

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 20220007-EI

FILED: October 28, 2022

AMENDED PRE-HEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2022-0055-PCO-EI, issued February 7, 2022, hereby submit this Amended¹ Prehearing Statement.

APPEARANCES:

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Public Counsel

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On behalf of the Citizens of the State of Florida

1. WITNESSES:

None

2. EXHIBITS:

None

¹ Since other parties have indicated their agreement with the OPC on certain issues, the OPC is providing updated positions on certain issues so that parties will have the opportunity to reassess their support for the OPC positions at the earliest possible time.

3. STATEMENT OF BASIC POSITION

The utilities bear the burden of proof to justify the recovery of costs they request in this docket. The utilities 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 even prudently incurred costs is constrained by the Commission's obligation to set fair, just, and reasonable rates. Pursuant to Section 366.01, Florida Statutes, the provisions of Chapter 366 must be liberally construed to protect the public welfare.

The Commission must independently determine that each cost submitted for recovery, deferred or new, meets each element of the statutory requirements for recovery through this clause, as set out in Section 366.8255, Florida Statutes. Specifically, each activity proposed for recovery must be legally *required* to comply with a governmentally imposed environmental regulation that was enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based, and such costs may not be costs that are recovered through base rates or any other cost recovery mechanism. Any decision by the Commission on a new project submitted for approval and cost recovery must be limited to the scope and documented cost information provided to the Commission in the company filing in this docket.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

GENERIC ENVIRONMENTAL COST RECOVERY ISSUES

ISSUE 1: **What are the final environmental cost recovery true-up amounts for the period January 2021 through December 2021?**

OPC: The OPC is not in agreement 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 is 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 does not agree, given these circumstances, that the costs proposed for final true-up can necessarily be deemed reasonable and prudent.

ISSUE 2: **What are the actual/estimated environmental cost recovery true-up amounts for the period January 2022 through December 2022?**

OPC: The OPC is not in agreement 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 is 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 does not agree, given these circumstances, that the costs proposed for final true-up can necessarily be deemed reasonable and prudent.

ISSUE 3: **What are the projected environmental cost recovery amounts for the period January 2023 through December 2023?**

OPC: The OPC is not in agreement 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 is 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 does not agree, given these circumstances, that the costs proposed for final true-up can necessarily be deemed reasonable and prudent.

ISSUE 4: **What are the environmental cost recovery amounts, including true-up amounts, for the period January 2023 through December 2023?**

OPC: The OPC is not in agreement 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 is 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 does not agree, given these circumstances, that the costs proposed for final true-up can necessarily be deemed reasonable and prudent.

ISSUE 5: **What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2023 through December 2023?**

OPC: The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that the depreciation rates are appropriate. A significant percentage of the costs on a customer's bill is 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 does not agree, given these circumstances, that the depreciation rates and resulting costs proposed for final true-up can necessarily be deemed prudent.

ISSUE 6: **What are the appropriate jurisdictional separation factors for the projected period January 2023 through December 2023?**

OPC: The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that separation factors are reasonable and prudent. A significant percentage of the costs on a customer's bill is 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 does not agree, given these circumstances, that the factors proposed for final true-up can necessarily be deemed prudent.

ISSUE 7: **What are the appropriate environmental cost recovery factors for the period January 2023 through December 2023 for each rate group?**

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

ISSUE 8: **What should be the effective date of the new environmental cost recovery factors for billing purposes?**

OPC: No position.

ISSUE 9: **Should the Commission approve revised tariffs reflecting the environmental cost recovery amounts and environmental 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 after a hearing.

ISSUE 10: **Should this docket be closed?**

OPC: No.

COMPANY-SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

Florida Power & Light Company (FPL):

ISSUE 11: **Should the Commission approve FPL's Combustion Turbine National Emission Standards for Hazardous Air Pollutants Project for cost recovery through the Environmental Cost Recovery Clause?**

OPC: No. The OPC is not in agreement that FPL has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Furthermore, FPL has not provided sufficient evidence to allow the Commission to make a decision on the scope of the project beyond the monitoring and related expenses submitted. No detail beyond a broad estimate of possible capital costs has been provided, sufficient for the Commission to approve indeterminate capital expenditures that may be incurred in the future. Any decision on this project should be limited to the specific expenses that have been provided in the filings.

ISSUE 12: **How should the approved costs related to FPL's Combustion Turbine National Emission Standards for Hazardous Air Pollutants Project be allocated to the rate classes?**

OPC: The OPC is not in agreement that FPL has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Accordingly, the OPC cannot agree to the rate class allocations.

ISSUE 13: **Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modification to its National Pollutant Discharge Elimination System Permit Requirements Project?**

OPC: No. The OPC is not in agreement that FPL has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent.

ISSUE 14: **Should the Commission approve FPL's proposed treatment for the ECRC assets associated with the retirement of Martin Thermal Solar, as proposed in FPL's 2022 Actual/Estimated Filing?**

OPC: No position.

ISSUE 15: **How should the approved costs related to the regulatory asset for the unrecovered early retired investment associated with the Martin Thermal Solar facility be allocated to the rate classes?**

OPC: No position.

Duke Energy Florida, LLC (DEF):

ISSUE 16: **Should the Commission approve DEF's National Emission Standards for Hazardous Air Pollutants Project for cost recovery through the Environmental Cost Recovery Clause?**

OPC: No. The OPC is not in agreement that DEF has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Furthermore, DEF has not provided sufficient evidence to allow the Commission to make a decision on the scope of the project beyond the monitoring and related expenses submitted. No detail beyond a broad estimate of possible capital costs has been provided, sufficient for the Commission to approve indeterminate capital expenditures that may be incurred in the future. Any decision

on this project should be limited to the specific expenses that have been provided in the filings.

ISSUE 17: **How should the approved costs related to DEF's National Emission Standards for Hazardous Air Pollutants Project be allocated to the rate classes?**

OPC: The OPC is not in agreement that DEF has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Accordingly, the OPC cannot agree to the rate class allocations

5. STIPULATED ISSUES

None at this time.

6. PENDING MOTIONS

None at this time.

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

There are no pending requests or 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 in which they pre-filed testimony as of the present date.

9. SEQUESTRATION OF WITNESSES

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

10. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 28th of October, 2022.

Respectfully submitted,

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Public Counsel

/s/Charles J. Rehwinkel

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CERTIFICATE OF SERVICE
DOCKET NO. 20220007-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Prehearing Statement has been furnished by electronic mail on this 28th day of October, 2022, to the following:

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