

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20240025-EI
ORDER NO. PSC-2024-0198-PCO-EI
ISSUED: June 19, 2024

ORDER DENYING OFFICE OF PUBLIC COUNSEL'S MOTION TO SEVER
DUKE ENERGY FLORIDA, LLC'S PETITION FOR RATE INCREASE
RELATING TO THE SECOND AND THIRD TEST YEARS

Duke Energy Florida, LLC (DEF or Utility) filed its Petition for Rate Increase, minimum filing requirements (MFRs), and testimony on April 2, 2024. Duke filed its MFRs based on projected test years from January 1 to December 31, 2025; January 1 to December 31, 2026; and January 1 to December 31, 2027. By Order No. PSC-2024-0092-PCO-EI, issued April 11, 2024, an administrative hearing has been scheduled for these matters for August 12 – 16, 2024. August 19 – 23, 2024, have also been reserved for the continuation and conclusion of this hearing, if necessary.

Motion to Sever and Request for Oral Argument

On May 20, 2024, the Office of Public Counsel (OPC) filed a Motion to Sever DEF's Petition for Rate Increase Relating to the Second and Third Test Years. OPC argues in its Motion that the last two of DEF's three proposed test years – January 1 to December 31, 2026, and January 1 to December 31, 2027 – should be severed from this proceeding, and that only projected test year January 1 to December 31, 2025 should be the subject of the August final hearing. OPC argues that it is prejudiced by the inclusion of three test years in this proceeding because it lacks adequate time to prepare “essentially three separate rate cases” while simultaneously litigating a separate docket involving Tampa Electric Company.¹ OPC contends that DEF would not be prejudiced by severing test years 2026 and 2027 because the Utility has multiple other options for rate relief should its earnings fall below the bottom of its approved range, and also because recovery through the clauses allows DEF avenues outside of base rates to ensure adequate revenue. OPC cites Rule 1.270(b), Florida Rules of Civil Procedure, as the authority for the requested relief.²

OPC filed a companion Request for Oral Argument on Motion for Severance contemporaneously with the Motion. The Request asserts that oral argument would aid the Commission in understanding and evaluating the Motion to Sever.

¹ Docket No. 20240026-EI, *In re: Petition for rate increase by Tampa Electric Company*.

² “The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.” Fla. R. Civ. P. 1.270(b).

DEF Response to Motion

On May 28, 2024, DEF filed its Response to the Motion. DEF avers that OPC's arguments regarding scheduling and workload issues have been previously considered and rejected in this docket. DEF further asserts that the arguments posed by OPC raise factual issues that must be resolved by the Commission on a full record. DEF disagrees with OPC's assertion that the Utility would not be prejudiced if two of the test years were dismissed from this case, noting the resources that have already been directed towards this rate case as filed. Finally, DEF opposes OPC's request for oral argument, and alternatively requests that it be allowed to participate should oral argument be granted.

Analysis and Decision

The only Florida Rules of Civil Procedure that are expressly applicable to the Commission as an agency are those governing discovery.³ Rule 1.270, Florida Rules of Civil Procedure, which addresses consolidation and holding separate trials, and is cited by OPC as the authority upon which relief may be granted, is not applicable to this proceeding. However, the presiding officer does possess similar authority under Rule 28-106.211, Florida Administrative Code (F.A.C.), to:

. . . 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, including bifurcating the proceeding. (emphasis added).⁴

Turning to the Motion to Sever under the standards in this rule, OPC's arguments do not demonstrate that bifurcation will promote the just, speedy, and inexpensive determination of all aspects of the case. DEF has requested three test years, supported its request with testimony and exhibits, and has the right to be heard on that request. The only factual issue argued by OPC in support of bifurcation is workload, and that issue has been fully considered by the Prehearing Officer⁵ and reconsidered by the full Commission.⁶ OPC's interrogatory limit has been expanded to 1,000 in order to allow full discovery on all test years,⁷ and the docket indicates that rigorous

³ “[T]he Florida Rules of Civil Procedure apply to “actions of a civil nature and all special statutory proceedings *in the circuit and county courts of this state* . . .” Fla. R. Civ. P. 1.010. (Emphasis added). Only those rules of civil procedure governing discovery apply in administrative proceedings. § 120.569(2)(f), Fla. Stat.” *Collins v. Whole Foods Market Ip, Inc.*, Order Denying Motion for Clerk’s Default, 2023 WL 10357560, at *1.

⁴ The document cited in footnote 4 of OPC’s Motion to Sever in support of its reliance on Rule 1.270 is Progress Energy, Inc.’s Response in Opposition to Joint Motion to Sever, not an Order of the Commission. The Commission Order Bifurcating Proceeding, which disposed of the Joint Motion to Sever, cited Rule 28-106.211, F.A.C., as authority for the Prehearing Officer bifurcating the proceeding. Order No. PSC-06-1059-PCO-EI, issued December 22, 2006, in Docket No. 20060642-EI, *In re: Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through fuel clause, by Progress Energy Florida, Inc.* The Order did not mention Rule 1.270.

⁵ Order Establishing Procedure (Order No. PSC-2024-0092-PCO-EI) at 11-12.

⁶ Document No. 03412-2024 (Commission Vote Sheet Denying OPC’s Motion for Reconsideration).

⁷ Order No. PSC-2024-0145-POC-EI.

discovery is underway. The initial January 31, 2024, letter from DEF to the Chair of the Commission gave notice that the Utility would be requesting three test years. The Chairman confirmed DEF's request for three test years by letter dated March 1, 2024, stating therein "that the appropriateness of the selected test years may be an issue in the proceeding." All parties have presumably been undertaking their hearing preparation accordingly. To change course now and set aside the preparatory work DEF has performed and the substantial discovery already conducted on three test years would result in delay and added expense.

In addition to the workload arguments, OPC asserts that severance is appropriate because the Commission allegedly lacks legal authority to consider three test years in one proceeding, and any analysis of the two outlying years should be conducted "closer in time to 2026 and 2027 when the projections would be more reliable and less speculative." The arguments raised by OPC regarding the Commission's authority and the reliability of forecasts over multiple test years present questions of both law and fact that are appropriately decided by the full Commission with the benefit of a complete hearing record and post-hearing filings from the parties. For all of these reasons, the Motion to Sever shall be denied.


The Motion to Sever, which incorporates by reference arguments made in other pleadings, contains all the information necessary to make a fully informed ruling. Therefore, the Request for Oral argument shall be denied.

Therefore, it is

ORDERED by Commissioner Gabriella Passidomo, as Prehearing Officer, that the Motion to Sever Duke Energy Florida, LLC's Petition for Rate Increase Relating to the Second and Third Test Years is denied. It is further

ORDERED that the Office of Public Counsel's Request for Oral Argument on Citizens' Motion for Severance is denied.

By ORDER of Commissioner Gabriella Passidomo, as Prehearing Officer, this 19th day
of June, 2024.



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

SPS

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.