IN THE SUPREME COURT OF FLORIDA

FLORIDIANS AGAINST INCREASED RATES, INC., et al

Appellants,

v.

CASE NO.: SC21-1761
L.T. Case No.
Docket 20210015-EI

GARY F. CLARK, ETC., ET AL

Appellees.

FLORIDIA RISING, INC., ET AL,

Appellants,

v.

CASE NO.: SC22-12
L.T. Case No.
Docket 20210015-EI

GARY F. CLARK, ETC., ET AL

Appellees.

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APPELLEE FLORIDA POWER & LIGHT COMPANY'S UNOPPOSED MOTION TO FILE AMENDED ANSWER BRIEF

In accordance with Florida Rule of Appellate Procedure 9.300(a), Appellee Florida Power & Light Company ("FPL") files this unopposed motion to file the amended answer brief attached to this motion, and, in support thereof, states as follows:

1. Appellants Florida Rising, Inc. and Floridians Against Increased Rates, Inc. each filed their initial briefs in these consolidated actions on April 6, 2022.

2. Appellees FPL and the Florida Public Service Commission each filed their answer briefs on July 20, 2022.

3. On July 21, 2022, it was brought to the undersigned's attention that the record on appeal to which FPL cited in its answer brief was not the most recent version provided to this Court. FPL has since obtained a properly paginated version of the record on appeal.

4. To assuage any confusion and to avoid the Court—and the judicial law clerks—any unnecessary hardship in reading and analyzing FPL's answer brief, FPL respectfully seeks leave to file an amended answer brief that included citations to the properly paginated version of the record on appeal. The proposed amended answer brief is attached to this motion as **Exhibit "A"**.

5. No party will be prejudiced by the Court accepting and filing the attached amended answer brief.

6. This motion is filed in good faith and not for the purpose of any delay.

7. The undersigned has conferred with counsel for Appellants and the PSC and is authorized to represent there is no opposition to the relief sought herein.

Dated: July 22, 2022 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 July 22, 2022, to the following:

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EXHIBIT A

SC21-1761; SC22-12

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Appellees.

AMENDED ANSWER BRIEF OF FLORIDA POWER & LIGHT COMPANY

Lower Tribunal Case No. Docket 20210015-EI

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

PSC Orders

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

Constitution & Statutes

TABLE OF AUTHORITIES

Rules

Other Authorities

STATEMENT OF CASE AND FACTS

I. Procedural Posture

A. The Initial PSC Proceedings

On March 12, 2021, Florida Power & Light Company ("FPL"), representing the merged and consolidated operations of FPL (serving peninsular Florida) and the former Gulf Power Company ("Gulf," serving Northwest Florida), filed with the Florida Public Service Commission ("Commission" or "PSC") a petition requesting approval of base rate increases pursuant to a four-year rate plan with unified rates for all customers (the "Rate Petition"). As discussed in more detail below in Point II.B, 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. 70124). 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. 52404-70106).

On March 24, 2021, shortly after FPL filed the Rate Petition and prepared testimony, the Commission issued an order that

established the schedule for the proceeding ("Order Establishing Procedure" or "OEP"). (R. 52383-52396). Under the OEP, all intervening parties were permitted to propound interrogatories, requests for production and requests for admission and had the opportunity to take depositions. (R. 52385-52387). All intervening parties also had the right to file testimony supporting their positions regarding FPL's Rate Petition. (R. 52388-52389).

Fifteen parties moved to intervene. (R. 47021-47034, 47929-47942, 51468-51472, 51912-51922, 52098-52099, 52339-52381, 52397-52403, 70162-70168, 70184-70189, 70202-70211, 70217-70218). Fourteen were ultimately granted intervenor status: the Office of Public Counsel ("OPC"), Florida Executive Agencies ("FEA"), Florida Industrial Power Users Group ("FIPUG"), Florida Internet & Television, Inc. ("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,[1] and Floridians

[1] Florida Rising, League of United Latin American Citizens, and Environmental Confederation of Southwest Florida were represented

Against Increased Rates, Inc. ("FAIR"). (R. 46330-46339, 51142-51144, 51254-51258, 51271-51278, 52114-52126, 52132-52135, 52141-52155).

FPL responded to over 2,900 discovery questions and produced thousands of pages of documents regarding the Rate Petition. *See, e.g.*, (R. 36651-36665, 43397); *cf.* (R. 34246 (*see* Attach. A, Confidential Tr. 2545)). Intervenors and the Commission's staff participated in 14 separate depositions of FPL witnesses. (R. 51936-51939, 51150-51154, 51134-51137, 45693-45698, 44623-44637, 44367-44370).

On June 21, 2021, thirty-six intervenor witnesses filed prepared testimony regarding their positions on FPL's four-year rate plan. (R. 47227-47928, 47943-48039, 48062-48398, 48402-48610, 48615-48718, 48911-49019, 49112-49483). Fifteen FPL witnesses filed rebuttal testimony. (R. 45709-46190). On August 2, 2021, the Commission held a prehearing conference on FPL's Rate Petition, and on August 10, 2021 it issued a prehearing order that set forth each

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by the same counsel and filed joint positions and witness testimony. *See, e.g.*, (R. 70202). For simplicity, these three companion appellants will be referred to herein as "Florida Rising."

party's position on 139 issues that were to be decided by the Commission in order to resolve the Rate Petition. (R. 43099-43338 (Order No. PSC-2021-0302-PHO-EI)).

B. The Settlement and the Ensuing PSC Proceedings

On August 11, 2021, FPL, OPC, FIPUG, FRF, and SACE filed a settlement containing the terms that would resolve all of the issues raised by FPL's Rate Petition (the "Settlement"). (R. 41296-43098). They jointly moved for Commission approval. (R. 41297-41307). Vote Solar and the CLEO Institute, Inc. joined as signatories to the Settlement on August 24, 2021, (R. 40965-40981, 41307), and FEA joined on August 27, 2021. (R. 38865-38870, 41307). The Settlement was not opposed by Walmart, (R. 34653), or the Florida Internet and Television Association. (R. 8096). The Settlement resolved all issues in FPL's Rate Petition in a manner that is supported by the eight Signatories. (R. 41310). The only parties who opposed the Settlement were FAIR, Florida Rising, and the Larsons. (R. 7792, 7808, 7878).

The Commission issued a Fourth Revised OEP, which established a process for developing additional record evidence regarding the Settlement. (R. 41053-41055). Signatories were

provided an opportunity to file prepared testimony in support of the Settlement, opposing parties had an opportunity to file their own prepared testimony, and additional discovery was permitted. (R. 41053-41054). Four witnesses filed testimony and exhibits supporting the Settlement, (R. 38878-40725, 40737-40762), and four witnesses filed opposing testimony and exhibits. (R. 36733-36864). FPL responded to more than 480 discovery requests regarding the Settlement. *See, e.g.*, (R. 38768-38842).

In accordance with the Fourth Revised OEP, the Commission held a hearing on September 20, 2021. (R. 38759-38761). The Commission first took evidence regarding the Rate Petition. *See* (R. 36377); *see also* (R. 8103-33829, 34247-34745, 34750-36628). All parties had the opportunity to cross-examine witnesses based on the prepared testimony. (R. 36428-36430). FPL and Appellants each presented two live witnesses. *See* (R. 34624); *see also* (R. 34247-34457, 34654-34745). All other prepared testimony was admitted into the record by stipulation. *See* (R. 36428-36430); *see also* (R. 34461-34623, 34748-36628).

The Commission then opened the testimonial record regarding the Settlement. *See* (R. 36377); *see also* (R. 33830-33862, 33884-

34005, 34012-34245, 34246 (*see* Attach. A, Confidential Tr. 2541-2581)). It admitted the prepared testimony of FPL's four direct witnesses and Appellants' four witnesses. (R. 34012-34245). Florida Rising and FAIR presented four witnesses who opposed the Settlement. (R. 34015-34143). As contemplated by the Fourth Revised OEP, FPL presented five witnesses who provided live rebuttal testimony and were thereafter tendered for cross examination as a panel. (R. 33884-34005, 34143-34245). They were cross examined by Florida Rising, FAIR, and the Larsons and questioned by the Commissioners. (R. 33884-34005).

On October 11, 2021, FPL, OPC, FIPUG, FRF, FEA and SACE filed post-hearing briefs supporting the Settlement as being in the public interest. (R. 7937-8075, 8085-8093). 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 the various components of the Settlement. (R. 7792-7946).

The Commission convened a special agenda conference on October 26, 2021, to consider the Settlement and deliberate on the outstanding issues. (R. 7710-7748). The Commission 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. 7727-7728, 7743-7746). It 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 "Final Order"). (R. 5245-6465, *as amended by* 5223-5225).

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;[2]

[2] The years 2022 and 2023 are known as the "test years." The base rate increases for each year under the Rate Petition are slightly lower than the figures presented in FPL's March 12, 2021 filing. FPL's accounting witness, Liz Fuentes, testified that the Company made certain computation corrections, which resulted in slightly

(3) maintenance of FPL's equity ratio and approval of a return on common equity ("ROE") midpoint of 11.50%;

(4) a Solar Base Rate Adjustment ("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"); and

(7) a storm cost recovery mechanism ("Storm Recovery").

(R. 26902-26907, 35831-35832, 70153-70155).

B. FPL Delivered Strong Results for Customers Under Prior Settlements

FPL's 2010, 2012, and 2016 settlements served as models for FPL's Rate Petition.[3] Those earlier settlements contained

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lower revenue requirements (base rate increase) for each test year. (R. 26902-26907, 35831-35832).

[3] FPL's 2010 settlement approval: *In re Petition for Increase in Rates by Florida Power & Light Co.*, Docket No. 080677-EI, Order No. PSC-11-0089-S-EI (F.P.S.C. Feb. 1, 2011);

mechanisms such as the RSAM, SoBRA and Storm Recovery, and they included an ROE that allowed the Company to attract the capital needed to make investments that benefit customers as well as the same equity ratio requested in the Rate Petition. *See, e.g.*, (R. 34332-34334, 34377, 34380, 34382, 34404). Numerous FPL witnesses explained that, while operating under multi-year settlement agreements, the Company delivered superior performance in terms of cost, service reliability and clean energy, among other things, all in ways that create customer value. *See, e.g.*, (R. 36386, 38892, 45713).

Cost. 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. 7972). FPL's cost efficiency in terms of operations and

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FPL's 2012 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 (F.P.S.C. Jan. 14, 2013);

FPL's 2016 settlement approval: *In re Petition for Rate Increase by Florida Power & Light Co.*, Docket No. 20160021-EI, Order No. PSC-16-0560-AS-EI (F.P.S.C. Dec. 15, 2016).

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 last settlement. (R. 41303). 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. 7972–73).

Clean energy. FPL's emissions profile is among the cleanest in the electric utility industry. (R. 7973). Since 2016, facilitated by the terms contained in its last settlement, particularly the SoBRA mechanism, 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, to customers and the state of Florida 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 rates adjustments coincident with the addition of cost-effective solar generation in 2024 and 2025. (R. 41311). 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. 7972).

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 projects that FPL reasonably projects will be constructed during 2024 and 2025, subject to a cap on installed costs of $1,250 per kW and a demonstration of cost effectiveness. Battery storage can be paired to the solar projects so long as total cost remains below the $1,250 per kW cap and the project is cost effective. (R. 41298–41299).
- 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. (R. 41299).
- 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.[4] (R. 41300).

- Authority for recovery of storm restoration costs on an interim basis 60 days following the filing of a cost recovery petition and tariff with the Commission. Consistent with prior similar mechanisms, recovery is capped at an amount producing a $4 per month surcharge on a typical residential 1,000 kWh bill. The storm reserve could be replenished up to its then-current amount, but in no event less than $150 million, to reflect the unification of FPL and Gulf. (R. 41301).

- Authority to adjust base revenue requirements to account for federal or state permanent tax changes, both increases and decreases, if any become effective for any of the tax years 2022 through the Term of the Settlement (the "Tax Reform Provision"). (R. 41301).

- 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. (R. 41302).

- Authority to continue Asset Optimization as a permanent program, subject to continued Commission oversight. (R. 41301).

Like the four-year proposal in the Rate Petition, most of the mechanisms in the Settlement replicate the terms contained in the prior settlement agreements. This was by design. The Settlement approved by the Commission follows the same foundational policies

[4] 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.

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 following mechanisms were instrumental to FPL's four-year "stay out":

Reserve Surplus Amortization Mechanism. The RSAM has been a primary enabler of multi-year agreements since 2011 as it enables the Company to avoid further base rate increases during the term of the Settlement. (R. 7975). 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. *Id.* The RSAM allows FPL to absorb changes primarily in cash revenues and expenses ***without an increase in customer rates***. (R. 8004).

Solar Base Rate Adjustment. The SoBRA in this Settlement functions in substantially the same way that FPL's prior SoBRA mechanism was prescribed and implemented. (R. 41323). It allows FPL to recover the incremental base revenue requirements associated with new cost-effective solar generation in the later years of the Settlement term, *i.e.*, 2024 and 2025, following Commission approval. *Id.* Inclusion of this mechanism for 2024 and 2025 as part

of the overall settlement helps to provide the Company with the ability to defer a general base rate increase in one or both of those years. (R. 41324). As this generation enters service, customers will immediately begin to receive fuel savings through the fuel adjustment clause, and the state will benefit from avoided emissions. *Id.*

Storm Recovery. In the Settlement, Storm Recovery is subject to the same procedure that served FPL's customers well under the Company's 2010, 2012, and 2016 rate settlements. (R. 26902–26907). If FPL incurs storm costs related to a named tropical storm, the Company may begin collecting, on an interim basis, up to $4 per month on a typical residential bill. (R. 41318). Recovery begins 60 days after FPL files a petition with the Commission and can last up to 12 months. *Id.* Under this framework, FPL may replenish its storm reserve to a level of not less than $150 million. (R. 41317-41318); *see also* (R. 34153-34154, 34377-34378).

Tax Reform. Under the Settlement, FPL may implement a limited scope base rate adjustment in the amount necessary to address the impact of tax-law changes on its revenue requirements. (R. 34179-34180). This provision is symmetrical: it applies whether

tax rates increase or decrease. *Id.* Base rates would change in the same direction. *Id.*

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. 45700–45718). FPL's 2021 Settlement follows the longer-view model, deliberately reinstituting terms that will promote extended rate stability and maintaining the core financial policies that allow FPL to execute its strategy, which delivers excellent value.

SUMMARY OF ARGUMENT

Appellants raise a host of arguments aimed at substituting this Court's judgment for that of the Commission contrary to well-established precedent. As this Court has held, the Commission reviews settlements "as a whole" to determine whether they are in the public interest, rather than examining them issue-by-issue (as it would in the absence of a settlement). When a Commission order approving a settlement reaches this Court, the standard of review is highly deferential: recognizing the Commission's expertise and statutory role in fixing fair rates, the Court will affirm the order as long as the Commission did not exceed its broad statutory authority and the order is supported by competent, substantial evidence.

Contrary to Appellants' arguments, Article V, § 21 of the Florida Constitution enacted in 2018 does not alter the Court's longstanding and highly deferential review of the Commission's factual findings. That constitutional provision states only that courts may not defer to an agency's interpretation of a state statute or rule, but must instead interpret statutes and rules *de novo*. Here, however, Appellants do not challenge the Commission's *statutory interpretations*. Instead, they challenge well-established rate mechanisms incorporated into

the Settlement and disagree with how the Commission weighed the *factual* evidence demonstrating that the Settlement is in the public interest. These challenges must be rejected. The Settlement, which is supported by the Public Counsel charged with representing all Florida customers as well as a broad coalition of others, is in the public interest.

Appellants launch a broad attack on the Commission's ability to approve the RSAM, which has been part of ratemaking for over a decade in this state. Similarly, Appellants assert that the Commission lacks authority to approve "future" rate increases in the Tax Provision, Storm Recovery, and SoBRA provisions, but the authority to approve such increases is rooted in express statutory language and this Court's precedent. Florida Rising even challenges the Asset Optimization program, which ensures that hundreds of millions of dollars in value are created and shared with customers consistent with Florida law and Commission policy.

Appellants also criticize the Commission's determination of FPL's ROE and capital structure, even though the Commission's determination is supported by a wealth of evidence and by all of the Settling Parties. In particular, Appellants suggest that FPL's ROE

should not exceed that of other Florida utilities, an argument contrary to controlling precedent that recognizes the Commission's authority to set an ROE based on utility-specific factors, including risk profiles and value of service.

Finally, Appellants challenge the prudence of various individual investments and mechanisms encompassed in the Settlement, directly contradicting the rule that settlements are to be assessed as a whole rather than by their individual components. Even if this inquiry were appropriate, however, the Commission received voluminous competent, substantial evidence supporting each aspect of the Settlement. As discussed below, that evidence amply supports the conclusion that the Settlement is in the public interest.

This Court should reject Appellants' challenges and affirm the Final Order.

ARGUMENT

I. Standard of Review

As this Court recently explained, "Commission orders arrive at this Court with a presumption that they are 'reasonable and just.'" *LULAC Fla. Educ. Fund, Inc. v. Clark*, No. SC21-303 (Fla. May 27, 2022) (order remanding case to PSC) (quoting *Sierra Club v. Brown*, 243 So. 3d 903, 907 (Fla. 2018)). This Court reviews the Commission's statutory interpretations *de novo*, Art. V, § 21, Fla. Const., but "it is not this Court's job to substitute [the Court's] policy views for the Commission's or to reweigh the evidence," *LULAC*, at 2. The Court has repeatedly confirmed that it "will not overturn an order of the PSC because we would have arrived at a different result had we made the initial decision and we will not reweigh the evidence." *Gulf Power Co. v. Fla. Pub. Serv. Comm'n*, 453 So. 2d 799, 803 (Fla. 1984).

Moreover, when the Commission is presented with a settlement agreement, the Commission reviews that agreement "as a whole," and "without necessarily having to make findings on every disputed issue" in order to comply with section 120.569(2)(*l*). *LULAC*, at 2; *Citizens of Fla. v. Fla. Pub. Serv. Comm'n*, 146 So. 3d 1143, 1153 (Fla.

2014) (*Citizens I*) ("[T]he Commission is not required by statute or case law to address each issue of disputed fact in its final order[.]"). The Court has expressly rejected arguments made by prior appellants who sought to reverse a rate case settlement on the ground that the Commission did not address their grievances regarding a specific investment. *See id.*; *Sierra Club*, 243 So. 3d at 913 ("[W]e conclude that the public interest was the appropriate standard to apply and there was no need for the Commission to make an express individual prudence determination.").[5] After all, settlements are a favored way of resolving rate cases, *Sierra Club*, 243 So. 3d at 909, and there would be little reason for settlement if the parties were required to prove that every issue in the case would be resolved in their favor without the settlement.

The Commission reviews settlements "under a broad, fact-dependent 'public interest' standard," *id.*, to determine "whether the agreement—as a whole—resolved all the issues; 'established rates

[5] The Court's *Citizens I* and *Sierra Club* decisions also foreclose Florida Rising's reliance on section 366.041(1) for the argument that the Commission was required to investigate each investment made by the Company even when evaluating a settlement.

that were just, reasonable, and fair; and that the agreement is in the public interest.'" *Id.* (quoting *Citizens I*, 146 So. 3d at 1164). This "fact-dependent" determination must be affirmed if "competent, substantial evidence supported the Commission's public interest finding." *Id.* at 914.

II. The Commission's Determination that a Settlement is in the "Public Interest" is a Fact-Bound Determination that is Entitled to Great Deference.

Under the plain text of section 120.57(4), Florida Statutes, the Commission may dispose of a rate proceeding "by stipulation, agreed settlement, or consent order" unless precluded by law. Accordingly, this Court has consistently recognized that rate cases may be resolved by settlement, even if those settlements are not unanimous. *Sierra Club*, 243 So. 3d at 909; *Citizens I*, 146 So. 3d at 1152-53. In such cases, unless the Commission exceeded its statutory authority, its final order must be approved so long as competent, substantial evidence supports its finding that a settlement is in the public interest. *Sierra Club*, 243 So. 3d at 909-10.

This Court has consistently recognized that the appropriate standard for reviewing a settlement is the public interest standard. Public interest is a "fact-dependent inquiry" that considers the

settlement agreement as a whole. *Id.* (citing *Citizens I* and outlining the standard as whether the agreement, taken as a whole, establishes rates that are fair, just and reasonable, and in the public interest). Unlike an agency's construction of a statute, which this Court reviews *de novo*, the Commission's fact-bound determination of public interest is entitled to great deference.

Florida Rising argues that "whether a settlement is in the public interest is fundamentally a question of law," which this Court should review *de novo* under Article V, § 21 of the Florida Constitution. (Fla. Ris. br. pp. 7-8). Florida Rising is wrong: this Court has repeatedly held, **both before and after the enactment of Article V, § 21,** that whether a settlement is in the public interest is a "fact-dependent" determination. *LULAC*, at 2; *Sierra Club*, 243 So. 3d at 911–12. Moreover, it is precisely the type of fact-bound determination that Florida law commits to the unique expertise and institutional ability of the Commission. After all, rate orders issued by utility regulators are "the product of expert judgment." *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (describing "end result doctrine" adopted in Florida in 1951).

The Commission has procedures for assessing the public interest in each case: for example, the Commission hears testimony from interested consumer, industrial, and environmental groups, receives letters from members of the general public, and receives reports and analyses from the regulated utilities themselves. *See generally* ch. 350, Fla. Stat. This process and the broad comprehensive nature of the evidentiary record resulting from this process is why the Commission is uniquely situated and has been granted exclusive jurisdiction by the Legislature over matters involving the rates and service of public utilities. *Fla. Pub. Serv. Comm'n v. Bryson*, 569 So. 2d 1253, 1254 (Fla. 1990). The Commission is also the sole arbiter charged with fixing "fair, just and reasonable rates." *Citizens of Fla. v. Pub. Serv. Comm'n*, 425 So. 2d 534, 540 (Fla. 1982) (citing §§ 366.06(2) and 366.05(1), Fla. Stat.).

For more than 60 years, this Court has consistently recognized "the broad legislative grant of authority which these statutes confer and the considerable license the Commission enjoys as a result of this delegation." *Citizens of Fla.* 425 So. 2d at 540; *see also City of Miami v. Fla. Pub. Serv. Comm'n*, 208 So. 2d 249, 253 (Fla. 1968) (citing *Jacksonville Gas Corp. v. Fla. R.R. & Pub. Utils. Comm'n*, 50

So. 2d 887 (Fla. 1951)). Indeed, in examining the very statutes that Appellants rely on in this case, the Court has explained that "[i]t is quite apparent these statutes repose considerable discretion in the Commission in the rate-making process." *City of Miami*, 208 So. 2d at 253.

Florida Rising's argument would upend this jurisprudence by transferring to this Court the responsibility to evaluate public interest in all cases *de novo*. Unsurprisingly, Article V, § 21 requires no such thing, stating only: "In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo." Nothing in Article V, § 21 changes the standard of review for inherently fact-bound questions such as whether a settlement agreement is in the public interest.

Sierra Club and *Citizens I* remain controlling authority for the review of Commission-approved settlements. *LULAC*, at 2 (observing continued viability of the *Sierra Club* and *Citizens I* holdings regarding standards of review for Commission orders approving settlements).

Appellants cherry-pick portions of the Settlement to which they object to argue that those aspects of the Settlement, considered in isolation, are not in the public interest or do not reflect assets "honestly and prudently invested" under section 366.06(1), Florida Statutes. This Court has rejected such an approach to reviewing Commission-approved settlements. *Sierra Club*, 243 So. 3d at 913. So long as the Commission acted within its grant of legislative authority, the Court will afford great deference to its findings of fact. *Id*. at 907-08. As is well-established, Appellants bear the burden of overcoming the presumption of validity regarding Commission orders. *See Gulf Power Co.*, 453 So. 2d at 806. And, in light of the Commission's broad grant of authority, it is not required, in defense of its Final Order, to identify a statute that authorizes each individual component of its rate-making decision. Rather, the burden is on Appellants to identify a statute that prohibits a specific decision. *Sierra Club*, 243 So. 3d at 907-08 (holding the burden lies with challenging party "to show departure from the essential requirements of law" (cleaned up)).

As discussed below, Appellants have not and cannot meet the heavy burden of demonstrating that this fair resolution of the rate

case supported by a broad coalition of customer groups is legally invalid. The Commission acted within the Legislature's grant of authority. No statute prohibits any of the mechanisms included in the Settlement, many of which have been previously examined by this Court. Accordingly, once it is established that the Commission acted within its authority, all that remains for this Court to determine is whether competent, substantial evidence supports the Commission's determination that the Settlement as a whole is in the public interest.

III. The Commission Has Authority to Approve the RSAM, Tax Reform, SoBRA, Storm Recovery, and Asset Optimization Provisions.

A. The Commission has repeatedly approved the RSAM and other ratemaking mechanisms challenged by Appellants

Appellants challenge ratemaking mechanisms and programs that the Commission has repeatedly examined and affirmed. In 2013, the Commission approved a non-unanimous settlement that resolved FPL's 2012 rate case. That settlement included an RSAM, a Storm Recovery provision, and an Asset Optimization program, all with terms substantially similar to those included in the Settlement here. In 2016, the Commission approved a non-unanimous settlement that resolved FPL's 2016 rate case. The 2016 settlement

essentially replicated the RSAM, Storm Recovery, and Asset Optimization program and introduced the SoBRA mechanism, all of which, again, functioned in substantially the same way as the analogous provisions here.

Both the 2012 and 2016 Commission orders approving those rate settlements were appealed by non-signatories and thus were subject to this Court's review. *Citizens I*, 146 So. 3d at 1143; *Sierra Club*, 243 So. 3d at 903. This Court evaluated both of those Commission orders and the various provisions that comprised the 2012 and 2016 settlements. Both settlement orders were affirmed. *Citizens I*, 146 So. 3d at 1173; *Sierra Club*, 243 So. 3d at 903.

Not long after the Commission approved FPL's 2016 settlement, the Commission also approved similar SoBRA provisions for Duke Energy Florida ("Duke") and Tampa Electric Company ("TECO").[6] The

[6] *See In re Application for Limited Proceeding to Approve 2017 Second Revised and Restated Settlement Agreement, Including Certain Rate Adjustments, by Duke Energy Florida, LLC*, Order No. PSC-2017-0451-AS-EU, at *4 (F.P.S.C. Nov. 20, 2017); *In re Petition for Limited Proceeding to Approve 2017 Amended and Restated Stipulation and Settlement Agreement, by Tampa Electric Company*, Order No. PSC-2017-0456-S-EI, at *3 (F.P.S.C. Nov. 27, 2017).

Commission also has approved an asset optimization program for TECO.[7]

By the time the Commission considered FPL's settlement in October 2021, the Commission also had considered and approved multiple rate settlements that addressed the possibility of a prospective, but unknown, change in tax law.[8, 9] In fact, a tax provision virtually identical to the one included in FPL's Settlement is included in the settlement agreements the Commission voted to

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[7] *See* Order No. PSC-2017-0456-S-EI, at *4.

[8] *See* Order Nos. PSC-2017-0451-AS-EU (Duke) and PSC-2017-0456-S-EI (TECO); *see also In re Petition for Rate Increase by Gulf Power Company*, Order No. PSC-17-0178-S-EI (F.P.S.C. May 16, 2017).

[9] FAIR relies on a statement in the prehearing order issued in Gulf Power's 2016 rate proceeding (Docket 20160186-EI) in which the Prehearing Officer stated that consideration of an unknown change in tax law was "premature and not ripe for consideration at this time." (FAIR br. p. 46). FAIR fails to inform the Court that the final order issued by the full Commission in that rate proceeding approved a settlement that included a provision to address a potential future change in tax law, just as the Tax Reform Provision in FPL's Settlement does. *See* Order No. PSC-17-0178-S-EI (noting that Gulf Power's 2017 rate settlement includes "a mechanism for addressing any federal corporate income tax reforms that *may occur* between the date we approved the Settlement and Gulf's next general base rate proceeding") (emphasis added).

approve for Duke[10] and TECO,[11] settlements that Florida Rising and FAIR uphold as models of excellence. *See* (Fla. Ris. br. p. 57; FAIR br. pp. 49-57).

These prior decisions correctly approved each of these mechanisms, which are well within the Commission's authority, as discussed in more detail below.

B. The RSAM is permitted under Florida law

In contesting the Commission's authority to approve the RSAM, SoBRA, Storm Recovery, Tax Reform, and Asset Optimization provisions, Appellants confuse ratemaking concepts when they argue that section 366.06(1) prohibits the RSAM. Nothing in section 366.06(1) dictates how to account for a depreciation surplus, and the statute certainly does not prohibit the fair solution that the Commission has successfully used for over a decade to protect all Florida customers.

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[10] *In re Petition for Limited Proceeding to Approve 2021 Settlement Agreement, Including General Base Rate Increases, by Duke Energy Florida, LLC*, Order No. PSC-2021-0202-AS-EI (F.P.S.C. June 4, 2021).

[11] *In re Petition for Rate Increase by Tampa Electric Company*, Order No. PSC-2021-0423-S-EI (F.P.S.C. Nov. 10, 2021).

Section 366.06 sets forth general principles and procedures that the Commission must apply in setting rates. The first paragraph of the statute defines the basic values that the Commission relies on to set rates, which should be enough to cover the utility's expenses and earn a reasonable return on its investment in property used for the public. To assess the investment, the Commission must keep a record of "the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation . . . ." § 366.06(1), Fla. Stat. In other words, the starting point for typical ratemaking is based on the value of the utility's useful assets, less accrued depreciation. The text of the statute expresses a simple concept: utility rate setting must account for the depreciation it already has recovered.

That was done here. FPL calculated depreciation expense based on the remaining value of the assets; that is, a value that excluded all depreciation that already had been recovered from customers. FPL used that level of depreciation expense to develop FPL's revenue requirements.

Section 366.06(1) does not dictate how surplus depreciation must be treated. Contorting the words "less accrued depreciation"

far beyond their plain meaning, Appellants effectively argue that these three words actually mean that whenever a surplus exists, a single, specific treatment is mandated and that the Commission has no discretion regarding how to reflect it when setting overall rates.

But nothing in the text of section 366.06(1) specifies how a utility must account for a surplus. *See generally Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1228 (Fla. 2009) ("In statutory construction, our task is to ascertain the meaning of the phrases and words used in a provision, not to substitute our judgment for that of the Legislature."); *Hayes v. State*, 750 So. 2d 1, 4 (Fla. 1999) ("We are not at liberty to add words to statutes that were not placed there by the Legislature."). In fact, section 366.06(1) does not address the existence of a surplus or a deficit at all. After all, the existence of a surplus does not indicate that the Commission has valued a utility's assets without accounting for accumulated depreciation. Rather, as explained above, a surplus occurs when new information indicates that the utility's level of accumulated depreciation as a result of prior ratemaking (*i.e.*, an earlier depreciation study with older information) is higher than it would be if the new information, such as longer asset lives, had been

recorded from the beginning. Because the Commission cannot retroactively undo the prior rate setting (and Appellants do not argue that the Commission's procedures for forecasting depreciation are faulty), it must determine what to do with the resulting surplus, a question on which section 366.06(1) is silent and therefore one upon which the Commission may exercise its ratemaking discretion.

Appellants' arguments therefore necessarily depend on second-guessing the Commission's resolution of rate-making questions, and thus they ask the Court to wade into an area in which the Commission has wide discretion and unquestioned expertise. There are no fixed guideposts determining the fairest or most efficient way to distribute the benefits of a surplus across all customers. As explained below, ample evidence supports the inclusion of the RSAM as a logical way to handle the surplus in a manner that benefits both customers and FPL and supports the Commission's determination that including the RSAM as an element of the Settlement results in fair rates over a four-year period.

C. The RSAM Is a Permissible Mechanism for Avoiding $2 Billion of Further Rate Increases

The RSAM is a critical component of the Settlement that allows FPL to flexibly respond to changes in its underlying revenues and expenses and make essential investments in infrastructure without charging customers a single extra dollar. Through the RSAM, FPL amortizes the surplus that results from applying the latest view primarily on assets' useful lives as compared to the current balance of accumulated depreciation. (R. 33985). Critically, the Settlement does not allow FPL's shareholders to simply keep this surplus. Instead, the Settlement requires FPL to use the RSAM to offset expenses incurred and investments made for the benefit of customers. (R. 34152-34153).

Depreciation is "loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property." *Tamaron Homeowners Ass'n, Inc. v. Tamaron Utils., Inc.*, 460 So. 2d 347, 352 (Fla. 1984) (quoting *Lindheimer v. Ill. Bell Tel. Co.*, 292 U.S. 151, 167 (1934)). The purpose of depreciation is to systematically spread the recovery of prudently invested capital over the period the plant assets represented by the capital are providing

service. *In re St. Joe Nat. Gas Co., Inc.*, 2003 WL 22358656 (F.P.S.C. Oct. 6, 2003); *see also Verizon Fla., Inc. v. Jaber*, 889 So. 2d 712, 716 (Fla. 2004) (depreciation life refers to "the period of time during which an object has effective usefulness and utility").

Differences between estimated lives and actual lives are inherent and unavoidable. As time passes, more information is known and better estimates of life and salvage can be determined. *See In re Petition for Rate Increase by Fla. Power & Light Co.*, Docket No. 080677-EI, Order No. 2010-0153-FOF-EI, at 83 (F.P.S.C. Mar. 17, 2010). In the simplest terms, if, based on new information, assets are expected to remain useful for a longer period than previously estimated, the utility will have a reserve surplus because the actual accumulated depreciation recorded on the utility's books and records is higher than it would be if the longer useful life had been applied to the assets from the beginning. Conversely, if assets are expected to reach the end of their useful life earlier than previously estimated, the utility will have under-collected and would be in a deficit position.[12]

[12] For example, if a depreciation study estimates that a $100 asset is estimated to have a 20-year life, then FPL would collect (on

The RSAM ensures that both consumers and FPL benefit from the surplus identified here. The RSAM directly benefits customers by avoiding rate increases: in any instance where FPL's earnings might fall below the ROE range, FPL is required to draw from the surplus to make up the difference rather than petitioning for an increase in rates. (R. 33986-33987). The RSAM also benefits FPL, allowing FPL to draw from the surplus so long as it does not exceed the upper end of the ROE range. (R. 34153-34154).

This sensible mechanism is an essential component of the Settlement and a key reason why FPL can commit to the Settlement's four-year term, because the RSAM allows FPL to respond to unexpected changes without seeking a change in rates. (R. 33893).

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a straight-line basis) $5 annually (annual depreciation expense) to recover the cost of that asset. By the fourth year, FPL would have collected $20 (accumulated depreciation). If, at the end of the fourth year, updated information indicates that the same asset is estimated to have a 25-year life, that means FPL should have been collecting only $4 a year, or $16. The excess $4 is a surplus, which is included in the depreciation reserve surplus. Therefore, a change in the estimated life of an asset has two principal effects: (1) it reduces the depreciation expense to be collected from customers annually, which, in turn, reduces the utility's revenue requirements.; and (2) it creates a depreciation reserve surplus. The opposite would occur if the updated study had estimated a 10-year life: FPL should have collected $40 and would therefore be in a deficit position and would need to increase depreciation expense (and rates).

In fact, the RSAM has been previously approved by the Commission as a core element in FPL's 2010, 2012, and 2016 settlement agreements. (R. 33988). This framework has been a necessary part of FPL's ability to continue to deliver value for customers over the last decade. (R. 34380). Contrary to FAIR's assertion, the RSAM in this Settlement functions in all material ways like those previously approved settlements.

Appellants argue that the Commission should not have approved the RSAM for four reasons: (1) the RSAM violates section 366.06(1); (2) the RSAM is unfair or unjust because it does not transfer all benefits of the surplus to customers; (3) the RSAM virtually ensures FPL will earn at the top of its ROE range; and (4) the surplus itself is artificial and not supported by evidence. Each of these arguments fails both legally and factually. The Commission acted within its authority in approving the RSAM.

1. Customers directly benefit from the accrued depreciation that comprises the RSAM reserve

The RSAM in the Settlement has a direct and beneficial impact on customers. Appellants' contention that this mechanism violates section 366.06(1) because FPL "keeps" the accrued depreciation "for

itself" has no basis in law or fact. *See* (FAIR br. pp. 32-35). The RSAM is a substitute for incremental cash-based rate and bill increases over the term of the Settlement that, in the absence of the RSAM, FPL would have recovered from customers. (R. 33986-33987, 33997-33998).

a. *The RSAM avoids $2 billion in cash increases for current customers*

As described above, Appellants cannot identify any statutory requirement dictating how the Commission must address a reserve surplus in all circumstances because no such requirement exists. Even the precedent upon which FAIR relies provides that when a surplus arises, circumstances (such as the size of the reserve) "dictate what action should be taken." (FAIR br. p. 30). The better approach, as articulated in the Commission's precedent and underscored by FAIR, is one that benefits the customers who created the surplus. *See* Order No. 2010-0153-FOF-EI at 83 ("[T]he quicker [the action taken] the better so that the ratepayers who may have overpaid would have a chance of benefitting.") (*quoted in* FAIR br. at

p. 30).[13] That is precisely what the RSAM accomplishes. Current customers benefit both immediately and throughout the term of the Settlement.

The RSAM avoids $2 billion of cash increases over the four-year term of the Settlement. First, incorporating the RSAM-adjusted depreciation lives reduced FPL's revenue requirement by almost $200 million each year of the Settlement, representing an approximately $800 million immediate total cash rate reduction over the four-year minimum term. (R. 33648-33649, 33892-33893, 34190). In addition, Scott Bores, FPL's Senior Director of Financial Planning & Analysis, testified that FPL will continue to invest for the benefit of customers in 2024 and 2025, despite agreeing to forgo general base rate increases in those years. (R. 34186-34187). Mr. Bores estimated that incremental revenue requirements would amount to

[13] FAIR relies heavily on Order No. 2010-0153-FOF-EI, the Commission's ruling on FPL's 2009 rate petition, but fails to apprise the Court that, in the aftermath of that ruling, the Commission approved a settlement that resolved all issues in that rate petition (referenced, *supra*, as the "2010 settlement") including FPL's treatment of a depreciation reserve surplus. Under the 2010 settlement, FPL was authorized to amortize the surplus through the use of an RSAM that functioned in all material respects like the RSAM that FAIR challenges here.

$411 million in 2024 and 2025 and an additional $454 million in 2025—or a total cumulative amount of $1.276 billion. (R. 34187). This means that FPL will use 90% of the Reserve (the accumulated depreciation) just to earn at its **ROE midpoint** in 2024 and 2025 so that it can offset costs incurred to serve customers. (R. 34187).

In the absence of an RSAM, FPL would need cash increases to cover the $2 billion. (R. 34190). The Company would be forced to initiate a rate case in 2023, seeking new rates to be effective in 2024 and would restart that process in 2024 for rates to be effective in 2025. (R. 33893, 33980, 34410). Effectively, the accumulated depreciation paid for by customers was returned to them in the form of avoided near-term cash increases: this use of the Reserve is a "quick" way to provide "the ratepayers who may have overpaid . . . a chance of benefitting." *See* (FAIR br. p. 30 (quoting Order No. 2010-0153-FOF-EI at 8)).

b. *RSAM helps FPL manage fluctuations and disruptions in the business*

The RSAM not only avoids cash increases that would result from the anticipated increases in FPL's base revenue requirements, it also

helps FPL and its customers mitigate the impact of both unanticipated "everyday" events and significant disruptions.

Because 90% of the Reserve is needed to offset anticipated investments, only about 10% would be available for FPL to manage other increases in the cost of doing business through each year of the Settlement term. (R. 34187). 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. 34188). In fact, the evidence showed that FPL likely had understated its revenue requirements. By the time the hearing in this matter took place, independent experts were calling for a doubling of inflation rates, and a committee of the United States Central Bank projected that interest rates could rise sooner than had been expected when FPL prepared its financial forecasts. (R. 27193-27200, 36616). 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.

FPL's witnesses also described three notable ways in which the RSAM included in FPL's prior settlement agreements helped it

weather significant business disruptions or avoid bill increases for customers. First, in 2017, FPL incurred $1.3 billion in storm restoration costs following Hurricane Irma. (R. 36459, 36587). Rather than raise customer rates through a multi-year surcharge, FPL used the flexibility afforded by the RSAM to amortize $1.25 billion to offset the expense incurred, and it forwent collecting those costs from customers. (R. 36587-36588). FPL later determined it would take the same approach for Hurricanes and Tropical Storms Dorian, Isaias and Eta, each time avoiding storm surcharges on customer bills. (R. 36588).

Second, in 2020, when faced with an unprecedented COVID-19 global pandemic, all Florida investor-owned utilities incurred significant levels of bad debt (uncollectible receivables) when they suspended customer disconnections due to non-payment. (R. 34386, 36042). Many other Florida investor-owned utilities petitioned the Commission for cost-recovery relief.[14] FPL did not. Its financial

[14] *See, e.g.*, *In re Petition for Approval of a Regulatory Asset to Record Costs Incurred Due to COVID-19, by Gulf Power Company*, Docket No. 20200151-EI, Order No. PSC-2021-0266-S-PU (F.P.S.C. Aug. 26, 2021); *In re Petition for Approval of Regulatory Assets to Record Costs Incurred Due to COVID-19, by Florida Public Utilities Company, et al.*, Docket No. 20200194-PU, Order No. PSC-2020-

strength combined with the ability to employ flexibly the RSAM mechanism allowed FPL to offset millions of dollars in pandemic-related bad debt. (R. 34345-34386, 36042).

Finally, in 2021, the availability of the RSAM allowed FPL to "stay out" of a rate case for a period of five years rather than four, meaning customers benefitted from an extra year of no base rate increases on their bills. (R. 33978-33979, 36412). FPL also projected that, at the end of the fifth year, $346 million would remain, further evidencing FPL's prudent employment of the RSAM as a tool that benefits customers rather than one that enriches shareholders. (R. 36619).

2. The RSAM does not allow FPL to impermissibly exceed earnings targets

Appellants also argue that the RSAM "guarantees" that FPL will earn at the top of the authorized ROE range. (Fla. Ris. br. pp. 44-50; FAIR br. pp. 35-41). This is wrong on both the facts and the law. In

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0404-PAA-PU (F.P.S.C. Oct. 26, 2020); *see also In re Petition for Approval to Track, Record as a Regulatory Asset, and Defer Incremental Costs Resulting from the COVID-19 Pandemic, by Peoples Gas System*, Docket No. 20200178-GU (petition filed July 2, 2020); *In re Petition for Approval of a Regulatory Asset to Record Costs Incurred Due to COVID-19, by Utilities, Inc. of Florida*, Docket No. 20200189-WS (petition filed Aug. 3, 2020).

fact, as noted above, FPL would need to use almost all of the RSAM just to earn at the ***midpoint*** of the current ROE range. (R. 34189). To earn toward the top of the range, FPL would need to make significant improvements in "FPL-funded efficiency measures or entrepreneurship," which even FAIR concedes is "entirely acceptable and consistent with the Regulatory Compact." (FAIR br. p. 40.)

Appellants lean heavily on history, pointing out that FPL has successfully earned at the high end of its range for many years now. Again, FPL's success is attributable to its best-in-class business model, not its accounting practices. Witness Bores demonstrated that FPL's historical ability to earn at the high end of its authorized range was attributable to its focus on productivity improvements. (R. 34189). From 2017 to 2021 (under FPL's 2016 settlement agreement), FPL's superior cost management produced more than $1.1 billion in non-fuel operations and maintenance savings.[15] (R. 34412).

[15] That cost performance delivered about 90 basis points of the 95-basis points improvement to FPL's ROE above its midpoint on average.

Moreover, the Commission-approved ROE range is just that: a range. No legal principle precludes FPL from earning at the top end of that range rather than the midpoint—especially if it can do so without raising bills by a single cent, using the RSAM. Just as nothing would allow FPL to petition for higher rates during the Settlement period if it ends up earning at the low end of the range.

The Commission, not this Court, is well-positioned to determine the appropriate range as well as the midpoint. In *Gulf Power Co. v. Wilson*, on which Appellants rely, this Court expressly approved the Commission's discretion to adjust rates to target a return nearly anywhere within the range. 597 So. 2d 270, 273 (Fla. 1992). Under *Gulf Power*, the Commission "may" adjust rates to account for a utility's consistently earning at the top of the range; but the Commission also "may" adjust rates to reward good management, to incentivize energy conservation, to account for business fluctuations, or to achieve any number of goals in the public interest that the Commission is charged with protecting. *Id.* After all, "the purpose of having a range is to give the commission some flexibility," and the existence of a range does not limit the Commission's discretion. *Id.* (quoting *United Tel. Co. of Fla. v. Mann*, 403 So. 2d 962, 968 (Fla.

1981)). Here, the Commission exercised its considerable discretion; accounted for FPL's historical performance; and set rates in a manner under which FPL (i) cannot even hit the midpoint ROE throughout the term without drawing from the RSAM, and (ii) is incentivized to find further efficiency gains in its business to earn at the top end of the range. The Commission's decision in this regard is supported by competent, substantial evidence and should be affirmed.

3. The reserve reflects reasonable depreciation lives

Florida Rising (but not FAIR) raises a self-defeating challenge to the appropriateness of the surplus itself, questioning whether the adjusted asset lives supporting the surplus are artificial. (Fla. Ris. br. p. 44.) This argument undermines Florida Rising's suggestion that the surplus that funds the RSAM be returned to customers; if no surplus really exists, then there is nothing to be used to benefit customers. Nonetheless, this is a challenge to the Commission's findings of fact, which are plainly supported by competent, substantial evidence.

The Commission had more than sufficient evidence upon which to adopt the longer lives that gave rise to the Reserve surplus. *See*

Verizon Fla., 889 So. 2d at 716 (affirming Commission's adoption of depreciation lives that "represent[ed] a good compromise" on the ground that expert testimony supported such adoption). The depreciation rates underlying the RSAM are based on FPL's 2021 Depreciation Study, plus reasonable adjustments to four categories of assets.

Based on testimony from FPL's Vice President of Power Generation that FPL has made significant investments in upgrading the primary components of "combined cycle" generating plants, and testimony from FPL's Vice President of Development about the potential to use different fuel sources, FPL's combined cycle generating plant lives were adjusted from 40 years to 50 years.[16] (R. 35675-35676). The second adjustment increased the plant life of the St. Lucie nuclear generation sites from 60 years to 80 years, supported by testimony from FPL's chief nuclear officer, who explained that the Company filed its application for license renewal with the Nuclear Regulatory Commission in August 2021 and had a

[16] In addition, there also was evidence of at least one combined cycle plant in Oklahoma that was approaching 50 years in service.

high level of confidence that the application would be approved. (R. 35675-35676).

Third, based on evidence from a U.S. Department of Energy survey in which solar industry professionals indicated that there has been an increase in recent years in the useful life of solar generating plants, with some industry experts suggesting that a 35-year life is feasible, the lives of solar generating plants were increased from 30 years to 35 years. (R. 35675-35677). Finally, for transmission, distribution and general plant, FPL adopted asset lives and salvage values that were anchored on the 2021 depreciation study or the lives approved in FPL's 2016 rate settlement. (R. 35675). All of these conclusions were supported by competent, substantial evidence, which this Court does not "reweigh" when reviewing factual determinations by the Commission. *Citizens I*, 146 So. 3d at 1164.

Still, Florida Rising argues that these adjustments must be artificial because FPL *also* presented evidence that could support shorter asset lives (and thus higher depreciation expenses). (Fla. Ris. br. p. 46.) This is a non-sequitur: while FPL presented evidence that the shorter asset lives originally expected were supportable, FPL advocated that the Commission accept the adjusted, longer asset

lives, creating a surplus that benefits all participants and that can be appropriately shared through the RSAM. (R. 35675–35678). The Commission appropriately chose to approve a four-year Settlement that was made possible by the adoption of longer depreciation lives based on competent, substantial evidence in the record. *See Verizon Fla.*, 889 So. 2d at 716 (affirming Commission's selection of depreciation rates among different alternatives).

D. The Tax Provision, Storm Recovery, and SoBRA Provisions Are Consistent With the Commission's Express Authority To Adjust Rates for Future Periods

Florida Rising argues that the Commission exceeded its authority by approving the Tax, Storm Recovery, and SoBRA provisions on the erroneous premise that these mechanisms allow rates to increase without a proper hearing. (Fla. Ris. br. pp. 50-56). FAIR asserts a similar argument but limits its challenge to only the Tax Provision. (FAIR br. pp. 43-45). This Court rejected this very contention in *Citizens I* and should do so again here.

In *Citizens I*, the Office of Public Counsel appealed the Commission's order approving FPL's 2012 rate settlement, which included a Generation Base Rate Adjustment ("GBRA"), the predecessor to the SoBRA mechanism. 146 So. 3d at 1147. The

GBRA authorized FPL to implement future rate adjustments when certain generation units came online to reflect the annual revenue requirement associated with each unit.[17] *Id.* at 1160. OPC argued that each requested rate adjustment should have required a new application for changes in rates. It also argued that the mechanism should not have been approved because the mechanism "would relieve FPL from the burden of demonstrating that it requires an increase in base rates given the totality of its operations." *Id.* at 1160, 1169. The Court disagreed on both legal and factual grounds.

First, as a statutory matter, the Court observed that the plain language of section 366.076(2) grants the Commission authority to approve subsequent year adjustments. *See id.* at 1157 n.7; *see also* § 366.076(2), Fla. Stat. ("The commission may adopt rules for the determination of rates in full revenue requirement proceedings which rules provide for adjustments of rates based on revenues and costs during the period new rates are to be in effect *and for incremental*

[17] Specifically, it authorized base rate adjustments limited to the first-year revenue requirements associated with three different generation units to be implemented at the time they entered commercial service.

adjustments in rates for subsequent periods.") (emphasis added). Under that authority, the Commission promulgated Rule 25–6.0425, F.A.C., which provides:

> The Commission may in a full revenue requirements proceeding approve incremental adjustments in rates for periods subsequent to the initial period in which new rates will be in effect.

Citizens I, at 1157.

The Court also pointed to the decades-old principle that the Commission must "combat 'regulatory lag' by granting prospective rate increases which enable the utilities to earn a fair and reasonable return on their investments." *Id*. at 1157 n.7; *Floridians United for Safe Energy, Inc. v. Pub. Serv. Comm'n*, 475 So. 2d 241, 242 (Fla. 1985) ("[I]t is appropriate for [the] PSC to recognize factors which affect future rates and to grant prospective rate increases based on these factors.") (citing *Citizens of Fla. v. Hawkins,* 356 So. 2d 254 (Fla.1978); *Gulf Power Co. v. Bevis,* 289 So. 2d 401 (Fla. 1974); and *City of Miami v. Fla. Pub. Serv. Comm'n*, 208 So. 2d 249 (Fla. 1968)).

On factual grounds, too, the Court was unpersuaded by OPC's requests to invalidate the GBRA because FPL "did not demonstrate a need for the rate base adjustments." The record in *Citizens I* revealed

that the cost for the generation in question was submitted to the Commission for review. *Citizens I*, at 1160. The Court further emphasized that, because the base rate adjustments would be tied to the midpoint ROE and capital structure authorized in the settlement, implementation of the GBRAs would not cause FPL to over-earn.[18] *Id.* at 1160, 1170.

The same reasoning supports the Commission's approval of the Tax Reform Provision, Storm Recovery, and SoBRA here. Each mechanism was approved "in a full revenue requirements proceeding" and provides for "incremental adjustments in rates" during periods "subsequent to" the initial test years. § 366.076(2), Fla. Stat. Accordingly, the Commission's authority stems directly from the plain language of section 366.076(2) and the corresponding Commission rule. These mechanisms combat the lag—and inefficiencies—that would otherwise occur if no cost recovery

[18] This rate-making effect is known colloquially as "midpoint seeking." FPL witness Barrett explained what this means mathematically: "[I]f, at the time of the adjustment, FPL is earning below the midpoint of its authorized ROE range, the adjustment will tend to push earnings toward (but not over) the midpoint. Likewise, if FPL is earning within its authorized ROE range but above the midpoint, the adjustment will drive earnings down toward (but not under) the midpoint." (R. 34340).

occurred until FPL next files a full revenue requirements proceeding. Moreover, FPL presented evidence that it could not commit to the four-year settlement stay-out without the RSAM, Tax Reform, and SoBRA mechanisms. (R. 36625, 34235, 34334, 34388-34389, 34410).

Like the GBRA mechanism affirmed in *Citizens I* as part of FPL's 2012 settlement, any rate change FPL requests under the Tax Provision, Storm Recovery, or SoBRA will be subject to Commission review. And all parties with standing—signatories and non-signatories alike—will have a point of entry to examine the costs.

- Under the Tax Reform Provision, FPL must submit revenue requirement calculations showing the impact from changed tax laws. (R. 41324-41326 ((¶ 13)).
- Storm Recovery requires FPL to demonstrate the costs incurred are prudent and accounted for in the manner set forth in the Commission's storm rule. (R. 41317-41318(¶ 10)); *see also* Rule 25-6.0143, F.A.C. ("All costs charged to Account 228.1 are subject to review for prudence and reasonableness by the Commission."); (R. 34445-34446 ("The Company still must finance the total

restoration effort, assisted by the cash provided by [Storm Recovery], and still bears all the prudence risk when the restoration costs are reviewed many months after the restoration is complete.")); and

- SoBRA recovery is subject to either a Power Plant Siting Act Need Determination, as were the GBRA units examined in *Citizens I*, or a demonstration by FPL that the solar installations are cost-effective and that the construction costs were reasonable. (R. 41320-41321 (¶¶ 12(b) and (c))). FPL also bears the burden of showing that the calculation of its revenue requirements and rate adjustment factor comport with the methodology prescribed by the Settlement. *Id.*; *see also Fla. Indus. Power Users Grp. v. Brown*, 273 So. 3d 926, 932 (Fla. 2019) (observing that the SoBRA provision in FPL's 2016 settlement requires that "FPL will file a request for approval of the solar project in the Fuel Cost Recovery Clause docket").

Thus, contrary to Appellants' mischaracterization, none of these mechanisms entitles FPL to an "automatic increase." Indeed, in the

case of the Tax Reform Provision, rates can ***decrease*** just as easily because the provision provides symmetric treatment: base rates will *decrease* if changes to state or federal laws lower the Company's tax expense. (R. 34179-34180, 38930).

In addition, consistent with *Floridians United for Safe Energy*, these mechanisms will enable FPL to earn a fair and reasonable return. 475 So. 2d at 242. Under the Settlement, FPL remains bound to stay within the authorized earnings range. If the implementation of any of these mechanisms caused FPL to earn in excess of the top of the that range, the Company would find itself in an "overearning" position, which triggers the right of the Commission or any party with standing to force FPL into a new rate proceeding. (R. 41326-41327 (¶¶ 14(a) and (b))).

If more were needed, the revenue requirements for the SoBRA, like the GBRA that preceded it, must be calculated based on the midpoint ROE so it is mathematically guaranteed not to increase FPL's ROE above the midpoint. (R. 33960). Rather, it is midpoint seeking: if, at the time of the adjustment, FPL is earning within its authorized ROE range but above the midpoint, the adjustment will drive earnings down toward (but not below) the midpoint. (R. 34388).

E. Asset Optimization Permissibly Allows Customers to Benefit from Assets that Would Otherwise Be Underutilized

The Asset Optimization program incentivizes FPL to create value from existing assets, which would otherwise be unmonetized, by providing FPL an opportunity to share in a portion of that value if certain targets are exceeded while most of the value is used to offset customers' fuel costs. (R. 35722-35723). While Florida Rising portrays this as a zero-sum game, the reality is that the program is a win-win: through the incentive, FPL is strongly motivated to find new ways to use existing assets and ultimately reduce customers' fuel costs. This program has worked successfully for almost a decade, providing over $354 million to consumers and just over $52 million to FPL since 2013—value that would not have been created without Asset Optimization. (R. 35724).

Nonetheless, Florida Rising claims that the Commission lacks authority to approve this sensible program because it "seeks recovery of costs from activities unrelated to generation, transmission, or distribution of electricity." (Fla. Ris. br. p. 51). This argument misunderstands the program and controlling Florida law, and should be rejected.

1. Background: The Asset Optimization Program

The Asset Optimization Program is designed to create additional value for FPL's customers by optimizing the use of existing utility assets while also providing an incentive to FPL to achieve certain customer-value thresholds. Gains created through the program reduce and offset fuel expenses that are currently being recovered through the fuel adjustment clause. (R. 35725-35726). First introduced as a pilot in FPL's 2012 settlement and then continued in 2016, the program overhauls the Commission's standard incentive mechanism that was strictly limited to gains associated with the regional sale of excess power. (R. 35720-35721).

Through Asset Optimization, FPL has created additional value by not only selling excess electricity into more regions, but also purchasing power in the market for FPL customers when it is more economic for them. (R. 35721-35722). The pilot added new activities such as natural gas storage optimization, natural gas sales, capacity releases of natural gas transportation, and selling rights on third-party electric transmission when they are not needed by FPL. (R. 35682-35723). To incentivize success under the program, FPL's

investors share in a portion of the value created, but only if the Company surpasses strict thresholds. (R. 35722).

The Settlement further expands allowed optimization activities to include "*all* fuel sources" and the sale of renewable energy credits ("REC") FPL has accumulated on behalf of customers. (R. 35727-35728). The Settlement establishes Asset Optimization as an ongoing program subject to continued Commission review. (R. 35725-35726).

Asset Optimization has worked as intended for both FPL's customers and FPL. Sam Forrest, FPL's Vice President of Energy Marketing and Trading, testified that, for the years 2013 through 2020, there was a total benefit of about $406 million from all program activities, far more than would have been attained under the Commission's standard incentive program. (R. 35724). Of this total, customers received about $354 million as a reduction to its fuel costs, and FPL received $52 million. (R. 35724).

2. The Commission has authority to approve the Asset Optimization Program.

The Commission's approval of this customer-benefitting program is consistent with its duty to regulate in the public interest,

s*ee* § 366.06(1), Fla. Stat., and Florida Rising cannot overcome the presumption of validity afforded to the Commission's determination. *See Gulf Power Co.*, 453 So. 2d at 806. Florida Rising relies on *Citizens of Fla. v. Graham*, 191 So. 3d 897 (Fla. 2016), but that case has no application here. (Fla. Ris. Br. p. 51). In that decision, this Court held that the Commission could not approve cost recovery for FPL's planned investments in gas exploration because that activity—exploration of potential natural gas reserves—strayed beyond the Commission's jurisdiction. *Graham*, 191 So. 3d at 901. The *Graham* Court also recognized the "undisputed" principle that "the PSC's ratemaking authority encompasses the authority to examine fuel cost expenditures and approve cost recovery to compensate for utilities' fuel expenses . . . ." *Id.* at 901-02.

Asset Optimization activities fall within the jurisdictional parameters described in *Graham* because they relate to the generation, transmission, and distribution of power or fuel expenditures examined by the Commission. As discussed above, under the Program, FPL will sell excess power generated, or purchase power generated, from the market when doing so is economic. (R. 35727-35728). Likewise, RECs are byproducts of energy generation

produced by FPL's solar sites, which have value in the market. (R. 35728). These activities relate to the generation of electricity. The program also incentivizes the sale of transmission rights when not needed by FPL. (R. 35723). FPL can also sell excess natural gas, natural gas transportation, and natural gas storage. (R. 35728). All of these are long-recognized utility fuel expenses, the cost of which the Commission is authorized to review and approve.

Unlike the gas exploration investments at issue in *Graham*, Asset Optimization does not rely on the procurement of new assets. Rather, under the program, FPL creates value from existing assets that would otherwise remain unutilized when they are not needed to serve customers.[19] (R. 35744). Contrary to Florida Rising's suggestion, the value created by this program is not "privatized" by FPL. (Fla. Ris. br. p. 52). Rather, the value flows to consumers as a reduction in fuel costs, which allows them to enjoy the savings in the form of lower bills that result from FPL's monetization of these assets. (R. 35725-35726, 35743-35744).

[19] Asset Optimization transactions are not based on speculation. They are executed only if they are economic, *i.e.*, create gains or generate immediate savings.

Florida Rising's argument, if accepted, would limit the Commission's power in strange and intolerable ways. For example, under Florida Rising's premise, the Commission can approve recovery of costs associated with the generation of clean energy, which in turn results in clean energy credits; but the Commission cannot allow a utility to sell those credits or do anything with them, depriving the utility and its customers of the benefits created as an incident of generation. Similarly, the Commission can permit cost recovery when a utility purchases transmission rights from a third party (known as "transmission capacity"), but Florida Rising would prohibit the Commission from allowing a utility to sell unused capacity (again, depriving both the utility and customers of a benefit incident to transmission). Nothing in *Graham* or any other provision of Florida law compels this result that would only hurt FPL's customers.

IV. The SolarTogether Program Was Already Approved, and the Settlement Only Expands Its Benefits to More Customers

FPL's existing SolarTogether program, originally approved by the Commission in 2020, will be expanded under the Settlement to allow additional customers to participate in and benefit from the

development of solar generation facilities in Florida. (R. 34208-34209). Florida Rising argues that the Commission lacks authority to approve the extension, claiming that the program constitutes an "undue preference."[20] (Fla. Ris. br. pp. 20-21). But the fundamental construct of SolarTogether, as originally approved, remains unchanged under the Settlement. Florida Rising's attempt to dismantle the original program design is a thinly-veiled collateral attack on the Commission's order approving the SolarTogether Program. This is prohibited by the doctrine of administrative finality.

[20] Florida Rising also challenges FPL's cost-effectiveness analysis. (Fla. Ris. br. pp. 26-28). That determination is, however, a factual one. *Fla. Indus. Power Users Grp. v. Brown*, 273 So. 3d 926, 932 (Fla. 2019) (analyzing whether Commission's cost-effectiveness finding was supported by competent, substantial evidence). In its brief, Florida Rising does not argue a *lack* of evidence; it simply urges the Court to accept its expert's position instead of FPL's. FPL witness Bores presented the Company's economic analysis that demonstrated benefits for all customers. (R. 34178, 34193). Mr. Bores also described multiple flaws inherent in the "math" performed by Florida Rising's expert. (R. 34193-34194). After hearing from both experts, the Commission determined that the Settlement as a whole, including the SolarTogether extension, is in the public interest. This Court will not reweigh the evidence or second-guess the Commission's conclusion.

See Fla. Indus. Power Users Grp. v. Brown, 273 So. 3d 926, 930 (Fla. 2019).

A. Background: The SolarTogether Program

Original SolarTogether approval. In its March 2020 order approving the program, the Commission authorized FPL to construct 1,490 MW of 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 (F.P.S.C. March 20, 2020) ("Order 2020-0084"). As described in that approval order, SolarTogether "allow[s] FPL customers to subscribe to a portion of new solar capacity built through the Program (subscription charge) and to receive a credit of a portion of the system savings produced by that solar capacity (subscription credit)." *Id.* at *2. The 1,490 MW 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.

The generation from the solar units was projected to save customers $249 million. *Id.* at *4. Under the original program, the general body of customers are not expected to pay for the cost of SolarTogether over the life of that program, but nevertheless would

receive 45% of the benefit. *Id.*; (R. 34216).[21] By contrast, the participants will cover all Program costs while receiving 55% of the projected benefits. Order 2020-0084 at *4. In other words, non-participants receive benefits generated by assets **without paying for the assets that created the savings**. This program design, including the allocation of costs and benefits, dispels any argument that non-participating customers would improperly subsidize participating customers.

SolarTogether extension. The Settlement extends SolarTogether by allowing FPL 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. 41332-41333 (¶ 20)). 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. 34208). The Settlement maintains SolarTogether's fundamental design, including the 45% allocation of savings to the general body of customers.

[21] Of the 45% benefit allocated to the general body of customers, approximately $56 million is a fixed base benefit. Order 2020-0084 at *4.

B. Florida Rising's Challenge Is an Impermissible Collateral Attack

Florida Rising now argues that allocating savings to participants and the allocation of capacity to commercial, industrial and governmental customers is unduly discriminatory. (Fla. Ris. br. p. 24). This is clearly an impermissible, belated attempt to undo the original SolarTogether Program and undermine the Commission's March 2020 approval order.

Further, the extension of this program in the Settlement *improves the allocations in favor of residential customers*. The SolarTogether extension keeps the basic structure intact: participants pay a subscription charge and receive a subscription credit. (R. 41332). By extending the program under the Settlement, the allocations Florida Rising criticizes *improve* significantly. Allocation of residential and small business capacity will triple from the existing 335 MW to 1,005 MW, while access to the program for low-income customers will increase from 37.5 MW to 82.5 MW. (R. 34208-34209). Regarding the benefits allocated to the general body of customers, FPL witnesses Bores and Valle demonstrated that the additional 1,788 MW to be installed will increase the projected

SolarTogether savings from $249 million to $648 million. (R. 28383-28385, 34176, 34208). That more than doubles the savings allocated for the general body of customers from $112 million to $292 million, with $95 million of that amount being fixed. (R. 34193).

The proportional benefit allocation is no different than the one approved in the Commission's March 2020 SolarTogether Order. As was the case in the original program and as is the case with the extension, the treatment accorded to participants is justified, not undue. Over the life of the program the general body of customers is not expected to bear **any cost**. (R. 34216). The participants, by contrast, will pay **more than 100%** of the base revenue requirements associated with SolarTogether. (R. 33894). It is therefore more than reasonable to allocate to the participants a greater share of the savings generated by the assets they funded.

Distilled to its core, Florida Rising's position asks this Court to reject features of SolarTogether that the Commission approved in its March 2020 Order. The Court is procedurally barred from doing so. Florida Rising, could have, but did not, participate in the original SolarTogether docket. There was no appeal of the Commission's March 2020 SolarTogether order. That order became unappealable

and final thirty days after its issuance. The Commission could not have vacated it.[22] *See Brown*, 273 So. 3d at 930 (noting that changing the terms of a prior order would have required vacatur, "which is contrary to the doctrine of administrative finality").

Indeed, rejecting the Settlement would not resolve Florida Rising's misgivings about the program, unfounded as they might be. Had the Commission been persuaded that the SolarTogether extension could not be approved as a component of the Settlement, the original program would have survived: 1,788 fewer megawatts of solar generation would be constructed for the program, residential customers would be allocated less capacity, and the general body of customers would receive less savings.

[22] Florida Rising did not allege changed circumstances or fraud. *See Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) ("'In order to be preserved for further review by a higher court, an issue must be presented to the lower [tribunal] and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.'" (quoting *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985))).

V. The Final Order is Fully Supported By Competent, Substantial Evidence Showing that the Settlement is in the Public Interest

With the Commission's legal authority to approve the Settlement well established, the remaining issue is whether competent, substantial evidence in the record supports the Commission's determination that the Settlement results in fair, just, and reasonable rates, and, considering the broad scope of factors the PSC must address, is in the public interest.

As discussed previously, the balance struck by the Settlement cannot be evaluated by segregating and dissecting the relative impact of select provisions, as suggested by Appellants. *LULAC*, at 2; *Sierra Club*, 243 So. 3d at 909. Rather, the ultimate rates must be evaluated "as a whole," to determine whether they are 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. *LULAC*, at 2; *Sierra Club*, 243 So. 3d at 908.

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. 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.

The particular terms that Appellants challenge (ROE, capital structure, base rate increases, RSAM, SolarTogether, Storm Recovery, Tax Reform Provision, pilot programs, and Asset Optimization) cannot be viewed in isolation, but instead, work in totality to benefit customers while offsetting the impact on FPL of the Settlement's four-year rate moratorium. The Commission's conclusion that this result is in the public interest is supported by competent, substantial evidence and should be affirmed.

A. The Commission's Determination that the Settlement is in the Public Interest is Supported by Competent, Substantial Evidence.

The "determination of what is in the public interest rests exclusively with the Commission." *Sierra Club*, 243 So. 3d at 910; *Citizens I*, 146 So.3d at 1173 (citing § 366.01, Fla. Stat.). Chapter 366 does not define public interest. This Court has held that it is a

"fact-dependent inquiry generally focused upon—but not limited to—the Commission's historical and statutory role." *Sierra Club*, 243 So. 3d at 911. In general, a public interest determination should consider such factors as "costs, effect on ratepayers, and ensuring reliability of service," although the Court has also held that it can consider other factors as well, such as protecting the environment or promoting renewable energy. *Id.* & n.9.

Courts have long-recognized the bedrock principle that "the rate-making process and the fixing of just and reasonable rates . . . involves a balancing of the investor and the consumer interests." *See Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (relied on in *City of Miami v. Fla. Pub. Serv. Comm'n*, 208 So. 2d 249, 253 (Fla. 1968), and *Jacksonville Gas. Corp. v. Fla. R.R. & Pub. Utils. Comm'n*, 50 So. 2d 887 (Fla. 1951)). To that end, the Commission historically has evaluated factors relevant to the settlement before it, while recognizing that each settlement reflects the specific circumstances facing each utility and the trade-offs reached by the parties involved.

Review of Commission decisions addressing settlements reveals that it has considered, in various contexts, whether the settlement is

supported by diverse interests, provides rate predictability or stability, provides the utility financial strength to make needed capital investments, enables the utility to maintain or improve its quality of service and reliability, and provides appropriate safeguards. *See, e.g.*, *Sierra Club*, 243 So. 3d at 911, 915; *Citizens I*, 14 So. 3d at 1165. While not every factor must be present in all settlements, the record contains competent, substantial evidence demonstrating that FPL's Settlement satisfies each.

1. The Settlement is supported by a broad segment of FPL's customer base

The Signatories to the Settlement represent a diverse cross-section of FPL's customer base that includes residential and commercial classes, environmental groups, community empowerment advocates, and even the United States military.

Seven intervenor groups affirmatively supported the Settlement. Among those was OPC, whose participation was especially significant because OPC's statutory duty is to provide legal representation for the people of the state in proceedings before the commission, and is empowered to "recommend to the commission . . . in the name of the state or its citizens, in any proceeding or action before the

commission . . . and urge therein any position which he or she deems to be in the public interest . . . ." § 350.0611(1), Fla. Stat. Thus, in signing on to the Settlement, OPC represented its view, on behalf of all FPL customers, that the Settlement is in the public interest. (R. 41303, 41310). Similarly, FRF and FIPUG, commercial associations with significant membership in Florida, also agreed that the terms of the Settlement should be approved as being in the public interest. *Id.*

SACE and Vote Solar, organizations focused on environmental preservation and clean energy interests, also signed onto the Settlement as being in the public interest. (R. 41306-41307, 41309). The CLEO Institute, Inc., advocating community empowerment, agreed and signed onto the terms of the Settlement. (R. 41307). The Federal Executive Agencies, agencies of the United States Government represented through the Department of Defense, also became a signatory and urged approval of the Settlement. (R. 38865-41307).

Appellants' interests, by contrast, are not readily discernable. In fact, FAIR's articles of incorporation indicate that it was created about a week after FPL filed its Rate Petition, for the purpose of

intervening. (R. 51271-51272). It is not an FPL customer, nor are its directors or officers. *Id.* It is similarly unclear what "public interest," or even what private interest, Florida Rising advances by opposing a settlement that promotes a wide range of benefits.

2. The Settlement provides predictability, stability and results in fair, just, and reasonable rates

The Settlement satisfies a key public interest objective by establishing rates that are low, stable, predictable, and reasonable for a minimum of four years. *Citizens I*, 146 So. 3d at 1165-66, 1171. The Settlement achieves this, in part, by providing for defined, limited step base rate increases. Specifically, the Settlement terms include: (i) a $692 million base rate increase effective January 1, 2022, representing a $383 million reduction from FPL's base rate request; and (ii) a $560 million base rate increase effective January 1, 2023, representing a $45 million reduction from FPL's request. (R. 41313 ¶¶ 4(a) and(b)). These reductions, cumulatively over the minimum four-year term of the Settlement, represent a reduction of $1.7 billion from FPL's Rate Petition.

The SoBRA likewise offers predictability. Under the Settlement, the solar addition cannot exceed 1,788 MW and the costs are capped

at $1,250 per kW. (R. 41298-41299, 41320-41324). Based on the cap, the SoBRAs are estimated to recover approximately $140 million of annual revenues effective January 1, 2024, and an additional approximately $140 million of annual revenues effective January 1, 2025. (R. 34223, 35506). These predictable rate adjustments are set forth in the Settlement and add to the predictability of customer rates in the outer years.

Under the Settlement, based on the record evidence reflecting the relevant data, the bills for all FPL customers are projected to remain among the lowest in the nation. FPL's projected 2022 typical residential 1,000-kWh bill would remain nearly 21% below the current national average and the projected 2025 typical residential 1,000-kWh bill would remain nearly 22% below the projected 2025 national average. (R. 34222).[23]

[23] The 1,000 kWh bill is the benchmark used throughout the electric industry and by the Commission for bill comparison purposes. (R. 33942-33943). Florida Rising's argument that FPL had the thirteenth highest "average" residential electric bill among the 50 largest utilities relies upon a bill comparison methodology that is contrary to industry standard. Average electric usage varies significantly throughout the country due to climate, weather, and availability of gas or other alternatives to electricity. *Id.*

3. The Settlement provides FPL the financial strength to make needed capital investments

Public interest in the context of rate setting typically considers the ability to deliver reliable service to customers. *Sierra Club*, 243 So. 3d at 911. The record evidence demonstrates that making investments necessary to continue to provide customers with safe and reliable power requires financial strength. This Settlement allows FPL to maintain the financial strength it needs. (R. 34156).

Like the 2021 Settlement, FPL's 2011, 2012, and 2016 settlements included provisions supportive of the Company's financial strength. (R. 34342-34346); Order Nos. PSC-16-0560-AS-EI, PSC-13-0023-S-EI, and PSC-11-0089-S-EI. Each provided for an authorized ROE midpoint and range that was reasonable and a capital structure reflective of the way in which the Company actually capitalizes the business. (R. 34345). Those terms incentivized investors to provide the capital needed to make strategic, long-term investments, which in turn, allowed FPL to maintain low bills and high service quality. (R. 34344).

The Settlement as a whole, particularly the ROE and capital structure, is designed to preserve FPL's financial strength on

substantially the same terms. This Settlement authorizes the same capital structure (59.6%). (R. 69984). Likewise, the 10.6% midpoint ROE authorized under the Settlement is only slightly higher than the 10.55% midpoint used to set rates under FPL's last Commission-approved rate settlement and is reflective of the higher rate of return required to compensate for the additional market uncertainty. (R. 34200). FPL witness Barrett testified that these terms, as part of the overall settlement, will continue to provide FPL the financial strength it needs to maintain and improve upon its already high level of reliability and overall performance. (R. 38892, 38899).

4. The Settlement enables FPL to maintain or improve its quality of service and reliability

As described above, the Settlement includes many of the same features from prior settlements that have allowed FPL to effectively manage the utility in a manner that benefits customers. Among those features are the RSAM, Storm Recovery, SoBRA, and Asset Optimization, all of which have been present in FPL's prior base rate settlement agreements. The high levels of reliability and service quality FPL achieved while operating under prior rate agreements substantiates the effectiveness of these features in encouraging FPL's

excellent operations. This Settlement is designed to continue and improve upon that performance.

Reliability. FPL also has been able to maintain and even improve upon its already superior reliability metrics while operating within its prior multi-year rate agreements. Record evidence showed that FPL was the top performer among Florida investor-owned utilities in reducing its distribution outage durations for nine of the ten years from 2010 through 2019. (R. 24089). FPL also offered into evidence its plans to continue investing in reliability initiatives during the Settlement term. (R. 41303). Those initiatives include deployment of technology that will leverage existing smart grid infrastructure to prevent outages and reduce outage durations, thereby improving reliability and increasing customer satisfaction. (R. 41338). Additionally, FPL will invest to rebuild major transmission structures to enhance continued reliable performance and will complete construction of a new transmission thoroughfare that will connect the electric systems in peninsular and Northwest Florida. (R. 35910, 35918-35919, 35945-35946, 36580).

Fleet performance. FPL's generation fleet performance and other operational metrics have improved since FPL entered its last

settlement agreement in 2016, all to the benefit of customers. (R. 35975). Looking back further into FPL's performance under multi-year rate settlements, FPL's non-fuel operating costs, heat rate (*i.e.*, fuel efficiency), and the availability of its fleet essentially has been best-in-class or top decile in the industry for 15 years. (R. 24098-24099). FPL's witnesses testified that during the Settlement term it will undertake several generation projects, including upgrades to its natural gas plants that will result in greater fuel efficiency and greater power output, thereby improving reliability and furthering value. (R. 69982, 69995, 70004, 70014).

In short, the evidence demonstrates that prior multi-year settlement agreements enabled FPL to maintain and even improve its quality of service and overall reliability. The Settlement builds upon that history and is intended to serve as a mechanism to allow FPL to continue to deliver strong value. Therefore, the record supports the conclusion that authorizing FPL to continue to operate within the same type of rate plan structure is in the public interest.

5. The Settlement promotes the advancement of renewable energy technologies

The Settlement is also consistent with the Florida Legislature's statutory declaration that it is in the public interest to promote the development of renewable energy. § 366.91, Fla. Stat. Through its terms, the Settlement enables and encourages FPL to continue its track record of developing renewable resources and advancing clean energy technologies through more solar installations, the introduction of hydrogen technology, and exploration of electric vehicle programs.

Solar. The Settlement contains an extension of FPL's SolarTogether Program, which in turn will allow for the expansion of solar generation in Florida and open the program for customers located in Northwest Florida. As explained above, extending SolarTogether is expected to add 1,788 MW of cost-effective solar to FPL's fleet by 2025 and will increase the level of access available for low-income customers. (R. 34208-34209). The SoBRA will facilitate the addition of another 1,788 MW of cost-effective solar generation in 2024 and 2025. (R. 41298-41299). These installations are in addition to the nearly 1,200 MW that FPL will place in service during

the first two years of the Settlement. (R. 41319-41320). The expansion of utility-scale solar facilities under the SoBRA provisions will also reduce fuel consumption and carbon emissions while providing increased diversification to FPL's generation portfolio. (R. 31901-31902, 31904). Finally, the Settlement includes a voluntary program pursuant to which commercial and industrial customers may elect to have FPL install and maintain a solar facility on their site for a monthly tariff charge. (R. 41336-41337 (¶ 23)).

Hydrogen. Section 366.91, found within the statutory chapter that governs the Commission's jurisdiction and its regulation of electric utilities, expressly contemplates that "hydrogen produced or resulting from sources other than fossil fuels" is a form of renewable energy that can help advance the public interest to promote the development of renewable energy resources in Florida. § 366.91(2)(e). To that end, the Settlement also includes a Green Hydrogen pilot project. This pilot will allow FPL to test its ability to produce hydrogen from water to be used as a fuel source in its combustion turbines, emitting only clean oxygen into the air as a byproduct of the process. FPL will also learn how a hydrogen fuel

production and storage facility can be effectively used on site with combustion turbine units. (R. 41337-41338 (¶ 24)).

Florida Rising (but not FAIR) suggests that the Commission exceeded its authority by approving the Green Hydrogen pilot program as a component of the Settlement. (Fla. Ris. br. p. 41-42) (citing *Graham*, 191 So. 3d at 901). Unlike the investment in shale gas reserves at issue in *Graham*, however, the Legislature has adopted an explicit statutory finding that "it is in the public interest to promote the development of renewable energy resources in this state," including "hydrogen." § 366.91(1), (2)(e), Fla. Stat. This statutory public-interest factor conclusively distinguishes this Court's decision addressing cost recovery for an out-of-state gas-reserves investment.

Electric Vehicles. The Settlement authorizes FPL to create pilot programs directly supportive of EV advancement in Florida. The suite of EV pilot programs includes, among other things, investments in public EV chargers for the purpose of gathering data in order to plan for and design possible future EV infrastructure ahead of mass adoption; a voluntary tariff for residential customers who desire EV charging at their homes and a voluntary tariff for commercial

customers that desire fleet charging services; and initiatives designed to evaluate emerging EV technologies and enhance service and resiliency for customers. (R. 41334-41336 (¶ 22)); *see also* (R. 34217).

6. The Settlement includes safeguards that preserve Commission oversight and protect customers and the Company

The Settlement offers a variety of safeguards that effectively address the needs of FPL's customers and investors and preserves Commission oversight. Most directly for customers, the Settlement secures low bills for a minimum of four years and precludes general base rate increases in 2024 and 2025, despite continued investments. (R. 34149, 34163).

As with FPL's prior multi-year settlement agreements, the Commission retains full regulatory oversight with respect to FPL's rates and charges. In that regard, FPL must continue to submit earnings disclosure forms known as "earnings surveillance reports" (or "ESR") on a monthly basis consistent with existing regulatory requirements. (R. 34389). As with its prior settlements, FPL would be subject to a rate review during the settlement term in the event FPL's reported ROE exceeds the top of the allowed range in any of its

ESRs. (R. 41327 (¶ 14(b)). Correspondingly, FPL would be authorized to petition for a rate adjustment in the event its ROE in a monthly earnings surveillance report fell below the bottom of the allowed range. (R. 41326-41327, 41330-41331 (¶¶ 14(a) and 16(f)).

The RSAM further mitigates the possibility that FPL's earnings will fall outside the range approved by the Commission. Consistent with prior settlements, FPL *must* amortize at least the Reserve Amount necessary to maintain an ROE of at least the bottom of its authorized range. The converse is also true; FPL cannot amortize the reserve in an amount that results in FPL achieving an ROE greater than the top of the authorized range. (R. 41329 (¶ 16(c))).

Because the Settlement was negotiated amidst an unusually volatile economic environment, Signatories also included an ROE trigger mechanism to ensure FPL can continue to attract capital on reasonable terms even if bond yield rates escalate on a sustained basis. If that occurs, the authorized ROE would, after an elective filing by FPL, be increased by 20 basis points from 10.6% to 10.8%, with a new authorized range of 9.8% to 11.8%. Even with that change in the ROE range, however, the Settlement precludes a change in base rates. (R. 41311-41312 (¶ 3(b))). This preserves the

ability to continue making necessary investments, while keeping bills low.

B. Even When Examined Under Florida Rising's Improper "Individualized" Standard, the Components of the Settlement Are Supported by Competent, Substantial Evidence.

Ignoring this Court's holdings in *Sierra Club* and *Citizens I*, Appellants ask the Court to isolate various features of the Settlement, and, under Florida Rising's plea, *each and every* investment included in FPL's base rate increase. *See, e.g.*, (Fla. Ris. br. p. 20). This Court has made clear that the Commission is not obligated to make an individualized prudence determination on each element of the Settlement. *Sierra Club*, 243 So. 3d at 911-12; *Citizens I*, 146 So. 3d at 1150 ("[T]he Commission is not required by statute or case law to address each issue of disputed fact."). As discussed above, competent, substantial evidence supports the Commission's determination that the Settlement as a whole is in the public interest and results in rates that are fair, just, and reasonable.

Nonetheless, even viewed in isolation (contrary to this Court's precedent), the various portions of the Settlement challenged in Appellants' briefs are fully supported by evidence before the

Commission, as discussed in more detail below. Appellants ask this Court to reweigh that voluminous evidence and reach a different conclusion than the Commission—something this Court has consistently refused to do. *Citizens I*, at 1164. ("[W]e will not overturn an order of the PSC because we would have arrived at a different result had we made the initial decision and we will not reweigh the evidence.").

1. The Commission's ROE and capital structure determinations are supported by evidence and should be affirmed.

Consideration of the appropriate ROE and 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, Appellants had every opportunity to present evidence to convince the Commission to award FPL a lower ROE. They failed to persuade.

i. The evidence supports the Commission's determination of an ROE and capital structure

FPL and Appellants presented competing evidence regarding the appropriate ROE. 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. 41299 ¶2(d), 41311 ¶3(b)). 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. 38888-40703, 45700-45718, 45814-45900). Appellants cross-examined both, and sponsored their own witness, who testified that the Commission should grant FPL a lower ROE and capital structure. (R. 36741-36742).

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. 69664-69668). 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. 69975-69976).

In response to Appellants' call for a lower cost of capital, 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. (R. 69980, 69982, 69989). This, in turn, would constrain FPL's ability to make the types of investment that made those low bills a reality and ultimately would result in increased bills. (R. 70022). The capital structure contained in the Settlement avoids the erosion of financial strength.

ii. There is no requirement that all Florida utilities earn the same ROE

Appellants argue that FPL's ROE is unlawfully excessive because other Florida electric utilities—Duke and TECO—were awarded lower ROEs under their respective settlements. (Fla. Ris. br. p. 57; FAIR br. pp. 57-58). 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 Florida electric utilities. FAIR's reliance on *Hope* and *Bluefield*[24] for this proposition is grossly misguided.

Hope and *Bluefield* fully support the Commission's conclusion. Both cases 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 Nat. Gas Co.*, 320 U.S. at 603. And both expressly recognize that "the 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").

Ample evidence demonstrated that the risk profiles of Duke and TECO differ from that of FPL. 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. 69500-69501, 69508). The record also contains an independent financial report that identified FPL as the nation's utility most

[24] *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923).

exposed to extreme weather events. (R. 70050); *see also* (R. 45795). This was unrefuted.

By myopically focusing on ROE, and only on Duke and TECO, Appellants disregard the ultimate result for customers, as well as more relevant comparisons. First, Appellants overlook the polestar factor in any ratemaking decision: whether the outcome will result in just and reasonable rates. Customers do not pay ROE, they pay bills. (R. 33977). Appellants conveniently ignore record evidence demonstrating that FPL's bills are lower than both Duke's and TECO's, despite FPL having a higher authorized ROE. *Id.* ("50-percent better reliability than Duke; bills that are 25 bucks lower.").

Second, by limiting their analysis to utilities within Florida, Appellants omit a more comparable rate decision. 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. 33992-33993). Georgia Power's settlement provided for an authorized ROE of

10.50% on a 56% equity ratio, comparable to FPL's and reflective of Georgia Power's lower risk profile.[25] (R. 33992, 34264).

Finally, Appellants' fixation on the ROE contained in settlements reached by other Florida utilities also ignores that FPL's Settlement is a unique resolution of the issues specific to FPL's rate case, and cost of capital is just one of many negotiated components. By contrast, the Duke and TECO settlements reflect the specific circumstances of those two companies and the trade-offs reached by the parties involved in those cases.

The Commission's approval of the Settlement, inclusive of ROE and capital structure, is legally and factually supported and should be affirmed. In fact, it would have been error to robotically replicate Duke's or TECO's ROE, as Appellants suggest, 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/debt ratio because it made a reasoned judgment based on competent,

[25] FPL has greater exposure to hurricanes and its settlement includes an additional year of locked-in rates with no cash-based relief in the event of rising interest rates or inflation.

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/debt ratio was arbitrary and violative of due process because decision was based on facts outside the record relating to other utilities generally).

2. The prudence of FPL's generation, transmission and distribution investments is supported by competent, substantial evidence

Appellants' challenges to the prudence of various FPL investments are squarely precluded by *Sierra Club*, which requires settlements to be examined as a whole, not dissected into individual investments. *LULAC*, at 2. Nonetheless, the basis for the increase in revenue requirements was supported by multiple witnesses who are responsible for different functional areas within the Company.

FPL's financial planning witness, Scott Bores, summarized the primary drivers for the 2022 and 2023 increases. (R. 40737-40753, 45789-45813). He explained that, aside from inflation and customer growth, the increases were largely due to capital investment initiatives that increase reliability, storm hardening and generation investments which provide long-term economic benefits to customers. (R. 45789-45813).

In terms of generation, the record evidence showed that FPL was investing in cost-effective solar projects in both peninsular and Northwest Florida, a 1,160 MW combined cycle generation site, 409 MW solar-powered battery storage system, as well as upgrades to its existing combined cycle plants, among other things. These investments will add to FPL's generating efficiency, improve power output and result in cost savings. (R. 35984-35985).

Distribution-related revenue requirements included, among other things, investments in strengthening the grid in ways that have allowed for faster restoration following storms. (R. 36396). FPL also will continue to deploy smart devices that reduce outage durations. (R. 41338). With respect to transmission, FPL will be rebuilding its 500-kilovolt transmission line. (R. 27776). Originally built in the 1970s and 1980s, FPL will be replacing the foundations and the dated and worn transmission towers—which form the backbone of the electricity delivery system—with galvanized steel. *Id.* These investments improve reliability and, when outages are reduced, so are the attendant restoration costs.

3. The Settlement's revenue allocation benefits all customers

Florida Rising criticizes how revenue requirements are allocated under the Settlement by simply ignoring the record evidence on this subject. (Fla. Ris. br. pp. 30-32). As was explained in FPL's testimony supporting the Settlement, the settlement revenue allocation reasonably balanced competing positions in a fashion that benefits all FPL customers.

FPL's Director of Rates, Tiffany Cohen, addressed revenue allocation at length. (R. 40709-40711). Ms. Cohen was responsible for calculating the rates, revenue by class, and projected bills that would result from both the Rate Petition and the Settlement. Her testimony in support of the Settlement pointed out that a number of intervenors disagreed in expert testimony with FPL's originally filed cost of service and proposed revenue allocation methodology, and that the Signatories subsequently reached a compromise on revenue allocation that was not based on any cost of service methodology submitted in connection with FPL's Rate Petition. *Id.* Rather, as part of negotiating the Settlement, the Signatories compromised on an allocation method that landed between the competing positions. The

result was lower bills for customers. (R. 34117-34118, 34237-34238). In short, Florida Rising's "transfer of rate burden" argument incorrectly presumes the application of the cost of service (the cost to serve each customer class) methodology filed with FPL's Rate Petition irrespective of the intervenor testimony subsequently filed, which challenged that method, and the Signatories' necessary efforts to resolve their differences. (Fla. Ris. br. p. 30).

Ms. Cohen's testimony also contradicted Florida Rising's claim that the Settlement "leaves the residential public worse off than if FPL's original proposal had been approved in full." (Fla. Ris. br. p. 5). Under the Settlement, residential rates will be lower than the filed rates. (R. 34222). 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. 34235). Residential bills are likewise more favorable under the Settlement compared to the Rate Petition. The typical residential bill for customers in the former FPL service area was projected to increase by only about 2.5% through 2025, as compared to 3.4% under the Rate Petition. (R. 40708). And the typical residential bill for customers in the former Gulf service area was projected to decrease

by approximately 0.7% through 2025. (R. 34234). The bills for all customers were projected to remain among the lowest in the nation as explained above.[26]

4. The minimum bill mitigates cross-subsidies

The record also contains ample evidence describing the appropriateness of FPL's 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. 34228, 40712). 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.[27] (R. 40712). 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

[26] While Florida Rising focuses only on the residential class, FPL's commercial and industrial customers also are projected to fare well under the Settlement. Commercial and industrial customers in both peninsular and Northwest Florida will see lower growth in their rates under the Settlement compared to the Rate Petition. (R. 28386-28395, 34224).

[27] Florida Rising argues that low consumption customers are disproportionately low-income. FPL is unaware of any reports or study that most low-income accounts use little to no electricity. Florida Rising offered no empirical evidence to establish that putative link.

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.*

Without the minimum bill, those customers would pay a "customer charge," covering only the billing, metering, and customer service costs. (R. 34228-34229). The customer charge does not cover any portions of the systems that are required for FPL to connect those customers to the grid. (R. 34228). The minimum bill is designed to ensure that low usage customers fairly and reasonably contribute to the fixed costs incurred to serve them and to reduce the potential for subsidization by other customers. (R. 34228).[28] For these reasons, Florida law expressly contemplates minimum bills. *See* Rule 25-6.106(2), Fla. Admin. Code. (explaining that in refunding customers for overcharges, the "refund shall not include any part of a minimum

[28] Florida Rising complains that the minimum bill was not "included in FPL's as-filed case," (Fla. Rising Br. p. 42), but a settlement may contain terms that go beyond those in the initial petition. *Citizens I*, 146 So. 3d at 1160 (Fla. 2014) (upholding Commission's approval of settlement even though certain "provisions in the settlement agreement exceeded the scope of FPL's initial petition").

charge"); *Kissimmee Util. Auth. v. Better Plastics, Inc.*, 526 So. 2d 46, 47 n.1 (Fla. 1988) (applying this provision).[29]

[29] Minimum bills are a well-established feature of utility rates. *See*, *e.g.*, *Mobil Oil Corp. v. Tenn. Valley Auth.*, 387 F. Supp. 498, 509 (N.D. Ala. 1974) ("The purpose of the minimum bill is to assure the power supplier of revenue to help meet its fixed costs on capacity made available to supply the customer's contract demand during the term of the contract."); *Lovett v. Columbia Power Sys.*, No. 87-75-II, 1987 WL 17024, at *3 (Tenn. Ct. App. Sept. 16, 1987) ("[M]inimum bills are a part of the prevailing rates, and have been for more than 50 years."); Arthur F. Curtis, *The Law of Electricity* 178, § 116 (1915) ("In the absence of a franchise provision or a governmental regulation affecting the question, there seems to be no objection to an electric rate which . . . requires the payment of at least a stated amount at regular intervals.).

CONCLUSION

The Commission acted within its statutory authority in approving the Settlement, and its public-interest findings are supported by competent, substantial evidence in the record. The Final Order should be affirmed.

Respectfully submitted,

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I certify that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.210(a)(2) because it was prepared using Bookman Old Style 14-point font and the word count from the word-processing system used to prepare this document is 18,503.

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