

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Environmental cost recovery clause.

DOCKET NO. 20240007-EI

FILED: October 11, 2024

**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-2024-0031-PCO-EI, issued February 6, 2024, and pursuant to the First Order Modifying Order Establishing Procedure, Order No. PSC-2024-0215-PCO-EI issued June 20, 2024, hereby submit this Prehearing Statement.

**APPEARANCES:**

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Public Counsel

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**1. WITNESSES:**

None

2. **EXHIBITS:**

None

3. **STATEMENT OF BASIC POSITION**

The utilities bear the burden of proof to justify the recovery of costs they request in this docket and must carry this burden regardless of whether or not the Interveners provide evidence to the contrary. Further, the utilities bear the burden of proof to support their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought. Even if the Commission has previously approved a program, recovery of a cost, factor, or adjustment as meeting the Commission's own requirements, the utilities still bear the burden of demonstrating that the costs submitted for final recovery meet any statutory test(s) and are reasonable in amount and prudently incurred. Further, recovery of all costs is constrained by the Commission's obligation to set fair, just, and reasonable rates, based on projects and/or costs that are prudent in magnitude and/or costs prudently incurred pursuant to Section 366.01, Florida Statutes. Additionally, the provisions of Chapter 366 must be liberally construed to protect the public welfare.

The Commission must independently determine that each cost submitted for recovery, deferred or new, meets each element of the statutory requirements for recovery through this clause, as set out in Section 366.8255, Florida Statutes. Specifically, each activity proposed for recovery must be legally *required* to comply with a governmentally imposed environmental regulation that was enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based, and such costs may not be costs that are recovered through base rates or any other cost recovery mechanism. Any decision by the Commission on a new project submitted for approval and cost recovery must be limited to the scope and documented cost information provided to the Commission in the company filing in this docket.

4. **STATEMENT OF FACTUAL ISSUES AND POSITIONS**

**GENERIC ENVIRONMENTAL COST RECOVERY ISSUES**

**ISSUE 1:     **What are the final environmental cost recovery true-up amounts for the period January 2023 through December 2023?****

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for final true-up can necessarily be deemed reasonable and prudent.

**ISSUE 2: What are the actual/estimated environmental cost recovery true-up amounts for the period January 2024 through December 2024?**

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for true-up can necessarily be deemed reasonable and prudent.

**ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2025 through December 2025?**

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the projected costs proposed for recovery can necessarily be deemed reasonable and prudent.

**ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2025 through December 2025?**

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the costs proposed for true-up can necessarily be deemed reasonable and prudent.

**ISSUE 5: What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2025 through December 2025?**

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the projected costs proposed for recovery can necessarily be deemed reasonable and prudent.

**ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2025 through December 2025?**

OPC: The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that separation factors are reasonable and prudent. A significant percentage of the costs on a customer's bill is based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC does not agree, given these circumstances, that the factors proposed can necessarily be deemed prudent.

**ISSUE 7:** What are the appropriate environmental cost recovery factors for the period January 2025 through December 2025 for each rate group?

OPC: No position at this time; however, the factors should be based on costs deemed reasonable and prudent in a hearing.

**ISSUE 8:** What should be the effective date of the new environmental cost recovery factors for billing purposes?

OPC: No position.

**ISSUE 9:** Should the Commission approve revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors determined to be appropriate in this proceeding?

OPC: No position at this time; however, the tariffs should be based on costs deemed reasonable and prudent in a hearing.

**ISSUE 10:** Should this docket be closed?

OPC: No.

## COMPANY-SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

### **Duke Energy Florida, LLC (DEF):**

**ISSUE 11:** Should the Commission approve DEF's Citrus Combined Cycle (CCC) Water Treatment System Project for cost recovery through the ECRC?

OPC: No. DEF has not demonstrated that its action(s) related to the undertaking of corrective action related to Administrative Order No. AO-052SWD22 were prudent and meet the standard established in Section 366.8255, Florida Statutes, for recovery from customers of compliance-related costs incurred for correcting groundwater discharge exceedances that violate the law.

**ISSUE 12:** How should the approved costs related to DEF's CCC Water Treatment System Project be allocated to the rate classes?

OPC: No position.

**Tampa Electric Company (TECO):**

**ISSUE 13: Should the Commission approve TECO's Bayside 316 (a) Thermal Variance Study Project for cost recovery through the ECRC?**

OPC: No position at this time.

**ISSUE 14: How should the approved costs related to TECO's Bayside (a) Thermal Variance Study Project?**

OPC: No position.

**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 11<sup>th</sup> of October, 2024.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 20240007-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement has been furnished by electronic mail on this 11<sup>th</sup> day of October, 2024, to the following:

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