

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Environmental Cost Recovery Clause

DOCKET NO. 20210007-EI

FILED: October 14, 2021

AMENDED 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-2021-0078-PCO-EI, issued February 11, 2021, modifying Order No. PSC-2021-0210-PCO-EI issued June 7, 2021, and second modifying Order No. PSC-2021-0338-PCO-EI issued September 14, 2021, hereby submit this Amended Prehearing Statement.

APPEARANCES:

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Public Counsel

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Associate Public Counsel

Patricia A. Christensen
Associate Public Counsel

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Associate Public Counsel

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c/o The Florida Legislature
111 West Madison Street, Room 812
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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. 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

Note: As to all issues in which OPC has indicated below it is willing to facilitate a Type 2 stipulation (Issues 1-8, and 10), the OPC position on each Type 2 stipulation is as follows:

OPC takes no position on these issues, nor does it have the burden of proof related to them. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on these issues, either in this docket, in an order of the Commission or in a representation to a Court.

A Type 2 stipulation occurs on an issue when the utility and the 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 they do not join in the agreement) do not object to the Commission relying on the agreed language to resolve that issue in a final order. *See Docket No. 20210010, Prehearing Order, p. 17, fn. 5.*

GENERIC ENVIRONMENTAL COST RECOVERY ISSUES

ISSUE 1: What are the final environmental cost recovery true-up amounts for the period January 2020 through December 2020?

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

ISSUE 2: What are the estimated/actual environmental cost recovery true-up amounts for the period January 2021 through December 2021?

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2022 through December 2022?

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2022 through December 2022?

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

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 2022 through December 2022?

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2022 through December 2022?

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2022 through December 2022 for each rate group?

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

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

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

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: Yes, with the understanding that the tariffs should be based on costs deemed reasonable and prudent after a hearing.

ISSUE 10: Should this docket be closed?

OPC: *OPC will facilitate a Type 2 Proposed Stipulation, See Section E*

COMPANY-SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

Florida Power & Light Company (FPL):

ISSUE 11: Should the Commission approve FPL’s Miami-Dade Clean Water Recovery Center Project for cost recovery through the Environmental Cost Recovery Clause?

OPC: No. The OPC is not in agreement that the utility has demonstrated it met its burden to demonstrate the project and/or related 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. Under the circumstances, the OPC does not accept that the costs for this project should be borne by the customers.

ISSUE 12: How should any approved Environmental Cost Recovery Clause costs associated with FPL’s Miami-Dade Clean Water Recovery Center Project be allocated to the rate classes?

OPC: No position.

ISSUE 13: Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modification to its Lowest Quality Water Source Project?

OPC: No.

E. STIPULATED ISSUES:

As to all issues in which OPC has indicated it is willing to facilitate a Type 2 stipulation (Issues 1-8, and 10), the OPC position on each Type 2 stipulation is as follows:

OPC takes no position on these issues, nor does it have the burden of proof related to them. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on these issues, either in this docket, in an order of the Commission or in a representation to a Court.

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F. PENDING MOTIONS:

None.

G. REQUESTS FOR CONFIDENTIALITY:

OPC has 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 14th day of October, 2021

Respectfully submitted,

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/s/ Stephanie A. Morse
Stephanie A. Morse
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CERTIFICATE OF SERVICE
Docket No. 20210007-EI

I **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's Amended Prehearing Statement has been furnished by electronic mail on this 14th day of October 2021, to the following:

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