

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO. 20230010-EI
ORDER NO. PSC-2023-0281-PHO-EI
ISSUED: September 8, 2023

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 August 24, 2023, in Tallahassee, Florida, before Commissioner Mike La Rosa, as Prehearing Officer.

APPEARANCES:

J. JEFFRY WAHLEN, MALCOLM MEANS, and VIRGINIA PONDER, ESQUIRES, Ausley Law Firm, Post Office Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO).

BETH KEATING, ESQUIRE, Gunster Law Firm, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301
On behalf of Florida Public Utilities Company (FPUC).

KENNETH A. HOFFMAN, ESQUIRE, 134 West Jefferson Street, Tallahassee, Florida 32301-1713 and CHRISTOPHER T. WRIGHT, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Florida Power & Light (FPL).

MATTHEW R. BERNIER and STEPHANIE A. CUELLO, ESQUIRES, 106 E. College Avenue, Suite 800, Tallahassee, Florida 32301 and DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701
On behalf of Duke Energy Florida, LLC (DEF).

WALTER TRIERWEILER, CHARLES REHWINKEL, MARY WESSLING, and PATRICIA CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399
On behalf of Office Of The Public Counsel (OPC).

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

PETER J. MATTHEIS, MICHAEL K. LAVANGA, and JOSEPH R. BRISCAR, ESQUIRES, Stone Law Firm, 1025 Thomas Jefferson Street NW, Eighth Floor, West Tower, Washington, DC 20007
On behalf of Nucor Steel Florida, Inc. (NUCOR).

JAMES W. BREW and LAURA WYNN BAKER, ESQUIRES, Stone Law Firm, 1025 Thomas Jefferson Street NW, Eighth Floor, West Tower, Washington, DC 20007
On behalf of PCS Phosphate – White Springs (PCS).

SHAW STILLER, ESQUIRE, and DANIEL DOSE, ESQUIRE, 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

The 2019 the 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.

The initial SPPs under Section 366.96, F.S., were filed by Florida Power & Light (FPL)/Gulf Power Company, Tampa Electric Company (TECO), and Duke Energy Florida, LLC (DEF), in 2020. All of the utilities reached settlement agreements with various intervenors

regarding the SPPs prior to final hearing. These settlement agreements were approved by the Commission on August 28, 2020.¹

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,² FPL, TECO, and DEF filed their first updated SPPs for Commission review.³ On that same date, Florida Public Utilities Company (FPUC) submitted its initial SPP⁴ for Commission review. Those four dockets were consolidated for purposes of hearing only and proceeded to final hearing August 2, 2022. On November 10, 2022, the Commission entered four final orders approving, with modifications, each utility's storm protection plan.⁵ On December 15, 2022, OPC filed Notices of Administrative Appeal with the Florida Supreme Court for all four dockets.⁶ These appeals remain pending.

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.

This 2023 annual SPPCRC docket was opened⁷ January 3, 2023, by Order No. PSC-2023-0010-PCO-EI. Tampa Electric Company, Duke Energy Florida, Florida Industrial Power Users

¹ Order No. PSC-2020-0293-AS-EI, issued August 28, 2020, in Docket Nos. 20200067-EI, *In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Tampa Electric Company*; 20200069-EI, *In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC*; 20200070-EI, *In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Gulf Power Company*; 20200071-EI, *In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Florida Power & Light Company*; and 20200092-EI, *In re: Storm Protection Plan cost recovery clause*.

² 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 is to review "[a]t least every 3 years."

³ Docket Nos. 20220051-EI (FPL), 20220050-EI (DEF) & 20220048-EI (TECO).

⁴ On March 17, 2020, FPUC requested that it be allowed to defer the filing of its initial 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. FPUC requested and was allowed by Order PSC-2021-0026-CO-EI entered January 10, 2021, to defer the filing of its initial 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. See 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*.

⁵ 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*.

⁶ Case Nos. SC22-1733 (FPL), SC22-1735 (DEF), SC22-1745 (FPUC) & SC22-1748 (TECO).

⁷ The 2022 SPPCRC docket concluded when the Commission entered Final Order Approving Storm Cost Recovery Amounts and Related Tariffs and Establishing Storm Cost Recovery Factors for the Period January 2023 Through

Group, Florida Power & Light, PCS Phosphate – White Springs, Nucor Steel Florida, Inc., Office of Public Counsel, and Florida Public Utilities Company each filed a Notice of Intent to Retain Party Status. No additional parties filed for intervention.

This matter has been scheduled for an administrative hearing September 12-14, 2023.

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, F.S. This hearing will be governed by Chapters 120 and 366, 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>		
Name	Utility/Staff	
Mark R. Roche ⁸	TECO	1-10
C. David Sweat ⁹	TECO	1-10
Jason Bennett	FPUC	1-9
Mark Cutshaw	FPUC	3
Michael Jarro ¹⁰	FPL	1-4
Richard L. Hume ¹¹	FPL	1-10
Christopher A. Menendez	DEF	1-9
Brian M. Lloyd	DEF	1-3
Robert E. Brong	DEF	1-3
Hymavathi Vedula	STAFF	1
Donna D. Brown	STAFF	1

⁸ Second Revised Direct Testimony, filed July 31, 2023.

⁹ Revised Direct Testimony filed July 21, 2023.

¹⁰ Corrected Direct Testimony filed May 2, 2023.

¹¹ Corrected Direct Testimony filed May 2, 2023.

VII. BASIC POSITIONS

TECO: In Order No. PSC-2022-0386-FOF-EI, issued November 10, 2022, the Commission found that Tampa Electric's 2022-2031 Storm Protection Plan ("2022 SPP") is in the public interest and approved that plan with one modification – elimination of the company's existing Transmission Access Enhancement Program as of December 31, 2022.

The Commission is currently scheduled to conduct a hearing regarding the Storm Protection Cost Recovery Clause on September 12, 2023, to review and approve the proposed cost recovery factors to be used for the January 2024 through December 2024 period.

The Commission should determine that Tampa Electric has properly calculated its Storm Protection Plan cost recovery true-up and projections and the Storm Protection Plan cost recovery factors set forth in the testimony and exhibits of witness Mark R. Roche during the period January 2024 through December 2024. These calculations were performed in accordance with the requirements of Section 366.96 of the Florida Statutes and Rule 25-6.031 of the Florida Administrative Code. While Tampa Electric agreed to make an adjustment to the times tax multiplier at the request of Commission Staff, no party has challenged or made any other recommended adjustments to the company's calculations. The company's true-up, projections, and factors should accordingly be approved. The Commission should also find that Tampa Electric's actual 2022 Storm Protection Plan costs were prudently incurred. No party has challenged the prudence of Tampa Electric's actual incurred costs or made any recommended adjustments to any of the projects or costs included in the 2022 final true-up.

FPUC: The factors proposed by the Company have been developed through projections and calculations made in accordance with Rule 25-6.031, F.A.C., and the associated depreciation expense has been calculated in accordance with the rates approved in the Company's last approved depreciation study. The factors are based upon actual, prudently incurred costs associated with the implementation of those aspects of FPUC's Storm Protection Plan ("SPP") approved by Order No. PSC-2022-0387-FOF-EI, issued November 10, 2022, as well as reasonable estimates of costs to be incurred in the remainder of 2023 and in 2024. In addition, the Company has applied an allocation methodology consistent with the stipulation between FPUC and Walmart approved by Order No. PSC-2022-0418-FOF-EI, issued in last year's SPPCRC proceeding. As such, the Company asks that it be allowed to implement its proposed SPPCRC Factors for the January – December, 2024 period.

FPL: FPL's final true-up of its 2022 SPP costs is consistent with the actual/estimated 2022 SPP costs approved by Commission Order No. PSC-2022-0418-FOF-EI in Docket No. 20220010-EI, consistent with the 2020 SPPs approved by Commission Order No. PSC-2020-0293-AS-EI in Docket Nos. 20200070-EI and 20200071-EI,

applies the methodology and prescribed schedules contained in Commission Forms 1A through 8A, and meets the requirements of Section 366.96, Florida Statutes, and Rule 25-6.031(7)(a), Florida Administrative Code. No parties challenged or made any recommended adjustments to any of the SPP projects, costs, or revenue requirements included in FPL's 2022 SPPCRC final true-up. Therefore, the Commission should approve FPL's net final true-up under-recovery amount of \$5,171,245, including interest, for the period of January 2022 through December 2022.

FPL's actual/estimated true-up of its 2023 SPP costs is consistent with the projected 2023 SPP costs approved by Commission Order No. PSC-2022-0418-FOF-EI in Docket No. 20220010-EI, consistent with the 2023 SPP approved Commission Order No. PSC-2022-0389-FOF-EI in Docket No. 20220051-EI, applies the methodology and prescribed schedules contained in Commission Forms 1E through 8E, and meets the requirements of Section 366.96, Florida Statutes, and Rule 25-6.031(7)(b), Florida Administrative Code. No parties challenged or made any recommended adjustments to any of the SPP projects, costs, or revenue requirements included in FPL's 2023 SPPCRC actual/estimated true-up. Therefore, the Commission should approve FPL's actual/estimated true-up under-recovery amount of \$14,860,970, including interest, for the period of January 2023 through December 2023.

FPL's projected 2024 SPP costs are consistent with the 2023 SPP approved Commission Order No. PSC-2022-0389-FOF-EI in Docket No. 20220051-EI, apply the methodology and prescribed schedules contained in Commission Forms 1P through 7P, and meet the requirements of Section 366.96, Florida Statutes, and Rule 25-6.031(2) and (7)(c), Florida Administrative Code. No parties challenged or made any recommended adjustments to any of the individual 2024 SPP projects or associated costs. Therefore, the Commission should approve FPL's projected recovery amount of \$513,855,741 for the period of January 2024 through December 2024.

For these reasons, as further explained in FPL's direct testimony, the Commission should approve the total jurisdictional revenue requirement of \$533,887,956, including true-up amounts, for recovery through FPL's 2024 SPPCRC Factors for the period of January 2024 through December 2024.

DEF: Not applicable. DEF's positions on specific issues are listed below.

OPC: The Storm Protection Plan Cost Recovery Clause (SPPCRC) is the step in the ratemaking process where the Commission sets the factors necessary for recovery for the annual costs for implementing the Companies' approved Storm Protection Plan (SPP). The process of reviewing and implementing a SPP is an indispensable and necessary step in the ratemaking process within the meaning and intent of Sections 366.06(1) 366.96, Florida Statutes. Section 366.06(1), Florida Statutes,

establishes the Commission's rate-making procedure for public utilities in the State of Florida. Upon application for a change in rates by a utility.

The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and **prudently** invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor.

Id. (emphasis added).

The requirement that the Commission evaluate the prudence of investments in all ratemaking requests before the Commission is embedded in the Commission's legislative mandate. The statute does not specify that the Commission must only consider prudence of investments in base rate cases, cost recovery dockets, or any other specified type of rate-setting case before the Commission. If the Commission is setting rates, it must consider, among other things, the prudence of making the investment at issue (including the decisions behind the timing, amount and locations of the investment(s)), regardless of whether that requirement is explicitly stated in the other provisions of chapter 366, Florida Statutes, or the Commission's rules. Section 366.96, Florida Statutes, sets forth the process for review and approval of and implementation of the prudent costs for the SPP. Furthermore, it is worth noting that section 366.96(2)(c), Florida Statutes defines "transmission and distribution storm protection plan costs" as "the reasonable and prudent costs to implement an approved transmission and distribution storm protection plan."

The positions taken by the Public Counsel in this docket are consistent with and informed by the unresolved statutory interpretation issues currently pending before the Florida Supreme Court in Case No. SC 2022-0173 (consolidated).

FIPUG: The Petitioners must provide sufficient evidence of its expenditures for recovery of approved storm protection costs to carry its burden of proof and establish that its actions and expenditures were consistent with approved Storm Protection Plans, used and useful, and prudent.

NUCOR: Nucor's basic position is that Duke Energy Florida, LLC ("DEF") bears the burden of proof to justify the costs it seeks to recover through the SPPCRC and any other relief DEF requests in this proceeding.

PCS

Phosphate: DEF has filed for recovery of costs of its Storm Protection Plan (“SPP”), which was approved in 2022.¹² DEF’s approved SPPCRC revenue requirement for 2023 was \$148,089,537¹³ and its proposed SPPCRC revenue requirement for 2024 is \$201,270,792, which is a 36% overall revenue requirement increase. According to DEF’s approved Storm Protection Plan, the utility’s 2023 SPP investments are supposed to begin generating substantial system benefits in the form of reduced outage times and restoration costs.¹⁴ The Commission should begin requiring DEF to include in its annual SPPCRC filings an assessment of system benefits realized by program.

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.

VIII. ISSUES AND POSITIONS

ISSUE 1: What amounts should the Commission approve as the Utilities’ final 2022 prudently incurred costs and final jurisdictional revenue requirement true-up amount for the Storm Protection Plan Cost Recovery Clause?

TECO: The Commission should approve final Storm Protection Plan Cost Recovery Clause prudently incurred jurisdictional revenue requirements of \$44,118,287 and a jurisdictional cost recovery true-up over-recovery amount of \$1,278,701 for the period January 2022 through December 2022 including interest. (Roche, Sweat)

FPUC: The final, end of period true up amount to be included in the calculation of the 2024 cost recovery factors is an under-recovery of \$157,305, which reflects the difference between the actual, end of period revenue requirement of \$490,460 based on actual expenditures, and the \$333,155 included in the calculation of the 2023 SPPCRC factors. (Bennett, Cutshaw)

FPL: FPL’s final total SPPCRC cost incurred for 2022 is \$1,292,952,697, which includes a total operations and maintenance (“O&M”) expense of \$95,133,622 (Line 5 of Form 5A of Exhibit RLH-1, p. 5) and a total capital expenditure of \$1,197,819,075 (sum of Line 1a of Form 7A of Exhibit RLH-1, pp. 10-16). FPL’s SPPCRC final jurisdictional revenue requirement true-up for the period January 2022 through

¹² Docket 20220050-EI, *Amended Final Order Approving, With Modifications, Duke Energy Florida’s Storm Protection Plan*, Order No. PSC-2022-0388A-FOF-EI (Nov. 14, 2022) (“2022 SPP Approval Order”).

¹³ See Docket No. 20220010-EI, *Final Order Approving Storm Cost Recovery Amounts and Related Tariffs for the Period January 2023 Through December 2023*, Order No. PSC-2022-0418-FOF-EI (Dec. 12, 2022) at 7.

¹⁴ See 2022 SPP Approval Order.

December 2022, including interest, is an under-recovery of \$5,171,245 (Line 10 of Form 1A of Exhibit RLH-1, p. 1). (Jarro, Hume)

DEF: Investments of \$416,956,141 (System). Over-recovery of \$10,715,993. (Menendez, Lloyd, Brong)

OPC: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake. Section 366.06(1), Florida Statutes, establishes that the Commission evaluate the prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate. For FPL, DEF, and TECO, OPC takes no position on the 2022 factors that are the subject of the 2020 Stipulation and Settlement Agreements approved in Order No. PSC-2020-0293-AS-EI. For FPUC, OPC takes no position on the 2022 factors.

FIPUG: Upon Commission review and application of the legal standards of review for recovery of the costs sought by the Utilities' the Commission should approve less monetary sums than sought by the Utilities'. Agree with OPC regarding the factors for all utilities.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 2: **What amounts should the Commission approve as the Utilities' reasonably estimated 2023 costs and estimated jurisdictional revenue requirement true-up amount for the Storm Protection Plan Cost Recovery Clause?**

TECO: The Commission should approve actual/estimated Storm Protection Plan Cost Recovery Clause jurisdictional revenue requirements of \$67,657,813 and a jurisdictional estimated cost recovery true-up under-recovery amount of \$3,056,003 for the period January through December 2023 including interest. (Roche, Sweat)

FPUC: FPUC projects an end of period 2023 over-recovery of \$142,094, based on a revised 2023 revenue requirement of \$923,527, which is net of \$975,504 already recovered through base rates. (Bennett)

FPL: FPL's total SPPCRC cost estimated for 2023 is \$1,307,293,308, which includes a total O&M expense of \$86,225,808 (Line 5 of Form 5E of Exhibit RLH-2, p. 5) and a total capital expenditure of \$1,221,067,500 (sum of Line 1a of Form 7E of

Exhibit RLH-2, pp. 10-17). FPL's SPPCRC actual/estimated jurisdictional revenue requirement true-up for the period January 2023 through December 2023, including interest, is an under-recovery of \$14,860,970 (Line 4 of Form 1E of Exhibit RLH-2, p. 1). (Jarro, Hume)

DEF: Investments of \$669,882,033 (System). Over-recovery of \$17,788,390. (Menendez, Lloyd, Brong)

OPC: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake and seek recovery. Section 366.06(1), Florida Statutes, establishes that the Commission evaluate the prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate. Therefore, the Commission cannot establish the reasonable estimated 2023 costs.

FIPUG: The Commission should approve less than the Utilities' requested reasonably estimated 2023 costs and estimated jurisdictional revenue requirement true-up amount for the Storm Protection Plan Cost Recovery Clause. Agree with OPC regarding the factors for all utilities.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 3: **What amounts should the Commission approve as the Utilities' reasonably projected 2024 costs and projected jurisdictional revenue requirement amount for the Storm Protection Plan Cost Recovery Clause?**

TECO: The Commission should approve reasonably projected Storm Protection Plan Cost Recovery Clause jurisdictional revenue requirements of \$90,584,791 for the period January 2024 through December. (Roche, Sweat)

FPUC: FPUC projects total expenditures of \$13,620,916, with a revenue requirement of \$2,448,891, which is net of \$975,504 already recovered through base rates. (Cutshaw, Bennett)

FPL: FPL's total SPPCRC cost projected for 2024 is \$1,389,706,289, which includes a total O&M expense of \$86,974,576 (Line 5 of Form 2P of Exhibit RLH-3, p. 2) and a total capital expenditure of \$1,302,731,713 (sum of Line 1a of Form 3P of Exhibit RLH-3, pp. 6-13). FPL's projected SPPCRC jurisdictional revenue requirement

for the period January 2024 through December 2024 is \$513,855,741 (Line 1e of Form 1P of Exhibit RLH-3, p. 1). (Jarro, Hume)

DEF: Investments of \$783,792,564 (System). Revenue requirement \$201,370,792. (Menendez, Lloyd, Brong)

OPC: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake and seek recovery. Section 366.06(1), Florida Statutes, establishes that the Commission evaluate the prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate. Therefore, the Commission cannot establish the reasonably projected 2024 costs.

FIPUG: The Commission should approve less than the Utilities' reasonably projected 2024 costs and projected jurisdictional revenue requirement amount for the Storm Protection Plan Cost Recovery Clause. Agree with OPC regarding the factors for all utilities.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 4: What are the Storm Protection Plan Cost Recovery Clause total jurisdictional revenue requirements, including true-ups, to be included in the Storm Protection Plan Cost Recovery factors for 2024?

TECO: 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 the period January 2024 through December 2024 is \$92,428,593. (Roche, Sweat)

FPUC: The total amount upon which FPUC's proposed factors are calculated is \$2,464,102, which when adjusted for taxes is \$2,465,876. (Bennett)

FPL: The projected total SPPCRC jurisdictional revenue requirement for the period January 2024 through December 2024, including true-up amounts, is \$533,887,956 (Line 4 of Form 1P of Exhibit RLH-3, p. 3). (Jarro, Hume)

DEF: \$172,866,409. (Menendez)

OPC: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake and seek recovery. Section 366.06(1), Florida Statutes, establishes that the Commission evaluate the prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate. Therefore, the Commission cannot establish the reasonably projected 2024 costs. For FPL, DEF, and TECO, OPC takes no position on the 2022 factors that are the subject of the 2020 Stipulation and Settlement Agreements approved in Order No. PSC-2020-0293-AS-EI. For FPUC, OPC takes no position on the 2022 factors.

FIPUG: The Storm Protection Plan Cost Recovery Clause total jurisdictional revenue requirements requested by the Utilities, including true-ups, to be included in the Storm Protection Plan Cost Recovery factors for 2024, should be less than as requested. Agree with OPC regarding the factors for all utilities.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

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?

TECO: The depreciation rates from Tampa Electric's most current Depreciation Study, approved by Order No. PSC-2021-0423-S-EI issued November 10, 2021, within Docket No. 20210034-EI, should be and were used to develop the depreciation expense included in the total Storm Protection Plan Cost Recovery Clause amounts for 2024.
(Roche, Sweat)

FPUC: The appropriate depreciation rates are those approved as part of the Commission's approval of the Settlement Agreement, Order No. PSC-2020-0347-AS-EI, issued October 8, 2020, in Docket Nos. 20190155, 20190156, and 20190174-EI. (Bennett)

FPL: The depreciation rates used to calculate the depreciation expense should be the Commission-approved depreciation rates that are in effect during the period the allowed capital investment is in service. For the period January 2024 through December 2024, FPL's depreciation rates are those approved by Commission Order Nos. PSC-2021-0446-S-EI and PSC-2021-0446A-S-EI in Docket No. 20210015-EI. (Hume)

DEF: DEF should use the depreciation rates that were approved in Final Order No. PSC-2021-0202A-AS-EI. (Menendez)

OPC: The last approved depreciation rates for the Companies should be used to calculate any depreciation expense related to SPPCRC recovery in 2024.

FIPUG: Adopt position of OPC.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 6: What are the appropriate jurisdictional separation factors for 2024?

TECO: The appropriate jurisdictional separation factors are as follows:

FPSC Jurisdictional Factor: 93.3746%

FERC Jurisdictional Factor: 6.6254%

(Roche, Sweat)

FPUC: There is no jurisdictional separation applicable to FPUC.

FPL: As shown on page 1 of Exhibit RLH-4, FPL's retail jurisdictional separation factors for the period January 2024 through December 2024 are:

DEMAND

Transmission	0.894143
Non-Stratified Production	0.960923
Intermediate Strata Production	0.954528
Peaking Strata Production	0.942663
Distribution	1.000000

ENERGY

Total Sales	0.943704
Non-Stratified Sales	0.958349
Intermediate Strata Sales	0.944751
Peaking Strata Sales	0.957272

GENERAL PLANT

Labor	0.970449
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(Hume)

DEF: DEF should apply the appropriate jurisdictional separation factors that were approved in Final Order No. PSC-2021-0202A-AS-EI:

Distribution: 1.0000000

Transmission: 0.7204200

Labor: 0.9677918 (Menendez)

OPC: No position at this time.

FIPUG: Adopt position of OPC as it relates to this issue for Utilities.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 7: What are the appropriate Storm Protection Plan Cost Recovery Clause factors for 2024 for each rate class?

TECO: The appropriate January 2024 through December 2024 cost recovery clause factors utilizing the appropriate recognition of Federal Energy Regulatory Commission transmission jurisdictional separation, revenue tax factors and the rate design and cost allocation as put forth in Docket No. 20210034-EI are as follows:

Cost Recovery Factors

<u>Rate Schedule</u>	<u>(cents per kWh)</u>
RS	0.658
GS and CS	0.775
GSD Optional – Secondary	0.172
GSD Optional – Primary	0.170
GSD Optional – Subtransmission	0.168
LS-1, LS-2	3.877

Cost Recovery Factors

<u>Rate Schedule</u>	<u>(dollars per kW)</u>
GSD – Secondary	0.72
GSD – Primary	0.71
GSD – Subtransmission	0.70
SBD – Secondary	0.72
SBD – Primary	0.71
SBD – Subtransmission	0.70
GSLD - Primary	0.60
GSLD - Subtransmission (Roche, Sweat)	0.12

FPUC:

Rate Schedule	SPP FACTORS PER KWH
Residential	\$0.00432
General Service	\$0.00498
General Service Demand	\$0.00273
General Service Large Demand	\$0.00174
Industrial/Standby	\$0.00293
Lighting Service	\$0.02652

(Bennett)

FPL:

As shown on Form 5P of Exhibit RLH-3, p. 15, the appropriate FPL 2024 SPPCRC factors for each rate class are as follows:

Rate Class	SPP Factor (\$/kW)	SPP Factor (\$/kWh)	RDC (\$/KW)	SDD (\$/KW)
RS1/RTR1		0.00557		
GS1/GST1		0.00499		
GSD1/GSDT1/HLFT1/GSD1-EV	1.02			
OS2		0.01527		
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	1.00			
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.96			
GSLD3/GSLDT3/CS3/CST3	0.16			
SST1T			0.02	0.01
SST1D1/SST1D2/SST1D3			0.17	0.07
CILC D/CILC G	1.00			
CILC T	0.14			
MET	1.25			
OL1/SL1/SL1M/PL1/OSI/II		0.00394		
SL2/SL2M/GSCU1		0.00504		

(Hume)

DEF:	Customer Class	SPPCRC Factor
	Residential	0.510 cents/kWh
	General Service Non-Demand	0.494 cents/kWh
	@ Primary Voltage	0.489 cents/kWh
	@ Transmission Voltage	0.484 cents/kWh
	General Service 100% Load Factor	0.231 cents/kWh
	General Service Demand	1.34 \$/kW
	@ Primary Voltage	1.31 \$/kW
	@ Transmission Voltage	0.25 \$/kW
	Curtable	2.11 \$/kW
	@ Primary Voltage	2.09 \$/kW
	@ Transmission Voltage	2.07 \$/kW
	Interruptible	1.02 \$/kW
	@ Primary Voltage	0.83 \$/kW
	@ Transmission Voltage	0.19 \$/kW
	Standby Monthly	0.119 \$/kW
	@ Primary Voltage	0.118 \$/kW
	@ Transmission Voltage	0.117 \$/kW
	Standby Daily	0.057 \$/kW
	@ Primary Voltage	0.056 \$/kW
	@ Transmission Voltage	0.056 \$/kW
	Lighting	0.373 cents/kWh
		(Menendez)

OPC: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake and seek recovery. Section 366.06(1), Florida Statutes, establishes that the Commission evaluate the prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate. Therefore, the Commission cannot establish the reasonably projected 2024 costs. For FPL, DEF, and TECO, OPC takes no position on the 2022 factors that are the subject of the 2020 Stipulation and Settlement Agreements approved in Order No. PSC-2020-0293-AS-EI. For FPUC, OPC takes no position on the 2022 factors.

FIPUG: Adopt position of OPC as it relates to this issue for Utilities.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 8: What should be the effective date of the new Storm Protection Plan Cost Recovery Clause factors for billing purposes?

TECO: The effective date of the new Storm Protection Plan Cost Recovery Clause factors should be January 1, 2024.
(Roche, Sweat)

FPUC: The effective date for FPUC's cost recovery factors should be the first billing cycle for January 1, 2024, which could include some consumption from the prior month. Thereafter, customers should be billed the approved factors for a full 12 months, unless the factors are otherwise modified by the Commission. (Bennett)

FPL: The 2024 SPPCRC Factors should become effective for application to bills beginning the first billing cycle in January 2024 through the last billing cycle December 2024 and continuing until modified by subsequent order of this Commission. (Hume)

DEF: The factors shall be effective beginning with the specified Storm Protection Plan Cost Recovery Clause cycle and thereafter for the period January 2024 through December 2024. Billing cycles may start before January 1, 2024, and the last cycle may be read after December 31, 2024, so that each customer is billed for twelve months, regardless of when the adjustment factor became effective. These charges shall continue in effect until modified by subsequent order of this Commission. (Menendez)

OPC: Any Commission approved SPPCRC factors should be effective no sooner than the first day of the first billing cycle for January 2024.

FIPUG: The effective date of the new Storm Protection Plan Cost Recovery Clause factors should be January 1, 2024.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

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?**

TECO: Yes, the Commission should approve revised tariffs reflecting the new Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding.
(Roche, Sweat)

FPUC: Yes. The Commission should approve revised tariffs reflecting the SPPCRC factors determined to be appropriate in this proceeding. The Commission should direct staff to verify that the revised tariffs are consistent with the Commission's decision. (Bennett)

FPL: Yes. FPL will submit to Staff for administrative approval revised tariffs reflecting the SPPCRC amounts and SPPCRC Factors approved in this proceeding. (Hume)

DEF: Yes. The Commission should approve DEF's revised tariffs reflecting the Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding. The Commission should direct Staff to verify that the revised tariffs are consistent with the Commission's decision. The Commission should grant Staff Administrative authority to approve revised tariffs reflecting the new Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding. (Menendez)

OPC: No. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake and seek recovery. Section 366.06(1), Florida Statutes, establishes that the Commission evaluate the prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate. Therefore, the Commission should not approve any revised tariffs on the SPP factors without first finding the SPP prudent.

FIPUG: Yes, after making downward adjustments as warranted.

NUCOR: Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 10: Should this docket be closed?

TECO: Yes, Docket No. 20230010-EI should be closed once the Commission's decisions on all the issues in the docket have become final and the Commission has concluded that the docket has otherwise met the requirements for closure.
(Roche, Sweat)

FPUC: This is a continuing docket and should remain open.

FPL: No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and should remain open. (Hume)

DEF: No, this is an on-going docket and should remain open until a subsequent year's docket is established.

OPC: No.

FIPUG: Yes.

NUCOR: No position.

PCS

Phosphate: No position.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Mark R. Roche	TECO	MRR-1; A-Schedules	Schedules supporting cost recovery amount, actual January 2022–December 2022
Mark R. Roche	TECO	MRR-2; E-Schedules	Schedules supporting cost recovery amount, projected January 2023- December 2023
Mark R. Roche	TECO	MRR-2; P-Schedules	Schedules supporting cost recovery amount, projected for the period January 2024–December 2024
C. David Sweat	TECO	CDS-1	Storm Protection Plan Accomplishments
C. David Sweat	TECO	CDS-2	Project List and Summary of Costs
Jason Bennett	FPUC	RCW-1	SPPCRC Schedules 1A-9A ¹⁵
Jason Bennett	FPUC	RCW-2	SPPCRC Schedules E and P
Michael Jarro	FPL	MJ-1	FPL Actual Storm Protection Plan Work Completed in 2022 (Project Level Detail)
Michael Jarro	FPL	MJ-2	List of Explanations of Drivers for Variances in Storm Protection Plan Programs and Projects
Michael Jarro	FPL	MJ-3	FPL Actual/Estimated Storm Protection Plan Work to be Completed in 2023 (Project Level Detail)
Michael Jarro	FPL	MJ-4	FPL Storm Protection Plan Work to be Completed in 2024 (Project Level Detail)

¹⁵ Schedule 8A jointly sponsored by Witness Cutshaw.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Michael Jarro	FPL	RLH-3	Form 6P – Program Description and Progress Report
Richard L. Hume	FPL	RLH-1	Forms 1A through 8A for the FPL 2022 SPPCRC Final True-Up
Richard L. Hume	FPL	RLH-2	Forms 1E through 8E for the FPL 2023 SPPCRC Actual/Estimated True-Up
Richard L. Hume	FPL	RLH-3	Forms 1P through 5P and 7P for FPL’s Proposed 2024 SPPCRC Factors
Richard L. Hume	FPL	RLH-4	Retail Separation Factors
Christopher A. Menendez	DEF	CAM-1	True-up costs associated with the SPPCRC activities for the period January 2022 through December 2022.
Christopher A. Menendez	DEF	CAM-2	Actual/estimated true-up for the period January 2023 through December 2023.
Christopher A. Menendez	DEF	CAM-3	Projected costs for the SPPCRC for the period January 2024 through December 2024, and DEF’s storm protection plan cost recovery factors for the period January 2024 through December 2024.
Brian M. Lloyd	DEF	CAM-1	Distribution-related costs associated with DEF’s Storm Protection Plan (“SPP”) proposed for recovery through the Storm Protection Plan Cost Recovery Clause (“SPPCRC”) for 2022.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Brian M. Lloyd	DEF	CAM-2	Distribution-related costs associated with DEF's Storm Protection Plan ("SPP") proposed for recovery through the Storm Protection Plan Cost Recovery Clause ("SPPCRC") for 2023.
Brian M. Lloyd	DEF	CAM-3	Distribution-related costs associated with DEF's Storm Protection Plan ("SPP") proposed for recovery through the Storm Protection Plan Cost Recovery Clause ("SPPCRC") for 2024.
Robert E. Brong	DEF	CAM-1	Transmission-related costs associated with DEF's Storm Protection Plan ("SPP") proposed for recovery through the Storm Protection Plan Cost Recovery Clause ("SPPCRC") for 2022.
Robert E. Brong	DEF	CAM-2	Transmission-related costs associated with DEF's Storm Protection Plan ("SPP") proposed for recovery through the Storm Protection Plan Cost Recovery Clause ("SPPCRC") for 2023.
Robert E. Brong	DEF	CAM-3	Transmission-related costs associated with DEF's Storm Protection Plan ("SPP") proposed for recovery through the Storm Protection Plan Cost Recovery Clause ("SPPCRC") for 2024.
Hymavathi Vedula	STAFF	HV-1	Auditor's Report – DEF
Hymavathi Vedula	STAFF	HV-2	Auditor's Report – FPUC

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Donna D. Brown	STAFF	DDB-1	Auditor's Report – FPL
Donna D. Brown	STAFF	DDB-2	Auditor's Report – TECO

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

X. PROPOSED STIPULATIONS

There are proposed Type 2 partial stipulations¹⁶ on Issues 1, 2, 3, 4, and 7 as stated below. DEF, FPL, TECO, NUCOR, and FIPUG support the proposed partial stipulations. PCS Phosphate takes no position on the proposed stipulations. The OPC position on each Type 2 partial stipulation is as follows:

Regarding Issues 1-4 and 7, OPC takes no position on the factors only for all four utilities, nor does it have the burden of proof related to them. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or staff as to a final resolution of the factors. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on these issues, either in this docket, in an order of the Commission or in a representation to a Court. OPC otherwise maintains its position on Issues 1-4 and 7 for purposes of briefing.

All witnesses are excused.¹⁷ All testimony and all hearing exhibits are to be included in the record.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

¹⁶ 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.

¹⁷ By agreement of the parties at the Prehearing Conference, OPC's written questions in lieu of cross-examination and each utility's responses and objections thereto, along with affidavits, are included on the Comprehensive Exhibit List as Stipulated Exhibits Nos. 42-46.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 75 words, it must be reduced to no more than 75 words.

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.

XIV. RULINGS

Opening Statements

Opening statements, if any, shall not exceed 3 minutes per party.

Notice of Substitution of Witness

Florida Public Utilities Company's Notice of Substitution of Witness and Adoption of Testimony is acknowledged.

Contested Issues

OPC proposed that the following nine issues be included for consideration by the Commission:

- OPC ISSUE 1A: Has FPL demonstrated that the programs and projects contained in its current SPP plan and on which it is basing cost recovery, are prudent to undertake and prudent in amount?
- OPC ISSUE 1B: Has the Commission properly determined, pursuant to Section 366.06(1), Fla. Stat., that the projected expenditures proposed for cost recovery by FPL are prudent?
- OPC ISSUE 2A: Has DEF demonstrated that the programs and projects contained in its current SPP plan and on which it is basing cost recovery, are prudent to undertake and prudent in amount?

- OPC ISSUE 2B: Has the Commission properly determined, pursuant to Section 366.06(1), Fla. Stat., that the projected expenditures proposed for cost recovery by DEF are prudent?
- OPC ISSUE 3A: Has Tampa Electric demonstrated that the programs and projects contained in its current SPP plan and on which it is basing cost recovery, are prudent to undertake and prudent in amount?
- OPC ISSUE 3B: Has the Commission properly determined, pursuant to Section 366.06(1), Fla. Stat., that the projected expenditures proposed for cost recovery by Tampa Electric are prudent?
- OPC ISSUE 4A: Has FPUC demonstrated that the programs and projects contained in its current SPP plan and on which it is basing cost recovery, are prudent to undertake and prudent in amount?
- OPC ISSUE 4B: Has the Commission properly determined, pursuant to Section 366.06(1), Fla. Stat., that the projected expenditures proposed for cost recovery by FPUC are prudent?
- OPC ISSUE 4C: Due to the proposed change in the cost allocation, did the Commission have adequate notice of the rate impacts caused by the capital expenditures under FPUC's current SPP so that the Commission could determine whether FPUC's projects and programs were prudent?

At the Prehearing Conference, OPC announced that it was voluntarily dropping Issue 4C. The eight proposed issues remaining for consideration are actually only two issues – A and B – repeated for each of the four utilities. The four utilities that are parties to this docket object to the inclusion of these issues. Intervenors FIPUG, PCS Phosphate, and Nucor Steel take no position.

The first of these issues asks the Commission to determine whether each utility has “demonstrated that the programs and projects contained in its current SPP plan and on which it is basing cost recovery, are prudent to undertake and prudent in amount.” The programs and projects contained in each utility’s SPP are subject to Commission review every three years in a docket separate and apart from the SPPCRC docket.¹⁸ The SPPCRC docket is “an annual proceeding to determine the 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.”¹⁹ Thus, the Commission lacks statutory authority to review the current SPP programs and projects in this docket.

¹⁸ See Fla. Stat. § 366.96(6). F.S.

¹⁹ Fla. Stat. § 366.96(7). F.S.

The programs and projects in each utility's current SPP were approved by this Commission in November 2022.²⁰ In the 2022 Final Orders approving the SPPs, the Commission concluded that Section 366.96(5), F.S., requires it to determine whether each utility's SPP is in the public interest when approving, approving with modification, or denying the SPP.²¹ The Commission rejected OPC's argument that the prudence standard should be applied to SPP projects and programs, and approved, with a few modifications, the utilities' SPPs as being in the public interest. Those Orders, along with the Order concluding the 2022 SPPCRC docket,²² are the subject of a consolidated appeal brought by OPC and currently pending before the Florida Supreme Court.²³ Until such time as the Court disposes of the appeal or otherwise relinquishes jurisdiction, this Commission is without authority to revisit or supplement the findings of fact and conclusions of law regarding the current SPP in the prior Final Orders. Those findings and conclusions directly address and dispose of the first issue OPC has proposed in this docket.

For all of these reasons, OPC proposed Issues 1A, 2A, 3A & 4A are disallowed.

OPC's second issue requests that the Commission determine whether the projected expenditures proposed for cost recovery by each utility are prudent. Just as it did with the above issue, OPC argues here that the Commission should apply a prudence test where another is standard established by law. The Commission's review of projected expenditures in the SPPCRC is "limited to determining the reasonableness of projected Storm Protection Plan costs" by Rule 25-6.031(3), F.A.C. Projected expenditures are not subject to a separate prudence determination in this docket as urged by OPC. The appropriate legal scope of the Commission's review of each utility's actual 2022, actual/estimated 2023, and projected 2024 SPP projects, costs, and revenue requirements in this docket is accurately and fully set forth in Issues No. 1-4.

Because the cognizable matters raised by OPC are subsumed in Issues No. 1-4, proposed Issues 1B, 2B, 3B & 4B are disallowed.

It is therefore,

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

²⁰ Order No. PSC-2022-0386-FOF-EI (TECO); Order No. PSC-2022-0387-FOF-EI (FPUC); Order No. PSC-2022-0388A-FOF-EI (DEF); and Order No. PSC-2022-0389-FOF-EI (FPL).

²¹ "No later than 180 days after a utility files a transmission and distribution storm protection plan that contains all of the elements required by commission rule, the commission shall determine whether it is in the public interest to approve, approve with modification, or deny the plan." Fla. Stat. § 366.96(5). F.S.

²² Order No. PSC-2022-0418-FOF-EI.

²³ Case Nos. SC22-1733, SC22-1735, SC22-1745, SC22-1748 & SC22-1777.

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 8th day of September, 2023.



Mike La Rosa
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.

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.