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**MEMORANDUM**

TO: Ms. Ann Cole  
Commission Clerk  
Florida Public Service Commission

FROM: Roy C. Young *RCY*

DATE: April 19, 2010

SUBJECT: Docket No. 100161-EG  
Petition for Approval of Demand-Side Management  
Plan of Orlando Utilities Commission

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Enclosed for filing on behalf of Orlando Utilities Commission original and 7 copies of OUC's Response in Opposition to Southern Alliance For Clean Energy's Motion to Intervene in the above captioned docket.

Thank you for your assistance with this filing.

RCY:swp  
Enclosures

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of Demand-side Management Plan of Orlando Utilities Commission )  
)  
)

DOCKET NO. 100161-EG

FILED: April 19, 2010

**RESPONSE IN OPPOSITION TO SOUTHERN ALLIANCE FOR CLEAN ENERGY'S MOTION TO INTERVENE**

Pursuant to Rule 28-106.204, Florida Administrative Code, Orlando Utilities Commission (hereinafter "OUC"), by and through its undersigned counsel, hereby files its response in opposition to the petition to intervene filed by Southern Alliance for Clean Energy, Inc. ("SACE") on April 12, 2010 and in support thereof states:

1. SACE is a non-profit corporation organized under the laws of the State of Tennessee and has staff working in Tennessee, North Carolina, Georgia, South Carolina and Florida. (SACE Pet. Intervene at 2.) SACE alleges that its substantial interests are affected due to its mission to promote responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast. Id.

2. SACE intervened in the recent docket In re Commission Review of Numeric Conservation Goals, Docket Nos. 080407-080413 in which OUC set forth demand side management plans in response to Order No. PSC-09-0855-FOF-EF. Id.

3. Section 120.52(13)(b), Florida Statutes, provides that a party to an administrative proceeding is any person: "whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party." Section 120.52(13)(b), Fla. Stat. (2010). Substantial interests are demonstrated if: 1) the party will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) the party's substantial injury is of a

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type or nature which the proceeding is designed to protect. Agrico Chem. Co. v. Dep't of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

4. Associational standing is: “[C]ontingent on the organization’s demonstration that many of its members, in general, stand to be affected . . . .” Florida Home Builders Ass’n v. Department of Labor & Employment Security, 412 So. 2d 351 (Fla. 1982); NAACP, Inc., etc., et al., v. Florida Board of Regents, 863 So. 2d 294 (Florida 2003). The test for determining associational standing not only requires an association to demonstrate that a substantial number of its members are substantially affected by what that association is challenging but also requires a showing that the subject matter challenged is within the association’s general scope of interest and activity, and the relief requested is of the type appropriate for the association to receive on behalf of its members. Florida Home Builders Ass’n, 412 So.2d at 353-54.

5. In Agripost, LLC v. Miami-Dade County Florida, 525 F.3d 1049, 1055 (11th Cir, 2008), the Court ruled that:

Florida issue preclusion doctrine forecloses relitigation if: (1) the parties are identical with those from the prior case, (2) the issues are identical, (3) there was a full and fair opportunity to litigate the issues and they were actually litigated, and (4) those issues were necessary to the prior adjudication.

6. SACE has made no allegation that this action will have any impact whatsoever on its individual members and therefore SACE lacks standing to intervene in this docket.

7. SACE’s claim is precluded under the standard applied in Agripost. Agripost involved setting forth conservation goals and the instant matter involves those same conservation goals. The conservation goals are the overriding issue in both proceedings, the parties are identical, and SACE had a full and fair opportunity to litigate those issues in the preceding case. Therefore, SACE has no standing to re-litigate the issues that SACE had a full and fair opportu-

nity to litigate in the recent docket In re: Commission Review of Numeric Conservation Goals,  
Docket Nos. 080407-080413.

WHEREFORE, OUC respectfully requests that the Commission enter an order denying  
SACE's Motion to Intervene.



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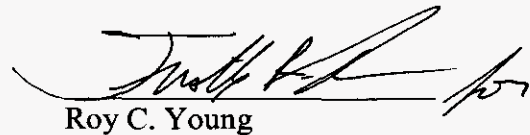
Attorney for Orlando Utilities  
Commission

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposi-  
tion to Southern Alliance for Clean Energy's Motion to Intervene, was served by U.S. Mail or  
electronic mail on this 12<sup>th</sup> day of April, 2010, to the following:

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