

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO. 20230010-EI
ORDER NO. PSC-2023-0090-PCO-EI
ISSUED: February 15, 2023

ORDER ESTABLISHING PROCEDURE

I. Case Background

The 2019 Florida Legislature enacted Section 366.96, Florida Statutes (F.S.), entitled “Storm protection plan cost recovery.” Section 366.96(3), F.S., established a new requirement that each public utility file a transmission and distribution storm protection plan (SPP) covering the immediate 10-year planning period, and explaining the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. Pursuant to Sections 366.96(5) and 366.96(6), F.S., the Florida Public Service Commission (Commission) is required every three years to determine whether it is in the public interest to approve, approve with modification, or deny each utility’s SPP.

In addition to reviewing SPPs at least every three years, the Commission must conduct an annual proceeding pursuant to Section 366.96(7), F.S., to determine a utility’s prudently incurred transmission and distribution storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause (SPPCRC). The annual SPPCRC proceeding is a rolling three-year review that includes a true-up of costs for the prior year, the calculation of actual/estimated costs for the year of the filing, and projected factors for the following year. If the Commission determines that costs were prudently incurred, those costs will not be subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility.

A. The 2020 SPP and SPPCRC Dockets

On March 3, 2020, the Commission opened separate dockets for review of the initial SPPs for the following investor-owned electric utilities (IOUs):

<u>Utility</u>	<u>Docket No.</u>
Florida Power & Light Company (FPL)	20200071-EI
Gulf Power Company (Gulf)	20200070-EI
Tampa Electric Company (TECO)	20200067-EI
Duke Energy Florida, LLC (DEF)	20200069-EI
Florida Public Utilities Company (FPUC)	20200068-EI

On March 13, 2020, the Commission opened Docket No. 20200092-EI as the companion cost recovery clause (CRC) docket to the above SPP dockets. The Office of Public Counsel (OPC), Walmart, the Florida Industrial Power Users Group (FIPUG), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (White Springs), each filed for, and were granted intervention in Docket No. 20200092-EI. Several of these same entities also intervened as parties in the individual SPP dockets.

FPL, Gulf, TECO, and DEF entered into a series of settlement agreements with the intervening parties that resolved all disputed issues in those utilities' individual SPP dockets and the companion SPPCRC docket to the extent it impacted those utilities.¹ In the settlements, the various parties represented and agreed that the SPPs proposed by the four utilities were in the public interest and that implementation of identified programs was not evidence of imprudence. The parties also agreed as part of these settlements that FPL, Gulf, TECO, and DEF would file updated SPPs in two years (2022), rather than three (2023). These settlement agreements were approved by the Commission, as reflected in Order No. PSC-2020-0293-AS-EI, issued August 28, 2020.

FPUC did not submit a SPP. Rather, on March 17, 2020, FPUC requested that it be allowed to defer the filing of its first SPP for a period of one year, from April 10, 2020, to April 10, 2021. By Order No. PSC-2020-0097-PCO-EI, issued on April 6, 2020, the Prehearing Officer granted FPUC's request to file its initial SPP in 2021, and further instructed FPUC to submit its updated SPP in 2023. Following Commission approval of the settlement agreements discussed immediately above, FPUC requested and was allowed by Order PSC-2021-0026-CO-EI entered January 10, 2021, to defer the filing of its SPP from April 12, 2021, to April 2022, so that it could remain in alignment with the overall plan update schedule for the other utilities.²

B. The 2021 SPPCRC Dockets

On January 4, 2021, the Commission opened Docket No. 20210010-EI as the first annual SPPCRC proceeding. FPL, Gulf, TECO, DEF, and FPUC were made original parties to this docket.³ Walmart, FIPUG, White Springs, and Nucor Steel Florida, Inc. (Nucor) all subsequently filed for, and were granted leave to intervene in this docket. The Office of Public Counsel filed a notice of intervention, which was acknowledged on July 8, 2021.

The Commission conducted an administrative hearing in Docket No. 20210010-EI on August 3, 2021. The parties waived post-hearing briefs and either took no position or proposed

¹ The parties to TECO's settlement agreement in Docket No. 20200067-EI are OPC, Walmart, and FIPUG. The parties to DEF's settlement agreement in Docket No. 20200069-EI are OPC, Walmart, and White Springs. The parties to the Gulf (Docket No. 20200070-EI) and FPL (Docket No. 20200071-EI) settlement agreements are OPC and Walmart.

² Docket No. 20200228-EI, *In re: Request to modify filing dates set forth in Order PSC-2020-0097-PCO-EI for storm protection plan and first plan update, by Florida Public Utilities Company.*

³ FPUC did not file a petition seeking storm cost recovery and did not actively participate in this docket.

for Commission consideration of Type 2 stipulations⁴ on all issues identified in the Prehearing Order.⁵ The Commission approved all proposed Type 2 stipulations as reasonable and supported by competent, substantial record evidence in the record in Order No. PSC-2021-0324-FOF-EI, issued August 26, 2021. In that Order, the Commission approved SPPCRC true-up amounts for 2020 (TECO only) and 2021 (DEF, FPL & Gulf, TECO), and established SPPCRC projected jurisdictional cost recovery amounts, depreciation amounts, jurisdictional separation factors, and the factors for each rate group for 2022 (DEF, FPL & Gulf, TECO).

C. 2022 SPP/SPPCRC Dockets

The 2022 annual SPPCRC docket was opened January 3, 2022, by Order No. PSC-2022-0010-PCO-EI. TECO, DEF, FIPUG, FPL, White Springs, Nucor, OPC, FPUC, and Walmart each filed a Notice of Intent to Retain Party Status. No additional parties filed for intervention.

On March 9, 2022, pursuant to Sections 366.96(5) and 366.96(6), F.S., and consistent with the terms of the above-referenced settlement agreements,⁶ the Commission opened separate dockets for review of the updated SPPs for TECO, DEF, and FPL, and the initial SPP for FPUC.⁷ On March 17, 2022, the Commission issued an Order Establishing Procedure (OEP) in these dockets.⁸ The OEP consolidated the four dockets for purposes of the evidentiary hearing only. Utility-specific filings would continue to be made in the appropriate individual docket. The OEP also required the utilities to submit their SPPs no later than April 11, 2022.

Pursuant to the direction in the OEP, each utility filed its proposed SPP in its individual docket. TECO filed a proposed SPP covering the period 2022-2031. FIPUG, OPC, and Walmart were granted intervention in that docket. FPUC filed its first proposed SPP, which covers the period 2022-2031. OPC was granted intervention in that docket. DEF filed its proposed SPP for the period 2023-2032. FIPUG, Nucor, OPC, White Springs, and Walmart were granted intervention in that docket. FPL filed its proposed SPP for the period 2023-2032. FIPUG, OPC, Southern Alliance for Clean Energy (SACE), and Walmart were granted intervention in that docket.

⁴ A Type 2 stipulation occurs on an issue when the utility and the staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the issue and the remaining parties (including staff if they do not join in the agreement) do not object to the Commission relying on the agreed language to resolve that issue in a final order.

⁵ Order No. PSC-2021-0290-PHO-EI, issued July 30, 2021.

⁶ The settlement agreements required these utilities to file updated plans in 2022, consistent with the requirement in section 396.96(6), F.S., that the Commission conduct its review “[a]t least every 3 years.”

⁷ Docket No. 20220048-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Tampa Electric Company*; Docket No. 20220050-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC*; Docket No. 20220051-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Power & Light Company*; Docket No. 20220049-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Public Utilities Company*.

⁸ Order No. PSC-2022-0119-PCO-EI, issued March 17, 2022, in Docket Nos. 20220048-EI, 20220049-EI, 20220050-EI & 20220051-EI.

The consolidated evidentiary hearing for these dockets was held August 2-4, 2022. After full consideration of the record and the parties' post-hearing submissions, the Commission entered separate Final Orders approving, with modifications, each utility's storm protection plan.⁹ On December 15, 2022, OPC filed Notices of Administrative Appeal with the Florida Supreme Court for all four dockets.¹⁰ These appeals remain pending.

The SPPCRC docket continued on its parallel track, while the SPP dockets were readying for and proceeding to hearing. In April 2022, FPL, DEF, and TECO filed their petitions in the SPPCRC docket for approval of prior year (January through December 2021) actual true-up. In May 2022, all four utilities filed their petitions for approval of current year (January through December 2022) actual/estimated true-up and projected 2023 cost recovery factors. TECO and FPUC revised certain submissions with subsequent filings in August 2022.

Because the Commission approved the updated SPPs of TECO and FPL with modifications, those two utilities were required to make corresponding modifications to their original cost recovery requests.¹¹ Accordingly, on October 14, 2022, TECO and FPL each filed an amended petition and supplemental testimony in the SPPCRC docket to align their cost recovery requests with the modifications to their updated SPPs made by the Commission.

An evidentiary hearing in the SPPCRC docket was held November 17, 2022. The parties elected to present closing arguments in lieu of briefs. At the conclusion of the parties' closing arguments, staff presented a recommendation on each of the issues. The Commission subsequently entered Final Order Approving Storm Cost Recovery Amounts and Related Tariffs and Establishing Storm Cost Recovery Factors for the Period January 2023 Through December 2023, Order No. PSC-2022-0418-FOF-EI. On December 20, 2022, OPC filed a Notice of Administrative Appeal of this Final Order with the Florida Supreme Court.¹² This appeal remains pending.

⁹ Order No. PSC-2022-0386A-FOF-EI, issued December 1, 2022, in Docket No. 20220048-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Tampa Electric Company*; Order No. PSC-2022-0387-FOF-EI, issued November 10, 2023, in Docket No. 20220049-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Public Utilities Company*; Order No. PSC-2022-0388A-FOF-EI, issued November 14, 2022, in Docket No. 20220050-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC*; and Order No. PSC-2022-0389-FOF-EI, issued November 10, 2022, in Docket No. 20220051-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Power & Light Company*.

¹⁰ Case Nos. SC22-1733 (FPL), SC22-1735 (DEF), SC22-1745 (FPUC) & SC22-1748 (TECO).

¹¹ "If the Commission approves the utility's Storm Protection Plan with modifications, the utility shall, within 15 business days, file an amended cost recovery petition and supporting testimony reflecting the modifications." Rule 25-6.031(2). F.A.C.

¹² Case No. SC22-1777.

D. Authority

This docket has been opened under the authority of Sections 366.96(5), 366.96(6), and 366.96(7), F.S., for the Commission to establish the amount of prudently incurred costs each utility shall be allowed to recover through the SPPCRC and the specific terms of that recovery.

This matter has been scheduled for an evidentiary hearing August 22-24, 2023.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

II. General Filing Procedures

Filings pertaining to this docket must comply with Rule 28-106.104, F.A.C. Filing may be accomplished electronically as provided in the Commission's Statement of Agency Organization and Operation and the E-Filing Requirements link, posted on our website, www.floridapsc.com. If filing via mail, hand delivery, or courier service, the filing should be addressed to:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The Commission strongly encourages electronic filing, which is available from the Commission's Home Page under the Clerk's Office menu and Electronic Filing web form. The filing party is responsible for ensuring that no information protected by privacy or confidentiality laws is contained in any electronic document. To the extent possible, when making an electronic filing, an electronic copy of all filings shall also be provided to parties and Commission staff in Microsoft Word format and all schedules shall be provided in Microsoft Excel format with formulas intact and unlocked.

III. Tentative List of Issues

A list of the issues identified thus far in this proceeding is attached hereto as Appendix A. The scope of this proceeding will be based upon these issues as well as other issues raised by the parties up to and during the Prehearing Conference, unless modified by the Commission.

IV. Prefiled Testimony and Exhibits

Each party shall file all testimony and exhibits that it intends to sponsor, pursuant to the schedule set forth in Section IX of this Order. Testimony and exhibits may be filed electronically. If filing paper copies, an original and 15 copies of all testimony and exhibits shall

be filed with the Office of Commission Clerk by 5:00 p.m. on the date due. A copy of all prefiled testimony and exhibits shall be served electronically or by regular mail, overnight mail, or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

The dimensions of each page of testimony shall be 8 ½ x 11 inches. Each page shall be consecutively numbered and double spaced, with 25 numbered lines per page and left margins of at least 1.25 inches. If filing paper copies of the testimony, all pages shall be filed on white, unglossed, three-holed paper and shall be unbound and without tabs.

Each exhibit sponsored by a witness in support of his or her prefiled testimony shall be:

- (1) Attached to that witness' testimony when filed;
- (2) If filing paper copies, on three-holed paper, unbound, and without tabs;
- (3) Sequentially numbered beginning with 1 (any exhibits attached to subsequently filed testimony of the same witness shall continue the sequential numbering system);
- (4) Identified in the upper right-hand corner of each page by the docket number, a brief title, and the witness' initials followed by the exhibit's number; and
- (5) Paginated by showing in the upper right-hand corner of each page the page number followed by the total number of pages in the exhibit.

An example of the information to appear in the upper right-hand corner of the exhibit is as follows:

Docket No. 20012345-EI
Foreign Coal Shipments to Port of Tampa
Exhibit BLW-1, Page 1 of 2

After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing.

V. Discovery Procedures

A. General Requirements

Discovery shall be conducted in accordance with the provisions of Chapter 120, Florida Statutes (F.S.), and the relevant provisions of Chapter 366, F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Discovery shall be completed by August 4, 2023.

- (2) Discovery requests and responses shall be served by e-mail, hand delivery, or overnight mail, and electronic service is encouraged. Discovery served via e-mail shall be limited to 5 MB per attachment, shall indicate how many e-mails are being sent related to the discovery (such as 1 of 6 e-mails), and shall be numbered sequentially. Documents provided in response to a document request may be provided via a CD, DVD, or flash drive if not served electronically.
- (3) Each electronic discovery response shall be given a separate electronic file name that is no longer than 60 characters.
- (4) Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery shall be numbered sequentially in order to facilitate identification.
- (5) Within each set, discovery requests shall be numbered sequentially, and any discovery requests in subsequent sets shall continue the sequential numbering system.
- (6) For discovery requests made prior to the filing of the utility's rebuttal testimony, discovery responses shall be served within 30 days (inclusive of mailing) of receipt of the discovery request. For discovery requests related to matters addressed in the utility's rebuttal testimony, discovery responses shall be served within seven days of receipt of the discovery request.
- (7) Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties should number produced documents in an unbroken sequence through the final hearing.
- (8) Copies, whether hard copies or electronic, of discovery requests and responses shall be served on all parties and Commission staff. In addition, copies of all responses to requests for production of documents shall be provided to the Commission staff at its Tallahassee office unless otherwise agreed.
- (9) Parties shall file in the Commission Clerk's Office a notice of service of any interrogatories or requests for production of documents propounded and associated responses in this docket, giving the date of service and the name of the party to whom the discovery was directed.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Interrogatories, including all subparts, shall be limited to 300.
- (2) Requests for production of documents, including all subparts, shall be limited to 300.
- (3) Requests for admissions, including all subparts, shall be limited to 100.

When a discovery request is served and the respondent intends to seek clarification of any portion of the discovery request, the respondent shall request such clarification within seven days of service of the discovery request. For discovery requests served after the date for rebuttal testimony, such clarification must be requested within three days. This procedure is intended to reduce delay in resolving discovery disputes.

B. Confidential Information Provided Pursuant to Discovery

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and 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.

Redacted versions of confidential filings may be served electronically, but in no instance may confidential information be electronically submitted. If the redacted version is served electronically, the confidential information (which may be on a CD, DVD, or flash drive) shall be filed with the Commission Clerk via hand-delivery, U.S. Mail, or overnight mail on the day that the redacted version was served via e-mail.

When a person provides information that it maintains as proprietary confidential business information to the Office of Public Counsel pursuant to a discovery request by the Office of Public Counsel or any other party, that party may request a temporary protective order pursuant to Rule 25-22.006(6)(c), F.A.C., exempting the information from Section 119.07(1), F.S.

When a party other than the Commission staff or the Office of Public Counsel requests information through discovery that the respondent maintains as proprietary confidential business information, or when such a party would otherwise be entitled to copies of such information requested by other parties through discovery (e.g., interrogatory responses), that party and respondent shall endeavor in good faith to reach agreement that will allow for the exchange of such information on reasonable terms, as set forth in Rule 25-22.006(7)(b), F.A.C.

VI. Prehearing Procedures

A. Prehearing Statements

All parties in this docket and the Commission staff shall file a Prehearing Statement pursuant to the schedule set forth in Section IX of this Order. Each Prehearing Statement shall be filed with the Office of Commission Clerk by 5:00 p.m. on the date due. A copy, whether paper or electronic, of the Prehearing Statement shall be served on all other parties and staff no later than the date it is filed with the Commission.

Each party's Prehearing Statement shall set forth the following information in the sequence listed below:

- (1) The name of all known witnesses whose testimony has been prefiled or who may be called by the party, along with subject matter of each such witness' testimony and the corresponding issue numbers in the following format:

All Known Witnesses:

Witness	Subject Matter	Issue #
Direct		
John Smith	Subject . . .	1, 3-5

- (2) A description of all prefiled exhibits and other exhibits that may be used by the party in presenting its direct case (including individual components of a composite exhibit) and the witness sponsoring each in the following format:

All Known Exhibits:

Witness	Proffered By	Exhibit No.	Description	Issue #
Direct				
John Smith	Party/Utility Name	ABC-1	Title	1, 3-5

- (3) A statement of the party's basic position in the proceeding;
- (4) A statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party's position on each issue, and, where applicable, the names of the party's witness(es) who will address each issue. Parties who wish to maintain "no position at this time" on any particular issue or issues should refer to the requirements of subsection C, below;
- (5) A statement of issues to which the parties have stipulated;
- (6) A statement of all pending motions or other matters the party seeks action upon;
- (7) A statement identifying the party's pending requests or claims for confidentiality;
- (8) Any objections to a witness' qualifications as an expert. The objection shall identify each witness the party wishes to voir dire as well as state with specificity the portions of that witness's prefiled testimony, by page and line number, and/or exhibits, by page and line number, to which the party objects. Failure to specifically identify the portions of the prefiled testimony or exhibits to which the party objects will result in restriction of a party's ability to conduct voir dire absent a showing of good cause at the time the witness is offered for cross-examination at hearing;

- (9) A request for sequestration of witnesses, so any such request may be resolved by the Prehearing Officer prior to the hearing. Failure to make such a request shall constitute a waiver of the right to request sequestration of witnesses absent a showing of good cause; and
- (10) A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Failure of a party to timely file a Prehearing Statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position on each such issue.

B. Attendance at Prehearing Conference

Pursuant to Rule 28-106.209, F.A.C., a Prehearing Conference will be held August 8, 2023, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Unless excused by the Prehearing Officer for good cause shown, each party (or designated representative) shall personally appear at the Prehearing Conference. Failure of a party (or that party's representative) to appear shall constitute waiver of that party's issues and positions, and that party may be dismissed from the proceeding.

C. Waiver of Issues

Any issue not raised by a party either before or during the Prehearing Conference shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the Prehearing Conference shall address each of the following:

- (1) Whether the party was unable to identify the issue because of the complexity of the matter;
- (2) Whether discovery or other prehearing procedures were not adequate to fully develop the issue;
- (3) Whether due diligence was exercised to obtain facts touching on the issue;
- (4) Whether information obtained subsequent to the Prehearing Conference was not previously available to enable the party to identify the issue; and
- (5) Whether introduction of the issue would not be to the prejudice or surprise of any party.

Specific reference shall be made to the information received and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall take a position on each issue by the time of the Prehearing Conference or by such later time as may be permitted by the Prehearing Officer. If a party is unable through diligence and good faith efforts to take a position on a matter at issue for that party, it shall explicitly state in its Prehearing Statement why it cannot take a position. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not

prejudice other parties or confuse the proceeding, the party may maintain “no position at this time” prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue, and the party’s position shall be shown as “no position” in the Prehearing Order. A party who takes no position on an issue by the time of the Prehearing Conference, or by such later time as may be permitted by the Prehearing Officer, waives its opportunity to conduct cross-examination on the issue as well as file a post-hearing brief on the issue. Commission staff may take “no position at this time” or a similar position on any issue without having to make the showing described above and without waiver of cross-examination.

D. Motions to Strike Prefiled Testimony and Exhibits

Motions to strike any portion of the prefiled testimony and related portions of exhibits of any witness shall be made in writing no later than July 28, 2023, and identify with specificity the page and line numbers of the information to be stricken. Motions to strike any portion of prefiled testimony and related portions of exhibits at hearing shall be considered untimely, absent good cause shown.

E. Demonstrative Exhibits

If a party wishes to use a demonstrative exhibit or other demonstrative tools at hearing, such materials must be identified by the time of the Prehearing Conference.

F. Official Recognition

Parties seeking official recognition of materials pursuant to Section 120.569(2)(i), F.S., shall notify all other parties and Commission staff in writing no later than two business days prior to the first scheduled hearing date. Such notification shall identify all materials for which the party seeks official recognition, and such materials shall be provided along with the notification.

G. Use of Depositions at Hearing

Absent agreement by all parties concerning the introduction of depositions into the record at the hearing, any party wishing to introduce all or part of a deposition at hearing for any purpose other than impeachment, must file a Notice of Intent to Use Deposition no later than the last day to conduct discovery in this docket as set forth in Section *IX* of this Order. The Notice shall include the following information for each deposition:

- (1) Name of witness deposed;
- (2) Date deposition was taken; and
- (3) Page and line numbers of each deposition the party seeks to introduce, when available.

Objection(s) to the entry into the record of a deposition or portion thereof at hearing for purposes other than impeachment must be made in writing within three days of filing a Notice of Intent to use Deposition for resolution by the Prehearing Officer.

VII. Hearing Procedures

A. Attendance at Hearing

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date of the following:

- (1) All parties agree that the witness will not be needed for cross examination.
- (2) All Commissioners assigned to the panel do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness's testimony.

B. Cross-Examination

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.

During cross-examination, if a witness (or their counsel) responds (or objects) to a relevant question by referring the question to another party witness, the counsel who is sponsoring the current witness shall confirm the identity of the appropriate party witness who can more fully address the question.

Each party shall be required to provide by a time certain and in a manner to be announced at a later date, all exhibits (whether for substantive, corroborative, impeachment, or rebuttal purposes, including deposition transcripts that may be used for impeachment) reasonably expected or intended to be offered at the hearing.

C. Use of Confidential Information at Hearing

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 at the hearing any proprietary confidential business information, as that term is defined in Section 366.093, F.S., 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. 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 information is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidentiality 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.

VIII. Post-Hearing Procedures

If the Commission (or assigned panel) does not render a bench decision at the hearing, it may allow each party to file a post-hearing statement of issues and positions pursuant to the schedule set forth in Section IX of this Order. In such event, a summary of each position of no more than 75 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the Prehearing Order, the post-hearing statement may simply restate the prehearing position. However, the position must be reduced to no more than 75 words. If a post-hearing statement is required and a party fails to file in conformance with Rule 28-106.215, F.A.C., that party shall have waived all issues and may be dismissed from the proceeding.

Further, pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time, unless modified by the Presiding Officer.

IX. Controlling Dates

The following dates have been established to govern the key activities of this case:

- | | | |
|------|--|--------------------|
| (1) | Utilities' Prior Year True-up Filings | April 3, 2023 |
| (2) | Utilities' Current Year True-Up & Projection Filings | May 1, 2023 |
| (3) | Utilities' Subsequent Year Projection Filings | May 1, 2023 |
| (4) | Intervenors' Testimony and Exhibits | June 23, 2023 |
| (5) | Staff Testimony and Exhibits | June 30, 2023 |
| (6) | Rebuttal Testimony and Exhibits | July 14, 2023 |
| (7) | Prehearing Statements | July 21, 2023 |
| (8) | Discovery Deadline | August 4, 2023 |
| (9) | Prehearing Conference | August 8, 2023 |
| (10) | Hearing | August 22-24, 2023 |
| (11) | Briefs | September 20, 2023 |

In addition, all parties should be on notice that the Prehearing Officer may exercise the discretion to schedule additional Prehearing Conferences or meetings of the parties as deemed appropriate. Such meetings will be properly noticed to afford the parties an opportunity to attend.

Based upon the foregoing, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 15th day of February, 2023.



Mike La Rosa
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

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

APPENDIX A

GENERIC STORM PROTECTION PLAN COST RECOVERY ISSUES

- ISSUE 1:** What jurisdictional amounts should the Commission approve as the Utilities' final 2022 prudently incurred costs and final true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?
- ISSUE 2:** What jurisdictional amounts should the Commission approve as the Utilities' reasonably estimated 2023 costs and estimated true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?
- ISSUE 3:** What jurisdictional amounts should the Commission approve as the Utilities' reasonably projected 2024 costs and projected revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?
- ISSUE 4:** What are the Storm Protection Plan Cost Recovery Clause total jurisdictional cost recovery amounts, including true-ups, to be included in establishing Storm Protection Plan Cost Recovery factors for 2024?
- ISSUE 5:** What depreciation rates should be used to develop the depreciation expense included in the total Storm Protection Plan Cost Recovery Clause amounts for 2024?
- ISSUE 6:** What are the appropriate jurisdictional separation factors for 2024?
- ISSUE 7:** What are the appropriate Storm Protection Plan Cost Recovery Clause factors for 2024 for each rate class?
- ISSUE 8:** What should be the effective date of the new Storm Protection Plan Cost Recovery Clause factors for billing purposes?
- ISSUE 9:** Should the Commission approve revised tariffs reflecting the new Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding?
- ISSUE 10:** Should this docket be closed?

COMPANY-SPECIFIC STORM PROTECTION PLAN COST RECOVERY ISSUES

These issues will be added as they are developed.