30 percent below the national average. (R. 46848, 47772). The typical commercial and industrial bills decreased by 14-19 percent, and are 7 percent to 24 percent below the state average and 18 percent to 45 percent below the national average. (R. 45323-24, 46848, 47753, 47772)³⁰ The record reflects that FPL has the lowest typical residential bill among the 20 largest investor-owned utilities in the country and is more than 40 percent below the national average, ranked by customer size. (R. 47772,)

Not only is the base rate increase not as drastic as Florida Rising suggests, but it is also supported by FPL's value of service. The Commission relied on evidence in the record which established that FPL maintains highly reliable service to customers, while maintaining low operating and maintenance expenses and low base rates. (R. 1082-89, 33982, 45154-55, 47833-34, 47853-54)

³⁰ Contrary to Florida Rising's arguments (I.B. 51), using a 1,000 kWh bills is the industry standard and appropriate benchmark, not actual bills. (R. 45100-02, 46898-902)

Regarding Florida Rising's contention that FPL's system is overbuilt (I.B. 44-45), the Commission relied on evidence that energy diversification is useful and necessary for utilities to comport with the public interest by providing reliable electricity to customers. (R. 514, 45368); *see also* § 366.91(6), Fla. Stat. The Commission also relied on evidence from FPL that a utility needs to consider a wide range of possibilities in planning for a reliable system with its generation, transmission, and distribution. (R. 514, 45088) While Florida Rising alleges that the transmission and distribution changes from the acquisition of Gulf Power Company (Gulf Power) resulted in the system being overbuilt (I.B. 40-44), the Commission bases its decisions regarding the system as a whole. (R. 519-20, 524-25) Moreover, with the acquisition of Gulf Power, FPL has shown that its changes and additions to those plants have saved those new FPL customers millions in CPVRR savings. (R. 45153-54, 47772-76) This evidence supports the Commission's finding that FPL's system is not overbuilt. (R. 514)

Additionally, in finding the extension of asset recovery time from 10 to 20 years to be in the public interest, the Commission relied on testimony from FPL that the extension of time reduces the

revenue requirement over the term of the settlement. (R. 513, 45350) The customers who pay for the retirement of plants over the 20-year period are subject to a nominal cost to do so and will realize the benefits of retiring plants, so that FPL can use more efficient, lower-emission generation. (R. 513, 35744-45, 45350-51, 45066)

Moreover, the record reflects that the Commission's approval of asset incentive mechanisms is beneficial to customers. The original mechanisms allowed FPL, for the first time, to "create gains through electric wholesale purchases and sales." (R. 516; 54547-48)³¹ The value from these sales and purchases flows to customers by reducing their annual fuel costs. (R. 526, 45350-51, 58277-78) This program, beginning in 2012, was amended through the 2021 Settlement to include all fuel types, which allows FPL to further optimize its resources for customer benefit. (R. 516-17, 47089-90) The Commission relied on evidence of proven savings to conclude the expanded program will continue "to provide savings through the efficient use of existing assets." (R. 518, 47089-90)

³¹ See also *In re: Petition for Increase in Rates by Fla. Power & Light Co.*, Order No. PSC-13-0023-S-EI, 2013 WL 209584 (Fla. P.S.C. Jan. 14, 2013), *aff'd sub nom Citizens*, 146 So. 3d at 1143.

Furthermore, the pilot programs authorize FPL to test new programs on a small-scale to collect data and garner information. (R. 509-12, 45376) Typically, pilot programs enable utilities to determine what improvements it can make to its operations and service. (R. 509-12, 47598, 477014, 52150-52) For example, the EV pilot program allows the Commission to gather information on the impact of EVs on the local grid and allows FPL to increase its awareness of the impacts of EV charging on grid reliability and customer usage patterns. (R. 510-11, 45370, 45376) Moreover, the EV, green hydrogen, and solar power programs all help FPL achieve the goals of increasing its renewable energy resources and diversifying its energy supply. (R. 509-12, 45370-71) The Commission found it is in the public interest to gain data on the particularities of such programs, such as the impacts of EV charging on grid reliability and customer usage. (R. 510-11)

In sum, Florida Rising's arguments are baseless. As shown above, the Commission's determination that the 2021 Settlement on the whole is in the public interest is supported by competent, substantial record evidence.

C. The Commission’s findings that the other elements of the 2021 Settlement are in the public interest are supported by competent, substantial record evidence.

In Point II.C. of its Initial Brief, Florida Rising again inappropriately requests that this Court step into the role of fact-finder and reweigh the evidence in its meritless arguments on the revenue allocation among classes and the \$25.00 minimum bill. (I.B. 49-53) As shown below, Florida Rising’s arguments should be rejected because the Commission’s findings are supported by competent, substantial record evidence.

The Commission found the revenue allocation—59 percent to residential customers—to be reasonable as the allocations were consistent with allocations from prior settlements and complied with the Commission’s principle of gradualism. (R. 514, 45104-06, 45384-85) Gradualism is a policy principle of utility regulation that “limits the revenue increase for each rate class to 1.5 times the total system average increase, including adjustment clauses, and provides that no rate class receives a decrease in rate,” while rates for other classes are being increased. (R. 513-14, 45384) The Commission found FPL’s revenue allocation comports with this principle. (R. 513-14) Despite Florida Rising’s claims that this

allocation is inequitable, the record demonstrates that the allocation was higher than that which FPL requested as a result of negotiations. (R. 513, 45384-84)

Florida Rising's claim that FPL provided no evidence justifying the \$25.00 minimum bill (I.B. 52) is false. The record evidence shows that there are costs associated with having all ratepayers connected to a system, even if the customer's bill is low due to having a second home, using solar panels to lower their bill, or having generally low usage. (R. 45114, 45386-87, 45400-03) The base charge³² only covers billing, metering, and customer service costs. (R. 512, 45386, 45400-01) The Commission found that the minimum bill was in the public interest because it ensures that all customers fairly contribute to the cost of the system. (R. Vol 1, 512-13)

Florida Rising's arguments are merely a regurgitation of the same arguments it made to the Commission and which the Commission, in its sound discretion, rejected in favor of other

³² FPL's monthly base charge for residential customers is \$8.99, which is the lowest of all Florida's investor-owned utilities. (R. 512, 45386) The same monthly charge for small commercial, non-demand customers is \$12.51. (R. 512, 45386)

record evidence. It is the Commission’s job as fact-finder to weigh the evidence and judge the credibility of witnesses. *Gulf Power*, 453 So. 2d at 805 (Fla. 1984) (“It is the PSC's prerogative to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems necessary.”); *Demichael v. Dep’t of Mgmt. Servs., Div. of Retirement*, 334 So. 3d 691, 695 (Fla. 1st DCA 2022); *Gross v. Dep’t of Health*, 819 So. 2d 997, 1003 (Fla. 5th DCA 2002).

As exemplified above, the Commission relied on competent, substantial evidence to support the elements of the 2021 Settlement and find it as a whole to be in the public interest. This Court has long recognized that the Commission “has considerable discretion and latitude” in ratemaking. *Bevis*, 296 So. 2d at 487; *City of Miami*, 208 So. 2d at 253. Accordingly, this Court should affirm the Supplemental Final Order.

III. THE COMMISSION APPROPRIATELY CONSIDERED FPL’S FEECA PERFORMANCE IN ACCORDANCE WITH THIS COURT’S OPINION IN *FAIR* AND DID NOT ABUSE ITS DISCRETION IN DENYING FLORIDA RISING’S MOTION TO REOPEN THE RECORD.

Florida Rising incorrectly asserts that this Court directed the Commission to “reflect the Commission’s consideration of FPL’s

performance pursuant to the Florida Energy Efficiency and Conservation Act (FEECA).” (I.B. 53-54) Rather, this Court merely stated that a “reasonably explained decision” would indicate that FEECA considerations set forth in section 366.82(10), Florida Statutes, along with the considerations set forth in section 366.06(1), Florida Statutes, were considered “to the extent practicable.” *FAIR*, 371 So. 3d at 912. The Commission did just that. The Commission provided a full explanation of how FPL’s FEECA performance was considered in establishing rates in accordance with this Court’s opinion in *FAIR*. (R. 521-23)

The Commission noted that Florida Administrative Code Rule 25-17.015 establishes the energy conservation cost recovery clause (ECCR) as the mechanism for electric utilities to seek approval of reasonable energy conservation expenses. (R. 522) Accordingly, the Commission determined that the appropriate proceedings for Florida Rising to assert the arguments raised would be “in FPL’s 2024 goal-setting, DSM plan, and the annual ECCR dockets.” (R. 522, footnote omitted); *see also* § 366.8255(3), Fla. Stat.; Fla. Admin. Code R. 25-17.0021(1). Although the Commission considers energy efficiency and conservation as part of its public interest

determination, an assessment of FEECA performance was not within the scope of the proceedings below. The Commission initiates proceedings to establish each utility's goals pursuant to FEECA every five years, rather than within a base rate case. See Fla. Admin. Code R. 25-17.0021(1); §§ 366.82(2) and (7), Fla. Stat. (R. 522) Florida Rising has not demonstrated any legal error in the Commission's historical interpretation and current application of the law regarding FEECA to FPL.

To the extent Florida Rising is arguing that the Commission erred in not reopening the record to introduce multiple years of FEECA reports into evidence (I.B. 54), its argument should be rejected because the Commission did not abuse its decision. Not only were the 2020, 2021, and 2022 FEECA reports not entered into evidence in the proceedings below, the 2021 and 2022 reports were created after the Commission voted to approve the 2021 Settlement. (R. 495-97) The existing record was sufficient for the Commission to address matters affected by FEECA. FEECA numeric goals were taken into account by the Commission in its consideration of FPL witness testimony regarding FPL's load

forecasting. (R. 45367-77, 47341-42, 47528, 47531-32, 47541-43, 47565-67, 47601-02, 47706-07)

Florida Rising had the opportunity to respond to this testimony by presenting testimony or offering exhibits, but failed to do so, even after other intervenors presented FEECA-related testimony. (R. 46268-70, 46382-89) Thus, the Commission's decision to not reopen the record was reasonable and justified. See *Canakaris*, 382 So. 2d at 1203 ("If reasonable people could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion.")

CONCLUSION

Florida Rising has failed to meet the heavy burden of overcoming the presumption of correctness that attaches to Commission orders. See *Sierra Club*, 243 So. 3d at 907 (quoting *West Fla. Elec. Co-op. Ass'n*, 887 So. 2d at 1204). The Commission's Supplemental Final Order should be affirmed.

Respectfully submitted,

/s/ Samantha M. Cibula
Samantha M. Cibula
Florida Bar No. 0116599
scibula@psc.state.fl.us

Susan Sapoznikoff
Florida Bar No. 0855987
ssapozni@psc.state.fl.us

Caroline G. Dike
Florida Bar No. 1050160
cdike@psc.state.fl.us

Douglas D. Sunshine
Florida Bar No. 0935263
dsunshin@psc.state.fl.us

Keith C. Hetrick, General Counsel
Florida Bar No. 0564168
khetrick@psc.state.fl.us

FLORIDA PUBLIC SERVICE
COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
(850) 413-6199

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document has been furnished by electronic mail through the Court's e-filing Portal this 10th day of June 2024, to the following:

**Florida Rising, League of United Latin American Citizens, and
Environmental Confederation of Southwest Florida**

Bradley Marshall
Jordan Luebke
Earthjustice
111 South Martin Luther King
Jr. Boulevard
Tallahassee, Florida 32301
bmarshall@earthjustice.org
jluebke@earthjustice.org
flcaseupdates@earthjustice.org

Florida Power & Light Co.

R. Wade Litchfield
John T. Burnett
Russell Badders
Maria Jose Moncada
Ken Rubin
Joel T. Baker
Kenneth Hoffman
700 Universe Boulevard
Juno Beach, FL 33408-0420
wade.litchfield@fpl.com
john.t.burnett@fpl.com
russell.badders@nexteraenergy.com
maria.moncada@fpl.com
ken.rubin@fpl.com
joel.baker@fpl.com
ken.hoffman@fpl.com

Daniel E. Nordby
Schutts & Bowen LLP
215 South Monroe Street
Suite 804
Tallahassee, FL 32301
Dnordby@schutts.com

Alyssa L. Cory
Schutts & Bowen LLP
4301 West Boy Scout Blvd.,
Suite 300
Tampa, FL 33607
Acory@schutts.com

Jason Gonzalez
Amber Stoner Nunnally
Lawson, Huck, Gonzalez PLLC
215 South Monroe Street,
Suite 320
Tallahassee, FL 32301
jason@lawsonhuckgonzalez.com
amber@lawsonhuckgonzalez.com
michelle@lawsonhuckgonzalez.com

Stuart Singer
Pascual Oliu
Boies Law Firm
401 East Las Olas Boulevard
Suite 1200
Ft. Lauderdale, FL 33301
ssinger@bsflfp.com
poliu@bsflfp.com
ftleserve@bsflfp

Federal Executive Agencies

Thomas A. Jernigan
Holly L. Buchanan
Robert J. Friedman
Arnold Braxton
Ebony M. Payton
139 Barnes Drive, Suite 1
Tyndall Air Force Base
Thomas.jernigan.3@us.af.mil
Holly.buchanan.1@us.af.mil
Robert.friedman.5@us.af.mil
Arnold.braxton@us.af.mil
Ebony.payton.ctr@us.af.mil
ULFSC.Tyndall@us.af.mil

Florida Internet & Television Association

Floyd R. Self
313 North Monroe Street
Suite 301
Tallahassee, FL
fself@bergersingerman.com

T. Scott Thompson
*Mintz, Levin, Cohn, Ferris,
Glovsky Popeo, P.C.*
555 12th Street NW,
Suite 1100
Washington, DC 20004
sthompson@mintz.com

Florida Industrial Power Users Group

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

Florida Retail Federation

James W. Brew
Laura Wynn Baker
Joseph R. Briscar
Stone Mattheis, Xenopoulos & Brew, PC
1025 Thomas Jefferson St., NW, Suite 800 West
Washington, D.C. 20007
jbrew@smxblaw.com
lwb@smxblaw.com
jrb@smxblaw.com

Floridians Against Increased Rates, Inc.

Robert Scheffel Wright
John T. LaVia, III
1300 Thomaswood Drive
Tallahassee, FL 32308
schef@gbwlegal.com
jlavia@gbwlegal.com

Daniel Larson & Alexandria Larson

Nathan A. Skop
420 NW 50th Boulevard
Gainesville, FL 32607
N_skop@hotmail.com

Office of the Public Counsel

Walt Trierweiler
Charles J. Rehwinkel
Patty A. Christensen
Anastacia Pirello
111 West Madison Street, Room 812
Tallahassee FL 32399
trierweiler.walt@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us
christensen.patty@leg.state.fl.us
pirrello.anastacia@leg.state.fl.us

Southern Alliance for Clean Energy

George S. Cavros
120 East Oakland Park Boulevard, Suite 105
Fort Lauderdale, FL 33334
george@cavros-law.com

The CLEO Institute, Inc.

William C. Garner
Law Office of William C. Garner, PLLC
3425 Bannerman Road, Unit 105, #414
Tallahassee, FL 32312
bgarner@wcglawoffice.com

Vote Solar

Katie Chiles Ottenweller
838 Barton Woods Road SE
Atlanta, GA 30307
Katie@votesolar.org

Walmart

Stephanie U. (Roberts) Eaton
*Spilman Thomas &
Battle, PLLC*
110 Oakwood Drive, Suite 500
Winston-Salem NC 27103
seaton@spilmanlaw.com

Barry A. Naum
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard,
Suite 101
Mechanicsburg PA 17050
bnaum@spilmanlaw.com

/s/ Samantha M. Cibula
Samantha M. Cibula

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Florida Rule of Appellate Procedure 9.045(e), that this Answer Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b), was prepared using Bookman Old Style 14-point font, and contains 10644 words, complying with the word limit of Florida Rule of Appellate Procedure 9.210(a)(2)(B).

/s/Samantha M. Cibula
Samantha M. Cibula