

**PRIVILEGED AND CONFIDENTIAL COMMUNICATION
PREPARED IN ANTICIPATION OF LITIGATION**

CASE NO. 2026-653—LAC MEMORANDUM

To: Environmental Defense Fund Litigation Advisory Committee

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Date: June 25, 2026

RE: Request for Feedback on Appeal of Florida Public Service Commission Final Order No. PSC-2026-0179-FOF-EL, approving Florida Power and Light Andytown Transmission Needs Determination, Docket No. 20260020, before the Florida Supreme Court

I. INTRODUCTION

EDF's Legal and Regulatory and Florida State Affairs teams respectfully seek the LAC's feedback on our intent to appeal the Florida Public Service Commission's ("FPSC" or "Commission") Final Order approving Florida Power & Light Company's ("FPL") petition for a determination of need for the proposed Andytown-Oasis Transmission Lines Project ("AOP" or "Project") in Broward and Miami-Dade Counties. The Project consists of four new transmission lines—two 500 kV and two 230 kV—running from FPL's existing Andytown substation in Broward County to a planned Oasis substation in Miami-Dade County, with connections to FPL's existing Quarry and Levee substations. FPL estimates the construction cost at approximately \$781.89 million, with a projected in-service date of December 2033.

Following a previous request for feedback from the LAC, EDF intervened in the Commission's proceeding and urged the Commission to deny the need determination on several grounds. First, EDF argued that the Commission, in exercising its jurisdiction over the prudence of FPL's decisions and investments, has the authority—and obligation—to consider FPL regional transmission obligations including obligations in FPL's Open Access Transmission Tariff. Second, EDF argued that FPL's failed to satisfy standards of prudent transmission planning, failed to ensure the avoidance of uneconomic duplication of transmission facilities, and failed to demonstrate that the proposed project is the most cost-effective alternative. Specifically, EDF argued that FPL's planning process was based on a flawed contingency-event reliability analysis, an inaccurate load growth forecast that included unsupported large-load projections allocated to Miami-Dade County, and an incomplete picture of system operations that did not reflect how the system would actually operate during a major contingency event. EDF further argued that FPL failed to properly evaluate operational solutions, grid-enhancing technologies, and other low-cost

non-transmission alternatives. The Commission rejected each of EDF’s arguments and, in doing so, failed to consider critical information underlying the rationale for the transmission need. Specifically, the Commission rejected EDF’s argument that FPL did not undergo a proper prudency analysis consistent with Florida law and prudent utility practice. In reaching this conclusion, the Commission disregarded FPL’s transmission planning obligations under federal law and its own compliance filings, best practices established by the North American Electric Reliability Corporation (“NERC”)—the organization whose reliability assessments FPL relied upon to identify a 2033 reliability need—and obvious deviations from standard practice that contribute to a highly inaccurate load forecast.

The Commission’s refusal to recognize Florida utilities’ federal planning obligations creates serious obstacles to developing cost-effective regional transmission that could reduce utility bills, lessen reliance on gas generation, integrate more solar power, and build climate-resilient infrastructure. Although federal planning obligations require Florida utilities to engage in long-term scenario planning to identify multi-benefit transmission solutions, utilities can continue to seek FPSC approval for costly local projects with limited ratepayer benefits. If permitted to stand, this approach would effectively deprive the Commission of any meaningful tool to determine whether a more cost-effective transmission solution exists—thereby undermining its ability and obligation to evaluate whether utility action is prudent.

This appeal continues to build on our ongoing advocacy before the Florida Reliability Coordinating Council (“FRCC”) to realize true multi-benefit regional transmission planning. In that process we have pressed for reforms to regional transmission planning that consider the full range of transmission benefits—particularly the economic benefits outlined in FERC Order No. 1920. Our concern is that approving local transmission projects such as the AOP without adequately considering broader regional benefits can lead to misdirected investments and place artificial constraints on the regional planning process. This risks imposing higher overall costs on ratepayers, and transmission infrastructure that fails to deliver the maximum possible cost savings or facilitate access to clean energy.

The Notice of Appeal to the Commission’s Final Order must be filed within 30 days of the rendition of the FPSC’s final order.¹ Because the final order was issued on June 1, 2026, EDF’s deadline to file is Wednesday, July 1, 2026. We therefore respectfully request any feedback or concerns by 5pm ET on Tuesday, June 30, 2026.

II. EQUITY AND ENVIRONMENTAL JUSTICE

The AOP will impose significant capital costs—approximately \$781.89 million—on FPL’s ratepayers. If this expenditure is approved without full consideration of regional alternatives and grid-enhancing technologies that could deliver comparable reliability benefits at lower cost, residential electricity customers in South Florida will bear unnecessarily inflated costs. EDF’s intervention described the financial risks to low- and moderate-income customers arising from

FPL's investment decisions, particularly where the utility has not demonstrated that it has explored the full spectrum of cost-effective alternatives.

Miami-Dade County represents nearly one quarter of FPL's total system load. As demand in the area continues to grow—FPL projects summer peak load in Miami-Dade County will reach approximately 7,200 MW by 2033—the cost burden on ratepayers from large transmission capital projects will only increase. Ensuring that FPL's transmission investments are evaluated through the lens of holistic regional planning and cost optimization is therefore essential to protecting ratepayer interests and promoting equitable outcomes for the communities served by this infrastructure.

Muti-benefit holistic regional transmission planning is also critical to enabling clean energy projects to come online within reasonable timelines and at reasonable costs, resulting in greater and faster reductions in power plant emissions. As demonstrated by a number of resources, including the Climate Vulnerability Index published by EDF and partners, the impacts of climate change disproportionately harm environmental justice communities, including communities of color and low-income communities

III. PARTIES AND FORUM

Florida Power & Light (“FPL”), a subsidiary of NextEra Energy and the largest electric utility in the United States, and is the petitioner in the underlying administrative proceeding before the Florida Public Service Commission (“FPSC” or “Commission”). The FPSC will be the appellee in the appeal.

Under the Transmission Line Siting Act (“TLSA”), the Florida Public Service Commission (“FPSC” or “Commission”) is the sole forum for determining the need for any proposed electric transmission facility that crosses two counties, exceeds fifteen miles in length, and operates at 230 kV or greater.² Appeals of final FPSC orders approving a transmission needs determination are reviewed solely by the Florida Supreme Court, which will examine whether the Commission’s decision is supported by competent, substantial evidence, complies with the essential requirements of law, and whether the FPSC acted within the scope of its delegated authority.³

On March 11, 2026, FPL filed a petition with the FPSC requesting a determination of need pursuant to Section 403.537, Florida Statutes. Under the TLSA’s expedited schedule, EDF intervened on March 24, 2026, and the Florida Office of Public Counsel (“OPC”) was the only other intervenor. EDF supported its intervention with witness testimony from EDF’s Florida Energy Policy Manager, David Cranston, and former Chair of the Arkansas Public Service

² Fla. Stat. § 403.537 (2025). Fla. Admin. Code r. 25-22.075, 25-22.076.

³ Fla. Const. art. V, § 3(b)(2); Fla. Stat. § 350.128 (2025).

Commission, Ted Thomas, developed over the thirteen days available to review FPL's filing and file intervention.

EDF filed two motions to alter schedule to allow additional time to review FPL's filing and prepare testimony, both of which the Commission denied. FPL moved to strike EDF's expert testimony, but the Commission denied that motion in full. Discovery was contentious: FPL objected to the majority of EDF's and OPC's discovery requests, and despite requests for Commission intervention, the requested information was not made available.

On the eve of the April 23, 2026 hearing, FPL offered a procedural settlement: in exchange for waiving cross-examination of FPL's witnesses, FPL would allow all of EDF's and OPC's cross-examination exhibits—more than 100—into the record. EDF and OPC accepted, and the hearing proceeded with witnesses reading prepared statements. All parties submitted post-hearing briefs on April 29, 2026.

On May 11, 2026, the Commission met the statutory deadline by reaching a decision within 60 days of the petition's filing and provided a vote sheet formally approving FPL's determination of need for all four transmission lines. On June 1, 2026, the Commission issued its Final Order Approving Determination of Need for Electrical Transmission Lines, Order No. PSC-2026-0179-FOF-EL ("Final Order"), which rejected EDF's arguments in all respects.

In its intervention, EDF raised three principal arguments. First, EDF argued that the Commission, as a matter of its jurisdiction over the prudence of FPL's decisions and investments, has the authority to consider whether FPL has complied with Federal Energy Regulatory Commission ("FERC") Order Nos. 1000, 1920, 1920-A, and 1920-B as they applied to Florida utilities, and whether FPL's siloed, reliability-only planning process is imprudent, inconsistent with federal law, and violates FPL's Open Access Transmission Tariff ("OATT").

Second, EDF argued that FPL's petition was not based on sufficient evidence, failed to satisfy standards of prudent transmission planning, failed to ensure the avoidance of uneconomic duplication of transmission facilities, and failed to assure that the best, most cost-effective option was developed. EDF raised that FPL's planning process included a flawed contingency-event reliability analysis, an inaccurate load growth forecast, and an incomplete picture of system operations. EDF further argued that FPL did not properly evaluate operational solutions or low-cost non-transmission and advanced transmission technology alternatives.

Third, EDF argued that the proceeding lacked adequate due process by unreasonably limiting the time available for EDF to prepare an alternative proposal and by denying EDF's two motions to alter schedule.

The Final Order disagreed with EDF's arguments. Regarding federal planning requirements, the Commission found that the FERC Orders were not relevant to the proceeding and beyond its jurisdiction to consider, affording such evidence no weight. The Commission gave little weight to EDF's argument that FPL's determination of need was based on a flawed NERC reliability assessment and denied EDF's argument that FPL imprudently failed to consider project

alternatives incorporating grid-enhancing technologies (“GETs”). The Final Order also failed to address evidence that FPL used inflated load forecasts and inaccurate system conditions when conducting its reliability assessments. Instead, the Commission approved FPL’s All Options Portfolio (“AOP”), finding all four lines are needed to ensure grid reliability and integrity and are the most cost-effective option among available alternatives.

The standard of review on a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order.⁴ Additionally, “[o]ne specific preservation principle comes into play when a final order addresses substantive issues or reaches legal conclusions that have not been previously raised or challenged. If this occurs, a party must file a motion for rehearing to preserve those alleged errors for appellate review.”⁵ On June 8, 2026, EDF filed a motion for reconsideration of the Final Order to pursue an alternate decision from the Commission and, consistent with *Citizens of Fla. v. Clark*, to preserve issues for appeal.

The Motion for Reconsideration requested the Commission correct statements describing EDF’s position regarding FERC Order 1000’s impact on the Commission’s consideration, whether specific technological alternatives were considered by FPL, and the role federal planning orders have in state siting decisions. The Motion also requested the Commission reconsider the Final Order because it does not address three particular factual matters relating to the carrying capacity of FPL’s existing transmission facilities and the large loads included in FPL’s load forecast. On June 12, 2026, FPL filed its response in opposition to EDF’s motion.

While EDF’s motion for reconsideration is pending, EDF may request judicial review by the Florida Supreme Court. EDF intends to appeal the Final Order on the grounds that: (1) the Commission failed to base its decision on competent, substantial evidence when it failed to consider three particular factual issues raised by EDF and preserved in the motion for reconsideration; (2) the Commission erred in its interpretation of the scope of its statutory authority over transmission planning and development under Sections 403.537 and 366.04(5), Florida Statutes, as well as its broader authority to ensure prudent utility management; and (3) the Commission’s proceeding and Final Order included material procedural errors, erroneous legal interpretations, or actions inconsistent with statutory or constitutional requirements.

IV. POLICY CONSIDERATIONS

⁴ *Diamond Cab Co. of Miami v. King*, 146 So. 2d 889, 891 (Fla. 1962) (purpose of reconsideration “is merely to bring to the attention of . . . the administrative agency, some point which it overlooked or failed to consider when it rendered its order” and “is not intended as a procedure for re-arguing the whole case”); *see also Stewart Bonded Warehouse v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974) (PSC reconsideration “should be based upon specific factual matters set forth in the record and susceptible to review,” and cannot be solely based on a “reweighing of the evidence”).

⁵ *Citizens of Fla. v. Clark*, 373 So. 3d 1128, 1131 (Fla. 2023).

EDF's intervention in this proceeding is rooted in our broader advocacy for reforms to regional transmission planning in Florida. EDF has taken a leading role in the stakeholder process guiding the implementation of FERC's 2024 Long-Term Regional Transmission Planning (LTRTP) order, Order No. 1920. That Order directs transmission providers and regional planning organizations to consider a wider range of factors when evaluating transmission needs and to apply a broader set of reliability and economic benefits when developing solutions. Our advocacy before the Florida Reliability Coordinating Council (FRCC)—the regional entity responsible for coordinating transmission planning in Florida—has centered on the need for regional planning processes to account for the full range of transmission benefits, particularly the economic benefits that Order No. 1920 identifies as critical to sound transmission planning.

The FRCC is also responsible for a parallel regional planning process under FERC Order No. 1000. That process includes both an Annual Transmission Planning Process (ATPP) and a Biennial Transmission Planning Process (BTPP), the latter of which is designed to analyze previously approved transmission plans and identify more Cost Effective or Efficient Regional Transmission Solutions. To date, no Florida utility has built a regional transmission project identified through Order No. 1000 planning processes—underscoring the need for the Commission to ensure that regional planning considerations inform prudence determinations.

EDF is concerned that, despite its regional transmission planning obligations, FPL does not intend to rigorously evaluate whether its transmission projects should be scaled to address the full range of system needs. EDF is also concerned that the Commission is not giving sufficient weight to Florida utilities' regional planning obligations when approving costly local transmission projects.

Building local transmission projects without considering broader regional benefits risks two significant harms. First, it undermines the effectiveness of the regional planning process by allowing utilities to advance large capital projects outside of a comprehensive cost-benefit framework. Second, it results in higher overall costs for ratepayers because locally planned projects may fail to capture the full economic value that properly planned regional projects can deliver—including congestion relief, production cost savings, enhanced resource access, and the ability to bring more clean energy online more quickly.

The Commission's decision to give regional planning processes zero weight when determining whether a utility's decision to build a transmission line is prudent could have significant consequences for realizing the full value of Order No. 1920's Long-Term Regional Transmission Planning in Florida. Because Order No. 1920 does not obligate a utility to build a project identified in an LTRTP study, Florida utilities are likely to continue pursuing costly reliability-only local projects through the TLSA process. If that process cannot consider the regional studies developed by utilities and the FRCC to identify region-wide needs and potential solutions, the Commission will be unable to determine whether a more cost-effective solution exists—not only for the ratepayers of the petitioning utility, but for Florida ratepayers generally.

Additionally, the Commission's decision to give little scrutiny to how Florida utilities calculate load and evaluate system responses to load increases could have significant consequences in an

era of accelerating load growth driven by electrification and data center development. Without adequate oversight, Florida risks building a transmission system that imposes greater costs on customers while delivering fewer benefits and opportunities.

V. LEGAL GROUNDS

Under Section 403.537, Florida Statutes (2025), the Commission has jurisdiction to determine the need for electrical transmission lines.⁶ The petition must demonstrate that the proposed project is the most cost-effective alternative available, taking into account the demand for electricity, transmission system reliability and integrity, and the need for low-cost electric service to assure the economic well-being of the residents of the state.⁷

FPL filed its petition pursuant to Section 403.537, Florida Statutes, and Rules 25-22.075 and 25-22.076, Florida Administrative Code. The Commission's need determination proceeding is governed by Chapter 120, Florida Statutes, Section 403.537, Florida Statutes, and Chapters 25-22 and 28-106, Florida Administrative Code.

EDF's intervention argued that the Commission's determination of need should be informed by the broader cost-benefit framework contemplated by FERC Order 1920 and the FRCC Regional Transmission Planning Process. While FPL's petition focuses on NERC Reliability Standards compliance—specifically TPL-001-5.1 and NUC-001-4—as the primary basis for the AOP, EDF urged the Commission to consider whether the statutory requirement for the "most cost-effective alternative" demands a fuller evaluation of regional transmission solutions and grid-enhancing technologies that could meet the identified reliability needs at lower cost to ratepayers.

Appeals of final orders of the Florida Public Service Commission in transmission need determinations bypass the District Courts of Appeal and are filed directly with the Florida Supreme Court pursuant to article V, section 3(b)(2) of the Florida Constitution and section 350.128, Florida Statutes. A Notice of Appeal must be filed within 30 days of the rendition of the FPSC's final order. See § 120.52(7), Fla. Stat. (defining "final order"); Fla. R. App. P. 9.110(b).

The Supreme Court's review is confined to the administrative record developed during the agency's evidentiary hearing. No new evidence may be introduced on appeal. The Court examines whether the FPSC's findings and conclusions are supported by competent, substantial evidence, whether the order complies with the essential requirements of law, and whether the FPSC acted within the scope of its delegated authority. Competent, substantial evidence is

⁶ Fla. Stat. § 403.537 (2025). Fla. Admin. Code R. 25-22.075, 25-22.076.

⁷ Fla. Stat. § 403.522(7).

defined as evidence that a reasonable mind would accept as adequate to support the conclusion reached.⁸

The Court applies distinct standards of review: factual findings are upheld if supported by competent, substantial evidence; legal interpretations are reviewed de novo; and discretionary decisions are reviewed for abuse of discretion. An abuse of discretion occurs when the FPSC acts outside the range of discretion delegated by law, fails to provide a reasoned explanation for its decision, or deviates from agency rules or policies without justification.

Additionally, under Fla. Stat. § 120.68(7), Florida Statutes, an appellant may challenge an FPSC order by demonstrating material procedural errors, erroneous legal interpretations, or actions inconsistent with statutory or constitutional requirements. The presumption that FPSC orders are just and reasonable is rebuttable, and the burden rests on the appellant to show that the order is arbitrary, unsupported by the record, or contrary to law.⁹

EDF's appeal will argue the Commission erred in its legal interpretation of the TSLA,¹⁰ and the scope of its statutory authority over transmission planning and development under the Florida Grid Bill,¹¹ as well as its broader authority to ensure prudent utility management and decision-making. By rejecting EDF's argument that the Commission has authority—and indeed an obligation—to consider transmission planning processes in which FPL participates, the Commission applied an erroneous legal interpretation of its statutory mandate. This error led the Commission to exclude from its analysis evidence material to determining whether the AOP is needed and whether FPL's preferred alternative is the most cost-effective solution under section 403.537, Florida Statutes.

EDF will also argue that the Commission's decision is unsupported by competent, substantial record evidence. Specifically, FPL's load projections relied on unsupported data allocating large loads to Miami-Dade County. These projections formed the basis for FPL's identified capacity need and its decision to pursue the AOP. The combined effect of this unsupported load allocation and the use of an inflated seasonal peak load factor departs from standard utility practice and NERC recommendations. Finally, the transmission line capacity ratings used are inconsistent with the operating standards for the contingency events evaluated in the NERC reliability assessment.

Finally, EDF intends to appeal the Commission's denial of EDF's motion to extend the procedural schedule. The Commission's ruling violated section 120.57(1)(b), Florida Statutes, which requires that parties have an "opportunity to . . . present evidence and argument on all

⁸ See *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

⁹ See *Shevin v. Yarborough*, 274 So. 2d 505, 508 (Fla. 1973).

¹⁰ Section 403.537, Florida Statutes.

¹¹ Section 366.04(5), Florida Statutes.

issues involved” in the proceeding. By denying adequate time to prepare, the Commission deprived EDF of its due process rights.

The legal relief we are seeking from the Court is to vacate the FPSC’s Final Order granting FPL’s Petition for a Determination of Need, and to remand the case back to the Commission with specific, binding instructions on how it must evaluate the project under Florida law. We will ask the Court to rule that the Commission’s needs determination process must include both an adherence to industry best practices for NERC reliability assessments that form the basis for a transmission need, and a comprehensive cost-effective alternative analysis that considers relevant FERC Orders and widely available technological alternatives to new transmission builds. As relief for the alleged due-process violation, we will also ask the Court to direct the Commission that, upon remand, to establish a new, expanded procedural schedule.

VI. ASSESSMENT OF THE PROCEEDING

Issue 1: Legal Interpretation of the TLSA, Grid Bill, and Prudence Standards

EDF’s argument that the Commission erred in its legal interpretation of Section 403.537, Florida Statutes, and Section 366.04(5), Florida Statutes (the “Florida Grid Bill”), has a reasonable likelihood of success. EDF contends the Commission misconstrued the scope of its statutory authority over transmission planning and development, as well as its broader authority to ensure prudent utility management. By failing to recognize its own role in transmission planning, the Commission excluded critical evidence bearing on need and cost-effectiveness from its analysis.

To the extent that the issue presents a question of pure statutory interpretation — the meaning and scope of Sections 403.537 and 366.04(5) and whether the statutes impose a duty on the Commission to consider FPL’s participation in transmission planning — review would be de novo. Under Article V, Section 21 of the Florida Constitution, the Court may not defer to the Commission’s interpretation of the statutes it administers and must independently determine their legal meaning. A reviewing court will not sustain an agency construction that enlarges, modifies, or contravenes the statutory text. However, to the extent the issue is recast as whether the Commission adequately weighed particular evidence, that inquiry shades into the Commission’s factual and policy determinations, which are reviewed deferentially for competent substantial evidence.

Because de novo review does not require deference to the Commission’s interpretation, EDF will frame this dispute as a discrete legal question: whether the statutes require the Commission to consider regional transmission planning in assessing need and cost-effectiveness. EDF will also leverage the principle that the Commission cannot adopt a construction that contravenes the statutory text, arguing that a need determination that ignores transmission planning in which FPL itself participates is inconsistent with the statutory mandate to evaluate need and identify the most cost-effective alternative.

EDF also has a solid legal foundation to argue that the FPSC abdicated its statutory duties. The Florida Grid Bill (Section 366.04(5), Florida Statutes) grants the FPSC exclusive jurisdiction over grid planning to ensure reliability and "the avoidance of further uneconomic duplication of

generation, transmission, and distribution facilities". In *City of Homestead v. Johnson*, the Florida Supreme Court squarely affirmed that the Commission possesses a supreme mandate to prevent uneconomic duplication. Additionally, Florida's prudence standard, established in *Gulf Power Co. v. Florida Pub. Serv. Comm'n*, requires utility investments to be judged by what a "reasonable utility manager" knew or should have known at the time the decision was made.

EDF can compellingly argue that the FPSC cannot satisfy these mandates if it accepts a siloed planning process that deliberately ignores federal (FERC) regional planning requirements and cost-saving alternatives. However, the FPSC and FPL will likely cite *Tampa Electric Co. v. Garcia* to argue that the Grid Bill regulates a state-level grid, and the Commission cannot expand its jurisdiction to enforce or adjudicate federal wholesale market rules.¹² EDF can counter that the Florida Reliability Coordinating Council (FRCC) planning process operates wholly within Florida and thus falls within the FPSC's jurisdiction, though the Florida Supreme Court's significant deference to the FPSC's interpretation of its own jurisdictional boundaries makes this a contested point. Winning this issue likely requires successfully framing the inquiry as a necessary component of the state *prudence* evaluation rather than as an enforcement of FERC rules.

If we receive an adverse ruling from the Florida Supreme Court—specifically one holding that the FPSC lacks the statutory authority to consider FERC orders or regional planning processes during a state needs determination—it would legally codify a regulatory blind spot. However, when assessing the practical impact of such a ruling, we must separate the short-term realities from the long-term strategic damage.

In practical terms, an adverse ruling would likely have limited immediate effect on Florida's existing regulatory landscape. Even absent a Florida Supreme Court decision, the current framework already constrains consideration of regional alternatives because the Commission gives substantial deference to utility modeling and data, and Florida utilities have limited incentive to pursue regional projects in a vertically integrated market. Utilities already rely on localized NERC reliability models to establish need, as FPL did with the AOP, and the FPSC has accepted that approach. An adverse ruling would therefore primarily provide judicial approval for the status quo.

The true danger of an adverse ruling lies in the future. If the political climate in Florida shifts over the next decade, resulting in a newly constituted Commission that wants to rigorously evaluate utility proposals against Order No. 1000 or Order No. 1920 regional planning data to save ratepayers money, and address greater state-wide system needs, an adverse ruling could legally bind their hands. This new Commission would be legally barred from demanding or even considering the regional data.

Further, if a shift in utility dynamics ever prompts a Florida transmission provider (or independent developer) to propose a beneficial, large-scale regional transmission project in

¹² 767 So. 2d 428 (Fla. 2000) (holding PSC lacks statutory authority to grant need determinations to non-regulated out-of-state wholesale generators).

Florida, adverse precedent could prevent the FPSC from approving it. The Commission would be barred from relying on the regional economic studies needed to justify the project. In effect, the Commission could be unable to permit a regional project spanning two utility service territories—an outcome that underscores why EDF will preserve its argument that the Commission’s position cannot be sustained.

Issue 2: Lack of Competent, Substantial Record Evidence (Load Forecasts, Line Ratings and NERC Assessment)

EDF contends the Commission’s order is unsupported by competent substantial record evidence. Specifically, EDF will argue that: (a) the Commission made erroneous factual findings in concluding that FPL’s NERC reliability assessment identified a reliability need; (b) FPL’s allocation of large loads to Miami-Dade County in its load projections — the basis for the asserted capacity need and the decision to pursue the AOP — rested on unsupported load data; (c) the combined use of that load allocation with an inflated seasonal peak load factor is not standard utility practice and is inconsistent with NERC recommendations; and (d) the transmission line capacity ratings used are inconsistent with operating standards for the contingency events evaluated in FPL’s NERC reliability assessment.

The Commission’s factual findings are reviewed under the deferential competent substantial evidence standard. The question is not whether the record could support a different conclusion, but whether the evidence the Commission relied upon is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. The reviewing court does not reweigh evidence, resolve conflicts in the testimony, or substitute its judgment for the Commission’s, and findings infused with policy considerations within the Commission’s technical expertise are entitled to particular deference.

EDF’s strongest arguments will be technical and specific, demonstrating that key inputs FPL used—the Miami-Dade load allocation, the seasonal peak load factor, and the transmission line capacity ratings—lack record support and rest on methodologies that depart from NERC standards and accepted utility practice. EDF will argue not merely that the findings are debatable, but that no competent, substantial evidence supports them—that is, no reasonable mind could accept the evidence as adequate to support the conclusions reached.

This argument poses a significant challenge because the competent substantial evidence standard is among the most deferential in Florida administrative law. EDF will therefore avoid framing the dispute as a battle of expert opinions. Instead, EDF will demonstrate that the record lacks any underlying data supporting FPL’s key inputs and methodological choices—showing not a difference of expert judgment, but an absence of evidentiary foundation. Because the Commission and FPL will point to testimony from FPL’s experts, EDF bears the greater burden here. However, given the lack of supporting detail in the record for FPL’s assertions and decisions, there is potential for success on this issue.

Issue 3: Due Process Violation

EDF will argue that the Commission erroneously denied EDF's motion to extend the procedural schedule and, in doing so, failed to properly apply Section 120.57(1)(b), Florida Statutes, which guarantees parties "an opportunity to . . . present evidence and argument on all issues involved" in the proceeding. EDF will therefore argue that the denial deprived the organization of a meaningful opportunity to be heard and thus violated its due process rights.

This issue presents two intertwined standards. The denial of a motion to extend or continue a hearing schedule is a procedural ruling reviewed for abuse of discretion; the Commission's ruling will be upheld unless it is arbitrary, capricious, or unsupported by logic or the necessary facts. To the extent EDF frames the denial as a deprivation of procedural due process under Section 120.57(1)(b) — the right to present evidence and argument on all issues — the underlying legal question of what process is due is reviewed *de novo*, although the application turns heavily on the particular record.

While Florida Supreme Court case law has affirmed the core tenets of administrative due process, there is no caselaw that specifically addresses TLSA proceedings or the specific circumstances from this matter. The primary test for a due process violation appears in *Citizens of State v. Fla. Pub. Serv. Comm'n*, where the Court held that the "fundamental requirements of due process can be satisfied by reasonable notice and a reasonable opportunity to be heard", but cautioned that "due process cannot be compromised on the footing of convenience or expediency."¹³

EDF will argue that it had neither reasonable notice, nor a reasonable opportunity to be heard given the technical nature of the submission, the scale of the project, and the information asymmetry regarding FPL's transmission network. The schedule set by the Commission provided intervenors with a mere thirteen days to review the technical data that FPL provided as part of its petition, and to develop and submit testimony regarding the NERC reliability assessment conducted and to provide recommended alternatives to the proposed project.

EDF will also argue that the Commission pursued an expedient schedule without consideration for due process for EDF—rebuffing EDF's requests to extend the schedule, and lacking any legitimate rationale for reaching an expedited conclusion to the proceedings—particularly in light of the fact that FPL has not yet submitted an application to the Florida Department of Environmental Protection for an approval of its proposed project route.

EDF will seek to demonstrate concrete prejudice: that specific expert testimony and evidence were excluded from the record because EDF lacked adequate time to review the record and develop testimony addressing both the assessment of underlying need and the evaluation of potential cost-effective alternatives. The record contains evidence supporting this showing, including EDF's statements that it did not have sufficient time to develop specific recommended

¹³ *Citizens v. Fla. PSC*, 146 So. 3d 1143, 1154 (Fla. 2014).

alternatives to the AOP, and FPL’s allegations that EDF’s testimony does not include evaluations of specific project alternatives.

VII. DISCOVERY RISK

We do not anticipate any meaningful discovery risk associated with pursuing this litigation. Because this matter is a direct appeal of a Florida Public Service Commission order to the Florida Supreme Court, the Court's review is appellate in nature and confined to the evidentiary record already established at the agency level.¹⁴ Consistent with Florida's statutory framework governing judicial review of Commission orders, and with the Florida Rules of Appellate Procedure that define the record on appeal in administrative proceedings,¹⁵ the Rules provide no mechanism for opposing parties to propound new discovery—such as interrogatories, requests for production, or depositions—during the pendency of an appeal. Furthermore, any threshold challenges the appellees might raise, including arguments regarding our standing to bring this appeal, will ordinarily be briefed and resolved as matters of law on the basis of the existing administrative record. While appellate courts retain a narrow, discretionary authority to relinquish jurisdiction for limited factual development in exceptional circumstances, that mechanism is rarely invoked and is not available to an opposing party as of right. Consequently, pursuing this appeal is highly unlikely to expose the organization to invasive fact-finding, document-production burdens, or deposition requests.

VIII. CASE RESPONSIBILITY

EDF will be represented by external attorneys at Gardner Bist King & Wood, LLP, Robert Scheffel “Schef” Wright and John T. LaVia, III, both of whom have extensive experience in utility matters at the Florida Public Service Commission, and representing appellants before the Florida Supreme Court. EDF attorneys Tomás Carbonell, Ted Kelly, and Adam Kurland will have in-house case responsibility and provide overall legal strategy guidance and support, in coordination with our Florida State Affairs team.

IX. PRIOR APPROVALS

On March 23, 2026, EDF received LAC approval to intervene in the underlying FPL needs determination proceeding at the FPSC. Submission of this request to the LAC has been approved by General Counsel Vickie Patton.

¹⁴ Fla. Stat. § 350.128.

¹⁵ Fla. R. App. P. 9.190.