

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm Protection Plan Cost Recovery
Clause

Docket No. 20230010-EI

Dated: October 13, 2023

**DUKE ENERGY FLORIDA’S POST-HEARING STATEMENT
OF ISSUES, POSITIONS, AND BRIEF IN SUPPORT**

Duke Energy Florida, LLC (“DEF” or the “Company”), pursuant to the Order Establishing Procedure¹ and Prehearing Order,² hereby files its Post-Hearing Statement of Issues, Positions, and Brief in Support of its requested Storm Protection Plan Cost Recovery Clause (“SPPCRC”) filings in this docket. The uncontested record evidence establishes by clear and convincing evidence that DEF’s 2022 SPPCRC incurred costs were prudently incurred in implementing its approved 2020 Storm Protection Plan (“2020 SPP” or “2020 Plan”),³ its 2023 and 2024 projected costs are reasonable and consistent with its approved 2023 Storm Protection Plan (“2023 SPP” or “2023 Plan”),⁴ and its proposed 2024 SPPCRC factors are appropriate. As such, this Commission should approve DEF’s requested recovery and establish the factors as provided in DEF’s filings.

In support, DEF states as follows:

Issues, Positions, and Brief in Support

¹ See Order No. PSC-2023-0090-PCO-EI, First Order Revising Order Establishing Procedure, Order No. PSC-2023-0105-PCO-EI, and Order Modifying Order Establishing Procedure, Order No. PSC-2023-0178-PCO-EI (collectively, the “Order Establishing Procedure” or “OEP”).

² Order No. PSC-2023-0281-PHO-EI (“PHO”).

³ See Order No. 2020-0293-AS-EI, Docket No. 20200069-EI.

⁴ See Order No. 2022-0388-FOF-EI, Docket No. 20220050-EI.

ISSUE 1: What amounts should the Commission approve as the Utilities’ final 2022 prudently incurred costs and final jurisdictional revenue requirement true-up amount for the Storm Protection Plan Cost Recovery Clause?

DEF: ***The Commission should approve as prudently incurred DEF’s 2022 SPP investments of \$416,956,141 (System). This amount results in an over-recovery of \$10,715,993.***

Supporting Brief:

The 2022 SPP investments were prudently incurred implementing the 2020 SPP. Tr. 188; Tr. 205. Witnesses Lloyd and Brong provided testimony regarding variances for specific Distribution and Transmission programs, respectively, and project level spending detail for each program that incurred costs in 2022 (as approved in the 2020 SPP) is detailed in Exhibit No. 16. The testimonies of Witnesses Lloyd and Brong demonstrate the prudence of the 2022 costs of implementing DEF’s Commission-approved SPP. *See* Tr. 186-91; Tr. 203-06). No party challenged the prudence of any specific 2022 expenditure, no party challenged the decision to move forward with any specific project, the prudence of the management of any specific project, or the prudence of any specific project’s cost, notwithstanding that this docket presents intervenor parties the opportunity to do so. *See* Rule 25-6.031(3) (requiring the Commission to hold “[a]n annual hearing to address . . . the prudence of actual Storm Protection Plan costs incurred by the utility.”).⁵ Therefore, the overwhelming weight of the evidence of record, indeed, the *only* record evidence, supports the prudence of these costs.

ISSUE 2: What amounts should the Commission approve as the Utilities’ reasonably estimated 2023 costs and estimated jurisdictional revenue requirement true-up amount for the Storm Protection Plan Cost Recovery Clause?

DEF: ***The Commission should approve as reasonable DEF’s estimated 2023 SPP investments of \$669,882,033 (System). This amount results in an estimated over-recovery of \$17,788,390.***

⁵ As OPC recognized in its Issue 1 position, the 2022 SPP costs were incurred implementing the 2020 SPP, which was approved by Stipulation joined by OPC. The Order approving DEF’s 2020 SPP is not part of the pending appeal before the Supreme Court.

Supporting Brief:

The 2023 SPP investments are the reasonable costs associated with implementing the approved 2023 SPP. Tr 195; Tr. 210. Witnesses Lloyd and Brong provided testimony demonstrating the reasonableness of the projected costs, demonstrating that the costs were incurred implementing the approved 2023 SPP consistent with the cost levels included in that filing, discussing cost variances for specific Distribution and Transmission programs, respectively, and project level spending detail for each program approved in the 2023 SPP is detailed in Exhibit No. 17. Tr. 192-201; Tr. 207-15. No party challenged the reasonableness of any *specific* 2023 expenditure, no party challenged the decision to move forward with any *specific* project, the management of any *specific* project, or the reasonableness of any *specific* project's cost notwithstanding that this docket presents intervenor parties the opportunity to do so. *See* Rule 25-6.031(3) (requiring the Commission to hold “[a]n annual hearing to address . . . the reasonableness of projected Storm Protection Plan costs”). Therefore, the overwhelming weight of the evidence of record, indeed the only record evidence, supports the reasonableness of these costs.

Rather than challenge the reasonableness of any specific project, OPC instead reiterates the legal argument rejected by the Commission in last year's SPP and SPPCRC dockets (which are the subject of the pending appeal):

OPC: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake and seek recovery. Section 366.06(1), Florida Statutes, establishes that the Commission evaluate the prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate. Therefore, the Commission cannot establish the reasonable estimated 2023 costs.

This argument is both an impermissible collateral attack on a prior Commission order as well as an incorrect statement of the proper standard of review for approving a utility's proposed SPP.

Because this docket is expressly *not* an opportunity to relitigate the issues decided in the Plan review docket, *see* Rule 25-6.031(3), F.A.C. (limiting the issues for determination in the SPPCRC to reasonableness of projected costs, prudence of actual costs, and setting the appropriate recovery factors), DEF will only briefly note that OPC has ignored the Legislature’s clear direction regarding the proper standard of the Commission’s review of a proposed SPP. *See* § 366.96(5), Fla. Stat.

The Commission approved DEF’s 2023 SPP⁶ and notwithstanding the pending appeal, that order remains in effect. As such, the Commission’s charge is to review the 2023 projected costs for compliance with the requirements of the rule and to ultimately determine the reasonableness of those costs. *See* Rule 25-6.031(3), (6), & (7), F.A.C. As noted above, the uncontradicted evidence of record clearly establishes the reasonableness of DEF’s 2023 projected costs. These costs are being incurred implementing DEF’s approved 2023 SPP, *see* Tr. 195; Tr. 210, and should be approved for recovery pending a prudence review after the actual costs are incurred. *See* § 366.96(7), Fla. Stat.; Rule 25-6.031(3) & (7)(a), F.A.C.

ISSUE 3: What amounts should the Commission approve as the Utilities’ reasonably projected 2024 costs and projected jurisdictional revenue requirement amount for the Storm Protection Plan Cost Recovery Clause?

DEF: *The Commission should approve as reasonable DEF’s projected 2024 SPP investments of \$783,792,564 (System). This amount results in a projected jurisdictional revenue requirement of \$201,370,792.*

Supporting Brief:

The 2024 SPP investments are the reasonable costs associated with implementing the approved 2023 SPP. Tr. 195; Tr. 210. Witnesses Lloyd and Brong provided testimony demonstrating the reasonableness of the projected costs, demonstrating that the costs were incurred

⁶ *See* fn. 4, *supra*.

implementing the approved 2023 SPP consistent with the cost levels included in that filing, discussing cost variances for specific Distribution and Transmission programs, respectively, and 2024 project level spending detail for each program approved in the 2023 SPP is detailed in Exhibit No. 18. Tr. 192-201; Tr. 207-15. No party challenged the reasonableness of any *specific* 2024 expenditure, no party challenged the decision to move forward with any *specific* project, or the reasonableness of any *specific* project's cost notwithstanding that this docket presents intervenor parties the opportunity to do so. *See* Rule 25-6.031(3) (requiring the Commission to hold “[a]n annual hearing to address . . . the reasonableness of projected Storm Protection Plan costs”). Therefore, the overwhelming weight of the evidence of record, indeed the only evidence of record, supports the reasonableness of these costs.

Rather than challenge the reasonableness of any specific project, OPC instead reiterates the legal argument rejected by the Commission in last year's SPP and SPPCRC dockets (which are the subject of the pending appeal):

OPC: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake and seek recovery. Section 366.06(1), Florida Statutes, establishes that the Commission evaluate the prudence of investments in all ratemaking requests before it which is embedded in the Commission's legislative mandate. Therefore, the Commission cannot establish the reasonable estimated 2024 costs.

This argument is both an impermissible collateral attack on a prior Commission order as well as an incorrect statement of the proper standard of review for approving a utility's proposed SPP. Because this docket is expressly *not* an opportunity to relitigate the issues decided in the Plan review docket, *see* Rule 25-6.031(3), F.A.C. (limiting the issues for determination in the SPPCRC to reasonableness of projected costs, prudence of actual costs, and setting the appropriate recovery factors), DEF will only briefly note that OPC has ignored the Legislature's clear direction

regarding the proper standard of the Commission's review of a proposed SPP. *See* § 366.96(5), Fla. Stat.

The Commission approved DEF's 2023 SPP⁷ and notwithstanding the pending appeal, that order remains in effect. As such, the Commission's charge is to review the 2024 projected costs for compliance with the requirements of the rule and to ultimately determine the reasonableness of those costs. *See* Rule 25-6.031(3), (6), & (7), F.A.C. As noted above, the uncontradicted evidence of record clearly establishes the reasonableness of DEF's 2024 projected costs. These costs will be incurred implementing DEF's approved 2023 SPP, *see* Tr. 195; Tr. 210, and should be approved for recovery pending a prudence review after the actual costs are incurred. *See* § 366.96(7), Fla. Stat.; Rule 25-6.031(3) & (7)(a), F.A.C.

ISSUE 4: What are the Storm Protection Plan Cost Recovery Clause total jurisdictional revenue requirements, including true-ups, to be included in the Storm Protection Plan Cost Recovery factors for 2024?

DEF: *\$172,866,409.*

Supporting Brief:

The jurisdictional revenue requirements issue, including true-ups, is a fall-out issue from Issues 1-3, and therefore the arguments presented regarding those issues are hereby incorporated by reference as if fully set forth herein. The calculation of the total jurisdictional revenue requirement is explained in Mr. Menendez's testimony (*see* Tr. 182-84) and Exhibit No. 18. Again, no party has challenged any specific aspect of the inputs or calculation of this total (with the exception of OPC's arguments discussed above in Issues 1-3) and the overwhelming weight of the evidence supports DEF's total requested 2024 SPPCRC recovery.

⁷ *See* fn. 4, *supra*.

Pursuant to Section 366.96(7), Fla. Stat. and Rule 25-6.031(3), F.A.C., DEF respectfully requests the Commission approve DEF's requested recovery of the total jurisdictional revenue requirements presented in Mr. Menendez's testimony and exhibits.

ISSUE 5: What depreciation rates should be used to develop the depreciation expense included in the total Storm Protection Plan Cost Recovery Clause amounts for 2024?

DEF: *DEF should use the depreciation rates that were approved in Final Order No. PSC-2021-0202A-AS-EI.*

ISSUE 6: What are the appropriate jurisdictional separation factors for 2024?

DEF: *DEF should apply the appropriate jurisdictional separation factors that were approved in Final Order No. PSC-2021-0202A-AS-EI:

Distribution:	1.0000000
Transmission:	0.7204200
Labor:	0.9677918*

Brief in Support (Issues 5 & 6):

The Commission most recently determined the appropriate depreciation rates for DEF in Order No. PSC-2021-0202A-AS-EI. Therefore, the depreciation rates included in that order are the appropriate depreciation rates in this docket. Rule 25-6.031(6)(c), Fla. Stat. On this point, the parties agree. *See* PHO, pg. 15.

The proper separation factors for use in this docket are the separation factors approved in Order No. PSC-2021-0202A-AS-EI. OPC took no position on this issue and the remaining interveners adopted OPC's position as it relates to DEF. *See* PHO, pg. 16. Therefore, to the extent there was any disagreement on these issues, it is a moot point as the intervener parties have waived their right to brief or contest the outcome of this issue. *See* Order No. PSC-2023-0090-PCO-EI, pg. 11.

DEF respectfully requests the Commission to approve DEF’s uncontested positions on Issues 5 and 6.

ISSUE 7: What are the appropriate Storm Protection Plan Cost Recovery Clause factors for 2024 for each rate class?

DEF:	*Customer Class	SPPCRC Factor
	Residential	0.510 cents/kWh
	General Service Non-Demand	0.494 cents/kWh
	@ Primary Voltage	0.489 cents/kWh
	@ Transmission Voltage	0.484 cents/kWh
	General Service 100% Load Factor	0.231 cents/kWh
	General Service Demand	1.34 \$/kW
	@ Primary Voltage	1.31 \$/kW
	@ Transmission Voltage	0.25 \$/kW
	Curtaillable	2.11 \$/kW
	@ Primary Voltage	2.09 \$/kW
	@ Transmission Voltage	2.07 \$/kW
	Interruptible	1.02 \$/kW
	@ Primary Voltage	0.83 \$/kW
	@ Transmission Voltage	0.19 \$/kW
	Standby Monthly	0.119 \$/kW
	@ Primary Voltage	0.118 \$/kW
	@ Transmission Voltage	0.117 \$/kW
	Standby Daily	0.057 \$/kW
	@ Primary Voltage	0.056 \$/kW
	@ Transmission Voltage	0.056 \$/kW
	Lighting	0.373 cents/kWh*

Brief in Support

DEF believes that this Issue has been stipulated, based on OPC’s position “Regarding Issues 1-4 and 7, *OPC takes no position on the factors* only for all four utilities” and the representation that “. . . NUCOR, and FIPUG support the proposed partial stipulations. PCS Phosphate takes no position on the proposed stipulations.” See PHO, pg. 25. Therefore, DEF respectfully requests the Commission approve the stipulated factors provided above.

OPC has also maintained its substantive position and requested the opportunity to brief the issue. Thus, to the extent Issue 7 has not been stipulated, DEF hereby incorporates its arguments presented in Issues 1-4 as if fully forth herein. Based on the overwhelming weight of the evidence, DEF respectfully asks that the Commission approve its factors presented above.

ISSUE 8: What should be the effective date of the new Storm Protection Plan Cost Recovery Clause factors for billing purposes?

DEF: ***The factors shall be effective beginning with the specified Storm Protection Plan Cost Recovery Clause cycle and thereafter for the period January 2024 through December 2024. Billing cycles may start before January 1, 2024, and the last cycle may be read after December 31, 2024, so that each customer is billed for twelve months, regardless of when the adjustment factor became effective. These charges shall continue in effect until modified by subsequent order of this Commission.***

Brief in Support

With the exception of FIPUG, the parties are in agreement that the factors established in this docket should be effective with the first billing cycle of January 2024. PHO, pg. 19-20. FIPUG's position in the prehearing order is that the factors should take effect on January 1, 2024, *id.* at p. 20, but because DEF's billing cycles do not align perfectly with the calendar, it is possible the first billing cycle for January of 2024 could begin prior to January 1. To account for this slight deviation from the calendar year, the Commission should adopt DEF's position as it will allow all customers to be billed on the appropriate factors for a 12-month period.

ISSUE 9: Should the Commission approve revised tariffs reflecting the new Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding?

DEF: ***Yes. The Commission should approve DEF's revised tariffs reflecting the Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding. The Commission should direct Staff to verify that the revised tariffs are consistent with the Commission's decision. The Commission should grant Staff Administrative authority to approve revised**

tariffs reflecting the new Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding.*

Brief in Support

This is a straightforward issue for which there should be no disagreement – regardless of what the Commission determines to be the appropriate recovery factors, the tariff should be adjusted appropriately. Any other outcome would result in customer bills based on tariffs that do not reflect rates and charges approved by this Commission in violation of Florida law. *See* § 366.06(1), Fla. Stat. (“A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission . . .”).

The Commission should approve DEF’s position on this issue and grant its Staff the administrative authority to approve revised tariffs reflecting the Commission’s decision in this docket.

ISSUE 10: Should this docket be closed?

DEF: ***No, this is an on-going docket and should remain open until a subsequent year’s docket is established.***

Brief in Support

Consistent with Commission practice, this docket should remain open until next year’s docket is established.

Respectfully submitted this 13th day of October, 2023.

/s/ Matthew R. Bernier

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CERTIFICATE OF SERVICE

Docket No. 20230010-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 13th day of October, 2023.

/s/ Matthew R. Bernier

Attorney

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