

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Proposed amendment to Rule 25-6.0143, FAC, Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4, and proposed adoption of Rule 25-7.0143, FAC, Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4.

DOCKET NO. 20200000

FILED: July 27, 2020

Comments of the Office of the Public Counsel

The Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), hereby file their initial and preliminary comments on the draft proposed amendment to rule 25-6.0143 and proposed new rule 25-7.0143.

As an initial matter, at the Agenda held on March 31, 2020, during the discussion of docket number 20200039, OPC proposed the adoption of a gas-specific counterpart to current rule 25-6.0143. The undersigned previously noted before the Commission that such a rule was necessary as gas utilities petitioned the Commission for storm recovery. As storms are predicted to become more frequent and more severe, OPC appreciates the Commission’s attention to this matter. Proposed rule 25-7.0143 meets that request. Accordingly, OPC is committed to participating constructively in the rulemaking process. The remainder of OPC’s comments will address the proposed amendment to rule 25-6.0143.

When initially adopted, the purpose behind rule 25-6.0143 was described as a self-insurance provision for the electric utilities. *See, e.g. In re: Petition for approval to establish regulatory asset for costs in of Storm Damage Reserve Fund, by Progress Energy Florida, Inc., Docket No. 041985-EI, ORDER NO. PSC-04-0977-PAA-EI, 04 FPSC 10:77, 2004 Fla. PUC LEXIS 862 (Fla. PSC Oct. 8, 2004)* (“In accordance with [the Commission’s] prior treatment of expenses related to individual utility self-insurance mechanisms. . . ,” the Commission noted that charges can be made to the accumulated reserve regardless of the balance.). In 2007-08, on the heels of particularly

destructive hurricane seasons, the Commission amended the rule to specifically cover storm-related damage. *See* Docket No. 070011-EI. In comments to the 2007 proposed revision, the utilities argued against the incremental approach recommended in Staff’s draft of the rule. *See* Document Number 04808-2008 in Docket No. 070011-EI. FPL, specifically, requested that the Commission adopt an “insurance-like actual restoration cost approach.” *Id.* at 31. Despite being unsuccessful at the time, over the subsequent years, the storm rule and associated reserves have begun to operate much closer to an “insurance-like actual restoration cost” approach than merely an incremental approach. In its comments, OPC strongly supported Staff’s draft and noted that to permit companies to recover “lost revenues” would allow the companies to charge customers for electricity that was never consumed. *Id.* at 81.

It is with this background that OPC writes to express its support for Staff’s proposed rule amendment and adoption as currently written. At the workshop held on June 29, 2020, Staff stated that the revisions to rule 25-6.0143 were intended to provide more specificity. OPC believes that the drafted language should not be changed because it best addresses the problem at issue. The electric utilities expressed concerns with the proposed revisions to rule 25-6.0143, specifically the language added in several provisions of section (1)(e), providing the following additional limitation on allowable costs:

. . . incurred in any month in which storm damage restoration activities are conducted, that are greater than the actual monthly average of contract labor costs charged to operation and maintenance expense for the same month in the three previous calendar years[.]

OPC emphatically supports the addition of this language. Staff’s suggested amendment ensures that storm-related costs remain incremental. Any attempt to remove that limitation should be viewed as a repudiation of the initial development of this rule and should be rejected. The utilities’ suggestion that previous storms could inflate the average costs in a particular month actually supports Staff’s proposed language—if storm costs have become so frequent and regular that they hit the same month every year for three years, they should no longer be considered an incremental,

unpredictable cost that rule 25-6.0143 and the storm reserves were designed to provide protection against.

OPC looks forward to continuing cooperation in the rulemaking process.

Respectfully submitted,

s/A. Mireille Fall-Fry

A. Mireille Fall-Fry
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 27th day of July, 2020, to the following:

James D. Beasley
J. Jeffrey Wahlen
Malcolm N. Means
Tampa Electric Company
Post Office Box 391
Tallahassee, Florida 32302
jbeasley@ausley.com
jwahlen@ausley.com
mmeans@ausley.com

Joint Administrative Procedures Committee
Ken Plante, Coordinator
680 Pepper Building
111 W. Madison Street
Tallahassee, FL 32399
joint.admin.procedures@leg.state.fl.us

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

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

Matthew R. Bernier
Duke Energy Florida
106 East College Avenue, Suite
800
Tallahassee, FL 32301
matthew.bernier@duke-energy.com

Holly Henderson
Gulf Power Company
215 S. Monroe St., Suite 618
Tallahassee, FL 32301
Holly.henderson@nexteraenergy.com

Robert Scheffel Wright
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee FL 32308
schef@gbwlegal.com

Jon C. Moyle, Jr.
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
jmoyle@moylelaw.com
Attorneys for the Florida Industrial
Power Users Group

Samantha Cibula
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
scibula@psc.state.fl.us

James W. Brew
1025 Thomas Jefferson Street, NW
Eight Floor, West Tower
Washington, DC 20007
jbrew@smxblaw.com

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

Kenneth M. Rubin/Kevin Donaldson
Florida Power & Light Company 700
Universe Blvd.
Juno Beach, Florida 33408-0420
ken.rubin@fpl.com

Attorneys for Florida Public
Utilities Company

s/A. Mireille Fall-Fry
A. Mireille Fall-Fry
Associate Public Counsel