

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by
Duke Energy Florida, LLC

Docket No. 20240025-EI

Filed: April 29, 2024

**DUKE ENERGY FLORIDA’S RESPONSE IN OPPOSITION TO OFFICE OF
PUBLIC COUNSEL’S EXPEDITED MOTION FOR RECONSIDERATION, OR,
IN THE ALTERNATIVE, MOTION FOR CONTINUATION AND RESPONSE TO
OPC’S EXPEDITED REQUEST FOR ORAL ARGUMENT**

Pursuant to Rule 28-106.204(1), F.A.C., Duke Energy Florida, LLC (“DEF” or the “Company”) hereby files this Response in Opposition to the Office of Public Counsel’s (“OPC”) Expedited Motion for Reconsideration, or, in the Alternative, Motion for Continuance (“Motion”) and OPC’s Expedited Motion for Oral Argument (“Oral Argument Motion”). OPC has not identified any new information that would justify reconsideration of the Order Establishing Procedure (“OEP”) in this docket. Accordingly, OPC’s Motion should be denied. In further support, DEF states:

Background

1. DEF’s current settlement agreement, the 2021 Settlement Agreement, expires at the end of 2024. DEF filed a Test Year Letter on January 31, 2024, indicating its intent to file a rate case on April 2 for new rates effective January 1, 2025.

2. On March 8, 2024, OPC filed a Motion for Expedited Joint Docket Scheduling Conference (“Scheduling Motion”). In that motion, OPC indicated its concern with the dates held on the Commission calendar for DEF’s rate case hearing.

3. On March 18 and March 27, 2024, OPC issued its first two sets of discovery to DEF. On April 2, DEF filed its petition, testimony, exhibits, and Minimum Filing Requirements (“MFRs”) in support of its rate request. After its filing, DEF received another eight sets of discovery from OPC, one set from Commission Staff, and five sets from other parties to the docket.

4. On April 3, 2024, OPC filed a supplement to its Scheduling Motion (“Supplement”) and included a proposed hearing schedule for DEF and Tampa Electric Company. With respect to DEF, the Commission issued its Order Establishing Procedure (“OEP”) on April 11, 2024. The OEP set forth the hearing dates and other key dates for the proceeding, and it also denied the request in OPC’s Scheduling Motion and Supplement. Specifically, with respect to the key dates section, the OEP states: “Having fully considered the representations and proposals by OPC in the Motion [for Expedited Joint Docket Scheduling Conference] and Supplement, the following dates shall govern the key activities of this case...” Order No. PSC-2024-0092-PCO-EI (dated Apr. 11, 2024), at p. 12. OPC’s current Motion seeks reconsideration of the OEP, or in the alternative a continuance of the hearing.

Motion for Reconsideration

5. “The standard for reconsideration is set forth in *Diamond Cab Co. of Miami v. King*, 146 So. 2d 889 (Fla. 1962). The court stated that: ‘[t]he purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. (citations omitted) It is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment or the order.’ *Id.* at 891.” *In Re: Investigation into Florida Public Service Commission jurisdiction over Southern States Utilities, Inc. in Florida*, Docket 1993045-WS, Order No. PSC-1993-0042-FOF-WS (Jan. 10, 1993) (denying SSU’s

motion for reconsideration and noting that “The Utility may not be permitted an opportunity to re-argue to the full Commission upon a motion for reconsideration issues already decided.”); *see also In Re: Petition for Rate Increase by Florida Power & Light Company*, Docket No. 20160021-EI, Order No. PSC-2016-0231-PCO-EI (June 10, 2016), at pp. 13-14 (Commission denied OPC’s request to modify a filing schedule in an OEP and stated: “Without a specific mistake of fact or law, a motion for reconsideration must be denied, even when there is a ‘feeling that a mistake may have been made’ or when the reviewing body would have reached a different decision.”).

6. OPC asserts there are six reasons for the Commission to reconsider their scheduling order. (Motion at p. 8). Most of these reasons are simply a rehash of the arguments raised in OPC’s Scheduling Motion; none of the reasons meet the standard for reconsideration.

7. Specifically, reasons 1 (insufficient time), 3 (insufficient time to consider both DEF and Tampa Electric’s rate cases), 4 (Commission Staff does not have enough time to complete their audit), and 5 (certainty that OPC does not have enough time outweighs the possibility of a delay) amount to creative ways of saying the same thing: OPC believes they do not have adequate time to prepare their case. These concerns were raised in the Scheduling Motion (pp. 2-4), and the Prehearing Officer clearly took those concerns into account when setting the schedule in the OEP. *See* ¶ 4, *supra*. Indeed, the argument raised in the Scheduling Motion (p. 4) regarding the number of hearing days appears to have been accepted by the Prehearing Officer as the OEP includes additional designated hearing days beyond the original five that were placeholders on the Commission calendar.

8. Reason 2 cited by OPC as cause for reconsideration is that the utilities created the “scheduling crisis” by waiting to file their cases, since it was known or foreseeable that both utilities would file rate cases in 2024. DEF notes that OPC was well aware that both Tampa Electric

and DEF would be filing for rate cases in 2024, as the Public Counsel testified at the December 11, 2023 Joint Commission on Public Counsel Oversight.¹ In any event, this reason is not cause to reconsider the Commission’s scheduling order. The MFRs require that utilities provide 2023 actual cost information. DEF’s books must be closed to allow sufficient review and population of the MFRs – this takes time and does not allow utilities to file much earlier. It is particularly important that DEF ensure the accuracy and sufficiency of its MFRs, lest a party accuse it of being deficient.²

9. OPC further requests the Commission to set a schedule that would allow rates to go into effect under the “12 month clock” rather than the “8 month clock.” This request ignores the plain language of Section 366.06(3), Fla. Stat., which states, in relevant part:

Pending a final order by the commission in any rate proceeding under this section, the commission may withhold consent to the operation of all or any portion of the new rate schedules, delivering to the utility requesting such increase, within 60 days, a reason or written statement of good cause for withholding its consent. **Such consent shall not be withheld for a period longer than 8 months from the date of filing the new schedules.** (emphasis added).

By operation of law, if the Commission has not taken final action in this case by December 23, 2024, DEF would be authorized to implement its full rate increase effective January 1, 2025, subject to refund pending the result of the Commission’s final action by April 22, 2025. While this is not DEF’s preferred path, it would be necessary if the Commission does not maintain a schedule that allows final agency action to conclude before the 8-month period. As demonstrated in DEF’s

¹ [12/11/23 Joint Committee on Public Counsel Oversight - The Florida Channel](#) at 2:00; 6:10.

² Since the filing of OPC’s Motion, the Commission Staff sent DEF a letter indicating that its filing, including the MFRs, meets the Requirements of Rule 25-6.043, F.A.C. *See* Document No. 02258-2024, dated April 23, 2024. Accordingly, April 23, 2024 is the start of the “clock.”

petition, testimony, and MFRs, if the requested rate relief is not granted, its return on equity will fall to 6.43 percent in 2025. OPC's reliance on the 2009 rate case orders involving Florida Power & Light and DEF's predecessor company (PEF) is misplaced. The original case schedule for those cases provided for hearings consistent with the 8-month clock. However, after PEF's hearing was completed, the Governor sent a letter to the Commission requesting that it postpone its final order on the cases until after two new Commissioners were appointed. The Commission determined that it could postpone the final decision consistent with the 12-month requirement, but that by operation of law PEF could implement rates subject to refund consistent with the 8-month clock provided in section 366.06(3). *See* Order No. PSC-2009-0753. Notably, each party filing briefs in DEF's 2009 rate case, including OPC, agreed that PEF was entitled to implement the new rates, subject to refund, at the conclusion of the 8-month period. *See id.* at p. 14.

10. The final reason OPC provides to support its motion for reconsideration is number 6: "asymmetrical advance knowledge created additional harm to interveners" (Motion at p. 14). While the only evidence that OPC cites to support this fact is the Tampa Electric admission, DEF will respond because OPC implied in two footnotes that DEF may have had similar "advance knowledge." Discussions with agencies and courts regarding scheduling matters is a common practice and is vital when attempting to align the schedules of 22 witnesses, witness support teams, and counsel. No rules prohibit such communication by any party who wishes to call and ask the question. Moreover, DEF fails to see how advance knowledge of the tentative dates for a hearing (when such information was also available to OPC by either calling or reviewing the Commission calendar) causes harm or somehow translates into a justification for pushing back the hearing.

11. With respect to OPC's arguments to reconsider the hearing exhibits and use of depositions portions of the OEP, DEF defers to the Commission and its Staff as to the needs for hearing efficiency and the time required to collect, upload and catalog known hearing exhibits.

Motion to Continue Hearing

12. OPC has also requested a motion for continuance of the hearing dates. (Motion at pp. 24-26). This alternative request is no more than a motion for reconsideration by a different name. For the reasons explained above, OPC has not met the burden of good cause shown to justify a change in the hearing dates; therefore, the motion to continue should be denied.

Motion for Oral Argument

13. With respect to the separately filed Motion for Oral Argument on the Motion, DEF believes that the Commission can make this decision based on the written documents. However, if the Commission has additional questions or would value hearing argument on this matter, DEF will participate.

WHEREFORE, DEF respectfully requests that the Commission deny OPC's Motion.

Respectfully submitted,

/s/ Dianne M. Triplett

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 29th day of April, 2024

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