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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240025-EI

Petition for rate increase  
by Duke Energy Florida, LLC.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 1

COMMISSIONERS  
PARTICIPATING: CHAIRMAN MIKE LA ROSA  
COMMISSIONER ART GRAHAM  
COMMISSIONER GARY F. CLARK  
COMMISSIONER ANDREW GILES FAY  
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, May 21, 2024

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
TALLAHASSEE, FLORIDA  
(850) 894-0828

## 1 P R O C E E D I N G S

2 CHAIRMAN LA ROSA: Good afternoon, everybody.  
3 Today is May 21st. This is our Special Agenda  
4 Conference, and I would like to call the meeting to  
5 order.

6 As we get started, I just want to double  
7 check, we do have some folks that have called in,  
8 correct, and they are everything is good and all  
9 right with that? Awesome.

10 So of course, we are hearing Item No. 1 and  
11 Item 2. I will introduce -- Mr. Stiller, you are  
12 recognized to introduce.

13 MR. STILLER: Afternoon, Commissioners. Shaw  
14 Stiller from your Office of General Counsel.

15 Item 1 on this Special Agenda is a motion for  
16 reconsideration or, in the alternative, motion for  
17 continuance and request for oral argument filed by  
18 the Office of Public Counsel.

19 Joinders to the motion were filed by the  
20 League of United Latin American Citizens of  
21 Florida, PCS Phosphate, the Sierra Club and the  
22 Florida Retail Federation.

23 The motion seeks reconsideration of certain  
24 controlling dates in the Order Establishing  
25 Procedure, or alternatively, a continuance of the

1 final hearing.

2 Staff recommends that the Commission deny  
3 OPC's request for oral argument on its motion.  
4 Staff believes that the pleadings are sufficient on  
5 their face for the Commission to evaluate and rule  
6 on the motion.

7 However, if the Commission elects to exercise  
8 its discretion and hear oral argument, staff  
9 recommends that five minutes be allotted per side.

10 Staff recommends that the Commission deny the  
11 motion for reconsideration on its merits because  
12 the motion fails to raise a point of fact or law  
13 that the prehearing officer overlooked or failed to  
14 consider in rendering their decision.

15 The OEP in this docket balances the needs of  
16 both prehearing and post-hearing process for the  
17 parties, staff and Commissioners, consistent with  
18 the deadlines under Section 366.06(3).

19 Finally, staff recommends that the Commission  
20 not grant a continuance as OPC has failed to  
21 provide adequate grounds to depart from the OEP  
22 controlling dates that were set consistent with the  
23 timeframe of Section 366.06(3).

24 Staff is available for questions.

25 CHAIRMAN LA ROSA: Thank you.

1           Commissioners, the question before us is  
2           whether the information provided by staff is  
3           sufficient. I do agree with what staff has  
4           recommended for us. I will look to us if there is  
5           any further discussion or thoughts.

6           Commissioner Graham, you are recognized.

7           COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

8           Well, personally, I think the prehearing  
9           officer on this one did a phenomenal job, and I  
10          thought he was very accommodating to the schedule,  
11          so I don't see any need to hear the oral argument.

12          CHAIRMAN LA ROSA: Commissioner Fay, you are  
13          recognized.

14          COMMISSIONER FAY: Thank you, Mr. Chairman.

15          I recognize that I'm probably in the same  
16          position as Commissioner Graham. My only thought  
17          on this is the standard that is out there on this  
18          motion for reconsideration, what's been filed by  
19          the parties, I don't know if any clarification  
20          could be given today. If you wouldn't mind,  
21          Chairman, can I just check with our legal just to  
22          make sure I have the full understanding?

23          CHAIRMAN LA ROSA: Yes, please.

24          COMMISSIONER FAY: So this might be for Shaw  
25          or Mary Anne, but if we allow oral argument on this

1 and new information is provided of some argument of  
2 mistake of fact or you law, that wouldn't be taken  
3 into account for our decision, correct?

4 MR. STILLER: Commissioner Fay, no. The  
5 timeline for filing a motion for reconsideration is  
6 10 days after the matter on which reconsideration  
7 is sought. So any matter that was not timely  
8 raised cannot be raised for the first time here at  
9 this hearing.

10 COMMISSIONER FAY: Okay. Great. So then with  
11 that, Mr. Chairman, I would agree with Commissioner  
12 Graham.

13 CHAIRMAN LA ROSA: Excellent.

14 Commissioners, any further questions, and is  
15 there a motion?

16 COMMISSIONER FAY: All right. Mr. Chairman, I  
17 will move to accept staff's recommendation on Issue  
18 1 for Item 1.

19 COMMISSIONER GRAHAM: Second.

20 CHAIRMAN LA ROSA: Hearing a motion and a  
21 second.

22 All those in favor signify by saying yay.

23 (Chorus of yays.)

24 COMMISSIONER LA ROSA: Yay.

25 Opposed no.

1 (No response.)

2 CHAIRMAN LA ROSA: Show that the motion passes  
3 and the recommendation for Item 1 is accepted.

4 Let's move on to Item No. 2 --

5 MS. HELTON: Mr. Chairman, I am so sorry, and  
6 I am sorry, Commissioner Fay, but I think you said  
7 just Issue 1, and I just wanted to make sure you  
8 meant all issues for Item 1.

9 COMMISSIONER FAY: No, so -- just for clarity,  
10 we would not allow oral argument, but Issue 2 is  
11 the motion for reconsideration or continuance, so  
12 we would stake that up separately. That's my  
13 understanding. I did not intend to move past Issue  
14 2.

15 CHAIRMAN LA ROSA: Correct, and neither was I,  
16 so I was moving on --

17 MS. HELTON: Sorry, I misunderstood.

18 CHAIRMAN LA ROSA: No. No. No.

19 COMMISSIONER FAY: I appreciate it, Ms.  
20 Helton. I want to make sure I didn't speak --  
21 speak wrong on this.

22 CHAIRMAN LA ROSA: And me as well.

23 So let's move on, then, to Item No. 2, if  
24 that's okay.

25 MR. STILLER: Well, Issue 2 --

1           CHAIRMAN LA ROSA: I'm sorry.

2           MR. STILLER: -- is the actual motion for  
3           reconsideration or continuance. Issue 1 was oral  
4           argument on those matters, so Issue 2 is the  
5           Commission voting on the merits of the motion for  
6           reconsideration, or alternatively, for a  
7           continuance.

8           CHAIRMAN LA ROSA: Discussion? Thoughts?  
9           Commissioner Fay.

10          COMMISSIONER FAY: Sure. So -- I mean, I  
11          think this is a really important issue to take up.  
12          I spent a lot of time looking at, obviously, the  
13          underlying law, but then the precedent for this  
14          type of issue. I mean, we've seen a number of  
15          these motions for reconsideration. I have opined  
16          previously in other dockets, you know, the mistake  
17          or law standard, which has been repeatedly kind of  
18          stated within the Commission. But I really just --  
19          I want to just talk a little bit about the  
20          precedent that applies to this, because I think the  
21          more I dug on that, the more clarity came to kind  
22          of the process itself.

23          So the two cases in particular the Commission  
24          has referred to are these Diamond Cab Company in  
25          Miami and then the Stewart Bonded Warehouse. We've

1           talked about not relitigating kind of what's been  
2           put forward.

3           The Diamond Cab Company states very clearly  
4           that the motion is not intended as a procedure for  
5           rearguing the whole case merely because the losing  
6           party disagrees with the judgment and order. So I  
7           think that's consistent with our process.

8           But probably more importantly, the Stewart  
9           Bonded Warehouse case is very clear about the  
10          process that we go through, and essentially  
11          compares it to a trial court rehearing. So it's  
12          stating that there was just such a clear mistake of  
13          fact or law that the decision itself could be  
14          overturned.

15          And actually in that case itself, the Supreme  
16          Court overturned the decision by the Commission to  
17          change the original decision under the motion for  
18          reconsideration because there was no new issue of  
19          fact or law.

20          And so when I look at this, I have trouble  
21          kind of finding what that scenario would be. I  
22          mean, I think if the Commission set something that  
23          was outside the legal 12 months for a decision,  
24          then I think that would be potential a mistake of  
25          law, and it would allow us the ability to do this.



1 But I just would caution my colleagues and the  
2 Commission on relitigating these components of this  
3 because the standard is very high, and the court  
4 has demonstrated that merely changing your mind on  
5 one of these things is not a sufficient process to  
6 go through for these motions, and so I know we've  
7 had a few of these, we might have a few more. I  
8 just want us to be very clear about the legal  
9 process that goes on with this decision.

10 And I can disagree with the prehearing officer  
11 on different components as to whatever they've  
12 decided, but here, I just think it's very clear the  
13 legal standard that we are under and, you know,  
14 find the motion for reconsideration something that  
15 I would not support or grant.

16 CHAIRMAN LA ROSA: Well said.

17 Commissioners, any other thoughts or  
18 questions?

19 I would like to echo similar comments, right?  
20 So when a prehearing officer is assigned, they've  
21 got a certain role, and staff does a good job, page  
22 six and seven, the rule is critical assignment to  
23 help the process specifically to promote the just,  
24 speedy and inexpensive determination of all aspects  
25 of the case. And I think that kind of sums it up

1 if I was to choose a few words to say it.

2 So agree with the comments that are made  
3 today. And, Commissioners, I am open for a motion.  
4 And this is on Item 2. I guess would this be  
5 potentially Item 2 and Item 3 -- Issue 2 and Issue  
6 3.

7 COMMISSIONER FAY: Mr. Chairman, I would be  
8 moving the Issue 2 on Item 1. So with that,  
9 Commissioners, I would move to approve the  
10 recommendation for Issue -- staff recommendation  
11 for Issue 2 on Item 1.

12 CHAIRMAN LA ROSA: Hearing a motion, is there  
13 a second?

14 COMMISSIONER GRAHAM: Second.

15 CHAIRMAN LA ROSA: All those in favor signify  
16 by saying yay.

17 (Chorus of yays.)

18 COMMISSIONER LA ROSA: Yay.

19 Opposed no.

20 (No response.)

21 CHAIRMAN LA ROSA: Show that Issue 2 in Item 1  
22 passes.

23 COMMISSIONER FAY: And then, Mr. Chairman, if  
24 you would just allow me. I know we do have an  
25 Issue 3 that we probably could have taken up

1           together, but if you don't mind, we can just take  
2           that up for staff's recommendation for Issue 3 for  
3           approval by the Commission.

4                    COMMISSIONER GRAHAM:    Second.

5                    CHAIRMAN LA ROSA:    Hearing a motion and  
6           hearing a second.

7                    All those in favor signify by saying yay.

8                    (Chorus of yays.)

9                    COMMISSIONER LA ROSA:    Opposed no.

10                   (No response.)

11                   CHAIRMAN LA ROSA:    Show that Issue 3 in Item 1  
12           passes.

13                   (Agenda item concluded.)

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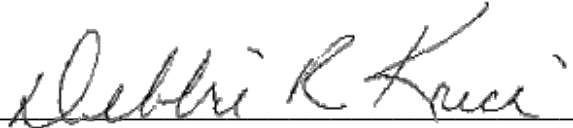
STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, Court Reporter, do hereby  
certify that the foregoing proceeding was heard at the  
time and place herein stated.

IT IS FURTHER CERTIFIED that I  
stenographically reported the said proceedings; that the  
same has been transcribed under my direct supervision;  
and that this transcript constitutes a true  
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,  
employee, attorney or counsel of any of the parties, nor  
am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am I  
financially interested in the action.

DATED this 4th day of June, 2024.

  
DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #HH31926  
EXPIRES AUGUST 13, 2024