BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Power & Light Company	**DOCKET NO. 20220051** **Filed: September 6, 2022**

SOUTHERN ALLIANCE FOR CLEAN ENERGY'S POST HEARING STATEMENT AND BRIEF

Pursuant to Order No. PSC-2022-0119-PCO-EI, issued March 17, 2022, and as modified by the Commission at the hearing on August 4, 2022, Southern Alliance for Clean Energy ("SACE") files its Post Hearing Statement and Brief in the above captioned docket. References to the transcript will be denoted as "T.p#." and exhibits as "Exh. #, p#."

I. SUMMARY AND BASIC POSITION

The Florida Power and Light Company ("FPL" or "Company") Storm Protection Plan proposes $14.7 billion in storm hardening programs over the next ten years. The Storm Protection Plan costs will be borne by hard working Florida families, and businesses, on their power bills. In return for shouldering the costs, customers should expect the Company to quantify the benefits of the Storm Protection Plan's proposed programs – in fact, the Commission's rule requires it. The Commission's Storm Protection Plan rule requires that the utilities include an estimate of the resulting reduction in restoration costs, outage times and a comparison of costs and benefits. Yet, FPL did not quantify the benefits of any of its Storm Protection Plan programs. Instead the Company argues both that the quantification of benefits going forward is not the best way to express the benefits of its programs, and that, stunningly, the Commission's rule does not require it.

Truth is, FPL could have provided the required quantifiable benefits of its programs in its filing, or requested a rule waiver by showing that the Commission's rule requirements placed a hardship on the Company. It did neither. Instead it provided qualitative narrative benefits that don't comply with the Commission's rule, do not provide the Commission any rational basis for comparing costs with dollar benefits, and would lead to an absurd outcome where parts of the Commission's rule are ignored – leaving commissioners to guess at the cost-effectiveness of FPL's proposed programs going forward. Approval of the plan, as filed, would also violate principles of responsible public policy. There is no disagreement among the parties that the Storm Protection Plan statute finds that it's in the state's interest to strengthen electric utility infrastructure. Likewise, there is no disagreement that the Commission's charge in this docket is to determine whether the plan is in the public interest and whether to approve it, approve it with modifications, or deny it. But neither the statute nor the rule encourage storm hardening at any cost. The rule does not contemplate jumping directly to the public interest determination without the utility first complying with rule provisions that are critical in informing the Commission's public interest determination. FPL has simply failed to comply with the Commission's rule; therefore, its Storm Protection Plan, as filed, cannot be approved.

II. SACE's POSITION ON THE ISSUES

ISSUE 1: Does the Company's Storm Protection Plan contain all of the elements, including but not limited to, a comparison of the costs and dollar benefits, required by Rule 25-6.030, Florida Administrative Code?

SACE: ***FPL's proposed Storm Protection Plan does not contain the necessary elements required by Rule 25-6.030, F.A.C. The FPL Storm Protection Plan does not provide the resulting reduction in restoration costs of its programs, nor reduction in outage times, nor a comparison of costs and dollar benefits. Therefore, the Storm Protection Plan, as filed, cannot be approved. See the argument below***

ISSUE 2: To what extent, and by how much, are each of the Company's Storm Protection Plan programs and projects expected to reduce restoration costs and outage times associated with extreme weather events?

SACE: ***FPL did not provide the necessary information required by Rule 25-6.030, F.A.C. for the resulting reduction in restoration costs and outage times for its proposed programs. As such, one cannot make a determination to what extent and by how much the proposed programs will reduce restoration costs and outage times. Therefore, the FPL Storm Protection Plan, as filed, cannot be approved. See the argument below.***

ISSUE 3: To what extent does the Company's Storm Protection Plan prioritize areas of lower reliability performance?

SACE: ***No position.***

ISSUE 4: To what extent is the Company's Storm Protection Plan regarding transmission and distribution infrastructure feasible, reasonable, or practical in certain areas of the Company's service territory, including, but not limited to, flood zones and rural areas?

SACE: ***No position.***

ISSUE 5: What are the estimated costs and dollar benefits to the Company and its customers of the Storm Protection Plan programs and projects?

SACE: ***FPL did not provide the necessary cost and dollar benefit data to the Commission required by Rule 25-6.030, F.A.C. As such, one cannot determine, or compare, the estimated costs and dollar benefits of the Storm Protection Plan programs and projects. Therefore, the FPL Storm Protection Plan, as filed, cannot be approved. See the argument below.***

ISSUE 6: What are the estimated annual rate impacts resulting from implementation of the Company's Storm Protection Plan during the first 3 years addressed in the plan, and are those impacts properly calculated?

SACE: ***No position.***

ISSUE 9: Should the Commission approve, approve with modification, or deny FPL's new Transmission Access Enhancment Program?

SACE: ***No position.***

ISSUE 10: Is it in the public interest to approve, approve with modification, or deny the Company's Storm Protection Plan?

SACE: ***FPL did not provide the necessary information required by Rule 25-6.030, F.A.C. for the Commission to render a public interest determination. Due to the Company's non-compliance with certain provisions of Rule 25-6.030, F.A.C., the FPL Storm Protection Plan, as filed, cannot be approved to be in the public interest. See the argument below.***

ISSUE 11: Should this docket be closed?

SACE: ***No Position***

III. ARGUMENT: THE FPL STORM PROTECTION PLAN, AS FILED, SHOULD NOT BE APPROVED.

A. THE MEANINGS OF THE RULE 25-6.030, F.A.C PROVISIONS ARE PLAIN ON THEIR FACE

The Florida Legislature passed a bill creating Section 366.96, Florida Statutes in 2019 in order to establish a process for annual cost recovery of storm hardening improvements for the state's investor-owned utilities. The law requires the Commission to adopt rules to implement the statute's provisions.[1] Pursuant to the legislative directive, the Commission adopted its Storm Protection Plan Rule 25-6.030, F.A.C in 2020 that administers the requirements of the statute. The rule provides the required contents of a Storm Protection Plan filed by a utility and states that these contents "must be provided."[2] The rule states the following in relevant part regarding Storm Protection Plan program description requirements.

> (d) A description of each proposed storm protection program that includes:
> 1. A description of how each proposed storm protection program is designed to enhance the utility's existing transmission and distribution facilities including an estimate of the resulting reduction in outage times and restoration costs due to extreme weather conditions;
> 2. If applicable, the actual or estimated start and completion dates of the program;
> 3. A cost estimate including capital and operating expenses;
> 4. A comparison of the costs identified in subparagraph (3)(d)3. and the benefits identified in subparagraph (3)(d)1.; and
> 5. A description of the criteria used to select and prioritize proposed storm protection programs.
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> R. 25-6.030(3)(d)1-5, F.A.C. (emphasis added)

The meaning of the rule provisions are plain on their face. Subparagraph (d)(1) has two prongs. The first prong asks for a "description of how each proposed storm protection program is

[1] § 366.96(11), (2019).
[2] R. 25-6.030(3), F.A.C. (emphasis added)

designed to enhance the utility's existing transmission and distribution facilities." The second prong has a distinct additional requirement - that the description must include "an estimate of the resulting reduction in outage times and restoration costs due to extreme weather conditions."

The Commission should rely on case law guidance in statutory construction when considering whether FPL has complied with Rule 25-6.030(3)(d)1, F.A.C. When the statute is clear and unambiguous, it is not necessary to look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. *See* Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 303 (Fla. 2002). A statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. *See* State v. Burris, 875 So. 2d 408, 410 (Fla. 2004). Conversely, it is well-settled law that a statutory interpretation that leads to an absurd result should be avoided. Amente v. Newman, 653 So. 2d 1030, 1032 (Fla. 1995). Lastly, a basic tenet of statutory interpretation is that a statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts. Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452, 455 (Fla.1992).

The word "cost" has a clear and definite meaning. Standing alone, the word "cost" means "the amount or equivalent paid for something."[3] The amount paid for something is plainly and obviously understood to be expressed in monetary terms – dollars and cents. Therefore, if the obvious meaning of the term "cost" is a monetary amount, a reduction in costs would likewise be reflected as a monetary amount. In the instant rule provision, there is no appropriate basis for going beyond the plain meaning of the term "cost" in subparagraph (3)(d)1 of Rule 25-6.030, F.A.C as the meaning is plain on its face. As discussed below, FPL did not provide the resulting reduction in restoration costs or outage times of its programs, or a comparison of costs and dollar benefits.

[3] Merriam Webster Dictionary, at https://www.merriam-webster.com/dictionary/cost last visited on August 23, 2022.

B. THE FPL STORM PROTECTION PLAN DOES NOT INCLUDE THE REQUIRED QUANTITIATIVE BENEFITS FOR ITS PROPOSED PROGRAMS

The FPL Storm Protection Plan, nor any of the supporting testimony, meet the requirements of Rule 25-6.030(3)d1 and d4, F.A.C. The Company provides no estimate of the resulting reduction in outage times and no estimate of restoration costs due to extreme weather conditions. Consequently, the Company cannot and does not provide a consistent and measurable metric for a comparison of cost and benefits of its proposed programs.

While the FPL plan, sponsored by FPL witness Jarro, contains the dollar cost of the programs, it merely provides amorphous narratives as the benefits of the programs. For instance, for the benefits of the distribution inspection program, FPL states that the "program has contributed to the overall improvement in distribution pole performance during storms, resulting in reduction to storm damage in poles, days to restore, and storm reduction costs." Exh. 2. p. 16 of 63. For the benefits of the transmission inspection program, the Company states that "the performance of FPL's transmission facilities during recent storm events indicates FPL's transmission inspection program has contributed to the overall storm resiliency of the transmission system and provides savings in storm restoration costs. Exh. 2, p. 20 of 63. For the feeder hardening program, FPL states that "hardened feeders perform better than non-hardened feeders." Exh. 2, p. 26 of 63. For the transmission hardening program, the Company states that it lost less transmission facilities during storms after hardening. Exh. 2, p. 38 of 63. The Company states that the benefit of its transmission vegetation management program "is self-evident" and that the outage of a transmission facility could cause loss of power to hundreds of thousands of customers. Exh. 2, p. 47-48 of 63. And the list goes on. Nowhere does the Company provide an estimate of the resulting reduction in outage times or an estimate of restoration costs for any its proposed programs going forward. Witness Jarro conceded this point at the hearing. T.74, 76-77.

In his testimony, Witness Jarro provides conflicting testimony on why the Company did not provide the required cost information. First, he states that quantification of benefits "was not required by the rule or statute." T.82. While witness Jarro renders a legal conclusion (T.82, 95), he is not an attorney (T.95), and his legal conclusion should be given the weight it deserves.

Later, Witness Jarro provides an additional alternative reason for FPL's non-compliance when he state the following.

> We felt it was not the best use of, you know, our time and analysis capability because, again, that forward-looking view is based on a lot of hypotheticals, a lot of variables of unknowns. T.100-101.

If the Company felt it was not the best use of its time to comply with the Commission rule, it could have engaged a consultant to perform analysis to comply with the Commission's rule. It concedes it could have engaged a consultant to provide the quantitative requirements of subparagraph (3)(d)1. T.1175.

Moreover, the Company could have requested a rule waiver pursuant to Section 120.542(2), Fla. Stat. and Rule 28-104.002, F.A.C. The statute and rule permit a regulated entity to file for a rule waiver, and for an agency to grant it, when the it demonstrates that the purpose of the underlying statute will be achieved by another means and when the application of the rule would create substantial hardship or would violate the principles of fairness. Witness Jarro's explanation of why FPL did not file dollar benefit data suggest the application of the rule may have served as a potential basis for a hardship argument for the Company. Yet, the Company chose not to avail itself of this option, instead it filed a non-compliant Storm Protection Plan.

The Company does provide some historical examples of how the Company's prior investments have led to quantifiable customer benefits in the context of two prior extreme weather events, Hurricane Michael and Irma. FPL provides instances where specific program hardening

improvements relative to past hurricanes have performed better than the non-hardened system, for example: the distribution inspection program, Exh. 2, p.17 of 63; the transmission inspection program, Exh. 2, p.20 of 63; the distribution and lateral feeder hardening programs. Exh. 2, p. 32-33 of 63; and the transmission hardening program. Exh. 2, p.38 of 63. Yet, this information provides snapshots of past hardening benefits, not the resulting reduction in outage times or an estimate of reduced restoration costs, or a comparison of costs and benefits for its proposed programs going forward.

While the historical information could serve to generally describe how the continuation of past programs can enhances distribution and transmission facilities (the first prong of subparagraph (3)(d)1), it falls far short of the Commission's rule requirement for quantifiable reduced outage times and reduced restoration cost going forward (the second prong of subparagraph (3)(d)1). Nor does it provide a basis for a comparison of future costs against future dollar benefits as required by subparagraph (3)(d)4.

C. THE COMMISSION SHOULD NOT GO BEYOND THE PLAIN MEANING OF THE TERM "COST"

The Commission should not go beyond the plain meaning of the word "cost" in subparagraph (3)(d)1. Any interpretation inconsistent with the common meaning of the term would render parts of subparagraph (3)(d) meaningless and produce an absurd result. For instance, FPL argues that its qualitative description meets the requirement in subparagraph (3)(d)1. T.79. Yet, a qualitative description (or historical references) can only meet the first prong of subparagraph (3)(d)1 requiring a description of how the programs will enhance the utility's existing transmission and distribution facilities. A qualitative description cannot meet the second prong of subparagraph (3)(d)1 that distinctly requires the utility to include the resulting reduction in outage times and restoration costs of proposed programs. The reduction in restoration costs must

necessarily be expressed as dollar benefits. If the second prong of subparagraph (3)(d)1 could be met by the general description required in the first prong of subparagraph (3)(d)1, as FPL argues (T.79), then the second prong of subparagraph (3)(d)1 would be rendered meaningless. Why did the Commission include the second distinct requirement of subparagraph (3)(d)1 – for an estimate of the reduction in restoration costs for each proposed program - if that clause was intended to have no force or effect? Such an interpretation of the Commission's rule would not be giving effect to every clause in the rule, rather it would produce a disharmonious and absurd result. Amente, 653 So. 2d at 1032; Forsythe, 604 So.2d 452 at 455.

Additionally, without quantifiable metrics, the Commission cannot conduct any type of meaningful and supportable comparison of costs and benefits as required in subparagraph (3)(d)4. The requirement for filing costs and benefits is also found in the underlying statute, in Section 366.96(4)(c), Florida Statutes. The Florida Legislature could not have expected the Commission to consider monetary costs against non-monetary benefits. There is no rational basis for doing so.

Moreover, in order to set fair just and reasonable rates under Chapter 366, Florida Statutes, the Commission must be able measure the dollar benefits of a program against the dollar costs of a program. After all, approval of the plan will necessarily set the scale of Storm Protection Plan increased rates to be passed on to customer bills.[4]

Lastly, It is important to note that administrative agencies in Florida are no longer granted deference on rule provision interpretations. Florida Constitution, Article V Section 21, adopted in 2018, states that "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

[4] Section 366.96(7) , Fla. Stat. ("After a utility's transmission and distribution storm protection plan has been approved, proceeding with actions to implement the plan shall not constitute or be evidence of imprudence."). *See also* Order No. PSC-2022-0187-PCO-EI, p. 1, 2 (recognizing the scope of costs to be recovered from customers pursuant to utility SPP plans is established in this docket).

interpretation of such statute or rule, and must instead interpret such statute or rule de novo." [5] (emphasis added) *See also* Citizens v. Brown, 269 So. 3d 498, 504 (Fla. 2018). As such, any adopted agency interpretation of a rule provision that is inconsistent with the plain and obvious meaning of a word or phrase, may make such adoption vulnerable to challenge.

IV. THE FPL STORM PROTECTION PLAN , AS FILED, SHOULD NOT BE APPROVED AS A MATTER OF SOUND PUBLIC POLICY

The Company is proposing $14.7 billion of storm hardening project over the next ten years. T.94; Exh. 2, Appendix C, p. 2 of 2. The scope of the cost of the plan, being determined in this docket, will be shouldered by hard working families, and Florida businesses. The matter before the Commission here is not whether storm hardening is in the public interest. That is not in dispute. The matter before the Commission is did FPL comply with all the provisions of the Commission's rule. The answer, as provided above, is clearly: No. This, unfortunately, places the Commission in the difficult position of not having facts in the record to support a public interest determination.

As regulators, the Commission should have answers to basic questions such as: 1) Are the proposed programs cost-effective?; 2) Can programs be reduced in scale to limit bill impacts and still reduce restoration costs?; and 3) When do exiting programs provide diminishing returns to the point where the costs outweigh the benefits? The answer to these questions is necessarily predicated on having quantitative data on which to compare cost and benefits. It is undisputed that FPL has not provided the required quantitative benefits of its proposed programs to the Commission.

Therefore, the Commission is being asked by FPL to approve a plan for which it has not been provided rational and consistent criteria to prioritize and approve the programs and projects.

[5] Fla. Const. Article V, Section 21, 2018

Moving forward on this basis would be simply be bad public policy. The Office of Public Counsel witness Kollen states it well in his testimony.

> The [Storm Protection Plan] Rule requires the utility to provide "[a] comparison of the costs identified in subparagraph (3)(d)3. and the benefits identified in subparagraph (3)(d)1." Rule 25-6.030(3)(d)4, F.A.C. The context and juxtaposition of the terms "costs" and "benefits" strongly imply a comparison of dollar costs and dollar benefits, not a comparison of dollar costs and qualitative benefits. The latter comparison provides no useful decision making information because it does not provide a useful threshold decision criterion to qualify programs and projects, does not provide a framework for ranking programs and projects, and does not allow a rational quantitative basis for the magnitude of programs and projects. (T.844)

Moreover, the Commission has consistently applied cost and cost reductions (benefits) as a quantitative measurement in other proceedings. For good reason, it provides an apples to apples comparison of costs and benefits from which to make informed decisions based on substantial and competent evidence. For instance, the Florida Energy Efficiency Conservation Act ("FEECA") in relevant part requires the Commission to do the following.

> (3) In developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, the commission shall take into consideration:
>
> (a) The costs and benefits to customers participating in the measure.
>
> (b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.
>
> ****
>
> Section 366.82(4), Florida Stat. (emphasis added)

The Commission has interpreted this statutory provision (as have the regulated utilities) to mean dollars and cents – both for the term "costs" and "benefits." *See* PSC Order No. 14-0696-FOF-EU. It should continue to do the same here. The above referenced subsection of the FEECA statute is analogous to Section 366.96(4)(c), Florida Statutes and Commission Rule 25-6.030

(3)(d)4, F.A.C. requiring estimates of cost and benefits, and a comparison of them respectively. In the instant case, FPL has not provided the Commission the necessary cost / benefit data specifically required under Rule 25-6.030(3)(d), F.A.C. Without the required data, the Commission cannot make a sound and supportable public policy decision.

V. CONCLUSION

Given the findings of fact, legal conclusions and the public policymaking reasons and support provided above, the FPL Storm Protection Plan, as filed, cannot and should not be approved to be in the public interest.

RESPECTFULLY SUBMITTED this 6th day of September, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 6th day of September, 2022 via electronic mail on:

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