

**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-EI

Filed: May 23, 2022

**FLORIDA POWER & LIGHT COMPANY’S RESPONSE IN OPPOSITION TO THE  
SOUTHERN ALLIANCE FOR CLEAN ENERGY’S PETITION TO INTERVENE**

Florida Power & Light Company (“FPL”), pursuant to Rule 28-106.205(1), Florida Administrative Code (“F.A.C.”), and this Commission’s Order Establishing Procedure PSC-2022-0119-PCO-EI (“OEP”), submits this Response in Opposition to the Southern Alliance for Clean Energy’s (“SACE”) Petition to Intervene. SACE has failed to meet its burden to demonstrate that has standing to intervene in this proceeding. The issues and findings in this Storm Protection Plan (“SPP”) docket are very specific and statutorily prescribed. The fact that SACE has been allowed to intervene in other Commission proceedings does not mean that is entitled to intervene in this proceeding, nor does it somehow excuse SACE from its burden to demonstrate it has standing to intervene. As explained below, SACE’s purpose, mission, and allegations of affected interests are simply beyond the transmission and distribution storm hardening programs and projects to be decided in this proceeding and, therefore, SACE’s Petition to Intervene should be denied. In support, FPL states as follows:

**I. BACKGROUND**

1. On June 27, 2019, the Governor of Florida signed CS/CS/CS/SB 796 addressing Storm Protection Plan Cost Recovery, which was codified in Section 366.96, Florida Statutes (“F.S.”). Therein, the Florida Legislature directed each investor owned utility (“IOU”) to file a transmission and distribution (“T&D”) SPP that covers the immediate 10-year planning period and

explains the systematic approach the utility will follow to achieve the legislative objectives of strengthening electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management. *See* Section 366.96, F.S.

2. On May 17, 2022, the Prehearing Officer issued the OEP that established, among other things, the procedural schedule for this docket.

3. Pursuant to the OEP, on April 1, 2022, FPL filed its 2023-2032 SPP (Exhibit MJ-1) in this docket together with supporting testimony and schedules.

4. On May 17, 2022, SACE contacted the parties to this docket to identify their position on SACE's intervention in this proceeding.

5. On May 18, 2022, FPL communicated with SACE and advised that it took no position at that time but reserved the right to respond to SACE's petition to intervene once it has been filed.

6. On May 19, 2022, SACE filed and served its Petition to Intervene.

7. Pursuant to Rule 28-106.205(1), F.A.C., FPL submits this response in opposition to SACE's intervention in this docket.

## **II. STANDARDS FOR INTERVENTION**

8. Pursuant to Rule 28-106.205, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding and who desire to become parties may move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that

the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

9. To have standing, an individual intervenor must meet the two-prong standing test set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Pursuant to the *Agrico* test, the intervenor must show that: (1) they will suffer injury in fact that is of sufficient immediacy to entitle the intervenor to a Section 120.57, F.S., hearing; and (2) the substantial injury is of a type or nature that the proceeding is designed to protect. The “injury in fact” must be both real and immediate and not speculative or conjectural. *International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990). *See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation*, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), *rev. den.*, 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

10. The test for associational standing was established in *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982), and *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), which is based on the basic standing principles established in *Agrico*. In order to demonstrate associational standing, the petitioner must establish the following elements: (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. *Fla. Home Builders*, 412 So. 2d at 353-54; *Farmworker Rights Org.*, 417 So. 2d at 754.

### **III. SACE HAS FAILED TO DEMONSTRATE STANDING IN THIS PROCEEDING**

11. In its Petition to Intervene, SACE concedes that it is not a customer of FPL and, as such, is seeking associational standing on behalf of its members. As such, SACE has the burden to allege facts sufficient to demonstrate and meet each of the three prongs required to establish associational standing.

12. In an effort to show its members' interests will be substantially affected by this proceeding, SACE alleges that it has over 200 members that reside within FPL's service area and are ratepayers and that the "Commission's action in this docket will affect the rates that FPL customers will pay, including FPL customers that are SACE members. (Petition, ¶ 1.) SACE therefore concludes that its "members will be directly and substantially affected economically from the proposed FPL Plan." (Petition, ¶ 7.)

13. The fundamental flaw with SACE's allegations is that the Commission is not approving or setting rates that any customers will pay. As required by the SPP statute, cost recovery for programs and projects included in a SPP are addressed in the annual Storm Protection Plan Cost Recovery Clause ("SPPCRC") dockets and not the SPP dockets. *See* Section 366.96(7), F.S. ("The commission shall conduct an annual proceeding to determine the utility's prudently incurred transmission and distribution storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause."). Indeed, the Commission has previously explained that: "even if the Commission approves FPL's SPP as in the public interest, the cost estimates are not correspondingly 'approved.' The Commission will have the opportunity to scrutinize and allow or disallow cost recovery of FPL's actual costs in the SPPCRC proceeding." Order No. PSC-2020-0162-PCO-EI, issued May 18, 2020, Docket No. 20200070-EI.

14. The error in SACE's reliance on rates to be paid by its members is further demonstrated by SACE's statement of disputed issues of fact. According to SACE, a disputed fact to be addressed in this case is "[w]hether the estimated annual rate impact resulting from implementation of the Plan during the first 3 years is fair, just and reasonable." (Petition, Section IV.) As explained above, the reasonableness and prudence of the costs associated with a SPP, as well as the associated rates, are addressed in the annual SPPCRC dockets. *See* Section 366.96(7), F.S.; *see also* Rule 25-6.031(3), F.A.C. ("annual hearing to address petitions for recovery of Storm Protection Plan costs will be limited to determining the reasonableness of projected Storm Protection Plan costs, the prudence of actual Storm Protection Plan costs incurred by the utility, and to establish Storm Protection Plan cost recovery factors consistent with the requirements of this rule"). The statutory standard of review for SPPs is a public interest standard based on consideration of expressly enumerated factors:

(4) In its review of each transmission and distribution storm protection plan filed pursuant to this section, the commission shall consider:

(a) The extent to which the plan is expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability, including whether the plan prioritizes areas of lower reliability performance.

(b) The extent to which storm protection of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the utility's service territory, including, but not limited to, flood zones and rural areas.

(c) The estimated costs and benefits to the utility and its customers of making the improvements proposed in the plan.

(d) The estimated annual rate impact resulting from implementation of the plan during the first 3 years addressed in the plan.

(5) No later than 180 days after a utility files a transmission and distribution storm protection plan that contains all of the elements required by commission rule, the commission shall determine

*whether it is in the public interest to approve, approve with modification, or deny the plan.*

See Section 366.96, F.S. (emphasis added).

15. SACE next alleges that the reliability issues in this case will affect SACE members' safety and health. (Petition, ¶ 7 and Sections VI and VII.) Although the SPP programs and projects may have the ancillary benefit of improving overall reliability, the purpose of this proceeding is to address the resiliency of the transmission and distribution systems from extreme weather events, not day-to-day reliability. Indeed, the statutory objective of the SPP is "to strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management" and "for each electric utility to mitigate restoration costs and outage times to utility customers when developing transmission and distribution storm protection plans." See Sections 366.96(1)(c)-(d), F.S.

16. Further, SACE's own stated purpose and mission is well outside the transmission and distribution storm hardening programs and projects to be decided in this proceeding and relate to issues that are beyond the SPP legislation. SACE concedes that its "guiding mission is to promote responsible and equitable energy choices to ensure clean, safe, and healthy communities throughout the Southeast, including Florida." (Petition, ¶ 5 (emphasis added).) Thus, SACE's scope of interest and activity is related to energy choices. Energy choices pertain to generation types, energy and fuel sources, and energy use. However, energy choices are not and cannot be addressed in this SPP docket.

17. The SPP is statutorily limited to the hardening of existing transmission and distribution system to withstand extreme weather conditions. Indeed, the statute requires each utility to file a "transmission and distribution storm protection plan," which is defined as "a plan for the overhead hardening and increased resilience of electric transmission and distribution

facilities, undergrounding of electric distribution facilities, and vegetation management.” See Sections 366.96(2)(b) and (3), F.S. Further, the Commission’s SPP rule makes it clear that the SPP is limited to existing transmission and distribution facilities:

(2) For the purpose of this rule, the following definitions apply:

(a) “Storm protection program” – a category, type, or group of related storm protection projects that are undertaken to enhance the utility’s existing infrastructure for the purpose of reducing restoration costs and reducing outage times associated with extreme weather conditions therefore improving overall service reliability.

(b) “Storm protection project” – a specific activity within a storm protection program designed for the enhancement of an identified portion or area of existing electric transmission or distribution facilities for the purpose of reducing restoration costs and reducing outage times associated with extreme weather conditions therefore improving overall service reliability.

(c) “Transmission and distribution facilities” – all utility owned poles and fixtures, towers and fixtures, overhead conductors and devices, substations and related facilities, land and land rights, roads and trails, underground conduits, and underground conductors.

Rule 25-6.030(2), F.A.C. (emphasis added).

18. Energy choices, generation types, energy and fuel sources, and energy use/conservation are all clearly outside the scope of both the SPP statute and the Commission’s SPP rule. Thus, the subject matter of this SPP proceeding is not within SACE’s stated mission and purpose.

19. Perhaps in an effort to cure this fatal flaw, SACE alleges that one of its purposes is to advocate for the general economic interests, public health, and safety of communities in the Southeast. (Petition, ¶¶ 5, 7.) FPL submits that this is an overstatement of SACE’s charter and purpose. Indeed, SACE concedes that the purpose of its work in Florida is to “advance energy choices that best serve the economic, environmental, and public health interests of all Floridians, including SACE members.” (Petition, ¶ 5 (emphasis added).) Similarly, the mission statement on

its website provides that SACE “promotes responsible and equitable energy choices to ensure clean, safe, and healthy communities throughout the Southeast.” A true and correct copy of the mission statement on SACE’s website is provided as “**Appendix A.**” Thus, contrary to the allegations in its Petition to Intervene, SACE’s mission and purpose is not advocating for the general economic interests, public health, and safety of communities in the Southeast. Rather, those economic, health, and safety interests are directly tied to advocating for energy choices, which as explained above is beyond the scope of this Proceeding.

20. Notwithstanding, SACE asserts there is a long history of SACE intervening in Commission proceedings to represent the economic interests of its members, including the most recent FPL rate case. In support, SACE includes a string citation in footnote 1 to multiple Commission cases where it was permitted to intervene. (Petition, ¶ 5.) However, a review of the cases cited by SACE reveals that each and every one of those cases, including the most recent FPL rate case, included one or more of the following topics: generation, renewable energy sources, conservation, fuel costs, environmental issues, and energy efficiency. Unlike the programs and projects included in the SPP, these topics are arguably within SACE’s mission and purpose – energy choices. The fact that SACE was permitted (or not opposed) to intervene in prior cases that clearly involved issues within its stated scope of interest and purpose does not somehow excuse SACE from its burden to demonstrate it has standing to intervene in this proceeding.

21. Further, to the extent that SACE’s Petition to Intervene could be interpreted to suggest that it intends to advocate for alternatives to hardening the transmission and distribution systems (such as solar, batteries, or microgrids), these are generation systems and/or new build that are not eligible for the SPP under the statute as explained above.

22. Based on the foregoing, SACE’s purpose, mission, and allegations of affected interests are simply beyond the transmission and distribution storm hardening programs and



projects to be decided in this proceeding and, therefore, SACE's Petition to Intervene should be denied

#### IV. CONCLUSION

23. The question of a petitioner's standing is of great importance to parties' substantive and procedural due process rights, as well as the orderly and efficient administration of proceedings.<sup>1</sup> Indeed, the Florida Supreme Court has adopted a three-prong test in *Florida Home Builders* to ensure that associations meet a minimum threshold to have standing to participate and represent the interests of their members in a particular proceeding. To hold, as apparently suggested by SACE, that a petitioner can meet its burden for associational standing by noting that it has been allowed (or not opposed) to intervene in other Commission proceedings or to allow an association to intervene to advocate for issues that are beyond its charter and purpose would render the Florida Supreme Court's three prong test in *Florida Home Builders* meaningless.

24. As explained above, and as acknowledged SACE's Petition to Intervene, SACE's purpose and mission is well outside the transmission and distribution storm hardening programs and projects to be decided in this proceeding and relate to issues that are expressly beyond the scope of the SPP legislation and rule. Further, SACE's reliance on rates associated with the SPP and system reliability are simply insufficient to make the required showing that its members have a real and substantial interest that may be substantially affected by the Commission's decision in this proceeding.

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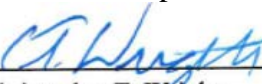
<sup>1</sup> "Establishing standing is of such importance that it can be raised at any time by any party—even by the court on its own." *Ramones v. Experian Info. Sols., LLC*, No. 19-62949, 2021 U.S. Dist. LEXIS 168243, 2021 WL 4050874, \*1 (S.D. Fla. Sept. 4, 2021) (citing *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2006)).

25. Accordingly, FPL submits that SACE has failed to satisfy the requirements of the *Florida Home Builders* three-prong test for associational standing in this proceeding. Therefore, FPL requests that the Commission deny SACE's Petition to Intervene.

**WHEREFORE**, FPL respectfully requests that the Commission deny SACE's Petition to Intervene and reject their status as an intervenor and party to this proceeding.

Respectfully submitted this 23rd day of May 2022,

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## **Appendix A**

[SACE | Southern Alliance for Clean Energy \(/\)](#).

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# ABOUT US



## Our Mission

The Southern Alliance for Clean Energy promotes responsible and equitable energy choices to ensure clean, safe, and healthy communities throughout the Southeast.

## Who We Are

Founded in 1985, the Southern Alliance for Clean Energy (SACE) has over 30 years' experience as a leading voice calling for smart energy policies in our region that help protect our quality of life and treasured places. Our expert staff is uniquely poised to tackle energy challenges and promote equitable outcomes that help our region's communities harness the environmental and economic opportunities presented by clean, renewable energy.

SACE is one of the few organizations in the Southeast with the analytical capacity to approach utilities and decision makers with multi-disciplinary arguments showcasing the true costs of high risk energy sources, and the real values of energy efficiency and renewable energy sources like solar and wind. In addition to our technical and policy advocacy work, SACE is also on the ground in local communities throughout our region working to mobilize concerned citizens and to elevate the conversation around the dangers of climate change and the importance of clean energy choices.

## Our Values

- Protecting Treasured Places
- Promoting Energy Independence
- Advancing a Clean Energy Economy
- Creating Job Opportunities
- Saving Energy and Saving Money
- Empowering Diverse Constituencies
- Ensuring Safe, Healthy Communities

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Together we're making a lasting impact across the Southeast.

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email@email.com

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 23rd day of May 2022:

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*s/ Christopher T. Wright*

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*Attorney for Florida Power & Light Company*