

Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

October 13, 2023

BY E-PORTAL

Mr. Adam Teitzman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

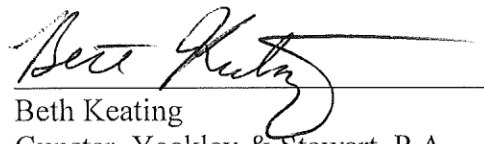
Re: Docket No. 20230010-EI: Storm Protection Plan Cost Recovery Clause.

Dear Mr. Teitzman:

Attached for filing, please find Florida Public Utilities Company's Post Hearing Statement and Brief.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

Sincerely,



Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

MEK
cc:/(Service List)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm Protection Plan Cost Recovery
Clause

DOCKET NO. 20230010-EI

DATED: October 13, 2023

**FLORIDA PUBLIC UTILITIES COMPANY'S
POST HEARING STATEMENT AND BRIEF**

In accordance with the Order Establishing Procedure for this Docket, Order No. PSC-2023-0090-PCO-EI, issued February 15, 2023, as amended by Order No. PSC-2023-0105-PCO-EI, issued March 20, 2023, and Order No. PSC-2023-0178-PCO-EI, issued June 12, 2023, Florida Public Utilities Company (“FPUC,” or “Company”) hereby files its Post Hearing Statement and Brief.

A. BACKGROUND AND POSTURE

As reflected in the Prehearing Order for this proceeding, Order No. PSC-2023-0281-PHO-EI, and confirmed at hearing, partial Type 2 stipulations have been facilitated for the Commission’s consideration as it pertains to Issues 1-4 and 7 by virtue of OPC’s representation that it does not contest or oppose the Commission taking action approving a stipulation between the utilities and another party or staff as to a final resolution of the factors.¹ OPC indicated that it nonetheless intends to submit a brief addressing its contention that the Commission should have conducted a prudence review under Section 366.06, Florida Statutes, for each of the utilities’ Storm Protection Plans, and that a review of the prudence of the costs incurred (as is consistent with Rule 25-6.031, F.A.C.) in this proceeding is “too late”. (TR 233-234).

¹ As set forth in FN 16 of the Prehearing Order, “A Type 2 stipulation occurs on an issue when the utility and the staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the issue and the remaining parties (including staff if they do not join in the agreement) do not object to the Commission relying on the agreed language to resolve that issue in a final order.”

As the Commission is well aware, its prior decisions regarding FPUC's Storm Protection Plan ("SPP") (Order No. PSC-2022-0387-FOF-EI) and FPUC's SPP Cost Recovery Factors ("SPPCRC") (Order No. PSC-2022-0418-FOF-EI) are the subject of a consolidated appeal before the Florida Supreme Court in Case Nos. SC22-1733 (FPUC-1745) and SC22-1777, respectively. As it pertains to this current proceeding, based upon OPC's Prehearing Statement, as well as statements made at hearing, it appears that the genesis of OPC's remaining area of disagreement in this proceeding is the same as that underlying its ongoing appeals. OPC's essential contention, which is that the Commission should have conducted a prudence review under Section 366.06, F.S. of the programs and projects included in FPUC's SPP, does not fit neatly under a singular issue in this proceeding. As such, for purposes of clarity and economy, FPUC approached this Post Hearing Statement and Brief by addressing the issues as identified in the Prehearing Order first, while addressing OPC's anticipated argument separately herein.

In sum, the factors proposed by the Company have been developed through projections and calculations made in accordance with Rule 25-6.031, F.A.C., and the associated depreciation expense has been calculated in accordance with the rates approved in the Company's last approved depreciation study. The factors are based upon actual, prudently incurred costs associated with the implementation of those aspects of FPUC's Storm Protection Plan ("SPP") approved by Order No. PSC-2022-0387-FOF-EI, issued November 10, 2022, as well as reasonable estimates of costs to be incurred in the remainder of 2023 and in 2024. In addition, the Company has applied an allocation methodology consistent with the stipulation between FPUC and Walmart approved by Order No. PSC-2022-0418-FOF-EI, issued in last year's SPPCRC proceeding. As such, the Company asks that it be allowed to implement its proposed SPPCRC Factors for the January – December, 2024 period.

B. FPUC's POST HEARING POSITION ON THE ISSUES

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

FPUC: *The final, end of period true up amount to be included in the calculation of the 2024 cost recovery factors is an under-recovery of \$157,305, which reflects the difference between the actual, end of period revenue requirement of \$490,460 based on actual expenditures, and the \$333,155 included in the calculation of the 2023 SPPCRC factors. This revenue requirement is based upon FPUC's incurred total costs of \$1,519,733 for the period May 2022 through December 2022. *

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

FPUC: *FPUC projects an end of period 2023 over-recovery of \$142,094, based on a revised 2023 revenue requirement of \$923,527, which is net of \$975,504 already recovered through base rates. This reflects reasonably estimated end-of-period costs of \$10,319,882. *

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

FPUC: *FPUC projects total expenditures of \$13,620,916, with a revenue requirement of \$2,448,891, which is net of \$975,504 already recovered through base rates. *

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

FPUC: *The total amount upon which FPUC's proposed factors are calculated is \$2,464,102, which when adjusted for taxes is \$2,465,876. *

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

FPUC: *The appropriate depreciation rates are those approved as part of the Commission's approval of the Settlement Agreement, Order No. PSC-2020-0347-AS-EI, issued October 8, 2020, in Docket Nos. 20190155, 20190156, and 20190174-EI. *

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

FPUC: *There is no jurisdictional separation applicable to FPUC. *

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

FPUC: *

Rate Schedule	SPP FACTORS PER KWH
Residential	\$0.00432
General Service	\$0.00498
General Service Demand	\$0.00273
General Service Large Demand	\$0.00174
Industrial/Standby	\$0.00293
Lighting Service	\$0.02652

*

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

FPUC: *The effective date for FPUC's cost recovery factors should be the first billing cycle for January 1, 2024, which could include some consumption from the prior month. Thereafter, customers should be billed the approved factors for a full 12 months, unless the factors are otherwise modified by the Commission. *

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

FPUC: *Yes. The Commission should approve revised tariffs reflecting the SPPCRC factors determined to be appropriate in this proceeding. The Commission should direct staff to verify that the revised tariffs are consistent with the Commission's decision. *

ISSUE 10: Should this docket be closed?

FPUC: *This is a continuing docket and should remain open.*

C. FURTHER ARGUMENT

As reflected in its filed Prehearing Statement, memorialized in the Prehearing Order, and reiterated at hearing, OPC contends that the Commission was required to conduct a prudence review of FPUC's Storm Protection Plan ("SPP"), but failed to do so. OPC contends therefore that the costs to implement FPUC's SPP are not appropriate for recovery through the SPPCRC, because the Commission has not yet made a determination as to the prudence of the investments called for by the Company's approved SPP. Because a prudence determination has not been made under Section 366.06(1), Florida Statutes, OPC argues that the proposed amounts to be recovered cannot be deemed fair, just and reasonable. Prehearing Order PSC-2023-0281-PHO-EI, pages 8-9; Hearing TR 234-236.

The argument put forth by OPC is an expanded version of that raised by OPC and addressed by the Commission in last year's SPPCRC docket, Docket No. 20220010-EI². It has also been addressed in briefs filed with the Florida Supreme Court in the pending appeal of the Commission's order in that prior docket, as well as the appeals of the Commission's orders approving each investor-owned electric utility's Storm Protection Plan, which are consolidated under Supreme Court Case No. SC22-1733. As such, FPUC's response herein is largely an abbreviated restatement of its previous responsive argument on this point.

² Order No. PSC-2022-0418-FOF-EI, pages 5-6.

FPUC's SPP is not subject to review in this SPPCRC proceeding. It has been reviewed and approved, with modifications, by the Commission consistent with the "public interest" standard set forth in Section 366.96(5), Florida Statutes. Contrary to OPC's assertions, the prudence standard found in the general ratemaking statute, Section 366.06(1), Fla. Stat., does not apply to the Commission's evaluation of FPUC's SPP. Sierra Club v. Brown, 243 So. 3d 903, 908 (Fla. 2018) ("Within a rate case, the Commission applies this prudence standard to the individual investment projects for which a utility is seeking cost recovery.") [*Emphasis added*]. Instead, as expressly stated in Section 366.96(7), Fla. Stat., it is "[a]fter a utility's [SPP] is approved," that the Commission determines, in the SPPCRC proceeding, the prudence of the utility's costs incurred to implement its SPP, as well as the reasonableness of its projections, in order to establish the SPPCRC factors. Section 366.96, Florida Statutes, is not ambiguous in this regard, nor has OPC suggested that it is.

"When the language of a statute [or rule] is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Storey Mountain, LLC v. George, 357 So. 3d 709, 714 (Fla. 4th DCA 2023) (internal quotation marks omitted). The rule in Florida is that where the language of the statute is so plain and unambiguous as to fix the legislative intent and leave no room for construction, the courts should not depart from the plain language used by the legislature. Carson v. Miller, 370 So.2d 10 (Fla.1979). Because the language of Section 366.96, Florida Statutes, is clear in its expression of the Legislature's intent, there is no need for further interpretation nor any need to graft the requirements of other statutory provisions onto the requirements otherwise clearly set forth by the Legislature with regard to approval of a Storm Protection Plan. In its review of FPUC's SPP in Docket No. 20220049-EI,

the Commission properly conducted its review in accordance with Section 366.96, Florida Statutes, and Rule 25-6.030, F.A.C. The plain language of the pertinent statute did not require that the Commission also conduct a review of FPUC's SPP under Section 366.06, Florida Statutes. Thus, the mere fact that the Commission did not apply a prudence standard to FPUC's SPP was not error.

Moreover, as previously noted, Section 366.06, Florida Statutes, speaks to the Commission's rate setting authority. The Commission's review of FPUC's SPP was not a rate-setting proceeding. Thus, whether looking at the plain language of Section 366.96, Florida Statutes, or the regulatory ratemaking process to which Section 366.06, Florida Statutes clearly applies, it is apparent that the Commission's review of FPUC's SPP was consistent with Florida law and presents no impairment to the Commission's ability to review, in this proceeding, FPUC's incurred and projected costs associated with implementing its SPP.

As specifically set forth in Rule 25-6.031(3), F.A.C., this proceeding is designed to address the "reasonableness" of projected SPP costs and the prudence of actual, incurred costs. Issues 1-9 as proposed by Commission staff and addressed herein provide the appropriate considerations to be undertaken by the Commission, in accordance with Rule 25-6.031, F.A.C., in determining whether FPUC's proposed cost recovery amounts and SPPCRC factors should be approved. And, as previously noted, Type 2 stipulations have been facilitated for the Commission's consideration regarding the key issues in this case, including the Company's proposed cost recovery factors. Thus, given the scope of this proceeding, as defined by Rule 25-6.031, F.A.C., OPC's argument regarding the review of FPUC's SPP is misplaced and erroneous. Moreover, it is likely to be addressed in another forum. As such, FPUC respectfully requests that the Commission reject, again, OPC's argument regarding review of FPUC's SPP and

approve FPUC's proposed SPPCRC factors for implementation with the first billing cycle in January 2024.

RESPECTFULLY SUBMITTED this 13th day of October, 2023.

BY: 

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

Attorney for Florida Public Utilities Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 13th day of October, 2023:

Daniel Dose Shaw Stiller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 Ddose@psc.state.fl.us sstiller@psc.state.fl.us	J. Jeffry Wahlen/Malcolm Means/Virginia Ponder Ausley Law Firm Post Office Box 391 Tallahassee, FL 32302 jwahlen@ausley.com mmeans@ausley.com vponder@ausley.com
P. Christensen / Charles Rehwinkel/Mary Wessling Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 Wessling.Mary@leg.state.fl.us Rehwinkel.Charles@leg.state.fl.us Christensen.patty@leg.state.fl.us	James W. Brew/Laura Baker Stone Matheis Xenopoulos & Brew, PC Eighth Floor, West Tower 1025 Thomas Jefferson Street, NW Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com
Christopher T. Wright Florida Power & Light Company 700 Universe Boulevard Juno Beach, FL 33408-0420 Christopher.Wright@fpl.com	Kenneth Hoffman Florida Power & Light Company 215 South Monroe Street, Suite 810 Tallahassee, FL 32301 Ken.Hoffman@fpl.com
Ms. Paula K. Brown Tampa Electric Company Regulatory Affairs P.O. Box 111 Tampa, FL 33601-0111 Regdept@tecoenergy.com	Florida Industrial Users Power Group Jon C. Moyle, Jr. Moyle Law Firm 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com

<p>Mike Cassel Florida Public Utilities Company 208 Wildlight Ave. Yulee, FL 32097 mcassel@fpuc.com</p> <p>Michelle Napier 1635 Meathe Drive West Palm Beach, Florida 33411 Michelle.Napier@fpuc.com</p>	<p>Matthew Bernier Robert Pickels Stephanie Cuello Duke Energy 106 East College Avenue, Suite 800 Tallahassee, FL 32301 Matthew.Bernier@duke-energy.com Robert.Pickels@duke-energy.com Stephanie.Cuello@duke-energy.com</p>
<p>P. Mattheis/M. Lavanga/J. Briscar 1025 Thomas Jefferson St., NW Eighth Floor, West Tower Washington DC 20007 jrb@smxblaw.com mkl@smxblaw.com pjm@smxblaw.com</p>	<p>Dianne M. Triplett Duke Energy 299 First Avenue North St. Petersburg, FL 33701 Dianne.Triplett@duke-energy.com</p>

By: 
Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706