

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Re: Environmental Cost Recovery Clause

DOCKET NO. 20200007-EI

FILED: October 9, 2020

**PRE-HEARING 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-2020-0123-PCO-PU, issued April 23, 2020, modifying Order No. PSC-2020-0044-PCO-PU issued January 31, 2020, hereby submit this Prehearing Statement.

**APPEARANCES:**

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Public Counsel

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Associate Public Counsel

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On behalf of the Citizens of the State of Florida

A. **WITNESSES:**

None.

B. EXHIBITS:

None.

C. STATEMENT OF BASIC POSITION

The utilities bear the burden of proof to justify the recovery of costs they request in this docket. The utilities 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 even prudently incurred costs is constrained by the Commission's obligation to set fair, just, and reasonable rates. Further, pursuant to Section 366.01, Florida Statutes, 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.

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 2019 through December 2019?

OPC: The OPC is not in agreement 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 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 accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent.

**ISSUE 2:** What are the actual/estimated environmental cost recovery true-up amounts for the period January 2020 through December 2020?

OPC: The OPC is not in agreement 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 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 accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent.

**ISSUE 3:** What are the projected environmental cost recovery amounts for the period January 2021 through December 2021?

OPC: The OPC is not in agreement 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 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 accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent.

**ISSUE 4:** What are the environmental cost recovery amounts, including true-up amounts, for the period January 2021 through December 2021?

OPC: The OPC is not in agreement 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 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 accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed 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 2021 through December 2021?

OPC: No position.

**ISSUE 6:** What are the appropriate jurisdictional separation factors for the projected period January 2021 through December 2021?

OPC: No position.

**ISSUE 7:** What are the appropriate environmental cost recovery factors for the period January 2021 through December 2021 for each rate group?

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

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

OPC: No position.

**COMPANY SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES**

Duke Energy Florida, LLC

**ISSUE 11:** Should the Commission approve DEF's Anclote and Bartow Stations 316(b) Rule Compliance Plan Projects for cost recovery through the Environmental Cost Recovery Clause?

OPC: The OPC is not in agreement 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 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 accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent.

**ISSUE 12:** How should any approved Environmental Cost Recovery Clause costs associated with DEF's Anclote and Bartow Stations 316(b) Rule Compliance Plan Projects be allocated to the rate classes?

OPC: No position.

**ISSUE 13:** Should the Commission approve DEF's proposed treatment for the ECRC assets associated with the retirement of Avon Park and Higgins, as proposed in DEF's 2020 Projection Filing?

OPC: The OPC is not in agreement 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 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 accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent.

Florida Power & Light Company:

**ISSUE 14:** Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed Power Plant Intake Protected Species Project?

OPC: The OPC is not in agreement 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 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 accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent.

**ISSUE 15:** How should any approved Environmental Cost Recovery Clause costs associated with FPL's proposed Power Plant Intake Protected Species Project be allocated to the rate classes?

OPC: No position.

**ISSUE 16:** Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modification to its Turkey Point Cooling Canal Monitoring Plan Project?

OPC: No.

E. **STIPULATED ISSUES:**

None at this time.

F. **PENDING MOTIONS:**

None.

G. **REQUESTS FOR CONFIDENTIALITY:**

OPC have no pending requests for claims for confidentiality.

H. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

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

I. 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 9<sup>th</sup> day of October, 2020

Respectfully submitted,

J.R. Kelly  
Public Counsel

/s/ Charles Rehwinkel  
Charles Rehwinkel  
Deputy Public Counsel

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**CERTIFICATE OF SERVICE**  
**Docket No. 20200007-EI**

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 9<sup>th</sup> day of October 2020, to the following:

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