

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C., Duke
Energy Florida, LLC.

DOCKET NO. 20220050-EI

FILED: July 13, 2022

PRE-HEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure (Order No. PSC-2022-0119-PCO-EI) issued March 17, 2022 and as modified by the First Order Modifying the Order Establishing Procedure (Order No. PSC-2022-0226-PCO-EI) issued on June 24, 2022, hereby submit this Prehearing Statement.

APPEARANCES:

Charles Rehwinkel
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
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On behalf of the Citizens of the State of Florida

1. **WITNESSES:**

Witness ¹	Subject Matter	Issue #
Kevin J. Mara	Engineering	All Issues
Lane Kollen	Accounting	All Issues

2. **EXHIBITS:**

<u>Witness</u>	<u>Proffered by</u>	<u>Exhibit No.</u>	<u>Description</u>	<u>Issue #</u>
Lane Kollen	OPC	LK-1	Resume of Lane Kollen	All Issues
Lane Kollen	OPC	LK-2	Summary of Each Utility's Decision Criteria	All Issues
Kevin J. Mara	OPC	KJM-1	Curriculum Vitae of	All

¹ Lane Kollen and Kevin J. Mara submitted Amended Direct Testimony on June 27, 2022, appended to an unopposed motion which was granted in Order No. PSC-2022-0271-PCO-EI.

			Kevin J. Mara	Issues
Kevin J. Mara	OPC	KJM-2	DEF's Response to OPC POD 1 Q. 1	All Issues
Kevin J. Mara	OPC	KJM-3	Duke 2020-2029 SPP JWO-2	All Issues
Kevin J. Mara	OPC	KJM-4	DEF's Response to OPC POD no. 21	All Issues
Kevin J. Mara	OPC	KJM-5	Duke 2020-2029 SPP JWO-1	All Issues
Kevin J. Mara	OPC	KJM-6	FEMA Chronology NFIP	All Issues
Kevin J. Mara	OPC	KJM-7	DEF's Response to OPC Interrogatories 1-8	All Issues

3. **STATEMENT OF BASIC POSITION**

The Office of Public Counsel's (OPC) basic position in this case is that the Commission's determinations regarding the Storm Protection Plans (SPP) that have been filed must be consistent with the public policy contained in Section 366.96, Florida Statutes and Rule 25-6.030, Florida Administrative Code (F.A.C.). The burden of proof remains on the company to justify compliance with the statute and rules, as well as to demonstrate the reasonableness and prudence of the programs and projects and their related costs. By challenging these programs, projects, and costs, the OPC and its experts have not assumed the burden of proof in this case. The OPC has focused on whether the programs and projects proposed by Duke Energy Florida (DEF) satisfy the statutory and rule requirements for permissible programs and projects as well as whether the appropriate cost/benefit analyses have been performed and whether that analysis supports the cost of the programs and projects contained in the SPPs filed by the IOUs. Unfortunately, there are instances within DEF's 2023-2032 SPP where some programs and projects do not meet the legal requirements of permissible SPP programs and projects and there are also some instances where the analysis of the cost and benefits do not justify the programs and projects. The Commission should deny the programs and projects that OPC identifies as impermissible and/or fiscally unjustifiable. For the years 2023 and 2024 the recommendations for exclusion from SPP and SPPCRC are subject to a provision in the 2021 Settlement agreement approved in Order No. PSC-2021-0202A-AS-EI, as discussed in certain circumstances below. To the extent that the portions of Witnesses Mara and Kollen's testimony containing their expert opinion is superseded by a

stipulation approved by the Commission in Order No. 2021-0202A-AS-EI (herein “Paragraph 4 Stipulation”), that testimony should not form the basis for an adjustment. The OPC is not seeking an adjustment to the DEF SPP for those programs nor will it seek an adjustment in Docket No. 20220010-EI for the years 2023 and 2024 for the recovery of the revenue requirement associated with the six programs covered by the stipulation, absent evidence of imprudence or unreasonableness as permitted by the August 3, 2020 Updated Stipulation and Settlement Agreement entered into in Docket 2000069-EI and approved in Order No. PSC-0293-AS-EI. Specifically, the portions of Mr. Mara’s and Mr. Kollen’s testimony recommending rejection of programs or subprograms for the years 2023 and 2024, under the heading of “Does not comply with 25-6.030” as shown in the table on page 13 Mr. Mara’s Amended testimony, should not be considered in this Docket by the Commission for the years 2023 and 2024 for disallowance where they conflict with the provisions of that order.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: Does the Company’s Storm Protection Plan contain all of the elements required by Rule 25-6.030, Florida Administrative Code?

OPC’s edit: Does the Company’s Storm Protection Plan contain all of the elements, including but not limited to, a comparison of the costs and dollar benefits, required by Rule 25-6.030, Florida Administrative Code?

OPC: No. While Duke provided cost and benefit information, it was not properly presented for determination of plan approval, modification, or rejection. At best, the cost/benefit comparison information was presented largely for prioritization of projects. Societal benefits in the form of cost avoidance are highly subjective estimates of the value to customers of avoided outages and should not be used. Additionally, DEF improperly seeks to include proposed “capital cost savings” in the cost/benefit analysis. Subject to the agreement to allow costs shown on page 13 of Kevin Mara’s amended Direct Testimony in the table with the notation “Does not comply with 25-6.030,” for the recovery periods 2023 and 2024, DEF has not

met its burden to justify programs and projects proposed in its Updated Plan as being cost-effective.

ISSUE 2: To what extent is the Company's Storm Protection Plan expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability?

OPC's edit: To what extent, and by how much, are each of the Company's Storm Protection Plan programs and projects expected to reduce restoration costs and outage times associated with extreme weather events?

OPC: Some of DEF's proposed programs and projects will have a better impact on reducing outages times and lowering restoration costs than others. Additionally, several programs and projects are not extreme weather storm hardening programs but rather routine maintenance responsibilities of any electric utility and should not be included in the company's SPP. DEF's plans are not shown to be cost effective as the benefits do not exceed the costs. It is unclear how much the actual benefits will be over time. It is clear that these benefits are not shown to exceed the costs. It remains to be seen whether storm restoration costs will be reduced or merely redeployed such that customers continue to bear the costs in pursuit of diminishing returns of ever faster – but cost ineffective – storm restoration time.

OPC Proposed Issue A:

Are the Company's Storm Protection Plan programs and projects new or expansions of existing activities that are incremental, and are the programs designed specifically for the purpose of reducing restoration costs and outage times?

OPC: To qualify for inclusion in the SPP proceedings and cost recovery in the SPPCRC proceedings, the projects and the costs of the projects must be incremental, not simply displacements of base rate costs that would have been incurred during the normal course of business, as well as prudent, used and useful, and just and reasonable both as to amount and customer impact. Subject to the Paragraph 4 Stipulation for the years 2023 and 2024, to the extent that any of DEF's programs and projects are not in compliance with all of these requirements, OPC requests that the Commission reject those programs and projects. As demonstrated in the Amended testimony of Kevin Mara and summarized in the table on page 13, the projects that are subject to the Paragraph 4 Stipulation for the years 2023 and 2024 are:

- Distribution - Self-Optimizing Grid (SOG)
- Distribution - UG Flood Mitigation
- Transmission - Structure Hardening
- Transmission - Substation Flood Mitigation
- Transmission - Loop Radially Fed Substation
- Transmission - Substation Hardening

Apart from these years, the OPC urges that these programs not be included in the DEF Updated SPP as not meeting the requirements of the Rule.

OPC Proposed Issue B:

What decision criteria, including economic, did the Company use to qualify, rank (select), and determine the magnitude (optimal and/or maximum levels and timing of capital expenditures and expenses) of the Company's Storm Protection Plan programs and projects, and are these criteria reasonable and properly applied for the purposes of mitigating outage times and restoration costs of extreme storms?

OPC: DEF developed its benefit quantifications using a model developed by their consultants, Guidehouse. While Duke provided cost and benefit information, it was not properly presented for determination of plan approval, modification, or rejection. At best, the cost/benefit comparison information was presented largely for prioritization of projects. Societal benefits in the form of cost avoidance are highly subjective estimates of the value to customers of avoided outages and should not be used. However, when a more accurate cost/benefit analysis is performed, none of the SPP programs have benefits that exceed the costs. If the programs and projects are not economically justified, then the programs and projects cannot be prudent and the costs cannot be prudent and reasonable.

ISSUE 3: To what extent does the Company's Storm Protection Plan prioritize areas of lower reliability performance?

OPC: DEF has several proposed projects that prioritize areas of lower reliability performance; however, many of those programs and projects either do not qualify as permissible SPP programs or projects and/or are not economically justifiable.

ISSUE 4: To what extent is the Company's Storm Protection Plan regarding transmission and distribution infrastructure feasible, reasonable, or practical in certain areas of the Company's service territory, including, but not limited to, flood zones and rural areas?

OPC: Many of DEF's proposed SPP programs and projects involving transmission and distribution infrastructure in flood zones are neither feasible, reasonable, or practical, but more importantly for this docket, they do not otherwise qualify as SPP programs or projects. A large number of programs and projects that DEF has proposed as SPP programs and projects in flood zones would, absent the Paragraph 4 Stipulation, be more appropriately addressed in a base rate case since they do not

harden the system from extreme storm events. Additionally, many programs and projects do not reduce BOTH restoration costs and outage times.

ISSUE 5: What are the estimated costs and benefits to the Company and its customers of the Storm Protection Plan programs and projects?

OPC's edit: What are the estimated costs and dollar benefits to the Company and its customers of the Storm Protection Plan programs and projects?

OPC: The costs are as set out in the company's Updated SPP. The OPC offers no opinion on the accuracy of the cost estimates, but notes that they exceed the objective, quantifiable benefits. There are no reliable, objective benefits demonstrated by DEF that are fully and accurately quantified in terms of dollars. While DEF has presented a cost/benefit analysis, none of the incremental costs of the expanded or new SPP programs have benefits that exceed the costs when the cost/benefit analyses are corrected. If the programs and projects are not economically justified, then the programs and projects cannot be prudent and the costs would be imprudent and unreasonable. Such projects and programs should not be allowed in the SPP, subject to the Paragraph 4 Stipulation, where applicable.

OPC Proposed Issue C:

Are the Company's Storm Protection Plan programs and projects prudent and reasonable and are the costs reasonable?

No. Because the programs and projects are not cost-effective, they are not prudent and reasonable. The costs are excessive because they exceed the benefits and are not developed without regard to the impact on the customers who will incur them in difficult economic times. To the extent that the company has not included cost savings that will inure to the company's benefit, but which are not demonstrably captured in rates elsewhere, the proposed costs are overstated and cost recovery in the SPPCRC will be overstated if the programs and projects are approved.

Additionally, DEF improperly calculated depreciation expense on CWIP and has prematurely included CWIP in the estimates.

ISSUE 6: What is the estimated annual rate impact resulting from implementation of the Company's Storm Protection Plan during the first 3 years addressed in the plan?

OPC's edit: What are the estimated annual rate impacts resulting from implementation of the Company's Storm Protection Plan during the first 3 years addressed in the plan, and are those impacts properly calculated?

OPC: The rate impacts are estimated in the proposed Updated Plan. To the extent that they included inappropriate costs or exclude cost savings they are overstated.

ISSUE 7: Should the Commission approve, approve with modification, or deny FPL's new Distribution Winterization Program?

OPC: This issue is moot.

ISSUE 8: Should the Commission approve, approve with modification, or deny FPL's new Transmission Winterization Program?

OPC: This issue is moot.

ISSUE 9: Should the Commission approve, approve with modification, or deny FPL's new Transmission Access Enhancement Program?

OPC: OPC takes no position on this issue at this time in this docket.

OPC Proposed Issue D:

Should a return on construction work-in-progress (CWIP) be included in the Company's annual rate impacts or deferred and included in the rate impacts only after a project is completed and determined to be prudent?

OPC: The Commission should exclude CWIP from both the return on rate base and depreciation expense, and instead allow a deferred return on CWIP until it is converted to plant in service or prudently abandoned. Alternatively, a return on CWIP can be deferred either as an allowance for funds used during construction (AFUDC) or as a miscellaneous deferred debit.

OPC Proposed Issue E:

Should credits be reflected in the Company’s annual rate impacts for savings in depreciation on base rate assets that are retired when replaced with SPP project assets and savings in base rate operation and maintenance and other operating expenses that are avoided due to SPP programs and projects?

OPC: Yes.

ISSUE 10: Is it in the public interest to approve, approve with modification, or deny the Company’s Storm Protection Plan?

OPC: Except for the programs/projects that are subject to the Paragraph 4 Stipulation, the plan should not be approved without modification as shown below. Subject to this, caveat for the years 2023 and 2024, the Commission should make the adjustments as reflected in this table from page 13 of the Amended Direct Testimony of Kevin J. Mara:

Capital	Total 2023-2032 SPP \$Millions	Reductions Proposed by Mara	Net 2023-2032 SPP \$Millions	Reason for Reduction
Distribution - Feeder Hardening	\$ 2,027	\$ (500)	\$ 1,527	Limit impact to customers
Distribution - Lateral Hardening	\$ 2,931	\$ (700)	\$ 2,231	Limit impact to customers
Distribution - Self-Optimizing Grid (SOG)	\$ 340	\$ (340)	\$ -	Does not comply with 25-6.030
Distribution - UG Flood Mitigation	\$ 15	\$ (15)	\$ -	Does not comply with 25-6.030
Distribution - Vegetation Management	\$ 23	\$ -	\$ 23	
Transmission - Structure Hardening	\$ 1,603	\$ (200)	\$ 1,403	Does not comply with 25-6.030
Transmission - Substation Flood Mitigation	\$ 38	\$ (38)	\$ -	Does not comply with 25-6.030
Transmission - Loop Radially Fed Substation	\$ 82	\$ (82)	\$ 0	Does not comply with 25-6.030
Transmission - Substation Hardening	\$ 133	\$ (133)	\$ -	Does not comply with 25-6.030
Transmission - Vegetation Management	\$ 126	\$ -	\$ 126	
Total Capital	\$ 7,318	\$ (2,008)	\$ 5,310	

Also, in determining elements of cost to be included in the SPP for recovery in the SPPCRC, the Commission should further exclude CWIP from both the return on rate base and depreciation expense, and instead allow a deferred return on CWIP until it is converted to plant in service or prudently abandoned. Alternatively, a return on CWIP can be deferred either as an allowance for funds used during construction (AFUDC) or as a miscellaneous deferred debit.

ISSUE 11: Should this docket be closed?

OPC: No position at this time.

5. STIPULATED ISSUES

None at this time.

6. PENDING MOTIONS

There are no motions filed by the OPC that are pending.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

There are no pending requests for claims for confidentiality filed by OPC.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT

OPC has no objections to the qualification of any witnesses as an expert in the field which they pre-filed testimony as of the present date.

9. SEQUESTRATION OF WITNESSES

OPC does not request the sequestration of any witness at this time.

**10. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING
PROCEDURE**

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Respectfully submitted,

/s/ Charles J. Rehwinkel

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CERTIFICATE OF SERVICE
DOCKET NO. 20220050-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 13th day of July 2022, to the following:

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