

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20240025-EI

FILED: May 20, 2024

**CITIZENS' MOTION TO SEVER DUKE ENERGY FLORIDA, LLC'S PETITION FOR
RATE INCREASE RELATING TO THE SECOND AND THIRD TEST YEARS**

The Citizens of the State of Florida, by and through the Office of Public Counsel (OPC), pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby file this Motion to Sever of all matters related to the 2026 and 2027 projected test years of the instant proceeding. This motion is made on the following grounds:

FACTS:

On January 31, 2024, Duke Energy Florida, LLC (DEF) filed a test year notification letter informing the Florida Public Service Commission (Commission) that DEF would be filing a request for a rate increase on April 2, 2024, and proposing to utilize three projected test periods for the years 2025, 2026, and 2027 to support its requested base rate increases in each year.

OPC is statutorily required to represent customers of investor-owned utilities in proceedings before the Commission, and "shall have such powers as are necessary to carry out the duties of his or her office. . ." ¹ On February 13, 2024, OPC filed a notice of intervention in this docket, and on February 22, 2024, OPC provided a letter in response to DEF's test year letter, objecting to and expressing concerns about the second and third projected test years. On February 29, 2024, DEF responded to OPC's letter and requested that the Commission deny the relief

¹ § 350.0611(1), Fla. Stat.

requested in OPC’s letter. On March 1, 2024, the Commission issued a letter that acknowledged DEF’s Test Year Notification Letter, without referencing OPC’s letter, and stated that, “the appropriateness of the selected test years may be an issue in the proceeding.”² On April 2, 2024, DEF filed its Petition for a Rate Increase (Petition), Minimum Filing Requirements, and testimony in support of its requested rate increase, proposing to utilize three projected test periods: 2025, 2026, and 2027.

ARGUMENT:

Severance of proceedings into phases is a tool used by courts either in furtherance of convenience or to avoid prejudice.³ The Commission and DEF (formerly Progress Energy Florida) have also recognized the propriety of severance in order to avoid prejudice.⁴ Severance of DEF’s 2026 and 2027 projected test years is appropriate in this case in order to avoid the prejudice to OPC and other intervenors of having to analyze three projected test years simultaneously in an excessively short timeframe.⁵ DEF’s 2026 and 2027 projected test years should be analyzed independent of DEF’s 2025 projected test year, and that analysis should be closer in time to 2026 and 2027 when the projections would be more reliable and less speculative. If severed, these

² Document No. 00879-2024, PSC Docket No. 20240025-EI, *In Re: Petition for Rate Increase By Duke Energy Florida, LLC.*; Document No. 00997-2024, Docket No. 20240025-EI, *In re: Petition for Rate Increase By Duke Energy Florida, LLC.*

³ “The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.” (Emphasis added.) R. 1.270(b), Fl. R. Civ. P.

⁴ “Severance is appropriate under Florida Rule of Civil Procedure 1.270(b) to avoid prejudice . . .” Document No. 11322-2006, pg. 4, PSC Docket No. 20060642-EI, *In Re: PEF’s Petition for Determination of Need for Expansion of an Electrical Power Plant, for Exemption from Rule 25-22.082, F.A.C and for Cost Recovery through the Fuel Clause.*

⁵ OPC incorporates by reference all arguments regarding the insufficient timeframe for preparing Citizens’ case made in Citizens’ Expedited Motion for Reconsideration, or, In the Alternative, Motion for Continuance. Document No. 02230-2024, PSC Docket No. 20240025-EI, *In re: Petition for rate increase by Duke Energy Florida, LLC.*

distant, future-period claims would not be so interwoven with the remaining action so as to interfere with the due process rights of litigants in the 2025 case-in-chief.

Severance Will Avoid Prejudice to OPC and Other Intervenors

Prejudice to a party is grounds for the Commission to use its discretion to sever the proceedings. R. 1.270(b), Fla. R. Civ. P. Duke's three projected test years have prejudiced OPC's ability to thoroughly litigate this case in numerous ways.

OPC is prejudiced by litigating essentially three separate rate cases under a regulatory framework meant for a single test year rate case proceeding.⁶ Each test year is in fact a full separate rate case proceeding, and “. . . back-to-back rate increases should be allowed only in extraordinary circumstances” for several reasons, including that “[a]s one reaches farther into the future, predictions and projections of future economic conditions become less certain and more subject to the vagaries of changing variables.”⁷ OPC is also prejudiced by having to litigate these multiple rate increase proceedings simultaneously with Tampa Electric Company's base rate proceeding.⁸ OPC is further prejudiced by the timeframe being imposed by the Order Establishing Procedure.⁹ OPC is severely prejudiced by having to perform a comprehensive review of all the information for three projected test years, as opposed to one projected test year, in order to adequately conduct discovery, analyze the information, and promulgate expert testimony.¹⁰ Additionally, the

⁶ § 366.06(3), Fla. Stat.; “The subsequent increase requested in this case is based on a second projected test year . . . and is in fact a second full rate case filing,” Order No. PSC-10-0153-FOF-EI, pg. 9, Docket Nos. 08067-EI, 090130-EI.

⁷ Order No. PSC-10-0153-FOF-EI, pg. 9-10, Docket Nos. 08067-EI, 090130-EI.

⁸ Docket No. 20240026, *In Re: Petition for rate increase by Tampa Electric Company*.

⁹ Document No. 01781-2024, Docket No. 20240025-EI, *In Re: Petition for Rate Increase by Duke Energy Florida, LLC*.

¹⁰ See Document No. 02230-2024, pg. 10, Docket No. 20240025-EI, *In Re: Petition for Rate Increase by Duke Energy Florida, LLC*.

speculative nature of forecasting data developed many months ago for time periods that are two to three years into the future prejudices OPC's ability to put on a case with any semblance of reality on behalf of DEF's customers. Even in times of economic stability, projections that far into the future strain the reliability and accuracy of the data that is needed to set rates. Additionally, without the severance of the 2026 and 2027 projected test years, DEF's customers are deprived of the benefit of an additional 24 months of actual economic data and operating history of the company, which the Commission has also previously stated is a reason not to approve a subsequent year adjustment. That 24 months of data is required to validate whether the second and third rate increases are essential to determining the propriety of those increases. Ratepayers should not have rates increased in 2026 and 2027 without the benefit of a thorough analysis of the additional 24 months of actual economic data and operating history of DEF. Without severance of the 2026 and 2027 test years from this proceeding, DEF customers will be irreparably prejudiced.

The additional proposed test years remove DEF from the regulatory oversight provided by statute and rule without compensation or value to the customers. There is no true-up between these proposed test years. The restrictive hearing schedule magnifies this prejudice three-fold. If the Commission will not grant the additional time necessary to address these rate cases all lumped together, then at least the Commission can reduce the number of rate cases that are being considered within that time frame.

Severance Will Not Prejudice DEF

This action can be severed and separate trials pursued without prejudice to the substantive rights of DEF or other parties in the rate case. The OPC acknowledges that DEF has concerns that they may be at risk of insufficient rates if they do not get the rate relief requested by the Commission; however, DEF has multiple other options for rate relief, such as subsequent year

adjustments for specific projects, limited proceedings, or filing a rate case when their rates are no longer sufficient. Also, the clause dockets provide a significant percentage of DEF's revenue and reduce the risk of under-recovery of a substantial portion of DEF's operating costs. The recovery of costs through the clauses mitigates DEF's purported need for three rate increases to be evaluated simultaneously. Additionally, severance would not prejudice DEF because the company would still be allowed to continue to pursue the requested rate increases at the appropriate times.

CONCLUSION

Granting this Motion for Severance for the 2026 and 2027 test years from the 2025 test year request would prevent prejudice to OPC's ability to thoroughly litigate these matters, would not prejudice DEF, and would allow for the streamlining of these proceedings.

As part of this motion, the undersigned has conferred with the other parties to this docket and those that have petitioned for intervention but have not yet been granted intervention. EVgo takes no position at this time. Florida Retail Federation, PCS Phosphate, Florida Rising, the League of United Latin American Citizens, Sierra Club, Southern Alliance for Clean Energy, Florida Industrial Power Users Group, and NUCOR Steel support this motion. The only party that opposes the motion is DEF, which reserves the right to file a response. OPC has not heard back from all the others.

WHEREFORE, OPC requests that the Commission grant OPC's Motion to Sever Duke Energy Florida, LLC's Petition for Rate Increase Relating to the Second and Third Test Years.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 20240025-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 20th day of May, 2024, to the following:

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