

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO.: 20240010-EI

FILED: July 31, 2024

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2024-0032-PCO-EI, issued February 6, 2024, the First Order modifying Order Establishing Procedure, Order No. PSC-2024-0110-PCO-EI, issued April 19, 2024, and the Second Order Modifying Order Establishing Procedure, No. PSC-2024-0216-PCO-EI, issued June 20, 2024, hereby submit this Pre-Hearing Statement.

APPEARANCES:

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1. **WITNESSES:**

None.

2. **EXHIBITS:**

None.

3. **STATEMENT OF BASIC POSITION:**

The Storm Protection Plan Cost Recovery Clause (SPPCRC) is the step in the ratemaking process where the Commission sets the factors necessary for recovery for the annual costs for implementing the Companies' approved Storm Protection Plan. The process of reviewing and implementing an SPP is an indispensable and necessary step in the ratemaking process within the meaning and intent of Section 366.06(1) and 366.96, Florida Statutes. Section 366.06(1), Florida Statutes, establishes the Commission's rate-making procedure for public utilities in the State of Florida. Upon application for a change in rates by a utility,

The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and **prudently** invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor.

Id. (emphasis added).

The requirement that the Commission evaluate the prudence of investments in all ratemaking requests before the Commission is embedded in the Commission's legislative mandate. The statute does not specify that the Commission must only consider prudence of investments in base rate cases, cost recovery dockets, or any other specified type of rate-setting case before the Commission. If the Commission is setting rates, it must consider, among other things, the prudence of making the

investment at issue (including the decisions behind the timing, amount and locations of the investment(s)), regardless of whether that requirement is explicitly stated in the other provisions of chapter 366, Florida Statutes, or the Commission’s rules. Section 366.96, Florida Statutes, sets forth the process for review and approval of and implementation of the prudent costs for the SPP. Furthermore, it is worth noting that section 366.96(2)(c), Florida Statutes defines “transmission and distribution storm protection plan costs” as “the reasonable and prudent costs to implement an approved transmission and distribution storm protection plan.”

The positions taken by the Public Counsel in this docket are consistent with and informed to the greatest extent possible by the unresolved statutory interpretation issues currently pending before the Florida Supreme Court in Case No. SC 2022-1733 (consolidated).

4. COMPANY SPECIFIC ISSUES

ISSUE 1A: What jurisdictional amounts should the Commission approve as FPL’s final 2023 prudently incurred costs and final true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake. 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. OPC takes no position at this time on the 2023 costs and final true-up revenue requirement amounts.

ISSUE 1B: What jurisdictional amounts should the Commission approve as TECO’s final 2023 prudently incurred costs and final true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake. 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. OPC takes no position at this time on the 2023 costs and final true-up revenue requirement amounts.

ISSUE 1C: What jurisdictional amounts should the Commission approve as FPUC’s final 2023 prudently incurred costs and final true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake. 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. OPC takes no position at this time on the 2023 costs and final true-up revenue requirement amounts.

ISSUE 1D: What jurisdictional amounts should the Commission approve as DEF’s final 2023 prudently incurred costs and final true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: None. The Commission failed to make a finding that the SPP and the programs and projects contained therein are prudent to undertake. 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. OPC takes no position at this time on the 2023 costs and final true-up revenue requirement amounts.

ISSUE 2A: What jurisdictional amounts should the Commission approve as FPL’s reasonably estimated 2024 costs and estimated true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: 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. OPC takes no position at this time on the 2024 costs and estimated true-up revenue requirement amounts.

ISSUE 2B: What jurisdictional amounts should the Commission approve as TECO’s reasonably estimated 2024 costs and estimated true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: 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. OPC takes no position at this time on the 2024 costs and estimated true-up revenue requirement amounts.

ISSUE 2C: What jurisdictional amounts should the Commission approve as FPUC’s reasonably estimated 2024 costs and estimated true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: 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. OPC takes no position at this time on the 2024 costs and estimated true-up revenue requirement amounts.

ISSUE 2D: What jurisdictional amounts should the Commission approve as DEF’s reasonably estimated 2024 costs and estimated true-up revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: 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. OPC takes no position at this time on the 2024 costs and estimated true-up revenue requirement amounts.

ISSUE 3A: What jurisdictional amounts should the Commission approve as FPL’s reasonably projected 2025 costs and projected revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: 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 reasonably projected 2025 costs. OPC takes no position at this time on the 2025 projected costs and revenue requirements.

ISSUE 3B: What jurisdictional amounts should the Commission approve as TECO’s reasonably projected 2025 costs and projected revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: 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 reasonably projected 2025 costs. OPC takes no position at this time on the projected 2025 costs and revenue requirements.

ISSUE 3C: What jurisdictional amounts should the Commission approve as FPUC’s reasonably projected 2025 costs and projected revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: 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 reasonably projected 2025 costs. OPC takes no position at this time on the projected 2025 costs and revenue requirements.

ISSUE 3D: What jurisdictional amounts should the Commission approve as DEF’s reasonably projected 2025 costs and projected revenue requirement amounts for the Storm Protection Plan Cost Recovery Clause?

OPC Position: 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 reasonably projected 2025 costs. OPC takes no position at this time on the projected 2025 costs and revenue requirements.

ISSUE 4A: What are the Storm Protection Plan Cost Recovery Clause total jurisdictional cost recovery amounts, including true-ups, to be included in establishing 2025 Storm Protection Plan Cost Recovery factors for FPL?

OPC Position: 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 reasonably projected 2025 costs. OPC takes no position at this time on the total cost recovery amounts and true ups.

ISSUE 4B: What are the Storm Protection Plan Cost Recovery Clause total jurisdictional cost recovery amounts, including true-ups, to be included in establishing 2025 Storm Protection Plan Cost Recovery factors for TECO?

OPC Position: 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 reasonably projected 2025 costs. OPC takes no position at this time on the total cost recovery amounts and true ups.

ISSUE 4C: What are the Storm Protection Plan Cost Recovery Clause total jurisdictional cost recovery amounts, including true-ups, to be included in establishing 2025 Storm Protection Plan Cost Recovery factors for FPUC?

OPC Position: 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 reasonably projected 2025 costs. OPC takes no position at this time on the total cost recovery amounts and true ups.

ISSUE 4D: What are the Storm Protection Plan Cost Recovery Clause total jurisdictional cost recovery amounts, including true-ups, to be included in establishing 2025 Storm Protection Plan Cost Recovery factors for DEF?

OPC Position: 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 reasonably projected 2025 costs. OPC takes no position at this time on the total cost recovery amounts and true ups.

ISSUE 5A: What depreciation rates should be used to develop the depreciation expense included in the total 2025 Storm Protection Plan Cost Recovery Clause amounts for FPL?

OPC Position: The last approved depreciation rates for FPL should be used to calculate any depreciation expense related to SPPCRC recovery in 2025.

ISSUE 5B: What depreciation rates should be used to develop the depreciation expense included in the total 2025 Storm Protection Plan Cost Recovery Clause amounts for TECO?

OPC Position: The last approved depreciation rates for TECO should be used to calculate any depreciation expense related to SPPCRC recovery in 2025.

ISSUE 5C: What depreciation rates should be used to develop the depreciation expense included in the total 2025 Storm Protection Plan Cost Recovery Clause amounts for FPUC?

OPC Position: The last approved depreciation rates for FPUC should be used to calculate any depreciation expense related to SPPCRC recovery in 2025.

ISSUE 5D: What depreciation rates should be used to develop the depreciation expense included in the total 2025 Storm Protection Plan Cost Recovery Clause amounts for DEF?

OPC Position: The last approved depreciation rates for DEF should be used to calculate any depreciation expense related to SPPCRC recovery in 2025.

ISSUE 6A: What are the appropriate 2025 jurisdictional separation factors for FPL?

OPC Position: No position at this time.

ISSUE 6B: What are the appropriate 2025 jurisdictional separation factors for TECO?

OPC Position: No position at this time.

ISSUE 6C: What are the appropriate 2025 jurisdictional separation factors for FPUC?

OPC Position: No position at this time.

ISSUE 6D: What are the appropriate 2025 jurisdictional separation factors for DEF?

OPC Position: No position at this time.

ISSUE 7A: What are the appropriate 2025 Storm Protection Plan Cost Recovery Clause factors for each rate class for FPL?

OPC Position: 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 appropriate projected 2025 costs. OPC takes no position at this time on the 2025 factors.

ISSUE 7B: What are the appropriate 2025 Storm Protection Plan Cost Recovery Clause factors for each rate class for TECO?

OPC Position: 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 appropriate projected 2025 costs. OPC takes no position at this time on the 2025 factors.

ISSUE 7C: What are the appropriate 2025 Storm Protection Plan Cost Recovery Clause factors for each rate class for FPUC?

OPC Position: 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 appropriate projected 2025 costs. OPC takes no position on the factors. OPC takes no position at this time on the 2025 factors.

ISSUE 7D: What are the appropriate 2025 Storm Protection Plan Cost Recovery Clause factors for each rate class for DEF?

OPC Position: 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 appropriate projected 2025 costs. OPC takes no position on the factors. OPC takes no position at this time on the 2025 factors.

ISSUE 8A: What should be the effective date of the 2025 Storm Protection Plan Cost Recovery Clause factors for billing purposes for FPL?

OPC Position: Any Commission approved SPPCRC factors should be effective no sooner than the first day of the billing cycle for January 2025.

ISSUE 8B: What should be the effective date of the 2025 Storm Protection Plan Cost Recovery Clause factors for billing purposes for TECO?

OPC Position: Any Commission approved SPPCRC factors should be effective no sooner than the first day of the billing cycle for January 2025.

ISSUE 8C: What should be the effective date of the 2025 Storm Protection Plan Cost Recovery Clause factors for billing purposes for FPUC?

OPC Position: Any Commission approved SPPCRC factors should be effective no sooner than the first day of the billing cycle for January 2025.

ISSUE 8D: What should be the effective date of the 2025 Storm Protection Plan Cost Recovery Clause factors for billing purposes for DEF?

OPC Position: Any Commission approved SPPCRC factors should be effective no sooner than the first day of the billing cycle for January 2025.

ISSUE 9A: Should the Commission approve revised tariffs reflecting the 2025 Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding for FPL?

OPC Position: No. 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 should not approve any revised tariffs on the SPP factors without first finding the SPP prudent.

ISSUE 9B: Should the Commission approve revised tariffs reflecting the 2025 Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding for TECO?

OPC Position: No. 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 should not approve any revised tariffs on the SPP factors without first finding the SPP prudent.

ISSUE 9C: Should the Commission approve revised tariffs reflecting the 2025 Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding for FPUC?

OPC Position: No. 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 should not approve any revised tariffs on the SPP factors without first finding the SPP prudent.

ISSUE 9D: Should the Commission approve revised tariffs reflecting the 2025 Storm Protection Plan Cost Recovery Clause factors determined to be appropriate in this proceeding for DEF?

OPC Position: No. 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 should not approve any revised tariffs on the SPP factors without first finding the SPP prudent.

ISSUE 10: Should this docket be closed?

OPC Position: No.

5. **STIPULATED ISSUES**

None at this time.

6. **PENDING MOTIONS**

None at this time.

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

There are no pending requests or 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 in which they pre-filed testimony as of the present date.

9. **SEQUESTRATION OF WITNESSES**

OPC does not request the sequestration of any witnesses 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.

Dated this 31st day of July, 2024.

Walt Trierweiler
Public Counsel

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 20240010-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 31st day of July, 2024, to the following:

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