Via E-Filing

June 18, 2014

Carlotta S. Stauffer, Director
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399

RE: Docket No. 130199-EI (Florida Power & Light Company)
Docket No. 130200-EI (Duke Energy Florida, Inc.)
Docket No. 130201-EI (Tampa Electric Company)
Docket No. 130202-EI (Gulf Power Company)
Docket No. 130203-EM (JEA)
Docket No. 130204-EM (Orlando Utilities Commission)
Docket No. 130205-EI (Florida Public Utilities Company)

Dear Ms. Stauffer:

Please find enclosed for filing the Reply to the Joint Response in Opposition to The Alliance for Solar Choice's Petition to Intervene. Do not hesitate to contact me if you have any questions regarding this filing.

Sincerely,

/s/ Thadeus B. Culley

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Enclosures

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 18, 2014

REPLY TO THE JOINT RESPONSE IN OPPOSITION TO
THE ALLIANCE FOR SOLAR CHOICE'S PETITION TO INTERVENE

The Alliance for Solar Choice ("TASC"), by and through its undersigned qualified representative, respectfully submits its reply to address the erroneous factual and legal assertions of Duke Energy Florida, Inc., Florida Power & Light Company, Gulf Power Company, JEA and Tampa Electric Company (collectively, the "Utilities") regarding TASC's standing to participate in this proceeding in their Joint Response in Opposition to TASC's Petition to Intervene ("Response").

I. BACKGROUND

1. On June 10, 2014, TASC submitted for filing in the above-captioned consolidated dockets its Petition to Intervene ("Petition"). In its Petition, TASC alleged that its members comprise the majority of the nation's rooftop solar market and that it has a specific interest in the development of Florida's rooftop solar market, an interest "which advances important state policy goals…." TASC Petition at ¶¶ 5, 6. TASC further alleged that "[t]he substantial interest of TASC members in the development of demand-side resources is of the type that this proceeding, and the Florida Energy Efficiency and Conservation Act, is designed to protect." Petition at ¶ 11.

2. On June 16, 2014, the Utilities filed a Response in Opposition to TASC's Petition. The Utilities allege that TASC does not meet the two-prong standing requirements for participation in Commission proceedings, as articulated by the court in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981):

> We believe that before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. While petitioners in the instant case were able to show a high degree of potential economic injury, they were wholly unable to show that the nature of the injury was one under the protection of chapter 403.

In particular, the Utilities claim that two Commission decisions from 1995 applying the *Agrico* two-prong test require the Commission to deny TASC's Petition because

those cases are factually "indistinguishable" from the facts alleged in TASC's Petition and involve the same legal analysis related to FEECA.

II. ARGUMENT

3. The Utilities' argument that TASC's Petition must be denied rests on errors of both fact and law and should be disregarded. TASC's Petition alleged sufficient facts to establish a nexus between TASC's member companies' operations and the FEECA goal of encouraging development of demand-side renewable energy systems in Florida. Accordingly, the question for the Commission to resolve is this: Does a statute requiring the Commission to set appropriate goals for "**increasing** the **development** of demand-side renewable energy systems" contemplate that the **developers** of those systems—who work directly with Florida retail customers to design, install, operate or finance these systems and often encourage customer adoption—should have a voice in seeing those goals properly implemented?

A. The Utilities' Rely on Factual Mischaracterization to Allege that TASC's "Injury in Fact" Is Too Remote.

4. TASC's Petition alleged that TASC member companies are engaged in the "financing, installation, or operation and maintenance of demand-side resources (i.e., customer-sited DSG)." Petition at ¶ 9. All of these activities involve a direct relationship, often an ongoing contractual one, between the company and the ultimate customer. There is a close and often an ongoing relationship between the rooftop solar companies and their customers. This scenario does not describe a company that is "two steps" or "three steps" removed from a Florida ratepayer receiving incentives under a solar program.

5. The Utilities' claim that TASC has failed to satisfy the "injury in fact" prong of *Agrico* rests on this mischaracterization of the relationship between rooftop developers and customers. For example, in Order No. PSC-95-1346-S-EG, Docket NO. 941173-EG (November 1, 1995) ("Order 95-1346"), the Commission found that a company selling solar equipment at wholesale (to other companies and installers who have direct retail interactions) had an interest that was too remote to satisfy the first prong of *Agrico*. As the Commission observed, these wholesale companies "are at least two steps removed from TECO customers who might have participated in an incentive program if there were one." Order 95-1346, at p. 8. Indeed, the Utilities suggest that this case is all the more applicable because, as they allege, one of the companies found to lack standing in that case (described as "Solar City[2]") is a TASC member. Utilities' Response at ¶ 5. This turns out to be a careless and inaccurate reference to a different entity and only serves to further conflate the factual distinctions between an upstream wholesale equipment dealer and a rooftop solar developer that is directly involved in developing and creating growth in the retail customer market.

6. Similarly, Order No. PSC-95-1343-S-EG, Docket No. 941170-EG (November 1, 1995) ("Order 95-1343"), does not bear a close factual resemblance, on the "injury in fact" prong, to the facts alleged in TASC's Petition. In Order 95-1343, the Commission determined that the owner of an energy auditing company had alleged an interest too remote to constitute an injury in fact:

[2] A search of the Florida Secretary of State's website reveals that "Solar City, Inc." was incorporated in Florida in 1995. SolarCity Corporation, the member of TASC referenced in TASC's Petition at ¶ 5, was not established and incorporated until 2006.

> The letter states only that Mr. Nolley owns a residential energy auditing company in FPL's service area, that solar water heating is of interest to homeowners, that solar energy is a valuable resource, that ending solar water heating incentives would be a step backwards, and that with the help of the incentives, homeowners can take advantage of this renewable resource. These are all general, unspecified allegations that do not relate in any direct or immediate way to the specific substantial interests of Mr. Nolley.

7. Contrary to the Utilities' assertions, the "interests alleged in TASC's Petition" are **not** "indistinguishable" from the facts laid out above in Orders 95-1343 and 95-1346. Utilities' Response at ¶ 7. Unlike wholesale vendors that may passively benefit from the growth of the solar market without actively generating leads, designing specific projects, or empowering customers with a choice of energy management options, rooftop solar companies directly participate in that manner in furthering the goals of market development. It is often the case that rooftop "developers" bring the customer to the market to take advantage of available incentives by providing specialized consultations and recommendations. In this way, rooftop solar companies are wholly distinct from the types of "upstream" market participants described above, who are rightfully classified as "two steps" removed from retail customers.

8. TASC's interest is in this proceeding is not remote or speculative. For example, solar incentives are a valuable tool in cultivating market opportunities and implicate a wide range of interests: the interest to rooftop solar companies; the interest to the customers who have increased choices for energy consumption; and the interest to the state in accomplishing its long-term energy goals. The unavailability of incentives creates a concrete injury in fact for rooftop developers who utilize these

incentives to drive customer adoption in Florida and to further the state's FEECA objectives.

B. The Commission Can Interpret the 2008 FEECA Legislative Amendments to Expand the Zone of Interest to Include Parties that Directly Participate in Development of Demand-Side Renewable Energy Systems.

9. TASC's Petition alleged that "the substantial interest of TASC members in the development of demand-side renewable resources is of the type that this proceeding, and [FEECA], is designed to protect." TASC Petition at ¶ 11. This is because rooftop solar developers directly participate in the goal of increasing development of demand-side renewable energy systems.

10. The fact that FEECA, as amended by the Legislature in 2008, requires the Commission to adopt appropriate goals to increase development of demand-side renewable energy systems, suggests that the protected interests extend to parties capable of acting within the program to increase development. Given the privity and mutual interest of customers and developers in developing demand-side renewable energy systems—one party providing the capital or land, the other providing the equipment, financing or technical expertise—the law does not draw a clear distinction between the two. Indeed, the definition of "demand-side renewable energy system" does not make reference to ownership of the system, merely that it is customer-sited.[3] In light of this broad impact of the 2008 amendment language requiring the Commission to adopt appropriate goals increasing development of demand-side renewable energy systems, it follows that both customers and developers have an interest that would be affected by failure of the Commission to follow FEECA's

[3] Florida Statutes § 366.82 (b).

requirements. Accordingly, both have a colorable claim to be within the zone of interest of FEECA.

11. In light of the possibility that the 2008 legilsative amendments to FEECA broadened the zone of interest analysis, the Utilities' reliance on decades-old Commission precedent is unavailing. In particular, the Utilities rely on Order 95-1346 as the dispositive statement regarding the FEECA zone of interest: "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 p. 10. (emphasis added). Reading further, Order 95-1346 suggests that this statement should be viewed within the stricter scope of FEECA (pre-2008) as it concerned the inclusion of demand-side renewable energy in conservation goals: "ISPC/SOLAR's interest in this proceeding is **beyond the scope of the energy conservation purposes** FEECA was designed to promote and protect." *Id.* at p. 10.

12. Nearly twenty years later, the scope of FEECA is not as limited or indirect in regards to its treatment of renewable energy. After the 2008 legislative amendments, FEECA requires the Commission to adopt goals specifically for development of demand-side renewable energy systems, a requirement that appears to expand upon the original "scope of energy conservation purposes FEECA was designed to promote and protect." *Id.* Thus, TASC suggests that the Commission should approach the zone of interest inquiry for FEECA anew, and question the Utilities suggestion that it rely on the continuing relevance of nearly twenty-year-old precedent, interpreting substantially different provisions, relating to how renewable energy fits within the FEECA scheme.

III. CONCLUSION

For the foregoing reasons, TASC respectfully asks the Commission to recognize the factual and legal errors of the Utilities' Response and to make an appropriate determination on TASC's Petition.

Respectfully submitted this 18th day of June, 2014.

BY **/s/ Thadeus B. Culley**

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2014 I sent a true and correct copy of this REPLY TO THE JOINT RESPONSE IN OPPOSITION TO THE ALLIANCE FOR SOLAR CHOICE'S PETITION TO INTERVENE via electronic mail or US Mail to the following:

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