

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO. 20230010-EI

FILED: August 7, 2023

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2023-0090-PCO-EI, issued February 15, 2023, the First Order Revising Order Establishing Procedure, Order No. PSC-2023-0105-PCO-EI, issued March 20, 2023, and Order No. PSC-2023-0178-PCO-EI, issued June 12, 2023, hereby submit this Prehearing Statement.

APPEARANCES:

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1. WITNESSES:

None.

2. EXHIBITS:

None.

3. STATEMENT OF BASIC POSITION

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).

4. COMPANY SPECIFIC ISSUES

FPL

**OPC Proposed
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:

No. The Company has not demonstrated the programs and projects in the current SPP on which cost recovery is based are prudent to undertake and prudent in amount because 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 the Commission’s rate-making procedure for public utilities in the State of Florida. Upon application for a change in rates by a utility,

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Id. (emphasis added).

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**OPC Proposed
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: No. 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 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).

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other things, the prudence of the investment at issue, regardless of whether that requirement is explicitly stated in the other provisions of chapter 366, Florida Statutes, or the Commission's rules.

DEF

OPC Proposed
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: No. The Company has not demonstrated the programs and projects in the current SPP on which cost recovery is based are prudent to undertake and prudent in amount because 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 the Commission's rate-making procedure for public utilities in the State of Florida. Upon application for a change in rates by a utility,

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Id. (emphasis added).

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requirement is explicitly stated in the other provisions of chapter 366, Florida Statutes, or the Commission's rules.

OPC Proposed 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:

No. 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 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).

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TECO

OPC Proposed

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: No. The Company has not demonstrated the programs and projects in the current SPP on which cost recovery is based are prudent to undertake and prudent in amount because 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 the Commission's rate-making procedure for public utilities in the State of Florida. Upon application for a change in rates by a utility,

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OPC Proposed

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:

No. 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 the Commission's rate-making procedure for public utilities in the State of Florida. Upon application for a change in rates by a utility,

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FPUC

OPC Proposed
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: No. The Company has not demonstrated the programs and projects in the current SPP on which cost recovery is based are prudent to undertake and prudent in amount because 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 the Commission's rate-making procedure for public utilities in the State of Florida. Upon application for a change in rates by a utility,

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OPC Proposed
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: No. 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 the Commission's rate-making procedure for

public utilities in the State of Florida. Upon application for a change in rates by a utility,

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Id. (emphasis added).

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OPC Proposed
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?

OPC:

No. Without the applicable cost allocations, the Commission did not have the correct estimated annual rate impact for all classes of customers that results from implementing the proposed SPP during the first three years, and thus could not determine if FPUC's projects and programs were prudent. 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,

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ISSUE 5: 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?

OPC: None.¹ 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

¹ The OPC remains in a position to facilitate appropriate stipulations on Issues 6-12 in order to allow the collection of the costs authorized by the Commission in 2022. The challenge to the statutory interpretation underlying the orders on appeal in Florida Supreme Court Case No. SC 2022-0173 (consolidated), is not subject to a stay.

prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate.

ISSUE 6: 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?

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.

ISSUE 7: 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?

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.

ISSUE 8: 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?

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.

ISSUE 9: What depreciation rates should be used to develop the depreciation expense included in the total Storm Protection Plan Cost Recovery Clause amounts for 2024?

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

ISSUE 10: What are the appropriate jurisdictional separation factors for 2024?

OPC: No position at this time.

ISSUE 11: What are the appropriate Storm Protection Plan Cost Recovery Clause factors for 2024 for each rate class?

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.

ISSUE 12: What should be the effective date of the new Storm Protection Plan Cost Recovery Clause factors for billing purposes?

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

ISSUE 13: Should the Commission approve revised tariffs reflecting the new Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding?

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.

ISSUE 14: Should this docket be closed?

OPC: No.

5. STIPULATED ISSUES

None at this time.

6. PENDING MOTIONS

None at this time.

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

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

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT

OPC has no objections to the qualification of any witnesses as an expert in the field in which they pre-filed testimony as of the present date.

9. SEQUESTRATION OF WITNESSES

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

10. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

There are no requirements of the Order Establishing Procedure with which the Office of Public

Counsel cannot comply.

Dated this 7th of August, 2023.

Walt Trierweiler
Public Counsel

Respectfully submitted,

/s/ Patricia A. Christensen
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*Attorneys for the Citizens
of the State of Florida*

CERTIFICATE OF SERVICE
DOCKET NO. 20230010-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 7^h day of August 2023, to the following:

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