

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by
Duke Energy Florida, LLC

Docket No. 20240025-EI

Filed: May 24, 2024

**DUKE ENERGY FLORIDA’S RESPONSE IN OPPOSITION TO FLORIDA RISING
AND LEAGUE OF UNITED LATIN AMERICAN CITIZENS’ MOTION FOR
RECONSIDERATION OF ORDER DENYING ORLANDO-AREA SERVICE HEARING**

Pursuant to Rule 28-106.204(1), F.A.C., Duke Energy Florida, LLC (“DEF” or the “Company”) hereby files this Response in Opposition to Florida Rising’s and the League of United Latin American Citizens’ (“LULAC”) Motion for Reconsideration of Order Denying an Orlando-Area Service Hearing (“Motion”). LULAC has not identified any issue of fact or law the Commission overlooked or failed to consider that would justify reconsideration of the Order Denying OPC’s Motion for Additional Service Hearings (“Order”), and accordingly, LULAC’s Motion should be denied.¹

In support, DEF states:

Background

¹ DEF disagrees with LULAC’s assertion that its opposition to this Motion is a basis for questioning the Company’s commitment to enhancing its customers’ experience. The matter at issue in this Motion is LULAC’s burden of demonstrating compliance with the standard for reconsideration of an Order. As explained herein, LULAC has failed to do so. Moreover, DEF has no basis to disagree with the Commission’s finding discussed in Paragraph 11, *infra*, regarding customer participation in virtual hearings. Finally, DEF regularly engages with its customers in a multitude of ways, as explained in Ms. Quick’s and Ms. Seixas’ pre-filed testimonies.

1. DEF's current settlement agreement, the 2021 Settlement Agreement, expires at the end of 2024. DEF filed a Test Year Letter on January 31, 2024, indicating its intent to file a rate case on April 2 for new rates effective January 1, 2025.

2. On April 16, 2024, OPC filed a Motion for Additional Customer Service Hearings. Doc. no. 01947-2024. In that motion, joined by LULAC, OPC indicated its concern with the number of in-person customer service hearings scheduled in this docket and their locations when compared to DEF's 2009 rate case. *See id.* at ¶¶ 10-12, 15-16. OPC also specifically requested additional in-person customer service hearings in Live Oak (Suwannee County) and Orlando (Orange County), the latter (at least) with a Spanish language interpreter, among additional customer service hearings. *See id.* at ¶ 17.

3. On May 8, 2024, the Commission issued its Order Denying OPC's Motion for Additional Service Hearings. Order No. PSC-2024-0147-PCO-EI.

4. LULAC timely filed its Motion on May 17, 2024. *See* Rule 25-22.0376(1), F.A.C. (requiring motions for reconsideration of non-final orders to be filed within 10 days after issuance of the Order). This Response is timely. *See id.* at (2).

5. OPC's "Notice of Joinder," filed on May 20, 2024, seeks additional relief beyond LULAC's Motion. *See* doc. no. 03294-2024, at p. 1 (noting its joinder of LULAC's Motion and adding "OPC *also requests* that the Commission grant at least one more in-person customer service hearing in the Madison/Suwannee/Lafayette Counties region" for similar reasons as raised in LULAC's Motion for the Orlando-area) (emphasis added). For the reasons provided below, OPC's Joinder/Motion should be denied for the same reasons as LULAC's Motion – i.e., for failing to identify an issue of fact or law the Commission overlooked or failed to consider.

Motion for Reconsideration

6. “The standard for reconsideration is set forth in *Diamond Cab Co. of Miami v. King*, 146 So. 2d 889 (Fla. 1962). The court stated that: ‘[t]he purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. (citations omitted) It is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment or the order.’ *Id.* at 891.” *In Re: Investigation into Florida Public Service Commission jurisdiction over Southern States Utilities, Inc. in Florida*, Docket 1993045-WS, Order No. PSC-1993-0042-FOF-WS (Jan. 10, 1993) (denying SSU’s motion for reconsideration and noting that “The Utility may not be permitted an opportunity to re-argue to the full Commission upon a motion for reconsideration issues already decided.”); *see also In Re: Petition for Rate Increase by Florida Power & Light Company*, Docket No. 20160021-EI, Order No. PSC-2016-0231-PCO-EI (June 10, 2016), at pp. 13-14 (Commission denied OPC’s request to modify a filing schedule in an OEP and stated: “Without a specific mistake of fact or law, a motion for reconsideration must be denied, even when there is a ‘feeling that a mistake may have been made’ or when the reviewing body would have reached a different decision.”).

7. LULAC asserts that the Commission’s Order “has overlooked the fact that the portion of Duke Energy Florida’s (‘Duke’) territory that has more Duke customers than any other portion has no service hearing, nor do its Spanish-language speakers have access to a service hearing with translation services.” Motion, at p. 1.

8. That assertion, however, is belied by the fact that OPC raised the same points regarding the location of service hearings and request for Spanish translation services in its Motion for Additional Service Hearings. *See* doc. no. 01947-2024, at ¶¶ 6-12, 15-16.

9. While OPC did not specifically cite to the relative number of DEF's customers in the Orlando area versus the remainder of its service territory writ large, it did provide multiple maps depicting DEF's service territory and showing where service hearings are currently scheduled. *See id.* at ¶¶ 5 & 9. Moreover, it is fair to assume that the Commission is quite familiar with the population dispersion of the state it regulates and takes that factor into consideration with other pertinent factors it deems appropriate when establishing service hearings. At the very least, there is certainly no indication that the Commission did not consider that factor. As the movant, LULAC bears the burden to establish its right to the relief it seeks. *See* Order No. PSC-2004-0518-PCO-EI, p. 12 (burden on party seeking protective order to show the information sought is confidential); Order No. 24898, p. 2 (burden on party seeking protective order to show that the information sought is not discoverable).

10. Additionally, LULAC's Motion has simply reiterated concerns raised by OPC's original motion regarding the opportunity for customers to participate virtually versus in-person. *See* Motion, at p. 4 ("Although the opportunity for a virtual hearing can be a great option for those unable to travel at all, Florida Rising and LULAC continue to believe that a reasonable opportunity for in-person service hearings also needs to be offered to give Duke's customers the chance to be meaningfully heard.") and doc. no. 01947-2024, at ¶ 15 ("OPC respectfully requests . . . that the in-person service hearings be distributed more evenly throughout DEF's service territory so that the most DEF customers as possible will have the opportunity to be heard.").

11. Of course, the Commission specifically considered this point in its Order, in which it explained:

Since [DEF's last rate case in 2009], the Commission has conducted several customer services hearings in other dockets virtually, which allows customers to participate by telephone from any location with wired or wireless service. ***Experience indicates that overall participation may increase if customers are allowed the option to participate in***

service hearings virtually, and that customers may actually prefer virtual to in-person participation. Taking into account this experience as well as historic practice, the current schedule combines two virtual and four in-person hearings. This schedule affords multiple opportunities and choices for customers who wish to participate.

Order, p. 2 (footnotes omitted and emphasis added).

12. While LULAC may disagree with the Commission’s conclusion, that is not a basis for reconsideration. *See* Order No. PSC-1993-0042-FOF-WS (reconsideration is “not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment or the order.”) (quoting *Diamond Cab Co.*).

13. Because LULAC has failed to identify an issue of fact or law the Commission overlooked or failed to consider but has instead simply disagreed with the Commission’s conclusions embodied in the Order, it has failed to meet the standard for reconsideration and the Motion should be denied.

Motion for Oral Argument

14. With respect to the separately filed Motion for Oral Argument on the Motion, DEF believes that the Commission can make this decision based on the written documents. However, if the Commission has additional questions or would value hearing argument on this matter, DEF will participate.

WHEREFORE, DEF respectfully requests that the Commission deny LULAC’s Motion.

Respectfully submitted,

/s/ Dianne M. Triplett

DIANNE M. TRIPLETT

Deputy General Counsel

299 First Avenue North

St. Petersburg, FL 33701

T: 727. 820.4692

E: Dianne.Triplett@Duke-Energy.com

MATTHEW R. BERNIER
Associate General Counsel
106 E. College Avenue, Suite 800
Tallahassee, FL 32301
T: 850.521.1428
E: Matt.Bernier@Duke-Energy.com

STEPHANIE A. CUELLO
Senior Counsel
106 East College Avenue
Suite 800
Tallahassee, Florida 32301
T: (850) 521-1425
E: Stephanie.Cuello@duke-energy.com
FLRegulatoryLegal@duke-energy.com

MOLLY JAGANNATHAN
molly.jagannathan@troutman.com

MELISSA O. NEW
melissa.butler@troutman.com
Troutman Pepper, LLC
600 Peachtree Street NE, Ste. 3000
Atlanta, GA 30308
T: (404) 885-3939

Attorneys for Duke Energy Florida, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 24th day of May, 2024.

/s/ Dianne M. Triplett
Attorney

<p>Jennifer Crawford / Major Thompson / Shaw Stiller Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 JCrawfor@psc.state.fl.us MThompso@psc.state.fl.us SStiller@psc.state.fl.us</p>	<p>Walt Trierweiler / Charles J. Rehwinkel / Mary Wessling / Austin Watrous Office of Public Counsel 111 W. Madison St., Rm 812 Tallahassee, FL 32399 rehwinkel.charles@leg.state.fl.us trierweiler.walt@leg.state.fl.us watrous.austin@leg.state.fl.us wessling.mary@leg.state.fl.us</p>
<p>Jon C. Moyle, Jr. / Karen A. Putnal Moyle Law Firm, P.A. FIPUG 118 North Gadsden Street Tallahassee, Florida 32301 jmoyle@moylelaw.com kputnal@moylelaw.com</p>	<p>Bradley Marshall / Jordan Luebke Earthjustice LULAC & FL Rising 111 S. Martin Luther King Jr. Blvd. Tallahassee, Florida 32301 bmarshall@earthjustice.org jluebke@earthjustice.org</p>
<p>Tony Mendoza / Patrick Woolsey Sierra Club 2101 Webster Street Suite 1300 Oakland, CA 94612 tony.mendoza@sierraclub.org patrick.woolsey@sierraclub.org</p>	<p>Robert Scheffel Wright / John T. LaVia, III Gardner, Bist, Bowden, Dee, LaVia, Wright, Perry & Harper, P.A. Florida Retail Federation 1300 Thomaswood Drive Tallahassee, Florida 32308 schef@gbwlegal.com jlavia@gbwlegal.com</p>
<p>Sari Amiel Sierra Club 50 F St. NW, Eighth Floor Washington, DC 20001 sari.amiel@sierraclub.org</p> <p>James W. Brew / Laura Wynn Baker / Sarah B. Newman Stone Mattheis Xenopoulos & Brew, PC PCS Phosphate-White Springs 1025 Thomas Jefferson Street, NW Suite 800 West Washington, DC 20007-5201 jbrew@smxblaw.com lwb@smxblaw.com sbn@smxblaw.com</p>	<p>Peter J. Mattheis / Michael K. Lavanga / Joseph R. Briscar Stone Mattheis Xenopoulos & Brew, PC NUCOR 1025 Thomas Jefferson Street, NW Suite 800 West Washington, DC 20007-5201 pjm@smxblaw.com mkl@smxblaw.com jrb@smxblaw.com</p> <p>William C. Garner Law Office of William C. Garner, PLLC SACE 3425 Bannerman Road Unit 105, No. 414 Tallahassee, FL 32312 bgarner@wcglawoffice.com</p>