

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Conservation Cost Recovery
Clause

DOCKET NO. 20170007-EI

FILED: September 29, 2017

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2017-0106-PCO-EI issued March 23, 2017, submit this Prehearing Statement.

APPEARANCES:

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On behalf of the Citizens of the State of Florida.

A. **WITNESSES:**

Dr. Sorab Panday Issues 10A, 10B, 10D, 10E

B. **EXHIBITS:**

<u>Witness</u>	<u>Exhibit #</u>	<u>Title</u>
Dr. Sorab Panday	SP-1	Resume of Sorab Panday
Dr. Sorab Panday	SP-2	Table of Referenced Documents
Dr. Sorab Panday	SP-3	Demonstratives 1-28

C. STATEMENT OF BASIC POSITION

The utilities have the burden of proof to justify and support the recovery of costs, their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed), and any other affirmative relief sought, regardless of whether the Interveners provide evidence to the contrary. Moreover, regardless of whether the Commission has previously approved a program as meeting the Commission's requirements, the utilities must still meet their burden of demonstrating that the costs submitted for final recovery meet the statutory test(s), are reasonable in amount, and prudently incurred. Issues that were deferred from 2016 to the current docket carry no presumption of correctness as to the reasonableness, prudence or retail ratepayer responsibility for the type or category of cost for which recovery is being sought.

The Commission has previously stated that the ECRC does not automatically require recovery of prudently incurred environmental costs through the clause. Instead, recovery of even prudently incurred costs is a matter of agency discretion and policy. Further, Section 366.01, Florida Statutes, states on its face that the provisions of Chapter 366 are to be liberally construed to protect the public welfare.

It is well-established that recovery should be denied where imprudent management resulted in additional costs. This standard applies to costs related to the correction of contamination and violations of law. *In the case of FPL, the record shows that several decades of management decisions led directly to the development and growth of a hypersaline plume which threatens a public source of drinking water upon which millions of citizens depend. FPL was issued regulatory notices of violation because of the hypersaline plume. FPL now seeks to burden*

ratepayers with the costs of retracting the hypersaline plume, or in other words, to make customers pay for the direct results of FPL's imprudent management decisions. This is contrary to law and policy. Additionally, FPL seeks to characterize a portion of its remediation responsibilities as ordinary capital improvement expenses related to containing the hypersaline plume, i.e., preventing further contamination of the Biscayne Aquifer. The purported "allocation" of costs proposed for recovery between O&M and Capital is not supported by scientific data. OPC objects to the recovery by FPL of any costs related to imprudent management.

D. STATEMENT OF FACTUAL ISSUES AND POSITIONS

GENERIC ISSUES

ISSUE 1: What are the final environmental cost recovery true-up amounts for the period January 2016 through December 2016?

OPC: No position at this time.

ISSUE 2: What are the estimated/actual environmental cost recovery true-up amounts for the period January 2017 through December 2017?

OPC: No position at this time.

ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2018 through December 2018?

OPC: No position at this time.

ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2018 through December 2018?

OPC: 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 2018 through December 2018?

OPC: No position at this time.

ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2018 through December 2018?

OPC: No position at this time.

ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2018 through December 2018 for each rate group?

OPC: No position at this time.

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

OPC: 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?**

OPC: No position at this time.

COMPANY SPECIFIC ISSUES

FLORIDA POWER & LIGHT

ISSUE 10A: **Should FPL be allowed to recover, through the ECRC, prudently incurred costs, if any, associated with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection and the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management (as amended by the August 15, 2016 Consent Agreement Addendum)?**

OPC: No.

ISSUE 10B: **Which costs, if any, associated with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection and the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management (as amended by the August 15, 2016 Consent Agreement Addendum) were prudently incurred?**

OPC: The costs of the Retraction Well System are remedial in nature and should not be imposed on FPL's customers. FPL's management knew or should have known that its actions in operating the CCS were creating material harm to the Biscayne

Aquifer. FPL's actions and inaction over time placed the Company in violation of law, and therefore constitute imprudence, such that the costs of addressing the consequences of that imprudence are not properly costs that should be borne by customers.

ISSUE 10C: Should the costs FPL seeks to recover in this docket be considered part of its Turkey Point Cooling Canal Monitoring Plan project?

OPC: No.

ISSUE 10D: Is FPL's proposed allocation of costs associated with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection and the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management (as amended by the August 15, 2016 Consent Agreement Addendum) between O&M and capital appropriate? If not, what is the correct allocation of costs between O&M and capital?

OPC: No. The costs of the Retraction Well System are remedial in nature and should not be imposed on FPL's customers. FPL's management knew or should have known that its actions in operating the CCS were creating material harm to the Biscayne Aquifer. FPL's actions and inaction over time placed the Company in violation of law, and therefore constitute imprudence, such that the costs of addressing the consequences of that imprudence are not properly costs that should be borne by customers.

ISSUE 10E: How should the costs associated with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection and the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management (as amended by the August 15, 2016 Consent Agreement Addendum) be allocated to the rate classes?

OPC: No position at this time.

TAMPA ELECTRIC COMPANY

ISSUE 11: How should revenues included in Tampa Electric's projected ECRC cost recovery amount for 2018 associated with Phase II of the company's coal combustion residuals compliance program ("CCR Program"), the approval of which is currently pending in Docket No. 20170168-EI, be treated for cost recovery purposes pending the final disposition of the company's petition in that docket?

OPC: The projected revenues for the costs associated with the Phase II of the CCR program should be conditioned on the approval of the CCR program in Docket No. 20170168-EI. To the extent the scope of the CCR program costs differ from costs of the approved program in Docket No. 20170168-EI, the revenues collected for the CCR program in Docket No. 20170007-EI should be held subject to refund.

DUKE ENERGY FLORIDA

ISSUE 12A Should the Commission find DEF's proposed 316(b) compliance project is reasonable and approve recovery of the related costs through the ECRC?

OPC: No position at this time.

ISSUE 12B: How should the costs associated with DEF's proposed 316(b) compliance Project be allocated to the rate classes?

OPC: No position at this time.

ISSUE 12C: Should the Regulatory Asset Treatment of the Alderman Road Fence be approved?

OPC: No position at this time.

E. STIPULATED ISSUES:

None.

F. PENDING MOTIONS:

None.

G. REQUESTS FOR CONFIDENTIALITY

Citizens have no pending requests for claims for confidentiality.

H. OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT

OPC has no objections to any witness' qualifications as an expert in this proceeding.

I. REQUIREMENTS OF ORDER

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 29th day of September, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Prehearing Statement has been furnished by electronic mail on this 29th day of September, 2017, to the following:

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