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**Subject:** Electronic Filing / Docket #'s 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EI / Joint Response in Opposition to TASC's Petition to Intervene  
**Attachments:** 6.16.14 - Joint response in opposition to TASC Petition to Intervene.pdf; joint response in opposition to TASC Petition to Intervene -- FINAL.DOC

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket Numbers 130199-EI  
In RE: Commission review of numeric conservation goals (Florida Power & Light Company)

Docket Number 130200-EI  
In RE: Commission review of numeric conservation goals (Duke Energy Florida, Inc.)

Docket Number 130201-EI  
In RE: Commission review of numeric conservation goals (Tampa Electric Company)

Docket Number 130202-EI  
In RE: Commission review of numeric conservation goals (Gulf Power Company)

Docket Number 130203-EI  
In RE: Commission review of numeric conservation goals (JEA)

c. The Document is being filed on behalf of Florida Power & Light Company, Duke Energy Florida, Inc., Tampa Electric Company, Gulf Power Company and JEA

d. There are a total of 9 pages

e. The document attached for electronic filing is Joint Response in Opposition to The Alliance for Solar Choice's Petition to Intervene

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Commission review of numeric conservation goals (Florida Power & Light Company)	DOCKET NO. 130199-EI
In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.)	DOCKET NO. 130200-EI
In re: Commission review of numeric conservation goals (Tampa Electric Company)	DOCKET NO. 130201-EI
In re: Commission review of numeric conservation goals (Gulf Power Company)	DOCKET NO. 130202-EI
In re: Commission review of numeric conservation goals (JEA)	DOCKET NO. 130203-EM
In re: Commission review of numeric conservation goals (Orlando Utilities Commission)	DOCKET NO. 130204-EM
In re: Commission review of numeric conservation goals (Florida Public Utilities Company)	DOCKET NO. 130205-EI
	FILED: June 16, 2014

**JOINT RESPONSE IN OPPOSITION TO  
THE ALLIANCE FOR SOLAR CHOICE’S PETITION TO INTERVENE**

Duke Energy Florida, Inc., Florida Power & Light Company, Gulf Power Company, JEA and Tampa Electric Company (collectively, the “FEECA Utilities”), pursuant to Rule 28-106.204, Florida Administrative Code, hereby file their response in opposition to the petition to intervene (the “Petition”) filed by The Alliance for Solar Choice (“TASC”), and in support thereof state as follows:

**BACKGROUND**

1. On June 10, 2014, TASC filed the Petition in the above DSM goals dockets. Those dockets were opened in July 2013 to determine DSM goals for the FEECA Utilities, covering the period 2015-2024. The Commission is required by FEECA, Sections 366.80 - .85,

Florida Statutes, to determine DSM goals every five years, and the above-referenced dockets implement that requirement.

2. In Paragraphs 5 and 6 of the Petition, TASC describes itself as follows:

[TASC] leads advocacy across the country for the rooftop solar industry. Founded by the largest rooftop companies in the nation, TASC represents the vast majority of the rooftop market in the United States. Its members include: Demeter Power Group, SolarCity Corporation, Solar Universe, Sungevity, Sunrun, and Verengo Solar. Several of TASC's member companies have an operational or business presence in the state of Florida and are, collectively, responsible for over one-hundred rooftop solar installations within the state.

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TASC was formed on the belief that consumers should have the option to switch to onsite solar power for at least a portion of their energy supply. The residential rooftop solar market in Florida, which advances important state policy goals, has been driven by the desire of customers to assert control over their electric bills. TASC believes this trend should be encouraged. Accordingly, TASC is committed to supporting policies that enable greater numbers of customers to exercise the choice to self-generate electricity from clean, onsite renewable generation.

(Emphasis added).

3. The Petition is forthright in acknowledging that TASC's interests in these proceedings are competitive, economic ones: "This proceeding directly impacts a substantial economic and proprietary interest of the TASC members currently operating in Florida, as TASC's members are engaged in the financing, installation, or operation and maintenance of demand-side resources (i.e., customer-sited DSG)." Petition, at ¶9 (emphasis added).

#### **ARGUMENT**

4. The Petition does not satisfy either prong of the two-pronged test for standing to intervene set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2<sup>nd</sup> DCA 1981) ("Before one can be considered to have a substantial interest in the outcome of the proceeding [a potential intervenor] must show 1) that he will suffer

injury in fact of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his injury is of a type or nature which the proceeding is designed to protect.”). Accordingly, the Petition must be denied.

5. The Commission has previously considered and denied petitions to intervene in DSM proceedings by persons whose interests are in commercial opportunities that the DSM proceedings might facilitate or enhance. In Order No. PSC-95-1346-S-EG, Docket No. 941173-EG, dated November 1, 1995 (“Order 95-1346”), the Commission denied a petition to intervene in a proceeding to approve a Tampa Electric Company (“TECO”) DSM plan, which was filed by the Independent Savings Plan Company and Solar City<sup>1</sup> (the “ISPC/SOLAR Petition”). The Commission found that the ISPC/SOLAR Petition failed to satisfy either prong of the *Agrico* test.

a. As to the “Injury in Fact” requirement, the Commission noted that the asserted injury cannot be remote, speculative, abstract or indirect, citing *International Jai-Alai Players Ass’n v. Florida Pari-Mutuel Commission*, 561 So.2d 1224 (Fla. 3<sup>rd</sup> DCA 1990) and *Village Park Mobile Home Ass’n v. Department of Business Regulation*, 506 So.2d 426 (Fla. 1<sup>st</sup> DCA 1987). It then concluded that the interests of ISPC and SOLAR were too speculative to meet this test:

The manner in which ISPC’s and Solar’s interests are affected by the lack of a program depends ultimately upon factors extraneous to these proceedings and upon consumer reactions. ISPC finances the wholesale purchase of SOLAR equipment which in turn is sold to retail customers of TECO by licensed contractors and retailers. SOLAR provides heating equipment to licensed contractors and other retail outlets. ISPC and SOLAR, therefore, are at least two steps removed from TECO customers who might have participated in an incentive program if there were one. ISPC/Solar have not shown that they have sustained actual injuries at the time of filing their petition, or that they are immediately in danger of sustaining direct injury as a result of the challenged Commission action.

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<sup>1</sup> Solar City is a member of TASC, according to Paragraph 5 of TASC’s Petition.

Order 95-1346, at 6-8.

b. As to the second prong of the *Agrico* test, the Commission found that ICSP's and SOLAR's alleged interests in the proceeding were not within the zone of interest that the proceeding was intended to protect:

ISPC/Solar argue that their economic interests fall within the zone of interest of the Florida Energy Efficiency and Conservation Act (FEECA), *Sections 366.80-.85, Florida Statutes*. They claim that the enhancement of competition between the solar energy industry and other types of energy providers is what FEECA was intended to accomplish. TECO argues that ISPC/Solar's interest in enhancing their prospects for the financing and sale of solar water heating products is not an interest that FEECA was designed to protect. We do not agree with ISPC/SOLAR's position. While FEECA encourages the use of solar energy and other renewable resources, it was not designed to protect the competitive economic interests of the solar industry. ISPC/SOLAR's interest in this proceeding is beyond the scope of the energy conservation purposes FEECA was designed to promote and protect. ISPC/SOLAR fail to meet the zone of interest requirement of the *Agrico* standing test ....

*Id.*, at 9-10. See *Grove Isle, Ltd. v. Bayshore Homeowners' Ass'n*, 418 So.2d 1046 (Fla. 1<sup>st</sup> DCA 1982); *Suwannee River Area Council Boy Scouts of America v. Department of Community Affairs*, 384 So.2d 1369 (Fla. 1<sup>st</sup> DCA 1980); *Boca Raton Mausoleum v. Department of Banking and Finance*, 511 So.2d 1060 (Fla. 1<sup>st</sup> DCA 1987); *Friends of the Everglades v. Board of Trustees*, 595 So.2d 186 (Fla. 1<sup>st</sup> DCA 1992).

6. Similarly, the Commission concluded in a proceeding to approve FPL's 1995 DSM plan that the owner of a residential energy auditing company did not have standing to intervene. Order No. PSC-95-1343-S-EG, Docket No. 941170-EG, dated November 1, 1995 ("Order 95-1343"). The Commission found that the potential harm to his interests as an energy auditor from FPL's DSM plan was too speculative and that "[t]he Florida Energy Efficiency and Conservation Act (FEECA), *Sections 366.80-.85, Florida Statutes*, is not intended to promote businesses or protect business markets, and thus in this case an economic interest in the

continuation of FPL's incentive program is insufficient to establish standing.” Order 95-1343, at 9-15.

7. The interests alleged in TASC's Petition are indistinguishable from those which were found to be an insufficient basis for standing in Orders 95-1343 and 95-1346. TASC seeks to intervene in order to protect the “substantial economic and proprietary interest of the TASC members ... in the financing, installation, or operation and maintenance of demand-side resources (i.e., customer-sited DSG).” Petition, at ¶9. In other words, TASC is alleging that its members have a competitive, economic interest in getting more business if the FEECA Utilities have DSM programs that promote customer-sited DSG.

8. The impact of the DSM goals established in these proceedings on such an interest is speculative, “at least two steps removed from the [FEECA Utilities'] customers who might [participate]” in any customer-sited DSG programs that might be implemented in order to meet DSM goals established in these proceedings. Order 95-1346, at 8. In reality, the interests of the TASC members are *three* steps removed, because Orders 95-1343 and 95-1346 concerned DSM plan-approval proceedings, whereas TASC is seeking to intervene in the DSM goals proceedings that precede plan approval. Furthermore, TASC candidly acknowledges that it seeks to protect commercial, economic interests in the continuation of particular DSM programs. Orders 95-1343 and 95-1346 both found such interests to be outside the zone of interest that FEECA is intended to protect. “While FEECA encourages the use of solar energy and other renewable resources, it was not designed to protect the competitive economic interests of the solar industry.” Order 95-1346, at 10.

9. Because the FEECA Utilities believe, as demonstrated above, that TASC does not have standing to intervene in this proceeding, this response does not address the “rebuttal”

testimony filed simultaneously by TASC. The FEECA Utilities do not waive their right to later move to strike or otherwise challenge that rebuttal testimony, if the Commission were to find that TASC has standing in this proceeding.

**WHEREFORE**, the FEECA Utilities respectfully request that the Commission deny TASC's petition to intervene for lack of standing. TASC fails, on the face of its petition, to meet either prong of the *Agrico* standing test.

Respectfully submitted,

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**CERTIFICATE OF SERVICE  
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