

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** June 6, 2024

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Economics (Draper) *EJD*  
Division of Accounting and Finance (Maurey) *ALM*  
Division of Engineering (Ballinger) *TB*  
Office of the General Counsel (Crawford, Stiller, Thompson) *JSC*

**RE:** Docket No. 20240025-EI – Petition for rate increase by Duke Energy Florida, LLC.

**AGENDA:** 06/18/24 – Regular Agenda – Motion for Reconsideration – Oral Argument Requested; Participation is at the Discretion of the Commission

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Passidomo

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case 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 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 (PCS Phosphate); and Nucor Steel Florida, Inc. (Nucor). On May 13, 2024, intervention was granted to the Southern Alliance for Clean Energy (SACE). Petitions for Intervention are pending for Americans for Affordable Clean Energy, Inc.; Circle K Stores, Inc.; RaceTrac Inc.; and Wawa, Inc. (Fuel Retailers), and for EVgo Services, LLC as of the date of filing of this recommendation.

Order Establishing Procedure No. PSC-2024-0092-PCO-EI, issued April 11, 2024, established controlling dates and procedures for this proceeding, including for 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 are scheduled for June 11 and 18, 2024, in Tallahassee, Florida. In-person customer service hearings will be 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 at 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 the Commission 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 recommendation addresses FR/LULAC’s Motion for Reconsideration, and the Joinder and Response thereto. The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.), including Section 366.06, F.S.

## Discussion of Issues

**Issue 1:** Should FR/LULAC's Request for Oral Argument on its Motion for Reconsideration of Order No. PSC-2024-0147-PCO-EI be granted?

**Recommendation:** No. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and rule on the Motion. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends that 5 minutes per side is sufficient. (Thompson)

### **Staff Analysis:**

#### Law

Rule 25-22.0022(1), Florida Administrative Code (F.A.C.), allows a party to request oral argument before the Commission for any dispositive motion (such as motions for reconsideration) by filing a separate written pleading filed concurrently with the motion on which argument is requested, and stating with particularity why oral argument would aid the Commission. Granting or denying oral argument is within the sole discretion of the Commission under Rule 25-22.0022(3), F.A.C.

#### FR/LULAC's Position

FR/LULAC requests the opportunity to provide oral argument on the Motion to speak directly to the Commission about why FR/LULAC places such importance on there being an Orlando-area service hearing as well as answer any questions the Commission may have.

#### DEF's Position

In its Response, DEF argues that oral argument is not necessary as the Commission can make its decision based on the written filings. However, if oral argument is permitted, DEF will participate.

#### Conclusion

Granting or denying oral argument is within the sole discretion of the Commission. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and decide FR/LULAC's Motion. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends 5 minutes per side is sufficient.

**Issue 2:** Should Reconsideration of Order No. PSC-2024-0147-PCO-EI be granted?

**Recommendation:** No. Reconsideration should be denied because the Motion for Reconsideration and Joinder fail to raise a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering their decision. (Thompson)

**Staff Analysis:**

Law

The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission 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 the Commission 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.<sup>1</sup> FR/LULAC notes that this is “nearly ten times” as many Duke customers as Citrus County<sup>2</sup> (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, the Commission 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.

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

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

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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 the Commission is 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.

### Analysis

#### *Motion for Reconsideration*

The Commission has held that a mistake of fact or law standard applies to reconsideration by the Commission of a Prehearing Officer's order.<sup>3</sup> 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 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."<sup>4</sup> 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

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<sup>3</sup> 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*.

<sup>4</sup> 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).

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 specific mistake of fact or law, a motion for reconsideration must be denied, even if the reviewing body would have reached a different decision.<sup>5</sup> Based on the above, FR/LULAC’s Motion should be 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 should also be denied.

*Conclusion*

For the reasons discussed above, staff recommends that FR/LULAC’s Motion for Reconsideration and OPC’s Joinder should be denied.

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<sup>5</sup> *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).

**Issue 3:** Should this docket be closed?

**Recommendation:** No. This docket should remain open pending the Commission's final resolution of DEF's requested permanent base rate increase. (Thompson)

**Staff Analysis:** This docket should remain open pending the Commission's final resolution of DEF's requested permanent base rate increase.