

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Storm Protection Plan Cost  
Recovery Clause

Docket No. 20230010-EI

**POST-HEARING BRIEF  
FLORIDA POWER & LIGHT COMPANY**

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**I. INTRODUCTION AND SUMMARY**

Florida Power & Light Company (“FPL” or the “Company”) hereby files with the Florida Public Service Commission (“Commission”) its Post-Hearing Brief in the above-referenced docket pursuant to Rules 28-106.215 and 28-106.307, Florida Administrative Code, and Commission Order Nos. PSC-2023-0090-PCO-EI, PSC-2023-0105-PCO-EI, PSC-2023-0178-PCO-EI, and PSC-2023-0281-PHO-EI. Pending before the Commission are FPL’s 2022 Storm Protection Plan Cost Recovery Clause (“SPPCRC”) final true-up, 2023 SPPCRC actual/estimated true-up, and projected 2024 SPPCRC Factors.

FPL’s final true-up of its 2022 SPP projects and associated costs is consistent with the actual/estimated 2022 SPP costs approved by Commission Order No. PSC-2022-0418-FOF-EI in Docket No. 20220010-EI, consistent with the 2020-2029 Storm Protection Plans (“SPP”) approved by Commission Order No. PSC-2020-0293-AS-EI in Docket Nos. 20200070-EI and 20200071-EI, applies the methodology and prescribed schedules contained in Commission Forms 1A through 8A, and meets the requirements of Section 366.96, Florida Statutes, and Rules 25-6.031(2) and (7)(a), Florida Administrative Code. No parties challenged or made any recommended adjustments to any of the 2022 SPP projects, costs, or revenue requirements included in FPL’s 2022 SPPCRC final true-up. Therefore, the Commission should approve FPL’s undisputed net final true-up under-recovery amount of \$5,171,245, including interest, for the period of January

2022 through December 2022.

FPL's actual/estimated true-up of its 2023 SPP projects and associated costs is consistent with the projected 2023 SPP costs approved by Commission Order No. PSC-2022-0418-FOF-EI in Docket No. 20220010-EI, consistent with the 2023-2032 SPP approved by Commission Order No. PSC-2022-0389-FOF-EI in Docket No. 20220051-EI, applies the methodology and prescribed schedules contained in Commission Forms 1E through 8E, and meets the requirements of Section 366.96, Florida Statutes, and Rules 25-6.031(2) and (7)(b), Florida Administrative Code. No parties challenged or made any recommended adjustments to any of the 2023 SPP projects, costs, or revenue requirements included in FPL's 2023 SPPCRC actual/estimated true-up. Therefore, the Commission should approve FPL's undisputed actual/estimated true-up under-recovery amount of \$14,860,970, including interest, for the period of January 2023 through December 2023.

FPL's projected 2024 SPPCRC Factors and associated SPP projects and costs are consistent with the 2023-2032 SPP approved by Commission Order No. PSC-2022-0389-FOF-EI in Docket No. 20220051-EI, apply the methodology and prescribed schedules contained in Commission Forms 1P through 7P, and meet the requirements of Section 366.96, Florida Statutes, and Rules 25-6.031(2) and (7)(c), Florida Administrative Code. No parties challenged or made any recommended adjustments to any of the 2024 SPP projects, associated costs, or revenue requirements included in FPL's 2024 projection. Therefore, the Commission should approve FPL's undisputed projected recovery amount of \$513,855,741 for the period of January 2024 through December 2024.

As set forth on page 25 of Prehearing Order No. PSC-2022-0281-PHO-EI, the Parties to this proceeding facilitated Type 2 Stipulations on FPL's proposed 2024 SPPCRC Factors. Although the Office of Public Counsel ("OPC") represented that "it will not contest or oppose the

Commission taking action approving a proposed stipulation between the Company and another party or staff as to the final resolution of the facts,” OPC and the Intervenors that agreed with OPC nonetheless maintained their positions on Issue No. 1-4 and 7 for purposes of briefing.<sup>1</sup> As explained in the argument set forth in Section IV below, Intervenors’ positions and arguments improperly attempt to challenge the express requirements of Section 366.96, Florida Statutes, and relitigate the Commission’s findings and approval of FPL’s 2023-2032 SPP in Docket No. 20220051-EI. As fully explained below, these issues are beyond the scope of this proceeding, have already been decided by the Commission, and are currently on appeal before the Florida Supreme Court.

For these reasons, as further explained below and in FPL’s unrefuted testimonies and exhibits, the Commission should find that the 2022, 2023, and 2024 projects and associated costs included in FPL’s SPPCRC filings are reasonable and prudent, and approve the total jurisdictional revenue requirement of \$533,887,956, including true-up amounts, for recovery through FPL’s 2024 SPPCRC Factors for the period of January 2024 through December 2024.

## **II. STANDARD OF REVIEW**

Section 366.96(7), Florida Statutes, provides in relevant part that 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

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<sup>1</sup> In their prehearing statements, the Florida Industrial Power Users Group (“FIPUG”) essentially agreed with the positions of OPC on all issues. Accordingly, unless otherwise noted, FPL will collectively refer to OPC and FIPUG as “Intervenors” for purposes of this post-hearing brief.

clause.” Rule 25-6.031(3), Florida Administrative Code, further provides that the “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.”

Contested proceedings before the Commission are governed by the Administrative Procedure Act, Chapter 120, Florida Statutes, which provides that “[f]indings of fact shall be based upon a preponderance of the evidence...and shall be based exclusively on the evidence of record and on matters officially recognized.” Section 120.57(1)(j), Fla. Stat. Thus, the Commission’s findings and conclusions in this case must be supported by competent, substantial evidence in the record. *Citizens of Fla. v. Brown*, 269 So. 3d 498, 505 (Fla. 2019); *Sierra Club v. Brown*, 243 So. 3d 903, 907-08 (Fla. 2018).

### **III. STATEMENT OF POSITIONS**

FPL provided project level detail and explanations for approximately 11,000 individual projects, as well as for its inspection and vegetation management programs, for the Commission to review and determine whether the individual projects and associated costs are reasonable and prudent. (*See* Tr. vol. 1, pp. 142-157; *see also* CEL Exs. 8-15.) Notably, no Party challenged the reasonableness or prudence of a single project or its associated costs in this proceeding. Rather, as set forth in Prehearing Order No. PSC-2022-0281-PHO-EI, the Parties to this proceeding facilitated Type 2 Stipulations, agreed with FPL’s position, or took no position on the issues in

this proceeding.<sup>2</sup> Based on the foregoing, FPL has largely restated its positions as reflected in Prehearing Order No. PSC-2022-0281-PHO-EI unless necessary or appropriate to further respond to the applicable issue.

**Issue 1:** What amounts should the Commission approve as the Utilities' final 2022 prudently incurred costs and final jurisdictional revenue requirement true-up amount for the Storm Protection Plan Cost Recovery Clause?

**\*FPL:** FPL's final total SPPCRC cost incurred for 2022 is \$1,292,952,697. FPL's SPPCRC final jurisdictional revenue requirement true-up for the period January 2022 through December 2022, including interest, is an under-recovery of \$5,171,245. (*FPL witnesses Jarro and Hume*)\*

No Parties presented any evidence of record to refute or otherwise contest the prudence of FPL's actual 2022 projects or associated costs. The Parties agreed to facilitate a Type 2 Stipulation for Issue No. 1. *See* page 25 of Prehearing Order No. PSC-2023-0281-PHO-EI.

**Issue 2:** What amounts should the Commission approve as the Utilities' reasonably estimated 2023 costs and estimated jurisdictional revenue requirement true-up amount for the Storm Protection Plan Cost Recovery Clause?

**\*FPL:** FPL's total SPPCRC cost estimated for 2023 is \$1,307,293,308. FPL's SPPCRC actual/estimated jurisdictional revenue requirement true-up for the period January 2023 through December 2023, including interest, is an under-recovery of \$14,860,970. No parties presented any evidence of record to refute or otherwise contest the prudence or reasonableness of FPL's actual/estimated 2023 projects or associated costs. (*FPL witnesses Jarro and Hume*)\*

No Parties presented any evidence of record to refute or otherwise contest the prudence of FPL's actual 2023 projects or associated costs or the reasonableness of FPL's estimated 2023 projects or associated costs. The Parties agreed to facilitate a Type 2 Stipulation for Issue No. 2.

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<sup>2</sup> Intervenors nonetheless maintained OPC's positions on Issue Nos. 1-4 and 7 for purposes of briefing. Because OPC's positions on each of these issues are beyond the scope of this proceeding and nothing more than an improper attempt to relitigate the Commission's findings and approval of FPL's 2023-2032 SPP in Docket No. 20220051-EI, FPL will separately address OPC's positions in the argument provided in Section IV of this brief.

See page 25 of Prehearing Order No. PSC-2023-0281-PHO-EI.

**Issue 3:** What amounts should the Commission approve as the Utilities' reasonably projected 2024 costs and projected jurisdictional revenue requirement amount for the Storm Protection Plan Cost Recovery Clause?

**\*FPL:** FPL's total SPPCRC cost projected for 2024 is \$1,389,706,289. FPL's projected SPPCRC jurisdictional revenue requirement for the period January 2024 through December 2024 is \$513,855,741. (*FPL witnesses Jarro and Hume*)\*

No Parties presented any evidence of record to refute or otherwise contest the reasonableness of FPL's projected 2024 projects or associated costs. The Parties agreed to facilitate a Type 2 Stipulation for Issue No. 3. See page 25 of Prehearing Order No. PSC-2023-0281-PHO-EI.

**Issue 4:** What are the Storm Protection Plan Cost Recovery Clause total jurisdictional revenue requirements, including true-ups, to be included in the Storm Protection Plan Cost Recovery factors for 2024?

**\*FPL:** The projected total SPPCRC jurisdictional revenue requirement for the period January 2024 through December 2024, including true-up amounts, is \$533,887,956. (*FPL witnesses Jarro and Hume*)\*

No Parties presented any evidence of record to refute or otherwise contest the reasonableness or prudence of the projects or associated costs underlying the total 2024 SPPCRC jurisdictional revenue requirement, or the calculation of that revenue requirement. The Parties agreed to facilitate a Type 2 Stipulation for Issue No. 4. See page 25 of Prehearing Order No. PSC-2023-0281-PHO-EI.

**Issue 5:** What depreciation rates should be used to develop the depreciation expense included in the total Storm Protection Plan Cost Recovery Clause amounts for 2024?

**\*FPL:** The depreciation rates used to calculate the depreciation expense should be the Commission-approved depreciation rates that are in effect during the period the allowed capital investment is in service. For the period January 2024 through December 2024, FPL's depreciation rates are those approved by Commission Order



Nos. PSC-2021-0446-S-EI and PSC-2021-0446A-S-EI in Docket No. 20210015-EI. (*FPL witness Hume*)\*

The Intervenors agreed with FPL’s position on Issue No. 5. See pages 14-15 of Prehearing Order No. PSC-2023-0281-PHO-EI.

**Issue 6:** What are the appropriate jurisdictional separation factors for 2024?

**\*FPL:** As shown on page 1 of Exhibit RLH-4 (CEL Ex. 15), FPL’s retail jurisdictional separation factors for the period January 2024 through December 2024 are:

**DEMAND**

Transmission	0.894143
Non-Stratified Production	0.960923
Intermediate Strata Production	0.954528
Peaking Strata Production	0.942663
Distribution	1.000000

**ENERGY**

Total Sales	0.943704
Non-Stratified Sales	0.958349
Intermediate Strata Sales	0.944751
Peaking Strata Sales	0.957272

**GENERAL PLANT**

Labor	0.970449
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(*FPL witness Hume*)\*

The Intervenors took no position on Issue No. 6. See pages 15-16 of Prehearing Order No. PSC-2023-0281-PHO-EI.

**Issue 7:** What are the appropriate Storm Protection Plan Cost Recovery Clause factors for 2024 for each rate class?

**\*FPL:** As shown on Form 5P of Exhibit RLH-3 (CEL Ex. 14), p. 15, the appropriate FPL 2024 SPPCRC factors for each rate class are as follows:

Rate Class	SPP Factor (\$/kW)	SPP Factor (\$/kWh)	RDC (\$/KW)	SDD (\$/KW)
RS1/RTR1		0.00557		
GS1/GST1		0.00499		

GSD1/GSDT1/HLFT1/GSD1-EV	1.02			
OS2		0.01527		
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	1.00			
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.96			
GSLD3/GSLDT3/CS3/CST3	0.16			
SSTIT			0.02	0.01
SST1D1/SST1D2/SST1D3			0.17	0.07
CILC D/CILC G	1.00			
CILC T	0.14			
MET	1.25			
OL1/SL1/SL1M/PL1/OSI/II		0.00394		
SL2/SL2M/GSCU1		0.00504		

*(FPL witness and Hume)\**

No Parties presented any evidence of record to refute or otherwise contest FPL’s proposed 2024 SPPCRC Factors, including the reasonableness or prudence of any of the individual underlying projects and associated costs. The Parties agreed to facilitate a Type 2 Stipulation for Issue No. 7. *See* page 25 of Prehearing Order No. PSC-2023-0281-PHO-EI.

**Issue 8:** What should be the effective date of the new Storm Protection Plan Cost Recovery Clause factors for billing purposes?

**\*FPL:** The 2024 SPPCRC Factors should become effective for application to bills beginning the first billing cycle in January 2024 through the last billing cycle December 2024 and continuing until modified by subsequent order of this Commission. *(FPL witness Hume)\**

The Intervenors agreed with FPL’s position on Issue No. 8. *See* pages 19-20 of Prehearing Order No. PSC-2023-0281-PHO-EI.

**Issue 9:** Should the Commission approve revised tariffs reflecting the new Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding?

**\*FPL:** Yes. FPL will submit to Staff for administrative approval revised tariffs reflecting the SPPCRC amounts and SPPCRC Factors approved in this proceeding. *(FPL witness Hume)\**

In its Prehearing Statement, OPC argued that the Commission should not approve revised

tariffs reflecting the new SPPCRC factors determined to be appropriate in this proceeding because, according to OPC, the Commission failed to make a prudence finding for the SPP and Section 366.06(1), Florida Statutes, purportedly requires the Commission to evaluate the prudence of investments in all ratemaking proceedings. *See* page 20 of Prehearing Order No. PSC-2023-0281-PHO-EI. These are the same arguments that OPC maintained on Issue Nos. 1-4 and 7 for purposes of briefing. FPL addresses and fully rebuts these issues in Section IV below and, for the reasons stated therein, OPC's position on Issue 9 should be rejected.

FIPUG, on the other hand, stated in its Prehearing Statement that the Commission should approve revised tariffs but only "after making downward adjustments as warranted." *See* page 21 of Prehearing Order No. PSC-2023-0281-PHO-EI. However, FIPUG failed to identify any such adjustment or provide any explanation for why FIPUG believes such an adjustment is appropriate. Moreover, there is nothing in the record to support any such adjustment to the proposed 2024 SPPCRC Factors. Indeed, no Parties presented any evidence of record, let alone evidence to refute or otherwise contest FPL's proposed 2024 SPPCRC Factors, including the reasonableness or prudence of any of the individual underlying projects and associated costs. Further, the Parties agreed to facilitate a Type 2 Stipulation for the 2024 SPPCRC Factors (*see* Issue 7 above). Therefore, FIPUG's unsupported position should be denied, and the Commission should grant Staff administrative authority to approve revised tariffs reflecting the undisputed and stipulated 2024 SPPCRC Factors.

**Issue 10:** Should this docket be closed?

**\*FPL:** No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and should remain open. (*FPL witness Hume*)\*

#### IV. ARGUMENT

Although there are Type 2 Stipulations, Intervenors maintained OPC's positions on Issue Nos. 1-4 and 7 for purposes of briefing. For each of these issues, OPC repeats the same two arguments: (1) OPC argues that the Commission failed to make a finding that the SPPs and projects and costs included in the SPPs are prudent to undertake; and (2) OPC argues that Section 366.06(1), Florida Statutes, requires the Commission to evaluate the prudence of investments in all ratemaking proceedings. FPL will separately address each of these arguments. For the reasons explained below, Intervenors' arguments and positions are beyond the scope of this proceeding, legally improper, and unsupported by the record evidence.

##### A. Intervenors' SPP Prudence Arguments Are Beyond the Scope of this Proceeding and Have Already Been Decided by the Commission

Intervenors maintain that the Commission failed to make a finding that the SPPs and projects and costs included in the SPPs are prudent to undertake. The fundamental flaw with this argument is that the SPP is not pending for review and approval in this docket – this is the docket to review and approve the projects and associated costs included in the SPPCRC filings. Indeed, in Section 366.96(7), Florida Statutes, the Legislature expressly mandated that the SPP and SPPCRC are separate and distinct proceedings before the Commission.

FPL's 2023-2032 SPP was fully reviewed and approved with modifications by Commission Order No. PSC-2022-0389-FOF-EI issued in Docket No. 20220051 on November 10, 2022 (hereinafter, the "*SPP Order*"). Moreover, in the *SPP Order*, the Commission fully considered and rejected this very same legal argument – concluding that Section 366.96(5), Florida Statutes, explicitly requires a public interest standard to be applied to the SPP, not the prudence standard. The Intervenors' argument is nothing more than a very thinly veiled and improper third attempt to again challenge to the explicit statutory requirements of Section 366.96 and relitigate

the Commission's *SPP Order* approving FPL's 2023-2032 SPP.

As appellate precedent has explained, a party dissatisfied with an order can seek reconsideration, file an appeal, or choose to be bound by it; however, a party cannot initiate a collateral attack on that order through a separate proceeding or action. *See Brevard County v. Obloy*, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020). Here, OPC elected to appeal the *SPP Order*. OPC's appeal is currently pending before the Florida Supreme Court.<sup>3</sup> Until such time as the Court disposes of the appeal, this Commission is without jurisdiction to revisit or supplement the findings of fact and conclusions in the *SPP Order*.<sup>4</sup>

During its opening statement, OPC argued that without a prudence review of the SPP the Parties and Commission are relegated to an after-the-fact prudence review of costs for SPP projects that have already been completed. (Tr. vol.1, 233-234.) Despite the fact that the Commission has already fully considered and rejected this argument, OPC again chooses to ignore the explicit bifurcated regulatory scheme adopted by the Florida Legislature for review and approval of the SPP Projects and costs.

OPC's argument also completely ignores that, similar to other clause proceedings before the Commission, all the SPP projects and associated costs included in the SPPCRC filings are subject to multiple and ongoing reviews, including: (i) after the final actual costs have been incurred during the previous year; (ii) while the costs are being incurred during the current year; and (iii) before the costs are incurred in the subsequent year. *See Fla. Admin. Code R. 25-6.031(7)*.

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<sup>3</sup> *See* consolidated Florida Supreme Court Case Nos. SC22-1733, SC22-1735, SC22-1745, SC22-1748, and SC22-1777.

<sup>4</sup> *See Palma Sola Harbour Condo., Inc. v. Huber*, 374 So. 2d 1135, 1138 (Fla. 2d DCA 1979) (“a trial court is divested of jurisdiction upon notice of an appeal except with regard to those matters which do not interfere with the power and authority of the appellate court or with the rights of a party to the appeal which are under consideration by the appellate court”); *see also* Fla. R. App. P. 9.600 (appeal from a final order divests the lower court of jurisdiction).

If the Commission finds any portion of an SPP project or associated costs to be imprudent, the imprudent project or imprudent portion thereof will be disallowed for recovery from customers. *See* Section 366.96(7), Fla. Stat. Further, OPC's argument disregards that the vast majority of the SPP projects included in FPL's SPPCRC filings span multiple years, with the Commission's ongoing review continuing for each year that costs are estimated or actually incurred for the projects. (CEL Exs. 8, 10, and 11.) Thus, it cannot be credibly maintained that the review of the projects and associated costs in the SPPCRC proceeding is limited to an after-the-fact review as incorrectly suggested by OPC's opening statement.

Further, even assuming, *arguendo*, that the Commission's review of the projects and costs in the SPPCRC is an after-the-fact review, which it is not for the reasons explained above, such a review is no different than the prudence review in a base rate proceeding for capital expenditures that were incurred in between base rate proceedings. For example, in the ordinary course of business, a utility can incur capital expenditures in between base rate cases. However, unless the utility voluntarily requests a pre-prudence review, those projects and associated costs are not subject to a prudence review by the Commission unless and until the utility seeks cost recovery in rates. If the Commission finds any portion of a capital project or associated costs to be imprudent or unreasonable,<sup>5</sup> the imprudent project or imprudent portion thereof will be disallowed for recovery from customers regardless of whether that finding occurs before the costs are incurred for a project (such as during a pre-prudence review or proposed projects included in a forecasted

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<sup>5</sup> A project or action is either prudent or it is not. A project can be imprudent if the utility incurs excessive costs or if the conduct or action was not reasonable under the circumstances. *In re Nuclear cost recovery clause*, Docket No. 20110009-EI, Order No. PSC-2011-0547-FOF-EI, 2011 WL 5904236 (FPSC Nov. 23, 2011) (the Commission's well-established standard for determining prudence is "what a reasonable utility manager would have done, in light of the conditions and circumstances which were known, or should have been known, at the time the decision was made").

test year) or after the project is completed (such as projects completed in between base rate cases).<sup>6</sup> These fundamental principles of regulated utility ratemaking apply equally to the Commission's ongoing annual review of the SPP projects and associated costs included in the SPPCRC filings.

OPC also claimed during its opening statement that the Commission's prudence review in the SPPCRC proceeding is limited solely to the SPP costs and implied that, absent a prudence review of the projects included in the SPP, the underlying SPP projects are not subjected to a prudence review. (Tr. vol 1, pp. 235-236.) OPC's argument is a red herring and incorrectly invites the Commission to somehow rewrite Section 366.96, Florida Statutes. As it did in the 2022 SPP and SPPCRC proceedings, the Commission should decline the invitation for multiple reasons.

First, the Florida Legislature has exclusive lawmaking power under Fla. Const. Art. III, § 1 and, as such, is the only entity with authority to amend or rewrite statutes, such as Section 366.96. Second, the Florida Legislature expressly directed the Commission to hold annual SPPCRC hearings to determine the utilities' prudently incurred SPP costs. *See* Section 366.96(7), Fla. Stat.; *see also* Section 366.96(2)(c), Fla. Stat. (defining "[t]ransmission and distribution storm protection plan costs" as "the reasonable and prudent costs to implement an approved transmission and distribution storm protection plan"). Third, OPC's argument disregards that the SPP only includes project level detail for the first year of the ten-year SPP period. *See* Fla. Admin. Code R. 25-6.030(3)(e)(1). Fourth, OPC's argument ignores the reality that the SPP project drives or is the

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<sup>6</sup> A utility could theoretically undertake a project that was later determined to be imprudent but, if it does so, none of the associated costs can be recovered from customers (*i.e.*, the costs must come from shareholders, commonly referred to as "below-the-line" in ratemaking, and not recovered in rates charged to customers). *See, e.g., In re Application for amendment of Certificates Nos. 359-W and 290-S to add territory in Broward County*, Order No. PSC-96-1527-FOF-WS in Docket No. 941121-WS, 1996 WL 745667 (FPSC Dec. 16, 1996) ("To the extent a particular project is an imprudent expenditure, the project and its associated [allowance for funds used during construction] would be disallowed in a rate proceeding.").

proximate cause of the SPP costs sought for recovery through the SPPCRC. Simply and logically stated, without a project there would be no costs, and without incurring the costs there would be no project. For these reasons, and consistent with the requirements of Section 366.96(7) and Rule 25-6.031(3), FPL submits that the time and place to review the reasonableness and prudence of both the SPP projects and associated costs is in the annual SPPCRC hearings.

Based on the foregoing, Intervenors' argument – that Commission failed to make a finding that the SPPs and projects and costs included in the SPPs are prudent to undertake – is beyond the scope of this proceeding and was previously rejected by the Commission pursuant to the clear and plain language of Section 366.96, Florida Statutes. OPC and Intervenors joining OPC's position, have chosen to utilize the opportunity for post-hearing briefs (despite participating in the development of stipulations on all SPPCRC factors at issue) to try to relitigate this "prudence" issue, perhaps in an indirect effort to somehow bolster OPC's appeal of the same issue currently pending before the Florida Supreme Court. However, as explained above, this Commission is currently without jurisdiction to reach this issue due to OPC's pending appeal.

**B. Although Section 366.06 is Not the Operative Statute, this Proceeding is the Time and Place to Review the Reasonableness and Prudence of the Annual SPPCRC Projects and Associated Costs**

Intervenors also assert that Section 366.06(1), Florida Statutes, requires the Commission to evaluate the prudence of investments in all ratemaking proceedings. FPL certainly agrees the prudence standard in section 366.06(1) applies to ratemaking proceedings conducted by the Commission, unless otherwise directed by the Legislature. However, the fundamental and fatal flaw to Intervenors' argument is that the Legislature expressly adopted the standard to be applied in the SPPCRC proceeding to determine a utility's prudently incurred SPP costs and to set rates for recovery of those costs:



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. 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. If the commission determines that costs were prudently incurred, those costs will not be subject to the disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility.

Section 366.96(7), Fla. Stat. (emphasis added). Thus, Intervenors’ argument incorrectly and inappropriately seeks to transpose the prudence standard in Section 366.06(1) into Section 366.96.<sup>7</sup> Section 366.96, however, specifically provides for its own prudence standard and that standard is limited by the Legislature to the SPPCRC proceedings.<sup>8</sup>

The Legislature directed the Commission to propose rules to implement and administer Section 366.96. *See* Section 366.96(11), Fla. Stat. In compliance with this mandate, the Commission adopted Rule 25-6.031, Florida Administrative Code, which describes what is to be included and reviewed as part of the SPPCRC proceeding. Consistent with the requirements of Section 366.96(7), Commission Rule 25-6.031(3) provides:

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<sup>7</sup> “When reconciling statutes that may appear to conflict, the rules of statutory construction provide that a specific statute will control over a general statute....” *Fla. Virtual Sch. v. K12, Inc.*, 148 So. 3d 97, 102 (Fla. 2014). *See also 1944 Beach Boulevard, LLC v. Live Oak Banking Co.*, 346 So. 3d 587, 591 (Fla. 2022) (explaining that a specific statute will control over a general statute); *Bank of N.Y. Mellon v. Glenville*, 252 So. 3d 1120, 1129 (Fla. 2018) (explaining that a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms).

<sup>8</sup> “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 2d 942, 946 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)); *see also Lieupo v. Simon’s Trucking, Inc.*, 286 So. 3d 143, 145 (Fla. 2019) (“A court’s determination of the meaning of a statute begins with the language of the statute.”). When the language of a statute is clear, it is given its plain meaning and a court does not look further for legislative intent. *Lieupo*, 286 So. 3d at 145.

An 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.

*See also* Section 366.96(2)(c), Fla. Stat. (defining “[t]ransmission and distribution storm protection plan costs” as “the reasonable and prudent costs to implement an approved transmission and distribution storm protection plan”).

Although FPL disagrees that Section 366.06 is the operative statute in this proceeding, FPL nonetheless agrees that, pursuant to Section 366.96(7) and Rule 25-6.031(3), this annual docket is the time and place to review and evaluate the reasonableness and prudence of the annual SPP projects and associated costs included in FPL’s SPPCRC filings. This is precisely why FPL provided project level detail and explanations for approximately 11,000 individual projects, as well as for its inspection and vegetation programs, as part of its SPPCRC filings, testimonies, and exhibits. Notably, no Party challenged the reasonableness or prudence of single project, action, or cost included in FPL’s SPPCRC filings in this docket. In fact, no Intervenor served a single discovery request regarding any project or its associated costs in this proceeding.

Accordingly, FPL respectfully requests that the Commission reject Intervenors’ improper and unsupported positions and approve FPL’s 2022, 2023, and 2024 projects, costs, true-ups, and factors as set forth in FPL’s unrefuted testimony and supporting exhibits.

V. **CONCLUSION**

For all the reasons stated herein, the unrefuted evidence in this proceeding demonstrates that the Commission should approve the total jurisdictional revenue requirement of \$533,887,956, including true-up amounts, for recovery through FPL's 2024 SPPCRC Factors for the period of January 2024 through December 2024.

Respectfully submitted this 13th day of October 2023,

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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 13th day of October 2023:

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