

IN THE SUPREME COURT OF FLORIDA

CITIZENS OF THE STATE OF
FLORIDA,

Appellant(s),

Case No.: SC22-1733

Lower Tribunal No.: 20220051-EI

vs.

ANDREW GILES FAY, ETC., ET AL.,

Appellee(s).

CITIZENS OF THE STATE OF
FLORIDA,

Appellant(s),

Case No.: SC22-1735

Lower Tribunal No.: 20220050-EI

vs.

ANDREW GILES FAY, ETC., ET AL.,

Appellee(s).

CITIZENS OF THE STATE OF
FLORIDA,

Appellant(s),

Case No.: SC22-1745

Lower Tribunal No.: 20220049-EI

vs.

ANDREW GILES FAY, ETC., ET AL.,

Appellee(s).

CITIZENS OF THE STATE OF
FLORIDA,

Appellant(s),

Case No.: SC22-1748

Lower Tribunal No.: 20220048-EI

vs.

ANDREW GILES FAY, ETC., ET AL.,

Appellee(s).

CITIZENS OF THE STATE OF
FLORIDA,

Appellant(s),

Case No.: SC22-1777

Lower Tribunal No.: 20220010-EI

vs.

ANDREW GILES FAY, ETC., ET AL.,

Appellee(s).

ANSWER BRIEF OF TAMPA ELECTRIC COMPANY

J. JEFFRY WAHLEN (FBN 884316)
MALCOLM N. MEANS (FBN 127586)
VIRGINIA PONDER (FBN 99947)
jwahlen@ausley.com
mmeans@ausley.com
vponder@ausley.com
Ausley McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

Counsel for Tampa Electric Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS..... 2

 I. NATURE OF THE CASE..... 2

 II. STATEMENT OF THE CASE AND FACTS..... 2

SUMMARY OF ARGUMENT 8

STANDARD OF REVIEW..... 9

ARGUMENT 10

 I. THE COMMISSION’S ORDER SHOULD BE
 AFFIRMED 10

 A. The TECO Final Order Correctly Applied the SPP
 Statute 10

 B. The Commission’s Findings Are Supported by
 Competent, Substantial Evidence..... 13

 II. THE COMMISSION CORRECTLY INTERPRETED
 AND APPLIED THE SPP STATUTE..... 15

 A. OPC’s Position Conflicts with the Plain Language of
 the SPP Statute 15

 B. OPC’s Claim that the Commission’s Interpretation
 Bars Review of Proposed SPP Activities is Without
 Merit 19

 C. OPC’s Interpretation of *Sierra Club v. Brown* is
 Erroneous 21

 D. The Commission’s Interpretation is not
 Inconsistent with Prior Agency Practice 23

III. TAMPA ELECTRIC PROVIDED THE COMPARISON OF COSTS AND BENEFITS REQUIRED BY THE SPP STATUTE AND SPP RULE 25

IV. THE COMMISSION PROPERLY GRANTED TAMPA ELECTRIC’S MOTION TO STRIKE 27

V. THE COMMISSION’S ORDER APPROVING TAMPA ELECTRIC’S SPPCRC COST RECOVERY FACTORS SHOULD BE AFFIRMED 33

CONCLUSION 36

CERTIFICATE OF SERVICE..... 37

CERTIFICATE OF COMPLIANCE WITH RULE 9.045(e) 40

TABLE OF AUTHORITIES

Cases

<i>De Groot v. Sheffield</i> , 95 So. 2d 912 (Fla. 1957).....	14
<i>Demase v. State Farm Florida Insurance Co.</i> , 351 So. 3d 136 (Fla. 5th DCA 2022).....	13, 35
<i>Jones v. State</i> , 330 So. 3d 130 (Fla. 2d DCA 2021).....	28
<i>Laboratory Corporation of America, et al. v. Davis</i> , 339 So. 3d 318 (Fla. 2022).....	15, 16
<i>LULAC Florida Education Fund, Inc. v. Clark</i> , No. SC21-303 (Fla. May 27, 2022)	9
<i>Metro Casualty Insurance Co. v. Tepper</i> , 2 So. 3d 209 (Fla. 2009).....	20
<i>Sierra Club v. Brown</i> , 243 So. 3d 903 (Fla. 2018).....	9, 10, 21, 22
<i>Special v. West Boca Medical Center</i> , 160 So. 3d 1251 (Fla. 2014).....	33
<i>T.J.R. Holding Co., Inc. v. Alachua County</i> , 617 So. 2d 798 (Fla. 1st DCA 1993)	28
<i>Taylor v. Culver</i> , 178 So. 3d 550 (Fla. 1st DCA 2015)	27

Statutes

Section 366.02, Florida Statutes	10
Section 366.06, Florida Statutes	17, 18
Section 366.93, Florida Statutes	23, 25
Section 366.96, Florida Statutes	passim
Section 403.519, Florida Statutes	23, 24, 25
Section 59.041, Florida Statutes	32

Rules

Rule 1.1140(f), Florida Rules of Civil Procedure 27
Rule 25-6.030, Florida Administrative Code passim
Rule 25-6.031, Florida Administrative Code 1, 20, 34
Rule 28-106.211, Florida Administrative Code 27

Other Authorities

Article V, § 21, Florida Constitution 9

PRELIMINARY STATEMENT

Appellee Tampa Electric Company will be identified as “Tampa Electric” or “the company.” Appellant, the Office of Public Counsel, will be referred to as “OPC.” Appellee the Florida Public Service Commission will be shortened to “Commission.” Appellee Florida Power & Light Company will be referred to as “FPL.” Appellee Duke Energy Florida will be referred to as “DEF.” Appellee Florida Public Utilities Company will be referred to as “FPUC.”

Tampa Electric will also utilize the same record citation abbreviations as OPC, including:

PSC Docket No. 20220048-EI/SC22-1748..... “R. TECO _____,”
and

PSC Docket No. 20220010/SC22-1777..... “R. SPPCRC ____.”

For consistency with OPC, Tampa Electric will also refer to the storm protection cost recovery clause as the “SPPCRC,” Section 366.96, Florida Statutes as the “SPP Statute,” Rule 25-6.030, Florida Administrative Code as the “SPP Rule,” and Rule 25-6.031, Florida Administrative Code as the “SPPCRC Rule.”

STATEMENT OF THE CASE AND FACTS

I. Nature of the Case

Tampa Electric submits this Answer Brief in support of the following Commission Orders that were consolidated for appellate review and are currently pending before this Court: (1) Order No. PSC-2022-0386-FOF-EI, issued November 10, 2022 in Docket No. 20220048-EI, which approved Tampa Electric's 2022-20231 Transmission and Distribution Storm Protection plan with modifications;¹ (2) Order No. PSC-2022-0292-PCO-EI, issued August 1, 2022 in Docket NO. 20220048-EI, which granted Tampa Electric's Motion to Strike portions of the direct testimony of OPC's witness Lane Kollen; and (3) Order No. PSC-2022-0418-FOF-EI, issued December 12, 2022 in Docket No. 20220010-EI, approving Tampa Electric's SPPCRC cost recovery amounts and related tariffs ("SPPCRC Order").

II. Statement of the Case and Facts

Tampa Electric accepts the Statement of the Case and Facts as presented in the Commission's Answer Brief. Given that there are unique aspects to Tampa Electric's SPP review docket, however,

¹ The Commission later entered Order No. PSC-2022-0386-A-FOF-EI to correct a scrivener's error in this order but affirmed it in all other respects. (R. TECO 75).

Tampa Electric will also summarize the specifics of Tampa Electric's 2022-2031 Transmission and Distribution Storm Protection Plan ("2022 SPP"), the approval of which is ultimately at the core of this appeal.

Tampa Electric filed its first SPP on April 10, 2020. (R. TECO 18). The company entered into a settlement agreement with all intervenors in the company's 2020 SPP review docket, including OPC, FIPUG, and Walmart. (R. TECO 18). On August 28, 2020, the Commission approved this settlement agreement and, by extension, approved the company's 2020 SPP. (R. TECO 18).

Tampa Electric filed its 2022 SPP, which is largely a continuation of the company's prior 2020 SPP, on April 11, 2022. (R. TECO 19; 30). The 2022 SPP describes the company's comprehensive approach to protect and strengthen the company's infrastructure to withstand extreme weather conditions. (R. TECO 816). The 2022 SPP is designed to reduce restoration costs and outage times associated with extreme weather. (R. TECO 816). In support of the company's 2022 SPP, Tampa Electric filed the direct testimony of four witnesses and several supporting exhibits. (R. TECO 8044-8528). This

testimony and these exhibits were ultimately entered into the record during the Commission's final hearing in the docket.²

Tampa Electric's 2022 SPP is comprised of the same eight programs that were in the company's 2020 SPP. These programs include: (1) Distribution Lateral Undergrounding; (2) Vegetation Management; (3) Transmission Asset Upgrades; (4) Substation Extreme Weather Hardening; (5) Distribution Overhead Feeder Hardening; (6) Infrastructure Inspections; and (7) Legacy Storm Hardening Plan Initiatives.³ Tampa Electric also proposed continuation of an eighth program, known as Transmission Access Enhancement, that was approved in the company's 2020 SPP. The Commission, however, excluded this program from the company's 2022 SPP. (R. TECO 274-276).

² See Direct Testimony of David A. Pickles (R. TECO 6473-6504); Direct Testimony of Jason D. DeStigter (R. TECO 6144-6217); Direct Testimony of Richard J. Latta (R. TECO 6249-6264); Direct Testimony of David L. Plusquellic (R. TECO 6278-6341); Exhibit of David A. Pickles (which includes the company's 2022 SPP and the 1898 Report) (R. TECO 814-993); Exhibit of Richard J. Latta (R. TECO 994-995); Exhibit of David L. Plusquellic (R. TECO 996-1105).

³ For a description of these programs, see (R. TECO 6292-6339).

Tampa Electric estimated that the capital cost of the company's 2022 SPP over the ten-year planning horizon would be \$1.698 billion, and the associated operations and maintenance expense over the same period would be \$377.15 million. (R. TECO 884; 6071).⁴

Tampa Electric hired 1898 & Co., an engineering consulting firm, to provide an independent, third-party review of the company's Distribution Lateral Undergrounding, Transmission Asset Upgrades, Substation Extreme Weather Hardening, Distribution Overhead Feeder Hardening, and Transmission Access Enhancement Programs. (R. TECO 6145; 6155). 1898 & Co. performed this comprehensive review for both the 2020 SPP and the 2022 SPP. (R. TECO 6155). Tampa Electric included 1898 & Co.'s report as an appendix to the company's 2022 SPP. (R. TECO 912-993). Jason DeStigter, Director at 1898 & Co., also provided testimony to describe the methodology and results of the report. (R. TECO 6144-6217).

In short, 1898 & Co. developed a model to simulate the impacts of extreme weather on Tampa Electric's transmission and distribution system. (R. TECO 6152-6154). The model identified

⁴ These figures include the projected costs of Tampa Electric's Transmission Access Enhancement Program, which the Commission excluded from the company's 2022 SPP.

13,356 potential hardening projects (R. TECO 961) and estimated the storm resiliency benefits of each project in terms of avoided restoration costs and reduced customer minutes of interruption (“CMI”). (R. TECO 971). Since the benefits of each project are dependent on the type and frequency of future storms, the model produces a range of possible benefits over the next 50 years. (R. TECO 972).

The results of 1898 & Co.’s analysis showed that the reviewed programs are expected to reduce storm restoration costs by 32 to 35 percent over the next fifty years, depending on the frequency and intensity of future storms. (R. TECO 926). This equates to approximately \$380 to \$530 million in restoration cost savings over the same period. (R. TECO 926). These programs are also expected to reduce CMI by 29 percent over the next 50 years. (R. TECO 927).⁵

1898 & Co. also ranked and prioritized all 13,356 potential storm protection projects for Tampa Electric. (R. TECO 981). The

⁵ These estimated benefits include the projected benefits of Tampa Electric’s Transmission Access Enhancement program, which was excluded from the 2022 SPP by the Commission’s final order. This program, however, was projected to contribute less than one percent of the overall reduction in CMI (R. TECO 991), and approximately two percent of the overall avoided restoration costs. (R. TECO 4166; *cf.* R. TECO 988).

model compared the total estimated resilience benefit of each project with its estimated cost and ranked all projects. (R. TECO 981). Tampa Electric utilizes this ranking as a tool to aid in project prioritization and scheduling. (R. TECO 983).

Tampa Electric also engaged Accenture, an outside consultant with expertise in data analysis and utility vegetation management activities, to prepare an analysis of the potential benefits of the company's Vegetation Management program. *See* (R. TECO 1012).⁶ Accenture utilized its Tree Trimming Model to develop and recommend an enhanced vegetation management program. (R. TECO 1028). Accenture prepared a report describing its analysis that was entered into the record at the Commission's final hearing. (R. TECO 1012-1045). Accenture estimated that this program will reduce vegetation-caused outages in storms by 22.2 percent over ten years based on wind speed probabilities. (R. TECO 1029).

Tampa Electric did not estimate the projected benefits of the Infrastructure Inspections and Legacy Storm Hardening Initiative

⁶ While this analysis was performed for the Vegetation Management program in the company's prior 2020 SPP, the company did not propose any changes to the program in this iteration of the SPP. *See* (R. TECO 6303).

programs because they were originally mandated by Commission orders prior to enactment of the SPP Statute. (R. TECO 865; 873).

SUMMARY OF ARGUMENT

This Court should affirm the TECO Final Order. The Commission correctly applied the plain language of the SPP Statute and concluded, based on competent substantial evidence in the record, that approval of Tampa Electric's 2022 SPP with modifications would be in the public interest. Consequently, the TECO Final Order did not constitute a departure from the essential requirements of law and contains findings supported by competent substantial evidence and it should be affirmed.

OPC's argument that the Commission misinterpreted the SPP Statute is without merit, and this Court should reject OPC's reading of the SPP Statute.

The Commission correctly found that Tampa Electric provided adequate information for the Commission to conduct the comparison of the costs and benefits of each SPP program as required by the SPP Statute and the SPP Rule.

The Commission did not abuse its discretion in granting Tampa Electric’s Motion to Strike portions of Mr. Kollen’s testimony because it was irrelevant and immaterial to the SPP review docket.

The Commission’s Order approving Tampa Electric’s 2023 SPPCRC cost recovery factors should be affirmed because the Commission correctly applied the SPP Statute to that proceeding, because the decision was based on competent, substantial evidence, and because OPC does not challenge that order on appeal.

STANDARD OF REVIEW

Commission orders arrive at this Court “with a presumption that they are ‘reasonable and just.’” *LULAC Fla. Educ. Fund, Inc. v. Clark*, No. SC21-303 (Fla. May 27, 2022) (order remanding case to the Commission) (quoting *Sierra Club v. Brown*, 243 So. 3d 903, 907 (Fla. 2018)). This Court reviews the Commission’s interpretation of a statute *de novo*. Art. V, § 21, Fla. Const.

A party challenging an order of the Commission on appeal has the burden of showing a departure from the essential requirements of law and the legislation controlling the issue, or that the findings of the Commission are not supported by competent, substantial evidence. *Sierra Club*, 243 So. 3d at 907-908. This Court has stated

that it will “not overturn an order of the PSC because we would have arrived at a different result had we made the initial decision and we will not reweigh the evidence.” *Sierra Club*, 243 So.3d at 908 (citation omitted).

ARGUMENT

I. THE COMMISSION’S ORDER SHOULD BE AFFIRMED

As stated above, OPC has the burden in this appeal of showing a departure from the essential requirements of law and the SPP Statute, or of showing that the Commission’s findings are not supported by competent, substantial evidence. *Sierra Club*, 243 So. 3d at 907-908. As explained below, the TECO Final Order correctly applied the SPP Statute and OPC does not contest that the decision is supported by competent, substantial evidence. This Court should accordingly affirm the Commission’s decision.

A. The TECO Final Order Correctly Applied the SPP Statute

The SPP Statute requires each public utility⁷ to file a “transmission and distribution storm protection plan” covering a 10-

⁷ The term “public utility” is defined in the SPP Statute by reference to Section 366.02(8), Florida Statutes. §366.96(2)(a), Fla. Stat.

year planning period with the Commission. §366.96(3), Fla. Stat. Once a utility submits a filing that contains all the elements required by Commission rule, the Commission “shall determine whether it is in the public interest to approve, approve with modification, or deny the plan.” §366.96(5), Fla. Stat. The SPP Statute sets out four criteria that the commission “shall consider” in reviewing plans, including:

(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.

§366.96(4)(a)-(d), Fla. Stat. The SPP Statute requires each utility to submit an updated plan at least every three years and directs the Commission to review updated plans “pursuant to the criteria used to review the initial plan.” §366.96(6), Fla. Stat.

The SPP Statute also directs the Commission to adopt rules to specify the required contents of a utility’s SPP filing. §366.96(3), Fla. Stat. The Commission complied with this requirement through adoption of Rule 25-6.030, Florida Administrative Code (the “SPP Rule”). The SPP Rule specifies the required content of a utility SPP filing. *See* R. 25-6.030(3)(a)-(j), F.A.C.

The Commission first found that Tampa Electric’s 2022 SPP contained all of the elements required by the SPP Rule. (R. TECO 262). The Commission then expressly considered each of the four public interest criteria enumerated in the SPP Statute in evaluating Tampa Electric’s 2022 SPP. The table below identifies where the Commission reviewed each of these factors in the TECO Final Order:

Public Interest Criterion	Issue Number	Record Citation
§366.96(4)(a)	Issue II	R. TECO 264-266
§366.96(4)(a) ⁸	Issue III	R. TECO 266-268
§366.96(4)(b)	Issue IV	R. TECO 268-269
§366.96(4)(c)	Issue V	R. TECO 269-271
§366.96(4)(d)	Issue VI	R. TECO 271-273

After considering each of these factors, the Commission found that it was in the public interest to approve Tampa Electric’s 2022 SPP with

⁸ The Commission considered the second part of this criterion, addressing “whether the plan prioritizes areas of lower reliability performance,” as a separate issue.

a single modification to remove the company's proposed Transmission Access Enhancement program. (R. TECO 273-276). Since the Commission followed the plain language of the SPP Statute and considered each of the four public interest criteria, the TECO Final Order does not constitute a departure from the essential requirements of law or the SPP Statute and should be affirmed.

B. The Commission's Findings Are Supported by Competent, Substantial Evidence

OPC's initial brief does not contest whether the TECO Final Order is supported by competent, substantial evidence. An issue that is not raised in the initial brief is deemed abandoned. OPC has accordingly waived the issue. See *Demase v. State Farm Florida Ins. Co.*, 351 So. 3d 136, 139 (Fla. 5th DCA 2022) (citing *Hagood v. Wells Fargo N.A.*, 112 So. 3d 770, 772 (Fla. 5th DCA 2013)).

OPC does however, assert that the company's analysis of the expected benefits of its plan is "flawed." See (OPC br. 48). To the extent this is an argument that the Commission's public interest finding is not supported by competent, that argument is plainly contradicted by the record below. Evidence is competent and substantial if it is "sufficiently relevant and material that a

reasonable mind would accept it as adequate to support the conclusion reached.” *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

Tampa Electric provided a reasoned, robust, and comprehensive analysis of its proposed SPP activities and their projected costs and benefits. This analysis was based on both internal company expertise⁹ and reports by outside consultants.¹⁰ The table below sets out where this evidence supporting the Commission’s analysis of each of the four public interest criteria is located within the record.

Public Interest Criterion	Issue Number	Record Citation
§366.96(4)(a)	Issue II	R. TECO 986-987; 1029
§366.96(4)(a) ¹¹	Issue III	R. TECO 912-993
§366.96(4)(b)	Issue IV	R. TECO 6494
§366.96(4)(c)	Issue V	R. TECO 884
§366.96(4)(d)	Issue VI	R. TECO 889

⁹ See the direct testimony and exhibits of company witnesses David A. Pickles (R. TECO 814-993; 6473-6504) and David L. Plusquellic (R. TECO 996-1105; 6278-6341.)

¹⁰ See the 1898 & Co. and Accenture reports (R. TECO 814-993; 1012-1101) and the direct testimony of Jason D. DeStigter (R. TECO 6144-6217).

¹¹ The Commission considered the second part of this criterion, addressing “whether the plan prioritizes areas of lower reliability performance,” as a separate issue.

Each of the Commission’s findings regarding the four public interest criteria set out in the SPP Statute is accordingly supported by competent, substantial evidence in the record below, and this Court should affirm the TECO Final Order.

II. THE COMMISSION CORRECTLY INTERPRETED AND APPLIED THE SPP STATUTE

OPC argues that the Commission erroneously interpreted the SPP Statute by declining to conduct a prudence review of the utilities’ proposed SPP activities in the dockets established to review those SPPs. (OPC br. 19-29). OPC also argues that this decision was inconsistent with prior agency practice under an unrelated statute. (OPC. br. 30-34). As explained below, these arguments are without merit and the Commission correctly interpreted and applied the SPP Statute in the proceedings below.

A. OPC’s Position Conflicts with the Plain Language of the SPP Statute

This Court has stated that, in interpreting a statute, a court’s “task is to give effect to the words that the legislature has employed in the statutory text.” *Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022). “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Id.*

(quoting *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020)). Proper interpretation “requires consideration of the entire text, in view of its structure and of the physical and logical relation of its many parts.” *Lab. Corp. of Am.*, 339 So. 3d at 324.

Under subsections (4) through (6) of the SPP Statute, the Legislature directed the Commission to review each utility’s plan and determine whether it is in the “public interest” to approve that plan by considering four enumerated criteria. None of these criteria address OPC’s additional standard of “the prudence of the programs and projects proposed.” (OPC br. 19). Instead, subsection (7) of the SPP Statute directs the Commission to conduct a separate, subsequent proceeding to determine the utility’s “prudently incurred” plan implementation costs and provide for recovery of those costs. Based on the plain language of the statute, the Commission’s task in the SPP review docket is to determine whether approval of a utility’s SPP is in the public interest based on four enumerated criteria, and issues related to whether SPP implementation costs were “prudently incurred” are addressed in the subsequent cost-recovery proceeding. OPC’s assertion that the Commission is required to review the

prudence of proposed SPP projects in the plan docket is accordingly inconsistent with the language of the SPP Statute.

OPC also asserts that the bifurcated review set out in the SPP Statute is inconsistent with Section 366.06(1), Florida Statutes. (OPC Br. 20-23). That statute prescribes how the Commission should review public utility “applications for changes in rates.” Among other things, Section 366.06(1) provides that the Commission must set rates by determining “the money honestly and prudently invested by the public utility company” in property that is used and useful in serving the public. Based on this language, OPC asserts that the Commission must evaluate the prudence of proposed SPP activities in the SPP review docket.

To the contrary, the Commission is not required to determine the “money honestly and prudently invested by the public utility company” in the SPP review docket because that docket does not involve rate setting. The SPP Statute only allows for the recovery of “transmission and distribution storm protection plan costs.” §366.96(7), Fla. Stat. That term is defined as “the reasonable and prudent costs *to implement an approved* transmission and distribution storm protection plan.” §366.96(2)(c), Fla. Stat.

(emphasis added). Plan approval is thus a prerequisite for cost recovery, and a utility cannot request a change in rates that would trigger the Commission's obligations under Section 366.06(1) until after the company's SPP is approved. OPC apparently agrees, as Mr. Kollen testified below: "The SPPCRC proceedings address the actual recovery and annual customer rate impact *only after the decision process in these SPP proceedings is complete, projects are approved, and the SPP programs and projects are implemented.*" (R. TECO 5812) (emphasis added). The Commission's interpretation and application of the SPP Statute is thus entirely consistent with the requirements of Section 366.06(1), Florida Statutes.

OPC also points to instances where Tampa Electric utilized the words "prudent" and "imprudent" in testimony as to argue that Tampa Electric "recognized the role of a prudence determination" in the SPP-review docket. (OPC br. 22). These quotes merely reflect the company's recognition that its SPP investments are ultimately subject to prudence review. OPC also elides several key facts, including that Tampa Electric's petition for approval of the company's 2022 SPP did not ask the Commission to make a Section 366.06(1)

prudence determination for the company's plan,¹² and that Tampa Electric asked the Commission to strike portions of Mr. Kollen's testimony on the grounds that it recommended applying a prudence standard of review in the plan-review docket. *See* (R. TECO 6973).

B. OPC's Claim that the Commission's Interpretation Bars Review of Proposed SPP Activities is Without Merit

OPC also argues that the Commission's application of the SPP Statute bars "front end" review of proposed SPP activities at the plan review stage. (OPC br. at 28-29). This is contradicted by the text of the SPP Statute itself, which authorizes the Commission to modify or reject a utility's SPP if it finds that the plan is not in the public interest. §366.96(5), Fla. Stat. It is also contradicted by the record below, as OPC successfully persuaded the Commission to modify Tampa Electric's 2022 SPP by excluding the company's proposed Transmission Access Enhancement program at the plan review stage. (R. TECO 274-275).

OPC also takes issue with the first sentence of Section 366.96(7), which states: "After a utility's [SPP] has been approved,

¹² The company's requested relief was a Commission finding "that it is in the public interest to approve the company's SPP without modification." (R. TECO 8052).

proceeding with actions to implement the plan shall not constitute or be evidence of imprudence.” OPC interprets this sentence to mean that “once [an] undertaking commences, any prudence review of the program or project is statutorily forbidden.” (OPC br. pp. 28-29). This sentence does not, however, mean that all costs incurred to implement a Commission-approved plan are automatically deemed prudent. Indeed, the very next sentence in Section 366.96(7) requires the Commission to “determine the utility’s prudently incurred” costs in the SPPCRC proceeding. OPC’s reading of the statute would render this subsequent sentence meaningless, and this Court has held that “courts should avoid readings that render part of a statute meaningless.” *Metro Cas. Ins. Co. v. Tepper*, 2 So. 3d 209, 215 (Fla. 2009). It would also render the SPPCRC Rule meaningless, since it provides that the annual SPPCRC hearing will address “the prudence of actual Storm Protection Plan costs incurred by the utility...” R. 25-6.031(3), F.A.C. Instead, the first sentence Section 366.96(7) simply stands for the proposition that a utility’s decision to begin an approved SPP project does not, on its own, constitute evidence of imprudence. Those costs remain subject to prudence review under the plain language of the SPP Statute and SPPCRC Rule.

The SPP Statute provides litigants such as OPC with a meaningful opportunity to challenge the contents of a utility's proposed SPP in the plan review docket as inconsistent with the public interest. Furthermore, even if the Commission approves a utility's plan, the utility is not guaranteed cost recovery for implementation costs under Subsection (7) of the SPP Statute since those costs must still undergo prudence review in the SPPCRC proceeding.

C. OPC's Interpretation of *Sierra Club v. Brown* is Erroneous

OPC cites *Sierra Club v. Brown*, 243 So.3d 903 (2018) for the proposition that the "public interest standard" includes a prudence determination. (OPC br. 26). This argument is based on a misreading and misapplication of that decision. The *Sierra Club* decision addressed Commission approval of a settlement agreement,¹³ and the Commission applies a "public interest standard" when reviewing a settlement agreement. *Sierra Club*, 243 So.3d at 909. The *Sierra Club* decision noted, however, that Chapter 366 of the Florida Statutes

¹³ "Principally, this dispute centers upon whether the Commission properly applied its public interest standard in considering and approving the settlement." *Sierra Club*, 243 So.3d at 907.

“does not separately prescribe a Commission standard for reviewing settlement agreements in rate cases.” *Id.* at 910. This contrasts with the “public interest” review set forth in the SPP Statute, where the legislature specifically delineated which factors the Commission must consider in determining whether a SPP is in the public interest. Clearly the “public interest” standard for review of settlements and the statutory “public interest” review in the SPP Statute are not synonymous.

Furthermore, even assuming that the two “public interest” standards are identical, the *Sierra Club* court expressly rejected “any requirement for independent, individualized prudence review” of specific investments in conducting public interest review. *Sierra Club*, 242 So.3d at 911. As the court stated: “It is crucial to remember that the Commission’s standard here is the public interest despite any extent to which that standard may resemble prudence review.” *Id.* at 912. Thus, even if OPC is correct that *Sierra Club* and the settlement agreement public interest standard controls, that opinion and that standard do not require prudence review of the individual planned investments which comprise a utility SPP at the plan-review stage.

D. The Commission's Interpretation is not Inconsistent with Prior Agency Practice

OPC points to past Commission determination of need proceedings for new generating facilities under Section 366.93, Florida Statutes and Section 403.519, Florida Statutes for the proposition that the Commission deviated from past precedent in applying the SPP Statute. (OPC br. 30-34). This argument misses the mark for two main reasons.

First, the statutes cited by OPC address an entirely different subject matter than the SPP Statute and there is no need, as OPC suggests, to evaluate past practice under these statutes against the record below. The proceedings contemplated under the cited statutes address whether there is a demonstrated need for a new generating facility, and ultimately the utility's cost recovery for that facility. In contrast, the SPP Statute addresses strengthening of "transmission and distribution electric utility infrastructure" against extreme weather. *See* §366.96(d)-(e), Fla. Stat. The proceedings are also distinct in that the Legislature explicitly found a need for storm

hardening in the SPP Statute,¹⁴ and required utilities to file SPPs.¹⁵ The proceedings offered up for comparison by OPC are accordingly distinct from those under the SPP Statute, and there is no need to construe the statutes.

Second, the very statutes cited by OPC as evidence of a deviation from prior agency practice in this proceeding set up a similar bifurcated review process as that contemplated by the SPP Statute. Under Section 403.519, the Commission first evaluates the need for the proposed power plant based on “matters within its jurisdiction,” including the need for base-load capacity, fuel diversity, and whether the plant will be the most cost-effective source of power. §403.519(4)(b), Fla. Stat. None of these factors address the prudence of actual incurred costs. Next, after the Commission makes an affirmative determination of need for the proposed plant, the utility accrues the right to recover certain plant project costs.

¹⁴ “It is in the state’s interest to strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management.” §366.96(1)(c), Fla. Stat.

¹⁵ “Each public utility shall file, pursuant to commission rule, a transmission and distribution storm protection plan...” §366.96(3), Fla. Stat.

§403.519(4)(e), Fla. Stat. This cost recovery, however, is subject to challenge on the basis that the costs were “imprudently incurred.” §403.519(4)(e), Fla. Stat. This process mirrors the one set out in the SPP Statute, except that the standard of review differs in the first stage of review under each statute. Thus, even if OPC were correct that it is necessary to review Sections 366.93 and 403.519 to interpret the SPP Statute, those statutes set out a similar process under which prudence is reviewed in a subsequent proceeding.

III. Tampa Electric Provided the Comparison of Costs and Benefits Required by the SPP Statute and SPP Rule

OPC argues the SPP Statute and the SPP Rule require utilities to provide “quantitative estimated costs and estimated benefits” for their proposed SPP programs. (OPC br. 37). To the contrary, as the Commission correctly noted in the TECO Final Order, neither the SPP Statute nor the SPP Rule “explicitly require a prescriptive or specific kind of analysis or comparison of the costs and benefits in a SPP.” (R. TECO 263). Section 366.96(4)(c) merely requires the Commission to consider the “estimated costs and benefits to the utility and its customers of making the improvements proposed in the plan.” The Commission implemented this requirement in the SPP Rule by

directing utilities to provide a “description” the benefits of each proposed storm protection program, “a cost estimate including capital and operating expenses” for each program, and a comparison of the two. R. 25-6.030(3)(d), F.A.C. The Commission accordingly concluded that each utility should have the discretion “to use a methodology that it believes most clearly demonstrates the benefits of a SPP...” (R. TECO 263). OPC’s approach would limit this discretion by reading additional requirements into the SPP Statute and Rule.

Even assuming, *arguendo*, that OPC is correct that quantification of benefits is necessary, it is undisputed that Tampa Electric provided a quantitative estimate of both costs and benefits. Tampa Electric’s 2022 SPP includes a table setting out the total estimated capital and operations and maintenance costs by program. (R. TECO 884). Tampa Electric also provided analyses by 1898 & Co. and Accenture setting out quantitative estimated benefits of the company’s proposed SPP programs. (R. TECO 912-993; R. TECO 1012-1045). OPC concedes this point. OPC’s initial brief states that Tampa Electric “made an effort to include quantitative estimated costs and estimated benefits,” in its 2022 SPP (OPC br. 37) and that “TECO and DEF included estimates, although flawed, of the expected

reduction in outage times and restoration costs...” from their SPPs. (OPC br. 42). See (OPC br. 37, 42). This Court should accordingly decline OPC’s request to reverse and remand the TECO Final Order on this basis.

IV. The Commission Properly Granted Tampa Electric’s Motion to Strike

The Commission properly exercised its discretion in granting Tampa Electric’s Motion to Strike. Rule 1.1140(f) of the Florida Rules of Civil Procedure provides that a court may “strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time.” Furthermore, Rule 28-106.211 of the Florida Administrative Code provides that the “presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.” On appeal, a “trial court’s decision to admit or exclude expert testimony is reviewed under an abuse of discretion standard.” *Taylor v. Culver*, 178 So. 3d 550 (Fla. 1st DCA 2015) (citing *Angrand v. Key*, 657 So.2d 1146, 1148 (Fla. 1995)).

In its Order granting Tampa Electric’s Motion to Strike, the Commission identified three separate bases for striking portions of

Mr. Kollen’s testimony: (1) testimony offering improper legal opinion and argument; (2) testimony addressing issues to be resolved in the SPPCRC proceeding; and (3) testimony recommending a standard of review other than the public interest standard set out in the SPP Statute. (R. TECO 6831-6835).

First, the Commission struck portions of Mr. Kollen’s testimony on the basis that it constituted improper legal opinion and argument advocating for “new standards and criteria that are improper for this proceeding.” (R. TECO 6831). To illustrate, Mr. Kollen stated in his proffered testimony that the Commission should “reject all proposed SPP projects that are not economic, meaning that they do not have a benefit-to-cost ratio of at least 100%.” (R. TECO 5843). The Commission noted that it has “generally excluded expert testimony on legal issues” since questions of law “are properly reserved for the trier of fact.” (R. TECO 6829-6830). This is proper, as courts have “repeatedly held that opinion testimony as to the legal interpretation of Florida law is not a proper subject of expert testimony.” *Jones v. State*, 330 So. 3d 130, 132 (Fla. 2d DCA 2021); *see also T.J.R. Holding Co., Inc. v. Alachua Cnty.*, 617 So. 2d 798, 800 (Fla. 1st DCA 1993) (“We reject this argument because the interpretation of a statute is a

question of law to be determined solely by the court, not by expert witnesses.”). Since these portions of Mr. Kollen’s testimony expressly advocated for a different interpretation of the SPP Statute, the Commission properly concluded that this testimony was improper legal argument that was immaterial to the issues addressed in Tampa Electric’s SPP review docket.

Second, the Commission excluded some portions of Mr. Kollen’s testimony on the grounds that it addressed issues to be resolved in the SPPCRC docket. (R. TECO 6833-6834). As an example, Mr. Kollen opined in his proffered testimony that the Commission should “adopt and consistently apply uniform methodologies among the utilities to determine the revenue requirements and rate impacts of the programs and projects in these proceedings and that it carry through those uniform methodologies to the rate calculations in the SPPCRC proceedings.” (R. TECO 5843). This argument addresses issues beyond the scope of the SPP review proceeding, as the SPP Statute only requires a utility to submit “*estimated* annual rate impacts” at the plan-review stage. §366.96(4)(d), Fla. Stat. These estimated rate impacts are distinct from the calculations performed in the subsequent SPPCRC proceeding, where the Commission sets actual

utility rates. *See* §366.96(7), Fla. Stat. The Commission noted this “bifurcated process envisioned by the Statute” and properly concluded that this testimony “conflates the SPP and SPPCRC guidelines” and was immaterial to the SPP review proceeding. (R. TECO 6830).

Third, the Commission struck some portions of Mr. Kollen’s testimony on the basis that it advocated for application of a standard of review in the SPP review docket that is not set out in the SPP Statute. For example, Mr. Kollen testified in his proffered testimony: “In the SPP proceeding, the Commission must determine the prudence of the programs upfront based on whether they are economically justified, whether the projected costs are just and reasonable, and whether the customer rate impact is reasonable.” (R. TECO 5846). As explained above, the Legislature directed the Commission to evaluate the prudence of a utility’s plan implementation costs in the subsequent SPPCRC proceeding. *See* §366.96(2)(c), Fla. Stat.; §366.96(7), Fla. Stat. Mr. Kollen’s proposed standard of review for plans based on whether they are “economically justified” is thus immaterial to the plan review docket and the Commission did not abuse its discretion in striking it.

OPC argues that the Commission “impaired the fairness” of the proceedings below by granting the utilities’ motions to strike. (OPC Br. 40.) OPC points to the utilities’ varying approaches to preparing and submitting their SPPs and asserts that it was unfair that Mr. Kollen was not allowed to opine on interpretation of the SPP Statute. (OPC. Br. 42-43.) There is an important distinction, however, between Mr. Kollen’s stricken testimony and the testimony offered by Tampa Electric that references the SPP Statute or Rule. While Mr. Kollen offered expert opinion testimony advising the Commission on how to interpret the statute and rule, Tampa Electric offered factual testimony regarding the company’s approach to complying with the requirements of the SPP Statute and Rule.¹⁶ Tampa Electric also filed errata to strike the portions of the company’s rebuttal testimony that responded to the stricken portions of Mr. Kollen’s testimony. (R. TECO 6734-6825). OPC also entered all of Mr. Kollen’s stricken

¹⁶ For instance, Tampa Electric witness David A. Pickles testified that the purpose of his testimony was to “describe the process the company followed to develop the 2022-2031 Storm Protection Plan and explain how it will accomplish the goals of the statute to reduce restoration costs and outage times associated with extreme weather and enhance reliability.” (R. TECO 8058). Company witness David L. Plusquellic similarly stated that the purpose of his testimony was to “describe how the company’s 2022 SPP complies with Rule 25-6.030(3)...” (R. TECO 8270).

testimony into the record of the SPPCRC proceeding. (R. SPPCRC 5774-5843). As a result, the portions of his testimony that were struck on the grounds that they addressed issues reserved to the SPPCRC docket were ultimately admitted to the record in the appropriate proceeding. Accordingly, there is no issue of fairness related to the Motion to Strike.

Even assuming, *arguendo*, that the Commission improperly struck portions of Mr. Kollen's testimony in the SPP Review docket, the ruling would constitute harmless error. Section 59.041, Florida Statutes, governs harmless error. It provides:

No judgment shall be set aside or reversed, or new trial granted by any court of the state in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case it shall appear that the error complained of has resulted in a miscarriage of justice. This section shall be liberally construed.

§ 59.041, Fla. Stat. This Court has articulated the following test to determine whether error was harmless in civil cases: "To test for harmless error, the beneficiary of the error has the burden to prove that the error complained of did not contribute to the verdict. Alternatively stated, the beneficiary of the error must prove that there

is no reasonable possibility that the error contributed to the verdict.”
Special v. W. Boca Med. Ctr., 160 So. 3d 1251, 1256 (Fla. 2014).

Here, the exclusion of Mr. Kollen’s testimony did not contribute to the finding that it was in the public interest to approve Tampa Electric’s 2022 SPP with modifications. As explained above, the Commission struck portions of Mr. Kollen’s testimony that offered improper legal opinions, recommended standards for plan review that are not set out in the SPP Statute, or addressed issues reserved for the SPPCRC proceeding. This testimony was immaterial to the question before the Commission, *i.e.* whether approval of the company’s 2022 SPP was in the public interest based on the four criteria set out in Section 366.96(4). Inclusion of Mr. Kollen’s stricken testimony accordingly would not have changed the outcome of the case.

V. THE COMMISSION’S ORDER APPROVING TAMPA ELECTRIC’S SPPCRC COST RECOVERY FACTORS SHOULD BE AFFIRMED

The SPP Statute provides that once the Commission approves a utility’s SPP, it must “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.” §366.96(7), Fla. Stat. The Commission implemented this requirement through the SPPCRC Rule, which states that the Commission will conduct an annual hearing to determine “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...” R. 25-6.031(3), F.A.C. In short, this process entails a “rolling three-year review that includes a final true-up of costs for the previous year, an actual/estimated true-up of costs for the current year, and a projection of costs for the subsequent year.” (R. SPPCRC 3032); *see also* R. 25-6.031(7)(a)-(c), F.A.C. These total amounts are then included in establishing SPPCRC “cost recovery factors” for the subsequent year. (R. SPPCRC 3032); *see also* R. 25-6.031(7)(e).

The testimony Tampa Electric witnesses Mark Roche and Richard Latta was stipulated into the record at the hearing in the SPPCRC proceedings below. (R. SPPCRC 3318). Tampa Electric witness David Plusquellic’s direct testimony and exhibits were also admitted into the record at hearing, and Mr. Plusquellic was cross-examined by OPC. (R. SPPCRC 3134-3144). Following this hearing, the Commission entered an order that correctly cited and applied the

above standards set out in the SPP Statute and the SPPCRC Rule in its final order approving Tampa Electric's cost recovery factors. *See* (R. SPPCRC 3030-3032). The Commission correctly determined that this record contained competent, substantial evidence "demonstrating that all actual 2021 costs were prudently incurred," and that the actual/estimated 2022 costs and projected 2023 costs were reasonable. (R. SPPCRC 3033). The Commission's decision is accordingly consistent with, and does not represent a departure from, the SPP Statute and is based on competent, substantial evidence. This Court should accordingly affirm the Commission's decision.

This Court should also affirm the Commission's order in the SPPCRC proceedings on the basis of waiver. OPC's initial brief does not challenge whether the Commission departed from the requirements of the SPP Statute or the SPPCRC Rule, nor does it challenge the sufficiency of the evidence underlying the Commission's decision. OPC has accordingly waived these issues. *See Demase*, 351 So. 3d at 139.

CONCLUSION

This Court should affirm: (1) Order No. PSC-2022-0386-FOF-EI, issued November 10, 2022 in Docket No. 20220048-EI, which approved Tampa Electric's 2022-20231 Transmission and Distribution Storm Protection plan with modifications;¹⁷ (2) Order No. PSC-2022-0292-PCO-EI, issued August 1, 2022 in Docket No. 20220048-EI, which granted Tampa Electric's Motion to Strike portions of the direct testimony of OPC's witness Lane Kollen; and (3) Order No. PSC-2022-0418-FOF-EI, issued December 12, 2022 in Docket No. 20220010-EI, approving Tampa Electric's SPPCRC cost recovery amounts and related tariffs.

/s/ Malcolm N. Means
J. JEFFRY WAHLEN (FBN 884316)
MALCOLM N. MEANS (FBN 127586)
VIRGINIA PONDER (FBN 99947)
jwahlen@ausley.com
mmeans@ausley.com
vponder@ausley.com
Ausley McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

Counsel for Tampa Electric Company

¹⁷ As amended by Order No. PSC-2022-0386-A-FOF-EI. (R. TECO 75).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished electronically to the following this 17th day of July, 2023:

Adria Harper
Douglas Sunshine
Samantha Cibula
Susan Sapoznikoff
Jonathan Rubottom
Shaw Stiller
Jacob Imig
Walter Trierweiler
Florida Public Service
Commission
2540 Shumard Oak Blvd.
Tallahassee, FL32399
aharper@psc.state.fl.us
dsunshin@psc.state.fl.us
scibula@psc.state.fl.us
ssapozni@psc.state.fl.us
jrubotto@psc.state.fl.us
jimig@psc.state.fl.us
sstiller@psc.state.fl.us
wtrierwe@psc.state.fl.us
croehner@psc.state.fl.us
BSchultz@psc.state.fl.us
ccraig@psc.state.fl.us

Christopher T. Wright
Florida Power & Light
Company
700 Universe Blvd.
June Beach, FL 33408-0420
Christopher.Wright@fpl.com

Walt L. Trierweiler
Charles J. Rehwinkel
Patricia A. Christensen
Mary A. Wessling
Office of Public Counsel
111 West Madison Street – Room
812
Tallahassee, FL 32399-1400
trierweiler.walt@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us
christensen.patty@leg.state.fl.us
wessling.mary@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 Company
134 West Jefferson Street
Tallahassee, FL 32301
Ken.Hoffman@fpl.com

Matthew Bernier
Stephanie Cuello
Robert L. Pickels
Duke Energy
106 East College Avenue
Suite 800
Tallahassee, FL 32301
Matthew.Bernier@duke-
energy.com
Stephanie.Cuello@duke-
energy.com
Robert.Pickels@duke-
energy.com

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

Daniel E. Nordby
Alyssa L. Cory
Shutts & Bowen LLP
215 South Monroe Street,
Suite 804
Tallahassee, FL 32301
DNordby@shutts.com
ACory@shutts.com

Michael P. Silver
Shutts & Bowen LLP
4301 West Boy Scout Blvd.
Suite 300
Tampa, FL 33607
MSilver@shutts.com

Amber Nunnally
Alan Lawson
Paul Huck
Jason Gonzalez
Taylor Greene
Lawson Huck Gonzalez PLLC
215 South Monroe Street
Suite 320
Tallahassee, FL 32301
alan@lawsonhuckgonzalez.com
paul@lawsonhuckgonzalez.com
jason@lawsonhuckgonzalez.com
amber@lawsonhuckgonzalez.com
taylor@lawsonhuckgonzalez.com
michelle@lawsonhuckgonzalez.com

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St.,
Suite 601
Tallahassee, FL 32301
bkeating@gunster.com
acowart@gunster.com
bfrzier@gunster.com

Mike Cassel
Florida Public Utilities Company
208 Wildlight Ave
Yulee, FL 32097
mcassel@fpuc.com

Michelle D. Napier
Florida Public Utilities Company
1635 Meathe Drive
West Palm Beach, Florida 33411
mnapier@fpuc.com

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

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

Peter J. Mattheis
Michael K. Lavanga
Joseph R. Briscar
James W. Brew
Laura Wynn Baker
PCS Phosphate – White
Springs
Stone Law Firm
1025 Thomas Jefferson St.,
NW
Suite 800 West
Washington, DC 20007
pjm@smxblaw.com
mkl@smxblaw.com
jrb@smxblaw.com
jbrew@smxblaw.com
lwb@smxblaw.com

Lauren Purdy
Gunster Yoakley & Stewart, P.A.
1 Independent Drive, Suite 2300
Jacksonville, FL 32202
lpurdy@gunster.com
awsinsor@gunster.com
eservice@gunster.com

Jounice L. Nealy-Brown
Gunster Yoakley & Stewart, P.A.
401 East Jackson St., Suite 1500
Tampa, FL 33602
jnealy-brown@gunster.com
tkennedy@gunster.com

Corey Allain
Nucor Steel Florida, Inc.
22 Nucor Drive
Frostproof, FL 33843
Corey.allain@nucor.com

George Cavros
120 E. Oakland Park Blvd.,
Suite 105
Fort Lauderdale, FL 33334
george@cavros-law.com

/s/ Malcolm N. Means
Malcolm N. Means

CERTIFICATE OF COMPLIANCE WITH RULE 9.045(e)

Counsel certifies that this document complies with the applicable font size (Bookman Old Style 14-point font) and word count limit requirements. This document contains 6,856 words.

/s/Malcolm N. Means

J. JEFFRY WAHLEN (FBN 884316)

MALCOLM N. MEANS (FBN 127586)

VIRGINIA PONDER (FBN 99947)

jwahlen@ausley.com

mmeans@ausley.com

vponder@ausley.com

Ausley McMullen

Post Office Box 391

Tallahassee, Florida 32302

(850) 224-9115

Counsel for Tampa Electric Company