
***Via E-Filing***

July 7, 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 The Alliance for Solar Choice's Motion for Reconsideration, in the above-referenced consolidated proceedings. 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**

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|---|---|
| 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: JULY 7, 2014** |

**THE ALLIANCE FOR SOLAR CHOICE'S**
**MOTION FOR RECONSIDERATION**

In accordance with Rule 25.22.060, Florida Administrative Code, The Alliance for Solar Choice ("TASC"), by and through its undersigned qualified representative, respectfully submits this Motion for Reconsideration of Florida Public Service Commission ("Commission") Order No. PSC-14-0329-PCO-EU, Consolidated Docket Nos. 130199 through 130205 (Issued June 26, 2014) ("Order").[1]

[1] TASC conferred with parties of record to this proceeding via email on July 2, 2014. As of the date of filing, Environmental Defense Fund, Sierra Club, Southern Alliance for Clean Energy, Wal-Mart, PCS Phosphate, Office of Public Counsel, Department of Agriculture and Consumer Services, NAACP, and Florida Industrial Power Users Group have responded and do not take a position or do

TASC respectfully requests that the Commission grant its request to intervene in the above-captioned proceedings and to allow TASC to fully participate in these proceedings. Alternatively, TASC seeks leave through its reconsideration for limited intervention to submit post-hearing comments, briefing or memoranda on the utilities' conservation goals.

TASC respectfully request that the Commission grant its Motion on the following grounds:

- The Order fails to consider relevant factual and legal arguments on the basis for finding an injury in fact, as contained in TASC's Reply to the Utilities' Joint Response in Opposition to TASC's Petition to Intervene;
- The Order fails to consider an issue of first interpretation involving the impact of 2008 amendments to FEECA on the Commission's "zone of interest" analysis; and
- The Order misapplies the standing test for associational standing to the facts alleged by TASC.

## I. INTRODUCTION

Founded by the largest rooftop solar companies in the nation, TASC represents the majority of the rooftop market in the United States and leads advocacy across the country for the rooftop solar industry. Its members include: Demeter Power Group, SolarCity Corporation, Solar Universe, Sungevity, Sunrun, and Verengo Solar. As alleged in TASC's Petition to Intervene in the consolidated FEECA dockets, 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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not oppose this Motion. Gulf Power, Florida Power & Light, and JEA have all indicated that they oppose the Motion.

There can be no credible dispute that Florida's solar market is woefully underperforming, given its explosive potential. The record in the consolidated Florida Energy Efficiency and Conservation Act ("FEECA") proceedings tells the story of a policy landscape that has, to this point, failed to breakthrough to encourage a meaningful number of ratepayers to self-generate using a demand-side renewable energy system. Other states have shown that some policy inertia and leadership is often required to breakthrough the century-old entitlements of monopoly utilities to be the sole source of electricity for captive ratepayers. In California, well over 2,000 MW of behind-the-meter solar have been installed as a result of Commission-led policies to direct incentives to customers.[2] The point of these incentives was to encourage the demand-side solar market to flourish while the marketplace matured to critical mass and reached sustainability. This design has worked. An astonishing 620 MW of customer-sited solar was installed in California in 2013 (with program incentive levels that decline as participation increases), standing as a testament to the critical role of regulatory policy in supporting the rapid maturation of the solar market.

But Florida has yet to make the substantial push required to match the results seen in states like Arizona, New Jersey, and California, where thousands of jobs have been created and hundreds of thousands of rooftop systems are currently deployed. In terms of natural potential for solar generation, it goes without saying that Florida is uniquely blessed with abundant solar resources and TASC expects that the state will advance to the front of the pack with the right policy tools in place.

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[2] 2014 California Solar Initiative Annual Program Assessment (June 2014), California Public Utilities Commission report *available at* www.cpuc.ca.gov/NR/rdonlyres/9FBE11AB-1120-4BE1-8C66-8C239E36A641/0/CASolarInitiativeThermalProgramJune2014_070114.pdf

Given the untapped potential in Florida, this Commission is an important and appropriate venue for TASC to pursue its central objective to support and defend successful policies that encourage customers to choose to adopt rooftop, demand-side solar energy systems. Moreover, FEECA is one of the more important tools and sources of statutory authority that the Commission has to help achieve these policy goals of solar market development.

The swift and unified Response in Opposition to TASC's intervention by Duke Energy Florida, Inc., Florida Power & Light Company, Gulf Power Company, JEA and Tampa Electric Company (collectively, the "Utilities"), accordingly, is not unexpected. In regulated markets, utilities tend to perceive expansion of opportunities for customers to choose to install rooftop solar as a threat to their firmly entrenched entitlements. That appears to be the case here, as the utilities opposed TASC's participation in a proceeding where the utilities are all urging the Commission to abandon programs to support customer choices to install demand-side renewable energy systems.

## II. PROCEDURAL BACKGROUND

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.

On June 16, 2014, the Utilities filed a Response in Opposition to TASC's Petition ("Response"). 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.

On June 18, 2014, TASC filed a Motion for Leave to Reply to the Response ("Motion for Leave to File a Reply") and a concurrent Reply, which addressed the legal and factual errors in the Utilities' Response. On June 20, 2014, the Utilities filed a Joint Response in Opposition to TASC's Motion for Leave to File a Reply.

On June 23, 2014, the Utilities' filed the Joint Motion to strike the entirety of TASC's Rebuttal Testimony.[3]

On June 25, 2014, on the eve of the prehearing conference for this proceeding, Commissioner Brisé issued an order denying TASC's intervention, Motion for Leave to File a Reply, and concurrently filed Reply.

## III. ARGUMENT

TASC seeks reconsideration of the Order to ask the full Commission to correct the misapplication of law and fact to its evaluation of TASC's intervention and to address an issue of first impression with important policy implications. First, TASC alleges that the Order fails to consider relevant factual and legal arguments, as contained in its Reply, that establish it has a substantial interest (i.e., an "injury in fact") that is affected by the FEECA proceedings. Second, TASC alleges that the Order fails to consider its legal arguments that the zone of interest of FEECA proceedings was expanded by 2008 amendments to include the interest of developers who would necessarily have a stake in seeing the Commission fulfill its obligation to create goals that "increase development." TASC suggests that this is an issue of first impression and warrants more careful and direct consideration from the Commission than the limited analysis presented in the Order. Third, the Order misapplies the test for associational standing, as announced in *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351 (1982), and errs in concluding that TASC does not have associational standing. Finally, the Order raises

[3] If granted intervention, TASC will not seek to include Mr. Miksis' rebuttal testimony in the record of this proceeding, as doing so could disrupt the orderly conduct of the hearing later this month.

important policy issues regarding the fairness of excluding market participants from conversations about moving the state toward a sustainable solar market, consistent with FEECA's intent.

The standard of review for a motion for reconsideration is well established: "The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order." Order No. PSC-12-0400-FOF-EI, Docket No. 110138-EI (Issued August 3, 2012). It is not appropriate to reargue matters that have already been considered by the Commission. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959). In this motion TASC brings forward assertions of fact and law that were not previously considered, as the Commission rejected TASC's Motion for Leave to Reply and did not receive TASC's Reply to the Utilities Response in Opposition into the record for consideration. TASC respectfully suggests that reconsideration is justified in this instance.

**A. The Order Errs in Concluding that TASC Did Not Allege a Sufficient Injury in Fact.**

*1. The Order fails to consider the factual distinctions that would distinguish rooftop developers from the more remote interest of the wholesale equipment dealers the Commission previously held to lack standing.*

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. In their Response, the Utilities claim that TASC is no different than wholesale equipment providers—who the Commission previously found to lack

standing to participate in a FEECA proceeding. Although such wholesale providers might enjoy downstream benefits from increased solar activity associated with Commission programs, the Commission reasoned that there were several degrees of separation between those companies and the ultimate customers receiving incentives. This made those wholesale companies' interests too remote or speculative to satisfy the first prong of *Agrico*. In contrast, TASC's Petition does not describe companies that are "two steps" or "three steps" removed from a Florida ratepayer receiving incentives under a solar program.

Despite this factual distinction, the Order appears to have adopted the erroneous argument put forward in the Utilities Response. The Utilities' Response claims that TASC fails to satisfy the "injury in fact" prong of *Agrico* because the activities of these companies are "two steps" or "three steps" removed from FEECA-related activities (i.e., customers receiving direct incentives). This argument entirely rests on this mischaracterization or simple misunderstanding of the relationship between rooftop developers and customers. For example, the Utilities cite Order No. PSC-95-1346-S-EG, Docket NO. 941173-EG (November 1, 1995) ("Order 95-1346"), where 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 under those facts, 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.

Similarly, the other Commission Order cited by the Utilities, 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:

> 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.

Contrary to the erroneous factual assertions in the Utilities' response, which were not addressed in the Order, 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.

The Order appears to rest its hat on the distinguishable precedent cited by the Utilities and does not address the nexus between the customers and the rooftop solar industry. The Order states that "TASC's alleged impact to its commercial and economic interest is speculative and indirect" without further explanation to support those conclusions. Order at p. 4. Indeed, the Order makes the curious assertion that "the rooftop solar market and customer driven demand side management are not directly affected by this proceeding." *Id.* TASC asserted in its Prehearing Statement that direct incentives, such as the type provided by the FEECA proceedings in the past, are critical part of the customer-driven market in Florida, particularly as it is in its early developmental stage.

The Order fails to consider the unique facts of the rooftop solar market and how deeply intertwined are customer decisions to install solar using available incentives to the ability of rooftop companies to bring those customers to the market. This idea is has some traction in the current proceeding. For example, Gulf Power's testimony boasts that the number of installers has increased since the pilot began, citing this fact as a justification for ending the incentive program.[4] TASC agrees with the suggestion that there is a point where incentives will foster the development of a market to where it can sustainably deliver the same results without direct support, but strongly disagrees with the conclusion that the time to end incentives is now. The solar market in Florida has not seen the type of growth that would suggest it has

[4] Direct Testimony of Witness John N. Floyd on behalf of Gulf Power Company at p. 30, lines 12-20 ("Based on the information collected in the solar pilot programs, a more stable and viable solar contractor base has developed in Gulf Power's service area. […] These contractors are actively competing for market share and providing customers more competitive options for system equipment and design, installed costs, and other services to meet customers' needs and expectations.").

sufficiently matured. TASC suggests that the state's solar market needs continued leadership from the Commission to provide direct support to reach the goal of long-term sustainability.

Accordingly, TASC's interest in this proceeding is not remote or speculative. 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.

*2. The Order fails to consider that a failure to continue to support a program to increase development of demand-side renewable energy systems through this proceeding will create an economic injury in fact.*

In concluding that "the rooftop solar market" is "not directly affected by this proceeding", the Order ignores the cause and effect that fewer support dollars will result in less development opportunities. It is intuitive that developers of rooftop solar systems have a direct interest in the Commission's implementation of a statute that requires the Commission to "increase development" of demand-side renewable energy systems. Previously, the Commission approved solar incentive programs that provided customers direct incentives to install demand-side solar systems as a means to increase this development. This pilot program created a benefit that caused the market to rise for the limited number of solar installers in the state and became the Commission's expression of the legislature's express intent to develop the solar market. TASC would be injured by Commission failure to continue these solar incentive programs or to implement a new program to increase development, as such

a result stifles the organizational purpose to increase opportunities for solar market development in the state and would deprive its members already active here of additional opportunities to install systems in Florida.

It is not far-fetched, remote or speculative to say that a service provider suffers a legally cognizable economic injury (for purposes of standing) when government support is withdrawn from the market for a service it provides. *State Department of Health and Rehabilitative Services v. Alice P.*, 367 So. 2d 1045, 1052 (Fla. 1st DCA 1979) (A doctor who was the Director of a clinic satisfied standing requirements where the Department's refusal to fund an elective medical procedure decreased the number of patients to the clinic.). Common sense suggests that TASC should have a seat at the table as the Utilities unanimously urge the Commission to withdraw its support from the demand-side renewables market.

**B. The Order Errs in Failing to Consider that 2008 FEECA Amendments Modified the Emphasis on Demand-Side Renewables and Should Impact the Commission's Zone of Interest Analysis.**

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.[5] Accordingly, the question for the Commission to resolve upon reconsideration 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

[5] 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.

these systems and often encourage customer adoption—should have a voice in seeing those goals properly implemented?

The Order errs in too strictly applying the zone of interest test to conclude that solar developers are not within FEECA's zone of interest. First, FEECA provides that its provisions are to be liberally construed to further the purposes of the statute.[6] Second, the zone of interest test is not intended to be particularly onerous. As stated by the United States Supreme Court in *Clarke v. Securities Industry Association*, 479 U.S. 388, 399 (1987) (citing *Investment Company Institute v. Camp*, 410 U.S. 617 (1971)),"the test is not meant to be especially demanding; in particular there need be no indication of congressional purpose to benefit the would-be plaintiff." It is not necessary for FEECA to evince the intent to financially benefit rooftop solar developers. The mandatory requirement that the Commission set goals to increase development of demand-side renewables implicates an interest of rooftop solar companies that is arguably within the reach of this liberally construed statute.

The Order, without further explanation, concludes that "the commercial interest of rooftop solar providers is not the type of interest that these proceedings are designed to protect." Order at p. 4. 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

[6] Fl. Stat. § 366.81.

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.[7] In light of the 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 requirements. Accordingly, both have a colorable claim to be within the zone of interest of FEECA.

Despite this, the Order appears to accept the argument put forward in the Utilitiles' Response. In light of the possibility that the 2008 legislative amendments to FEECA broadened the zone of interest analysis, TASC suggests that the Commission should avoid relying on stale precedent. In particular, the Utilities' Response relied 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 in Order 95-1346, the Commission's statement 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. Despite the possibility that the amendments would

[7] Florida Statutes § 366.82 (b).

be relevant, the Order denying TASC's intervention repeats this old refrain and fails to consider the impact of the 2008 amendments. Order at p. 4.

Nearly twenty years later, it is important to note that the scope of FEECA is not as limited or indirect in regards to its treatment of renewable energy as it was when the Commission undertook its analysis in 1995. 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.* In Order No. PSC-09-0855-FOF-EG, Consolidated Docket Nos. 080408-EG through 080413-EG (Issued December 30, 2009) ("Order No. 09-0855"), the Commission recognized that the Legislature put "new emphasis" on demand-side renewable energy systems in the 2008 amendments. *Id.* at p. 58. Thus, TASC suggests that the Commission should revisit the zone of interest inquiry for FEECA, and question the continuing relevance of nearly twenty-year-old precedent that interprets substantially different provisions on how renewable energy fits within the FEECA scheme.

### C. The Order Misapplies the Test for Associational Standing in *Florida Home Builders*.

TASC is an organization that is dedicated to working nationally to create and defend market opportunities for the expansion of rooftop solar through in involvement in regulatory proceedings that involve rooftop (or distributed) solar issues. The purpose and intended result of TASC's advocacy is to improve opportunities to increase rooftop solar development by supporting policies that encourage customer's choices to install and consume clean, onsite generation.

This purpose is germane to its members' direct interest in this proceeding. TASC's members have successfully used state-level regulatory solar policies to encourage tens of thousands of Americans to choose to install demand-side solar. Two of TASC's six members, including one of its largest in terms of employees and overall deployed rooftop systems, are directly engaged with customers in Florida and will necessarily rely on continued solar incentives or some alternate support program to help in their efforts to get customers to choose to install solar.

As the Commission states the test for associational standing, TASC appears to clearly meet this bar:

> To have associational standing, the intervenor must satisfy the test for associational standing set forth in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982)(for rule challenges), and extended to Section 120.57(1), F.S., hearings by Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982). Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members. Florida Home Builders at 353.

TASC satisfies the first prong of *Florida Home Builders* because two of its members are engaged in Florida in the solar market and will suffer an immediate and direct injury if the Commission fails to uphold its statutory obligation to ensure that the utilities' FEECA goals include a mechanism to increase development of demand-side renewable energy systems. The Order does not hold that TASC fails to meet the substantial number element of this first prong. If the Commission finds that TASC

members have a substantial interest (i.e., an injury in fact) in the proceeding, then TASC will meet the first prong.

TASC satisfies the second prong because the FEECA goal of increasing development of demand-side renewable energy systems—and the utilities' proposal to dismantle the solar incentive programs—is directly and undeniably within TASC's "general scope of interest and activity." The Order inexplicably overlooks this simple application of the second prong and, instead, applies the *Agrico* zone of interest test to conclude that FEECA "was not designed to protect the competitive economic interests of the solar industry." Order at p. 4.

TASC satisfies the third prong of *Florida Home Builders* because a final decision in this proceeding will result in a program that supports the activities of its member companies and will either enhance or impede their ability to encourage additional utility customers in Florida to exercise their right to install and consume demand-side renewable generation. The Order offers only the conclusory statement that "there is no relief in the FEECA dockets that would be appropriate for the association to receive on behalf of its members." Order at p. 4. A Commission order that would continue support for the demand-side renewable market is exactly the type of remedy that TASC seeks to provide to its members and appears entire appropriate here.

For these reasons, TASC respectfully submits that the Order errs in its application of *Florida Home Builders* to the facts alleged in TASC's petition and cuts against a common sense approach to evaluating the standing of persons who wish to participate in Commission proceedings.

### D. The Order Fails to Consider the Basic Policy Disharmony Created by Excluding Parties from a FEECA Proceeding that Are Willing, Able, and Important Partners in Meeting the State's FEECA Demand-Side Renewable Energy Goals.

With the 2008 amendments to FEECA, the Florida Legislature sent a direct message that it intends the Commission to do what is necessary and appropriate to encourage the demand-side renewable market, which clearly includes the rooftop solar market. The Legislature intends FEECA to be liberally construed, as has always been the case with this statute, and gave a direct indication, with its explicit substitution of "demand-side renewable energy systems" for "cogeneration" (in the previous version), that the demand-side renewable market would take a new place in the FEECA framework. Indeed, the Commission recognized in Order No. 09-0855 that "in making these amendments to Section 366.82(2), F.S., the Legislature has placed additional emphasis on encouraging renewable energy systems." Order No. 09-0855 at p. 58. It seems implausible that the Legislature would intend to place additional emphasis on increasing the development demand-side renewable energy systems without considering the need for an industry to develop to fulfill that goal.

Common sense suggests that it is entirely proper for the leading voices in the solar industry to have a voice in a FEECA proceeding where one of the main issues concerns the types of programs that will increase development of the market. TASC's members have helped pioneer solar market growth across the nation. In this context, the Order's doctrinaire application of Florida standing law gives little credence to the Legislature's expressed intent to foster a sustainable solar market in the state. Presumably, the Legislature would expect that parties with expertise and experience in the field of developing a solar market, such as the members of TASC, would have

a seat at the table and a voice in the process. This reasonable conclusion gives additional weight to the argument that the solar industry is within the zone of interest of FEECA, according to the 2008 amendments, and that the time has come for the Commission to reconcile its precedent to allow for participation of parties that are active and necessary players in achieving FEECA demand-side renewable energy goals.

## IV. CONCLUSION

WHEREFORE, TASC respectfully requests that the Commission grant its Motion for Reconsideration or, alternatively, grant it limited party status to allow TASC to submit post-hearing briefing.

Respectfully submitted this 7th day of July, 2014.

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

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Qualified Representative of The Alliance for Solar Choice

## CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2014 I sent a true and correct copy of **THE ALLIANCE FOR SOLAR CHOICE'S MOTION FOR RECONSIDERATION** via electronic mail or US Mail to the following:

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