

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Duke Energy
Florida, LLC.

DOCKET NO. 20240025-EI
ORDER NO. PSC-2024-0226-FOF-EI
ISSUED: July 8, 2024

The following Commissioners participated in the disposition of this matter:

MIKE LA ROSA, Chairman
ART GRAHAM
GARY F. CLARK
ANDREW GILES FAY
GABRIELLA PASSIDOMO

ORDER DENYING FLORIDA RISING AND LEAGUE OF UNITED LATIN AMERICAN
CITIZENS' MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Background

Duke Energy Florida, LLC (DEF or Utility) provides electric service to approximately 2 million customers across the state. DEF filed its Petition for Rate Increase, minimum filing requirements (MFRs), and testimony on April 2, 2024. DEF filed its MFRs based on three projected test years, from January 1 to December 31, 2025; January 1 to December 31, 2026; and January 1 to December 31, 2027.

The Office of Public Counsel's (OPC's) intervention in this docket was acknowledged by Order No. PSC-2024-0041-PCO-EI, issued February 26, 2024. On April 19, 2024, intervention in this proceeding was granted to Florida Rising, Inc., and the League of United Latin American Citizens of Florida (FR/LULAC); Florida Industrial Power Users Group (FIPUG); Florida Retail Federation (FRF); and Sierra Club. On April 24, 2024, intervention was granted to White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs; and Nucor Steel Florida, Inc. On May 13, 2024, intervention was granted to the Southern Alliance for Clean Energy (SACE). On June 4, 2024, intervention was granted to the Americans for Affordable Clean Energy, Inc.; Circle K Stores, Inc.; RaceTrac Inc.; Wawa, Inc.; and EVgo Services, LLC.

Order Establishing Procedure No. PSC-2024-0092-PCO-EI, issued April 11, 2024, established controlling dates and procedures for this proceeding, including a technical hearing to be held in Tallahassee, Florida for August 12–16, 2024, with August 19–23, 2024, reserved for the continuation and conclusion of the technical hearing, if necessary. In addition to the technical hearing, the Chairman's office scheduled four service hearings for the purpose of taking testimony from Duke's customers regarding Duke's provision of service and its requested rate increase. Notice of the service hearings was issued by the Commission on May 23, 2024, and published in the Florida Administrative Register on May 24, 2024. By notice, virtual and in-person service hearings were scheduled for June 11 and 18, 2024, in Tallahassee, Florida. In-

person customer service hearings were held on June 12, 2024 in Inverness, Florida, and June 12, 2024 in Largo, Florida. Spanish language interpreters were noticed for the June 11 virtual and in-person service hearing and the June 12 service hearing in Largo, Florida.

On April 17, 2024, OPC filed a Motion for Additional Service Hearings (OPC's Motion). On that same date, FR/LULAC filed a Notice of Joinder in Citizens' Motion. In the Motion, OPC requested, in part, that we establish three additional in-person service hearings and provide a Spanish language interpreter at an in-person service hearing in the Orlando area. On May 8, 2024, the Prehearing Officer issued Order No. PSC-2024-0147-PCO-EI, denying OPC's request for additional service hearings, noting that the current service hearing schedule affords multiple opportunities and choices for customers who wish to participate.

On May 17, 2024, FR/LULAC filed a Motion for Reconsideration of Order No. PSC-2024-0147-PCO-EI, which OPC, Sierra Club, and FRF support. FR/LULAC contends that Order No. PSC-2024-0147-PCO-EI overlooked the fact that the Orlando portion of Duke's territory has more customers than any other portion of Duke's territory and Spanish language customers do not have access to a service hearing with translation services. On the same day, FR/LULAC filed a request for oral argument. On May 20, 2024, OPC filed a Notice of Joinder of FR/LULAC's Motion for Reconsideration.

On May 24, 2024, DEF filed a Response in Opposition (Response) to FR/LULAC's Motion for Reconsideration. DEF contends that FR/LULAC's arguments fail to identify a mistake of law or a fact that was overlooked by the Prehearing Officer. DEF argues that OPC raised the same points in OPC's Motion that FR/LULAC's have raised in this Motion for Reconsideration. Therefore, DEF argues that FR/LULAC's Motion should be denied.

This order addresses FR/LULAC's Motion for Reconsideration, the Joinder, and the Response thereto. We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.), including Section 366.06, F.S.

Decision

Denying FR/LULAC's Request for Oral Argument

Granting or denying oral argument on a dispositive motion is within our sole discretion. Having found the pleadings sufficient on their face, oral argument was denied.

Denying FR/LULAC's Motion for Reconsideration

Law

The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering the order under review. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394

So. 2d 162 (Fla. 1st DCA 1981). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959) (citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)). Furthermore, a motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review.” *Stewart Bonded Warehouse, Inc.*, 294 So. 2d at 317.

FR/LULAC’s Motion for Reconsideration

In its Motion for Reconsideration, FR/LULAC requests us to reconsider the denial of an Orlando service hearing because the Orlando portion of the DEF service territory has more Duke customers than any other service area with no service hearing. Orange County has 419,517 Duke customers, behind only Pinellas County.¹ FR/LULAC notes that this is “nearly ten times” as many Duke customers as Citrus County² (51,361 customers), which was selected for a service hearing.

FR/LULAC maintains the need for an in-person service hearing despite the virtual hearing opportunities because many people can struggle with the technology to participate in a virtual service hearing and neither of the virtual service hearings include a Spanish interpreter. In contrast, the Orlando service area includes a large Spanish-speaking population.

Joinder by OPC

On May 20, 2024, OPC filed a Notice of Joinder of FR/LULAC’s Motion for Reconsideration. OPC noted that, in addition to the request made by FR/LULAC, we should also have at least one more in-person service hearing in Madison, Suwannee, and/or Lafayette County region for the same purpose of mitigating the distance that any of those customers would have to travel to attend an in-person service hearing.

Sierra Club and FRF also stated their support of FR/LULAC’s motion. No other parties provided comment.

DEF’s Response in Opposition

On May 24, 2024, DEF filed its Response in Opposition. DEF argues FR/LULAC has not identified a mistake of law or fact that would justify reconsideration of the hearing locations. Duke contends that while Order No. PSC-2024-0147-PCO-EI did not specifically set forth the rubric by which service hearings for this docket were established, it is fair to assume that we are familiar with the population dispersion of the state and took that into consideration along with other relevant factors when scheduling service hearings in this proceeding.

¹ Largo, the site of one in-person service hearing, is in Pinellas County.

² Inverness, the site of another in-person service hearing, is in Citrus County.

Analysis

Motion for Reconsideration

We have held that a mistake of fact or law standard applies to our reconsideration of a Prehearing Officer's order.³ The Prehearing Officer is the procedural administrator of a hearing-track case. They rule on motions and procedural matters and conduct prehearing conferences, prior to referral of such cases to the full Commission for final decision. Pursuant to Rule 28-106.211, F.A.C., the Prehearing Officer may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case. "The Prehearing Officer has wide discretion in balancing the interests of parties in the furtherance of the orderly administration of justice."⁴ The service hearings set by a Prehearing Officer are controlled in part by the selection of hearing dates by the Chairman, which is in turn based upon the availability of the Commission's calendar and many other factors.

Much of FR/LULAC's argument on reconsideration repeats matters raised in OPC's Motion for additional service hearings, which the Prehearing Officer considered when denying the request. OPC's Motion specifically requested, amongst other things, an Orlando-area service hearing in order for the in-person service hearings to be "distributed more evenly throughout DEF's service territory." FR/LULAC's Motion for Reconsideration reargues this same point. Order No. PSC-2024-0147-PCO-EI denying OPC's Motion considered these arguments and held that "[e]xperience indicates that overall participation may increase if customers are allowed the option to participate in service hearings virtually, and that customers may actually prefer virtual to in-person participation." Finally, while not specifically referenced in Order No. PSC-2024-0147-PCO-EI, as a matter of clarification, Spanish language interpretation will be available at several of the service hearings.

It is not appropriate to reargue matters on reconsideration that have already been considered. FR/LULAC has not clearly identified any specific mistakes of fact or law the Prehearing Officer made in denying OPC's Motion for Additional Service Hearings. Without a

³ See Order No. PSC-2016-0231-FOF-EI, issued June 10, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*; Order No. PSC-2002-1442-FOF-EI, issued October 21, 2002, in Docket Nos. 20020262-EI, *In re: Petition to Determine Need for an Electrical Power Plant in Martin County by Florida Power & Light Company* and 20020263-EI, *In re: Petition to Determine Need for an Electrical Power Plant in Manatee County by Florida Power & Light Company*; Order No. PSC-2001-2021-FOF-TL, issued October 9, 2001, in Docket No. 19960786A-TL, *In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996*; Order No. PSC-1997-0098-FOF-EU, issued January 27, 1997, in Docket No. 19930885-EU, *In re: Petition to Resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company*; Order No. PSC-1996-0133-FOF-EI, issued January 29, 1996, in Docket No. 19950110-EI, *In re: Standard offer contract for the purchase of firm capacity and energy from a qualifying facility between Panda-Kathleen, L.P., and Florida Power Corporation*, Order No. PSC-2024-0287-FOF-EI, issued June 10, 2024, in Docket No. 20240025-EI, *In re: Petition for rate increase by Duke Energy Florida, LLC*.

⁴ Order No. 25245, issued October 23, 1991, in Docket No. 19880069-TL, *In re: Petitions of Southern Bell Telephone and Telegraph Company for Rate Stabilization and Implementation Orders and Other Relief* (Prehearing Officer balanced competing interests of new counsel desiring more time to prepare and party seeking to proceed with discovery by delaying deposition).

specific mistake of fact or law, a motion for reconsideration must be denied, even if the reviewing body would have reached a different decision.⁵ Based on the above, FR/LULAC's Motion is hereby denied.

OPC's Notice of Joinder and Request for Additional Service Hearing

In OPC's Notice of Joinder, OPC indicates support for FR/LULAC's Motion for Reconsideration but also goes further in requesting a service hearing in the Madison, Suwannee, or Lafayette County region. OPC's original Motion for Additional Service Hearings requested a hearing be held in Live Oak, Florida, which is located in Suwannee County. This request was denied in Order No. PSC-2024-0147-PCO-EI, and no mistake of fact or law is even alleged to have been overlooked in OPC's Joinder. Therefore, OPC's request for a service hearing in the Madison, Suwannee, or Lafayette County region is also denied.

Conclusion

For the reasons discussed above, we deny FR/LULAC's Motion for Reconsideration and OPC's Joinder.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that, for the reasons set forth herein, Florida Rising, Inc. and League of United Latin American Citizens of Florida, Inc.'s Motion for Reconsideration and Request for Oral Argument and the Office of Public Counsel's Joinder are hereby denied. It is further

ORDERED that this docket shall remain open pending our final resolution of DEF's requested permanent base rate increase.

⁵ *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315, 317 (Fla. 1974); Order No. PSC 2016-0231-FOF-EI, issued June 10, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company* (page 5).

By ORDER of the Florida Public Service Commission this 8th day of July, 2024.



ADAM J. TETZMAN
Commission Clerk
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.

MRT

NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.