BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.	DOCKET NO. 20250007-EI FILED: October 17, 2025

AMENDED 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-2025-0049-PCO-EI, issued February 10, 2025 hereby submit this Prehearing Statement. Amended positions are shown in underline.

APPEARANCES:

Walt Trierweiler
Public Counsel

Charles Rehwinkel
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, Florida 32399-1400
850-488-9330

1. WITNESSES:

None

2. EXHIBITS:

None

3. STATEMENT OF BASIC POSITION

The utilities bear the burden of proof to justify the recovery of costs they request in this docket and must carry this burden regardless of whether or not the intervenors provide evidence to the contrary. Further, the utilities bear the burden of proof to support their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought. Even if the Commission has previously approved a program, recovery of a cost, factor, or adjustment as meeting the Commission's own requirements, the utilities still bear the burden of demonstrating that the costs submitted for final recovery meet any statutory test(s) and are reasonable in amount and prudently incurred. Further, the utilities bear the burden of proof to support that all costs sought to be recovered through this clause are correctly clause recovery costs and not base rate costs. Further, recovery of all costs is constrained by the Commission's obligation to set fair, just, and reasonable rates, based on projects and/or costs that are prudent in magnitude and/or costs prudently incurred pursuant to Section 366.01, Florida Statutes. Additionally, the provisions of Chapter 366, Florida Statute, must be liberally construed to protect the public welfare.

The Commission must independently determine that each cost submitted for recovery, deferred or new, meets each element of the statutory requirements for recovery through this clause, as set out in Section 366.8255, Florida Statutes. Specifically, each activity proposed for recovery must be legally *required* to comply with a governmentally imposed environmental regulation that was enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based, and such costs may not be costs that are recovered through base rates or any other cost recovery mechanism. Any decision by the Commission on a new project submitted for approval and cost recovery must be limited to the scope and documented cost information provided to the Commission in the company filing in this docket.

In addition, with regard to FPL, the OPC does not agree that the Commission should presume the validity of a contested non-unanimous and special interest-focused and facially invalid settlement agreement filed on August 20, 2025 can or should give it any weight in determining costs, cost attribution or revenue allocation in this docket. In the SPPCRC docket, 20250010-EI, for example, the OPC has taken the position that the only lawful and proper posture is to determine this case based on the timely filings of evidence and testimony submitted pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2025-0049-PCO-EI, issued February 10, 2025. In this docket, FPL did file testimony on August 25, 2025 seeking to inject the impacts of the proposed settlement agreement into this docket. The OPC nevertheless maintains its objection to the unapproved, non-final settlement providing the basis for factors and rates in this docket. An exclusionary settlement document that purports to adjudicate rights, costs and revenue responsibility in this or any clause docket and to seek capital recovery of asset-related costs from substantial interests that were not represented in the making of the defective document, cannot be considered in this case, regardless of what the limited special interests agreed-to in private, among themselves. Any assertion by FPL related to return on equity, depreciation expense, deferred taxes and revenue allocation or any other cost that has yet to be determined by the Commission must be ignored. If the Commission makes a determination after the close of the record in this docket that changes the cost and revenue allocation assumptions, the impact of such can be adjusted in the true-up process in 2026 and in the factor in 2027. To the extent that the Commission were to do anything else would be a violation of due process and demonstrate a prejudgment of the outcome of another case without a record basis.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

GENERIC ENVIRONMENTAL COST RECOVERY ISSUES

ISSUE 1: What are the final environmental cost recovery true-up amounts for the period January 2024 through December 2024?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that these costs are reasonable and/or prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the final environmental cost recovery true-up amounts for the period January 2024 through December 2024, proposed for recovery from customers, can necessarily be deemed reasonable and prudent.

ISSUE 2: What are the estimated/actual environmental cost recovery true-up amounts for the period January 2025 through December 2025?

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that these costs are reasonable and/or prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the estimated/actual environmental cost recovery true-up amounts for the period

January 2025 through December 2025, proposed for recovery from customers, can necessarily be deemed reasonable or prudent.

<u>ISSUE 3</u>: **What are the projected environmental cost recovery amounts for the period January 2026 through December 2026?**

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that these costs are reasonable and/or prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the projected environmental cost recovery amounts for the period January 2026 through December 2026, proposed for recovery from customers, can necessarily be deemed reasonable. <u>In addition, with regard to FPL, the OPC does not agree that the Commission should presume the validity of a contested non-unanimous and special interest-focused and facially invalid settlement agreement filed on August 20, 2025 can or should give it any weight in determining costs, cost attribution, revenue allocation or factors in this docket.</u>

<u>ISSUE 4</u>: **What are the environmental cost recovery amounts, including true-up amounts, for the period January 2026 through December 2026?**

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that these costs are reasonable and/or prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that the environmental cost recovery amounts, including true-up amounts, for the period January 2026 through December 2026 proposed for recovery from customers can necessarily be deemed reasonable or prudent. <u>In addition, with regard to FPL, the OPC does not agree that the Commission should presume the validity of a contested non-unanimous and special interest-focused and facially invalid settlement</u>

agreement filed on August 20, 2025 can or should give it any weight in determining costs, cost attribution, revenue allocation or factors in this docket.

ISSUE 5: **What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2026 through December 2026?**

OPC: The OPC is not in agreement at this time that the Companies have demonstrated that they have met their burden to demonstrate that these costs are reasonable and/or prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, what depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2026 through December 2026, and proposed for recovery from customers, can necessarily be deemed reasonable. In addition, with regard to FPL, the OPC does not agree that the Commission should presume the validity of a contested non-unanimous and special interest-focused and facially invalid settlement agreement filed on August 20, 2025 can or should give it any weight in determining costs, cost attribution, revenue allocation or factors in this docket.

ISSUE 6: **What are the appropriate jurisdictional separation factors for the projected period January 2026 through December 2026?**

OPC: The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that these separation factors are reasonable and/or prudent. A significant percentage of the costs on a customer's bill is based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC does not agree, given these circumstances, that the appropriate jurisdictional separation factors proposed for the projected period January 2026 through December 2026 can necessarily be deemed reasonable or prudent.

<u>ISSUE 7</u>: **What are the appropriate environmental cost recovery factors for the period January 2026 through December 2026 for each rate group?**

OPC: The factors should be based on costs deemed reasonable and prudent in a hearing. <u>In addition, with regard to FPL, the OPC does not agree that the Commission should presume the validity of a contested non-unanimous and special interest-focused and facially invalid settlement agreement filed on August 20, 2025 can or should give it any weight in determining costs, cost attribution, revenue allocation or factors in this docket.</u>

<u>ISSUE 8</u>: **What should be the effective date of the new environmental cost recovery factors for billing purposes?**

OPC: The effective date for any rate change should be the first day of the first billing cycle in January 2026.

<u>ISSUE 9</u>: **Should the Commission approve revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors determined to be appropriate in this proceeding?**

OPC: The tariffs ultimately approved should be based on costs deemed reasonable or prudent in a hearing.

COMPANY-SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

<u>Tampa Electric Company</u>

<u>ISSUE 10:</u> **Should the Commission approve TECO's Big Bend CCR Rule Legacy Amendment Study project for cost recovery through the environmental cost recovery clause?**

OPC: The OPC is not in agreement at this time that Tampa Electric Company has demonstrated that it has met its burden to demonstrate that these costs are reasonable and/or prudent. A significant percentage of the costs on a customer's bill are based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC is not in a position to agree, given these circumstances, that Tampa Electric Company's Big Bend CCR Rule Legacy Amendment Study project and related costs, proposed for recovery from its customers, can necessarily be deemed reasonable or prudent.

ISSUE 11: **How should the approved costs related to TECO's Big Bend CCR Rule Legacy Amendment Study project be allocated to the rate classes?**

OPC: No position.

ISSUE 12: Should this docket be closed?

OPC: No position.

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 17th of October, 2025.

Respectfully submitted,

Walt Trierweiler
Public Counsel

<u>/s/ Charles J. Rehwinkel</u>
Charles J. Rehwinkel
Deputy Public Counsel
Florida Bar No.: 527599

c/o The Florida Legislature
Office of Public Counsel
111 W. Madison Street, Suite 812
Tallahassee, FL 32399-1400

Attorney for the Citizens
of the State of Florida

<u>CERTIFICATE OF SERVICE</u>
<u>DOCKET NO. 20250007-EI</u>

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement has been furnished by electronic mail on this 17th day of October, 2025, to the following:

Carlos Marquez
Jacob Imig
Shaw Stiller
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
cmarquez@psc.state.fl.us
jimig@psc.state.fl.us
sstiller@psc.state.fl.us
discovery-gcl@psc.state.fl.us

J. Jeffry Wahlen
Malcolm Means
Virginia Ponder
Ausley McMullen
P.O. Box 391
Tallahassee FL 32302
jwahlen@ausley.com
mmeans@ausley.com
vponder@ausley.com

Paula K. Brown
Tampa Electric Company
P. O. Box 111
Tampa FL 33601
regdept@tecoenergy.com

Dianne M. Triplett
Duke Energy Florida, LLC
299 First Avenue North
St. Petersburg FL 33701
Dianne.triplett@duke-energy.com

Matthew R. Bernier
Stephanie A. Cuello
Robert L. Pickels
Duke Energy Florida, LLC
106 E. College Avenue, Suite 800
Tallahassee FL 32301
matt.bernier@duke-energy.com
stephanie.cuello@duke-energy.com
robert.pickels@duke-energy.com
FLRegulatoryLegal@duke-energy.com

Jon C. Moyle, Jr.
Florida Industrial Power Users Group
Moyle Law Firm
118 North Gadsden Street
Tallahassee FL 32301
jmoyle@moylelaw.com
mqualls@moylelaw.com

Maria Jose Moncada
Joel Baker
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
maria.moncada@fpl.com
joel.baker@fpl.com

Kenneth A. Hoffman
Florida Power & Light Company
134 West Jefferson Street
Tallahassee FL 32301
ken.hoffman@fpl.com

James W. Brew
Laura W. Baker
Sarah B. Newman
Stone Mattheis Xenopoulos & Brew, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington DC 20007
jbrew@smxblaw.com
lwb@smxblaw.com
sbn@smxblaw.com

Peter J. Mattheis
Michael K. Lavanga
Joseph R. Briscar
Stone Mattheis Xenopoulos & Brew, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington DC 20007
pjm@smxblaw.com
mkl@smxblaw.com
jrb@smxblaw.com

/s/ Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel
rehwinkel.charles@leg.state.fl.us