BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for Base Rate Increase and Rate Unification	Docket No. 20210015-EI Filed: February 13, 2024

FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO MOTIONS TO REOPEN RECORD

Florida Power & Light Company ("FPL") files this response to the Motion filed by Floridians Against Increased Rates ("FAIR") To Reopen the Record in this Docket for the limited purpose of allowing FAIR to submit the Public Service Commission's ("PSC") Annual Report on Activities Pursuant to the Florida Energy Efficiency and Conservation Act for 2021 (the "FEECA Report") and the Motion filed by Florida Rising, League of United Latin American Citizens ("LULAC"), and the Environmental Confederation of Southwest Florida ("ECOSWF") for Evidentiary Hearing regarding FPL's FEECA and energy efficiency performance, or, in the alternative, to admit Energy Information Agency ("EIA") data on energy efficiency performance and a brief argument on FPL's performance. (Collectively, "the Motions To Reopen Record" or "the Motions"; as used in this Response, "Movants" refers to the parties who filed the Motions).

The Motions suffer from two fatal errors and should be denied. First, the Movants contend that in order to comply with the Florida Supreme Court's order remanding this matter, the PSC must now hold mini sub-hearings within every one of its base rate adjustment proceedings to evaluate a utility's FEECA performance. The Court said nothing of the sort. Instead, the Court stated the unremarkable fact that, where practicable, the PSC should consider FEECA performance, which in this context means FEECA should be considered when and if such matters are relevant to an issue being litigated. Second, the

Movants ignore the fact that in this proceeding, Florida Rising/LULAC/ECOSWF and other intervenors actually did raise issues and introduce evidence regarding FPL's FEECA performance and FPL responded to those issues in kind. Thus, the PSC already has a proper record before it on any FEECA issues relevant to FPL's request to adjust its base rates, and it is unnecessary and inappropriate to open the record now and allow the Movants to introduce evidence on redundant and irrelevant topics. FPL further states:

I.
Background

1. *Procedural posture*. FPL and the Movants agree on the basic procedural posture that precipitated the Motions To Reopen Record. On December 12, 2021, the PSC entered an order approving a rate settlement agreement (the "Settlement Agreement") between FPL, the Office of Public Counsel, Florida Retail Federation, Florida Industrial Power Users Group ("FIPUG"), Southern Alliance for Clean Energy ("SACE"), Federal Executive Agencies, Vote Solar and the CLEO Institute (the "Approval Order"). The Movants, who opposed the Settlement Agreement, appealed the Commission's Approval Order. On September 28, 2023, the Florida Supreme Court entered an order remanding the case back to the PSC (the "Remand Order").

2. *The Court's conclusions*. The Court did not issue a dispositive order. Rather, it expressed that the PSC's Approval Order lacked sufficient detail "for meaningful judicial review of its conclusion that the settlement agreement at issue 'provides a reasonable resolution of all issues raised, establishes rates that are fair, just and reasonable, and is in the public interest.'" Remand Order at 2. Accordingly, the case was remanded to the PSC for an explanation of the basis for its public interest determination.

3. *The Court references FEECA*. The Court stated that the PSC's order must be "reasonably explained." Elaborating on what a reasonably explained order should contain, the Court cited to Section 366.82(10), Florida Statutes, noting that the PSC "shall also consider the performance of each utility pursuant to [the Florida Energy Efficiency and Conservation Act] when establishing rates for those utilities over which the commission has ratesetting authority." Remand Order at 17-18 (brackets in original). The Remand Order expressly acknowledges that a reasonably explained order must reflect that this factor was considered "to the extent practicable." Remand Order at 18. As detailed below, FPL disagrees with Movants regarding how that mandate applies here.

4. *Discretion afforded to PSC*. FPL and Movants also agree that the Court provided the PSC latitude to determine the form of the remand proceedings. Remand Order at 23 ("Subject to any statutory requirements, the form of the proceedings on remand will be up to the Commission, including the decision whether to allow the parties to present additional evidence.").

5. *Existing record is sufficient*. Finally, and somewhat ironically, FPL and Movants appear to agree that the existing record adequately addresses FPL's FEECA performance. Although they request that the Commission reopen the record to add FEECA reports and make FEECA-related arguments, **neither FAIR nor Florida Rising/ LULAC/ECOSWF assert that the record *lacks evidence* regarding FPL's FEECA performance.** Nor do the Movants argue that they were denied the opportunity to present such evidence or arguments during the underlying proceeding.

6. As demonstrated below, FPL addressed FEECA to the extent it was relevant to its rate request. Movants, too, had ample opportunity to present, and did present, evidence

regarding FPL's FEECA performance. The existing record provides the PSC sufficient evidence to consider FPL's FEECA performance to the extent practicable and prepare a subsequent order in compliance with the Remand Order. The Motions To Reopen Record should therefore be denied.

II.
The Existing Record Adequately Facilitates the PSC's Consideration of FPL's FEECA Performance

7. The record below is ample. As the Court acknowledged in the Remand Order, the record contains over 70,000 pages. Remand Order at 10. The Court also acknowledged that the PSC received testimony "from 60 witnesses and receiv[ed] 635 exhibit into evidence . . . ." Remand Order at 19. This tome included testimony and argument from FPL and numerous intervenors related to FEECA and FPL's FEECA performance.

A. FPL witnesses addressed relevant aspects of FEECA

8. FEECA emphasizes four key areas: reducing the growth rates of weather-sensitive peak demand and electricity usage, increasing the efficiency of electricity and natural gas production and use, encouraging demand-side renewable energy systems, and conserving expensive resources, particularly petroleum fuels. § 366.81, F.S.; § 366.82(2), F.S. Florida's Legislature expressly stated its intent through FEECA that "the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load-control systems be encouraged." § 388.81, F.S. FEECA also addresses Clean Air Act compliance, including reduction of sulfur dioxide ("SO_2") and nitrogen oxide ("NOx") emissions. § 388.825(2)(b)-(c), F.S. FPL's witnesses address several of these aspects, to the extent they were relevant to FPL's rate petition or the Settlement Agreement.

9. *Energy efficiency and conservation*. FPL presented evidence demonstrating that its planning and forecasting methodologies, which underpinned its rate request, incorporate conservation programs approved through the Commission's Demand-Side Management ("DSM") goals proceedings. With respect to "reducing and controlling growth rates of electric consumption," FPL witness Park testified that FPL's load forecasting process assumes the Company will achieve the full amount of its DSM goals. Similarly, with respect to "encouraging demand-side renewable systems" FPL's load forecast assumed the continued interconnection of customer-owned renewable generating facilities to the grid. Tr. 295, 298-99, 301, 308-10 (Park). By modeling these inputs, FPL's load forecast is consistent with FEECA's intent and the PSC's associated mandates.

10. In addition, the record contains evidence showing how FPL evaluates DSM options into the Company's resource planning and investment decisions. For example, FPL witness Sim testified that FPL's analysis of system additions to serve the integrated FPL/Gulf system explicitly assumed the DSM goals approved by the PSC in the 2019 DSM goals proceeding would be achieved fully. Tr. 369 (Sim). FPL's resource planning therefore assumes the highest level of allowable energy conservation, irrespective of whether FPL actually achieves 100% of its goals.

11. *Use of solar energy technologies*. The record contains substantial evidence that FPL has demonstrated leadership in the use of solar generation technologies, as well as evidence the Settlement Agreement would enable and encourage FPL to continue its track record. For example, FPL proposed a Solar Base Rate Adjustment 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. Tr. 473 (Valle). In addition,

FPL witness Valle testified that as part of the Settlement Agreement, FPL and the signatories proposed to extend FPL's SolarTogether Program to allow construction of an additional 1,788 MW of cost-effective solar through 2025, increasing SolarTogether's total capacity to 3,278 MW. Tr. 2779 (Valle).

12. *Increased cost-effectiveness of electricity and natural gas use*. The record contains unrebutted evidence that FPL has steadily improved the cost-effectiveness of its electric generating fleet and the cost-effectiveness of its natural gas usage. FPL witness Broad testified that FPL has reduced its heat rate by 8% since 2016. A lower heat rate means a lower amount of natural gas or other fuel is needed to generate each unit of electricity. Mr. Broad also explained that FPL's investments have reduced – and will continue to reduce – FPL's equivalent forced outage rate (known as "EFOR"). Since 2016, FPL has reduced its EFOR by 64%, which means its plants will have even more availability to generate cost-effective (low heat rate) electricity for the benefit of customers. Tr. 581 (Broad).

13. *Reduced air emissions*. The existing record contains evidence regarding how FPL's decisions to make smart investments have reduced air emissions. FPL witness Broad testified that FPL's improved fossil and solar fleet since 2016 have reduced air emission rates by 13% for carbon dioxide, 54% for NOx and 80 percent for SO_2. Tr. 581 (Broad).

14. *DSM Programs*. Section 366.81, Florida Statutes, requires that utility conservation programs be cost-effective. To that end, FPL presented evidence regarding the level of incentive credits that would make its commercial demand reduction ("CDR") and commercial/industrial load control ("CILC") programs cost-effective. Tr. 333 (Sim). Under the Settlement Agreement, the Signatories compromised to maintain the CDR and CILC credits at their current level. *See* Settlement Agreement at Paragraph 4(e).

15. All of the FEECA-related evidence submitted by witnesses Park, Sim, Broad, Valle, along with other FPL witnesses, is contained in the existing record for the PSC's consideration.

B. The Movants Had Every Opportunity To Raise, and Did Raise, FEECA Issues in the Underlying Case

16. Tellingly, Movants do not – and cannot – argue that they were precluded from submitting evidence or arguing any points regarding FPL's FEECA performance or any other aspect of FEECA. To the contrary, the existing record contains ample evidence and argument related to FEECA issues raised by Florida Rising/LULAC/ECOSWF, as well as intervenors who ultimately agreed to the compromises reached in the Settlement Agreement. None of their FEECA-related evidence or arguments were excluded from the record.

17. *FEECA Performance as a Rate Case Issue*. As a threshold matter, FPL's energy efficiency and conservation efforts were identified as specific issues for resolution in the rate case proceeding. The Prehearing Order identifies the following issue to be litigated by the parties:

> Is the quality of the electric service provided by FPL adequate taking into consideration: a) the efficiency, sufficiency and adequacy of FPL's facilities provided and the services rendered; b) the cost of providing such services; c) the value of such service to the public; d) the ability of the utility to improve such service and facilities; **e) energy conservation and the efficient use of alternative energy resources** . . .

Order No. PSC-2021-0302-PHO-EI at 25.

18. Florida Rising/LULAC/ECOSWF took the position that "FPL has one of the lowest energy efficiency achievements compared to other utilities nationwide and does not provide adequate energy efficiency aid to its customers to help them lower their usage and monthly bills." *Id*. at 72-73. In other words, the argument Florida Rising/LULAC/

ECOSWF made in the underlying proceeding is the same argument they now seek to reassert by reopening the record to introduce cumulative evidence. Florida Rising/ LULAC/ECOSWF did not allege then – and do not argue now – that they were precluded from presenting or eliciting evidence pertaining to this issue.

19. The record also contains positions of other intervenors who took positions similar to Florida Rising/LULAC/ECOSWF:

> - CLEO Institute: FPL fails to consider new energy conservation investments in any of its resource planning decisions or load forecasts, despite it being widely viewed as the most cost-effective resource . . . FPL/Gulf customers pay relatively high electricity bills compared to customers served by other utilities, in part due to FPL's abysmal energy efficiency offerings. FPL must take steps to help its customers, particularly its low-income customers, implement more energy efficient measures to better manage their bills.
>
> - SACE: As a quality of service metric, FPL's energy savings (energy efficiency) performance is well below that of other investor-owned utilities both in Florida and nationally.

Id. at 72 and 73, respectively.

20. FAIR, by contrast, took a starkly different position regarding FPL's performance in terms of "energy conservation and the efficient use of alternative energy resources." FAIR stated simply and plainly that "**FPL's service is adequate**." *Id*. 72. Thus, unlike Florida Rising/LULAC/ECOSWF which seek to supplement the record with more of the same argument, FAIR actually seeks to *change* its position.

21. *FEECA testimony from Intervenors*. In addition to the positions taken in the Prehearing Order, Florida Rising/LULAC/ECOSWF and FAIR, along with all other intervenors had an opportunity to, and many of them did, submit their own testimony and exhibits addressing FPL's FEECA performance.

22. The existing record contains testimony from Florida Rising/LULAC/ ECOSWF witness Rábago who testified that one of the "key issues of great significance to FL Rising, ECOSWF and LULAC" was FPL's proposal related to demand response program incentives. Tr. 2946 (Rábago). He identifies four reasons he believed FPL's proposal regarding CILC/CDR credits are unreasonable and devotes a portion of his testimony to addressing:

- "[h]ow [] the Company performed in developing and delivering efficiency in Florida;"
- "the major problems with the Company's approach to energy efficiency in general;" and
- "what [he] recommend[s] that the Commission do regarding the Company's proposal to reduce compensation rates for CDR and CILC programs and the Company's general approach to energy efficiency."

Tr. 2965-68 (Rábago). Florida Rising/LULAC/ECOSWF covered the topic of FPL's FEECA performance comprehensively. All of witness Rábago's testimony was admitted and can be considered by the PSC.

23. The record also contains FEECA-related evidence submitted by at least three other intervenors:

- FIPUG witness Pollock submitted detailed testimony arguing that the CILC/CDR credit proposed by FPL should be rejected, devoting 16 pages of his testimony to this topic alone. Tr. 1639-40, 1685-98 (Pollock). He also testified that That FPL's resource planning model used to calculate the proposed CDR/CILC values should be disregarded, and he challenges specific assumptions used in the model; he presents his own calculation of avoided capital costs associated with load control; and presents his own CILC/CDR cost on a dollar per kW/month basis.

- Florida Retail Federation witness Tony Georgis explained that purpose of his testimony was to explain that "the current and proposed Commercial Demand Reduction ('CDR') credit offset that FPL incorporates in its cost of service study is not valued correctly." Tr. 1776, 1778 (Georgis); and to "demonstrate that FPL has significantly understated the value of its [CILC and successor CDR] credit programs as well as why the credits associated with those programs should be increased." Tr. 1777-78 (Georgis). Mr. Georgis goes on to devote nearly 50% of his testimony to this topic (See Tr. 1776-78, 1780-94), emphasizing that the CILC rate and CDR rider "are the largest and most successful FPL demand side management ('DSM') programs for its commercial and industrial customers. Historically, these programs have been among the most cost-effective of all DSM programs implemented by FPL. Combined, they currently provide approximately 814 MWs of interruptible load controlled by FPL." Mr. Georgis also addressed the manner in which FPL treats load associated with CILC and CDR for resource planning purposes.

- Vote Solar and CLEO Institute witness Wilson addressed the manner in which FPL's resource planning process considers DSM measures as a replacement resource. She advocated that "the Commission should require FPL to incorporate its currently approved levels of DSM savings into the Company's load forecasts over its long-term planning horizon . . . ." Tr. 1416, 1417-23 (Wilson).

24. These excerpts – which are illustrative and do not comprise the universe of FEECA-related evidence in the record – not only demonstrate that the quantity of evidence in the existing record is sufficient, but also disposes of any argument that Movants lacked the opportunity to introduce FEECA-related evidence in the underlying proceeding.

C. Movants' Attempt To Introduce Evidence Post-Dating the Underlying Proceeding Contravenes Basic Principles of Fairness

25. What the Movants *could not* have done in the underlying case is introduce many of the FEECA and DSM reports they now seek to enter in the record – not because the process precluded them from doing so but because many of the FEECA and DSM reports in question *did not exist* at the time the PSC was evaluating FPL's rate petition and the Settlement Agreement. In particular, FAIR, Florida Rising/LULAC/ECOSWF request the

admission of the PSC's 2021 FEECA annual report, which was published November 2021, at least six weeks after the record was closed. Florida Rising/LULAC/ECOSWF, in their separate Motion, also seek the introduction of the PSC's 2022 and 2023 FEECA annual reports, FPL's 2021 and 2022 DSM Reports, and EIA data for 2021 and 2022, all of which were published well after the record was closed.[1]

26. Movants do not even attempt to explain why it would be appropriate to allow evidence developed in a timeframe that falls outside the dates of the underlying proceeding. This is particularly puzzling given Movants' acknowledgement[2] that the FEECA and DSM reports are published annually, meaning they could have – but did not – offer evidence regarding the FEECA and DSM reports published in earlier periods.

27. It would be manifestly unjust to reopen the record to receive evidence that post-dates the underlying proceeding. First, the Remand Order directs the Commission to provide details supporting the public interest determination it made following a hearing that concluded on September 20, 2021. The Commission could not have considered the 2022 and 2023 FEECA reports or FPL's 2021 and 2022 DSM reports for those years when it made its public interest determination.

28. For the same reason, the PSC should summarily reject Florida Rising/ LULAC/ECOSWF's suggestion that the "additional evidence also weighs against approval

[1] The only documents referenced in Florida Rising/LULAC/ECOSWF's Motion that verifiably existed before the record was closed are FPL's and Gulf's 2020 DSM Reports. As explained in Section II, Florida Rising/LULAC/ECOSWF could have, but did not attempt, to introduce those reports in the underlying proceeding before the record closed. The publication date of the 2020 EIA data they seek to introduce is unclear. If it was available before the record closed, Florida Rising/LULAC/ECOSWF offer no explanation why they did not introduce it when they had the opportunity.

[2] Florida Rising/LULAC/ECOSWF Motion at 4-5.

of [the] Settlement." The Court did not direct the PSC to reconsider its public interest determination. Instead, the Court directed that the PSC to explain the determination it reached in December 2021, noting that a final order must:

> discuss the major elements of the settlement agreement and explain[] why it [is] in the public interest. That includes considering the competing arguments *made by the parties below* in light of the factors relevant to the Commission's decision, and supplying, given these arguments and factors, an explanation of *how the evidence presented led to its decision*.

Remand Order at 16 (emphases added) (internal citations omitted).

29. Second, FPL's FEECA performance is not the only set of events that have transpired since the Commission evaluated whether the Settlement Agreement is in the public interest. It would be unfair to introduce isolated, single-subject data points about the years since the Settlement Agreement was approved, to the exclusion of evidence regarding other data from that period, such as the substantial rise in inflation and interest rates. Fairness dictates that the Commission's subsequent order be based on evidence presented in the underlying proceeding when all parties had an equal opportunity to submit relevant data that existed at time the Commission made its public interest determination. *See* Remand Order at 16.

III.
Movants' Request To Open the Record Beyond the FEECA-related Evidence Already in the Record is an Improper Attempt To Expand FEECA

30. Section 366.82(10), Florida Statutes, provides that the PSC "shall also consider the performance of each utility pursuant to ss. 366.80-366.83 and 403.519 when establishing rates for those utilities over which the commission has ratesetting authority." The Court's Remand Order sensibly limits the application of this statute, noting that FPL's performance should be considered "to the extent practicable." Remand Order at 18. The

statute, and the Court's mandate, should not be applied perversely to transforms all rate-related proceedings into DSM proceedings. The PSC already has a long-standing and well-established procedure for implementing FEECA.

31. Sections 366.82(2) and (6), Florida Statutes require the PSC to set DSM goals at least every five years for the utilities subject to FEECA. The PSC sets electric goals with respect to summer and winter electric-peak demand and annual energy savings over a ten-year period, with a re-evaluation every five years. Utility-sponsored DSM programs are funded by all ratepayers. Therefore, in order to meet FEECA requirements, the PSC and utilities must ensure that the DSM programs created to reap the benefits of reduced fuel usage and deferred generating capacity are cost-effective, meaning the programs are less costly than generation. A full evidentiary hearing is held to determine the appropriate goals for each utility. Once goals are established, the electric FEECA utilities must submit DSM plans containing cost-effective programs intended to meet the goals for PSC approval. These FEECA proceedings are robust and focused. Interested persons with standing are permitted to participate and are afforded all rights provided by the Administrative Procedure Act.

32. In terms of ratesetting, utilities are allowed by Rule 25-17.015, Florida Administrative Code, to recover reasonable expenses for DSM programs through the Energy Conservation Cost Recovery ("ECCR") Clause. Such expenses may include administrative costs, equipment, and incentive payments. Before attempting to recover costs through the ECCR Clause, a utility must provide data on DSM program cost-effectiveness. On an annual basis, an evidentiary hearing is held to determine the cost recovery factors to be applied to customer bills in the following year.

33. FPL's last goal-setting procedure occurred in 2019, with the DSM plans submitted and approved thereafter. The next goal-setting proceeding will take place this year. FPL's 2021 rate case is not a prescribed occasion to revisit FPL's conservation goals or develop a DSM plan. That is not the purpose of *any* rate case.

34. For these reasons, the PSC should adhere to the Court's directive to consider FPL's FEECA performance "to the extent practicable," which in this context coincides with the issues previously identified by the PSC for resolution in this matter and the relevant issues raised and the evidence presented by the parties.

WHEREFORE, for the reasons stated above, Florida Power & Light Company requests that the Commission deny the Motions To Reopen the Record.

Respectfully submitted this 13th day of February 2024.

Respectfully submitted,

FLORIDA POWER & LIGHT COMPANY

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CERTIFICATE OF SERVICE
20210015-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 13th day of February 2024 to the following parties:

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