

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Fuel and purchased power cost recovery  
clause with generating performance incentive  
factor.

DOCKET NO.: 20230001-EI

FILED: October 6, 2023

**PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, by and through the Office of Public Counsel, pursuant to the Order Establishing Procedure, Order No. PSC-2023-0066-PCO-EI, issued February 3, 2023, hereby submit this Prehearing Statement.

**APPEARANCES:**

Walt Trierweiler  
Public Counsel

Charles Rehwinkel  
Deputy Public Counsel

Patricia A. Christensen  
Associate Public Counsel

Mary A. Wessling  
Associate Public Counsel

Octavio Simoes-Ponce  
Associate Public Counsel

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

On behalf of the Citizens of the State of Florida

**1. WITNESSES:**

<b>Witness</b>	<b>Subject Matter</b>	<b>Issue #</b>
<b>Direct</b>		
N/A		

**2. EXHIBITS:**

<b>Witness</b>	<b>Proffered</b>	<b>Exhibit</b>	<b>Description</b>	<b>Issue #</b>
----------------	------------------	----------------	--------------------	----------------

	<b>by</b>	<b>No.</b>		
<b>Direct</b>				
N/A				

**3. STATEMENT OF BASIC POSITION**

The utilities bear the burden of proof to justify the recovery of costs they request in this docket and must carry this burden regardless of whether or not the Interveners provide evidence to the contrary. Further, the utilities bear the burden of proof to support their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought. Even if the Commission has previously approved a program, recovery of a cost, factor, or adjustment as meeting the Commission's own requirements, the utilities still bear the burden of demonstrating that the costs submitted for final recovery meet any statutory test(s) and are reasonable in amount and prudently incurred. Further, recovery of all costs is constrained by the Commission's obligation to set fair, just, and reasonable rates, based on projects that are prudent in purpose and scope and costs that are prudently incurred pursuant to Section 366.01, Florida Statutes. Additionally, the provisions of Chapter 366 must be liberally construed to protect the public welfare.

**4. STATEMENT OF FACTUAL ISSUES AND POSITIONS**

**I. FUEL ISSUES**

**Duke Energy Florida, LLC.**

**ISSUE 1A:** Should the Commission approve DEF's 2024 Risk Management Plan?

OPC: Hedging should not be authorized at this time. To the extent any risk management plan authorizes a utility to engage in financial hedges related to natural gas fuel procurement, it should be denied.

**ISSUE 1B:** What is the appropriate subscription bill credit associated with DEF's Clean Energy Connection Program, approved by Order No. PSC-2021-0059-S-EI, to be included for recovery in 2024?

OPC: No position at this time.

**ISSUE 1C:** What is the impact on this docket, if a decision is issued in Case SC22-94 before January 1, 2024?

OPC: No position at this time.

**ISSUE 1D:** If the decision in Case SC22-94 requires the return of replacement power costs to customers, what interest amount should be applied?

OPC: Interest should be applied pursuant to Commission rule and policy.

**ISSUE 1E:** What is the appropriate Clean Energy Impact (CEI) credit, approved by Order No. PSC-2023-0191-TRF-EI, to be included in the fuel clause in 2024?

OPC: No position at this time.

### **Florida Power & Light Company**

**ISSUE 2A:** What was the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2021-0446-AS-EI that FPL may recover for the period January 2022 through December 2022, and how should that gain to be shared between FPL and customers?

OPC: No position at this time.

**ISSUE 2B:** What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2021-0446-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2022 through December 2022?

OPC: No position at this time.

**ISSUE 2C:** What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2021-0446-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2022 through December 2022?

OPC: No position at this time.

**ISSUE 2D:** What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2021-0446-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2022 through December 2022?

OPC: No position at this time.

**ISSUE 2E:** What is the appropriate subscription credit associated with FPL's SolarTogether Program approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2024?

OPC: No position at this time.

**ISSUE 2F:** Should the Commission approve FPL's 2024 Risk Management Plan?

OPC: Hedging should not be authorized at this time. To the extent any risk management plan authorizes a utility to engage in financial hedges related to natural gas fuel procurement, it should be denied.

**ISSUE 2G:** Are the 2024 SoBRA units (12 total) proposed by FPL cost effective?

OPC: No position at this time.

**ISSUE 2H:** What are the revenue requirements associated with the 2024 SoBRA Project?

OPC: No position at this time.

**ISSUE 2I:** What is the appropriate base rate percentage increase for the 2024 SoBRA Project to be effective when all 2024 units are in service, currently projected to be January 31, 2024?

OPC: No position at this time.

**ISSUE 2J:** Should the Commission approve revised tariffs for FPL reflecting the base rate percentage increases for the 2024 SoBRA Project determined to be appropriate in this proceeding?

OPC: No position at this time.

### **Florida Public Utilities Company**

**ISSUE 3A:** Should the Commission modify the previously ordered (Order No. PSC-2023-0026-FOF-EI) recovery schedule for FPUC's under-recovery of 2022 fuel costs from three years to two years?

OPC: No position at this time.

### **Tampa Electric Company**

**ISSUE 4A:** What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2022 through December 2022, and how should that gain to be shared between TECO and customers?

OPC: No position at this time.

**ISSUE 4B:** Should the Commission approve TECO's 2024 Risk Management Plan?

OPC: Hedging should not be authorized at this time. To the extent any risk management plan authorizes a utility to engage in financial hedges related to natural gas fuel procurement, it should be denied.

## **GENERIC FUEL ADJUSTMENT ISSUES**

**ISSUE 5:** What are the appropriate actual benchmark levels for calendar year 2023 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

OPC: No position at this time.

**ISSUE 6:** What are the appropriate estimated benchmark levels for calendar year 2024 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

OPC: No position at this time.

**ISSUE 7:** What are the appropriate final fuel adjustment true-up amounts for the period January 2022 through December 2022?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for final true-up can necessarily be deemed reasonable and prudent.

**ISSUE 8:** What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2023 through December 2023?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for true-up can necessarily be deemed reasonable and prudent.

**ISSUE 9:** What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2024 through December 2024?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the

costs proposed for true-up can necessarily be deemed reasonable and prudent. The amounts proposed by the companies are incorrect.

**ISSUE 10:** What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2024 through December 2024?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for final true-up can necessarily be deemed reasonable and prudent.

## **COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES**

### **Duke Energy Florida, LLC.**

No company-specific GPIF issues for Duke Energy Florida, Inc. have been identified at this time. If such issues are identified, they shall be numbered 11A, 11B, 11C, and so forth, as appropriate.

### **Florida Power & Light Company**

No company-specific GPIF issues for Florida Power and Light Company have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

### **Tampa Electric Company**

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

## **GENERIC GPIF ISSUES**

**ISSUE 14:** What is the appropriate GPIF reward or penalty for performance achieved during the period January 2022 through December 2022 for each investor-owned electric utility subject to the GPIF?

OPC: No position at this time.

**ISSUE 15:** What should the GPIF targets/ranges be for the period January 2024 through December 2024 for each investor-owned electric utility subject to the GPIF?

OPC: No position at this time.

## **FUEL FACTOR CALCULATION ISSUES**

**ISSUE 16:** What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2024 through December 2024?

OPC: No position at this time.

**ISSUE 17:** What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2024 through December 2024?

OPC: No position at this time.

**ISSUE 18:** What are the appropriate levelized fuel cost recovery factors for the period January 2024 through December 2024?

OPC: No position at this time.

**ISSUE 19:** What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

OPC: No position at this time.

**ISSUE 20:** What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

OPC: No position at this time

## **II. CAPACITY ISSUES**

### **COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES**

#### **Duke Energy Florida, LLC.**

**ISSUE 21A:** What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation (ISFSI) that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEF's 2017 Settlement for 2024?

OPC: No position at this time.

**ISSUE 21B:** What adjustment amount should the Commission approve to be refunded through the capacity clause associated with the Solar Base Rate Adjustment true-up for Plant Sandy Creek?

OPC: No position at this time.

**ISSUE 21C:** What adjustment amount should the Commission approve to be refunded through the capacity clause associated with the Solar Base Rate Adjustment true-up for Plant Santa Fe?

OPC: No position at this time.

**ISSUE 21D:** What adjustment amount should the Commission approve to be refunded through the capacity clause associated with the Solar Base Rate Adjustment true-up for Plant Twin Rivers?

OPC: No position at this time.

### **Florida Power & Light Company**

**ISSUE 22A:** Should the Commission approve a \$7.92 million refund related to the incremental impact of the Inflation Reduction Act for years 2022 and 2023 due to the application of the Tax Provision contained in FPL'S current Rate Settlement Agreement?

OPC: No position at this time.

### **Tampa Electric Company**

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they will be numbered 23A, 23B, 23C, and so forth, as appropriate.

### **GENERIC CAPACITY COST RECOVERY FACTOR ISSUES**

**ISSUE 24:** What are the appropriate final capacity cost recovery true-up amounts for the period January 2022 through December 2022?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for final true-up can necessarily be deemed reasonable and prudent.

**ISSUE 25:** What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2023 through December 2023?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested



proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for estimated/actual true-up can necessarily be deemed reasonable and prudent.

**ISSUE 26:** What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2024 through December 2024?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for true-up can necessarily be deemed reasonable and prudent.

**ISSUE 27:** What are the appropriate projected total capacity cost recovery amounts for the period January 2024 through December 2024?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the projected costs proposed for recovery can necessarily be deemed reasonable and prudent.

**ISSUE 28:** What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2024 through December 2024?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the projected costs proposed for recovery can necessarily be deemed reasonable and prudent.

**ISSUE 29:** What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2024 through December 2024?

OPC: No position at this time.

**ISSUE 30:** What are the appropriate capacity cost recovery factors for the period January 2024 through December 2024?

OPC: No position at this time; however, the factors should be based on costs deemed reasonable and prudent in a hearing.

**III. EFFECTIVE DATE**

**ISSUE 31:** What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

OPC: No position.

**ISSUE 32:** Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

OPC: No position at this time; however, the tariffs should be based on costs deemed reasonable and prudent in a hearing.

**ISSUE 33:** Should this docket be closed?

OPC: No.

**5. STIPULATED ISSUES**

None at this time.

**6. PENDING MOTIONS**

OPC has no pending motions at the time.

**7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY**

There are no pending requests for claims for confidentiality filed by OPC.

**8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT**

OPC has no objections to the qualification of any witnesses as an expert in the field which they pre-filed testimony as of the present date.

**9. SEQUESTRATION OF WITNESSES**

OPC does not request the sequestration of any witness at this time.

10. **STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING  
PROCEDURE**

There are no requirements of the Order Establishing Procedure with which OPC cannot comply.

Dated this 6<sup>th</sup> day of October

Respectfully Submitted,

Walt Trierweiler  
Public Counsel

**/s/Octavio Simoes-Ponce**

Octavio Simoes-Ponce  
Associate Public Counsel  
Ponce.Octavio@leg.state.fl.us  
Florida Bar No. 96511

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

**CERTIFICATE OF SERVICE**

**DOCKET NO. 20230001-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 6th day of October 2023, to the following:

J. Wahlen/M. Means/V. Ponder  
Ausley Law Firm  
P.O. Box 391  
Tallahassee FL 32302  
jwahlen@ausley.com  
mmeans@ausley.com  
vponder@ausley.com

Dianne M. Triplett/Robert Pickels  
Duke Energy  
299 First Avenue North  
St. Petersburg FL 33701  
Dianne.triplett@duke-energy.com  
robert.pickles@duke-energy.com

Suzanne Brownless/Ryan Sandy  
Florida Public Service Commission  
Office of the General Counsel  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
sbrownle@psc.state.fl.us  
rsandy@psc.state.fl.us

Matthew R. Bernier/Stephanie A. Cuello  
Duke Energy  
106 E. College Avenue, Suite 800  
Tallahassee FL 32301  
FLRegulatoryLegal@duke-energy.com  
matthew.bernier@duke-energy.com  
stephanie.cuello@duke-energy.com

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

Maria Jose Moncada/David Lee  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach FL 33408-0420  
david.lee@fpl.com  
maria.moncada@fpl.com

Kenneth A. Hoffman  
Florida Power & Light Company  
134 W. Jefferson Street  
Tallahassee FL 32301-1859  
ken.hoffman@fpl.com

Mr. 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 FL 33411  
mnapier@fpuc.com

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

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

Robert Scheffel Wright/John T. LaVia III  
Florida Retail Federation  
1300 Thomaswood Drive  
Tallahassee FL 32308  
schef@gbwlegal.com  
jlavia@gbwlegal.com

Beth Keating  
Gunster Law Firm  
215 South Monroe St., Suite 601  
Tallahassee FL 32301  
bkeating@gunster.com

James W. Brew/Laura Wynn Baker  
PCS Phosphate - White Springs  
c/o Stone Law Firm  
1025 Thomas Jefferson St., NW, 8th Floor, W.  
Tower  
Washington DC 20007  
jbrew@smxblaw.com  
lwb@smxblaw.com

Peter J. Mattheis/Michael K. Lavanga/Joseph R.  
Briscar  
Stone Law Firm  
1025 Thomas Jefferson St., NW, Ste. 800 W.  
Washington DC 20007  
jrb@smxblaw.com  
pjm@smxblaw.com  
mkl@smxblaw.com

William C. Garner  
Garner Law Firm  
3425 Bannerman Road, Unit 105, No. 414  
Tallahassee, FL 32303  
bgarner@wcglawoffice.com

*/s/Octavio Simoes-Ponce*

Octavio Simoes-Ponce  
Associate Public Counsel  
Ponce.Octavio@leg.state.fl.us  
Florida Bar No. 96511