

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Tampa Electric Company.	DOCKET NO. 20220048-EI
In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Public Utilities Company.	DOCKET NO. 20220049-EI
In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC.	DOCKET NO. 20220050-EI
In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, F.A.C., Florida Power & Light Company.	DOCKET NO. 20220051-EI ORDER NO. PSC-2022-0292-PCO-EI ISSUED: August 1, 2022

**ORDER GRANTING MOTIONS TO STRIKE PORTIONS OF THE TESTIMONY OF
THE OFFICE OF PUBLIC COUNSEL WITNESS KOLLEN BY
FLORIDA POWER & LIGHT COMPANY,
DUKE ENERGY FLORIDA LLC., AND TAMPA ELECTRIC COMPANY
AND GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
REQUEST TO HAVE THE SAME TESTIMONY STRICKEN**

The 2019 Florida Legislature enacted Section 366.96, Florida Statutes (F.S.), entitled “Storm protection plan cost recovery.” Section 366.96(3), F.S., requires each public utility to file a transmission and distribution storm protection plan that covers the immediate 10-year planning period, and explains the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. Pursuant to Sections 366.96(5) and 366.96(6), F.S., every three years the Florida Public Service Commission (Commission) is required to determine whether it is in the public interest to approve, approve with modification, or deny each utility’s transmission and distribution storm protection plan no later than 180 days after the utility files a plan that contains all of the elements required by Commission Rule. Rules 25-6.030 (SPP Rule) and 25-6.031, (SPPCRC Rule), Florida Administrative Code (F.A.C.), implement Section 366.96, F.S. (the Statute).

In March of 2022, the Commission opened four dockets to address the storm protection plans (SPPs) filed by each of the investor owned utilities (IOUs) on April 11, 2022. By Order

No. PSC-2022-0119-PCO-EI, issued on March 17, 2022, the Commission consolidated the dockets for the purposes of an evidentiary hearing scheduled for August 2-4, 2022.¹

At issue is the direct testimony filed by Witness Lane Kollen on behalf of the Office of Public Counsel (OPC). Florida Power & Light Company (FPL) filed a motion to strike and the other IOUs followed by filing a motion or letter seeking the same treatment to Witness Kollen's testimony as it related to their plans. SPPs are filed under Section 366.96, F.S. and Rule 25-6.030, F.A.C., which implements the statute. For the reasons discussed below, the IOUs seek to strike portions of Witness Kollen's testimony.

FPL's Motion to Strike

On July 13, 2022, FPL filed a timely Motion to Strike certain portions of the prefiled direct testimony of OPC Witness Kollen. In its motion, the utility argued that (a) Witness Kollen's recommendations that the Commission adopt new requirements and standards that are not included in the SPP Rule and then retroactively apply these new requirements and standards to FPL's 2023 SPP filed on April 11, 2022, violate Section 120.54, F.S.; (b) Witness Kollen's recommendations that the Commission apply the cost recovery standards from the Storm Protection Plan Cost Recovery Clause (SPPCRC) Rule to FPL's 2023 SPP are irrelevant and beyond the scope of this proceeding; and (c) Witness Kollen's recommendations rely upon and apply an incorrect standard of review in violation of Section 366.96, F.S. FPL also argued that Witness Kollen's testimony improperly recommends that the Commission adopt new requirements in Rule 25-6.030, F.A.C. (the Rule), outside of a rulemaking proceeding and then retroactively apply these new requirements to FPL's 2023-2032 SPP.

FPL argued that Witness Kollen's testimony seeks to transpose the cost requirement criteria found within the SPPCRC Rule and the Statute, into the SPP proceedings. FPL argued that the Legislature intended that the SPP and SPPCRC proceedings should be conducted sequentially, in recognition of the separate and distinct guidelines that are evident in the plain reading of the SPP Rule, the SPPCRC Rule, and the Statute. FPL argued the SPP cycle begins with the three-year SPP review and is completed annually by the SPPCRC. FPL further argued that there is no support for Witness Kollen's arguments that the Commission should apply the reasonableness evaluation, prudence review, or cost recovery criteria from the SPPCRC Rule to the SPP proceeding.

FPL's motion contained detailed tables describing exactly which lines of Witness Kollen's testimony were to be stricken and specifying which of the three justifications provided above applied to the subject testimony. To its motion, FPL attached a copy of Witness Kollen's prefiled testimony, with the portions to be stricken highlighted for easy identification. In the

¹ Intervention by the Office of Public Counsel (OPC) was acknowledged in all four dockets. Florida Industrial Power Users Group (FIPUG) and Walmart Inc. (WALMART) were granted intervention in the TECO, DEF, and FPL dockets. Nucor Steel (NUCOR) and White Springs Agricultural Chemicals, d/b/a PCS Phosphate (PCS) were granted intervention in the DEF docket. Southern Alliance for Clean Energy (SACE) was granted intervention in the FPL docket.

event that the portions of Kollen's testimony identified by FPL were not stricken, FPL requested that these portions of Kollen's testimony be given no evidentiary weight or value at hearing.

DEF's and TECO's Motions to Strike and FPUC's Letter Requesting the Same Matters be Stricken from Witness Kollen's Testimony in its Docket

On July 19, 2022, DEF, and on July 20, 2022, TECO filed Motions to Strike certain portions of OPC's Witness Kollen's testimony, and while noting that except for one unique error in FPL's SPP, all testimony to be stricken is identical in all four dockets. FPUC filed a letter on July 20, 2022, requesting that, in the event similar portions of Witness Kollen's testimony were stricken by the Motions to Strike filed in the FPL, DEF, and TECO dockets, then those same matters should be stricken from the FPUC docket as redundant and immaterial. All four IOUs provided a marked-up version indicating the portions of Witness Kollen's testimony to be stricken.

OPC's Response in Opposition to FPL's Motion to Strike

On July 20, 2022, OPC filed a timely response in opposition to FPL's motion, arguing that the plans and programs proposed by FPL were not new. OPC also argued that this is the first time that the SPP statute is truly before the Commission, as the parties entered into a settlement of both the joint 2020 SPP and 2020 SPPCRC dockets, to which OPC was a signatory.²

OPC relied on Rule 25-6.030(3)(d)4, F.A.C., which requires a utility's description of each SPP program to include "a comparison of the *costs* identified in subparagraph (3)(d)3, and the *benefits* identified in subparagraph (3)(d)1." (Emphasis added by OPC). OPC asserted that these benefits explicitly include a reduction in "costs." OPC argued that in the enabling statute, the Florida Legislature expressed the main benefit of storm protection planning to customers as "reduced costs." Section 366.96(1)(f), F.S.

OPC asserted that the plain meaning of a comparison of costs and benefits contemplates a quantitative comparison of costs and benefits in terms of dollars, and noted that a plausible reading of the enabling statute at issue suggests an evaluation of costs expressed in dollars is not prohibited anywhere in the express language of the Statute. OPC concludes that FPL has failed to point to any language in the SPP statute that prohibits the description of any benefits of SPP programs from including the dollar values associated with said benefits.

OPC argued in support of Witness Kollen's testimony that the Commission must apply a quantitative analysis based upon dollars is relevant in the SPP proceeding: "Otherwise as a matter of basic logic, the comparison required by the SPP Rule becomes a nullity; a superficial exercise; indeed a fraud on the ratepaying public." OPC also argued that Witness Kollen's testimony on this topic is consistent with and tracks the language of the statute. OPC also argued that the controlling statute explicitly references both reasonableness and prudence, and asserted

² See Order No. PSC-2020-0293-AS-EI, issued August 28, 2020, in Docket Nos. 20200067, 20200069, 20200070, 20200071, and 20200092, *In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Tampa Electric Company et al.*

that FPL is misconstruing Section 366.96(2)(c), F.S. OPC acknowledges the public interest standard for approving the SPPs, but cautions that the principle of prudence is not severable from any public interest analysis. OPC asserted that, because of OPC's vital role in the process, striking any portion of the OPC expert's testimony violates due process and subjects OPC to extraordinary prejudice. OPC suggests that the Commission can give Kollen's expert testimony the weight it is due while not abandoning the use of requiring qualitative evidence to conduct the cost benefit analysis that Witness Kollen argued is required by the SPP Rule.

At the Prehearing Conference held on July 21, 2022, the Parties provided comments on the motions and request to strike.

Analysis and Ruling

Pursuant to Rule 28-106.211, F.A.C., "[t]he presiding officer before whom a case is pending may 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," and presiding officers have significant discretion in ruling on motions to strike testimony.³ In addition, Rule 1.140(f), Fla. R. Civ. P., provides that a court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time. While the Florida Rules of Civil Procedure, like Chapter 90, F.S., do not control in administrative proceedings, the Commission has followed the requirements of Rule 1.140(f), Fla. R. Civ. P., when considering motions to strike.⁴

The Commission has generally excluded expert testimony on legal issues.⁵ Section 120.57, F.S., provides for a fact-finding evidentiary proceeding and does not contemplate cross-

³ See *Town of Palm Beach v. Palm Beach County*, 460 So. 2d 879, 882 (Fla. 1984); Order No. PSC-06-0261-PCO-TP, supra note 8, at 3; Order No. 02-0876-PCO-TP, issued June 28, 2002, in Docket No. 020129-TP, *In re: Joint petition of US LEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITC^DeltaCom Communications objecting to and requesting suspension of proposed CCS7 Access Arrangement tariff filed by BellSouth Telecommunications, Inc.*; and Order No. PSC-99-0099-PCO-TP, issued January 20, 1999, in Docket No. 981008-TP, *Request for arbitration concerning complaint of American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. against BellSouth Telecommunications, Inc. regarding reciprocal compensation for traffic terminated to internet service providers* [hereinafter "Order No. PSC-99-0099-PCO-TP"] (noting that the Commission has the discretion to allow testimony and simply give it the weight it is due, but nevertheless striking certain portions of the expert witness's testimony that contained legal analysis and opinion).

⁴ See, e.g., Order No. PSC-99-1809-PCO-WS, issued September 20, 1999, in Docket No. 971220-WS, *Application for transfer of Certificates Nos. 592-W and 509-S from Cypress Lakes Associates, Ltd. to Cypress Lakes Utilities, Inc. in Polk County*; Order No. PSC-02-0878-FOF-TP, issued July 1, 2002, in Docket No. 001305-TP, *Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.*; and Order No. PSC-93-0165-FOF-EI, issued February 2, 1993, in Docket No. 920324-EI, *Application for a rate increase by TAMPA ELECTRIC COMPANY*.

⁵ See Order No. PSC-94-1363A-PCO-WS, issued November 21, 1994, in Docket No. 930945-WS, *Investigation into Florida Public Service Commission jurisdiction over SOUTHERN STATES UTILITIES, INC. in Florida* [hereinafter "Order No. PSC-94-1363A-PCO-WS"] (striking legal argument in testimony even though one of the issues specifically identified to be addressed at hearing presented a purely legal question); Order No. PSC-94-0371-PCO-WS, issued March 30, 1994, in Docket No. 930880, *Investigation into the appropriate rate structure for SOUTHERN STATES UTILITIES, INC. for all regulated systems in Bradford, Brevard, Citrus, Clay, Collier, Duval, Hernando, Highlands, Lake, Lee/Charlotte, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole,*

examination of a witness on legal opinion.⁶ In addition, Florida case law clearly states that an expert witness should not be allowed to testify concerning questions of law, which are properly reserved for the trier of fact.⁷

The portions of Witness Kollen's testimony at issue are either irrelevant or attempt to set new standards and criteria that are beyond the scope of this proceeding. The portions of Witness Kollen's testimony that encourage the Commission to disregard the plain reading of the SPP Statute and Rule and to engage in impermissible rulemaking, outside of a properly noticed rulemaking hearing, lack merit. SPPs must meet the factors expressly enumerated in Section 366.96(4), F.S.

Witness Kollen's testimony conflates the portions of the SPP hearing guidelines contained within the Statute and the SPP Rule with the SPPCRC guidelines found within the Statute and Rule. There is no support for OPC's suggestion that, in this instance, the guidelines between the distinctions between two proceedings are somewhat blurred. The Legislature intended that the SPP and SPPCRC hearings be bifurcated, driven by separate and distinct guidelines that are evident in the plain reading of both Rules 25-6.030 and 25-6.031, F.A.C., and Section 366.96, F.S. The plain reading of Section 366.96(7), F.S., provides that once a plan has been approved in the SPP docket, a utility's actions to implement the plan "shall not constitute or be evidence of imprudence." This language illustrates the bifurcated nature of the planning cycle that begins with the SPP and completed by the SPPCRC, rather than providing the grounds to transfer the cost recovery clause type "prudency review" from the SPPCRC to the SPP.

The SPP guidelines contemplate a designed natural progression to be undertaken by the IOUs to first develop and then evaluate potential storm hardening plans that reduce outage times and increase resiliency. The bifurcated process envisioned by the Statute creates an efficient regulatory process to encourage innovative storm protections programs. OPC's argument conflating the two ignores the plain reading of the separate and distinct guidelines for the SPP as opposed to the SPPCRC.⁸

St. Johns, St. Lucie, Volusia, and Washington Counties [hereinafter "Order No. PSC-94-0371-PCO-WS"]; Order No. PSC-94-1520-PCO-WS, issued December 9, 1994, in Docket No. 930945-WS, *Investigation into Florida Public Service Commission jurisdiction over SOUTHERN STATES UTILITIES, INC. in Florida* [hereinafter "Order No. PSC-94-1520-PCO-WS"]; and Order No. PSC-99-0099-PCO-TP.

⁶ Order No. PSC-94-0371-PCO-WS.

⁷ C. Ehrhardt, *Florida Evidence*, §703.1 (2021 Edition); *Town of Palm Beach*, 460 So. 2d at 882 (holding that a witness's testimony is inadmissible if it tells the trier of fact how to decide the case without helping in the determination of what has occurred); *T.J.R. Holding Co., Inc. v. Alachua County*, 617 So. 2d 798, 800 (Fla. 1st DCA 1993) ("The interpretation of a statute is a question of law to be determined solely by the court, not by expert witnesses."); *Williams v. State Dept. of Transportation*, 579 So. 2d 226, 231 (Fla. 1st DCA 1991) (holding that an expert should not be allowed to testify concerning questions of law, which are to be determined by the trier of fact); *Seibert v. Bayport Beach and Tennis Club Ass'n*, 573 So. 2d 889, 891-92 (Fla. 2d DCA 1990) (holding that an expert witness should not be allowed to testify concerning questions of law); *Lindsay v. Allstate Insurance Company*, 561 So. 2d 427, 428 (Fla. 3d DCA 1990) (upholding court's exclusion of expert testimony as to how a statute should be interpreted because it is improper for a court to rely on expert testimony to determine the meaning of terms in a legislative enactment).

⁸ The annual SPPCRC hearing is limited to determining the reasonableness of projected costs, the prudence of incurred costs, and to establish cost recovery factors consistent with the SPPCRC Rule. Rule 25-6.031(3), F.A.C.

The portions of Witness Kollen's testimony sought to be stricken from these dockets are irrelevant and immaterial to the evaluation of these SPPs. Witness Kollen's testimony at issue distracts the participants from developing the plans by attempting to implement a pre-cost recovery gauntlet into the process. SACE's argument made at the prehearing, that all of the legal arguments made by Witness Kollen should be allowed in the record so that it may support the legal arguments in OPC's brief, are rejected. OPC's brief, is the appropriate place to raise legal opinions.

Examination of each portion of the testimony sought to be stricken by the parties further illuminates the immaterial and irrelevant nature of the testimony and that this is not the proper docket within which to raise these matters. I find the stricken testimony in the tables below to be improper legal arguments that advocate new standards and criteria that are improper for this proceeding. I also find that the stricken testimony conflates the SPP and SPPCRC guidelines as it contained an evaluation of the SPP using the standards and criteria appropriate in SPPCRC proceedings, not the SPP dockets. FPL's, DEF's, and TECO's motions to strike the portions of testimony listed below are granted. Accordingly, FPUC's request that the same matters be stricken from its docket as redundant and immaterial is also granted and has been added to the matters stricken by the motions to strike as reflected in the three categories below.

The following portions of Witness Kollen's testimony shall be stricken as improper legal opinion and argument:

Page, Line				New Criteria Proposed By OPC Witness Kollen
TECO	FPUC ⁹	DEF	FPL	
p. 2, ln. 12-15	p. 2, ln. 12-15	p. 2, ln. 12-15	p.1, ln. 12-15	New threshold economic decision
p. 7, ln. 12 through p. 8, ln. 1	p. 7, ln. 12 through p. 8, ln. 1	p. 8, ln. 6-8	p. 6, ln. 12 through p. 7, ln. 1	Establishment and application of threshold decision criteria
p. 10, ln. 1-3	p. 10, ln. 1-3	p. 10, ln. 15-17	p. 9, ln. 1-3	Adopt and apply decision criteria
p. 10, ln. 10-14	p. 10, ln. 10-14	p. 10, ln. 10-14	p. 9, ln 10-14	Apply new benefit-to-cost threshold for SPP projects
p. 10, ln. 15 through p. 11, ln. 3	p. 10, ln. 15 through p. 11, ln. 4	p. 11, ln. 13 through p. 12, ln. 2	p. 9, ln. 15 through p. 10, ln. 3	New requirements to estimate revenue requirements and rate impacts in SPP
p. 12, ln. 20 through p. 13, ln. 6	p. 12, ln. 18 through p. 13, ln. 4	p. 13, ln. 16 through p. 14, ln. 42	p. 11, ln. 18 through p.12, ln. 4	Benefits of SPP must be quantified; establish thresholds for approval of SPPs

⁹ Stricken upon the request of FPUC as redundant and immaterial, under Rule 1.140(f), Fla. R. Civ. P., following the granting of the motions to strike the same portions of Witness Kollen's testimony.

Page, Line				New Criteria Proposed By OPC Witness Kollen
TECO	FPUC ⁹	DEF	FPL	
p. 13, ln. 17-21	p. 13, ln. 15-19	p. 14, ln. 13-17	p. 12, ln. 16-19	Apply objective thresholds to review SPPs
p. 14, ln. 7-20	p. 14, ln. 6-19	p. 15, ln. 5-10 and 12-20	p. 13, ln. 7-20	SPPs can only include new or expanded programs or projects
p. 15, ln. 3-4	p. 14, ln. 22-23	p. 16, ln. 3-4	p. 14, ln. 3-4	SPPs must meet Kollen's previously described requirements
p. 15, ln. 4-7	p. 14, ln. 23 through p. 15, ln. 3	p. 16, ln. 4-7	p. 14, ln. 4-7	SPPs can only include new or expanded programs or projects
p. 16, ln. 8-12	p. 15, ln. 19 through p. 16, ln. 2	p. 17, ln. 17 through p. 18, ln. 2	p. 15, ln. 4-8	SPP programs and projects must meet benefit-to-cost ratio of 100%
p. 16, ln. 13-16 and 20 through p. 17, ln. 5	p. 16, ln. 3-6 and 10-17	p. 18, ln. 3-6 and ln. 10-17	p. 15, ln. 9-12 and 16-23	SPPs can only include new or expanded programs or projects
p. 17, ln. 6-14	p. 16, ln. 18 through p. 17, ln. 3	p. 18, ln. 18 through p. 19, ln. 3	p. 16, ln. 1-9	SPP programs and projects must meet benefit-to-cost ratio of 100%; must be economic justification
p. 20, ln. 17 through p. 21, ln. 13	p. 20, ln. 2-18	p. 21, ln. 18 through p. 22, ln. 2	p. 19, ln. 11 through p. 20, ln. 5	SPP programs must be economically justified; benefits must be quantified and monetized; economic benefit/cost criterion is required; benefits must be at least equal to the costs
p. 21, ln. 15-19	p. 20, ln. 20 through p. 21, ln. 2	p. 22, ln. 4-8	p. 20, ln. 7-11	Adopt and apply decision criteria
p. 21, ln. 20 through p. 22, ln. 2	p. 21, ln. 3-6	p. 22, ln. 11-14	p. 20, ln. 12-15	SPPs can only include new or expanded programs or projects
p. 22, ln. 3-15	p. 21, ln. 7-19	p. 22, ln. 16-20 and p. 23, ln. 1-8	p. 20, ln. 16 through p. 21, ln. 6	SPP programs and projects must meet benefit-to-cost ratio of 100%; must be economic justification and threshold

Additionally, the following portions of Witness Kollen's testimony shall be stricken, as I find them to be more appropriate to the Storm Protection Plan Cost Recovery Clause, and therefore, irrelevant to this proceeding:

Page, Line				New Criteria Proposed By OPC Witness Kollen
TECO	FPUC ¹⁰	DEF	FPL	
p. 8, ln. 16-22	p. 8, ln. 16-22	p. 9, ln. 9-15	p.7, ln. 16-22	SPP costs must be incremental to and not displace base rate Costs
p. 9, ln. 15-22	p. 9, ln. 15-22	p. 10, ln. 7-14	p. 8, ln. 16-22	SPP projects should reflect avoided costs savings in SPPCRC or base rates
p. 10, ln. 3-9	p. 10, ln. 3-9	p. 10, ln. 17-23	p. 9, ln. 3-9	SPP costs must be incremental to and not displace base rate Costs
p. 10, ln 15 through p. 11, ln. 3	p. 10, ln 15 through p. 11, ln. 4	p. 11, ln 13 through p. 12, ln. 2	p. 9, ln 15 through p. 10, ln. 3	Methodologies for calculating the revenue requirements and rates for the SPP costs
p. 12, ln. 3-6	p. 12, ln. 1-4	p. 12, ln. 23 through p. 13 ln. 2	p. 11, ln. 1-4	SPP costs recovered through SPPCRC cannot include costs recovered through base rates
p. 13, ln. 7-10	p. 13, ln. 5-8	p. 14, ln. 3-6	p. 12, ln. 5-8	Recovery through SPPCRC must be incremental to base rates and include avoided cost savings
p. 14, ln. 7-20	p. 14, ln. 6-19	p. 15, ln. 5-10 and ln. 12-20	p. 13, ln. 7-20	SPP costs recovered in base rates must be excluded from SPPCRC
p. 15, ln. 4-7	p. 14, ln. 22 through p. 15, ln 3	p. 16, ln. 4-7	p. 14, ln. 4-7	SPP program costs are not outside of base rates
p. 16, ln 13-16 and ln 20 through p. 17, ln. 5	p. 16, ln. 3-6 and 10-17	p. 18, ln 3-6 and ln. 10-17	p. 15, ln. 9-12 and 16-23	SPP costs must be beyond costs recovered in base rates

¹⁰ *Id.*

Page, Line				New Criteria Proposed By OPC Witness Kollen
TECO	FPUC ¹⁰	DEF	FPL	
p. 17, ln. 17 through p. 18, ln. 3	p. 17, ln. 6-14	p. 19, ln. 6-14	p. 16, ln. 12- 20	The incremental cost for the SPP programs and projects must include avoided restoration costs, reductions in base O&M expense from new SPP assets
p. 21, ln. 17 through p. 22, ln. 2	p. 20, ln. 22 through p. 21, ln. 6	p. 22, ln 6-8	p. 20, ln. 9- 15	SPP and SPPCRC cannot be used to displace base rate costs and cannot include costs that are not incremental
p. 22, ln. 20 through p.27, ln. 2	p. 22, ln 1 through p. 27, ln. 6	p. 23, ln. 5 through p. 28, ln. 4	p. 21, ln. 11 through p. 26, ln.2	Methodologies for calculating the revenue requirements and rates for the SPP costs ¹¹

Finally, the following portions of Witness Kollen's testimony shall be stricken, as they recommend a standard of review that is outside the scope of this proceeding:

Page, Line				New Criteria Proposed By OPC Witness Kollen
TECO	FPUC ¹²	DEF	FPL	
p. 8, ln. 11	p. 8, ln. 11	p. 9, ln. 4	p.7, ln. 11	Prudence standard
p. 9, ln. 6-8	p. 9, ln. 6-8	p. 9, ln. 21-23	p. 8, ln. 6-8	Whether programs and projects are reasonable and prudent
p. 10, ln. 2	p. 10, ln. 2	p. 10, ln. 16	p. 9, ln. 2	Prudence standard
p. 12, ln. 7-19	p. 12, ln 5-17	p. 13, ln 3-15	p. 11, ln 5-17	Reasonable and prudent standard in SPPCRC should be applied to SPP
p. 13, ln. 17- 21	p. 13, ln 15- 19	p. 14, ln 13- 15	p. 12, ln. 15- 17	Commission must determine prudence of SPP programs, and whether costs are just and reasonable
p. 15, ln. 3-4	p. 14, ln 22- 23	p. 16, ln 3-4	p. 14, ln. 3-4	Reasonable and prudent standard

¹¹ Note that the answers to the same question were slightly different: FPL – pg 22, ln 10-13, TECO – pg 23, ln. 18, FPUC – pg 22, ln. 21 through pg. 24, ln. 3, DEF – pg 24, ln. 14 through p. 25, ln. 2.

¹² Stricken upon the request of FPUC as redundant and immaterial, under Rule 1.140(f), Fla. R. Civ. P., following the granting of the motions to strike the same portions of Witness Kollen's testimony.

Page, Line				New Criteria Proposed By OPC Witness Kollen
TECO	FPUC ¹²	DEF	FPL	
p. 20, ln 16-20 and p. 21, ln 7-8	p. 20, ln 1-5, and 12-13	p. 21, ln 8-12 and 19-20	p. 19, ln. 10- 14 and 21-22	Reasonable and prudent standard

Having considered the pleadings and oral arguments at the prehearing conference, I find that portions of Witness Kollen's testimony shall be stricken as reflected in the tables above. Finally, I find that OPC's arguments that they are prejudiced by having the portions of Witness Kollen's testimony stricken are not persuasive. As recognized by the IOUs, the stricken testimony is virtually identical across all dockets and focuses on the legal arguments supporting the abandonment of the prescribed SPP guidelines and criteria in favor of new ones that prioritize costs. This order leaves Witness Kollen's specifically tailored testimony that addressed each of the IOUs' SPPs intact.

Based on the foregoing, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that the Motions to Strike Portions of Witness Kollen's Testimony by Florida Power & Light, Duke Energy Florida, LLC., and Tampa Electric Company are hereby granted as set forth in the body of this Order. It is further

ORDERED that Florida Public Utilities' Request to have the same matters stricken from its docket as redundant and immaterial is hereby granted as set forth in the body of this order. It is further

ORDERED that the Parties shall file corrected versions of testimony and exhibits removing the matters stricken no later than 4:30 p.m., August 1, 2022.

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 1st day of August, 2022.



Mike La Rosa
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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

WLT/JDI

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.