

**Case No. SC2024-0485; LT. Case No. 20210015-EI**

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**IN THE SUPREME COURT OF FLORIDA**

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**FLORIDA RISING, INC., et al.**

*Appellants,*

v.

**FLORIDA PUBLIC SERVICE COMMISSION;  
FLORIDA POWER & LIGHT COMPANY,**

*Appellees.*

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**ANSWER BRIEF OF FLORIDA POWER & LIGHT**

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## STATEMENT OF THE CASE AND FACTS

### I. Procedural Posture

This is the second appeal of a determination by the Florida Public Service Commission (“Commission”) that a multi-party settlement agreement resolving Florida Power & Light Company’s (“FPL”) petition to establish base rates (the “Settlement”) is in the public interest and results in fair, just and reasonable rates. That determination was appealed in December 2021. R.6032-38. The rates resulting from that Settlement have been in effect for FPL’s more than five million customers since January 1, 2022. R.7343.

On September 28, 2023, following the first appeal, this Court issued an order directing the Commission to further explain the reasons underlying its public interest determination (“Remand Order”).<sup>1</sup> R.1189. The Commission issued a more detailed order on March 25, 2024 (“Supplemental Final Order”). R.489-590. This appeal followed. R.380-85.

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<sup>1</sup> *Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905, 910–11 (Fla. 2023) (“FAIR”)

### **A. The Initial PSC Proceedings**

On March 12, 2021, FPL, representing the merged operations of FPL (serving peninsular Florida) and the former Gulf Power Company (“Gulf,” serving Northwest Florida), filed with the Commission a petition requesting approval of base rate increases pursuant to a four-year rate plan with unified rates for all customers (the “Rate Petition”). R.290697-749. As discussed in more detail below, the proposed four-year plan was modeled after a series of Commission approved multi-year settlements under which FPL operated from 1999 through 2021 and which served customers exceptionally well over that period. R.290714-15. Along with its Rate Petition, FPL filed the testimony of 20 witnesses who supported the basis for the rate increases, FPL’s cost of capital, and the need for each of the rate mechanisms that comprise the four-year plan. R.271523-290698.

Fourteen parties intervened: the Office of Public Counsel (“OPC”), Florida Executive Agencies (“FEA”), Florida Industrial Power Users Group (“FIPUG”), Florida Internet & Television Association (“FIT”), Florida Retail Federation (“FRF”), Southern Alliance for Clean Energy (“SACE”), Vote Solar, Walmart, Inc., Daniel and Alexandria

Larson (the “Larsons”), CLEO Institute, Inc. (“CLEO”), Florida Rising, League of United Latin American Citizens, Environmental Confederation of Southwest Florida,<sup>2</sup> and Floridians Against Increased Rates, Inc. (“FAIR”). R.46330-46339, 51142-51144, 51254-51258, 51271-51278, 52114-52126, 52132-52135, 52141-52155. Thirty-six intervenor witnesses filed prepared testimony regarding their positions on FPL’s four-year rate plan. R.60336-61037, 61052-61136, 61171-61507, 61511-61719, 61724-62217, 62222-62593. Fifteen FPL witnesses filed rebuttal testimony. R.57930-58421.

**B. The 2021 Settlement and Ensuing PSC Proceedings**

On August 11, 2021, FPL, OPC, FIPUG, FRF, and SACE filed and sought approval of the Settlement. R.52697-54499. Vote Solar, the CLEO Institute and FEA later joined as Signatories. R.50255-50260, 52366-52382. The Settlement resolved all issues in FPL’s Rate Petition in a manner that is supported by the eight Signatories.

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<sup>2</sup> Florida Rising, League of United Latin American Citizens, and Environmental Confederation of Southwest Florida were represented by the same counsel and filed joint positions and witness testimony. *See, e.g.*, R.290792-801. For simplicity, these three companion appellants will be referred to as “Florida Rising.”

R.52710. The only parties who opposed the Settlement were FAIR, Florida Rising, and the Larsons.<sup>3</sup> R.7792-7946, 52475-653.

The Commission established a separate process for developing additional record evidence regarding the Settlement. R.52454-456. Four witnesses filed testimony and exhibits supporting the Settlement, R.50278-52115, 52127-152, and four witnesses filed opposing testimony and exhibits. R.48103-49926. FPL responded to more than 480 discovery requests regarding the Settlement. *See, e.g.*, R.50210-32.

A hearing took place on September 20, 2021. R.50149-50151. The Commission first took evidence regarding the Rate Petition, allowing all parties the opportunity to cross-examine witnesses. FPL, Florida Rising and FAIR each presented two live witnesses who all parties were permitted to cross-examine. *See* R.10199-44988, 45613-45823, 45827-46371, 47744. All other prepared testimony was admitted into the record by stipulation. *See* R.47745-47; *see also* R.45827-45990, 46117-47995.

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<sup>3</sup> The Settlement was not opposed by FIT or Walmart. R.10191-95, 46019.

The Commission then opened the testimonial record regarding the Settlement. *See* R.45043-45164, 45405-612, 47744; *see also* R.44989-45021. After admitting all prepared testimony, R.45171-404, Florida Rising and FAIR presented live opposition testimony. R.45174-302. FPL then presented five witnesses who provided live rebuttal testimony supporting the Settlement and were thereafter cross examined as a panel. R.45043-164, 46302-45404.

On October 11, 2021, FPL and other Signatories filed post-hearing briefs supporting the Settlement as being in the public interest. R.10042-10170, 10180-88. Florida Rising, FAIR, and the Larsons filed post-hearing briefs arguing that the Settlement is not in the public interest and challenging the Commission's authority to approve various components of the Settlement. R.98887-10041.

The Commission convened on October 26, 2021 to consider the Settlement. R.9805-46. It determined it had the authority to approve the various components of the Settlement and, based on the comprehensive record before it, concluded unanimously that the Settlement, taken as a whole, is in the public interest. R.9819-23, 9838-9841. The Commission memorialized its vote in Order No. PSC-2021-0446-S-EI issued December 2, 2021, which was amended on

December 9, 2021, to correct scriveners' errors (together, these comprise the "2021 Final Order"). R.7340-8600, as amended by 7318-20.

### **C. The First Appeal**

Florida Rising and FAIR appealed the Commission's 2021 Final Order approving the Settlement. R.6032-38, 2218-22. The prior appeal contested both the Commission's statutory authority to approve various aspects of the Settlement as well as the Commission's ultimate conclusion that the Settlement "provides a reasonable resolution of all issues raised, establishes rates that are fair, just, and reasonable, and is in the public interest." *FAIR*, 371 So. 3d at 907.

On September 28, 2023, following comprehensive briefing and oral argument, this Court issued its Remand Order rejecting challenges to the Commission's statutory authority to approve programs addressed in the 2021 Settlement Agreement. *See id.* at 907 n.2 (rejecting challenges to Commission's approval of the "Storm Cost Recovery Mechanism; the Reserve Surplus Amortization Mechanism; the Asset Optimization Incentive, which includes the monetization of renewable energy credits; a corporate tax

adjustment; the Solar Base Rate Adjustment mechanism (SoBRA); a construction incentive for solar generation sites constructed pursuant to SoBRA; and cost recovery related to the Green Hydrogen Pilot Program and a consummation payment FPL made to Jacksonville Electric Authority concerning the retirement of a coal-fired power generation unit”). The Court noted that, “[t]o the extent any of these challenges to the Commission’s statutory authority is preserved, none gives us a reason to set aside the order under review.” *Id.*

While rejecting the challenges to the Commission’s statutory authority, the Court concluded that the 2021 Final Order failed to provide a sufficient explanation of the Commission’s public interest determination. *Id.* at 913. The Court therefore remanded the case to the Commission for “an explanation of its decision,” including a “consideration of the parties’ main disagreements reflected in the record” and the “reasoned explanation” required for appellate review. *Id.* at 907, 913-14. The form of the proceedings on remand was otherwise left to the Commission’s discretion. *Id.*

### **D. Post-Remand Proceedings**

On November 9, 2023, following receipt of the Remand Order, the Commission staff convened a meeting with the parties to the First Appeal. R.1189. The participating parties and Commission staff developed and agreed to a list of the competing arguments and “main disagreements” to be addressed in the Commission’s subsequent order. R.611; *FAIR*, 371 So. 3d at 914.

On February 6, 2024, FAIR filed a Motion To Reopen the Record, and on February 7, 2024, Florida Rising filed a Motion for Evidentiary Hearing (the “Motions To Reopen”), both relying on the Remand Order’s observation that the Commission “shall also consider the performance of each utility pursuant to [the Florida Energy Efficiency and Conservation Act] when establishing rates for those utilities over which the commission has ratesetting authority. § 366.82(10), Fla. Stat. (2021). A reasonably explained decision from the Commission must reflect that those factors have been considered to the extent practicable.” R.735-1160.

FAIR requested that the Commission reopen the evidentiary record for the purpose of admitting the Commission’s “Annual Report

of Activities Pursuant to the Florida Energy and Conservation Act<sup>4</sup> for 2021,” known as the “PSC FEECA Report.” R.1082. FEECA reports are prepared annually by the Commission’s Staff. R.495, 1085. Florida Rising went further, requesting a limited evidentiary hearing. R.734-36. Alternatively, Florida Rising asked the Commission to supplement the evidentiary record with the PSC’s 2021, 2022 and 2023 FEECA Reports, as well as FPL’s 2020, 2021 and 2022 Demand-Side Management Reports. R.738-40.

The Commission entered a Supplemental Final Order on March 25, 2024. R.489-590. The Supplemental Final Order spans 37 pages and reflects the parties’ competing arguments regarding the public interest issues, explains the basis for its conclusion that the 2021 Settlement is in the public interest and results in rates that are fair, just, and reasonable. R.489-525. The Supplemental Final Order also denied the Motions To Reopen, finding that the record was sufficient to address FEECA issues and noting that “virtually all of the evidence Florida Rising seeks to submit for consideration was not in existence” at the time of the Commission’s original decision. R.495-97.

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<sup>4</sup> §§ 366.80, 366.83, Fla. Stat. and § 403.519, Fla. Stat.

On April 2, 2024, Florida Rising appealed the Supplemental Final Order. R.380-85.

## **II. Factual Background**

### **A. The Rate Petition**

The four-year plan requested in the Rate Petition consists of seven major components: (1) a general base rate increase in the amount of \$1.075 billion to be effective January 1, 2022; (2) a subsequent year adjustment of \$605 million to be effective January 1, 2023;<sup>5</sup> (3) maintenance of FPL's 59.6 equity ratio (also known as capital structure) and approval of a return on common equity ("ROE") midpoint of 11.50%; (4) a SoBRA mechanism authorizing FPL to recover costs associated with the installation and operation of up to 1,788 megawatts ("MW") of cost-effective solar generation in 2024 and 2025; (5) a mechanism to address the possibility that corporate tax laws might change during the four-year plan ("Tax Reform Provision"); (6) a reserve surplus amortization mechanism ("RSAM");

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<sup>5</sup> The base rate increases under the Rate Petition for each year are slightly lower than the figures presented in FPL's March 12, 2021 filing due to certain computation corrections. R.47194, 75818-75837, 105308-28.

and (7) a storm cost recovery mechanism (“Storm Recovery”). (R. 45735, 45743, 47194, 47967-70, 290743-745).

### **B. FPL Delivered Strong Results for Customers Under Prior Multi-Year Settlements**

FPL’s 2010, 2012, and 2016 settlements served as models for FPL’s Rate Petition.<sup>6</sup> Each of those earlier settlements contained mechanisms such as the RSAM, SoBRA and Storm Recovery, as well as an ROE that allowed the Company to attract the capital needed to make investments that benefit customers and the same equity ratio requested in the Rate Petition. *See, e.g.*, R.47705, 45709, 45743, 45746, 45147. Numerous FPL witnesses explained that prior multi-year settlement agreements provided FPL the financial strength necessary to deliver superior performance in terms of cost, service

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<sup>6</sup> *See In re Petition for Increase in Rates by Florida Power & Light Co.*, Docket No. 080677-EI, Order No. PSC-11-0089-S-EI (Fla. Pub. Serv. Comm’n Feb. 1, 2011) (FPL’s 2010 settlement approval); *In re Petition for Increase in Rates by Florida Power & Light Co.*, Docket No. 120015-EI, Order No. PSC-13-0023-S-EI (Fla. Pub. Serv. Comm’n Jan. 14, 2013) (FPL’s 2012 settlement approval); *In re Petition for Rate Increase by Florida Power & Light Co.*, Docket No. 20160021-EI, Order No. PSC-16-0560-AS-EI (Fla. Pub. Serv. Comm’n Dec. 15, 2016) (FPL’s 2016 settlement approval).

reliability and clean energy, among other things, all in ways that create customer value. *See, e.g.*, R.45694-701, 47758-62, 47980-81.

***Low bills.*** Largely due to its investments in efficient generation and renewable technologies, FPL's typical 1,000 kilowatt-hour residential customer bill in 2021 was about 30% lower than the national average and nearly 10% lower than it had been fifteen years earlier. R.45695-96. FPL's cost efficiency in terms of operations and maintenance was best in class by a wide margin: in 2019 alone, FPL avoided about \$2.6 billion in operations and maintenance costs compared to average-performing utilities. *Id.* For residential customers, this translates to a savings of \$24 per month or nearly \$300 per year. *Id.*

***Reliability.*** FPL's ability to lower bills was not achieved by sacrificing the delivery of reliable service. To the contrary, FPL's service reliability, which is largely a measure of how often and for how long a utility customer experiences a power outage, improved by more than 16% after the Commission approved its 2016 settlement. R.45695-96. While operating under similar multi-year rate plans, FPL attained reliability that was 58% better than the national average

and was recognized nationally five times for its leadership and excellence in electric reliability. R.45695-96.

**Clean energy.** FPL's emissions profile is among the cleanest in the electric utility industry. R.45697. Since 2016, FPL leads the nation as the utility owner and operator having the most large-scale solar, an emissions-free source of electric generation. *Id.* In the same period, FPL reduced its carbon dioxide emissions by 13%, nitrogen oxides emissions by 54%, and sulfur dioxide by 80%. *Id.*

The evidence regarding these achievements and the benefits they provide to customers was uncontroverted. FPL's ability to deliver these benefits, among many others, was made possible by the terms of previous rate settlements approved by the Commission.

### **C. The Settlement is Designed to Continue Delivering Excellent Value**

The current Settlement enables FPL to continue its focus on improving service delivery, realize additional efficiencies in operations, and create even stronger customer value, all while providing a high degree of base-rate certainty for customers for at least four years. Under the Settlement, FPL is authorized to implement reduced general base rate increases in 2022 and 2023

(relative to the initially filed requests); and it has the opportunity for limited base rate adjustments coincident with the addition of cost-effective solar generation in 2024 and 2025. R.45380. The compromise reached by the various parties maintains typical residential customer bills that are projected to remain 20% below the national average and among the lowest in the country. R.45381.

The Settlement unifies FPL's and Gulf's rates, and provides, among other things:

- A minimum four-year term, from January 1, 2022, through the end of 2025; and a maximum five-year term through 2026.
- Base rate adjustments as follows:
  - A \$692 million increase, effective January 1, 2022;
  - A \$560 million increase, effective January 1, 2023;
  - Authority to implement SoBRAs in connection with the commercial operation of up to 1,788 MW of solar and battery projects constructed during 2024 and 2025, subject to a cost cap of \$1,250 per kW and a demonstration of cost effectiveness.
- An ROE midpoint of 10.6%, with an authorized range of 9.7% to 11.7%. The range shifts by 20 points to 9.8% to 11.8% if the average 30-year United States Treasury Bond yield increases by 50 points for six consecutive months. The ROE adjustment, if one is triggered, would not increase base rates.
- Authority to use an RSAM to flexibly amortize its surplus depreciation reserve. For purposes of the Settlement, FPL's

depreciation reserve surplus is \$1.45 billion (the “Reserve Amount”). Consistent with FPL’s previously approved settlement agreements, the amounts to be amortized are left to FPL’s discretion subject to certain enumerated limitations.<sup>7</sup>

- Authority for recovery of storm restoration costs, subject to certain enumerated caps, on an interim basis 60 days after FPL files a cost recovery petition and tariff.
- Authority for a Tax Reform Provision that allows FPL to adjust base revenue requirements to account for federal or state permanent tax increases and decreases, if any become effective during the term of the Settlement.
- Authority to recover the costs associated with electric vehicle (“EV”) programs and a “Green Hydrogen” pilot project. Cost recovery for the EV programs and the Green Hydrogen pilot project are included in and do not increase the base rate increases set forth in the Settlement.
- Authority to expand its previously approved SolarTogether Program through the addition of 1,788 MW of additional solar capacity to which participants may subscribe.
- Authority to continue Asset Optimization as a permanent program, subject to continued Commission oversight.

R.52698-747.

Like the four-year proposal in the Rate Petition, most of the mechanisms in the Settlement replicate the terms contained in the

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<sup>7</sup> Under specified circumstances, FPL is authorized to use the RSAM to increase its storm reserve, an account FPL can use to cover storm restoration costs and to pay down certain identified assets.

prior settlement agreements. This was by design. The Settlement approved by the Commission follows the same foundational policies that produced low bills, excellent reliability, a clean energy profile, and fair returns for investors.

In addition to a reasonable ROE range and capital structure, the RSAM has been a primary enabler of multi-year agreements. Since 2011, it has enabled the Company to avoid further base rate increases during settlement periods. R.45750-51. It is a non-cash accounting mechanism used to address volatility in the business by amortizing the Company's depreciation reserve in a manner that maintains its overall resulting ROE within the authorized range. R.45747-58. The RSAM allows FPL to absorb changes primarily in cash revenues and expenses ***without an increase in customer rates***. R.45747.

With features of this nature, multi-year settlements approved by the Commission have been key to FPL's ability to drive its performance to exceptional levels of service and customer value. As explained by FPL witness Robert Barrett, one-year-at-a-time ratemaking would not produce the same positive results. R.45772-74. FPL's 2021 Settlement follows the longer-view model, deliberately

reinstating terms that will promote extended rate stability and maintaining the core financial policies that allow FPL to institute initiatives that deliver excellent value.

### **SUMMARY OF ARGUMENT**

The Commission's Supplemental Final Order properly approved the 2021 Settlement based on its determination that the agreement is in the public interest and fixes fair, just, and reasonable rates. In response to this Court's direction in the prior appeal involving the 2021 Settlement, the Supplemental Final Order also provides a thorough explanation of the Commission's reasoning and a consideration of the parties' main disagreements reflected in the record.

The Supplemental Final Order specifically provides an explanation of the Commission's findings related to the extension of FPL's previously approved SolarTogether Program, including the Commission's determination that the structure of the SolarTogether Program is not unduly preferential to program participants. The Commission's factual findings that SolarTogether's rate structure does not result in an undue preference are supported by competent, substantial evidence in the record; the Commission's public-interest

conclusions regarding SolarTogether are well within the wide range of legislatively delegated policy discretion.

In addition to SolarTogether, the Supplemental Final Order also addresses the parties' other competing arguments regarding components of the 2021 Settlement, including the return-on-equity range, equity-to-debt ratio, the use of a reserve surplus amortization mechanism, certain rate base investments (SoBRA), a minimum bill provision, and a variety of pilot programs. As to these provisions, the Supplemental Final Order makes factual findings and includes an explanation of the parties' main disagreements and the basis for the Commission's public-interest determination.

Florida Rising identifies no legal basis to set aside the Commission's Supplemental Final Order affirming that the 2021 Settlement is in the public interest and results in rates that are fair, just, and reasonable. Instead, the initial brief largely asks this Court to reexamine the competing evidence presented to the Commission, discount the testimony of FPL's witnesses, credit the testimony of Florida Rising's witnesses, and reach different conclusions from the Commission on disputed factual issues and policy judgments. Florida Rising's requests for this Court to reweigh the evidence and

second-guess the Commission's exercise of regulatory authority within its legislatively authorized range of discretion is contrary to this Court's well-established standard of review and should be rejected.

This Court should affirm.

### **STANDARD OF REVIEW**

This Court's recent decision in *FAIR* recognized the Commission's "broad legislative grant of authority" and "considerable license" to fix fair, just, and reasonable rates. *FAIR*, 371 So. 3d at 910 (citing *Citizens of State v. Pub. Serv. Comm'n*, 425 So. 2d 534, 540 (Fla. 1982)). The Commission's decisions arrive at this Court "with the presumption that they are reasonable and just." *FAIR*, 371 So. 3d at 911 (quoting *W. Fla. Elec. Coop. 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 evidence." *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 752 (Fla. 2013) (quoting *Crist v. Jaber*, 908 So. 2d 426, 430 (Fla. 2005)).

The Commission's factual findings in an order approving a settlement agreement are reviewed for competent, substantial evidence. *FAIR*, 371 So. 3d at 910 (noting that this Court will sustain the Commission's factual findings in an order approving a settlement agreement "if they are supported by competent, substantial evidence in the record."); § 120.68(7)(b), Fla. Stat. (reviewing court "shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact").

The Commission's determination that a settlement agreement is in the "public interest" and results in rates that are "fair, just, and reasonable" rests on both facts in the record and policy judgments guided by its "specialized knowledge and expertise in this area." *Id.* In other words, it is a mixed question of law and fact. *Id.* (citing, *inter alia*, *Utilities Operating Co. v. Mayo*, 204 So. 2d 321, 324 (Fla. 1967)). This Court reviews the Commission's public interest determination "to ensure it is within the range of discretion given to the Commission by the Legislature." *Id.* at 910-11; *see also* § 120.68(7)(e), Fla. Stat. (reviewing court "shall not substitute its judgment for that of the agency on an issue of discretion").

This Court “will not overturn an order of the PSC because we would have arrived at a different result had we made the initial decision” and “will not reweigh the evidence.” *Sierra Club v. Brown*, 243 So. 3d 903, 908 (Fla. 2018) (quoting *Gulf Power Co. v. Fla. Pub. Serv. Comm’n*, 453 So. 2d 799, 803 (Fla. 1984)). “[I]t is not this Court’s job to substitute [its] policy views for the Commission’s.” *FAIR*, 371 So. 3d at 911 (citing *inter alia*, *LULAC Fla. Educ. Fund, Inc. v. Clark*, No. SC2021-0303 (Fla. May 27, 2022) (Order at 2)).

Finally, the Commission’s determination not to reopen the record on remand to admit additional evidence is reviewed for abuse of discretion. *See FAIR*, 371 So. 3d at 914 (stating that the form of the proceedings on remand, “including the decision whether to allow the parties to present additional evidence,” was “up to the Commission”). An agency will be found to have abused its discretion only where its actual is “arbitrary, fanciful, or unreasonable.” *Garcia v. Agency for Health Care Admin.*, 330 So. 3d 542, 544-45 (Fla. 4th DCA 2021). If reasonable minds could differ as to the propriety of the action taken by the lower tribunal, then the action is not unreasonable and there can be no finding of an abuse of discretion. *Id.*

## **ARGUMENT**

### **I. The Commission's correctly determined that the SolarTogether extension addressed in the 2021 Settlement is in the public interest.**

The Commission considered Florida Rising's various arguments that SolarTogether constitutes an undue preference and is not in the public interest and weighed them against the evidence presented by FPL and the other signatories that SolarTogether is fair and benefits all customers. R.507-09, 519-525. The Commission found, within its judgment and expertise, that SolarTogether's allocation of benefits and capacity does not constitute an undue preference. R.507-09, 523. The Program is fair, and inclusion of the SolarTogether extension in the Settlement is in the public interest. R.519-24. The Commission's factual findings and policy determinations should not be disturbed.

#### **A. The SolarTogether Program.**

The SolarTogether Program had been previously approved by the Commission, and the Settlement only expands its benefits, allowing additional customers of all types to participate in and benefit from the development of solar generation facilities. R.508. The

fundamental construct of SolarTogether remains unchanged under the Settlement.

1. *Original SolarTogether approval*

The Commission originally approved SolarTogether as a stand-alone program 18 months before Florida Rising asserted its challenge to the SolarTogether extension included in the Settlement. R.507. In its March 2020 approval order, the Commission authorized FPL to construct 1,490 MW of cost-effective solar facilities that will serve all customers. *In re Petition for Approval of FPL SolarTogether Program and Tariff*, Docket No. 20190061-EI, Order No. PSC-2020-0084-S-EI (Fla. Pub. Serv. Comm’n March 20, 2020) (“Order 0084”). As described in Order 0084, SolarTogether participants pay a monthly charge to subscribe to a portion of new solar capacity built for the Program (subscription charge), and they receive a credit that comprises a portion of the system savings produced by that solar capacity (subscription credit).” *Id.* at \*2; *see also* R.507-08. The Program’s 1,490 MW of capacity was allocated 75% (1,117.5 MW) to commercial, industrial, and governmental customers and 25% (372.5 MW) to residential and small business. *Id.* at \*3; *see also* R.507-08.

The generation from the solar units constructed under the original Program was projected to save customers \$249 million. *Order 0084* at \*4. The greatest portion of the projected savings is comprised of avoided fuel costs, with the balance coming from avoided emissions cost. Under the Program design, participants will cover all costs over the life of SolarTogether: revenue generated from the participant's subscription charge pays for the cost of the solar facilities and the cost to administer the Program.<sup>8</sup> In return, the participants will receive 55% of the projected benefits created by the facilities through credits calculated to provide a "payback" within seven years. *Id.* at \*4; R.507-09, 45073.

The revenue requirements associated with the solar sites decline over the life of the generation units. R.52133, 52141. However, the participant subscription charge is levelized over the life of the Program to collect the full revenue requirement without a

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<sup>8</sup> Florida Rising's argument that the subscription charge does not cover administrative costs is belied by the record evidence, which demonstrated that the \$3 billion of revenue collected from participants more than covers both the net cost of the solar installation and SolarTogether's administrative cost (approximately \$2.9 billion). R.52130-43.

change over time. R.45336-37. The declining revenue requirements are higher than the participant's levelized monthly payments in the early years of the Program. R.52141. As designed, the general body of customers will initially contribute toward a portion of the revenue requirements and will subsequently be made whole in the latter part of the Program as the participant's levelized monthly payment exceeds the declining revenue requirements. R.45080-81, 52133, 52141.

Under this paradigm, the general body of customers does not pay for the cost of SolarTogether over the life of the Program, but nevertheless receives 45% of the benefit, (\$112 million in the original Program). Of the 45% benefit allocated to the general body of customers, approximately \$56 million was a fixed base benefit. *Order 0084* at \*4.

## *2. SolarTogether extension*

The Settlement extends SolarTogether in a way that provides more benefits to customers, particularly the residential class. Under the extension, FPL is authorized to construct an additional 1,788 MW of cost-effective solar through 2025, such that the total capacity of SolarTogether will be 3,278 MW. R.45367, 52733-34. Forty percent

of the 1,788 MW of incremental capacity will be allocated to residential and small business customers along with low-income customers. R.45367, 52733.

The Supplemental Final Order recognizes that the extension maintains SolarTogether’s fundamental design. Participants will pay 103% of the Program’s revenue requirement, while receiving 55% of the benefits. R.507-09, 52733-34. As before, the design of the extension contemplates that the general body of customers continues to receive the 45% allocation of benefits while paying nothing for the solar facilities built under the program. *Id.* The expanded size allowed under the Settlement more than doubles the benefits received by the general body to \$292 million, with \$95 million being fixed. R.508, 45352.

**B. The Commission’s finding that SolarTogether does not result in an undue preference is supported by competent, substantial evidence in the record.**

By its plain terms, section 366.03, Florida Statutes does not prohibit all “preferences.” Only those preferences that result in an “undue or unreasonable” preference or advantage are proscribed. § 366.03, Fla. Stat. (2021) (“No public utility shall make or give any *undue or unreasonable* preference or advantage to any person or

locality, or subject the same to any *undue or unreasonable* prejudice or disadvantage in any respect.”). Customers that exhibit similar traits may be classified into subgroups, and the mere fact that customer groups are treated differently does not invalidate a program or pricing term. *See Fla. Power Corp. v. Mayo*, 203 So. 2d 614, 615 (Fla. 1967). Criteria for applicability of a rate that sufficiently identify and distinguish a class of consumers “precludes an effective attack based on discrimination or arbitrary preference.” *Id.*

The Commission’s determination that a utility’s rates do not result in an undue or unreasonable preference is a factual finding. *See, e.g., Pennsylvania Co. v. U.S.*, 236 U.S. 351, 361 (1915) (what constitutes an “undue or unreasonable preference or advantage” is “a question not of law, but of fact”); *Great Western Sugar Co. v. Johnson*, 624 P.2d 1184, 1186 (Wy. 1981) (“Whether or not a rate is ‘undue’ or ‘unreasonable’ or ‘unjust’ is a question of fact to be determined by the PSC”); *Akron, C. & Y. Ry. Co. v. Pub. Utilities Comm’n*, 96 Ohio St. 359, 117 N.E. 314 (1917) (“What is undue or unreasonable preference or advantage, or unjust discrimination, is not a question of law, but of fact”). Accordingly, the Commission’s determination that the SolarTogether extension does not result in an

undue preference must be upheld if supported by competent, substantial evidence in the record. *Id.*

1. *Fair Allocation of Benefits*

Florida Rising's claim that there is no difference between participants and the general body of customers (IB.10-25) is contrary to the record evidence and the program design. One group of customers—the participants—pay the costs of the solar sites through subscription charges. The other group of customers—the general body of customers—does not. FPL witness Scott Bores testified that the subscription charge, which is paid only by participants, is designed to collect 103% of the cost of the solar sites and program administration. R.45336, 52133. The avoided costs made possible by the solar sites are allocated 55% to the group of customers who paid for the solar sites (thus, making the benefits possible) and 45% to the group of customers who did not pay for the solar sites. R.45367-68.

Florida Rising's position that *all* benefits should have been allocated to the general body of customers without a subscription-based program is illusory. There would have been no benefits to allocate: the benefits distributed through the Program would not exist

without the SolarTogether solar sites. On this point, Mr. Bores presented unrefuted testimony that SolarTogether accelerates the construction of the Program's 1,788 MW of solar capacity. R.45089. Even Florida Rising acknowledges that FPL did not plan for the 1,788 MW of incremental generation in the absence of the Program extension included in the Settlement. IB.41. Because the participants pay to construct the sites, they alone—not the general body of customers—are responsible for the benefits.

Accordingly, allocating a larger portion of the benefits to the SolarTogether participants who paid to generate them has a rational basis and fits squarely within the logic of the long-standing ratemaking principle that costs should be borne by those who caused them. *In re Tampa Elec. Co.*, 273 P.U.R.4th 177, 2009 WL 2003582 at \*108 (Fla. Pub. Serv. Comm'n Apr. 30, 2009) ("To the extent possible, rates should be designed to collect the costs from the cost causer"). Here, non-participants did not cause the costs, and thus are not bearing them. And because the non-participants did not create the benefits, they *cannot* be harmed by a program designed to allocate 45% of the savings created by the SolarTogether participants. Florida Rising offers no support based in law or economics for its

position that getting “something for nothing” is discriminatory against the person receiving the cost-free benefit.

The reason for distinct treatment between participants and the general body of customers also is consistent with this Court’s precedent and section 366.06(1), Florida Statutes. *City of New Smyrna Beach v. Fish*, 384 So. 2d 1727 (Fla. 1980) (identifying factors such as “the cost of service” serve as a ground for distinction between customer groups); § 366.06(1), Fla. Stat. (2021) (directing the Commission to consider “the cost of providing service to the class” when fixing fair, just and reasonable rates).<sup>9</sup>

The Commission’s conclusion that the SolarTogether extension fairly shares the benefits between participants and the general body of customers is supported by competent, substantial record evidence. This Court should affirm.

## *2. Fair Allocation of Program Capacity*

The Commission also found that “SolarTogether fairly distributes the solar generation [capacity] among classes,”

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<sup>9</sup> Florida Rising acknowledges that the cost of providing service is a proper reason to distinguish a class of customers. IB.22-23.

emphasizing that the expansion “increase[es] availability for residential and small business.” R.509. Here, again, the record contained evidence explaining the reason for the allocation of 40% to residential and small business customers and 60% to commercial, industrial and governmental customers. FPL witness Valle testified that:

[FPL] oversold the [P]rogram by a factor of two for [the commercial, industrial and governmental] segment. We, then, closed the wait-list and we continue to take interest in this program from a variety of large customers. These are national retail chains, hospitals, colleges. Municipalities have been very interested in this. So, we continue to see a very strong demand for this program in that segment.

R.45094.

In other words, the allocations reflect the fact the commercial customers had expressed a greater interest in participating. And, despite Florida Rising’s argument that the allocation to the residential class of participants is not sufficiently represented, the extension included in the Settlement *tripled the capacity for residential and small business customers* from the original 335 MW to 1,005 MW, while access to the program for low-income customers more than doubled from 37.5 MW to 82.5 MW. R.45367-68.

Finally, any attempt by Florida Rising to challenge features of SolarTogether that the Commission approved in its March 2020 Order is legally barred. *See Fla. Indus. Power Users Grp. v. Brown*, 273 So. 3d 926, 930 (Fla. 2019) (noting that changing the terms of a prior order would have required vacatur, “which is contrary to the doctrine of administrative finality”). Ironically, rejecting the 2021 Settlement would not eliminate Florida Rising’s objections to the Program. Without the SolarTogether extension, the original program would have remained in place: 1,788 fewer megawatts of solar generation would be constructed, residential customers would be allocated less capacity, and the general body of customers would receive less savings.

Competent, substantial record evidence supports the Commission’s determination that the SolarTogether extension does not result in an undue preference. This Court should affirm.

**C. The Commission properly rejected Florida Rising’s challenge to SolarTogether’s cost-effectiveness.**

Florida Rising challenges FPL’s cost-effectiveness analysis, asserting that SolarTogether imposes a cost on the general body of customers. IB.8-18. In its brief, Florida Rising does not argue that

FPL failed to present any evidence regarding the Program's cost-effectiveness and the benefit to customers; it simply urges the Court to accept its expert's position instead of FPL's. The cost-effectiveness of a utility program is, again, a factual determination. *Brown*, 273 So. 3d at 932 (analyzing whether Commission's cost-effectiveness factual finding was supported by competent, substantial evidence). The Commission explicitly found the "comprehensive analysis" performed by FPL expert witness Bores and its conclusions regarding the benefits SolarTogether generates for all customers to be "more persuasive" than Florida Rising's attempts to impeach that analysis. R.509. This Court should not reweigh the evidence.

Mr. Bores demonstrated that the calculations offered by Florida Rising in support of their claim of an unduly discriminatory rate structure were based on a flawed assumption. *Id.* His testimony in this regard was extensive. See R.45351-53. First, Mr. Bores corrected Florida Rising's argument, which it reasserts in this appeal, that the SolarTogether extension reduces the benefits to the general body customers compared to the original program. He explained that the expansion creates "a bigger pot of benefits" totaling \$648 million. R.45075. As explained above, FPL projects that \$292 million of the

benefits will be allocated to the general body of customers, more than twice that of the original Program. *Id.* And, although Florida Rising attempts to attribute a negative connotation to the change in benefit rate under the SolarTogether extension, FPL witness Valle explained that the change was the product of a sensible decision to develop a single benefit rate for both the original and expanded phase of SolarTogether instead of having two different offerings in the same marketplace. R.45140-41.

Mr. Bores next pointed out that Florida Rising's witness incorrectly assumed that customers would be paying an 11.7% return on the capital investment associated with the SolarTogether assets. R.45351. Mr. Bores also explained that if that were the rate of return (which it is not), the revenue requirement would need to be recalculated and the subscription charge to collect 103% of that revenue requirement would necessarily increase. R.45352-53. By failing to reflect a higher subscription charge, Florida Rising computed an artificial shortfall in the participant contribution that does not exist when the correct return is reflected. *Id.*

In response to Florida Rising's cross-examination, Mr. Bores also explained that its expert's insistence on cherry-picking financial

results that focus on snapshots in time is inappropriate. The proper way to evaluate an investment is over the long-term. In the context of SolarTogether, this means the economics should be assessed over the life of the Program. Mr. Bores explained:

Commissioners I don't view this [SolarTogether] different than any other investment. There is a cost up front. No investment we make on a long- life asset at FPL pays back immediately. This is no different. General body is not paying – they're paying a little bit up front to help structure the program; however, the long-term, just like with any other investment, there is a benefit for them.

R.45080-01. Although the financial analysis showed an incremental cost to the general body of customers in certain years, it projected significant benefits will flow to all customers over the Program's life. And, contrary to Florida Rising's claims (IB.13), the general body of customers will not contribute at all to the cost of the solar installations during the years when the revenue requirements are the highest. R.45076.

The Commission accorded significant weight to Mr. Bores's analysis, and based on its expertise, the Commission concluded that the correct methodology is to evaluate cost-effectiveness over the long-term rather than make decisions based on snapshots in time. R.509. This Court should reject Florida Rising's request to second-guess the

Commission’s determination as to the weight of the evidence regarding the cost-effectiveness of the SolarTogether extension.

**D. Florida Rising mischaracterizes the subscription credit as a “cost.”**

Throughout its brief, Florida Rising mischaracterizes the subscription credit paid to SolarTogether participants as a “cost” funded by the general body of customers. IB.12, 15-18. This framing by Florida Rising ignores the critical fact that the Program’s solar installations are cost-effective, which—by definition—means that that the benefits (i.e., savings or avoided costs) are greater than the investment. Providing subscription credits to participants is not a “funding” mechanism imposing a “cost” on customers. Rather, it is the process FPL employs to allocate the *benefits* of the program. A simplified walk-through of FPL’s financial analysis illustrates the point:

- Participants make a \$2.908 billion investment (subscription charges) that adds solar generation to the electric system that serves all FPL customers.<sup>10</sup>

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<sup>10</sup> As Mr. Bores explained, participants pay 103% of the Program costs. Accordingly, revenue from the subscription charges totals \$3.003 billion (\$95 million more than the Program costs). R.52133, 52141.

- The investment is projected to avoid \$3.556 billion in fuel and emissions costs.
- The investment is therefore cost-effective by \$648 million. The savings are manifested as lower fuel and emissions costs (i.e., avoided cost) for the general body of customers compared to the costs they would have been incurred without the additional solar generation.
- The \$648 million is the total benefit to be shared by the general body of customers and participants, \$292 million (45%) and \$357 million (55%), respectively.

R.52141. Accordingly, the general body of customers *avoids* \$292 million in projected fuel and emissions costs as compared to a scenario in which SolarTogether does not exist. *Id.* The Commission was persuaded by this analysis and concluded that SolarTogether is cost-effective. See R.509 (“We find the comprehensive analysis performed over the life of the extended SolarTogether program under the direction of FPL Witness Bores and its conclusion regarding CPVRR benefits to be more persuasive than mathematical snapshots offered by Florida Rising as impeachment of that analysis”).

**E. The Commission’s determination that SolarTogether is in the public interest is based on competent, substantial evidence.**

The Commission determined that SolarTogether serves “the public interest to promote the development of renewable energy resources in the state.” R.509, 523. In its Supplemental Final Order,

the Commission pointed out that the Legislature included solar energy in the definition of “renewable energy” resources. R.523 (citing § 366.91(2)(e)). The Commission pointed to the fact that “SolarTogether directly serves the purposes outlined in [Section 366.91] by expanding the program by an addition 1,788 MW at FPL’s discretion through 2025 such that the total capacity of SolarTogether would equal 3,278 MW.” *Id.*

Florida Rising argues the Program cannot be in the public interest because of alleged bill impacts in an isolated year (2026), or over the “medium term.” IB.25-26. As demonstrated above, the Commission concluded based on the record and on its expertise that it is more appropriate to consider SolarTogether’s economics over the life of the Program. R.509. That is exactly the type of expert decision-making the Legislature left to the Commission’s broad discretion.

For all the reasons discussed above, the Commission’s finding that SolarTogether is in the public interest is supported by competent, substantial record evidence and should be affirmed.

**II. The Commission's determination that the 2021 Settlement is in the public interest is adequately explained and is supported by competent, substantial evidence.**

This Court previously dispensed with Florida Rising's challenges to the Commission's statutory authority to approve various mechanisms included in the Settlement. *See FAIR*, 371 So. 3d at 907 n.2. Having established the Commission's legal authority and the validity of the SolarTogether Program (Section I above), the remaining issue in this appeal is whether competent, substantial evidence in the record supports the Commission's determination that the remaining major elements of the 2021 Settlement are in the public interest.

The balance struck by the 2021 Settlement must be evaluated as a whole to determine whether it is in the public interest, compared to the prospect of multiple petitions for rate increases that would inevitably occur over the next four years absent a settlement. In weighing the totality of these factors, the Commission is afforded great deference, and this Court will not reweigh the evidence. *Sierra Club*, 243 So. 3d at 907.

The Settlement's negotiated terms benefit customers by enabling them to continue to receive low bills, high reliability,

improved emissions, and excellent customer service, while simultaneously allowing FPL to maintain the financial strength required to secure those benefits. R.45308-09. The Settlement enables FPL to continue to build upon its already established track record of success in delivering exceptional customer service and industry-leading customer value. *Id.*

The terms that Florida Rising challenges (ROE, equity ratio, base rate increases, RSAM, cost allocation, minimum bill, pilot programs, and asset optimization) work in totality to benefit customers while offsetting the impact on FPL of the Settlement's four-year rate moratorium. R.45317-22. The Commission's conclusion that this result is in the public interest is supported by competent, substantial evidence and should be affirmed.

**A. Competent, substantial evidence supports the Commission's approval of the 2021 Settlement provisions addressing ROE, Equity Ratio, and RSAM.**

Florida Rising's initial brief contests the Commission's approval of the portions of the Settlement addressing return on equity, equity ratio, and the reserve surplus amortization mechanism. IB.27-39. In effect, Florida Rising reargues the merits of factual disputes resolved against it in the underlying proceeding and asks this Court to reject

the Commission's findings of fact and the competent, substantial evidence supporting them in favor of Florida Rising's competing evidence and arguments. These arguments—each of which is addressed briefly below—are contrary to the well-settled standard of review and should be rejected.

1. *Return on Equity*

Consideration of the appropriate ROE and equity ratio (also known as “capital structure”) is within the Commission's exclusive purview. As the Court explained in *United Telephone Co. of Florida v. Mayo*, 345 So. 2d 648, 654 (Fla. 1977):

While the Commission has the difficult responsibility of determining a ‘reasonable’ rate of return for the utility, this Court's examination in reviewing the Commission's order is not nearly so onerous.

. . .

There was a divergence of expert opinion as to the proper rate of return to be granted to United. It is the Commission's prerogative to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems appropriate.

Here, Florida Rising (and all parties) had every opportunity to present evidence to convince the Commission to award FPL a lower ROE. They were unconvincing.

*a. Competent, substantial record evidence supports the Commission's ROE determination*

The Commission's Supplemental Final Order observed that "FAIR, Florida Rising, and FPL presented the testimony of numerous, well-qualified experts" regarding ROE and equity ratio. R.503; see also R.500-04 (discussing various witness positions). The Commission weighed the experts' opinions and ultimately found the testimony of FPL's witnesses to be "more persuasive". R.503. Based on this evidence, the Commission concluded that FPL's strong capital structure has contributed to the Company's ability to provide reliable service at reasonable rates, and determined that the 10.6 ROE is appropriate and in the public interest. *Id.*

Record evidence supports the Commission's determination. FPL originally sought an ROE midpoint of 11.5% and an equity ratio of 59.6% but agreed to a 10.6% ROE midpoint as a component of the comprehensive negotiated settlement. R.45320, 45354-55. The equity ratio remained the same. *Id.* In support of its position under both the Rate Petition and the Settlement, FPL provided the testimony and exhibits of witnesses James Coyne and Robert Barrett. R.46023-109, 45618-83, 45683-818, 45303-28, 45354-62. Florida

Rising (and other opponents of the Settlement) cross-examined both, and sponsored their own witness who testified that the Commission should grant FPL a lower ROE and capital structure. R.45175-205, 45228-61, 45263-303).

Mr. Coyne's ROE recommendation was based on his expert evaluation of a peer group of similarly situated companies, using a portfolio of cost of equity models and relevant capital markets data. R.46027-87). Mr. Barrett's recommendation on ROE and capital structure was based on his extensive experience working with investors and rating agencies, and his experience as FPL's Vice President responsible for managing the Company's financial ability to meet customer and investor needs. R.45690-91). FPL's witnesses explained that the ROE and capital structure reflected FPL's risk profile and would provide investors confidence that the utility is financially sound and is adequate to maintain creditworthiness. R. 46088-106, 45717-32, 45789-90.

In response to calls for a lower cost of capital by Florida Rising and other Intervenor, Mr. Barrett testified that the market's reaction to a lower ROE and capital structure would lead to an unwillingness

by investors to provide capital to the Company.<sup>11</sup> R.45806-07). This, in turn, would constrain FPL's ability to make the types of investment that made low customer bills a reality and ultimately would result in increased bills. R.45806-07). The capital structure contained in the Settlement avoids the erosion of financial strength.

*b. The Commission appropriately rejected Florida Rising's challenges to the ROE*

Florida Rising argues that FPL's ROE is unlawfully excessive because it does not match the ROE of other utilities across the country and because other Florida electric utilities were awarded lower ROEs under their respective settlements. IB.28-29. No legal principle, based on either statutes or case law, precludes the Commission from approving a Settlement containing an ROE that differs from the ROEs awarded to other electric utilities. Florida Rising's reliance on *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320

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<sup>11</sup> Florida Rising's argument that FPL's ROE should be lower because credit rating agencies already account for FPL's risk (IB.29-30) is unsound. Mr. Barrett explained it would be incongruous to assume that FPL's credit ratings, which is largely based on the Commission's historical willingness to support the elements of FPL's financial strength, would remain constant in the face of a lower ROE. R.45806-10.

U.S. 591, 603 (1944) and *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679 (1923) for this proposition lacks merit.

*Hope* and *Bluefield* establish that the ROE awarded to a regulated utility “should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.” *Hope*, 320 U.S. at 603. “[T]he return to the equity owner should be commensurate with returns on investments in other enterprises having *corresponding risks*.” *Id.* (emphasis added); see also *Bluefield*, 262 U.S. at 692-93 (pointing to “corresponding risks and uncertainties”).

Ironically, under *Hope and Bluefield* it would have been error to robotically replicate an “average” national or state-based ROE, as Florida Rising suggests, rather than assessing the unique circumstances attributable to FPL, the compromise it reached, and the results it has delivered. See *Gulf Power Co.*, 453 So. 2d at 805 (affirming Commission’s selection of equity ratio because it made a reasoned judgment based on competent, substantial evidence within the record which related specifically to the utility); cf. *Gen. Dev. Utilities, Inc. v. Hawkins*, 357 So. 2d 408 (Fla. 1978) (Commission’s

selection of equity ratio was arbitrary and violative of due process because decision was based on facts outside the record relating to other utilities generally).<sup>12</sup>

Experts testified that FPL has greater risk in terms of nuclear generation, length of the rate plan (at least one or two years longer), capital expenditure levels, and storm risk. R.46088-102, 45717-32. The record also contains an independent financial report that identified FPL as the nation's utility most exposed to extreme weather events. R.45357-58. Indeed, Florida Rising admits (as it must) that FPL presented evidence that it "experiences a uniquely high risk" and that the Commission agreed with FPL's testimony notwithstanding lower ROEs proposed by other witnesses. IB.28. According weight to ROE witness testimony is precisely—and exclusively—the

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<sup>12</sup> Florida Rising also conspicuously omits a more comparable rate decision discussed in the record. FPL's cost of capital expert explained that the Georgia Public Service Commission's approval of Georgia Power's 2020 settlement agreement was a better comparison because that utility's settlement comprised a three-year rate plan spanning 2020-2022 and the utility has a risk profile that shares several significant risk factors with FPL, such as nuclear and capital expenditure risks. R.45356-58. Georgia Power's settlement provided for an authorized ROE of 10.50% on a 56% equity ratio, comparable to FPL's. *Id.*

Commission's role. *United Telephone*, 345 So. 2d at 654. Florida Rising's suggestion in this appeal that FPL's risk profile is relatively low is an improper invitation to have this Court reweigh evidence.

## 2. *Equity Ratio*

The Commission also considered competing evidence regarding FPL's equity ratio presented by various experts, discussed that evidence in its Supplemental Final Order and concluded the equity ratio included in the Settlement is in the public interest. R.503 (discussing positions of Florida Rising and other intervenors advocating for a lower equity ratio); R.504 ("Many of Intervenors' factual arguments with respect to the equity to debt ratio mirror those with respect to the ROE. The remainder are variations on a common theme . . . :").

The Commission found, based on a preponderance of the evidence, "that FPL's overall capital structure has contributed to its ability to provide customers reliable service at reasonable rates while weathering tropical and financial storms. Continuing this strong capital structure can assure investors that the utility is financially sound, which in turn benefits all customers by attracting capital on reasonable terms." R.502. Relying on the testimony of FPL witness

Barrett, the Commission found that FPL's financial position, including its equity ratio, supported FPL's ability "to meet unprecedented challenges posed by effects of the global outbreak of COVID-19." R.501-03, R.45706. The Commission also pointed to evidence that FPL's financial strength distinguished it from entities with lesser financial integrity who lacked access to financing or faced higher costs that ultimately are passed along to customers. R.501-02.

Mr. Barrett also demonstrated that FPL could not maintain its credit rating and financial integrity if the Commission adopted the lower common equity ratio recommended by Intervenor such as Florida Rising. R.45781-89. He explained that, based on his years of experience in the capital markets, lowering the equity ratio as suggested by Florida Rising would ultimately diminish the level of service FPL provides to customers because over time "[i]nvestors that have long supported the Company would direct their capital elsewhere as they assess the opportunity to earn a fair return and surmise that FPL's winning strategy is no longer supported." R.45783.

Based on record evidence, the Commission found the combination of equity ratio and ROE in the Settlement produces rates that are fair, just and reasonable. R.504. The Commission's judgment should not be set aside.

### *3. Reserve Surplus Amortization Mechanism*

Based on the record evidence, Commission found that the RSAM "has been a key to implementing multiyear terms and avoiding multiple rate cases" and that the resulting "rate stability . . . is in the public interest." R.504-06. Florida Rising admits that the Commission undertook this analysis (IB.34), yet asks this Court to substitute the Commission's decision in favor of a different outcome. There is no basis for doing so.

Florida Rising asserts three reasons why the Commission's approval of the RSAM should be invalidated: (1) the factual basis for the surplus is "dubious" because FPL presented alternative depreciation parameters (IB.32-33), (2) FPL had been able to implement multi-year rate plans in the past without an RSAM (IB.34-35), and (3) over the years, FPL had earned at the top of its range using the RSAM (IB.36-38). The Commission considered each of

these arguments and, based on the evidence and its judgment, rejected them. R.504-06.

First, the Supplemental Final Order expressly addresses the factual basis for the Reserve Surplus, including the fact that FPL presented alternative sets of depreciation parameters. R.504. The Commission found that a preponderance of the evidence supports use of the parameters that result in a surplus amount that facilitates the RSAM. R.504-05. The testimony of FPL’s experts—engineers who operate the very assets whose depreciation lives were in question—support the Commission’s decision to adopt the longer lives. *Id.*; R.47337, 47351-52, 47366, 47043-44; *see Verizon Fla., Inc. v. Jaber*, 889 So. 2d 712, 716 (Fla. 2004) (affirming Commission’s adoption of depreciation lives that “represent[ed] a good compromise” on the ground that expert testimony supported such adoption).

Second, the Commission found that the RSAM facilitates multi-year terms that provide rate stability, and concludes that rate stability is in the public interest. R.505-06. Florida Rising’s argument that FPL did not need an RSAM in certain in earlier years is not a basis for this Court to order a different result, particularly in the absence of any proof that the economic and business conditions

FPL experienced more than a decade ago were the same as those FPL anticipated during the Settlement term.<sup>13</sup>

Mr. Bores testified that FPL would continue to invest for the benefit of customers in 2024 and 2025, despite agreeing to forgo general base rate increases in those years. R.45345. He estimated that incremental revenue requirements would amount \$1.276 billion. R.45346) and calculated that FPL will need to utilize 90% of the Reserve just to earn at its *ROE midpoint* in 2024 and 2025 after absorbing the incremental costs incurred to serve customers. R.45346). In the absence of an RSAM, FPL would need to seek cash increases in 2024 and 2025 to cover the incremental revenue requirements. R.45776). Effectively, the accumulated depreciation

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<sup>13</sup> FPL had employed RSAM-like mechanisms for 10 years before the Commission approved the Settlement in 2021. These mechanisms were critical to FPL's implementation of multiyear rate terms and avoiding multiple rate cases. R.45746-52. In the Supplemental Final Order, the Commission emphasized that while operating under its 2016 Settlement, FPL employed the RSAM to address the unprecedented impacts related to the COVID pandemic without seeking a rate change. R.505-06. And, even with those unexpected events, FPL was able to extend the term under its 2016 Settlement such that it avoided a subsequent request for a rate increase for five years (rather than four as had been anticipated). *Id.*

paid for by customers was returned to them in the form of avoided near-term cash increases.

Third, the record evidence reflects that the RSAM helps FPL manage fluctuations and disruptions in the business. Florida Rising advocated against the RSAM by pointing to periods in which FPL had used RSAM to earn at the top of its authorized range. R.506. The Commission considered and rejected this argument. *Id.* Although it recognized that “the RSAM may indirectly contribute to higher earnings, it is primarily “used to respond to events and expenses not anticipated in the normal course of business.” *Id.*

FPL witnesses Barrett and Bores testified that business costs may rise due to any number of factors, such as increases in inflation or interest, unexpected expenditures, revenue losses or other changes in the business over the term of the Settlement. R.45751-02, 45347. In fact, by the time the hearing in this matter took place, independent experts were projecting a doubling of inflation rates and a sooner-than-expected rise in interest rates. R.47983-84, 47508, 46042, 45347. Under the RSAM, FPL bears all of these risks for the full term of the four-year settlement and must deal with these circumstances without increasing customer bills.

Based on the evidence presented, the Commission found that “[t]he RSAM can (and does) serve as a tool to address the unexpected as FPL implements its plans over time.” R.506, 47987-88. This finding is supported by competent, substantial evidence and should be affirmed.

4. *The Commission considered the interplay between ROE, equity ratio, and the RSAM*

Contrary to Florida Rising’s assertion (IB.27-39), the Commission considered the interaction between the ROE, equity ratio and RSAM in determining that the Settlement as a whole is in the public interest. The Commission’s Supplemental Final Order observed that approval of a 10.6%, with an authorized range of 9.7% to 11.7%, and equity ratio of 59.6% “will ensure that FPL has adequate and timely access to capital in order to continue supplying reliable service.” R.520.

The Commission also found that this overall capital structure is supported by the RSAM, which is “designed to support a four-year rate plan.” *Id.* The RSAM provides FPL with a tool to address unexpected expense and revenue impacts over the Settlement Term without the need to seek a rate increase. “Without the RSAM, the

multiyear rate plan would not be possible, and ratepayers would not enjoy long-term bill stability.” *Id.* These conclusions are supported by competent, substantial record evidence and should be affirmed.

**B. Competent, substantial evidence supports the Commission’s approval of the 2021 Settlement provisions addressing revenue allocation and minimum bill.**

The Settlement’s revenue allocation and minimum bill provision reasonably and fairly allocate revenues, ensuring customers pay a fair portion of system and operational costs. The Commission considered Florida Rising’s arguments to the contrary and found that the Settlement’s revenue allocations and minimum bill provision result in rates that are fair, just, and reasonable. R.512-14.

*1. Revenue Allocations between Classes*

The Commission considered Florida Rising’s arguments that the allocations were not based on the result of a study and that the allocations under the Settlement are inequitable to small business and residential customers. R.513. The Commission weighed that against competing testimony from FPL witness Cohen, who also sponsored exhibits that provided proxy cost-of-service data showing how the revenue was allocated. R.46857-67, 52099-101, 52120-21.

Based on the record, the Commission found the revenue allocations to be reasonable because the allocations reduce the overall impact to the residential classes, are consistent with the historical manner in which rates have been allocated, are consistent with the Commission's long-standing "gradualism" policy.<sup>14</sup> R.514. Florida Rising acknowledges that the Commission cited the factual and policy bases for its conclusion that the revenue allocations between classes under the Settlement are reasonable (IB.51-52); it simply disagrees with the Commission's conclusions.

Competent, substantial evidence demonstrated that revenue allocations under the Settlement *do not* leave the residential public worse off than if FPL's original proposal had been approved, as Florida Rising contends. IB.50. Compared to FPL's Rate Petition, the revenue allocated to the residential customers under the Settlement is \$101.5 million less in 2022 and \$106 million less in 2023. R.45394. Residential bills are likewise more favorable under the

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<sup>14</sup> The Commission's gradualism principle 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. R.513-14, 46885.

Settlement compared to the Rate Petition. The typical residential bill for customers in the former FPL service area under the Settlement was projected to increase by only about 2.5% through 2025, as compared to 3.4% under the Rate Petition. R.514, 45398. And the typical residential bill for customers in the former Gulf service area was projected to decrease by approximately 0.7% through 2025. R.45316. Bills for all customers were projected to remain among the lowest in the nation. R.45381.

## *2. Minimum Bill*

The Settlement provides for the addition of a minimum base bill of \$25.00 for all residential and general service non-demand customers. R.45386-87. The minimum bill reflects the reality that FPL incurs “fixed” system costs to connect and serve a customer, even if that customer’s usage is low or zero. R.45386-87. Customers with low or zero usage, such as seasonal customers with a second home that remains unoccupied during different times of the year, expect that the lights will turn on when they flip the switch. *Id.* To meet that expectation, which FPL does, the Company invests in the wires, poles, and other infrastructure necessary to serve all customers instantly. *Id.* The purpose of the minimum bill is to

ensure that all ratepayers contribute their share to these fixed system costs. R.512-13. All customers whose total bill, based on usage, amounts to less than \$25 would be subject to the minimum bill. *Id.*

The Commission considered Florida Rising's arguments opposing this charge and, based on the evidence, ultimately concluded that the minimum bill "reasonably allocates fixed costs not covered by the base bill among all of these customers, and that recovering this amount results in rates that are fair, just, and reasonable." R.512-13.

Florida Rising does not dispute that FPL must invest in infrastructure for all customers, even those with low or zero usage. Nor does it counter that those customers should not pay their fair share. It argues only that the minimum bill disproportionately harms low-income customers with bills that fall below \$25 and that the charge is not based on a cost-of-service study. IB.52-53.

Neither argument has merit. Florida Rising's first argument is tautological: a \$25 minimum bill will *necessarily* impact customers whose bills fall below \$25. Income status is not a factor. In fact, the Commission's Supplemental Final Order found, based on the

evidence, that impacted customers also include those with second homes, *i.e.*, “seasonal residents.” R.512.

Nevertheless, competent, substantial evidence demonstrates that setting the minimum bill at \$25 is reasonable. FPL witness Tara DuBose testified that majority of revenue requirements associated with fixed costs are classified as either demand or customer related. R.47235. These demand and customer-related fixed costs amount to approximately \$70 per month on a per customer basis.<sup>15</sup> Therefore, customers who pay less than that amount, on average, do not cover their respective contribution to fixed costs. The Commission properly determined that the \$25 minimum bill reasonably allocates fixed costs among customers and that recovering this amount results in rates that are fair, just, and reasonable. R.512-13.

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<sup>15</sup> This number is derived from a cost-of-service schedule sponsored by Ms. Dubose. R.11704-53. Adding the “Demand” total revenue requirements and the and “Customer” total revenue requirements in column 16, then dividing that number by the “# of Bills for Metered Classes”  $(\$3,885,155,000 + \$373,339,000) \div 60,639,320 = \$70.23$ ).

**C. Competent, substantial evidence supports the Commission's approval of pilot programs and other settlement provisions challenged by Florida Rising.**

Florida Rising's initial brief also reiterates its objections to FPL's rate base, the extended cost recovery of retired assets, the Asset Optimization Program, the SoBRA incentive, and several pilot programs. IB.39-49. It does not allege a lack of evidence or any legal principles prohibiting their approval. It simply asks this Court to accord greater weight to the evidence already considered by the Commission. Each contention is addressed below.

*Rate base.* The Commission rejected Florida Rising's contention that FPL's investment levels are excessive and was unpersuaded by Florida Rising's myopic focus on "loss of load probability" as a basis to conclude that FPL's system is "overbuilt." R.514. The Commission concluded that the public interest is better served if a utility considers a wide range of possibilities to plan for a reliable system. *Id.* It found, based on record evidence, that FPL's planning analyses are "thorough" and data-based, and that FPL's fleet results in "lower operation and maintenance expenses and a high degree of reliability." R.500. And, despite intervenor objections to the size of its rate base, FPL's residential rates remain well below the national average and

below those of other Florida investor-owned utilities. *Id.* These findings are supported by the record. R.26050, 26052, 26055, 47356-57, 47937-44, 47948-52, 47960-61.

*Extended time for recovery of retired assets.* In the Supplemental Final Order, the Commission addressed and rejected Florida Rising's argument against the Settlement's extended time to recover the costs of retired assets. R.513. Florida Rising acknowledges that FPL's expert testimony supports the Commission's conclusion that the Settlement's extended recovery period reduces bill impacts but argues that the Commission should have adopted the position advocated by a different witness. IB.45-46; *see also* R.45338, 45350-51 (testimony of FPL witness Bores relied upon by Supplemental Final Order).

*Asset Optimization Program and SoBRA cost cap incentives.* The Supplemental Final Order found that the Asset Optimization Program had produced \$406.7 million in total benefits, with customers keeping 87% (\$354.5 million) of that amount. R.516-18. Florida Rising does not dispute these figures. Nor does Florida Rising dispute that the SoBRA cost cap incentive is designed to encourage FPL to procure construction at lower costs, which benefits

customers. R.519. In short, there is no factual dispute and Florida Rising cites no legal prohibition on these programs. It simply does not agree with the Commission's discretionary policy judgement in approving a savings-sharing mechanism. These arguments provide no basis to reverse.

*Pilot programs.* The Commission considered Florida Rising's objections to the various pilot programs included in the Settlement but found FPL's evidence to be more persuasive. The Commission was unpersuaded by Florida Rising's argument that the Green Hydrogen Pilot should be rejected because it is "uneconomic." R.511-512. The Commission rested its public interest determination largely on Section 366.91, Florida Statutes, which encourages development of renewable energy resources. *Id.* The Commission concluded, based on the evidence of FPL witness Valle, that the Green Hydrogen Pilot's relatively small costs are outweighed by the potential short- and long-term benefits associated with the supplemental use of solar generation. *Id.*; R.47731.

Florida Rising does not dispute the Commission's legal authority to approve the electric vehicle pilot programs, but contends that the programs are unsupported by a cost-benefit analysis. IB.47-

48. As indicated in the Supplemental Final Order, the Commission's public interest determination was not based on cost-effectiveness. Rather, the Commission found that the Programs are an effective means of gathering information regarding the impacts EVs will have on the local grid, and that gaining that understanding is in the public interest. R.510-11.

As to the Solar Power Facilities Project, Florida Rising argues that it should not be included in rate base because it does not serve the public at large. IB.48-49. The Commission considered this argument but was not convinced. R.512. It concluded that this pilot advances the public interest in renewable generation and that all costs and expenses are covered by the participants. *Id.* Here, too, Florida Rising expressly acknowledges that FPL introduced evidence regarding this Pilot but insists that the Commission should not have accepted it. IB.48-49. The initial brief provides no basis to reverse the Commission's judgment on this issue.

### **III. The Commission considered FPL's performance under FEECA in its review of the 2021 Settlement.**

This Court's Remand Order directed the Commission to consider FEECA "to the extent practicable." The Commission did so.

The fact that Florida Rising was disenchanted with the level of FPL's conservation measures that are evaluated by the Commission in a separate docket does not render the Commission's decision, or the content of the Supplemental Final Order, legally insufficient.

**A. The Commission's Supplemental Final Order analyzes FPL's FEECA performance practicably.**

As its name implies, the primary focus of the Florida Energy Efficiency and Conservation Act ("FEECA") addresses conservation of energy through such measures as reducing or controlling the growth rates of electric consumption particularly during weather-related peaks. This is known as demand-side management ("DSM"). Other objectives include increasing the overall efficiency and cost-effectiveness of electricity and natural gas use, encouraging further development of demand-side renewable energy systems, and conserving petroleum fuels. *Id.*

The FEECA discussion in the Supplemental Final Order explains that, under section 366.82(6), Florida Statutes, every five years the Commission must review each utility's DSM goals – the amount of energy conservation (avoided consumption) that is appropriate for each utility. R.521-23. The Commission last

established FPL's DSM goals in 2019. Within 90 days of setting the goals, utilities must submit a plan designed to achieve the DSM goals (the "DSM plan"). The Commission last approved FPL's DSM plan in 2020. *Id.*

Against this backdrop, the Commission assessed FPL's FEECA performance. The Commission observed that DSM goals and DSM plans generally are not subject to reexamination in a base rate case. *Id.* However, FEECA does influence some of the utility's underlying analyses. The Commission found that the load forecasts underlying rate request "properly accounted for incremental DSM." *Id.* Additionally, FPL resource plans "follow and [are] consistent with [the] most recent order on conservation goals." *Id.*

These findings are based on competent, substantial evidence. FPL's load forecasting witness testified that the load analysis assumed the Company will achieve the full amount of FPL's DSM goals approved by the Commission in 2019. R.47528, 47531-32, 47534, 47541-43. In addition, FPL's resource planning witness testified that its analysis of system additions to serve the integrated FPL/Gulf system explicitly assumed the DSM goals would be fully achieved. R.47602. This means FPL's resource plans assume the

highest level of approved energy conservation measures, irrespective of whether FPL actually achieves 100% of its goals.<sup>16</sup>

Florida Rising's witness testified that FPL should implement more energy conservation and DSM measures than had been approved. R.45017-18. The Commission disagreed, concluding that a reevaluation of FPL's DSM programs is more appropriately raised in FPL's next goal-setting proceeding. R.521-23

The Commission's review satisfies this Court's request to consider FEECA "to the extent practicable" by addressing FEECA as it relates to the issues that were identified and litigated. Based on the evidence, it concluded that the Settlement is consistent with FEECA, is in the public interest and establishes fair, just and reasonable rates. R.421. There is no basis to set aside the Commission's determination.

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<sup>16</sup> Record evidence also supports the Commission's findings related to FPL's other FEECA initiatives, such as: (i) FPL's deployment of solar energy (R.47706, 45367); (ii) increased cost-effectiveness of electricity and natural gas use (R.47342); and (iii) reduced air emissions (R.47342) *see also* R.722-25 (identifying prior FPL witness testimony on relevant aspects of FEECA).

**B. The Commission's decision not to reopen the record was appropriate and within its discretion.**

Florida Rising and FAIR moved to reopen the record to admit the Commission's 2021, 2022 and 2023 FEECA reports, FPL's 2021 and 2022 DSM Reports, as well as EIA data for 2021 and 2022. The Commission declined. R.495-97. Nothing in the Remand Order required the Commission to admit additional evidence. *FAIR*, 371 So. 3d at 914 ("Subject to any statutory requirements, the form of the proceedings on remand will be up to the Commission, including the decision whether to allow the parties to present additional evidence.").

The Commission acted well within its discretion. The PSC already had a proper record concerning FEECA issues relevant to FPL's request to adjust its base rates. No additional evidence was necessary.

Tellingly, Florida Rising's Motion To Reopen did not – and could not – assert that the existing record lacked evidence regarding FPL's FEECA performance. R.735-43. In the original proceeding below, it took the position that "FPL has one of the lowest energy efficiency achievements compared to other utilities nationwide and does not

provide adequate energy efficiency aid to its customers to help them lower their usage and monthly bills.” Order No. PSC-2021-0302-PHO-EI at 72-73. In support of that position, it introduced testimony addressing how FPL “performed in developing and delivering efficiency in Florida;” as well as “the major problems with the Company’s approach to energy efficiency in general.” R.45015-18. In other words, the argument Florida Rising made in the underlying proceeding is the same argument it sought to reassert by reopening the record to introduce cumulative evidence. It was not precluded from presenting or eliciting evidence pertaining to this issue.

What Florida Rising could *not* have done in the underlying case is introduce many of the FEECA and DSM reports that were the subject of its Motion To Reopen—not because the process precluded them from doing so, but because many of the FEECA and DSM reports in question *did not exist* at the time of the Commission’s original decision. The PSC’s 2021-2023 FEECA annual reports, FPL’s 2021 and 2022 DSM Reports, and EIA data for 2021 and 2022, all were published well after the record was closed. The Commission appropriately exercised its discretion in declining to introduce documents “created post-hearing, post-decision in the record for

purposes of making additional findings.” R.495-97.

### **CONCLUSION**

This Court should affirm the Commission’s Supplemental Final Order.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing  
has been filed with the ePortal website and served on June 10, 2024  
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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this filing complies with the typeface requirements of Rule 9.045(b), Florida Rules of Appellate Procedure because it was prepared in a proportionally spaced typeface using 14-point font Bookman Old Style. This brief complies with the type volume limitations set in Rule 9.210(a)(2)(B), Florida Rules of Appellate Procedure. This brief contains 12,418 words, excluding the parts of the brief exempted by Rule 9.045(e).

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