

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 20230007-EI  
ORDER NO. PSC-2023-0328-PHO-EI  
ISSUED: October 26, 2023

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 17, 2023, in Tallahassee, Florida, before Commissioner Mike La Rosa, as Prehearing Officer.

APPEARANCES:

MARIA JOSE MONCADA and JOEL BAKER, ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida 33408-2863  
On behalf of FLORIDA POWER & LIGHT COMPANY (FPL).

DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701 and MATTHEW R. BERNIER, and STEPHANIE CUELLO ESQUIRES, 106 East College Avenue, Suite 800, Tallahassee, Florida 32301  
On behalf of DUKE ENERGY FLORIDA, LLC (DEF).

MALCOLM N. MEANS, J. JEFFRY WAHLEN, and VIRGINIA PONDER ESQUIRES, Post Office Box 391, Tallahassee, Florida 32302  
On behalf of TAMPA ELECTRIC COMPANY (TECO).

WALT TRIERWEILER, CHARLES REHWINKEL, PATRICIA A. CHRISTENSEN, MARY A. WESSLING, and OCTAVIO PONCE, ESQUIRES, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of OFFICE OF PUBLIC COUNSEL (OPC).

JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES, 118 North Gadsden Street, Tallahassee, Florida 32312  
On behalf of FLORIDA INDUSTRIAL POWER USERS GROUP (FIPUG).

JAMES W. BREW, and LAURA WYNN BAKER, ESQUIRES, 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower, Washington, D.C. 20007  
On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS).

PETER J. MATTHEIS, MICHAEL K. LAVANGA, and JOSEPH R. BRISCAR, ESQUIRES, 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower, Washington D.C. 20007

On behalf of Nucor Steel Florida, Inc. (NUCOR).

JACOB IMIG, TIMOTHY SPARKS, and CARLOS MARQUEZ II, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

SAMANTHA CIBULA, ESQUIRE, Attorney Supervisor, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Florida Public Service Commission General Counsel

## **I. CASE BACKGROUND**

As part of the Florida Public Service Commission's (Commission) continuing Environmental Cost Recovery Clause (ECRC) proceeding, undertaken pursuant to Section 366.8255, Florida Statutes (F.S.), a hearing has been set in this Docket for November 1-3, 2023. The ECRC proceeding allows investor-owned electric utilities to seek recovery of their costs for approved environmental programs on an annual basis.

## **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

## **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 120 and 366, F.S.. This hearing will be governed by said Chapters and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

#### **IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

**V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES**

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

**VI. ORDER OF WITNESSES**

Each witness whose name is preceded by a plus sign (+) will present direct and rebuttal testimony together.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
+Richard L. Hume	FPL	1-12
+Katharine MacGregor	FPL	1-4, and 11-12
+Gary P. Dean	DEF	1-9, and 13-16
+Eric Szkolnyj	DEF	1-3
+Reginald Anderson	DEF	1-3

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
+Patricia Q. West	DEF	1-3, 13, and 15
+M. Ashley Sizemore	TECO	1-9
+Byron T. Burrows	TECO	3

+ These witnesses have been excused from attending the final hearing.

## **VII. BASIC POSITIONS**

**FPL:** FPL's 2024 Environmental Cost Recovery Clause factors are reasonable and should be approved. The Commission also should approve FPL's (1) proposed modification to its St. Lucie Turtle Nets Project, and (2) proposed modification to its Solar Site Avian Monitoring and Reporting Project.

**DEF:** DEF's positions to specific issues are listed below.

**TECO:** The Commission should approve the compliance programs described in the testimony and exhibits of Tampa Electric witnesses Sizemore and Burrows for environmental cost recovery. The Commission should also approve Tampa Electric's calculation of its environmental cost recovery final true-up for the period January 2022 through December 2022, the actual/estimated environmental cost recovery true-up for the current period January 2023 through December 2023, and the company's projected ECRC revenue requirement and the company's proposed ECRC factors for the period January 2024 through December 2024 using the 2021 Settlement Agreement methodology.

**OPC:** 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.

**FIPUG:** The utilities bear the burden of proof to justify the recovery of costs they request in this docket as reasonable and prudent. The utilities must carry this burden regardless of whether or not FIPUG or other parties introduce evidence to the contrary. The utilities must also carry their burden of proof to support their proposal(s) asking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought.

**PCS**

**Phosphate:** PCS Phosphate generally adopts the positions taken by the Florida Office of Public Counsel ("OPC") unless a differing position is specifically stated.

**NUCOR:** Nucor's basic position is that Duke Energy Florida, LLC ("DEF") bears the burden of proof to justify the costs it seeks to recover through the ECRC and any other relief DEF requests in this proceeding.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

**VIII. ISSUES AND POSITIONS**

**ISSUE 1:** **What are the final environmental cost recovery true-up amounts for the period January 2022 through December 2022?**

**FPL:** \$850,694 under-recovery. (Hume, MacGregor)

**DEF:** \$309,443 over-recovery. (Dean, Anderson, Szkolnyj, West)

**TECO:** The appropriate final environmental cost recovery true-up amount for this period is an over-recovery of \$3,288,223. (Sizemore)

**OPC:** The OPC is not in full agreement that the Companies have demonstrated that the amounts are reasonable or prudent and thus objects to inclusion of the cost for recovery. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation<sup>1</sup> on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

**ISSUE 2: What are the actual/estimated environmental cost recovery true-up amounts for the period January 2023 through December 2023?**

**FPL:** \$2,189,109 over-recovery. (Hume, MacGregor)

**DEF:** \$3,091,285 under-recovery. (Dean, Anderson, Szkolnyj, West)

**TECO:** The actual/estimated environmental cost recovery true-up amount for the period is an over-recovery of \$3,180,723. (Sizemore)

**OPC:** The OPC is not in full agreement that the Companies have demonstrated that the amounts are reasonable or prudent and thus objects to inclusion of the cost for recovery. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

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<sup>1</sup> A "Type 2 stipulation" occurs on an Issue when the utility and Staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the Issue and the remaining Parties (including Staff if it does not join in the agreement) do not object to the Commission relying upon the agreed language to resolve that issue in a final order.

**ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2024 through December 2024?**

**FPL:** \$379,441,334. (Hume, MacGregor)

**DEF:** \$14,785,647. (Dean, Anderson, Szkolnyj, West)

**TECO:** The appropriate amount of environmental costs projected to be recovered for the period January 2024 through December 2024 is \$23,585,023. (Sizemore; Burrows)

**OPC:** The OPC is not in full agreement that the Companies have demonstrated that the amounts are reasonable or prudent and thus objects to inclusion of the cost for recovery. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

**ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2024 through December 2024?**

**FPL:** \$378,102,918. (Hume, MacGregor)

**DEF:** \$17,567,489. (Dean)

**TECO:** The total environmental cost recovery amount, including true-up amounts, for the period January 2024 through December 2024 is \$17,128,401 after the adjustment for taxes. (Sizemore)

**OPC:** The OPC is not in full agreement that the Companies have demonstrated that the amounts are reasonable or prudent and thus objects to inclusion of the cost for recovery. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.



**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

**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 2024 through December 2024?**

**FPL:** The depreciation rates used to calculate the depreciation expense should be the rates that are in effect during the period the allowed capital investment is in service. For the period January 2024 through December 2024, FPL will use the depreciation rates that were approved by the Commission in Order No. PSC-2021-0446-S-EI. (Hume)

**DEF:** The depreciation rates used to calculate depreciation expense should be the rates that are in effect during the period the allowed capital investment is in service. (Dean)

**TECO:** The depreciation rates used to calculate the depreciation expense shall be the depreciation rates agreed to in Tampa Electric's 2021 Settlement Agreement were applied to the 2024 projection. (Sizemore)

**OPC:** The OPC is not in full agreement that the Companies have demonstrated that the proposed depreciation rates are reasonable or prudent and thus objects to inclusion of the cost for recovery. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

**ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2024 through December 2024?**

**FPL:**

**ENERGY**

Retail Energy Jurisdictional Factor - Base/Solar	95.834918%
Retail Energy Jurisdictional Factor - Intermediate	94.475106%
Retail Energy Jurisdictional Factor - Peaking	95.727165%

**DEMAND**

Retail Demand Jurisdictional Factor - Transmission	89.414285%
Retail Demand Jurisdictional Factor - Base/Solar	96.092263%
Retail Demand Jurisdictional Factor - Intermediate	95.452789%
Retail Demand Jurisdictional Factor - Peaking	94.266255%
Retail Demand Jurisdictional Factor - Distribution	100.0000%

**GENERAL PLANT**

Retail General Plant Jurisdictional Factor - Labor (Hume)	97.044914%
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**DEF:**

The separation factors are below and are consistent with DEF's 2021 Settlement Agreement approved in Order No. PSC-2021-0202-AS-EI in Docket No. PSC-20210016-EI.

Transmission Demand – 72.042%  
Distribution Primary Demand – 100.000%

Production Demand:  
Production Base – 97.403%  
Production Intermediate – 92.637%  
Production Peaking – 95.110%  
Production A&G – 96.779%  
(Dean)

**TECO:**

Energy: 100.00%  
Demand: 100.00% (Sizemore)

**OPC:**

The OPC is not in full agreement that the Companies have demonstrated that the factors are reasonable or prudent and thus objects to them. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:**

Adopt position of OPC.

**PCS**

**Phosphate:** No position.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

**ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2024 through December 2024 for each rate group?**

**FPL:** FPL’s ECRC factors for the period January 2024 through December 2024 are:

RATE CLASS	Environmental Cost Recovery Factor (cents/kWh)
RS1/RTR1	0.332
GS1/GST1	0.304
GSD1/GSDT1/HLFT1/GSD1-EV	0.280
OS2	0.184
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	0.257
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.241
GSLD3/GSLDT3/CS3/CST3	0.224
SST1T	0.281
SST1D1/SST1D2/SST1D3	0.234
CILC D/CILC G	0.236
CILC T	0.209
MET	0.265
OL1/SL1/SL1M/PL1	0.046
SL2/SL2M/GSCU1	0.219
Total	0.303

(Hume)

**DEF:** The appropriate recovery factors are as follows: (Dean)

RATE CLASS	ECRC FACTORS
Residential	0.046 cents/kWh
General Service Non-Demand	
@ Secondary Voltage	0.044 cents/kWh
@ Primary Voltage	0.044 cents/kWh
@ Transmission Voltage	0.043 cents/kWh
General Service 100% Load Factor	0.042 cents/kWh
General Service Demand	
@ Secondary Voltage	0.043 cents/kWh
@ Primary Voltage	0.043 cents/kWh
@ Transmission Voltage	0.042 cents/kWh
Curtailable	
@ Secondary Voltage	0.041 cents/kWh
@ Primary Voltage	0.041 cents/kWh
@ Transmission Voltage	0.040 cents/kWh
Interruptible	
@ Secondary Voltage	0.041 cents/kWh
@ Primary Voltage	0.041 cents/kWh
@ Transmission Voltage	0.040 cents/kWh
Lighting	0.037 cents/kWh

**TECO:** The appropriate environmental cost recovery factors are as follows:

<u>Rate Class</u>	<u>Factor (¢/kWh)</u>
RS	0.089
GS, CS	0.084
GSD, SBF	
Secondary	0.081
Primary	0.080

Transmission	0.080
GSLDPR/GSLDTPR, SBLDPR/SBLDTPR	0.071
GSLDSU/ GSLDTSU SBLDSU/SBLDTSU	0.074
LS1, LS2	0.060
Average Factor (Sizemore)	0.084

**OPC:** The OPC is not in full agreement that the Companies have demonstrated that the factors are reasonable or prudent and thus objects to them. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

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

**FPL:** The environmental cost recovery factors should be effective for meter readings that occur on or after January 1, 2024. These charges should continue in effect until modified by subsequent order of this Commission. (Hume)

**DEF:** The factors should be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2024 through December 2024. Billing cycles may start before January 1, 2024 and the last cycle may read after December 31, 2024, so that each customer is billed for twelve months regardless of when the adjustment factor became effective. These charges will continue in effect until modified by the Commission. (Dean)

**TECO:** The factors should be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2024 through December 2024. Billing cycles may start before January 1, 2024 and the last cycle may read after December 31, 2024, so that each customer is billed for twelve months regardless of when the adjustment factors became effective. These charges shall

continue in effect until modified by subsequent order of this Commission.  
(Sizemore)

**OPC:** No position.

**FIPUG:** No position.

**PCS**

**Phosphate:** No position.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

**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?**

**FPL:** Yes. The Commission should approve FPL's tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors as presented in this proceeding. (Hume)

**DEF:** Yes. (Dean)

**TECO:** Yes. (Sizemore)

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

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Regarding DEF, agree with OPC. For all other utilities, Nucor takes no position.

**STAFF:** Staff has no position at this time.

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

**FPL:** No. This is a continuing docket and should remain open. (Hume)

**DEF:** No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and shall remain open.

**TECO:** Yes.

**OPC:** No.

**FIPUG:** No.

**PCS**

**Phosphate:** No position.

**NUCOR:** No position.

**STAFF:** Staff has no position at this time.

#### COMPANY-SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

##### **Florida Power & Light Company**

**ISSUE 11:** **Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modification to its St. Lucie Turtle Nets Project?**

**FPL:** Yes. On August 8, 2022, the National Marine Fisheries Services (“NMFS”) issued a new Biological Opinion (“BO”) for the St. Lucie Plant (“PSL”) containing additional monitoring and compliance requirements beyond those of the currently approved St. Lucie Turtle Nets Project. As currently approved, the Project involves the installation and maintenance of a barrier net that is designed to limit lethal takes of sea turtles in compliance with a BO issued in 2001. Under the 2022 BO, PSL is required to have on site – 365 days a year, between the hours of 6 a.m. and 10 p.m. – at least one biologist that has been trained by NMFS in safe handling and release of giant manta rays. Prior to implementation of the 2022 BO, under normal circumstances PSL was required to have a biologist available only during daylight hours on weekdays. The 2022 BO also establishes new recovery protocols for the giant manta ray, requiring that any giant manta rays entangled in the barrier net be recovered, tagged, and released in accordance with the specific procedures. FPL must incur costs to meet these new requirements. (MacGregor)

**DEF:** No position.

**TECO:** No position.

**OPC:** No. The OPC is not in agreement at this time that FPL has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Any decision on this project should be limited to the specific expenses that have been provided in the filings. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** No position.

**NUCOR:** No position.

**STAFF:** Staff has no position at this time.

**ISSUE 12: Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modification to its Solar Site Avian Monitoring and Reporting Project?**

**FPL:** Yes. Originally approved by Order No. PSC-2018-0594-FOF-EI, the Solar Site Avian Monitoring and Reporting Project stemmed from county avian mortality monitoring and reporting requirement included in the permit for construction of an FPL solar center in Alachua County in 2018. The purpose of the monitoring program was to estimate the overall annual avian fatality rate and species composition associated with a solar site. On March 17, 2023, FPL received a permit from the Florida Department of Environmental Protection for construction of a new solar site in Martin County. The permit for this new site requires FPL to conduct a three-year post-construction survey of Florida's population of Northern crested caracara, a bird species listed as threatened by the U.S. Fish and Wildlife Service ("USFWS"). The purpose of the post-construction monitoring is to evaluate whether solar arrays located within the primary management zone of a known caracara nest cause an observable change in site occupancy, number of broods, or fledgling rate when construction occurs outside of the breeding season months. Annual post-construction breeding success reports are required to be submitted to the USFWS. FPL must incur additional costs to meet these new requirements. (MacGregor)

**DEF:** No position.

**TECO:** No position.

**OPC:** The OPC is not in agreement at this time that FPL has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable



and prudent. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** No position.

**NUCOR:** No position.

**STAFF:** Staff has no position at this time.

**Duke Energy Florida, LLC**

**ISSUE 13: Should the Commission approve DEF's Reclaimed Water Interconnection Project for cost recovery through the ECRC?**

**FPL:** No position.

**DEF:** Yes. DEF's proposed Reclaimed Water Interconnection project meets the recovery criteria established in Order No. 94-044-FOF-EI, in that:

a) All expenditures will be prudently incurred after April 13, 1993;

b) The activities are legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year which rates are based; and

c) The expenditures are not being recovered through some other cost recovery mechanism or through base rates. (West, Dean)

**TECO:** No position.

**OPC:** No. The OPC is not in agreement at this time that DEF has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Agree with OPC.

**STAFF:** Staff has no position at this time.

**ISSUE 14: How should the approved costs related to DEF's Reclaimed Water Interconnection Project be allocated to the rate classes?**

**FPL:** No position.

**DEF:** O&M costs associated with the Reclaimed Water Interconnection Program should be allocated to rate classes on an Energy basis, and Capital be allocated to the rate classes on a Demand basis. (Dean)

**TECO:** No position.

**OPC:** The OPC is not in agreement at this time that DEF has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Accordingly, the OPC is not in a position to agree to the rate class allocations. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Agree with OPC.

**STAFF:** Staff has no position at this time.

**ISSUE 15: Should the Commission approve DEF's Lead and Copper Rule Project for cost recovery through the ECRC?**

**FPL:** No position.

**DEF:** Yes. DEF's proposed Lead & Copper project meets the recovery criteria established in Order No. 94-044-FOF-EI, in that:

a) All expenditures will be prudently incurred after April 13, 1993;

b) The activities are legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year which rates are based; and

c) The expenditures are not being recovered through some other cost recovery mechanism or through base rates. (West, Dean)

**TECO:** No position.

**OPC:** The OPC is not in agreement at this time that DEF has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Agree with OPC.

**STAFF:** Staff has no position at this time.

**ISSUE 16:** **How should the approved costs related to DEF's Lead and Copper Rule Project be allocated to the rate classes?**

**FPL:** No position.

**DEF:** O&M and Capital costs associated with the Lead & Copper Rule Program should be allocated to rate classes on a Demand basis. (Dean)

**TECO:** No position.

**OPC:** The OPC is not in agreement at this time that DEF has demonstrated that it has met its burden to demonstrate that the costs related to this project are reasonable and prudent. Accordingly, the OPC is not in a position to agree to the rate class allocations. Nevertheless, for various reasons, including judicial economy, the OPC is willing to facilitate a Type 2 stipulation on this issue.

**FIPUG:** Adopt position of OPC.

**PCS**

**Phosphate:** Agree with OPC.

**NUCOR:** Agree with OPC.

**STAFF:** Staff has no position at this time.

**IX. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
<u>Direct</u>		
Richard L. Hume	FPL	RLH-1 2022 ECRC Final True-Up
Richard L. Hume	FPL	RLH-2 2023 ECRC Actual Estimate
Richard L. Hume	FPL	RLH-3 2024 ECRC Projection Filing
Richard L. Hume	FPL	RLH-4 2024 ECRC Projection Filing (Calculation of Stratified Separation Factors)
Katharine MacGregor	FPL	KM-1 St. Lucie Nuclear Power Plant Biological Opinion
Katharine MacGregor	FPL	KM-2 FPL Monarch Solar Site FDEP General Permit
Gary P. Dean	DEF	GPD-1 Forms 42-1A - 42-9A January 2022 – December 2022
Gary P. Dean	DEF	GPD-2 Forms 42-1E – 42-9E January 2023 – December 2023
Gary P. Dean	DEF	GPD-3 Forms 42-1P – 42-8P January 2024– December 2024
Eric Szkolnyj	DEF	GPD-3 Form 42-5P, page 23
Reginald Anderson	DEF	GPD-3 Form 42-5P, pages 7 and 20 through 22
Patricia Q. West	DEF	KSM-1 Review of Integrated Clean Air Compliance Plan
Patricia Q. West	DEF	GPD-3 Form 42-5P, pages 1-4, 6, 7, and 8-19
M. Ashley Sizemore	TECO	MAS-1 Final Environmental Cost Recovery Commission Forms 42-1A through 42-9A for the period January 2022 through December 2022

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
M. Ashley Sizemore	TECO	MAS-2	Environmental Cost Recovery Commission Forms 42-1E through 42-9E for the Period January 2023 through December 2023
M. Ashley Sizemore	TECO	MAS-3	Environmental Cost Recovery Forms 42-1P through 42-8P for the Period January 2024 through December 2024

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

**X. PROPOSED STIPULATIONS**

There are no proposed stipulations at this time.

**XI. PENDING MOTIONS**

There are no pending motions at this time.

**XII. PENDING CONFIDENTIALITY MATTERS**

There are no pending confidentiality matters at this time.

**XIII. POST-HEARING PROCEDURES**

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

**XIV. RULINGS**

Opening statements, if any, shall not exceed three minutes per party.

It is therefore,

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 26th day of October, 2023.



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Mike La Rosa  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://www.floridapsc.com)

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.