

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20240001-EI
ORDER NO. PSC-2024-0075-PHO-EI
ISSUED: March 21, 2024

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on March 19, 2024 in Tallahassee, Florida, before Commissioner Gabriella Passidomo, as Prehearing Officer.

APPEARANCES:

MARIA JOSE MONCADA, WILLIAM P. COX, and DAVID M. LEE,
ESQUIRES, Florida Power & Light Company, 700 Universe Boulevard, Juno
Beach, Florida 33408-0420
On behalf of Florida Power & Light Company (FPL)

WALT TRIERWEILER, CHARLES REHWINKEL, PATRICIA A.
CHRISTENSEN, MARY WESSLING, and OCTAVIO SIMOES-PONCE,
ESQUIRES, 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 (OPC)

JON C. MOYLE, JR. and KAREN A. PUTNAL, ESQUIRES, Moyle Law Firm,
PA, The Perkins House, 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of the Florida Industrial Power Users Group (FIPUG)

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Gardner
Bist, Bowden, Dee, LaVia, Wright, Perry, and Harper, PA, 1300 Thomaswood
Drive, Tallahassee, Florida 32308
On behalf of Florida Retail Federation (FRF)

SUZANNE BROWNLESS and RYAN SANDY, ESQUIRES, Florida Public
Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-
0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public
Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-
0850
Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Florida Public Service Commission General Counsel

I. CASE BACKGROUND

An administrative hearing will be held by the Florida Public Service Commission (Commission) on March 26-27, 2024. The issues to be determined in this proceeding were deferred from the 2023 Fuel Clause docket and are associated with nuclear power plant outages that occurred at Florida Power & Light Company's St. Lucie Units 1 and 2 and Turkey Point Units 3 and 4 between 2020 and 2022.

At this time there are only four parties to the Fuel Clause docket that have standing to participate in this proceeding: FPL, Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG) and Florida Retail Federation (FRF). The other parties to the docket that are without standing to participate in this proceeding are the other investor-owned electric utilities (TECO, DEF, FPUC), Nucor, and PCS Phosphate.

FRF filed a Prehearing Statement on March 11, 2024. FPL, OPC, and FIPUG filed Prehearing Statements on March 12, 2024. FPL and OPC have agreed to stipulations on all the issues raised in this proceeding. FRF and FIPUG have stated that they take no position on the issues raised in this proceeding and have requested to be excused from the March 26 final hearing.

Given these facts, on March 8, 2024, FPL filed an Unopposed Motion to Stay Rebuttal Testimony Deadline (Motion). In its Motion, FPL requested that the filing date for its rebuttal testimony, currently March 12, be stayed and that these stipulations be voted upon by the full Commission at the March 26 hearing. Should the Commission vote not to accept the stipulations, FPL requested that a new trial schedule be set, e.g., dates for filing rebuttal testimony, prehearing statements, hearing, etc. FPL's Motion was granted by Order No. PSC-2024-0062-PCO-EI, issued March 11, 2024.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter, Chapter

120, F.S., and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
*Daniel DeBoer	FPL	1-2
*Joel Gebbie	FPL	1
*Richard A. Polich	OPC	1-2
*Carl Vinson	Staff	1-2
*Tom Ballinger	Staff	1-2

*These witnesses have been excused from attending the March 26, 2024 final hearing.

VII. BASIC POSITIONS

FPL: The Commission should approve the stipulated positions reached by FPL and the Office of Public Counsel (OPC) as a reasonable resolution of the issues involved in this matter.

OPC: OPC and Florida Power & Light Company (FPL) have agreed to stipulations to resolve all outstanding issues. OPC represents that these stipulations are reasonable and prudent resolutions to the issues and are in the public interest.

FRF: The Commission's task in the Fuel Docket, as in all ratemaking proceedings, is to ensure that the rates charged by Florida public utilities are fair, just, reasonable, non-discriminatory, and neither insufficient nor excessive. The utilities bear the burden of proof that their proposed Fuel Charges satisfy the statutory criteria articulated above. The FRF understands that FPL and OPC have reached a stipulation on the issues to be addressed in the hearing scheduled for March 26, 2024, and the FRF takes no position on the proposed stipulation.

FIPUG: Florida Power & Light Company (FPL) and the Office of Public Counsel (OPC) have reached a stipulation which addresses the two issues in this case. FIPUG takes no position on these two issues. Thus, FIPUG's position in this matter is that FIPUG takes no position.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

ISSUE 1: **What adjustment should be made with respect to replacement power costs associated with any unplanned outages that occurred at Turkey Point or St. Lucie during the calendar years 2020, 2021, and 2022?**

FPL: See Stipulated Issues (Section 5).

OPC: Stipulation: FPL shall credit customers \$5 million, inclusive of interest, through the fuel clause. The credit shall be included in the calculation of FPL's fuel factors the next time the fuel factors are reset. The prudence of, and replacement power cost calculations associated with, all forced or unplanned outages or down power events at the Turkey Point and St. Lucie nuclear facilities which occurred during the calendar years 2020, 2021 and 2022 are hereby fully resolved and shall not be subject to further challenge or litigation in the future.

FRF: No position.

FIPUG: No position.

STAFF: No position at this time.

ISSUE 2: **Should FPL be subject to a follow up nuclear operations and management audit covering the 2024 to 2029 time period?**

FPL: See Stipulated Issues (Section 5).

OPC: Stipulation: Yes, a follow up audit may be conducted no earlier than 2030.

FRF: No position.

FIPUG: No position.

STAFF: No position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
Daniel DeBoer	FPL	(DD-1)	Reactor Trip and Trip Bypass Breaker Inspection Maintenance
Richard Polich	OPC	(RAP-1)	Resume
		(RAP-2)	List of Polich testimony
		(RAP-3)	20220001-EI Polich testimony
		(RAP-4)	PSC Audit Report
		(RAP-5)	NRC Inspection Report 12/09/2020
Carl Vinson	Staff	(CV-1)	PSC Audit Report
Tom Ballinger	Staff	(TEB-1)	Summary of outages

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

ISSUE 1: **What adjustment should be made with respect to replacement power costs associated with any unplanned outages that occurred at Turkey Point or St. Lucie during the calendar years 2020, 2021, and 2022?**

FPL:

Stipulation: FPL shall credit customers \$5 million, inclusive of interest, through the fuel clause. The credit shall be included in the calculation of FPL's fuel factors the next time the fuel factors are reset. The prudence of, and replacement power cost calculations associated with, all forced or unplanned outages or down power events at the Turkey Point and St. Lucie nuclear facilities which occurred during the calendar years 2020, 2021 and 2022 are hereby fully resolved and shall not be subject to further challenge or litigation in the future.

OPC:

Stipulation: FPL shall credit customers \$5 million, inclusive of interest, through the fuel clause. The credit shall be included in the calculation of FPL's fuel factors the next time the fuel factors are reset. The prudence of, and replacement power cost calculations associated with, all forced or unplanned outages or down power events at the Turkey Point and St. Lucie nuclear facilities which occurred during the calendar years 2020, 2021 and 2022 are hereby fully resolved and shall not be subject to further challenge or litigation in the future.

FRF:

The FRF understands that FPL and the Office of Public Counsel have agreed to a stipulation on the above issues. The FRF takes no position on the stipulation. If the stipulation is not approved, the FRF will take positions on any remaining issues as instructed by the Commission.

FIPUG:

FIPUG has not stipulated to any matters in this matter, but understands that FPL and OPC have reached a stipulation on the two issues above. FIPUG takes no position at this time on these two issues. Should the Commission not approve this "Type 2" stipulation between FPL and OPC, FIPUG reserves the right to subsequently take a position on the two issues.

ISSUE 2: **Should FPL be subject to a follow up nuclear operations and management audit covering the 2024 to 2029 time period?**

FPL:

Stipulation: Yes, a follow up audit may be conducted no earlier than 2030.

OPC:

Stipulation: Yes, a follow up audit may be conducted no earlier than 2030.

FRF:

The FRF understands that FPL and the Office of Public Counsel have agreed to a stipulation on the above issues. The FRF takes no position on the stipulation. If the stipulation is not approved, the FRF will take positions on any remaining issues as instructed by the Commission.

FIPUG:

FIPUG has not stipulated to any matters in this matter, but understands that FPL and OPC have reached a stipulation on the two issues above. FIPUG takes no position at this time on these two issues. Should the Commission not approve this “Type 2” stipulation between FPL and OPC, FIPUG reserves the right to subsequently take a position on the two issues.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no confidentiality orders pending at this time.

XIII. POST-HEARING PROCEDURES

Post-hearing procedures will depend upon whether the proposed stipulations are approved by the Commission or are not approved. If approved, all issues will be resolved and no further action needs to be taken by the parties. If the Commission does not approve the proposed stipulations, the hearing will be continued and a revised procedural order will be issued.

XIV. RULINGS

Opening statements, if any, shall not exceed 5 minutes per party unless a party chooses to waive its opening statement. FRF’s and FIPUG’s requests to be excused from the final hearing on March 26 are hereby granted.

Stipulations resolving all issues shall be voted upon by the full Commission at the March 26 hearing. If approved, the testimony and exhibits as listed on the Comprehensive Exhibit List shall be admitted into the record. Should the Commission vote not to accept the stipulations, the hearing shall be continued and a new trial schedule shall be set, e.g., dates for filing rebuttal testimony, prehearing statements, hearing, briefing, etc.

It is therefore,

ORDERED by Commissioner Gabriella Passidomo, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Gabriella Passidomo, as Prehearing Officer, this 21st day of March, 2024.



Gabriella Passidomo
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the

ORDER NO. PSC-2024-0075-PHO-EI

DOCKET NO. 20240001-EI

PAGE 10

appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.