

**IN THE SUPREME COURT OF FLORIDA**

CITIZENS OF THE STATE OF  
FLORIDA, ETC.,

CASE NO: SC22-1733  
LT Case No. 20220051-EI

Appellants,

v.

ANDREW GILES FAY, ETC., ET AL.,

Appellees.

---

CITIZENS OF THE STATE OF  
FLORIDA, ETC.,

CASE NO: SC22-1735  
LT Case No. 20220050-EI

Appellants,

v.

ANDREW GILES FAY, ETC., ET AL.,

Appellees.

---

CITIZENS OF THE STATE OF  
FLORIDA, ETC.,

CASE NO: SC22-1745  
LT Case No. 20220049-EI

Appellants,

v.

ANDREW GILES FAY, ETC., ET AL.,

Appellees.

---

CITIZENS OF THE STATE OF  
FLORIDA, ETC.,

CASE NO: SC22-1748  
LT Case No. 20220048-EI

Appellants,

v.

ANDREW GILES FAY, ETC., ET AL.,

Appellees.

---

CITIZENS OF THE STATE OF  
FLORIDA, ETC.,

CASE NO: SC22-1777  
LT Case No. 20220010-EI

Appellants,

v.

ANDREW GILES FAY, ETC., ET AL.,

Appellees.

---

---

**ANSWER BRIEF OF APPELLEE, FLORIDA  
PUBLIC UTILITIES CO.**

---

Lauren V. Purdy, Esq.

Florida Bar No. 93943

Beth Keating, Esq.

Florida Bar No. 22756

Jounice L. Nealy Brown, Esq.

Florida Bar No. 124793

**GUNSTER, YOAKLEY & STEWART, P.A.**

1 Independent Drive, Suite 2300

Jacksonville, Florida 32202

(904) 354-1980 (telephone)

(904) 354-2170 (facsimile)

lpurdy@gunster.com

bkeating@gunster.com

jnealy-brown@gunster.com

*Counsel for Appellee, Florida Public Utilities Co.*

**TABLE OF CONTENTS**

TABLE OF CITATIONS..... iii

PRELIMINARY STATEMENT ..... 1

STATEMENT OF THE CASE AND FACTS..... 3

    I.    THE SPP FRAMEWORK AND REQUIREMENTS ..... 3

    II.   FPUC’S PROPOSED SPP ..... 6

    III.  THE HEARING ON FPUC’S PROPOSED SPP AND  
        OPC’S CHALLENGE TO FPUC’S SPP ..... 8

    IV.  THE COMMISSION’S FINAL ORDER ON FPUC’S SPP  
        ..... 12

    V.   THE COMMISSION’S FINAL ORDER ON FPUC’S  
        REQUEST FOR COST RECOVERY IN THE STORM  
        PROTECTION PLAN COST RECOVERY CLAUSE ..... 14

SUMMARY OF ARGUMENT ..... 15

ARGUMENT ..... 18

    I.    STANDARD OF REVIEW ..... 18

    II.   PURSUANT TO THE PLAIN LANGUAGE OF THE SPP  
        STATUTE AND SPP RULE, FPUC WAS NOT  
        REQUIRED TO PROVIDE A QUANTITATIVE  
        COMPARISON OF THE COSTS AND BENEFITS OF  
        ITS PROPOSED SPP..... 19

        A.   The plain language of the SPP Statute and SPP  
            Rule demonstrates FPUC was not required to  
            provide a quantitative comparison of costs and  
            benefits..... 20

B.	The Commission’s finding that FPUC provided sufficient qualitative and quantitative information regarding the benefits of its proposed programs is supported by the record....	27
III.	THE COMMISSION WAS NOT REQUIRED TO CONDUCT A PRUDENCE REVIEW OF FPUC’S PROPOSED SPP.....	29
A.	The plain language of the SPP Statute demonstrates the general ratemaking statute does not apply to the Commission’s evaluation of a SPP. ....	30
B.	The prudence review is conducted in connection with the annual SPPCRC proceeding, not the SPP proceeding. ....	34
C.	The Commission’s prudence review in the context of a determination of need for a power plant under §403.519(4)(e), Fla. Stat. is irrelevant here.....	36
IV.	THE COMMISSION DID NOT ABUSE ITS DISCRETION BY STRIKING PORTIONS OF OPC WITNESS LANE KOLLEN’S TESTIMONY.....	38
	CONCLUSION .....	42
	CERTIFICATE OF SERVICE.....	43
	CERTIFICATE OF COMPLIANCE .....	47

## TABLE OF CITATIONS

	<b>Page(s)</b>
<b>State Cases</b>	
<i>Advisory Op. to Governor re Implementation of Amend. 4, The Voting Restoration Amend.,</i> 288 So. 3d 1070 (Fla. 2020) .....	20
<i>Bleich v. Chicago Title Ins. Co.,</i> 117 So. 3d 1163 (Fla. 3d DCA 2013) .....	21
<i>Jackson v. Household Finance Corp., III,</i> 298 So. 3d 531 (Fla. 2020) .....	19, 40
<i>State v. Lewars,</i> 259 So. 3d 793 (Fla. 2018) .....	21
<i>Lindsey v. Bill Arflin Bonding Agency, Inc.,</i> 645 So. 2d 565 (Fla. 1st DCA 1994) .....	41
<i>Sierra Club v. Brown,</i> 243 So. 3d 903 (Fla. 2018) .....	18, 19, 32
<i>Storey Mountain, LLC v. George,</i> 357 So. 3d 709 (Fla. 4th DCA 2023) .....	21
<i>W. Fla. Elec. Coop. Ass’n v. Jacobs,</i> 887 So. 2d 1200 (Fla. 2004) .....	18
<i>White Mederi Caretenders Visiting Servs. of Fla., LLC,</i> 226 So. 3d 774 (Fla. 2017) .....	25
<b>State Statutes</b>	
Fla. Stat. section 120.56(1)(a) .....	5
Fla. Stat. section 120.68(c) .....	38
Fla. Stat. section 120.569(2)(g) .....	40

Fla. Stat. section 366.06(1)..... *passim*  
 Fla. Stat. section 366.93 ..... 37  
 Fla. Stat. section 366.96 ..... *passim*  
 Fla. Stat. section 403.519..... 36, 37

**Other Authorities**

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012) ..... 20  
 Art. V, § 21, Fla. Const..... 18  
 Rule 25-6.030, F.A.C..... *passim*  
 Rule 25-6.031, F.A.C..... *passim*

## **PRELIMINARY STATEMENT**

The main issue on appeal is a straightforward question of statutory of construction: whether section 366.96, Fla. Stat. (“SPP Statute”) and Rule 25-6.030, F.A.C. required Appellee Florida Public Utilities Company’s (“FPUC”) Storm Protection Plan (“SPP”) to include a quantitative, monetized comparison of the SPP’s costs and potential benefits. Appellant Office of Public Counsel (“OPC”) argued below that such a quantitative assessment was required, while FPUC asserted it was not.

The Public Service Commission (“Commission”) correctly concluded the plain language of the SPP Statute and Rule 25-6.030, F.A.C. do not require monetized dollar amounts of the benefits or cost-effectiveness of FPUC’s SPP. FPUC presented extensive qualitative evidence of the relative benefits of its proposed SPP, including a description of how its SPP would reduce restoration costs and outage times and enhance the facilities, as well as cost estimates of capital and operating expenses for each proposed program. As the Commission recognized, FPUC’s submissions provided the Commission with sufficient information necessary to make a public interest determination on FPUC’s SPP in accordance with Florida law.

As such, the Commission's Final Order on FPUC's SPP should be affirmed.

Likewise, the Commission correctly concluded that FPUC supported its request for recovery of SPP costs in the Storm Protection Plan Cost Recovery Clause ("SPPCRC") with appropriate detail regarding its SPP implementation activities and costs, as well as how those costs were consistent with the FPUC's SPP in accordance with Rule 25-6.031, F.A.C. As the Commission concluded, the record reflects competent, substantial evidence demonstrating that FPUC's actual/estimated costs for 2022, as well as its projected costs for 2023, were reasonable for purposes of calculating the FPUC's SPPCRC factors for 2023.

OPC's remaining arguments on appeal should also be rejected. The Commission was not required to determine the prudence of FPUC's SPP under section 366.06(1), Fla. Stat., a general ratemaking statute, in connection with the SPP proceeding. And the Commission did not abuse its discretion by striking certain portions of witness testimony as either improper legal opinion or irrelevant to the SPP proceeding.

## **STATEMENT OF THE CASE AND FACTS<sup>1</sup>**

### **I. THE SPP FRAMEWORK AND REQUIREMENTS**

In 2019, the Legislature enacted section 366.96, Fla. Stat.—the SPP Statute. Entitled “Storm Protection Plan Cost Recovery,” the SPP Statute requires each investor-owned electric utility, including FPUC, to file a SPP covering the immediate 10-year planning period that explains the systematic approach the utility will follow to achieve the Legislature’s objectives of “reducing restoration costs and outage times associated with extreme weather events and enhancing reliability.” § 366.96(3), Fla. Stat. Pursuant to sections 366.96(5)-(6), Fla. Stat., every three years, the Commission must determine whether it is in the public interest to approve, approve with modifications, or deny each utility’s SPP no later than 180 days after the SPP is submitted to the Commission. *Id.* § 366.96, Fla. Stat.

The SPP Statute specifically identifies what the Commission must consider in its review of proposed SPP’s:

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

---

<sup>1</sup> FPUC adopts the Statement of the Case and Facts at pages 2 through 21 of the Commission’s Answer Brief and offers this additional Statement to elucidate the specific facts pertaining to the appeal of FPUC’s SPP.

(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.

*Id.* § 366.96(4), Fla. Stat.

The Legislature also required the Commission to conduct a separate, annual proceeding to determine each utility's prudently incurred SPP costs. *See id.* § 366.96(7), Fla. Stat. The purpose of this annual proceeding is to determine what, if any, prudent SPP costs the utility may recover through a separate charge from its base rates. *See id.* § 366.96(7), Fla. Stat. This separate proceeding is known as the Storm Protection Plan Cost Recovery Clause ("SPPCRC") proceeding and the separate charges established therein are the SPP Factors.

As required by the Legislature, *see id.* § 366.96(3), Fla. Stat., the Commission initiated rulemaking to implement and administer the SPP Statute. The Commission’s proposed rules were the subject of extensive, and ultimately unsuccessful challenge, by OPC.<sup>2</sup> Whether the rules are a valid exercise of delegated legislative authority under section 120.56(1)(a), Fla. Stat. is not at issue in this appeal.

Effective February 18, 2020, the Commission adopted two rules: Rule 25-6.030, F.A.C. (“SPP Rule”) and Rule 25-6.031, F.A.C. (“SPPCRC Rule”). The SPP Rule outlines the specific information each utility must include in its proposed SPP to be reviewed by the Commission. *See* Rule 25-6.030(3)(d), F.A.C. Most pertinent to the instant appeal, the SPP Rule requires each utility to provide the following information about each of its proposed SPP programs:

3(d) A description of each proposed storm protection plan program that includes:

1. A description of how each proposed storm protection program is designed to enhance the utility’s existing transmission and distribution facilities including an estimate of the resulting reduction in outage times and restoration costs due to extreme weather conditions;

---

<sup>2</sup> *See* Commission Docket No. 20190131.

2. If applicable, the actual or estimated start and completion dates of the program;
3. A cost estimate including capital and operating expenses;
4. A comparison of the costs identified in subparagraph (3)(d)3. and the benefits identified in subparagraph (3)(d)1.

Rule 25-6.030(3)(d), F.A.C.

Similarly, the SPPCRC Rule describes the information each utility must include in connection with a SPPCRC proceeding. See Rule 25-6.031, F.A.C. The SPPCRC Rule requires each utility to provide: (a) Final True-Up for Previous Year, (b) Estimated True-Up for Current Year, (c) Projected Costs for Subsequent Year, (d) True-Up Variances, and (e) Proposed Storm Protection Plan Cost Recovery Factors. Rule 25-6.031(7), F.A.C. This information is used to determine the costs, if any, a utility should be allowed to recover as prudent investments in its SPP.

## **II. FPUC'S PROPOSED SPP**

FPUC was originally required to file its SPP by April 10, 2020. [R. 205, 245]. But due to the impact of Hurricane Michael, FPUC obtained a deferral of its SPP submission and continued to operate

under its previously approved Storm Hardening Plan for the next two years. [R. 205, 245, 1042].

On April 11, 2022, working with Pike Engineering, FPUC submitted its first and only proposed SPP for 2022-2031. [R. 1038]. The proposed SPP outlined eight programs, most of which were a continuation of its Storm Hardening Plan. [R. 227]. Those eight programs were identified as:

- Overhead Feeder Hardening
- Overhead Lateral Hardening
- Overhead Lateral Underground
- Distribution Pole Inspections and Replacements
- Transmission System Inspection and Hardening
- Transmission/Substation Resiliency
- Future Transmission and Distribution Enhancements
- Transmission & Distribution Vegetation Management

[R. 1043].

Overall, FPUC's proposed SPP combined the beneficial legacy Storm Hardening Plan programs with new programs developed based on resiliency risk scores from across FPUC's electric system to provide an organized roadmap of necessary investments for

implementing the SPP's objectives. [R. 320]. For example, FPUC's SPP identified unique risks and necessary investments given its Northeast Division is located on Amelia Island and receives power via a transmission line that crosses the Amelia River, and its Northwest Division is located in a heavily forested, rural area of the panhandle that is still recovering from Hurricane Michael. [R. 327]. Its proposed plans, among other things, addressed the particularized risks of outages and reliability concerns for the Northeast and Northwest Divisions in the context of major weather events.

To design its proposed SPP and ensure compliance with Florida law, FPUC used the elements outlined in the SPP Rule as a checklist. [R. 322-25]. Likewise, its SPP and prehearing submissions of testimony and exhibits expressly tracked the elements of the SPP Rule. [R. 322-25].

### **III. THE HEARING ON FPUC'S PROPOSED SPP AND OPC'S CHALLENGE TO FPUC'S SPP**

On August 2-4, 2022, the Commission held an evidentiary hearing on the utilities' SPPs. [R. 205]. Consistent with its SPP, FPUC presented extensive evidence regarding how FPUC's SPP met the statutory requirements of the SPP Statute and SPP Rule, including

describing how its SPP would enhance its facilities and reduce restoration costs and outage times consistent with Rule 25-6.030(3)(d)1. [R. 210].

For example, FPUC witness Cutshaw testified that FPUC's proposed SPP programs would promote storm hardening, thereby reducing or avoiding restoration costs associated with retaining outside services to restore the facilities after a hurricane, and which is typically a more expensive proposition given the circumstances and urgency associated with restoration. [R. 210-11, 326]. Mr. Cutshaw also testified that, as it pertained to both FPUC's Northeast and Northwest Divisions, FPUC's SPP implemented a targeted approach to addressing the unique risks and circumstances of the facilities located in each distinct service area during a hurricane event. [R. 327]. He emphasized that implementation of FPUC's SPP would reduce costs associated with storm damage because, as FPUC learned following Hurricane Michael, it is more expensive to rebuild a system after a storm than protect the same system through targeted storm hardening programs. [R. 328, TR 1593].

As acknowledged by OPC's own witnesses, Mr. Cutshaw also testified that FPUC's SPP included an estimate of the resulting

reduction in outage times and restoration costs due to extreme weather conditions. [R. 26-27, 51-52, 252]. FPUC's model, developed with Pike Engineering, evaluates the probability of damage, FPUC's ability to respond and recover from the damage, and the societal impact of outages. [R. 7140]. The model then weighs a variety of factors, like wind speeds, flood and storm surge potential, historical performance, accessibility, vegetation exposure, importance of load, number of customers served, and an estimate of the cost of an interruption. [R. 7140, Ex LK-3].

FPUC also provided monetized, estimated costs (capital and operating expenses), consistent with Rule 25-6.030(3)(d)3. [R. 259].

But FPUC did not include dollar amounts for the "benefits" or "cost-effectiveness" of its proposed programs, asserting the plain text of the SPP Statute and SPP Rule did not require such a quantitative assessment. [R. 210]. In its post-hearing brief, FPUC explained that it could qualitatively describe the benefits and cost-effectiveness of its proposed plans, including the potential for cost-savings to customers, but quantifying such savings would depend on the scope of a major weather event, its precise location, customers impacted, and timing, among other factors. [R. 326-333]. Given the SPP Rule

required no dollar-for-dollar comparison and FPUC was otherwise not privy to a methodology or mechanism to accurately quantify the savings in light of myriad variables, FPUC elected to qualitatively describe the benefits and cost-effectiveness, rather than attempt to quantify it. [R. 327-28].

Pertinent to this appeal, OPC argued FPUC's SPP was inadequate under the SPP Rule because it lacked a quantitative, monetized comparison of the "cost-effectiveness" and "benefits" of FPUC's proposed programs. [R. 210, 320-21]. It claimed that without quantitative cost-benefit estimates, the Commission lacked the necessary information to determine whether FPUC's SPP is in the public interest. [R. 209]. It presented the testimony of OPC witnesses Kollen and Mara in support of its challenge to FPUC's SPP. [R. 320-21].

FPUC responded to the arguments offered by OPC's witness through the rebuttal testimony of witnesses Cutshaw and Waruszewski. [R. 5084-5147; TR 1638-1675].

Some portions of Mr. Kollen's testimony had been the subject of a prehearing motion to strike submitted by Appellee Florida Power & Light Co., which Appellees Tampa Electric Company and Duke

Energy Company joined. [R. 6851]. While FPUC did not submit a separate joinder motion, it did request that if the testimony was stricken in the other utilities' dockets, the Commission should consider striking the testimony in the FPUC docket as well to ensure consistency and reduce confusion, given the consolidated hearing on all the utilities' SPPs. [R. 6851].

The Commission granted the motion to strike and FPUC's request on August 1, 2022. [R. 6695-6705]. It concluded the identified portions of Mr. Kollen's testimony were either irrelevant or an attempt to set new standards and criteria for approval of a SPP beyond the scope of the SPP proceeding, rather than appropriate expert testimony. [R. 6699]. The Commission's order then identified the specific pages and lines of testimony that would be excluded as either improper legal argument, irrelevant testimony regarding the SPPCRC, or an improper recommendation of a standard of review outside the scope of the SPP proceeding. [R. 6700-04].

#### **IV. THE COMMISSION'S FINAL ORDER ON FPUC'S SPP**

The Commission issued its Final Order on November 10, 2022, ultimately adopting FPUC's SPP with two modifications that removed its proposed Transmission and Substation Resiliency Program and

T&D Enhancement Program. [R. 204, 221]. FPUC does not challenge the Commission's modifications to its SPP.

Pertinent to the instant appeal, the Commission's Final Order made the following findings. First, it concluded the SPP Statute and SPP Rule do not require FPUC to quantify "benefits" or "cost-effectiveness" of its proposed programs under Rule 25-6.030(3). [R. 207-08]. The Commission noted that neither the plain language of the SPP Statute nor the SPP Rule include an explicit requirement of a "cost-effectiveness evaluation or quantitative cost-benefit analysis," as advanced by OPC. [R. 209]. Rather, both the statute and rule collectively require the utility "to provide information that demonstrates their program is likely to mitigate potential outages and reduce restoration time and the subsequent costs, regardless if [sic] such information is presented in a qualitative or quantitative format." [R. 209]. As such, the Commission determined FPUC's SPP provided the Commission with sufficient information necessary to make a public interest determination under section 366.96(5), Fla. Stat. [R. 211].

The Commission then analyzed the evidence and submissions relating to each element of the SPP Rule and whether FPUC's

proposed SPP programs were in the public interest. [R. 211-222]. Ultimately, the Commission concluded six of the eight programs should be implemented and directed FPUC to remove its proposed Future T&D Enhancement Program and Transmission & Substation Resiliency Program. [R. 222].

Finally, the Commission addressed and rejected OPC's post-hearing argument that it should reverse its order granting the motion to strike Kollen's testimony. [R. 206-07]. It found that the order striking the testimony was not procedurally infirm and did not negatively impact the fairness of the SPP proceeding. [R. 207].

OPC filed a notice of appeal regarding the Commission's decision on FPUC's SPP on December 9, 2022.

#### **V. THE COMMISSION'S FINAL ORDER ON FPUC'S REQUEST FOR COST RECOVERY IN THE STORM PROTECTION PLAN COST RECOVERY CLAUSE**

This is FPUC's first SPP; therefore, FPUC did not file a "true-up" of its 2021 SPP costs on April 1, 2022, as did the other utilities. FPUC did, however, submit the testimony and exhibit of Michelle Napier and the testimony of Mark Cutshaw in support of its request to establish SPPCRC factors to recover the projected costs associated

with its SPP. [R. SPPCRC 7330-7408; 6664-6742, and 4211-4216 and TR 3391-3396].

FPUC Witness Cutshaw described the work to be performed under the SPP, the projects involved, as well as the projected costs, and an explanation of how FPUC developed its projections and excluded costs already recovered through base rates. [R. SPPCRC 6737-6742, 4211-4214]. FPUC Witness Napier described how FPUC's proposed SPPCRC factors were calculated based upon projected costs for the May through December 2022 period and for January through December 2023 with the specific amounts already in the FPUC base rates excluded. [R. SPPCRC 6674-6735].

The Commission concluded that FPUC had carried its burden to demonstrate that the costs for which it sought recovery were prudently incurred and that its projections submitted for future costs were reasonable. [R. SPPCRC 36].

OPC filed a Notice of Appeal regarding the Commission's SPPCRC decision on December 19, 2022.

### **SUMMARY OF ARGUMENT**

The Commission's well-reasoned Final Order approving, with modifications, FPUC's proposed SPP should be affirmed. Likewise,

the Commission's SPPCRC Order should be affirmed. Each of the three arguments raised by OPC on appeal should be rejected.

First, the plain language of the SPP Statute and SPP Rule do not require a monetized, quantitative comparison of the SPP's costs and benefits. Instead, as recognized by the Commission, FPUC need only provide a cost estimate of capital and operating expenses, along with a sufficient qualitative description regarding the benefits of the proposed SPP programs that allows the Commission to determine whether the programs are in the public interest. FPUC provided exhaustive, detailed information regarding how its programs would enhance its facilities, including estimates of reduced outage times and restoration costs due to hurricanes and other extreme weather events. The Commission properly recognized this information met the requirements of the SPP Statute and SPP Rule. And as such, OPC's argument should be rejected.

Second, the prudence review standard contained in section 366.06(1), Fla. Stat.—a general ratemaking statute—does not apply to the Commission's review of FPUC's proposed SPP. The SPP proceeding is not a ratemaking proceeding; no rates are set, and no

determination of cost recovery is established. The statute simply does not apply to a SPP proceeding.

Just as importantly, neither the SPP Statute nor the SPP Rule require the Commission to conduct a prudence review in connection with approval of a utility's SPP. By the plain language of the statute, the Commission is charged with determining whether it is in the "public interest" to approve, approve with modifications, or deny a utility's SPP. As expressly stated in section 366.96(7), Fla. Stat., it is "***after*** a utility's [SPP] is approved," that the Commission determines, in the SPPCRC proceeding, the prudence of the utility's investments in order to establish the SPPCRC factors. OPC's reliance on a 20-year-old, inapplicable, prehearing order concerning approval of a power plant is also misplaced, particularly given that that review was not conducted under the SPP Statute. Neither applicable Florida law nor prior Commission orders support OPC's contentions. Thus, its argument should also be rejected.

Third, the Commission did not abuse its discretion in striking portions of OPC witness Lane Kollen's testimony. The stricken testimony constituted (1) improper legal opinion regarding the "appropriate" interpretation of the SPP Statute and SPP Rule, (2)

asked the Commission to essentially adopt new criteria and standards not contained within the text of the SPP Statute and SPP Rule, or (3) was irrelevant to and beyond the scope of the SPP proceeding. Far from “impair[ing] the fairness” of the SPP proceeding, the Commission’s ruling ensured relevant, admissible evidence was considered in connection with approval of FPUC’s proposed SPP.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

“When reviewing an order of the Commission, this Court affords great deference to the Commission’s findings.” *Sierra Club v. Brown*, 243 So. 3d 903, 907 (Fla. 2018) (internal quotation marks and citation omitted). As such, Commission orders are presumed “reasonable and just.” *W. Fla. Elec. Coop. Ass’n v. Jacobs*, 887 So. 2d 1200, 1204 (Fla. 2004).

While this Court reviews the Commission’s interpretation of Florida statutes and administrative rules *de novo*, see art. V, § 21, Fla. Const., the Court “will affirm the Commission’s findings and conclusions if they are based upon competent, substantial evidence

and are not clearly erroneous.” *Sierra Club*, 243 So. 3d at 914-15 (internal quotation marks omitted).

The Commission’s decision whether to admit or exclude evidence is reviewed for abuse of discretion. *Jackson v. Household Finance Corp., III*, 298 So. 3d 531, 535 (Fla. 2020).

**II. PURSUANT TO THE PLAIN LANGUAGE OF THE SPP STATUTE AND SPP RULE, FPUC WAS NOT REQUIRED TO PROVIDE A QUANTITATIVE COMPARISON OF THE COSTS AND BENEFITS OF ITS PROPOSED SPP.**

OPC asserts FPUC was required under the SPP Statute and SPP Rule to provide a quantitative, monetized estimate and comparison of the costs and benefits of its proposed programs. [I.B. at 36; R. 207]. And it asserts FPUC’s exhaustive qualitative description and analysis regarding the relative benefits of the proposed programs coupled with quantitative cost estimates was insufficient as a matter of law. [I.B. at 34-40]. On this basis, OPC argues the Court should remand for a new hearing and direct FPUC to provide OPC’s preferred quantitative data. [I.B. at 19].<sup>3</sup>

---

<sup>3</sup> It is unclear what relief OPC even seeks from this Court. While OPC requests a remand for a new hearing with instructions that the Commission evaluate the prudence of the proposed SPP programs and require the utilities to “provide the requisite cost and benefit information,” [I.B. at 19], it sidesteps the practical effect of its

As explained below, the plain language of the SPP Statute and SPP Rule do not require a monetized comparison of “costs” and “benefits” of the proposed SPP programs. And the Commission correctly concluded the detailed, qualitative (and quantitative) information provided by FPUC met the requirements of the SPP Statute and SPP Rule. Accordingly, the Commission’s Final Order should be affirmed.

**A. The plain language of the SPP Statute and SPP Rule demonstrates FPUC was not required to provide a quantitative comparison of costs and benefits.**

Florida follows the “supremacy-of-the-text principle.” *Advisory Op. to Governor re Implementation of Amend. 4, The Voting Restoration Amend.*, 288 So. 3d 1070, 1078 (Fla. 2020). As such, “[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Id.* (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)).

---

requested relief. It vaguely assures the Court that a remand would not require a rollback of rates already implemented. [I.B. at 19]. Instead, OPC appears to seek an improper advisory opinion that directs the Commission in future SPP proceedings what extra-statutory criteria it must consider. [I.B. at 19].

“When the language of a statute [or rule] is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Storey Mountain, LLC v. George*, 357 So. 3d 709, 714 (Fla. 4th DCA 2023) (internal quotation marks omitted). To determine a statute or rule’s meaning, “all language” in the provision must be considered, and “effect must be given to every part of the section and every part of the statute [or rule] as a whole.” *Id.* (internal quotation marks omitted). The rules of statutory construction apply equally to the interpretation of administrative regulations. *See Bleich v. Chicago Title Ins. Co.*, 117 So. 3d 1163, 1164-65 (Fla. 3d DCA 2013).

Neither party has asserted the language of the SPP Statute and SPP Rule is ambiguous, and the Court need not resort to any other rules of statutory construction to determine the provisions’ meaning. *See State v. Lewars*, 259 So. 3d 793, 797 (Fla. 2018) (“If the language is clear and unambiguous, the court must recognize the statute’s plain meaning and, therefore, need not employ any other rules of statutory construction.”).

The language of the SPP Statute, as well as the implementing SPP Rule, demonstrates no quantitative cost/benefits analysis is required. Again, section 366.96(4), Fla. Stat. provides the Commission should consider the following elements in its review of proposed SPPs:

(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.

*Id.* § 366.96(4), Fla. Stat. (emphasis added).

And under Rule 25-6.030(3), F.A.C., which implements section 366.96(4), Fla. Stat., a utility must provide the following information

relating to each proposed SPP program:

3(d) A description of each proposed storm protection plan program that includes:

1. A description of how each proposed storm protection program is designed to enhance the utility's existing transmission and distribution facilities including an estimate of the resulting reduction in outage times and restoration costs due to extreme weather conditions;
2. If applicable, the actual or estimated start and completion dates of the program;
3. A cost estimate including capital and operating expenses;
4. A comparison of the costs identified in subparagraph (3)(d)3. and the benefits identified in subparagraph (3)(d)1.

Rule 25-6.030(3)(d), F.A.C.

OPC argues the requirement in section 366.96(4)(c), Fla. Stat. that the Commission consider “[t]he estimated costs and benefits to the utility and its customers of making the improvements proposed in the [SPP]” demonstrates that qualitative evidence of “costs” and “benefits” is required. [I.B. at 35]. It also asserts Rule 25-6.030(3)(d)4 demonstrates a quantitative comparison of “costs” and “benefits” are essential components of a SPP. [I.B. at 36].

But as observed by the Commission in its Final Order, the more logical interpretation of the terms “costs” and “benefits” is “found in

the plain reading” of the SPP Statute and SPP Rule themselves. [R. 209]. These provisions require a utility to provide information demonstrating its programs are likely to mitigate potential outages and reduce restoration time and the subsequent costs. [R. 209]. Such information could be provided in either a qualitative or quantitative format.

Indeed, the SPP Statute refers to the submission of a SPP that “***explain[s]*** the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability.” § 366.96(3), Fla. Stat. (emphasis added). And while Rule 25-6.030(3)(d)3. expressly requires a “cost estimate” of capital and operating expenses for the proposed programs, Rule 25-6.030(3)(d)1. only requires “[a] description” of the proposed plan’s enhancement of the utility’s facilities, “including an estimate of the resulting reduction in outage times and restoration costs due to extreme weather conditions.”

OPC’s position regarding Rule 25-6.030(3)(d)1.’s “estimate of the resulting reduction in outage times and restoration costs” ignores the preliminary phrase of this portion of the rule directing utilities to

provide “[a] description” of the program’s enhancement of facilities. [I.B. at 35-36]. Read in context, these provisions contemplate monetary estimates of the costs of the proposed programs and at least a qualitative description of how the proposed plan will address the key objectives of the SPP Statute.

Indeed, the phrase “including” in Rule 25-6.030(3)(d)1. is meant to provide a non-exhaustive list of content that satisfies the requirement to “describe . . . how each proposed storm protection program is designed to enhance the utility’s . . . facilities.” *See White Mederi Caretenders Visiting Servs. of Fla., LLC*, 226 So. 3d 774, 781-83 (Fla. 2017) (recognizing the term “including” means a non-exhaustive list of illustrative application of a general principle).

Contrary to OPC’s contention, the plain language of the SPP Rule does not “expressly require[] a quantitative comparison” of the estimated costs and benefits of a SPP. [I.B. at 38]. The word “quantitative” or “monetary” appears nowhere in the SPP Statute or SPP Rule. And, as the Commission observed in rejecting this argument below, OPC’s specific position on the suggested, required criteria would “result in the imposition of new filing and analytical requirements that are not contained within the current rule, and

therefore would arguably be beyond the scope of the current rule.” [R. 24]. Indeed, OPC suggested the Commission should require FPUC to “look to the ratio of capital spending per customers” [R. 296, 6862] and demonstrate a “benefit-to-cost ratio of at least 100%” to meet the “benefits” requirements of the SPP Rule. [R. 6838].

There is no indication, anywhere in the SPP Statute or SPP Rule, that such a specific, granular “benefits” demonstration is required. Rather than rely on the plain language of the SPP Rule, OPC sought below (and now on appeal) to effectively relitigate its failed rulemaking challenge and convince the Commission to impose requirements not contained in the SPP Rule that was enacted.

The Commission also noted another fatal flaw in OPC’s position: it ignores “the real world nature of storm hardening,” the purpose of which is to “strengthen existing utility infrastructure to withstand potential extreme weather conditions.” [R. 24]. As a result, storm hardening costs “may or may not produce actual financial benefits during a given time, depending on a particular utility’s circumstances.” [R. 24-25]. As such, a qualitative assessment of the benefits of proposed SPP programs, such as that proffered by FPUC,

can provide sufficient information for the Commission's public interest assessment. [R. 25].

In sum, the OPC's contention that quantitative, monetary estimates and comparison of the "costs" and "benefits" of FPUC's proposed SPP was required under the terms of the SPP Statute and SPP Rule is incorrect. The plain language of the rule requires no such quantitative (dollar for dollar) information. OPC's effort to insert this requirement into the SPP Rule should be rejected.

**B. The Commission's finding that FPUC provided sufficient qualitative and quantitative information regarding the benefits of its proposed programs is supported by the record.**

Having correctly dispensed with OPC's effort to require quantitative information regarding the benefits of FPUC's proposed SPP programs, the Commission also rightly concluded FPUC's qualitative and quantitative submissions were sufficient under the SPP Statute and SPP Rule to allow the Commission to make a public interest determination. [R. 25-26].

As the Commission observed, FPUC provided: (1) estimated costs for each proposed program, (2) a description of how implementation of its plan would reduce restoration costs and outage

times, and (3) a description of how each program would enhance FPUC's facilities. [R. 25].

As explained in detail above, beyond providing the actual estimated costs for its proposed programs, FPUC presented testimony and other evidence explaining how its SPP enhanced its facilities and reduced restoration costs and outage times consistent with Rule 25-6.030(3)(d)1. [R. 210]. It also presented evidence of the actual estimated reduction in outage times and restoration costs based on a model it developed with Pike Engineering that evaluates the probability of damage, FPUC's ability to respond and recover, and the societal impact of outages. [R. 6961, 7140].

The Commission correctly found that while FPUC did not include "dollar amounts for benefits or a cost-effectiveness analysis in the format requested by OPC," its information was sufficient to provide meaningful review of its SPP under section 366.96, Fla. Stat. [R. 25]. As such, the Commission's finding that sufficient evidence was presented is supported by the record and should not be disturbed on appeal. Likewise, OPC's argument that FPUC's submission was insufficient under Florida law for failing to include a

quantitative, monetized assessment of the relative “costs” and “benefits” of its proposed SPP programs should be rejected.

### **III. THE COMMISSION WAS NOT REQUIRED TO CONDUCT A PRUDENCE REVIEW OF FPUC’S PROPOSED SPP.<sup>4</sup>**

OPC also asserts the Commission erred by failing to conduct a prudence review of the SPP investments under section 366.06(1), Fla. Stat. [I.B. at 20]. It claims the statute applies to FPUC’s proposed SPP because “[t]he approval of a SPP is a condition precedent to any cost recovery through rates.” [I.B. at 21].

OPC’s argument fails as a matter of law. Section 366.06(1) governs ratemaking proceedings. But the Commission’s review of FPUC’s SPP is governed by the SPP Statute and the SPP Rule. As explained in more detail below, there is no basis to require the Commission to graft the separate prudence review requirements of the general ratemaking statute onto the specific provisions in section 366.96(4), Fla. Stat. and Rule 25-6.030(3)(d), F.A.C. for the SPP proceeding.

---

<sup>4</sup> FPUC agrees with the Commission’s Answer Brief at pages 24 through 31 on this issue.

Rather, as recognized by section 366.96(5), Fla. Stat., in connection with the SPP proceeding, the Commission need only consider the specific elements provided in the SPP Statute and SPP Rule and determine whether the proposed SPP is in the “public interest.” The prudence review subsequently occurs, on an annual basis, during the SPPCRC proceeding that addresses cost recovery for costs prudently incurred by the utility in the implementation of its Commission-approved SPP.

**A. The plain language of the SPP Statute demonstrates the general ratemaking statute does not apply to the Commission’s evaluation of a SPP.**

OPC’s contention that the prudence review of section 366.06(1), Fla. Stat. applies to the SPP Statute should be rejected.

As recognized by OPC, section 366.06(1) establishes the general ratemaking procedure conducted by the Commission. [I.B. at 20]. This broad authority empowers the Commission with “the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service.” § 366.06(1), Fla. Stat. To recover costs, the general ratemaking statute requires the Commission determine that costs be “honestly and prudently invested by the public utility company” in

property and facilities that are used to provide service to the public.  
*Id.* § 366.06(1).

The premise of OPC’s assertion that the general ratemaking statute applies to FPUC’s SPP is that “the SPP approval is part of the rate-setting process governed by the statute.” [I.B. at 21]. But that is incorrect.

During the SPP proceeding, the Commission’s sole duty is to evaluate the utilities’ submissions for their compliance with the SPP Statute and SPP Rule and then to determine whether the proposed SPP is in the public interest. *See* § 366.96(4), Fla. Stat. The Commission does not set the utilities’ rates, or even the SPPCRC charges, based on the utilities’ SPP submissions. The Commission’s public interest evaluation of the utility’s SPP is limited to the analysis as set forth in sections 366.96(4), Fla. Stat., and as further elucidated in the SPP Rule. As set forth in the plain language of the SPP Statute, the prudence determination under the SPP Statute is conducted **after** a utility’s SPP is approved by the Commission and specifically addresses recovery of “prudently incurred transmission and distribution storm protection plan costs,” rather than the cost to provide electric service to multiple classes of customers. *See*

§ 366.96(7), Fla. Stat. [*See infra*, Sec. II.B.].<sup>5</sup> Section 366.06(1) simply should not be construed to apply to FPUC’s SPP.

Finally, OPC also attempts to graft a prudence review onto the SPP Statute by citing *Sierra Club* for the proposition that the prudence review is a “crucial element of the public interest standard” referenced in the SPP Statute. [I.B. at 25-26].

OPC’s reliance on *Sierra Club* is misplaced. *Sierra Club* addressed a settlement agreement in a base rate case under section 366.06(1), Fla. Stat.—not a SPP proceeding under section 366.96, Fla. Stat. *See Sierra Club*, 243 So. 3d at 905. In *Sierra Club*, the appellant asserted the Commission should have applied the prudence standard to an individual, capital investment. *Id.* at 905-07. The Commission argued it was required to apply the public interest standard to the settlement agreement as a whole. *Id.* at 907. This Court rejected the appellant’s contention that a prudence determination was “necessary to support an overall public interest

---

<sup>5</sup> OPC’s assertion that FPUC “recogniz[ed] that the Commission must fulfill its obligations under section 366.06(1)” based on references to the SPP record is incorrect and unsupported by the record. [I.B. at 23]. At no point did FPUC rely upon or even reference section 366.06(1) in the case below.

finding,” observing that determining public interest is “fact dependent” and was the province of the Commission. *Id.* at 910.

Most importantly, the Court ultimately concluded there was no “affirmative requirement upon the Commission to make and set forth independently specific prudence findings in a final order reviewing a settlement.” *Id.* at 912. Thus, while OPC selectively quotes from a single sentence of the opinion and mischaracterizes its holding, this Court determined that it was **not** error for the Commission to apply the public interest standard without individually addressing the prudence of a single capital investment project, as the appellant contended. *Id.*

In short, the prudence standard found in the general ratemaking statute, section 366.06(1), Fla. Stat., does not apply to the Commission’s evaluation of a proposed SPP. *Id.* at 908 (“**Within a rate case**, the Commission applies this prudence standard to the individual investment projects for which a utility is seeking cost recovery.” (emphasis added)). OPC’s argument fails as a matter of law and should be rejected.

**B. The prudence review is conducted in connection with the annual SPPCRC proceeding, not the SPP proceeding.**

OPC argues the Commission’s construction of the SPP Statute would bar a prudence review of SPP investments in not only a SPP proceeding, but also a SPPCRC proceeding. [I.B. at 27]. That is incorrect.

Again, “[*a*fter a utility’s [SPP] has been approved,” the Commission conducts a separate, annual SPPCRC 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,”—the SPPCRC. § 366.96(7), Fla. Stat. (emphasis added). The statute specifically acknowledges the Commission must determine the “prudently incurred transmission and distribution storm protection plan costs” that the utility may recover above the base rate.

Indeed, under the SPPCRC Rule, the Commission’s annual prudence review involves three separate instances of analysis: (1) after the final actual costs have been incurred from the prior year “Final True-Up for Previous year,” (2) while the costs are being

incurred for the given year “Estimated True-Up for Current Year,” and (3) before costs are incurred for the following year “Projected Costs for Subsequent Year.” Rule 25-6.031(7)(a)-(c), F.A.C.

Nevertheless, OPC contends that section 366.96(7), Fla. Stat. “guarantees that once a SPP is approved,” there is effectively no opportunity for further prudence review, arguing that the phrase “proceeding with actions to implement the [SPP] shall not constitute or be evidence of imprudence,” in section 366.96(7), Fla. Stat., means actions to implement an approved SPP are deemed prudent and not subject to **any** review. [I.B. at 26-27].

FPUC disagrees. On its face, this language simply means that after a SPP is approved, the utility’s implementation of a component of its SPP is not, by itself, evidence of imprudence. § 366.96(7), Fla. Stat. It does not mean, nor does it say, that once a program begins, the Commission does not consider the prudence of the costs incurred. To the contrary, as explained above, a prudence review is conducted on an annual basis. *Id.*; Rule 25-6.031(7)(a)-(c), F.A.C. And the utility maintains the burden to prove that its costs were prudently incurred in order to obtain cost recovery. *See* § 366.96(7), Fla. Stat.

As such, OPC's assertion that no prudence review would be conducted unless it occurred during the SPP proceeding is misplaced. A fulsome, annual prudence review will occur every year during the SPPCRC proceeding.

**C. The Commission's prudence review in the context of a determination of need for a power plant under § 403.519(4)(e), Fla. Stat. is irrelevant here.**

Finally, OPC's contention that the Commission's failure to conduct a prudence determination is "inconsistent with Commission precedent and practice" in "similar forward-looking ratemaking proceedings, [I.B. at 30], should be rejected. OPC's contention is based on a more than 20-year-old prehearing order issued in the context of a determination of need for a power plant; that decision and the applicable statutory and regulatory framework is irrelevant to the statutory and administrative requirements for review of a SPP. [I.B. at 30-31].

Most fundamentally, the provisions of section 366.96, Fla. Stat. and section 403.519, Fla. Stat. and their relative purposes, are dissimilar and should not be read together. While the SPP Statute outlines the required components for the review of a proposed SPP, section 403.519(4), Fla. Stat. addresses the required elements to

demonstrate a need for a new power plant. Given the statutes do not relate to the same subject or even the same type of proceeding, the Court need not construe them together.

In the specific context of nuclear or integrated gasification combined cycle (IGCC) power plants, the Legislature requires a utility to petition the Commission for a determination of need in order to construct a new plant. *See* § 366.93, Fla. Stat. By contrast, the Commission makes no findings that a SPP is necessary under the SPP Statute. That is a determination that has already been made by the Legislature. Instead, the Commission reviews a utility's SPP, which must be submitted every three years, and determines if the plan is in the public interest after considering specific, clearly identified statutory criteria.

Finally, FPUC disagrees that the criteria considered under section 403.519(4), Fla. Stat. for a petition for determination of need are similar to the criteria for analyzing whether a proposed SPP is in the public's interest. *Compare* § 403.519(4), Fla. Stat. *with* § 366.96(4), Fla. Stat. The elements for determining whether an area requires a new IGCC power plant are significantly different from the elements the Commission considers in connection with achieving

“the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability.” See § 366.96(3), Fla. Stat. (outlining objective of SPP) and § 366.96(4), Fla. Stat. (outlining criteria for assessing whether SPP achieves these objectives and is in the public interest). Neither the criteria nor the subject matter of these two statutory tests are similar; thus, the need determination provisions provide no support for OPC’s contention that a prudence determination was required in connection with FPUC’s SPP.

Accordingly, the Commission did not err in failing to conduct a prudence determination under section 366.06(1) in the context of its review of FPUC’s SPP. None was required by the terms of the SPP Statute and SPP Rule. OPC’s argument fails as a matter of law.

#### **IV. THE COMMISSION DID NOT ABUSE ITS DISCRETION BY STRIKING PORTIONS OF OPC WITNESS LANE KOLLEN’S TESTIMONY.**

Finally, citing section 120.68(c), Fla. Stat., OPC argues the Commission “impaired the fairness of the SPP and SPPCRC hearings” when it struck portions of OPC witness Kollen’s testimony. [I.B. at 40]. OPC also claims the Commission permitted the utilities’ witnesses to testify regarding “the very same subjects” for which it

excluded Mr. Kollen's testimony, though it fails to acknowledge that most of the "legal opinions" were elicited on cross-examination by OPC over FPUC and other utilities' objections. [I.B. at 43]. Indeed, the utilities submitted redacted portions of witness testimony responding to Mr. Kollen's stricken testimony. [R. 5420 (recognizing second errata struck portions of FPL witness Jarro's testimony responding to portions of Mr. Kollen's stricken testimony)].<sup>6</sup> OPC asks this Court to remand with instructions that the Commission hold a new hearing and consider the entirety of Mr. Kollen's testimony. [I.B. at 41]. OPC's argument should be rejected.

Preliminarily, while "impairment of fairness" is not the standard for reversal on appeal, the record demonstrates the Commission's rulings regarding Mr. Kollen's testimony were both procedurally fair and legally correct.

As recognized by the Commission in its Final Order, much of Mr. Kollen's testimony was admitted and considered by the Commission. [R. 206]. And OPC separately proffered the portions of Mr. Kollen's testimony subject to the order granting the motion to

---

<sup>6</sup> The unredacted versions of the testimony were proffered solely to preserve the record on appeal.

strike and then the proffered testimony was moved into the record as though read. [R. 206]. On the second day of the hearing on the utilities' proposed SPPs, Mr. Kollen provided a summary and was subject to cross-examination on both the testimony the Commission previously admitted, as well as the proffered testimony that had been stricken. [R. 206]. Thus, OPC was permitted to present the proffered testimony at the hearing itself, even if it was ultimately (and properly) disregarded by the Commission in connection with its Final Order.

More fundamentally and notably, OPC does not assert the Commission abused its discretion by striking discrete portions of Mr. Kollen's testimony, [I.B. at 40-44], which is the appropriate standard of review on appeal. *See Jackson*, 298 So. 3d at 535. At any rate, OPC's argument for a new hearing to consider the stricken portions of Mr. Kollen's testimony should be rejected. [See I.B. at 40-44].

OPC argues Mr. Kollen provided admissible expert testimony regarding his own expert interpretations of the requirements of the SPP Statute and SPPCRC Rules, as well as his recommendation that the Commission consider the economic justification for proposed investments through a cost/benefit analysis. [I.B. at 41-42]. OPC also contends generally that Mr. Kollen's testimony should have been

admitted under section 120.569(2)(g), Fla. Stat. because “[e]xpert testimony is routinely relied upon by reasonably prudent persons across the world.” [I.B. at 43].

The stricken testimony is nothing more than legal opinion regarding the meaning of the applicable statutes and administrative rules and Mr. Kollen’s opinion regarding whether the Commission should impose additional requirements outside the plain language of the SPP Rule. It is well-settled that expert testimony regarding the meaning of statutes or regulations “is not appropriate when the disputed language consists of ordinary words susceptible to being given plain effect consistent with their ordinary meaning.” *Lindsey v. Bill Arflin Bonding Agency, Inc.*, 645 So. 2d 565, 568 (Fla. 1st DCA 1994) (no basis for expert testimony regarding meaning of local ordinance). Mr. Kollen’s own opinion about how the Commission should interpret the SPP Statute and SPP Rule and what he believes the Commission should require before approving a SPP is unnecessary and unhelpful to the legal question before the Commission. Thus, the Commission did not abuse its discretion in striking the testimony.

## CONCLUSION

For the foregoing reasons, this Court should affirm the Final Order of the Commission.

DATED this 17th day of July, 2023.

Respectfully submitted,

**GUNSTER, YOAKLEY &  
STEWART, P.A.**

Attorneys for Appellee, Florida Public Utilities Co.

1 Independent Drive, Suite 2300  
Jacksonville, Florida 32202  
Tel (904) 354-1980  
Fax (904) 354-2170

By: /s/Lauren V. Purdy

Lauren V. Purdy, Esq.  
Florida Bar No. 93943  
Beth Keating, Esq.  
Florida Bar No. 22756  
Jounice L. Nealy-Brown, Esq.  
Florida Bar No. 124793  
Primary Email:  
lpurdy@gunster.com  
bkeating@gunster.com  
jnealy-brown@gunster.com  
Secondary Email:  
acowart@gunster.com  
awinsor@gunster.com  
tkennedy@gunster.com

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing is being served on July 17, 2023, by email through the Florida Courts E-Filing Portal addressed to the following counsel of record:

Mary A. Wessling  
Charles J. Rehwinkel  
Office of the Public Counsel  
The Florida Legislature  
111 West Madison Street,  
Suite 812  
Tallahassee, FL 32399-1400  
wessling.mary@leg.state.fl.us  
rehwinkel.charles@leg.state.fl.us

Jon C. Moyle, Jr.  
Karen A. Putnal  
Florida Industrial Power  
Users Group  
c/o Moyle Law Firm  
118 North Gadsden Street  
Tallahassee, FL 32301  
jmoyle@moylelaw.com  
kputnal@moylelaw.com  
mqualls@moylelaw.com

Kenneth A. Hoffman  
Florida Power & Light Co.  
134 West Jefferson Street  
Tallahassee, FL 32301-1713  
ken.hoffman@fpl.com

Christopher T. Wright  
Florida Power & Light Co.  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
christopher.wright@fpl.com

Stephanie U. Eaton  
Walmart Inc.  
c/o Spilman Law Firm  
110 Oakwood Drive,  
Suite 500  
Winston-Salem, NC 27103  
seaton@spilmanlaw.com

Derrick Price Williamson  
Barry Naum  
Steven W. Lee  
Walmart Inc.  
c/o Spilman Law Firm  
1100 Bent Creek Boulevard,  
Suite 101  
Mechanicsburg, PA 17050  
dwilliamson@spilmanlaw.com  
bnaum@spilmanlaw.com  
slee@spilmanlaw.com

Peter J. Mattheis  
Michael K. Lavanga

Samantha M. Cibula  
Susan Sapoznikoff

Joseph R. Birscar  
James W. Brew  
Laura Wynn Baker  
PCS Phosphate - White Springs  
c/o Stone Law Firm  
1025 Thomas Jefferson St., NW,  
Eighth Floor, West Tower  
Washington, DC 20007  
pjm@smxblaw.com  
mkl@smxblaw.com  
jrb@smxblaw.com  
jbrew@smxblaw.com  
lwb@smxblaw.com

Matthew R. Bernier  
Robert L. Pickels  
Stephanie A. Cuello  
Duke Energy Florida, LLC  
106 E. College Avenue,  
Suite 800  
Tallahassee, FL 32301  
FLRegulatoryLegal@duke-  
energy.com  
matthew.bernier@duke-  
energy.com  
robert.pickels@duke-energy.com  
stephanie.cuello@duke-energy.com

Mike Cassel  
Florida Public Utilities Co.  
208 Wildlight Ave.  
Yulee, FL 32097

Jonathan H. Rubottom  
Keith C. Hetrick  
Shaw Stiller  
Jacob Imig  
Walter Trierweiler  
Florida Public Service  
Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399  
scibula@psc.state.fl.us  
susan.sapoznikoff@psc.state.  
fl.us  
jrubotto@psc.state.fl.us  
khetrick@psc.state.fl.us  
sstiller@psc.state.fl.us  
jimig@psc.state.fl.us  
wtrierwe@psc.state.fl.us  
croehner@psc.state.fl.us  
bschultz@psc.state.fl.us  
ccraig@psc.state.fl.us

Dianne M. Triplett  
Duke Energy Florida, LLC  
299 First Avenue North  
St. Petersburg, FL 33701  
dianne.triplett@duke-  
energy.com

Michelle D. Napier  
Florida Public Utilities Co.  
1635 Meathe Drive  
West Palm Beach, FL 33411

mcassel@fpuc.com

Paula K. Brown  
Tampa Electric Company  
Regulatory Affairs  
P. O. Box 111  
Tampa, FL 33601-0111  
regdept@tecoenergy.com

Amber Stoner Nunnally  
C. Alan Lawson  
Paul C. Huck, Jr.  
Jason Gonzalez  
Taylor Greene  
Florida Power & Light Co.  
c/o Lawson Huck Gonzalez PLLC  
215 South Monroe Street,  
Suite 320  
Tallahassee, FL 32301  
amber@lawsonhuckgonzalez.com  
alan@lawsonhuckgonzalez.com  
paul@lawsonhuckgonzalez.com  
jason@lawsonhuckgonzalez.com  
taylor@lawsonhuckgonzalez.com  
michelle@lawsonhuckgonzalez.com

Daniel E. Nordby  
Duke Energy Florida, LLC  
c/o Shutts & Bowen LLP  
215 S. Monroe St.,  
Suite 804  
Tallahassee, FL 32301

mnapier@fpuc.com

J. Jeffrey Wahlen  
Malcolm N. Means  
Virginia Ponder  
Tampa Electric Company  
c/o Ausley McMullen  
P.O. Box 391  
Tallahassee, FL 32302  
jwahlen@ausley.com  
mmeans@ausley.com  
vponder@ausley.com  
blink@ausley.com  
nestes@ausley.com  
bpandolfi@ausley.com

George S. Cavros  
Southern Alliance for Clean  
Energy  
120 E. Oakland Park Blvd.,  
Suite 105  
Fort Lauderdale, FL 33334  
george@cavros-law.com

Michael P. Silver  
Alyssa L. Cory  
Duke Energy Florida, LLC  
c/o Shutts & Bowen LLP  
4301 West Boy Scout Blvd.,  
Suite 300

dnordby@shutts.com

Tampa, FL 33607-5716

msilver@shutts.com

acory@shutts.com

chill@shutts.com

ehumaran@shutts.com

Corey Allain

Nucor Steel Florida, Inc.

22 Nucor Drive

Frostproof, FL 33843

corey.allain@nucor.com

/s/Lauren V. Purdy

Attorney

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY this brief complies with the type size and style requirements of Rule 9.045(b), Florida Rules of Appellate Procedure and has been prepared in Bookman Old Style, 14 Point Font. This brief complies with the type volume limitations set forth in Rule 9.210(a)(2)(B), Florida Rules of Appellate Procedure. This brief contains 7,630 words, excluding the parts of the brief exempt by Rule 9.045(e).

/s/ Lauren V. Purdy

ACTIVE:19297597.1