

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA

Tuesday – August 1, 2023
Immediately Following Agenda Conference
Room 148 - Betty Easley Conference Center

1. Draft Comments on the U.S. Environmental Protection Agency's Proposed Rules Regarding Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants (Attachment 1)
2. General Counsel's Report
3. Executive Director's report
4. Other Matters

BB/aml

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON
ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE
OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6463.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 25, 2023

TO: Braulio L. Baez, Executive Director

FROM: Matthew Hardy, Public Utility Analyst II, Office of Industry Development and Market Analysis
Jon Rubottom, Senior Attorney, Office of the General Counsel

MH BC

JHR SC

RE: Draft comments to the U.S. Environmental Protection Agency regarding Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants
CRITICAL INFORMATION: Please place on the August 1, 2023, Internal Affairs. Comments to the EPA are due on August 8, 2023.
COMMISSION GUIDANCE AND APPROVAL OF COMMENTS IS SOUGHT

On May 11, 2023, the U.S. Environmental Protection Agency (EPA) released a proposed rule consisting of five separate actions under the Clean Air Act (CAA) Section 111, targeting greenhouse gas (GHG) emissions from fossil fuel-fired electric generating units (EGUs).

The proposed EPA actions include emission guidelines for large and frequently used fossil fuel-fired stationary combustion turbines; guidelines for existing fossil fuel-fired steam generating EGUs; standards for new, reconstructed, and modified coal units; updates to the New Source Performance Standards for fossil fuel-fired stationary combustion turbines; and the repeal of the Affordable Clean Energy Rule, which had previously replaced the Clean Power Plan.

At the July 11, 2023, Internal Affairs meeting, Commission staff provided an update on the EPA's proposed rule regarding GHG emissions from fossil fuel-fired EGUs. The Commission directed staff to draft comments to the EPA to address concerns regarding the proposed rule.

Staff seeks guidance on whether to file written comments on this EPA rulemaking. Attachment A provides draft comments on the proposed rule for Commission consideration. The draft comments would provide the EPA with information on the Commission's statutory jurisdiction; describe the particular concerns of the Commission related to the proposed rule; and highlight attributes of Florida that merit consideration by the EPA when addressing the implementation of the proposed rule. Comments are due to the EPA by August 8, 2023.

Attachment

cc: Keith Hetrick, General Counsel
Mark Futrell, Deputy Executive Director, Technical
Apryl Lynn, Deputy Executive Director, Administrative

**UNITED STATES OF AMERICA
BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY**

New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule

Docket ID No. EPA-HQ-OAR-2023-0072

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) respectfully requests consideration of the comments provided herein on the proposed New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule (Proposed Rule).¹ The FPSC recognizes the necessity and role of the U.S. Environmental Protection Agency (EPA) in addressing public health and environmental issues. The FPSC is concerned, however, that the Proposed Rule, in its current form, lacks the clarity and compliance flexibility necessary to avoid adverse impacts on the reliability, safety, and cost of electric service upon which the citizens of the state of Florida rely. Furthermore, given the complexity of the technical and economic issues addressed in the Proposed Rule and the EPA's supporting documents, the FPSC believes that more time is needed for the electric generating units (EGUs) in Florida that would be subject to the Proposed Rule to ascertain the achievability of the proposed greenhouse gas (GHG) emissions standards and for the FPSC to understand the potential scope of the regulatory impact

¹ 88 Fed. Reg. 33,240 (proposed May 23, 2023) (to be codified at 40 C.F.R. pt. 60).

on the energy marketplace. Therefore, in addition to the more specific concerns discussed below, the FPSC supports the requests filed by other stakeholders urging the EPA to extend the comment period.

As the economic regulator for electric utilities in the state of Florida, the FPSC has an important perspective that it urges the EPA to consider in its rulemaking process. The FPSC's comments below assume that the EPA will adopt carbon emission rules in some form in accordance with the Proposed Rule notice. These comments highlight the unique circumstances and attributes of the state of Florida that affect EGUs in their ability to comply with the EPA's Proposed Rule.

FPSC Concerns and Recommendations to the EPA:

I. FPSC Jurisdiction

- Do not bypass or preempt the FPSC's exclusive jurisdiction under Florida Statutes.

II. Clarity on Which EGUs are Regulated

- Clarify methodology for calculating EGU megawatt (MW) capacity and capacity factors.
- Establish explicit and transparent thresholds for MW capacity and capacity factors to determine whether an EGU is subject to the Proposed Rule.

III. Time and Flexibility for Compliance

- Lack of time and flexibility for compliance could result in higher costs than otherwise required to meet emissions targets.
- Extend the compliance schedule to allow EGUs more time to determine and choose the emissions control system best suited to their unique circumstances.
- Provide greater flexibility to allow EGUs to change emissions control systems if a chosen system proves unfeasible.

IV. Proposed BSER and Performance Standards

- CCS and Low-GHG Hydrogen Co-firing technologies have not been adequately demonstrated in Florida.
- Performance standards based upon un-proven technologies are not achievable in Florida.

I. FPSC Jurisdiction

The Proposed Rule is of direct concern to the FPSC. The FPSC is charged with ensuring that Florida's electric utilities provide safe and reliable energy for Florida's consumers in a cost-effective manner. The FPSC regulates four investor-owned electric utilities, including aspects of rate setting, operations, and safety. The FPSC additionally regulates thirty-three municipal electric utilities and eighteen rural electric cooperative utilities regarding the safety, rate structure, and oversight of their generation and transmission planning. As of 2021, nearly 70% of Florida's electricity generation came from natural gas and nearly 10% from coal.² In 2031, the combined share of natural gas- and coal-fired electricity is currently estimated to be close to 70%.³ Therefore, a significant percentage of the generation in Florida could be impacted by the Proposed Rule. The FPSC has concerns that the Proposed Rule will adversely affect the reliability and cost of electricity service in Florida.

Adverse impacts to the reliability of the grid and economic dispatch should be carefully considered when implementing new emission reduction technologies that result in significant changes to the energy generation landscape in order to ensure the delivery of electricity to consumers without interruptions or disruptions. In Florida, the FPSC has exclusive jurisdiction to require electric power conservation and reliability measures within the coordinated electric power grid for operational and emergency purposes.⁴ The FPSC's jurisdiction includes the planning, development, and maintenance of the state's coordinated electric power grid to assure an adequate and reliable source of energy and to avoid uneconomic duplication of generation,

² See FLA. PUB. SERV. COMM'N, 2023 Facts and Figures of the Florida Utility Industry, p. 2, <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf>.

³ *Id.*

⁴ Section 366.04(2)(c), Florida Statutes.

transmission, and distribution facilities.⁵ The FPSC is charged with determining the need for all new steam or solar electrical generating facilities with a capacity of 75 megawatts (MW) or greater.⁶

Reliability, resilience, and fuel diversity are vital in states like Florida that regularly experience hurricanes and other storms. In 2021, nearly two-thirds of Florida's natural gas EGUs were capable of switching to other fuels in the event of disruptions to the natural gas supply.⁷ The Proposed Rule will likely necessitate substantial planning for and investment in new electricity generation and transmission infrastructure in Florida to facilitate the transition to EGU operation that complies with the Proposed Rule.

The EPA states in its Regulatory Impact Analysis of the Proposed Rule that the model used to assess the impact of hydrogen production did not consider "any incremental upstream electricity demand associated with its production."⁸ The FPSC believes it is critical that the EPA consider the adverse impact on the electricity landscape that could result from the additional upstream electricity required to produce hydrogen, particularly in light of the high percentage of EGUs in Florida that could be impacted by the Proposed Rule. The FPSC urges the EPA to consider the full range of potentially adverse impacts, including upstream and cascading effects to electricity demand, that could result in Florida and similarly situated states due to any dramatic changes to the statewide electricity generation and transmission landscape.

⁵ Section 366.04(5), Florida Statutes.

⁶ Sections 403.503(14) and 403.519, Florida Statutes.

⁷ See U.S. ENERGY AND INFORMATION ADMINISTRATION, *Florida: State Profile and Energy Estimates*, <https://www.eia.gov/state/analysis.php?sid=FL#26>, (last visited July 19, 2023).

⁸ See EPA, Regulatory Impact Analysis for the Proposed New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, p. 3-34 (May 2023), https://www.epa.gov/system/files/documents/2023-05/utilities_ria_proposal_2023-05.pdf.

Additionally, Florida law requires the FPSC to hold an annual proceeding to approve recovery of environmental compliance costs by investor-owned electric utilities, such as costs incurred in compliance with the Clean Air Act.⁹ The recovery of compliance costs through rates has consequences for consumers and businesses. Increased electricity rates strain household budgets, disproportionately affecting low-income households. Higher energy costs would reduce competitiveness for Florida's businesses, particularly those reliant upon affordable energy, and could potentially result in job losses. Utility recovery of compliance costs associated with the Proposed Rule, as required by Florida law, will therefore have a near-immediate impact on the retail rates of electric service paid by all ratepayers in Florida. However, due to some of the uncertainties surrounding the Proposed Rule, as discussed in more detail below, the FPSC is unable to accurately estimate the potential costs that would be passed on to customers. The FPSC urges the EPA to consider the adverse impacts to electricity rates in Florida, especially among low-income customers, that would result from the costs incurred by utilities to comply with the Proposed Rule.

II. Lack of Clarity on Which EGUs are Subject to Regulation under the Proposed Rule

It is unclear which EGUs in Florida would be affected by the Proposed Rule due to the lack of specificity in a method of calculating MW capacity and capacity factor, as well as a lack of explicit thresholds. These issues are crucial in assessing the potential environmental, regulatory, and economic impacts of the Proposed Rule in Florida.

The EPA's proposal did not provide explicit thresholds for MW capacity and capacity factor that would determine whether an EGU falls within the regulatory scope of the Proposed Rule. Seeking to address this ambiguity, the EPA issued additional guidance aimed at clarifying

⁹ Section 366.8255, Florida Statutes.

the calculation methodology to assist EGUs and stakeholders in understanding the potential scope of the Proposed Rule. Even with this additional guidance, however, the EPA's proposal still lacks the clarity and transparency that would allow the FPSC and Florida's utility operators to definitively identify the EGUs in Florida that would be regulated by the Proposed Rule.

To alleviate these concerns and provide much-needed clarity, the FPSC urges the EPA to establish in the final rule explicit and transparent thresholds in addition to a clearly defined calculation methodology for determining MW capacity and capacity factor. Defining these thresholds would enable Florida's EGUs and stakeholders to determine whether a source falls within the regulatory scope, facilitating better decision-making, more efficient planning, and more financially sound investments for all parties involved.

III. Insufficient Time and Flexibility for Compliance

The FPSC has concerns that the compliance schedules outlined in the Proposed Rule do not allow Florida EGU operators sufficient time and flexibility for compliance, which may result in excessive compliance costs being passed on to Florida's electricity customers through increased rates. The FPSC requests that the EPA thoroughly evaluate the Proposed Rule's impacts on customers, particularly in terms of the time and flexibility afforded to the EGUs for compliance.

Complying with the proposed regulations would involve significant investments in emission control technologies, infrastructure upgrades, and operational changes. These measures can be time-consuming and expensive for EGUs, especially if retrofitting existing facilities is necessary to meet the new standards. Without adequate time and flexibility, EGUs may face challenges in effectively and efficiently implementing these changes.

Flexibility in compliance options is crucial for EGUs. Florida's EGU facilities vary in characteristics such as age, size, remoteness, and technological capabilities, making a one-size-fits-all approach impractical and cost-ineffective. Allowing flexibility enables utilities to explore compliance strategies that suit their specific circumstances, such as investing in cleaner technologies, transitioning to alternative fuel sources, or participating in emissions trading programs. Flexibility encourages innovation and facilitates the identification of economically and technologically viable solutions for emissions reduction that fit the needs and constraints of individual EGU operators.

Tight timelines and limited flexibility for compliance may compel EGUs to choose quick but potentially less cost-effective or environmentally optimal solutions. Rushed decision-making can lead to higher compliance costs, including investments in expensive technologies, expedited construction or retrofitting, and operational disruptions. These additional costs are often passed on to customers through increased electricity rates. The FPSC desires to avoid such adverse outcomes in Florida.

To address these concerns, the EPA should consider providing EGUs with adequate timeframes and flexibility in the final rule. For instance, a longer glide path for implementation would provide EGUs with adequate time to plan, invest, and optimize compliance measures, and it would facilitate a smoother integration of new technologies while enabling necessary infrastructure upgrades and a phased retirement or retrofitting of existing assets if required. This approach also avoids premature retirements that could result in stranded investments and potential reliability concerns. Moreover, a longer transition period would allow for additional development and deployment of advanced technologies, avoiding potential grid instability and ensuring the viability, scalability, and cost-effectiveness of emerging technologies before

widespread implementation. The FPSC also recommends that the EPA provide a mechanism by which Florida’s EGUs can change course without penalty if a chosen compliance path proves to be unviable or exorbitantly costly.

IV. Concerns about “Adequately Demonstrated” BSER & “Achievable” Standard regarding CCS and Low-GHG Hydrogen Technologies in Florida

The FPSC has concerns that the emission control systems identified by the EPA as the best system of emission reduction (BSER)—specifically CCS and low-GHG hydrogen co-firing—have not been “adequately demonstrated” for use in Florida, and that the performance standards proposed by the EPA are not “achievable” for Florida’s EGU operators.¹⁰ When establishing a standard of performance under Section 111 of the CAA, the EPA must (1) determine the BSER that has been adequately demonstrated, (2) determine the degree of emission limitation achievable through the application of that system, and (3) impose an emissions limit on new stationary sources that reflects that amount.¹¹

Although neither the CAA nor the U.S. Supreme Court have defined the term “adequately demonstrated,” the U.S. Court of Appeals for the D.C. Circuit has stated that the EPA cannot base its determination on a “crystal ball inquiry,” but may “look toward what may fairly be projected” to be available “rather than the state of the art at present.”¹² The BSER must be shown to be reasonably “reliable,” “efficient,” and “expected to serve the interests of pollution control without becoming exorbitantly costly.”¹³ The EPA bears the burden to

¹⁰ *Nat’l Lime Ass’n v. EPA*, 627 F. 2d 416, 433 (D.C. Cir. 1980) (“Section 111 requires that the [BSER] considered able to meet the standard be ‘adequately demonstrated’ and the standard itself be ‘achievable.’”).

¹¹ *West Virginia, et al., v. EPA*, 142 S. Ct. 2587, 2601 (2022).

¹² *Portland Cement Ass’n v. Ruckelshaus*, 486 F. 2d 375, 391 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974).

¹³ *Essex Chem. Corp. v. Ruckelshaus*, 486 F. 2d 427, 433 (D.C. Cir. 1973), *cert. denied sub nom. Appalachian Power Co. v. EPA*, 416 U.S. 969 (1974). *See also Nat’l Lime Ass’n*, 627 F. 2d at 431 n.46 (stating that “a standard must be capable of being met under most adverse conditions which can reasonably be expected to recur and which are not or cannot be taken into account in determining the ‘costs’ of compliance”).

affirmatively demonstrate that standards proposed under Section 111 reflect “consideration of the range of relevant variables that may affect emissions in different plants.”¹⁴

While the EPA points to certain developers and utilities that have announced CCS and hydrogen co-firing projects, the FPSC is concerned that isolated implementation under controlled circumstances is not a sufficient basis upon which to establish performance standards for carbon emissions. No utility in Florida has yet demonstrated a cost-effective CCS project or co-fired the required volume of low-GHG hydrogen, and the FPSC is aware of very few operational plants anywhere operating such technologies at anything close to the emission levels the EPA is proposing to require. As such, the FPSC is concerned that Florida’s EGUs will not be able to overcome the technological and economical challenges associated with grid-scale implementation of technologies that have yet to be proven feasible in Florida.

The absence of demonstrated CCS projects raises concerns about the scalability and economic viability of the technology in Florida. The specific geological characteristics required for safe and effective underground storage of carbon dioxide need to be assessed in Florida. The lack of proven CCS projects in Florida and the surrounding region suggests that there may be technical, economic, or regulatory challenges associated with its implementation—particularly implementing the technology at scale—in states that are geologically similar to Florida. The FPSC is concerned that these industry-wide challenges will not be sufficiently resolved in the compliance timeline set forth in the Proposed Rule.

Similar to CCS, no Florida utility has demonstrated the capability to co-fire the volume of low-GHG hydrogen required to comply with the Proposed Rule. Due to Florida’s unique circumstances, the FPSC is concerned that Florida’s EGUs will face substantial obstacles in

¹⁴ *Nat’l Lime Ass’n*, 627 F. 2d at 433.

implementing grid-scale hydrogen co-firing capabilities. Florida is a peninsular state, and as stated above, nearly 70% of Florida's electricity generation comes from natural gas-fired EGUs. These factors make any new regulations affecting natural gas EGUs in Florida especially challenging. Not only is the "state of the art" in hydrogen co-firing untested in Florida, the FPSC is concerned that the EPA has projected that an entirely new fuel source, along with the vast network of production and distribution infrastructure necessary to support its integration, can be established for reliable use before the 2032 and 2038 compliance dates set forth in the Proposed Rule. Even if safe and reliable grid-scale integration is possible, the FPSC is concerned that such rapid capital expenditures would be exorbitantly costly to both EGUs and electricity customers alike.

One significant aspect of the uncertainty surrounding the proposed hydrogen-based BSER is the availability and production capacity of low-GHG hydrogen sources. Producing hydrogen with minimal greenhouse gas emissions requires access to renewable energy or nuclear power, which may have limitations in terms of availability and scalability. The infrastructure required for large-scale production and distribution of low-GHG hydrogen, as well as the energy required to produce it, is still in the early stages of development in the industry and is unproven in the state of Florida.

While the FPSC appreciates that Florida will have its own state implementation plan that can account for some of its unique needs, the FPSC urges the EPA to consider the following issues: whether the identified BSERs involving CCS and low-GHG hydrogen co-firing are "adequately demonstrated" for use in Florida; whether it is fair to project that the technologies will be available, scalable, and deployable in Florida; whether the proposed performance standards based on these technologies are "achievable" in Florida given the relevant variables

specific to the state; and whether a grid-scale transition to the technologies according to EPA's proposed timeline can be accomplished "without becoming exorbitantly costly" for Florida's EGU operators and, consequently, its ratepayers.

V. Conclusion

The FPSC recognizes the necessary role of the EPA in addressing public health and environmental issues. However, as discussed throughout these comments, the FPSC is concerned that the regulations proposed by the EPA in its Proposed Rule do not reflect what is technically or economically feasible in Florida. There are at least four critical issues that require the EPA's clarification or revision before moving forward with the Proposed Rule. First, the EPA should consider the cascading effects the Proposed Rule will have upon reliability of electric service and the full impact on retail electricity rates that could occur due to dramatic shifts in supply and demand in the energy marketplace. Second, the EPA should clarify the methodology for calculating EGU MW capacity and capacity factor and establish explicit and transparent thresholds for MW capacity and capacity factor to determine whether an EGU is subject to the Proposed Rule. Third, the EPA should extend the compliance schedule to allow EGUs more time to determine and choose the emissions control system best suited to their unique circumstances and provide greater flexibility to allow EGUs to change emissions control systems if a chosen system proves unfeasible. Lastly, the EPA should consider whether the proposed BSERs of CCS and low-GHG hydrogen co-firing are "adequately demonstrated" for use in Florida and whether performance standards based upon those BSERs are "achievable" in Florida without becoming "exorbitantly costly."

The FPSC is concerned that the failure to consider and incorporate the concerns raised in these comments will result in unjust, unreasonable, and excessively costly carbon emissions

performance standards that would risk the safety, reliability, and affordability of electric service in Florida.

II. Outside Persons Who Wish to Address the Commission at Internal Affairs

Note: The records reflect that no outside persons addressed the Commission at this Internal Affairs meeting.

III. Supplemental Materials for Internal Affairs

Note: The records reflect that there were no supplemental materials provided to the Commission during this Internal Affairs meeting.

IV. Transcript

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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PROCEEDINGS: INTERNAL AFFAIRS

COMMISSIONERS PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, August 1, 2023

TIME: Commenced: 10:15 a.m.
Concluded: 10:39 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN FAY: All right. Commissioners, we
3 will get started with Internal Affairs. If you
4 could grab your seats.

5 This morning we will start, as we always do,
6 with our Employee of the Month Hiep Nguyen. Hiep
7 started in the Commission in March 2022 as a
8 Commission Deputy Clerk in the Office of Commission
9 Clerk. Based on his ability to learn quick --
10 learn quick on his job and learn responsibilities
11 quickly, his performance has been outstanding. He
12 recently received a promotion to Commission Deputy
13 Clerk II in March of 2023, and continues to thrive
14 in this role.

15 He works on a number of different issues,
16 including the issuance of Commission orders,
17 notices, staff recommendations, processing
18 documents or filing correspondence in CMS, and
19 researching copy requests, and he serves as the
20 backup for confidential document coordination,
21 which is never an easy process.

22 Hiep comes to work every day with a great
23 attitude, and his willingness to provide backup
24 support for his team is much appreciated. He truly
25 is an outstanding employee.

1 I got to meet Hiep the other day, and even
2 though else newer to our agency, he has jumped
3 right in and demonstrated that he enjoys being part
4 of the team and continues to thrive in his role.

5 So with that, we will recognize Hiep Nguyen as
6 Employee of the Month.

7 (Applause from the audience.)

8 CHAIRMAN FAY: He is not here.

9 All right. Next, Commissioners, we will move
10 into our agenda for -- the draft first -- the
11 agenda item is the Draft Comments on the U.S.
12 Environmental Protection Agency's Proposed Rules
13 Regarding Greenhouse Gas Standards and Guidelines
14 for Fossil Fuel-Fired Power Plants. That's a
15 mouthful there.

16 So we will have our item presented this
17 morning with a quick summary from staff, and then
18 take up any questions or comments from my
19 colleagues.

20 MR. HARDY: Good morning, Commissioners. I am
21 Matthew Hardy with the Office of Industry
22 Development and Market Analysis.

23 On May 11th, 2023, the U.S. Environmental
24 Protection Agency released a proposed rule
25 consisting of five separate actions under the Clean

1 Air Act Section 111, targeting greenhouse gas
2 emissions from fossil fuel-fired electric
3 generating units.

4 At the July 11th, 2023, Internal Affairs
5 meeting, Commission staff provided an update on the
6 EPA's proposed rule regarding greenhouse gas
7 emissions from fossil fuel-fired electric
8 generating units. The Commission directed staff to
9 draft comments to the EPA to address concerns
10 regarding the proposed rule.

11 Staff seeks guidance on whether to file
12 written comments on this EPA rulemaking.
13 Attachment A provides draft comments on the
14 proposed rule for Commission consideration. The
15 draft comments would provide the EPA with
16 information on the Commission's statutory
17 jurisdiction, highlight particular concerns that
18 the Commission's -- particular concerns that the
19 Commission related to the proposed rule and
20 attributes of Florida that merit consideration by
21 the EPA when addressing the implementation of the
22 proposed rule.

23 Comments are due to the EPA by August 8th,
24 2023.

25 Staff is available to answer any questions.

1 And today, we have representatives from FMPA and
2 FRCC as well.

3 CHAIRMAN FAY: Okay. Great. Thank you, Mr.
4 Hardy.

5 What I will do is I will go next to Mr.
6 Williams, representing the FRCC as Board Chair, and
7 then Mr. Navid Nowakhtar, did I get that right?
8 Okay, great. We will go to you afterwards.

9 So, Mr. Williams, you are recognized. Just
10 make sure you have your button turned on there.

11 MR. WILLIAMS: All right. Thank you very
12 much, Commissioners.

13 I am Jacob Williams, General Manager and CEO
14 for Florida Municipal Power Agency, but today I am
15 appearing before you as the Board Chair of FRCC.
16 Unfortunately, Executive Director Stacy Dochoda had
17 a long time vacation planned and couldn't be here,
18 so I am doing this in her stead.

19 You know that FRCC is -- represents the
20 utilities, who are members, are the large bulk
21 suppliers in the state of Florida, and our mission
22 is to provide safe, reliable and secure power.

23 FRCC works with -- you know, works with the
24 PSC and accomplishes many things, but some of the
25 things most important to you all is compiling the

1 state load and resource data, including compiling
2 the 10-year site plan for the whole state, pulling
3 that all together.

4 FRCC provides a number of annual reliability
5 assessments and long-term assessments that are
6 provided to you all as well. And we represent --
7 FRCC represents the members at SERC, Southeast
8 Reliability Corporation.

9 So on behalf of FRCC, thanks for the
10 opportunity to reply. We are addressing concerns
11 to the EPA proposed CO2 rule. The rule puts the
12 reliability of electricity delivery in Florida at
13 risk.

14 And in summary, the rule closes -- essentially
15 closes all the coal plants in the country by 2032,
16 or thereabouts, which is 20 percent of the electric
17 supply in the country. But more importantly, the
18 state of Florida, it puts significant constraints
19 on the natural gas units if they cannot overcome by
20 2032 with some of the requirements that are in
21 there.

22 And since Florida is the most gas dependent
23 state in the country for gas generation, at 75
24 percent, there is not another region in the country
25 that has more than 50 percent of their generation

1 from natural gas, and Florida has 75 percent.

2 Our reliance on natural gas in our peninsular
3 geography and the limited interconnections to the
4 rest of the state, puts the state at great risk
5 because we have to provide our own resources within
6 the state. We can't rely meaningfully on outside
7 generation to do that.

8 Florida, as you know, in the 10-year site
9 plan, you see that there is a significant amount of
10 solar generation that's being added today. It's
11 eight percent of the generation, the megawatt hours
12 in the state. By 2032, under the -- it will rise
13 to about 28 percent of the energy. It is a
14 dramatic increase.

15 But that said, that -- that resource has to be
16 backed up and, frankly, the gas system -- the
17 generation needs to continue to operate because it
18 provides the dependable generation when the sun
19 doesn't shine, and all the ancillary services
20 ramping, et cetera. This rule goes to the heart of
21 whether we can -- we can meet the needs of the
22 customers.

23 The timeline imposed by the rule clearly
24 undermines the reliability in the state of Florida.
25 It will -- it will reduce the amount of generation

1 available because we can't meet the timelines to
2 put all the new infrastructure in place that would
3 be required by 2032 and the green hydrogen
4 infrastructure that they talk about.

5 Specifically, in the analysis of FRCC, they
6 look -- we looked at the rule, and there are many
7 questions that were not answered. It was very
8 vague on the natural gas side. And so we had to
9 make a few assumptions, and there is two critical
10 assumptions we made.

11 The 300-megawatt all gas combined cycles, 300
12 megawatts and larger that run at 50 percent
13 utilization, they would be impacted by the rule.
14 Well, that's most of the gas generation in the
15 state would be impacted by the rule in terms of the
16 megawatt hours. So that's the first thing.

17 The second thing is we assume that carbon
18 capture and sequestration would not be available to
19 the units, so there is no alternative but to use --
20 to manage these.

21 The rule basically states that these -- the
22 large gas units, the 300-megawatt units that run
23 anywhere between 60 to 85 percent utilization,
24 would be capped at running at 50 percent
25 utilization by 2032. And so the problem is where

1 does the extra energy come from if those units are
2 ramped back?

3 FRCC estimates that in 2032, the rule would
4 require replacing 23 million-megawatt hours of
5 energy that would not be supplied. What that means
6 is that it's equivalent to blacking out 1.8 million
7 residential customers year-round, or all the
8 residential customers for two months. That's eight
9 percent of the energy as the state of Florida we
10 would not be able to serve if you made those two
11 assumptions, that the gas generation would be
12 backed down like it would be.

13 This is a significant shortfall, and a
14 significant risk. We've only had 60 days to
15 analyze the rule. Such a fundamental rule, you
16 would take six months to, or longer, to do all the
17 normal work that FRCC, the utilities, that SERC,
18 FERC and NERC would be involved in. But given we
19 only had 60 days to comment, that's what we could
20 come up with.

21 Our fundamental comment from FRCC's standpoint
22 is the timing of the rule, by implementing in 2032,
23 is too soon. We cannot meet the rule as written
24 for the state of Florida, the state that's most
25 impacted by this rule, by 2032, and we can't

1 guarantee the same reliability of service that the
2 customers of Florida have been used to if this rule
3 goes forward. And frankly, we need quite a bit
4 more time, and study, and input from a number of
5 agencies that did not have that.

6 So I will stop there and take any questions if
7 you desire.

8 CHAIRMAN FAY: Okay. Great. I will go to
9 Mr. Nowakhtar next.

10 MR. NOWAKHTAR: Thank you, Mr. Chairman. Good
11 morning. My name is Navid Nowakhtar. I am the
12 Asset and Strategic Planning Director at Florida
13 Municipal Power Agency. Our mission is to support
14 our 33 municipal electric members with low cost,
15 reliable and clean power. Together, the members of
16 FMMPA provide power to over 4.2 million Floridians,
17 or about 19 percent of the state's population.

18 We I applaud the PSC's intent to file comments
19 with the U.S. EPA regarding the recently proposed
20 greenhouse gas rules for electric generation
21 facilities. We echo the concerns raised by the
22 Florida Reliability Coordinating Council as it
23 relates to reliability risks that the proposed
24 rules pose for Florida. Which is a uniquely
25 situated peninsula, where 75 percent of our

1 electricity is delivered from natural gas
2 generation.

3 We concur with the FRCC that the EPA's
4 proposed fundamental transformation of the electric
5 generation mix to green hydrogen in eight years is
6 unlikely. This leaves Florida with having to
7 comply with the EPA proposal by reducing generation
8 levels at the large low cost, low emitting natural
9 gas units, and ramp up to permissible levels the
10 smaller higher cost, higher emitting natural gas
11 and diesel peaking units.

12 We, like FRCC, are concerned there would still
13 not be enough then generation available to fully
14 meet load by 2032. In addition, FMPA is concerned
15 about the extraordinary economic and financial
16 hardship the EPA proposal could pose for our
17 customers, as well as all Floridians.

18 Floridians are uniquely dependent on
19 affordable and reliable power. Our families used
20 twice as much electricity as places like California
21 or New York because it's hot and humid. Florida
22 also has the largest percentage of senior citizens
23 in our population in the country, as well as a
24 typical amount of low-income population. Meaning,
25 many Floridians have disposal income to pay for

1 higher electricity prices.

2 FMPA's analysis shows meeting the EPA's rule
3 by having green hydrogen generation at our large
4 natural gas units could lead to power cost
5 increases of potentially 100 to 200 percent for the
6 average family. That will impact the quality of
7 life for millions in the statute.

8 For FMPA's membership, it's especially tough,
9 as we have 15 of our 33 member communities with
10 average incomes that are 50 percent or less of the
11 U.S. average. That cost increase is well above
12 what the EPA is estimating at one to two percent
13 over their base case assumptions.

14 EPA's assumptions for Florida are also
15 misaligned with recently filed 10-year site plans
16 for the state. The 10-year site plans show solar
17 generation growing from about five-and-a-half
18 gigawatts in 2022 to over 32 gigawatts, so adding
19 27 gigawatts by 2032 for the entire state.

20 The EPA expects that Florida would construct
21 constrict an 19 gigawatts of solar in 2035, and
22 further, another 38 gigawatts in 2040, achieving in
23 two to three years roughly what the state is
24 planning to take a decade to achieve. The
25 timelines for siting of new solar and transmission

1 of this quantity in eight to 10 years is highly
2 improbable.

3 We appreciate the PSC's engagement in this
4 matter. FMPA has filed our detailed comments with
5 the U.S. EPA, and we will continue to articulate
6 our concerns for our member cities and Florida as a
7 whole at the federal and state level.

8 Thank you.

9 CHAIRMAN FAY: Great. Thank you.

10 You mentioned at the end there, so you guys
11 have filed -- officially filed comments? And I
12 guess the same question for the FRCC, in your
13 capacity as a board member, did y'all vote --

14 MR. WILLIAMS: FRCC filed back on, I believe
15 it was July 12th or 13th, filed the comments with
16 the EPA. So FRCC has filed these publicly.

17 CHAIRMAN FAY: Okay.

18 MR. NOWAKHTAR: And FMPA has as well.

19 CHAIRMAN FAY: Okay. Great.

20 All right. Commissioners, any questions for
21 our staff or our public speakers, or any comments
22 on the proposed comments?

23 Yeah, Commissioner La Rosa.

24 COMMISSIONER LA ROSA: Thank you, Chairman.

25 I think you are asking just for general

1 comments?

2 CHAIRMAN FAY: Sure.

3 COMMISSIONER LA ROSA: Well, I appreciate
4 staff's work on this, and certainly have taken the
5 comments that we had from our last meeting, and I
6 will say this, it's a diplomatic approach, right?
7 I think it's very professional, and I understanding
8 that, and I am appreciative and supportive of the
9 comments that we are going to send to the federal
10 government. But I still sit here in frustration
11 and just kind of want to echo some of the things I
12 said originally.

13 This is the opportunity for us to chime in,
14 which we all are. And I appreciate both
15 organizations coming before us today and explaining
16 the comments that they provided for the federal
17 government. I think that they are spot on, and
18 obviously very consistent with what we are saying,
19 and I just want to pull something out.

20 FRCC estimates that in 2032 the proposed rule
21 change requires replacement of 23 million megawatts
22 of annual energy supply unit to serve load. The
23 shortfall represents about eight percent of FRCC's
24 total projected demand and equivalent to blacking
25 out about 1.8 million residential customers for the

1 entire year, or all residential customers for about
2 two months.

3 I feel -- and that's -- that's -- that's well
4 understood. I kind of feel like Florida is unique
5 for a lot of the good points that were brought out
6 today for sure; hurricanes, our weather patterns
7 are different from most of the U.S. I feel that
8 with implementation of rules that are very
9 nearsighted start to make Florida look more like
10 California, which is what I think most Floridians
11 have tried to avoid, which is why they live here in
12 the sunshine state.

13 So I just want to just echo my frustrations.
14 I think the comments today were well taken, and
15 certainly by me. The last thing we want to see is
16 unnecessary expenses falling back on our customers,
17 and I think this is the tip of the sphere of that
18 happening.

19 So thank you, Chairman, and I appreciate
20 everyone here on the Commission for their input on
21 this.

22 CHAIRMAN FAY: Sure. Thank you, Commissioner
23 La Rosa.

24 Any other -- Commissioner Clark, you are
25 recognized.

1 COMMISSIONER CLARK: Thank you.

2 I was going to keep quiet out of abundant fear
3 that I will say something that I will regret at
4 some point in time, but I just want to say thank
5 you to FMPA for the comments that you made. Thank
6 you to the staff for the work that you did on our
7 response as well. I thought it was well written.
8 I would have been a lot harsher in some of my
9 statements, but I think you did an outstanding job
10 of boxing in the issues at hand.

11 And I think that, just to echo Commissioner La
12 Rosa's comments, I am always continually concerned
13 about the continued overreach of the EPA in this
14 case. And anything we do to stand up and take a
15 stand for Floridians, and looking at our future,
16 and taking into account the people that live here
17 and the people that we serve, I think is of the
18 utmost importance, and so thank you all for your
19 support of this item.

20 CHAIRMAN FAY: Great. Any other comments or
21 questions?

22 I just -- I have just a quick question for
23 staff.

24 So in the proposed comments, there is a
25 specific paragraph that talks about to alleviate

1 concerns provided, the Commission, or EPA, to
2 establish a final rule explicit with transparent
3 thresholds in addition to clear calculation for
4 determining megawatt capacity and capacity factor.

5 Do we -- I guess -- I know you can't predict
6 what the EPA, the final rule would look like, but
7 at this point, with there being some confusion
8 understanding where those thresholds are, I guess
9 how do -- how do they move forward? Do we
10 anticipate they will -- when they roll out their
11 final rule, there will be, like, a clear threshold
12 for the utility -- all utilities to then just
13 determine okay, we've -- this unit falls into the
14 category that has requirements or this unit
15 doesn't, or do we think that it might be broader,
16 and that's kind of why it was written the way it
17 was originally? Either Mr. Hardy or Mr. Rubin.

18 MR. HARDY: So we don't think there is going
19 to be much clarification on it. They have already
20 issued that threshold, they issued some
21 clarification on it, but it's kind of ambiguous
22 depending -- if a lot of those units are right on
23 the threshold, they could decide to back down their
24 generation capacity or capacity factors to get them
25 out of the compliance standards.

1 So that's where the issue is, is because they
2 are kind of boxed in right now, but they are kind
3 of on that threshold. Depending on what the EPA
4 decides to set it at, they could -- they could
5 decide to back out of it and ramp things down,
6 which is why we talked a little bit about the
7 reliability issues that this could cause.

8 CHAIRMAN FAY: Okay. Great. Thanks.

9 And, yeah, Mr. Rubottom, anything to add?

10 MR. RUBIN: Just to add on to that, I think,
11 obviously, we -- we -- and not being an expert in
12 EPA's processes, but the original filing of the
13 proposed rule kind of sets the starting point, and
14 any changes or adjustments or clarifications are
15 going to need to be based upon that.

16 So our assumption, and part of it the reason
17 we used some of the language we did in the draft
18 comments, subject to y'all, the Commission's
19 approval, is an assumption that they are going to
20 proceed as they have indicated.

21 So we don't know what direction they are going
22 to go, how far they might clarify, how far it might
23 change, and what form it will take in the final
24 rule, but we are assuming that they are going to
25 proceed this direction, and so that's why we

1 included some of the language that we did
2 specifically talking about the final rule, looking
3 for more clarification, and that's partially why,
4 because currently, our understanding is it lacks
5 that clarification we would like. It seems that
6 more clarification would be warranted in this case.

7 CHAIRMAN FAY: Okay. Great.

8 Any other comments or questions?

9 Seeing none. Mark, do we need to just
10 official -- do we officially just bless the --
11 formally, do we need to --

12 MR. FUTRELL: That's always helpful in
13 something like this.

14 CHAIRMAN FAY: Okay. Well, then why don't we
15 go ahead and we will take a motion on approval of
16 the comments as chosen, if either amended or as is,
17 and then we will take up that vote.

18 COMMISSIONER CLARK: Mr. Chairman, I would
19 move to approve the draft comments as presented,
20 and to authorize staff to make any necessary
21 modifications to clean up the final language in it.

22 CHAIRMAN FAY: Okay. Great.

23 Do we have a second to Commissioner Clark's
24 motion?

25 COMMISSIONER GRAHAM: Second.

1 CHAIRMAN FAY: Okay. All that approve say
2 aye.

3 (Chorus of ayes.)

4 CHAIRMAN FAY: Showing none opposed. Okay.
5 We will send those comments with staff's
6 administrative authority to make changes as they
7 see needed.

8 Okay. Great. With that, Commissioners, that
9 takes care of our first item. We will then move on
10 to the General Counsel's report. Mr. Hetrick.

11 MR. HETRICK: I have no report, Mr. Chair.
12 Good morning, Commissioners. Next month, though, I
13 hope to, knock on wood, introduce you to two new
14 attorneys that are coming on board in mid-August.

15 Thank you.

16 CHAIRMAN FAY: Okay. You should report that
17 you have been running up and down the halls lately
18 in the Commission moving swiftly.

19 MR. HETRICK: The hip is doing remarkable.
20 Thank you, Mr. Chair.

21 CHAIRMAN FAY: Okay. Great.

22 All right. With that, we will move on to Mr.
23 Baez for the Executive Director's report.

24 MR. BAEZ: Thank you, Mr. Chairman. Good
25 morning, Commissioners.

1 We are in the final stages of -- well,
2 actually, we are about to finalize our legislative
3 budget request for the '24-'25 fiscal year, and we
4 are far enough along that I can bring you the
5 highlights and what the intentions for the agency
6 are scheduled to be -- excuse me here.

7 Starting with highlights. As has been long
8 our tradition, we are filing pretty much a flat LBR
9 relative to last year, just the numbers, for your
10 reference, our '23-'24 operating budget was set at
11 28.9 million, and we are proposing 28.7 and change
12 this year. So it's a slight reduction, I think
13 about half a percent, with two issues, which I will
14 highlight now.

15 The first issue is we are proposing
16 eliminating nine vacant positions, which will,
17 after accounting, will realize about \$250,000 of
18 reductions to operating expenses for the agency.

19 And the second is we are proposing to increase
20 our vehicle allotment from, I think right now it's
21 at around 40,000 recurring every year. That is for
22 purchase of new vehicles. Now, 40,000, at this
23 point with inflation, only really gives us time to
24 replace one vehicle a year. And we have done a
25 little bit of a study, an aging study on our

1 current fleet, and we tried to up that to about
2 three vehicles, so we are going -- we are proposing
3 an increase from 40 -- 41,000, I think, to 120. So
4 that will give us room to be able to purchase and
5 replace three vehicles at the same time.

6 And this is really run by mileage standards.
7 We are averaging about 200,000 miles a year, and
8 that's a little bit over our threshold for
9 replacement. So we are addressing those.

10 Those are the two major issues. If you all
11 have questions as to the finer details, I would be
12 happy to discuss it with y'all. If you have
13 questions now, I am happy to --

14 CHAIRMAN FAY: I just have a quick question.
15 I know we dissolved our offices in Tampa and Miami
16 for a lot of those folks that were doing the
17 inspections because it didn't really make a ton of
18 sense to have to keep paying the rent on those
19 offices.

20 MR. BAEZ: Sure, last year, yes.

21 CHAIRMAN FAY: Yeah. We don't have the
22 ability -- I guess those funds don't help us, then,
23 on the capital side to, you know, address some of
24 those costs, or is it all kind of --

25 MR. BAEZ: Well, I think -- well, yeah, that's

1 a good point. But those savings have already been
2 rolled into -- they have already been absorbed,
3 right? They were absorbed, and they are rolled
4 into the LBR request this year, so you wouldn't --
5 it wouldn't reflect again.

6 CHAIRMAN FAY: Okay.

7 MR. BAEZ: They are having their impact, just
8 not -- it's not new and improved.

9 CHAIRMAN FAY: Okay.

10 MR. BAEZ: So these are the only two issues,
11 really, that are standing out that are different.

12 CHAIRMAN FAY: Okay. Are any questions,
13 Commissioners? Nope.

14 Okay. Anything else?

15 MR. BAEZ: No. I don't think -- we are going
16 to get set to file September 15th, I believe. So
17 that's coming up. And, again, up until then, and
18 even after, if you have questions, and we will be
19 updating you as to whatever -- whatever issues need
20 updating obviously. We are on track.

21 CHAIRMAN FAY: Great. Thank you.

22 All right. Commissioners any other matters?

23 MR. BAEZ: Thank you, Commissioners.

24 CHAIRMAN FAY: Seeing no other matters,
25 Internal Affairs is adjourned. Thank you.

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(Proceedings concluded.)

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CERTIFICATE OF REPORTER


STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
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same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
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attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 15th day of August, 2023.


DEBRA R. KRICK
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