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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC | DOCKET NO. 20260064-EI |

**FLORIDA RISING'S RESPONSE IN OPPOSITION TO DUKE ENERGY FLORIDA'S MOTION TO STRIKE FLORIDA RISING, INC. AS AN INTERVENING PARTY**

Florida Rising, Inc. ("Florida Rising") hereby responds in opposition to Duke Energy Florida, LLC's ("Duke's") Motion to Strike Florida Rising as an Intervening Party ("Motion to Strike").[1] Duke's Motion to Strike is without legal basis, mistimed, an unlawful collateral attack on other Commission orders, and mislabeled in order to bypass the legal standards applicable to a motion for summary final order. Duke cites no precedent for a motion to strike a party at this stage of proceeding in this fashion, as there is none. Rather than acknowledge the extraordinary change of law that Duke asks for, including the ability to collaterally attack prior orders (which receives no mention or disclosure in this "motion"), Duke's make-up-the-law as you go "motion" pretends it is in the ordinary course of business. It is not. Among other strikingly bald statements without legal basis, Duke claims an "estimate cannot equate to competent substantial evidence" in Commission proceedings. Duke knows this is not the law, as it has often used estimates itself, and had such estimates upheld by the Florida Supreme Court as competent, substantial evidence. Duke next questions the existence of a well-established First Amendment

[1] This response is timely filed pursuant to Florida Administrative Code Rule 28-106.204 (allowing responses within 7 days of a written motion), Florida Administrative Code Rule 2-106.103 (in computation of time, last day of the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday, with legal holidays being defined pursuant to section 110.117, Florida Statutes), and section 110.117, Florida Statutes, defining Independence Day as a legal holiday, and if it falls on a Saturday, the preceding Friday being observed as the holiday). With Friday, July 3, 2026 being a legal holiday and with Duke's Motion to Strike having been filed Friday, June 26, 2026, the deadline to respond is July 6, 2026.

privilege to protect membership lists. Again, Duke knows, or at least should know, that its position is not the law.

This motion has it all: seeking to obtain the relief of a summary final order without any of the applicable legal standards; attempting to strike testimony without any of the applicable legal standards; attempting to resolve discovery disputes without any of the applicable legal standards; attempting to resolve evidence admissibility disputes without any of the applicable legal standards; attempting to resolve evidentiary issues and disputed facts without an evidentiary hearing and without any of the applicable legal standards; and seeking to collaterally attack prior Commission orders in this case without any of the applicable legal standards. For all the reasons that follow, this improper motion is due to be summarily denied.

## BACKGROUND

On April 22, 2026, Duke filed a Petition for a Limited Proceeding to Approve Large Load Tariff ("Duke Petition"). On May 5, 2026, Florida Rising filed its Petition to Intervene in this docket. On May 12, 2026, Duke responded in opposition to this petition, arguing that the petition to intervene should be denied because Florida Rising's allegations regarding potential increased rates were not germane to this proceeding, as "it is not seeking to change any customer rates in this proceeding." Duke's Resp. to Florida Rising's Pet. to Intervene at 2.[2] As such, Duke argued that Florida Rising did not have standing on behalf of its members to intervene in this proceeding.

On June 23, 2026, the Commission issued an order granting Florida Rising's petition to intervene over Duke's objections and legal argument, "subject to proof of standing or stipulations

[2] https://www.floridapsc.com/pscfiles/library/filings/2026/02791-2026/02791-2026.pdf.

that there are sufficient facts to support all elements for standing." Order No. PSC-2026-0233-PCO-EI at 2. On June 26, 2026, Duke filed this Motion to Strike Florida Rising's intervention.

## LEGAL STANDARD AND ARGUMENT

### I. Duke's Motion Improperly Ignores Applicable Legal Standards

Because Duke cites no applicable standard to strike a party after the pre-filing of testimony but before an evidentiary hearing, and because no such standard exists, except that applicable to a motion for summary final order which cannot be used to resolve factual disputes as Duke's motion seeks to do (which Duke fails to acknowledge), Florida Rising addresses the legal standard and argument together here. The only legal standard Duke discloses in its motion is the standard for standing in an administrative proceeding.[3] However, the relevant standard here is a far cry from the legal standard Duke advances, which applies to motions seeking to resolve factual disputes *before* any facts are entered into evidence. Effectively, Duke seeks a motion for a summary final order, without showing the complete lack of genuine disputed issues of fact that such a motion would require. Duke can't make this showing as the motion itself is replete with factual disputes. Duke instead invents its own motion in order to bypass the protections of a motion for summary final order. Perhaps even worse, it presents this standard to the Commission as if it is in the ordinary course of business and not an extraordinary departure from established law and procedure.

Duke ignores the legal standard applicable to a motion to strike a party based on pre-filed testimony and instead points to the standing standard to argue Florida Rising has not yet met its evidentiary burden to establish standing in this case. Of course it hasn't—the case has not gone

[3] As shown below, Duke's articulation of even that standard, as requiring a percentage of affected members that would "approach a simple majority," is misstated. *See* Motion to Strike at 7.

to hearing yet, not all evidence has been presented, and discovery and pre-filing of testimony are still underway. And yet, Duke goes on to make several evidentiary arguments based on evidence that Duke unilaterally deems inadmissible. But Duke has not moved to strike the pre-filed testimony, which has clearly defined legal standards that must be based on evidentiary arguments and objections, nor has it filed a motion in limine to exclude evidence. Tellingly, in contrast to Duke's present motion, both a motion to strike testimony and a motion in limine to exclude evidence have clearly defined legal standards and applicable procedures. As noted above, it is also not a motion for a summary final order based on Florida Rising's discovery responses, as this motion is heavily dependent on apparently contested evidence. Having rejected all appropriate vehicles for review of its asserted grievances, Duke cannot shoehorn its arguments into an invented procedural scheme in order to sidestep the standards established by law.

The proper motion for the relief Duke seeks pursuant to chapter 120, would be a motion for summary final order regarding Florida Rising's standing. *See* § 120.57(1)(h), Fla. Stat.; Fla. Admin. Code R. 28-106.305; Fla. R. Civ. P. 1.280(c). Such a motion is defined by law and has well established standards. For instance, Florida Power & Light Co. ("FPL") filed such a motion in the 2021 FPL rate case. *See* FPL's Mot. for Summ. Final Order Regarding Floridians Against Increased Rates, Inc., *In re: Petition by Florida Power & Light Company for Rate Unification and for Base Rate Increase*, Docket No. 20210015-EI ("2021 FPL Rate Case") (Fla. Pub. Serv. Comm'n Aug. 4, 2021).[4] However, Duke's filing fails to disclose citations to this standard, and at no point does Duke move for a summary final order regarding Florida Rising and its standing in this proceeding. Perhaps this is because summary final orders cannot be used to circumvent a hearing to resolve disputed issues of material fact. Instead, Duke attempts to shift the burden to

[4] https://www.floridapsc.com/pscfiles/library/filings/2021/08753-2021/08753-2021.pdf.

Florida Rising at this stage in proceedings, without the benefit of evidence to be presented at an evidentiary hearing that is many weeks away.[5] Despite Duke's motion being premature, procedurally improper, and legally insufficient, Florida Rising does its best to respond to Duke's evidentiary arguments below.

Duke is not the first utility to challenge a party's standing after intervention and before the evidentiary hearing. As noted above, FPL filed such a motion in 2021, albeit proper procedurally via a motion for summary final order that did not attempt to resolve evidentiary disputes that require an evidentiary hearing. The Commission, however, decided that such motion would only be decided after the evidentiary hearing in the case so that the full evidentiary record was before the Commission in making such a decision on standing. Final Order Approving 2021 Stipulation and Settlement Agreement at 5, 2021 FPL Rate Case, Order No. PSC-2021-0446-S-EI (Fla. Pub. Serv. Comm'n Dec. 2, 2021).[6] Similarly, in the 2025 FPL rate case, the Southern Alliance for Clean Energy ("SACE") offered no pre-filed testimony or factual stipulations in support of its allegations of standing. Yet, rather than strike SACE as a party before the evidentiary hearing, the Commission waited until after the evidentiary record was closed to find that SACE had failed to offer any evidence at hearing and therefore lacked standing "[b]ased on the absence of supporting testimony or other competent, substantial evidence regarding SACE membership." Final Order Approving 2025 Stipulation and Settlement Agreement at 18, *In re: Petition for rate increase by Florida Power & Light Company*, Docket No. 20250011-EI ("2025 FPL Rate Case"), Order No. PSC-2026-0022-S-EI

[5] As discussed below, based on this Commission's and other precedent, the evidence Florida Rising intends to offer at hearing satisfies the standing standard.
[6] https://www.floridapsc.com/pscfiles/library/filings/2021/12919-2021/12919-2021.pdf.

(Fla. Pub. Serv. Comm'n Jan. 22, 2026)[7] ("2025 FPL Rate Case Order"). Florida Retail Federation in that case offered almost no pre-filed testimony on the subject of its standing yet was ultimately found to have standing based on the evidence adduced at hearing, including documents admitted on cross-examination, which, notably, named one member of their thousands to establish standing. *Id.*; *see also* 2025 FPL Rate Case Ex. 1415. This is, of course, the proper procedure for arguing that a party has not offered sufficient evidence regarding their standing—*after* the party has had the *opportunity* to offer such evidence.

II. Duke's Motion Improperly Tries to Resolve Evidentiary and Discovery Disputes

Assuming, arguendo, that there were any legal basis to strike a party based on just *some* of the evidence they intend to offer to support their standing—there is not, and Duke cites no authority to suggest otherwise—Duke seeks to impermissibly short-circuit the process for even evaluating that evidence. Duke starts by arguing that Ms. Negrón's testimony regarding conversations in which Florida Rising members self-identified as Duke customers is nothing more than uncorroborated hearsay, and as such, cannot provide a sufficient factual basis to establish standing. Duke's argument appears to be that the entirety of Florida Rising's understanding regarding its membership is ultimately based on hearsay and therefore is inadmissible as evidence. Again, Duke has filed the wrong motion, as Duke's motion is not a motion to strike testimony nor is it a motion in limine. Duke asserts that such testimony "amounts to no more than textbook hearsay." Motion to Strike at 5. If so, such testimony is also textbook corroboration of Florida Rising's own estimates of how many of its members are Duke customers. *See* § 120.57(1)(c), Fla. Stat.

[7] https://www.floridapsc.com/pscfiles/library/filings/2026/00561-2026/00561-2026.pdf.

Duke then takes issue with Florida Rising's estimate of the number of its members in Duke's service territory, stating that "a mere estimate cannot equate to competent substantial evidence." *See* Motion to Strike at 5. At best, Duke's argument goes to the weight of *some* of the evidence that Florida Rising intends to offer to support its standing. Again, Duke's motion is not a motion to strike testimony, nor is it a motion in limine. Duke cites no law that an estimate cannot equate to competent, substantial evidence. Utilities, including Duke, make estimates *all the time* in their filings, and such estimates have been repeatedly relied upon by the Commission to make findings upheld by the Florida Supreme Court, including in Duke's own cases. *See, e.g.*, *LULAC Florida Educational Fund v. Clark*, No. SC2021-0303, 2025 WL 1993430 (Fla. July 17, 2025) (upholding Clean Energy Connection program, with the benefits of such program entirely projected estimates); Final Order Approving 2024 Settlement Agreement, *In re: Petition for rate increase by Duke Energy Florida, LLC*, Docket No. 20240025-EI ("2024 Duke Rate Case"), Order No. PSC-2024-0472-AS-EI (Fla. Pub. Serv. Comm'n Nov. 12, 2024) (approving settlement in Duke rate case with multiple future test years, which, by definition, must be estimates). Duke's own initial filing in this case uses the term "estimate" 33 times, including requirements on how large load customers will be required to advance total "estimated costs to extend service." Duke Petition at 5. Duke knows that estimates are valid for making factual findings, yet makes a legal argument, without meaningful citation, that estimates can never be used in Commission proceedings. Florida Rising would be hard pressed to find a single Commission case that did not rely on an estimate of some kind in making findings of fact. Duke looks past all of this law and baldly asserts that estimates cannot be used by the Commission to make factual findings, yet neglects to argue a good-faith basis for a change in law.

Duke also complains that Florida Rising only specifically identified three members who are Duke customers, Motion to Strike at 7, yet neglects to mention that this is three more than FIPUG has named (for which Duke offers no complaints about their evidence regarding standing), is two more than the Commission found to be sufficient to be specifically named for the Florida Retail Federation in the 2025 FPL rate case, and is three more than is typically offered by associations seeking standing before the Florida Public Service Commission.

At best, Duke's arguments regarding Florida Rising's estimates of its membership in Duke's territory go to the weight of the evidence, not its admissibility nor the ability of the Commission to use such estimates in making factual findings.

Duke next goes on to complain about the discovery (or lack thereof) that Florida Rising has produced, Motion to Strike at 6, despite the fact that Florida Rising has produced more discovery than Duke, even though this is Duke's case and Duke has the overall burden in this case. If Duke believes that Florida Rising has improperly withheld discovery, a motion to compel would be the proper vehicle for redressing such inadequacy (as Florida Rising did with Duke). In fact, this motion is the first time Florida Rising has learned of Duke's apparent dissatisfaction with its discovery responses.

Duke also argues that Florida Rising essentially waived its First Amendment associational rights[8] when it intervened in this case. Decades of black letter case law, which Duke fails to disclose to the Commission, belie this assertion and confirm the existence of such a privilege. *See Nat'l Ass'n for the Advancement of Colored People v. Alabama*, 357 U.S. 449, 466 (1958) (freedom of association protects forced disclosure of membership lists); *Gibson v. Fla. Legis. Investigation Comm.*, 372 U.S. 539, 549 (1963) (disclosure of membership must be

[8] Although Duke even "doubts there is any such privilege." Motion to Strike at 6.

"demonstrated to bear a crucial relation to a proper governmental interest or to be essential to fulfillment of a proper governmental purpose"); *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 611 (2021) (mandated disclosure of donors, like members, requires "exacting scrutiny [which] requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest, and that the disclosure requirement be narrowly tailored to the interest it promotes") (internal quotations and citations omitted). This includes in the Florida chapter 120 context. *NAACP v. Fla. Bd. of Regents*, 863 So. 2d 294, 300 (Fla. 2003) (NAACP did not need to disclose membership list to establish standing in chapter 120 context, nor did it need to "demonstrate immediate and actual harm," rather, "a substantial effect of the [action] on a substantial number of the association's members" was sufficient to establish standing in the chapter 120 context). Thus, even when an association has filed suit, it has not waived its "privacy rights concerning the members' names," but it still must establish standing. *Nat'l Rifle Ass'n of Am. v. City of South Miami*, 774 So. 2d 815, 816 (Fla. 3d DCA 2000) (quashing order that NRA disclose the names and addresses of 10 of its members in the city of South Miami to establish standing). Irrespective of Duke's "doubts that there is any such privilege," it does, in fact, exist.

Duke then argues, inexplicably, that Florida Rising's position is that it is "immune to cross-examination on the underlying facts, and shielded from any independent verification mechanism." Motion to Strike at 7. Florida Rising has never contended that it is immune to cross-examination nor shielded from independent verification. Again, if Duke has complaints regarding Florida Rising's discovery responses, a motion to compel would be the proper vehicle[9]

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[9] Of course, until the filing of this Motion to Strike, Florida Rising was unaware of *any* such complaints as to the adequacy of its responses to Duke's discovery. In contrast, before Florida

so the discoverability of any such materials can be properly argued and adjudicated using *standards* and *law*.

## III. <u>The Evidence Florida Rising Intends to Offer is Sufficient to Establish Standing</u>

Duke then goes on to argue that the Commission does not need to reach any of the above questions and that "the numbers speak for themselves" that there is not a substantial number of Florida Rising members who are Duke customers. Motion to Strike at 7. Florida Rising agrees that there is no need to address any of the above questions—nor *can* the Commission address any of the above questions given the procedural posture of Duke's Motion to Strike. Duke argues that such membership numbers offered by Florida Rising are not a "substantial number" (whether 190, the Florida Rising estimate, or 65, the number of Pinellas County members served by DEF) because they "do not even approach a simple majority." Motion to Strike at 7. Duke cites no case law that such numbers must approach a simple majority to be a substantial number, nor can it. *See ABC Fine Wine & Spirits v. Dep't of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco*, 323 So. 3d 794, 798 (Fla. 1st DCA 2021) (finding 42% of membership impacted to be a substantial number). Duke has no argument that 65 is not a substantial number, as confirmed by Duke's own citation to *Hillsborough County v. Florida Restaurant Association*, 603 So. 2d 587, 589 (Fla. 2d DCA 1992), where 37 impacted members, constituting 41% of the members in *that county alone*, was deemed substantial. Therefore,

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Rising filed a motion to compel discovery regarding insufficient discovery answers from Duke, Florida Rising attempted to avoid the motion altogether by seeking clarification and resolution with Duke. *See* Fla. R. Civ. Procedure, R. 1.380(a)(1). The consultation on Duke's Motion to Strike, by contrast, was an email that stated in its entirety: "After reviewing Florida Rising's testimony on standing, DEF plans to file a Motion to Strike Florida Rising, Inc. as an Intervening Party. I am writing for your party's opinion on this motion. Please provide your response by 2 pm tomorrow, as we are filing tomorrow." At no point during the consultation process did Duke raise any discovery issues.

Duke's argument must rest entirely on the denominator, i.e., that Florida Rising has too many members outside Duke's territory for its membership within Duke's territory to be "substantial." However, as Duke knows from the *Hillsborough County* case, the total number of members that the Florida Restaurant Association had in that case was 2,766 members statewide, only 37 of whom in *one county* were impacted by the ordinance at issue. This is both more total members than Florida Rising has, and far less individual members impacted by what is at issue in this case. Florida Rising has 65 members in Pinellas County, all of whom will be impacted by rising Duke rates. If 37 out of 2,766 (or 41% in the county in question) is a substantial number, then 65 out of 1,255 (or 100% in the county in question), plus additional members in other parts of Duke's territory, is certainly a substantial number. This Commission has applied *Hillsborough County* to its own standing analysis. *In re: Application for Increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida*, Docket No. 160101-WS, Order No. PSC-17-0150-PCO-WS (Fla. Pub. Serv. Comm'n May 4, 2017) ("Under Florida law, neither a specific number, nor percentage of association members is required for standing. *Hillsborough County v. Florida Restaurant Association, Inc.*, 603 So. 2d 587, 589 (Fla. 2d DCA 1992) (court found standing where 37 of 2,766 members were affected because a substantial number of the members residing in the county at issue were affected)."); *see also Sierra Club v. Dep't of Envtl. Prot.*, Nos. 19-0644–50, 2020 WL 9720476, at *33-34 (Fla. DOAH Jan. 27, 2020) (for chapter 120 standing, "Florida agency final orders . . . have rejected use of a 'percentage' test to deny standing. . . . Courts have found associational standing where as few as three (3) members of the organizational petitioner demonstrated that they would be affected by the proposed agency action."). In *Sierra Club*, the Florida Division of Administrative Hearings found that all of the organizational petitioners, including Sierra Club, a national organization with tens of thousands of members, had standing to challenge the basin management action plans at issue. Duke's argument would preclude any general Florida-based organization from intervening in a Duke docket, as FPL serves the majority of the State. A group like AARP, with a majority of members in FPL's territory, even with tens of thousands of Duke members, would be precluded from intervening based on this argument. Duke cites no case law to support such a position, nor can it.

At a minimum, whether Florida Rising has a substantial number of members impacted is an evidentiary question. Furthermore, this Commission has repeatedly found that such numbers offered by Florida Rising in the past, with nearly identical numbers of Pinellas County members, were sufficient to establish standing, and Duke did not object. 2024 Duke Rate Case, Tr. Vol. 6 at 1200-01 (standing based on 53 members in Pinellas County at the time);[10] Tr. Vol. 2 at 447, *Commission review of numeric conservation goals (Duke Energy Florida, LLC)*, Docket No. 20240013-EG (Fla. Pub. Serv. Comm'n Aug. 8, 2024) (standing based on 53 members in Pinellas County, plus additional Duke members in the Orlando-area, even though clear that majority in FPL's territory and outside of Duke's territory).[11] Such evidence was more than sufficient for Duke before. Florida Rising now has even more members in Pinellas County and has offered additional evidence than ever before regarding its members who are Duke customers, including specifically naming some members. Only now that Florida Rising challenges Duke's proposals to serve large load customers, which can result in billions of dollars of cost-shifting onto residential customers, does Duke object based on Florida Rising's statewide membership

[10] https://www.floridapsc.com/pscfiles/library/filings/2024/08845-2024/08845-2024.pdf.
[11] https://www.floridapsc.com/pscfiles/library/filings/2024/08612-2024/08612-2024.pdf.

numbers. In fact, the Commission has a long practice, as Duke is well aware, of accepting significantly smaller membership numbers as a "substantial number" in territories outside of FPL for statewide organizations for standing. *See, e.g.*, Pet. to Intervene by Southern Alliance for Clean Energy, *In re: Commission Review of Numeric Conservation Goals Duke Energy Florida, LLC*, Docket No. 20190018-EG (Fla. Pub. Serv. Comm'n March 20, 2019)[12] (Commission granted associational intervention[13] based on substantial number of members based on 162 members in FPL territory, 45 members in Duke territory, 18 members in TECO territory, 17 members in Gulf Power territory, 9 members in JEA territory, and 7 members in OUC territory, with intervention granted in each of those respective dockets, and SACE having a larger membership than Florida Rising[14]); Order Granting Intervention, *In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.)*, Docket No. 130200-EI, Order No. PSC-14-0239-PCO-EI (Fla. Pub. Serv. Comm'n May 16, 2014) (Environmental Defense Fund allegation of 16,421 members in Florida out of 300,000 members nationwide adequate to support standing in FEECA dockets).[15] Duke makes no argument for a departure from this well-accepted Commission practice, and the Commission should not entertain such a departure here in violation of Chapter 120. *See* § 120.68(7)(e)3.

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[12] https://www.floridapsc.com/pscfiles/library/filings/2019/03232-2019/03232-2019.pdf.

[13] Order Granting Intervention, Order No. PSC-2019-0137-PCO-EG (Fla. Pub. Serv. Comm'n. April 17, 2019), https://www.floridapsc.com/pscfiles/library/filings/2019/03747-2019/03747-2019.pdf.

[14] *See* Petition to Intervene by Southern Alliance for Clean Energy at 2, *In re: Petition for rate increase by Florida Power & Light Company*, Docket No. 20250011-EI (Fla. Pub. Serv. Comm'n Feb. 25, 2025) (alleging that SACE has more than 8,000 members residing in Florida), https://www.floridapsc.com/pscfiles/library/filings/2025/01126-2025/01126-2025.pdf.

[15] https://www.floridapsc.com/pscfiles/library/filings/2014/02316-2014/02316-2014.pdf.

IV. Duke's Motion Improperly Collaterally Attacks the Commission Decision Granting Florida Rising Intervention

Duke then goes on to repeat the *same* arguments it made in opposing Florida Rising's Petition to Intervene as to the supposedly "speculative" nature of Florida Rising's injuries, with Duke asserting "[t]his proceeding neither changes those [residential] rates nor authorizes any new charges to existing customers." Motion to Strike at 8. This is identical to Duke's previous opposition regarding the legal sufficiency of Florida Rising's allegations and is nothing more than a collateral attack on the Commission's order granting Florida Rising's Petition to Intervene. Such a collateral attack is, of course, improper. *See Smith v. Willis*, 415 So. 2d 1331, 1334 (Fla. 1st DCA 1982) (improper collateral attack on administrative chapter 120 order when it is remediable by ordinary chapter 120 processes); Fla. Admin. Code R. 25-22.0376(3) ("Failure to timely file a motion for reconsideration . . . shall constitute waiver of the right to do so."). This is confirmed by Duke's requested relief, asking the Commission to deny Florida Rising's Petition to Intervene for lack of standing, Motion to Strike at 9, with such Petition already having been granted by the Commission. This is the definition of an improper collateral attack. Duke's proper vehicle, rather than attempting this end-run around the Commission order that already rejected the arguments Duke now rehashes here, should have been a motion for reconsideration. Since Duke has chosen instead to pursue an improper collateral attack, this motion is due to be summarily denied.

Even assuming, arguendo, that this motion were not an improper collateral attack based on arguments identical to those already rejected by the Commission, Duke is essentially taking the position that since rates are not rising in this proceeding, Florida Rising cannot be injured with "sufficient immediacy to confer standing in this proceeding." Motion to Strike at 8. Such an expansive argument has never been accepted by this Commission, as no party, other than

OPC, would ever have standing to challenge any utility action that was not a rate increase. Such a proposition has no support in Florida law. Instead, as alleged by Florida Rising and supported by Florida Rising's testimony, Duke's proposal, if allowed to go forward, *will* result in increased rates for Florida Rising's members, albeit not in this proceeding. Such an injury is well-recognized, *see NAACP v. Fla. Bd. of Regents*, 863 So.2d 294, 300 (Fla. 2003) (NAACP did not need to "demonstrate immediate and actual harm," rather, "a substantial effect of the [action] on a substantial number of the association's members" was sufficient to establish standing in the chapter 120 context) and has been continuously accepted by the Commission, for just one example, in every need determination proceeding where the Commission granted intervention to any party. *See, e.g.*, Order Granting Intervention to Environmental Confederation of Southwest Florida, *In re: Petition for determination of need for Ockeechobee Clean Energy Center Unit 1, by Florida Power & Light Company*, Docket No. 150196-EI, Order No. PSC-15-0494-PCO-EI (Fla. Pub. Serv. Comm'n Oct 22, 2015).[16] Duke cites no basis for this sea-change in standing law, nor can it. Duke's argument, of course, would equally apply to the other intervenors other than OPC in this proceeding, yet Duke does not seek to strike their participation in this docket. Florida Rising would note that if the Commission were to accept such an argument, which it should not, it should also immediately strike the participation of FIPUG and PCS Phosphate in this proceeding, as no party other than OPC, according to Duke, can have standing since rates are

[16] https://www.floridapsc.com/pscfiles/library/filings/2015/06757-2015/06757-2015.pdf. Upon request, Florida Rising can supply more citations to need determination proceedings where intervention has been granted, even though it was not a rate case, and other non-rate cases as well (for example, the Duke Clean Energy Connection case which went to the Florida Supreme Court).

not being changed in this proceeding. Such an outcome is as absurd as it sounds, yet would be required by accepting Duke's argument that there is no standing without changes to rates.[17]

## CONCLUSION

For all of the reasons stated above, Duke's motion, which lacks any legal basis, and, at best, makes a factual argument reserved for after the introduction of evidence in this proceeding, is due to be denied. To the extent it challenges Florida Rising's legal arguments regarding its standing in its Petition to Intervene (regarding the sufficiency of the injury), such a challenge is an improper collateral attack and re-argument on Florida Rising's Petition to Intervene and has already been denied by this Commission.

RESPECTFULLY SUBMITTED this 6th day of July, 2026.

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[17] Duke argues that its position is bolstered regarding Florida Rising because Florida Rising members do not take service under GSD-1 or GSDT-1 rates, yet provides no basis for why an existing customer taking service under the GSD-1 or GSDT-1 rates may have standing when their rates are equally frozen as customers under the RS rates.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 6th day of July, 2026, via electronic mail on:

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| **Duke Energy Florida, LLC**<br>Dianne M. Triplett<br>299 1st Avenue North<br>St. Petersburg, FL 33701<br>dianne.triplett@duke-energy.com<br><br>Matthew R. Bernier<br>Stephanie Cuello<br>Robert Pickels<br>106 E. College Avenue, Ste. 800<br>Tallahassee, FL 32301<br>matthew.bernier@duke-energy.com<br>stephanie.cuello@duke-energy.com<br>flregulatorylegal@duke-energy.com<br>robert.pickels@duke-energy.com | **Office of Public Counsel**<br>Walt Trierweiler<br>Charles J. Rehwinkel<br>Octavio Simoes-Ponce<br>Austin A. Watrous<br>c/o The Florida Legislature<br>111 West Madison Street, Room 812<br>Tallahassee, FL 32399-1400<br>trierweiler.walt@leg.state.fl.us<br>rehwinkel.charles@leg.state.fl.us<br>ponce.octavio@leg.state.fl.us<br>watrous.austin@leg.state.fl.us |
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DATED this 6th day of July, 2026.

/s/ Bradley Marshall
Attorney