

IN THE SUPREME COURT OF FLORIDA

FLORIDA RISING, INC., ET AL.,

Appellants,

v.

FLORIDA PUBLIC SERVICE
COMMISSION, ET AL.,

Appellees.

Supreme Court Case No.
SC2024-0485

Lower Tribunal No.
Docket No. 20210015-EI

Order Nos.
PSC-2024-0078-FOF-EI
PSC-2021-0446-EI and
PSC-2021-0446A-EI

REPLY BRIEF

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

TABLE OF CONTENTS

SUMMARY OF ARGUMENT	1
ARGUMENT.....	2
I. FPL’s Accounting Sleight-of-Hand Cannot Disguise That SolarTogether Violates Florida Law by Creating Undue Preferences for Participants.	2
A. Challenge to SolarTogether Not Legally Barred.....	3
B. The Commission’s Determination That SolarTogether Does Not Create Undue Preferences Is Not Supported, Even Accepting All Factual Findings as True.	4
C. CPVRR Analysis Premised on Imminent Hypothetical Carbon Costs Not Supported by Competent, Substantial Evidence	8
II. The Commission’s Determinations Regarding the Settlement’s Other Major Features Against Public Interest, Unreasonable, and Unsupported by Competent, Substantial Evidence.....	11
A. The Commission’s Approved ROE, Equity Ratio, And RSAM Produce Unjust and Unreasonable Rates Contrary to Public Interest and Unsupported by Record.....	11
B. Other Settlement Elements Contrary to Public Interest and Unsupported by Competent, Substantial Record Evidence.	14
i. Settlement’s profit-increasing elements contrary to public interest.	15
ii. Settlement cost allocations intensify unfair and discriminatory rates.	17

III. The Commission Did Not Appropriately Consider FPL’s FEECA Performance in Accordance With <i>FAIR</i>	19
CONCLUSION	20
CERTIFICATE OF SERVICE.....	21
CERTIFICATE OF COMPLIANCE.....	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Fla. Indus. Power Users Grp. v. Brown</i> , 273 So. 3d 926 (Fla. 2019).....	7
<i>Fla. Power Corp. v. Mayo</i> , 203 So. 2d 614 (Fla. 1967).....	10
<i>Floridians Against Increased Rates, Inc. v Clark</i> , 371 So. 3d 905 (Fla. 2023)	6, 15, 23
Florida Constitution	
Art. V, § 21, Fla. Const.....	6
Florida Statutes	
§ 366.01, Fla. Stat.....	13
§ 366.03, Fla. Stat.....	6
§ 366.06, Fla. Stat.....	21

SUMMARY OF ARGUMENT

The Settlement approved by the Commission in December 2021 violates Florida law. First, the Settlement more than doubles SolarTogether, transferring billions of dollars from the general body of mostly residential ratepayers to mainly the largest industrial and commercial customers. SolarTogether participants receive enormous windfalls, while non-participants pay the costs. FPL's opposing arguments and related accounting sleight-of-hand are belied by the actual numbers, which show the truth of FPL's undue preferences for certain customers and resulting discriminatory rates for those unable to participate. In short, SolarTogether violates Florida's rate-setting requirements by allowing select customers to opt in to free (to them) money from the general body of ratepayers. This alone compels vacating Commission approval of the Settlement.

Second, other major elements of the Settlement also operate against the public interest. The Commission fails to provide a reasoned explanation based on competent, substantial evidence to justify a record-setting Return on Equity ("ROE") and Equity-to-Debt Ratio for a utility facing no unique risks. Moreover, the Commission fails to reasonably explain approving these elements *alongside* the Reserve Surplus

Amortization Mechanism (“RSAM”), which allows FPL to earn precisely at the top of its allowed band. FPL’s maximized profits are in FPL’s interest, *not* the public’s interest, and no competent, substantial evidence supports finding otherwise.

Finally, the Commission failed to abide by this Court’s ruling in *Floridians Against Increased Rates, Inc. v. Clark* (“FAIR”), and to its statutory duty to adequately consider FPL’s energy-efficiency performance when assessing the Settlement. 371 So. 3d 905, 912 (Fla. 2023).

ARGUMENT

I. FPL’s Accounting Sleight-of-Hand Cannot Disguise That SolarTogether Violates Florida Law by Creating Undue Preferences for Participants.

As the epitome of undue preferences for program participants—disproportionately FPL’s largest customers—SolarTogether results in rates that cannot square with Florida law. To the extent that this Court’s determination depends on the statutory interpretation of the words in the statute, including the meaning of the words “undue” or “unreasonable preference or advantage,” § 366.03, Fla. Stat., despite FPL and the Commission citing a string of out-of-state decisions, *see* PSC Br. 29; FPL Br. 27, those determinations (as opposed to the underlying factual determinations), are conducted *de novo*, Art. V, § 21, Florida. Constitution.

A. Challenge to SolarTogether Not Legally Barred

FPL cites *Florida Industrial Power Users Group v. Brown* for the proposition that because Florida Rising challenges the legality of the features of the SolarTogether expansion, when such features were included in an unchallenged earlier Commission Order that Florida Rising did not participate in, that Florida Rising is now “legally barred” from challenging such features. FPL Br. 32; *Fla. Indus. Power Users Grp. v. Brown*, 273 So. 3d 926, 933 (Fla. 2019) [hereinafter “*FIPUG*”]. Two key distinctions FPL fails to address are that 1) Florida Rising Appellants were not parties to the original approval of SolarTogether; and 2) Florida Rising Appellants challenge the *expansion* of SolarTogether as unlawful. Nothing in the *FIPUG* decision implies that parties are legally barred from challenging the expansion of a previously unchallenged program when they were not parties to the original case.

Although the original program could remain in place should the Court vacate the Commission’s approval of the more than doubled expansion, the increased credit to participants as part of the expanded program *and* original program would be struck down, saving the general body of customers—including Florida Rising’s members—well over \$1 billion.

Compare Appx. 110¹ (net payment to participants of \$678 million in original program and \$20.3 million in administrative costs) *with* Appx. 111 (net payment to participants under expansion of \$2.0272 billion and \$66.3 million in administrative costs). The rate impacts (and impacts to Appellants) are thus similarly magnified.

B. The Commission’s Determination That SolarTogether Does Not Create Undue Preferences Is Not Supported, Even Accepting All Factual Findings as True.

FPL and the Commission fail to distinguish the benefits of the solar power plants versus the SolarTogether program, arguing that they are inseparable. FPL Br. 29; PSC Br. 33. However, just because FPL claims it would refuse to build these solar plants absent an ability to transfer billions of dollars (net) from the general body to a few select customers, does not mean that the program cannot be separated from the solar power plants at issue.

The basis for the Cumulative Present Value Revenue Requirements (“CPVRR”) calculations that the Commission accepted and that FPL and the PSC rely on throughout their briefs were provided in Florida Rising’s Appendix and distilled in Tables 1 through 3, included in Florida Rising’s Initial Brief. FPL’s argument, thus distilled, (accepting all their projections,

¹ Refers to Appendix filed with Florida Rising’s Initial Brief.

including high carbon costs 18 months away) is that it would *refuse* to give \$8.4 billion in benefits to customers (Appx. 111, column “Nominal Total,” row “Net Revenue Requirements (fav) unfav), *unless* it can give \$2 billion in bill credits (net) to favored customers (Appx. 111, column “Nominal Total,” row “Participant Net Distribution (Payment)”). FPL cites no law that such financial hostage-taking of its customers is a basis for allowing it to violate statutory requirements against creating undue preferences in ratemaking. FPL’s assertions that the only way to build these solar plants is through SolarTogether are not credible when it is billions of dollars cheaper for the general body of customers to do it without the program, as shown by Tables 1 through 3 in Florida Rising’s Initial Brief.

FPL correctly recognizes that “[c]riteria for applicability of a rate that sufficiently identify and distinguish a class of consumers ‘precludes an effective attacked based on discrimination or arbitrary preference.’” FPL Br. 27 (quoting *Fla. Power Corp. v. Mayo*, 203 So. 2d 614, 615 (Fla. 1967)). The only class distinction SolarTogether creates is a class of customers—disproportionately FPL’s largest customers—that want to receive payments from FPL’s other customers. As has been shown by FPL’s CPVRR projections and in Tables 1 through 3 in Florida Rising’s Initial Brief, participants, once accounting for bill credits and the administrative costs to

administer the program for participants, never contribute any money towards building the solar plants at issue. The only thing that distinguishes the customer “class” (of the participants) is wanting free money (i.e., a discriminatory rate) paid for by other customer classes. This is not the kind of distinguishment for a class referenced in *Florida Power Corp.*

In approving SolarTogether, the Commission turned a blind eye to the fact that the participants receive bill credits paid for by the general body of ratepayers. To be sure, consider the following hypothetical. If FPL doubled the subscription fee and increased the credits by the same amount, both the net amount paid by the general body to subscribers and the net lack of contribution from subscribers to the capital cost of the program would remain the same. No one’s electric bill would actually change, yet, under FPL’s theory, participants have contributed 206% of the costs of the solar and have “paid” for the plants twice-over. Therefore, the “paradigm” created by FPL to fund SolarTogether is nothing more than an accounting trick designed to give the appearance that participants, not the general body of ratepayers, pay the costs of the program. FPL could have designed a program where participants would actually pay for the costs of the solar power plants at issue (rather than rate-basing them), and such participants would receive the benefits—but that is not what FPL has done.

FPL's contention that there is no "cost" in paying billions of dollars (net) from the general body to participants, FPL Br. 36, is as nonsensical as it sounds. Of course, there is a cost—over two billion dollars as shown by FPL's own documents supporting its "benefit" calculations. Appx. 111. Again, FPL relies on a comparison to an alternative that does not exist—an alternative where FPL refuses to build the solar plants at issue. As an analogy, a person seeking housing (additional FPL generation) could purchase a home for \$1 million (non-solar plan) or \$500,000 (solar plan), with the option on the latter to pay an additional \$200,000 to a third party to claim credit for building the house (SolarTogether program credits). FPL's paradigm weighs the \$700,000 option against the million-dollar option, concluding it to be free by comparison, while ignoring the \$500,000 option (regular rate-based solar) altogether. FPL's view is disingenuous. Bills for the general body of customers still rise to pay off the third party, except, for SolarTogether, the cost is almost \$2.1 billion (Appx. 111, net bill credits and administrative costs), which FPL and the PSC do not dispute in their answer briefs.

Because it defies reality to suggest that non-participants are not funding SolarTogether, the resulting windfall to participants through FPL's accounting scheme creates unlawful rates under the Settlement.

C. CPVRR Analysis Premised on Imminent Hypothetical Carbon Costs Not Supported by Competent, Substantial Evidence

The proposed quantified “savings” asserted by FPL and accepted by the Commission also reflect nothing more than an accounting gimmick based off hypothetical carbon costs. FPL’s benefits calculation relies on high carbon costs that go into effect by 2026, 18 months from the time of the filing of this Reply Brief. Initial Br. 14. However, no party introduced competent, substantial evidence to sustain this finding implicitly made by the Commission in its adoption of FPL’s CPVRR analysis. Initial Br. at 14 n. 3, 19. Thus, the 45% allocation of projected benefits going to the general body of customers, FPL Br. 25-26, is speculative and cannot be a basis to increase customer rates. Notably, the benefits to the participants in the form of bill credits do not vary on whether these imminent carbon costs materialize. R. 45082-83 (emissions savings from carbon cost); Appx. 116 (assumed carbon costs starting 2026); Appx. 111 (projected emissions cost savings from avoided carbon costs). Therefore, the Commission’s approval of SolarTogether based on illusory long-term benefits for customers and a resulting profit for FPL of over \$2 billion is firmly against the public interest in violation of section 366.01, Florida Statutes. Initial Br. 25.

The Commission’s objections to Tables 1-3 in Florida Rising’s Initial Brief similarly lack merit. Unlike the Commission’s assertion that the tables “combine data sets without explanation or justification,” PSC Br. 36, Florida Rising’s Initial Brief explains the function of each table and identifies the source of their information, Initial Br. 15-18. Additionally, unlike the Commission’s contention, Florida Rising never stated that Tables 1-3 were the same tables cited in the Appendix. *Contra* PSC Br. 36 n.26. Rather, Florida Rising cites the Appendix to indicate where the figures in the table were derived, and the Commission cited no objections to the Appendix.

Take the following example from Table 1, line 1. Initial Br.16. In 2021, the costs (nominal value) of the SolarTogether expansion without SolarTogether participants are \$0.6 million,² and the costs (nominal value) with SolarTogether participants are \$0.6 million.³ The difference between these two values in 2021—zero dollars—represents the additional cost to the general body of ratepayers of building the solar plants *with* the SolarTogether program, given the lack of expected participation. The Commission has no basis to object to these facts in sentence form, and

² From row “Net Revenue Requirements (fav) unfav” minus the row “Program Administrative Costs” to administer the program for participants. Appx. 113.

³ From row “Total Net RevReq’s (fav) unfav.” Appx. 113.

simply translating the same information into a digestible table cannot generate any valid objection. As such, Florida Rising disagrees with the characterization that Tables 1-3 are demonstrative aids subject to the standard outlined by the Commission. Rather, they simply condense what could be said over many paragraphs into tables entirely derived from the Appendix while using simple addition and subtraction that would be subject to judicial notice.

In short, Florida Rising does not request that this Court reweigh any evidence, and, for the purposes of this section, accepts all of the Commission's actual factual findings as true, except to the extent that Florida Rising contends that there is no competent, substantial evidence that high carbon costs are going into effect in 18 months. The numbers themselves dictate that SolarTogether does not serve the public interest and provides undue preferences to participants and that the Commission's approval was not based on competent, substantial record evidence.

II. The Commission’s Determinations Regarding the Settlement’s Other Major Features Against Public Interest, Unreasonable, and Unsupported by Competent, Substantial Evidence.

The Commission has failed to support its purported findings⁴ that other features of the Settlement are in the public interest.

A. The Commission’s Approved ROE, Equity Ratio, And RSAM Produce Unjust and Unreasonable Rates Contrary to Public Interest and Unsupported by Record.

The Commission provides no reasonable explanation for approving the up-to 11.8%⁵ ROE, 59.6% Equity-to-Debt Ratio, and RSAM. The Commission has again surveyed each factor in isolation and ignored their interplay. No party contests that *FPL* benefits from unlimited access to capital; the Final Supplemental Order’s unanswered question—which the Commission still evades—is *how much* is appropriate and necessary for reliable service considering the costs to its customers.

Regarding ROE, it is disingenuous for FPL to defend the Commission’s determination about the propriety of a “10.6 ROE,” FPL Br.

⁴ Despite claiming it “extensively” cites the record, PSC Br. 38, the revised Order contains just *eight* citations to an identified page of the record, Appx. 19, 20, 22, 30, 32. To the extent the Commission asserts purported facts without citations that enable meaningful review, it has once again “point[ed] ... and [said] ‘It’s in there,’” ignoring this Court’s admonishment. *FAIR*, 371 So. 3d 905, 913 (Fla. 2023).

⁵ Exercising the Settlement’s included inflation trigger raised FPL’s ROE midpoint to 10.8% and maximum to 11.8%. R. 1898.

42, when the Commission knew that authorizing the RSAM would virtually guarantee FPL an 11.8% ROE, Appx. 150-55.⁶ Even at face value, not only is the 10.8% ROE well above the declining national average, Initial Br. 28, but the Commission’s conclusion that FPL presents heightened risks, PSC Br. 41-42, lacks evidence. Also noteworthy is FPL’s brazen claim that capital spending increases its risk (justifying a higher ROE), FPL Br. 46, when that same spending, supercharged by FPL’s high equity ratio, drives shareholder profits as FPL relentlessly inflates the rate base on which it is guaranteed double-digit returns.

Further, Appellees fail to rebut the fact that both Duke Energy Florida and Tampa Electric Company were facing the same geographic risks and coronavirus-impacted market when they received ROEs of 9.85% and 9.95%—without RSAM—within months of FPL’s Settlement. Initial Br. 29. Appellees likewise ignore uncontested evidence that credit rating agencies already account for FPL’s risk.⁷ Initial Br. 30. Florida Rising cannot ask the

⁶ Earnings Surveillance Reports admitted in this case (the source for the above-cited document), were downloaded from the Commission’s website, <https://www.floridapsc.com/earnings-surveillance-reports?industry=Electric>, where FPL’s reports are published monthly. Page 2, row G of each report (“RETURN ON COMMON EQUITY (AVERAGE)”) displays FPL’s achieved ROE.

⁷ FPL’s assertion, that rating agencies have “largely based” favorable reports on the Commission’s historic willingness to approve FPL’s requests, FPL Br. 44 n.11, is not supported by FPL’s citation, R. 45806-10.

Commission to “reweigh” evidence it never weighed, and this record cannot support finding an investment risk that is consistent with the extraordinary ROE approved for FPL.

Nor has the Commission provided a reasoned basis for approving a 59.6% equity ratio, offering only vague assertions of “financial strength and flexibility.” PSC Br. 43. An equity ratio (or ROE) higher than necessary to access the capital required to provide affordable, reliable service produces excessive, intrinsically unreasonable rates. Initial Br. 31 (citing cases).

Approving the RSAM operates against the public interest alone and in the context of the remainder of the Settlement. Appellees do not dispute that FPL introduced simultaneous conflicting depreciation studies and asked the Commission to approve the one yielding an \$1.48 billion surplus *only* if allowed to render it a slush fund via RSAM, but to otherwise approve the study associated with a nearly half billion-dollar deficit—allowing FPL to recover that additional amount. Initial Br. 33-34. Because the scant evidence FPL introduced does not support the surplus-creating modifications,⁸ Initial Br. 33 & n.18, the Commission’s subsequent approval of the RSAM was made absent competent, substantial evidence.

⁸ FPL argues the alternate parameters were created by “engineers who operate the very assets” at issue. FPL Br. 50. In fact, witness Ferguson,

Regardless of whether the “surplus” even exists, Appellees’ attempts to explain how the public interest is served by FPL keeping customer money it apparently overcharged are incompatible with the record. While broadly asserting RSAM is necessary to a multiyear rate structure, see, e.g., PSC Br. 43-44; FPL Br. 51, Appellees have never engaged with the uncontested fact that *no other utility* in the country uses an RSAM despite the increasing prevalence of multiyear rate structures, Initial Br. 35. That FPL’s sole way to manage cost fluctuations and unexpected conditions is to expropriate nearly *\$1.5 billion* in customer overpayments lacks a basis in the record, reason, and fairness.

B. Other Settlement Elements Contrary to Public Interest and Unsupported by Competent, Substantial Record Evidence.

The Commission’s Final Supplemental Order failed to discuss, much less reasonably explain, why it approved major additions to FPL’s rate base. Initial Br. 40. Other major Settlement mechanisms likewise impose

who devised these parameters solely *to enable further RSAM*, R. 47042, is an accountant with no engineering experience, R. 47031-32. FPL’s citations do not support the Commission’s signoff on longer service lives. See, e.g., R. 47043-44 (Ferguson speculating about extending solar and gas unit lives based on a DOE survey and others’ testimony about upgrades and unrelated pilot programs, *not* because FPL plant engineers concluded such extended lives were reasonable or likely).

unjust and unreasonable customer rates. The Commission’s conclusions regarding these elements and the public interest find no record support.

i. Settlement’s profit-increasing elements contrary to public interest.

The Commission fails to provide a reasoned explanation for permitting FPL to swell its rate base to \$68.349 billion by 2025, corresponding to a loss of load probability (“LOLP”) over ten-thousand times smaller than industry standards and FPL’s own criteria. Initial Br. 42-43. To conclude FPL’s system is not overbuilt, Appellees dismiss the relevance of the LOLP—a ubiquitous utility planning metric—and reframe around vagaries on “energy diversification” and reliability. PSC Br. 47; FPL Br. 59. First, even if “energy diversity” were an acceptable end run around demonstrating capacity need for new units, the Commission failed to provide any explanation for how spending \$4.4 billion for 4.1 gigawatts of new gas generation, R. 9982, 9988 n.11, contributes any fuel diversity to an already 70.9% gas-powered system, R. 9988. Second, FPL’s extraordinary \$11.5 billion in additional rate-based transmission spending, Initial Br. 44, cannot square with boasts of preexisting, best-in-class grid reliability, R. 47757. Any grid could be more reliable, efficient, and resilient, but unlimited spending on these ends would yield a system so expensive

no customer would be able to connect and enjoy its benefits. “Reliability” cannot be a blank check, especially on an already reliable system and Appellees cannot refute FPL’s overbuilding.

Further, the Commission has failed to identify competent, substantial evidence why the pilot programs for hydrogen, electric vehicle infrastructure, and rooftop solar are in the public interest. Citing the FPL’s desire to “gain data” on such programs, PSC Br. 49, does not explain why customers should shell out a quarter of a billion dollars for EV chargers that do not generate or transmit electricity, Initial Br. 47. Such spending cannot reflect a prudent investment used and useful for public service, as Florida law requires.

The same applies to the rate-based hydrogen project and the Commission’s unsupported argument that the \$65 million program serves the public interest by encouraging renewables’ development. PSC Br. 17; Initial Br. 48. The program will provide $\leq 5\%$ of *one* combustion turbine’s fuel, PSC Br. 16, and forcing ratepayers to absorb FPL’s extracurricular research and development costs (plus 11.8% return) provides no customer benefits, Initial Br. 48.

Finally, the Commission’s approval of the Solar Power Facilities pilot program, premised on FPL’s illusory pledge to stay revenue neutral for

non-participants (by assuming project costs will be covered by participants), lacked sufficient evidence. PSC Br. 17; Initial Br. 48.

ii. Settlement cost allocations intensify unfair and discriminatory rates.

The Settlement's revenue allocation between customer classes violates section 366.06, Florida Statutes. Charged nearly \$100 million over parity annually, residential customers are made to subsidize large commercial and industrial customers. Initial Br. 49-50. That the rate increase percentage allocated to the residential class is less severe than what the Commission previously approved, PSC Br. 19, does not suggest that this allocation produces lawful rates (especially in conjunction with other elements, like the SolarTogether expansion).

The interclass allocation—derived from negotiations that excluded residential interests—is unsupported by competent evidence such as a full cost-of-service study. Initial Br. 50. However, based on the only cost-of-service study supported by FPL, interclass allocations ultimately transfer over \$1 billion from residential and small business customers to large commercial and industrial users. Initial Br. 50-51.

Appellees' argument that residential customers pay less under the Settlement is a red herring. FPL Br. 55-56; PSC Br. 20. It does not follow

that one scenario is reasonable merely because it produces a (marginally) smaller cost than another. Appellees also refuse to acknowledge that FPL's "typical residential bill" calculations have been thoroughly debunked and cannot serve as competent, substantial evidence for the propriety of rates. Initial Br. 51-52.

The Commission cites no competent, substantial evidence supporting the \$25.00 minimum bill. Shifting additional costs onto FPL's poorest customers to subsidize households with high energy usage necessarily overburdens lower-income households. Initial Br. 53. That income status does not explicitly drive the minimum bill and seasonal residents may have been FPL's intended target, FPL Br. 57, does not erase the asymmetrical impact customers experience based on income. The minimum bill is not made reasonable just because FPL did not *intend* to harm low-income households.

Second, Appellees' vigorous focus on the fairness of all customers contributing to fixed system costs, PSC Br. 51, FPL Br. 56-57, ignores that Florida Rising has never argued otherwise—only that the fixed charge must *fairly* reflect actual customer costs to the grid. Evidence of the unremarkable fact that FPL incurs costs to connect customers does not obviate the Settlement's missing cost-of-service study, and neither

Appellee can point to any competent, substantial record evidence that \$25.00 accurately reflects the monthly customer cost. Initial Br. 52-53. Instead, FPL's as-filed cost-of-service study reveals a cost of \$9.37. R. 285819 (including meter, distribution, and customer costs, i.e., cost to connect to the grid). Finally, lauding FPL's "lowest" residential base charge—\$8.99—among Florida's investor-owned utilities, PSC Br. 51 n.32, is disingenuous when the minimum bill nearly triples that amount for 360,000 households who would otherwise pay less, Initial Br. 53.

III. The Commission Did Not Appropriately Consider FPL's FEECA Performance in Accordance With *FAIR*.

Insisting that FEECA performance was "not within the scope" of this case, PSC Br. 54, the Commission contradicts Florida law, which requires it to "consider the performance of each utility" pursuant to FEECA in a proceeding "establishing rates." § 366.82(10), Fla. Stat. This Court's 2023 remand explicitly provided that a "reasonably explained decision" must reflect Commission consideration of FPL's FEECA performance. *FAIR*, 371 So. 3d at 912.

The Commission's position that the existing record (testimony regarding FPL's load forecasting) was sufficient, PSC Br. 54-55, reflects its erroneous determination that load forecasting alone, rather than actual

achievements (via performance reports and EIA data), sufficiently met its statutory duty, Initial Br. 54. The Commission’s refusal to reopen the record belies its claim that its decision considered FEECA “to the extent practicable.”

CONCLUSION

For the forgoing reasons, this Court should find that the Settlement violates Florida law, vacate the Commission’s Supplemental Final Order—and earlier related orders—approving the unlawful Settlement, and remand to the Commission for further proceedings consistent with applicable law and the Court’s opinion.

Respectfully submitted,

/s/ Bradley Marshall
Bradley Marshall
Florida Bar No. 98008
Primary email:
bmarshall@earthjustice.org

/s/ Jordan Luebke
Jordan Luebke
Florida Bar No. 1015603
Primary email:
jluebke@earthjustice.org
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301
(850) 681-0031 (Phone)
(850) 681-0020 (Facsimile)
Secondary email:
flcaseupdates@earthjustice.org

*Attorneys for Florida Rising,
League of United Latin American
Citizens, and Environmental
Confederation of Southwest
Florida, Appellants.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by electronic mail on this 1st day of July 2024, to the following:

**Florida Public Service
Commission**

Adam Teitzman
Suzanne Brownless
Shaw Stiller
Douglas Sunshine
Jennifer Crawford
Colin Roehner
Brian Schultz
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
ateitzma@psc.state.fl.us
sstiller@psc.state.fl.us
jcrawfor@psc.state.fl.us
dsunshin@psc.state.fl.us
Croehner@psc.state.fl.us
BSchultz@psc.state.fl.us

Office of the Public Counsel

c/o The Florida Legislature
Richard Gentry
Patty A. Christensen
Walt L. Trierweiler
111 W. Madison Street, Room 812
Tallahassee FL 32399
gentry.richard@leg.state.fl.us
christensen.patty@leg.state.fl.us
trierweiler.walt@leg.state.fl.us

Florida Power & Light Co.

John T. Burnett
Maria Jose Moncada
Daniel Elden Nordby
Alyssa Lynn Cory
Joel Baker
700 Universe Blvd.
Juno Beach, FL 33408-0420
john.t.burnett@fpl.com
maria.moncada@fpl.com
dnordby@shutts.com
acory@shutts.com
joel.baker@fpl.com

Vote Solar

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

Walmart Inc.

Stephanie U. (Roberts) Eaton
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
Barry A. Naum
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Ste. 101
Mechanicsburg, PA 17050

**Florida Industrial Power
Users Group**

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
T: (850) 681-3828 F: (850) 681-8788
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

seaton@spilmanlaw.com
bnaum@spilmanlaw.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

**Southern Alliance for Clean
Energy**

George Cavros
120 E. Oakland Park Blvd., Suite 105
Fort Lauderdale, Florida 33334
(954) 295-5714
george@cavros-law.com

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

**Daniel Larson & Alexandria
Larson**

Nathan A. Skop
420 NW 50th Blvd.
Gainesville, FL 32607
n_skop@hotmail.com

**Florida Internet & Television
Association**

Floyd R. Self
313 N. Monroe St.
Suite 301
Tallahassee, FL
fself@bergersingerman.com
T. Scott Thompson
Mintz, Levin, Cohn, Ferris, Glovsky
Popeo, P.C.

**Floridians Against Increased
Rates, Inc.**

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

555 12th St NW, Suite 1100
Washington, DC 20004
sthompson@mintz.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

DATED this 1st day of July 2024.

/s/ Bradley Marshall
Bradley Marshall
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY certify that the foregoing is typed in Arial 14-point font and contains 3,994 words, not exceeding the word limit of 4,000 and therefore complies with the font requirements of Rule 9.045 and 9.210(a)(2), Florida Rules of Appellate Procedure.

/s/ Bradley Marshall
Bradley Marshall
Attorney