

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Review of 2026-2035 Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Power & Light Company.

DOCKET NO.: 20250014-EI

In re: Review of 2026-2035 Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC.

DOCKET NO.: 20250015-EI

In re: Review of 2026-2035 Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Tampa Electric Company.

DOCKET NO.: 20250016-EI

In re: Review of 2026-2035 Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Public Utilities Company.

DOCKET NO.: 20250017-EI

FILED: April 28, 2025

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

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), pursuant to Florida Public Service Commission (Commission) Order Establishing Procedure, PSC-2025-0029-PCO-EI, issued January 24, 2025, hereby submit this Prehearing Statement.

**APPEARANCES:**

Walt Trierweiler  
Public Counsel

Charles Rehwinkel  
Deputy Public Counsel

Office of Public Counsel  
c/o The Florida Legislature  
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Attorneys for the Citizens of the State of Florida

**1. WITNESSES:**

<b>Witness</b>	<b>Subject</b>	<b>Issue Numbers</b>
Kevin Mara	Appropriateness of the Storm Protection Plans and the proposed spending levels.	FPL 1*; DEF 1, 2, Contested A & B; TEC 1-3; FPUC 1,2.

\*All issues for FPL are stipulated, subject to Commission approval.

**2. FPL EXHIBITS:**

<b>Witness</b>	<b>Proffered By</b>	<b>Exhibit No.</b>	<b>Description</b>	<b>Issue Numbers</b>
Kevin Mara	OPC	KJM-1	Curriculum Vitae	All
Kevin Mara	OPC	KJM-2	DEF's Response to Staff's Interrogatory No. 7	1
Kevin Mara	OPC	KJM-3	Staff's First Set of Interrogatories Interrogatory No. 16	1
Kevin Mara	OPC	KJM-4	Excerpt from FPL Response to OPC's First Request for Production of Documents Nos. 3-4	1

**3. DEF EXHIBITS:**

<b>Witness</b>	<b>Proffered By</b>	<b>Exhibit No.</b>	<b>Description</b>	<b>Issue Numbers</b>
Kevin Mara	OPC	KJM-1	Curriculum Vitae	All
Kevin Mara	OPC	KJM-2	FPL's Response to OPC's First Set of Interrogatories No. 25	Contested Issue A
Kevin Mara	OPC	KJM-3	Excerpt of TECO Exhibit KEP-1, Appendix 2, pages 57-58	Contested Issue A
Kevin Mara	OPC	KJM-4	Excerpt from FPL Response to OPC's First Request for Production of Documents Nos. 3-4	Contested Issue A

**4. TECO EXHIBITS:**

<b>Witness</b>	<b>Proffered By</b>	<b>Exhibit No.</b>	<b>Description</b>	<b>Issue Numbers</b>
Kevin Mara	OPC	KJM-1	Curriculum Vitae	All
Kevin Mara	OPC	KJM-2	TECO's Response to Staff's First Set of Interrogatories No. 1	1
Kevin Mara	OPC	KJM-3	TECO's Response to Staff's First Set of Interrogatories No. 2	2

**4. FPUC EXHIBITS:**

<b>Witness</b>	<b>Proffered By</b>	<b>Exhibit No.</b>	<b>Description</b>	<b>Issue Numbers</b>
Kevin Mara	OPC	KJM-1	Curriculum Vitae	All
Kevin Mara	OPC	KJM-2	FPUC's Response to OPCs' First Det of Interrogatories, No. 10a	1
Kevin Mara	OPC	KJM-3	FPUC's Response to OPCs' First Det of Interrogatories, No. 10b	1
Kevin Mara	OPC	KJM-4	FPUC's Response to OPCs' First Det of Interrogatories, Nos. 10f, g and h	1
Kevin Mara	OPC	KJM-5	FPUC's Response to OPCs' First Det of Interrogatories, No. 11	1

**5. STATEMENT OF BASIC POSITION:**

The 2025 SPP process has been an unusual one. The OPC was surprised by an unannounced move of the beginning of the filing process from the second week of April to the second week of January. The Companies were told about this obviously because they had to prepare their plans and testimony for filing by the January filing date. The OPC was notified of this move on or about January 8, 2025. These circumstances required the OPC to literally scramble

to engage an expert witness and put him under contract. The Commission did make some accommodation to move the hearing times and testimony deadlines out by two weeks. This was appreciated but the advantage was largely lost due to our expert's – totally unaware of the significant move in the schedule – being out of pocket on other business matters, resulting in his unavailability to complete the contracting process. The OPC also has appreciated the fact that the companies have all cooperated in facilitating discovery and deposition availability.

This background is provided not as a complaint about water-over-the-dam, but as a predicate to the nature of the OPC's inquiry and positions taken here and in testimony. The Legislature has directed that the Commission to make its decision on each Company's filing within 180 days. In this case it means a decision is required by July 14, 2025. In order to provide the Public Counsel and other intervenors an opportunity for hearing, the Commission has a very difficult scheduling task that allows limited discovery – two written rounds and a brief deposition window on company direct and a single round with a deposition window on rebuttal. Each company has to manage its own filing and case; the OPC has to manage four cases simultaneously. This is not a complaint. The Legislature has directed the timeline and the Commission, companies and intervenors have cooperatively managed this process successfully.

One point to be made in this predicate is that there are specific criteria that the Legislature has entrusted and empowered the Commission with determining by rule. Among these is the establishment of information it needs to make the findings and determinations mandated by law. The Commission has accordingly required that information to be filed ***on day one*** of the 180-day statutory clock-driven process. The rule does not contemplate or allow the mandatory supporting information to be submitted through discovery responses, supplemental filings or rebuttal testimony. Late-filed, information filings that should have been made on the mandatory "day one" in this docket have nevertheless occurred.

In the company-specific sections the OPC will address the instances where information was not provided and the recommended impact on the proposed SPP. While not attempting to elevate form over substance, the Public Counsel is concerned that if the agency does not nip this practice in the bud and send a strong signal that, because of the required very tight schedule for four simultaneously considered plans, the filing requirements should be and will be strictly enforced and the pre-approved spending proposed in the SPP will be denied where the required

information is not filed on day one. Otherwise, it may create the impression that what the Legislature envisioned to be an intense, yet robust, triennial review of billions of dollars of spending, is only a rote and superficial one.

The OPC has made some specific recommendations for disallowances for proposed aspects of the Company SPPs. The OPC's basic positions by specific company are as follows:

#### **Florida Power & Light ("FPL")**

The OPC and FPL have stipulated to modify FPL's 2026-2035 SPP as set out in the Stipulation filed in this docket on April 25, 2025 and incorporated herein as Attachment A.

#### **Duke Energy Florida ("DEF")**

The OPC recommends that the new Insulator Upgrade program be excluded from the SPP for non-compliance with the filing requirements and that the Tower Upgrade program be excluded from the SPP because this program is a like-for-like replacement. DEF is alone in including the cost of lattice tower replacement in their respective SPP. The OPC recommends that the Overhead Ground Wire Upgrade program be excluded from the SPP because this program is simply replacing old overhead ground wire with another conductor that serves the same purpose without any increase in performance of the transmission line during extreme weather events. It is a base rate program. In addition to making these sub-program-specific modifications, the Commission should consider whether to slow down the pace of the deployment of the SPP under the authority granted to them to modify the proposed plan under Section 366.96(5), Florida Statutes, and the decision in *Citizens of the State of Fla. v. Fay*. The OPC specifically recommends a reduction in the pace of the proposed DEF SPP which results in a reduction of 3.9% in the jurisdictional revenue requirements and therefore provides some level of rate relief for customers.

#### **Tampa Electric Company ("TEC")**

The OPC recommends that the Distribution Storm Surge Hardening program be excluded from the SPP for non-compliance with the filing requirements and that the Transmission Switch Hardening program be excluded from the SPP for non-compliance with the filing requirements. In addition to making these program-specific modifications, the Commission should consider whether to slow down the pace of the deployment of the proposed TEC SPP under the authority

granted to them to modify the proposed plan under Section 366.96(5), Florida Statutes, and the decision in *Citizens of the State of Fla. v. Fay*.

### **Florida Public Utilities (“FPUC”)**

The OPC recommends that the Distribution Connectivity and Automation Program should be excluded from the SPP due to redundancy and for non-compliance with the filing requirements. In addition to making the recommended program-specific modification, the Commission should consider whether to slow down the pace of the deployment of the proposed FPUC SPP under the authority granted to them to modify the proposed plan under Section 366.96(5), Florida Statutes, and the decision in *Citizens of the State of Fla. v. Fay*.

### **Contested Issues**

The OPC has raised issues with whether the Tower Upgrade Sub-Program and Overhead Wire Upgrade (OHGW) Sub-Program activities proposed by DEF for SPP approval and future SPPCRC cost recovery that do not comply with the statute or Commission rule. The Commission should consider the discrete testimony by the OPC and the company on these issues and decide them separately based on an individual analysis by its professional staff. The OPC further supports the legal issue C, raised by DEF the inclusion of which is essential to its position that it does not oppose inclusion of the OPC Contested Issues A & B.

**Terminology:** As used herein, Section 366.96, Florida Statutes shall be referred to as the “SPP Statute” and Rule 25-6.030, Florida Administrative Code shall be referred to as the “SPP Rule.”

## **6. STATEMENT OF FACTUAL ISSUES AND POSITIONS:**

### **COMPANY SPECIFIC ISSUES:**

#### **20250014-EI (FPL)**

**ISSUE 1:** Should the Commission approve, approve with modification, or deny FPL’s Storm Protection Plan?

**OPC Position:** Pursuant to the stipulation entered into by FPL and the OPC on April 24, 2025 the OPC supports approval of the FPL SPP, as modified by the stipulation.

**ISSUE 2:** Should this docket be closed? (FPL)

**OPC Position:** Pursuant to the stipulation entered into by FPL and the OPC on April 24, 2025, the OPC supports approval of the FPL SPP as modified by the stipulation and accordingly the closure of this docket.

**20250015-EI (DEF)**

**ISSUE 1:** Should the proposed Insulator Upgrade Sub-Program be included in DEF's proposed 2026-2035 SPP?

**OPC Position** No. The proposed Insulator Upgrade Sub-Program does not qualify for recovery under the SPP Statute or SPP Rule. The OPC recommends that the new Insulator Upgrade program be excluded from the SPP for non-compliance with the filing requirements. (Mara)

**ISSUE 2:** Should the Commission approve, approve with modification, or deny DEF's Storm Protection Plan?

**OPC Position:** The OPC recommends that the proposed new Insulator Upgrade program be excluded from the proposed SPP for non-compliance with the filing requirements and that Tower Upgrade program be excluded from the proposed SPP because this program is a like-for-like replacement. DEF is alone in including the cost of lattice tower replacement in their respective SPP. The OPC recommends that the Overhead Ground Wire Upgrade program be excluded from the SPP because this program is simply replacing old overhead

ground wire with another conductor that serves the same purpose without any increase in performance of the transmission line during extreme weather events. It is a base rate program. In addition to making the modification to exclude the proposed Distribution Connectivity and Automation Program, the Commission should consider whether to slow down the pace of the deployment of the SPP under the authority granted to them to modify the proposed plan under Section 366.96(5), Florida Statutes, and the decision in *Citizens of the State of Fla. v. Fay*. Specifically, the OPC recommends a reduction in the pace of the proposed SPP which results in a reduction of 3.9% in the jurisdictional revenue requirements and therefore provides some level of rate relief for customers. (Mara).

**ISSUE 3:** Should this docket be closed?

**OPC Position:** No Position at this time.

#### **DEF-SPECIFIC CONTESTED ISSUES**

**OPC A:** Has the scope of the Tower Upgrade Sub-Program been modified since it was approved in Docket No. 20220050-EI, and if so, what action, if any, should the Commission take with respect to the scope of the Tower Upgrade subprogram included in DEF's proposed 2026-2035 SPP?

**Position:** Yes. The Commission should not approve any aspect of the sub-program that is new in substance or scope that does not comply with the SPP statute or SPP Rule. (Mara).

**OPC B:** Has the scope of the Overhead Wire Upgrade (OHGW) Sub-Program been modified since it was approved in Docket No. 20220050-EI, and if so, what action, if any, should the Commission take with respect to the scope of the OHGW subprogram included in DEF's proposed 2026-2035 SPP?



**Position:** Yes. The Commission should not approve any aspect of the sub-program that is new in substance or scope that does not comply with the SPP statute or SPP Rule. (Mara).

**OPC C:** What is the preclusive effect, if any, of the prior litigation in Docket No. 20220050-EI and resulting orders, Commission Order No. PSC-2022-0388-EI and *Citizens of the State of Fla. v. Fay*, 395 So. 3d 549 (Fla. 2024), on the OPC's right to challenge previously approved subprograms in this docket?

**Position:** The cited authorities do not preclude the Commission from taking action to exclude proposed spending for previously considered programs or sub-programs that have changed in scope or are otherwise different from what the Commission previously considered and approved

### **20250016-EI (TECO)**

**ISSUE 1:** Should the proposed Distribution Storm Surge Hardening Program be included in TECO's proposed 2026-2035 SPP?

**OPC Position:** No. The Distribution Storm Surge Hardening program should be excluded from the SPP for non-compliance with the filing requirements and that the Transmission Switch Hardening program be excluded from the SPP for non-compliance with the filing requirements.(Mara)

**ISSUE 2:** Should the proposed Transmission Switch Hardening Program be included in TECO's proposed 2026-2035 SPP?

**OPC Position:** The Transmission Switch Hardening program should be excluded from the SPP for non-compliance with the filing requirements. (Mara)

**ISSUE 3:** Should the Commission approve, approve with modification, or deny TECO's Storm Protection Plan?

**OPC Position:** In addition to making the modification to exclude the Distribution Storm Surge Hardening Program Transmission Switch Program, the Commission should consider whether to slow down the pace of the deployment of the SPP under the authority granted to them to modify the proposed plan under Section 366.96(5), Florida Statutes, and the decision in *Citizens cf the State cf Fla. v. Fay*.

**ISSUE 4:** Should this docket be closed?

**OPC Position:** No Position at this time.

#### **20250017-EI (FPUC)**

**ISSUE 1:** Should the proposed Distribution Connectivity and Automation Program be included in FPUC's proposed 2026-2035 SPP?

**OPC Position:** The OPC recommends that the Distribution Connectivity and Automation Program should be excluded from the SPP due to redundancy and for non-compliance with the filing requirements. (Mara)

**ISSUE 2:** Should the Commission approve, approve with modification, or deny FPUC's Storm Protection Plan?

**OPC Position:** In addition to making the modification to exclude the proposed Distribution Connectivity and Automation Program, the Commission should consider whether to slow down the pace of the deployment of the SPP under the authority granted to them to modify the proposed plan under Section 366.96(5), Florida Statutes, and the decision in *Citizens cf the State cf Fla. v. Fay*.

**ISSUE 3:** Should this docket be closed?

**OPC Position:** No Position at this time.

**7. STIPULATED ISSUES**

The OPC and FPL have reached a stipulation that, if approved, will resolve Issues 1 & 2 in Docket No. 20250014-EI. The OPC is not aware of any stipulated issues in the other dockets.

**8. PENDING MOTIONS**

The OPC is not aware of any formal motions to be disposed of at this time. There is pending a request to resolve the Contested Issues A-C in Docket No. 20250015-EI.

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

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

**9. 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.

**10. SEQUESTRATION OF WITNESSES**

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

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

OPC is unaware of any aspect of the Order Establishing Procedure in this docket with which it cannot comply.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**  
**DOCKET NOS. 20250014-EI, 20250015-EI,**  
**20250016-EI, and 20250017-EI**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 28<sup>th</sup> day of April, 2025, to the following:

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