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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20210015-EI

Petition for rate increase by
Florida Power & Light Company.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 6

COMMISSIONERS
PARTICIPATING: CHAIRMAN MIKE LA ROSA
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, March 5, 2024

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN LA ROSA: Let's move on to Item No.
3 6.

4 MR. STILLER: Good morning, Commissioners.
5 Shaw Siller from your Office of General Counsel for
6 Commission staff.

7 Agenda Item 6 involves the Florida Supreme
8 Court's remand of this commission's 2021 order
9 approving a settlement in the Florida Power & Light
10 base rate case Docket No. 20210015.

11 By way of a brief history, this docket was
12 opened in early 2021 when FPL filed for a base rate
13 increase. Numerous parties intervened in the
14 docket and undertook discovery in preparation for
15 the final hearing.

16 In August 2021, FPL and numerous intervenors
17 in the docket entered into a comprehensive
18 settlement agreement and presented it to the
19 Commission for approval. Some parties opposed that
20 settlement agreement. Accordingly, the Commission
21 followed and conducted an evidentiary hearing to
22 hear those objections. Following the hearing, this
23 commission voted to approve the settlement
24 agreement as being in the public interest.

25 Two appeals of that final order were taken to

1 the Florida Supreme Court. The first was filed by
2 Floridians Against Increased Rates, who I will
3 refer to by their acronym FAIR. The second appeal
4 was filed by Florida Rising, the Environmental
5 Confederation of Southwest Florida, and the League
6 of United Latin American Citizens of Florida. I
7 will refer to the second group collectively as
8 Florida Rising.

9 After full briefing and oral argument, the
10 Florida Supreme Court remanded this commission's
11 order. Notably the Court neither affirmed nor
12 reversed that prior final order, but remanded it
13 for further explanation of the prior determination.
14 The Court left the procedure on remand to the sound
15 discretion of this commission.

16 Issue 1 in staff's recommendation addresses a
17 motion filed by FAIR that is directed to this
18 procedure on remand. In its motion to reopen the
19 evidentiary record, FAIR requests that the
20 Commission reopen the record for sole purpose of
21 admitting the Commission's Annual Report of
22 Activities pursuant to the Florida Energy
23 Efficiency and Conservation Act. Otherwise known
24 as FEECA. FAIR argues that this report is
25 necessary in the record for this commission to make

1 a full disposition on remand.

2 The FEECA report was prepared by this
3 commission pursuant to the statutory mandate in
4 366.82(10) that it annually report to the
5 Legislature regarding utility progress in FEECA.
6 The report bears an issuance date of November 2021.
7 That postdates both the final evidentiary hearing
8 on the settlement agreement and this commission's
9 vote.

10 On that basis, staff believes the motion
11 should be denied, and the report should not be
12 admitted as it postdates the evidentiary record.

13 Staff also notes that reopening the record
14 would necessitate reopening the record for rebuttal
15 from Florida Power & Light, and could lead to a
16 great expansion of this case in what the courts
17 have called a never-ending case. And for that
18 second reason, staff could recommend that the
19 notion be denied.

20 Item 2 is a similar motion. This one was
21 filed by Florida Rising requesting an evidentiary
22 hearing. Florida Rising, like FAIR, requested the
23 Court -- or the Commission consider the 2021 FEECA
24 report, but also requested two other FEECA reports
25 be admitted, as well as some information from the

1 United States Energy Information agency.

2 The same arguments as to the first motion
3 apply to the second. That is, much of this data
4 postdates the record. To the data that predates
5 the closing of the record, that evidence could have
6 been presented to this commission but was not, and
7 there is no cause been shown why it could not.

8 Finally, getting to Item 3, which is staff's
9 recommendation for the procedure on remand. When
10 the Florida Supreme Court remanded this matter, it
11 directed that this commission consider the
12 competing arguments made by the parties below in
13 light of the factors relevant to the Commission's
14 decision, and supply, given these arguments and
15 factors, an explanation of how the evidence
16 presented led to its decision.

17 Attached to the staff recommendation is a
18 draft supplemental order that first addresses all
19 of the competing arguments raised before the
20 Commission in 2021. Each of the 15 competing
21 arguments are addressed under separate headings.

22 The draft supplemental order then explains how
23 the evidence presented supports the Commission's
24 approval of the settlement as being in the public
25 interest, taking into account all of the factors

1 identified by the Florida Supreme Court.

2 This supplemental order will be a final order
3 and will be subject to appeal, as with any other
4 final order of this commission.

5 Counsel for Florida Rising, Florida Power &
6 Light and FAIR are here if the Commission has any
7 questions, and I am also available for any
8 questions.

9 CHAIRMAN LA ROSA: Thank you, Mr. Stiller, for
10 that detailed summary.

11 Commissioners, are there any questions?

12 Commissioner Graham, you are recognized.

13 COMMISSIONER GRAHAM: Thank you, Mr. Chair.

14 So basically what the Florida Supreme Court
15 just said that we didn't write enough?

16 CHAIRMAN LA ROSA: I will let our attorneys
17 answer that question.

18 COMMISSIONER GRAHAM: Can we weigh the order
19 the next time to see if it weights enough?

20 MR. STILLER: The words they used was a
21 further explanation, which does require more words.
22 But importantly, the Court also identified some
23 factors to be taken into account, which requires
24 more words. And of course, 15 competing arguments
25 require a lot of words.

1 COMMISSIONER GRAHAM: And so this is against
2 everything I have been pushing for since I have
3 been here about things being more streamlined and
4 more efficient, huh?

5 MR. STILLER: I am not sure --

6 COMMISSIONER GRAHAM: I will --

7 MR. STILLER: -- how to quite answer that,
8 Commissioner, but this -- this order does look more
9 like an order from another agency, a typical agency
10 that conducts proceedings in a different manner
11 than this commission.

12 COMMISSIONER GRAHAM: Okay. Well, Mr. Chair,
13 I will make -- I will move the staff recommendation
14 by attaching the supplemental order.

15 CHAIRMAN LA ROSA: Okay. I am going to do
16 other questions.

17 COMMISSIONER GRAHAM: Okay.

18 CHAIRMAN LA ROSA: Commissioner Clark, you are
19 recognized.

20 COMMISSIONER CLARK: I wasn't going to ask
21 any, but since Commissioner Graham opened it up, I
22 am going to just get a clarification in my own
23 mind.

24 Understanding that they are asking to include
25 the FEECA report would be the more recent -- the

1 2019 report was what was available to this
2 commission during the hearing, is that correct?

3 MR. STILLER: Yes, that is correct.

4 COMMISSIONER CLARK: And that report is
5 included?

6 MR. STILLER: In the record?

7 COMMISSIONER CLARK: Yes. There were
8 references made in the hearing, I know, to the 2019
9 FEECA report. My recollection was there were
10 references made, so I assumed it was -- was the
11 document itself part of the official record?

12 MR. STILLER: I do not know if it was on the
13 CEL as I sit here, Commissioner Clark. There were
14 matters relating -- there was a lot of evidence
15 regarding FEECA and some DSM materials. I don't
16 know if that specific report came in. I know
17 things that are in the 2019 report are in the
18 record, but I don't know if the report in that form
19 is.

20 COMMISSIONER CLARK: Is it just commission
21 orders that are soon to be, I guess -- I am not the
22 attorney here -- in evidence at all times, or these
23 type of documents, can they be presumed to be in
24 evidence if a document exists? Ms. Mary Anne -- I
25 have been looking at Mary Anne the whole time down

1 here, so I know she's dying to answer this
2 question.

3 MS. HELTON: I would not say the Commission
4 orders are assumed to be in evidence. I would say
5 that you do not have to officially acknowledge or
6 recognize Commission orders to use them in your
7 decisions -- in your deliberations.

8 COMMISSIONER CLARK: Would that not also apply
9 to a report that has been approved by this
10 commission under a similar light?

11 MS. HELTON: I think that would probably
12 depend on how the report is used, but my gut
13 reaction is yes, unless Shaw can think -- Mr.
14 Stiller can --

15 COMMISSIONER CLARK: We stumped the lawyers.

16 MS. HELTON: I don't -- I think it's -- I
17 think -- orders, yes. I am not sure about reports.
18 I would need to look at the statute and the rules.

19 MR. STILLER: Commissioner Clark, under the
20 Evidence Code, which doesn't strictly bind this
21 commission, reports prepared pursuant to an
22 official duty, which the FEECA report is, are
23 subject to official recognition, under the Evidence
24 Code. So presumably they could come in. Someone
25 would have to move that into evidence. It's not

1 something that the Commission could do once the
2 record is closed. It would have to be during the
3 course of the proceeding.

4 COMMISSIONER CLARK: Did anywhere in the order
5 we reference or document any of the evidence that
6 was presented regarding the 2019 FEECA report?

7 MR. STILLER: In the draft supplemental order
8 or the original final order?

9 COMMISSIONER CLARK: Original. Either one. I
10 guess both would apply.

11 MR. STILLER: I do not believe it's in the
12 original. And, again, there are references to the
13 evidence regarding FEECA in this order. I do not
14 recall that 2019 report in that form being in the
15 record.

16 COMMISSIONER CLARK: Okay. That's all I have,
17 Mr. Chairman. Thank you.

18 Thank you, Mr. Stiller.

19 CHAIRMAN LA ROSA: Commissioner Passidomo, you
20 recognized.

21 COMMISSIONER PASSIDOMO: Thank you, Mr.
22 Chairman.

23 I just wanted to -- well, first off, for
24 Commissioner Graham, I appreciate, yeah, always
25 expediency. I think in that instance, the one we

1 are talking about, rate cases, and even
2 settlements, I think what the Court is asking us is
3 to just thoroughly -- more thoroughly explain our
4 rationales for, in the settlement case, why we
5 believe it was in the public interest.

6 And I want to just take a point of privilege
7 to thank staff for this amended order, and Mr.
8 Stiller specifically. That was not easy to comb
9 through. A giant record that we had previously in
10 our previous order just alluded to certain things,
11 but you have specifically pointed out and addressed
12 all of the Court's concerns.

13 And I would second Commissioner Graham's
14 motion if we are ready to do so.

15 CHAIRMAN LA ROSA: I believe so.

16 So hearing a motion and hearing a second, all
17 those in favor signify by saying aye.

18 (Chorus of ayes.)

19 CHAIRMAN LA ROSA: Opposed, no.

20 (No response.)

21 CHAIRMAN LA ROSA: Show that the motion
22 passes.

23 COMMISSIONER FAY: Mr. Chairman.

24 CHAIRMAN LA ROSA: Yes, you are recognized,
25 Commissioner Fay.

1 COMMISSIONER FAY: I want to make one comment.
2 I do support the motion on the item that's in front
3 of us. The only thing I wanted to add that
4 Commissioner Passidomo mentioned is -- and I know
5 you are a fan of efficiency, Commissioner Graham,
6 and so I respect that, and you have been on this
7 commission a long time.

8 I think I have a lot of respect for our
9 Supreme Court and the people who serve in that
10 role, and I think despite if it's different from
11 previous Commission, you know, procedures or maybe
12 even if you agree in dissent, or whatever it may be
13 related to this, like, the Court has asked us to do
14 this, and so I think it's really important that we
15 put it forward.

16 So I recognize we can't always be as
17 efficient, but they serve as our primary
18 jurisdiction for these issues, and we have a lot of
19 respect for them. So we will send this order to
20 them and see where it goes.

21 Thank you.

22 CHAIRMAN LA ROSA: Well said.

23 (Agenda item concluded.)

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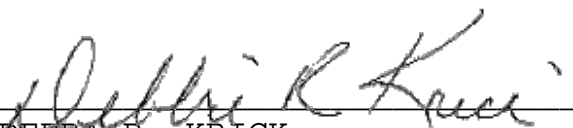
STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 19th day of March, 2024.


DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024