

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of modifications to risk management plans by Duke Energy Florida, Florida Power & Light Company, Gulf Power Company and Tampa Electric Company.

DOCKET NO. 160096-EI

FILED: July 15, 2016

**PETITION PROTESTING & REQUESTING EVIDENTIARY HEARING
ON THE PROPOSED AGENCY ACTION**

The Citizens of the State of Florida (Citizens), by and through the Office of Public Counsel (OPC), pursuant to Section 120.57, Florida Statutes (F.S.), and Rules 25-22.029 and 28-106.201, Florida Administrative Code (F.A.C.), file this protest of the Florida Public Service Commission's (Commission) Order No. PSC-16-0247-PAA-EI, issued June 27, 2016, (PAA Order). In the PAA Order, the Commission approved the Joint Petition by Investor-Owned Utilities for Approval of Modifications to Risk Management Plans (Joint Petition). In support for a hearing on the protested PAA Order, Citizens state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 160096-EI

2. The Citizens include the customers of Duke Energy Florida (DEF), Florida Power & Light Company (FPL), Gulf Power Company (Gulf), and Tampa Electric Company (TECO)¹ whose substantial interests are affected by the PAA Order.

3. Pursuant to Section 350.0611, F.S., the Citizens who file this Petition are represented by the Office of Public Counsel with the following address and telephone number:

¹ Collectively, the utilities or Companies.

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
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Telephone No. (850) 488-9330

4. The Citizens obtained a copy of the PAA Order via Commission email on June 27, 2016.
5. The disputed issues of material fact are discussed below, including a concise statement of the ultimate facts alleged and those facts which Citizens contend warrant reversal and/or modification of the PAA Order.

Since 2002 through 2015, the four investor-owned utilities have cumulative natural gas financial hedging losses totaling over \$6 billion, and these utilities have projected they will lose another \$559 million in 2016.²

By the Joint Petition, the Companies sought permission to reduce the hedging target and/or hedging target ranges in their 2016 risk management plans approved by the Commission in the 2015 fuel adjustment clause docket.³ The proposed reduction approved by the PAA Order was a 25% reduction in the target range, however, that reduction will not reduce hedging losses by 25% for 2017 because most of the Companies have locked in most of their 2017 hedging positions. Therefore, minor changes to their 2016 risk management plans are too little too late to meaningfully provide substantial customer benefit in 2017. The OPC continues to support elimination – not slight modification – of the hedging programs.

OPC's position on natural gas financial hedging activities remains the same. The Companies' hedging activities have added unnecessary costs to the price customers pay for fuel

² Approximately \$174 million for DEF; \$300 million for FPL; \$58 million for Gulf; and \$18 million for TECO, according to discovery by OPC.

³ Order No. PSC-15-0586-FOF-EI, issued December 23, 2015, in Docket No. 150001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor

on their utility bills. The evidence presented by OPC in the 2015 fuel adjustment clause demonstrated that the attendant costs of financial hedging greatly outweigh any temporary benefits of fuel price volatility mitigation. The facts and evidence have already demonstrated that the need for financial hedging of natural gas has dissipated since the program's inception in 2002. In the past, the Commission, utilities, and customers expected that hedging gains and losses would offset over time. However, it is now 2016 and hedging losses have continued to mount in a significant way.

In addition, all the customer groups (representing residential, commercial, and industrial rate classes) have been united in opposition to the continuation of financial hedging because of its extraordinary costs. The Commission should acknowledge the customers' united front and the overwhelming evidence against the continued financial hedging of natural gas and move to terminate it instead of approving a small change to the percentages of the volumes of natural gas as proposed by the Companies.

For all these reasons, the financial hedging of natural gas should be discontinued or suspended at this time; therefore, OPC protests the PAA Order in its entirety.

6. Citizens reserve the right to fully participate in the hearing process, take positions and file testimony on any additional issues raised by any other party's protest or cross-petition, and resolve any issues which come to light during the pendency of this docket. Below is a tentative list of issues identified by Citizens as being ripe for an evidentiary hearing.

Statement of Disputed Facts and Issues

- Issue 1. What are the actual cumulative hedging loses for the utilities through 2015, estimated and actual for 2016, and projected for 2017?
- Issue 2. Is it in the consumers' best interest for the utilities to continue natural gas financial hedging activities?

Issue 3. Should the Commission order the utilities to cease natural gas financial hedging activities?

Issue 4. Should the Commission approve the utilities' proposed modifications to their 2016 risk management plans?

7. Pursuant to Sections 366.04, 366.05, and 366.06, F.S., the Commission has the authority and duty to prescribe and fix just and reasonable rates and charges. Pursuant to these statutes, adjustments should be made to the risk management plans that the Commission proposed to approve by the PAA Order. In the broadest terms, the Citizens' ultimate factual allegation that continuing natural gas hedging activities should be discontinued. The disputed issues of material fact delineated in and by Citizens' protest should be interpreted broadly in order to effectuate full discovery on the disputed issues, thereby allowing the parties to adequately determine the scope of the issues for consideration and determination. Citizens' protest encompasses any additional issues logically arising from the specifically identified areas, including related issues that may arise during the process of discovery issued in this case. Further, Citizens reserve the right to fully participate in the hearing process, take positions and file testimony on any additional issues raised by any other party's protest or cross-petition, and resolve any issues which come to light during the pendency of this docket.

8. Citizens are entitled to a *de novo* proceeding on the disputed issues of material fact raised in Citizens' protest of the PAA Order. Citizens further maintain that the utility has the burden of proof in all aspects of the requested evidentiary hearing pursuant to Section 120.57(1), F.S., and if the burden of proof is not satisfied, the disputed issues of material fact must be resolved in the favor of the ratepayer.

9. By Order No. PSC-16-0247-PAA-EI, protests of the PAA Order shall be filed with the clerk of the Office of Commission Clerk no later than the close of business on July 18, 2016. This Petition has therefore been timely filed.

10. Sections 366.04, 366.05, and 366.06, F.S., are the specific statutes that require reversal or modification of the PAA Order.

11. Citizens request that the Commission take the following actions with respect to this protest and objection to the PAA Order:

(a) Establish a hearing schedule to resolve the disputed issues of material fact as described above, including any additional issues raised by a party's protest or cross-petition and on any issues which come to light during the pendency of this docket.

(b) Deny the Companies' requested modification of their 2016 risk management plans.

WHEREFORE, the Citizens hereby protest and object to Commission Order No. PSC-16-0247-PAA-EI, as provided above, and petition the Commission to conduct a formal evidentiary hearing, as required under the provisions of Section 120.57(1), F.S., at a convenient time within or as close as practical to the utility's certificated service area.

Respectfully Submitted,

JR Kelly
Public Counsel



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CERTIFICATE OF SERVICE

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's PETITION PROTESTING & REQUESTING EVIDENTIARY HEARING ON THE PROPOSED AGENCY ACTION has been furnished by electronic mail to the following parties on this 15th day July, 2016.

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