SC22-94

IN THE SUPREME COURT OF FLORIDA

CITIZENS OF THE STATE OF FLORIDA, ETC.,

Appellants,

v.

GARY F. CLARK, ETC., E AL.,

Appellees.

APPENDIX TO ANSWER BRIEF OF DUKE ENERGY FLORIDA

On Appeal from a Final Order of the Public Service Commission
PSC Docket No. 20210001-EI

DUKE ENERGY FLORIDA, LLC

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 20210001-EI FILED: January 5, 2022

CITIZENS' MOTION FOR RECONSIDERATION

The Citizens of Florida, through the Office of Public Counsel ("Citizens" or "OPC"), pursuant to Rules 25-22.0376, and 25-22.060, Florida Administrative Code, request the Florida Public Service Commission ("FPSC" or "Commission") to reconsider its decision in Order No. PSC-2021-0466-FOF-EI, Docket No. 20210001-EI (FPSC December 21, 2021) ("Order"). In support, Citizens provide the below arguments.

The standard of review on a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. *See e.g.*, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Docket No. 20060001-EI, Order No. PSC-06-0949-FOF-EI, 06 Fla. Pub. Serv. Comm'n Rep. 11:119, at 1-2 (Fla. P.S.C. Nov. 13, 2006).

The Commission Should Reconsider its Decision to Order Duke Energy Florida, LLC ("DEF") to Refund Customer's only $7.2 Million Instead of the full $14.4 Million in Total Replacement Power Costs that Duke Should Have to Refund to Customers.

In its Order, the Commission correctly determined that the DEF plant operator's failure to follow established written procedures, without supervisory approval, directly led to the outage at Crystal River 4 ("CR4"). Pg. 5 of Order. However, citing two purported mitigating factors,[1] the

[1] "However, the operator's reliance on an unapproved procedure that had been successful at CR4 in the past, coupled with repeated testing establishing the reliability of the relay, are mitigating factors that must be taken into account." Pg. 5 of Order.

Commission ordered that DEF should only be required to credit DEF customers half, or $7.2 million, of the total $14.4 million retail replacement fuel costs incurred as a result of the outage.

Prudence determinations are crucial decisions which often involve millions of dollars, and the Supreme Court of Florida has provided the framework that Commissioners must use in making those decisions. The standard of review for prudence determinations is, "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made." *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013). Furthermore, DEF has the burden to prove that it met this standard by a preponderance of the evidence. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

"Mitigation" is not a relevant factor in a prudence determination. The Commission is charged with determining if actions of the utility management were imprudent and, if so, whether those actions were the cause of the damage that required incurring replacement power costs. Prudence determinations are binary, "yes or no" decisions, not ones that can be made on a spectrum. In prudence cases, Utilities either meet their burden of proof, or they do not. With this Order and the consideration of "mitigating factors," the Commission has effectively abrogated the burden on proof in all future prudence cases. The Commission must not allow this Order to stand.

The Commission Should Reconsider its Decision to Order Duke Energy Florida, LLC ("DEF") to Refund Customer's only $7.2 Million Instead of the full $14.4 Million in Total Replacement Power Costs that Duke Should Have to Refund to Customers Due to the Inconsistent Mitigating Factors.

Additionally, OPC submits that the Commission misapprehended or failed to consider that that the two cited mitigating factors do not actually mitigate anything.

As in all rate-setting matters, the utility bears the burden of demonstrating the reasonableness – and where questioned, the prudence – of its actions. Neither of the referenced

mitigating factors changed the proximate cause of the outage (operator error facilitated by inadequate supervision) or mitigated the consequences of the resulting plant outage. First, the Commission noted that the DEF operator relied on an unapproved procedure because it had worked in the past. Consistent failure to follow established startup procedures is not reasonable, and actually demonstrates that DEF's *management* failed to implement adequate operating and oversight procedures for DEF's employees to follow. The Commission cannot rationally consider this circumstance to be a mitigating factor in a prudence determination. This is an error.

Second, the Commission noted that DEF's testing of the check relay caused DEF employees to believe the relay was reliable and was not expected to fail when implementing the un-authorized startup synchronization procedure. However, even DEF's witness agreed that regardless of whether that relay was working or not, if the operator had performed his or her job properly, then no damage would have occurred. Tr. 339.

The Commission should reconsider the Order, find that there are no mitigating factors, and require DEF to refund the total of $14.4 million to DEF's customers.

The Commission Should Reconsider its Decision to Order Duke Energy Florida, LLC ("DEF") to Refund Customer's only $7.2 Million in Total Replacement Power Costs Instead of the full $14.4 Million that Duke Should Have to Refund Customers Since There is No Evidence or Precedent Upon Which to Apportion the Financial Responsibility.

The Commission should reconsider its Order apportioning the financial responsibility for the CR4 damage between the customers and DEF. The Order overlooks a significant requirement of the law by adding additional elements to the standard of review as described by the Supreme Court of Florida.

The issue before the Commission in this case was to determine if DEF met its burden of proof to demonstrate by a preponderance of the evidence that DEF's actions related to CR4 were

prudent, not to determine to what degree DEF should be financially responsible for those actions if they failed to meet that burden. [2]

Once the Commission made the prudence determination that DEF's actions directly led to the outage, the Commission's decision-making responsibilities were complete. For example, on pages 4 and 5 of the Order, the Commission made factual determinations:

> "As with all replacement power cases, our decision in this case is highly fact-specific. We find that the record is clear that if the operator had followed written procedures for either automatic or manual synchronization, the outage would not have occurred and the failed relay would have gone undetected until DEF performed an inspection. We also find that if the relay had not failed, then the operator's disregard of written procedures and use of an unapproved procedure would not have resulted in an outage. The record does not satisfactorily establish that either a thorough walkdown occurred after each synchronization attempt or that the operator received supervisory approval to deviate from the written procedure. Failure to follow approved written procedures for automatic or manual synchronization, coupled with the fact that although a supervisor was on site he was not consulted by the operator prior to using an unapproved procedure, is very troubling and does not constitute acceptable operational practices."

The "but for" nature of these factual determinations cannot be reconciled with the notion of allocation of fault. Once DEF management is determined to be imprudent, based on what it knew or should have known at the time of (or prior to) the accident, there is no room for apportionment of the damage. If management is at fault, consequential damage in the form of replacement power costs are shareholder responsibility. The Commission is without precedent to allocate damages based on arbitrary feelings or instinct.

[2] The introduction, *ab initio,* of a completely new legal "standard" akin to the concept of comparative negligence (with no citation to precedent in Florida or elsewhere) makes it difficult to formulate a reconsideration argument on that aspect of the order as parties were not on notice that the Commission would or could depart from the established framework for making a prudence determination.

Nevertheless, and without any quantifiable evidence, data, or case law[3] as support, the Commission decided to allocate[4] financial responsibility for management's imprudent actions between DEF and DEF's customers. The Commission's introduction of this novel "apportionment" decision-making process, which is subject simply to the "gut"[5] instinct of Commissioners, is not only a departure from the requirements of the established agency policy for the prudence standard of review and the resultant burden of proof, but also renders agency determinations whimsical and thus arbitrary and capricious.

The Commission should immediately reconsider this Order and require DEF to refund the total $14.4 million in replacement fuel costs to DEF's customers since the Commission found that DEF's actions, in sum, directly led to the outage.

OPC has attempted to consult with counsel for DEF, Florida Industrial Power Users Group ("FIPUG"), White Springs Agricultural Chemicals d/b/a PCS Phosphate ("PCS"), Florida Retail Federation ("FRF"), and NuCor Steel Florida, Inc. ("NuCor") on this motion. FRF supports this motion. PCS does not oppose the motion. FIPUG and NuCor take no position at this time. OPC attempted to obtain DEF's position on this motion; however, no response was received by the time of filing.

[3] OPC has been unable to find a single instance in Florida, or any other State, where the Commission has made such an apportionment of financial responsibility in a prudence case.

[4] The discussion among the Commissioners was framed thus: "I said, you know, this is one of those Solomon decisions, can you split the baby." December 7, 2021 Agenda Conference, Item 4B, Transcript at 4.

[5] "… [T]here's not a formula we can use here, we're going to have to lean on what our gut tells us in some of these regards." December 7, 2021 Agenda Conference, Item 4B, Transcript at 10.

WHEREFORE, the Citizens hereby request the Commission grant this Motion for Reconsideration of Order No. PSC-2021-0466-FOF-EI, and Citizens request the Commission issue an order assigning all of the $14.4 million financial responsibility for the CR4 outage to DEF.

Respectfully Submitted,

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DOCKET NO. 20210001-EI

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor	Docket No. 20210001-EI Filed: January 12, 2022

DUKE ENERGY FLORIDA'S RESPONSE IN OPPOSITION TO OFFICE OF PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION

Pursuant to Rule 25-22.060(1)(b), F.A.C., Duke Energy Florida, LLC ("DEF" or the "Company") hereby files this Response in Opposition to the Office of Public Counsel's ("OPC") Motion for Reconsideration ("Motion") and urges the Florida Public Service Commission ("PSC" or "Commission") to deny OPC's meritless Motion. OPC's Motion raises no point of law or any record fact the Commission overlooked or failed to take into consideration, and therefore fails to meet well-established standard for reconsideration. Rather, the OPC provides legal conclusions it prefers the Commission had reached, without citation to any authority for the propositions cited, and further impermissibly requests the Commission to reweigh the evidence to support its preferred conclusion. As such requests are improper on a motion for reconsideration,[1] the PSC should deny the Motion. In support, DEF states as follows:

Standard of Review

[1] DEF's opposition to the Motion should not be taken as agreement with the Commission's ultimate decision in this case; rather, DEF recognizes the Commission was fully apprised and did not overlook any points of fact or law and therefore reconsideration is unnecessary and inappropriate. However, DEF continues to believe its actions were at all times and prudent and it should be permitted to collect the full amount of replacement power costs, therefore should the Commission deem it appropriate to grant reconsideration, DEF reserves all rights to argue in favor of its right to full recovery at the appropriate time.

At the outset, the Company agrees with OPC's recitation of the standard of review – to a point. As this Commission has consistently recognized, "[t]he standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order." *In re: Petition for Increase in Rates by Gulf Power Company*, Order No. PSC-2012-0400-FOF-EI, p. 3 (Aug. 3, 2012). However, OPC fails to note that a motion for reconsideration cannot be used to ask the Commission to simply reweigh evidence. *See id.* at p. 4 (*citing Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974) ("The only basis for reconsideration noted in the instant cause was the reweighing of the evidence . . . This is not sufficient.")); *In re: Nuclear Cost Recovery Clause*, Order No. PSC-2011-0224-FOF-EI, p. 3 (May 16, 2011) ("The purpose of a petition for rehearing is merely to bring to the attention of the trial court, or in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance . . . . It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or order . . . .") (*citing Diamond Cab Co. v. King*, 146 So. 2d 889, 891 (Fla. 1964)).

Argument

With the proper standard of review established, it becomes clear that OPC's three proposed bases for reconsideration do not warrant relief and the Motion should be denied.

1. OPC's Argument that the Commission is without Authority to find Mitigating Factors does not Raise any Overlooked Point of Law and is itself Inconsistent with Florida Law.

OPC's first contends that the Commission is limited in cases involving a prudence determination to "binary, yes or no decisions" and that "'Mitigation' is not a relevant factor in a prudence determination." Motion at p. 2. This argument raises no point of law the Commission

overlooked or failed to consider; indeed, OPC's Motion and the Commission's Order cite to the same recognized legal standard for determining prudence – i.e., what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. *Compare id. with* Order No. PSC-2021-0466-FOF-EI, at p. 3. Thus, the Commission considered and followed the very standard OPC (and all parties) agrees controls this proceeding.

Rather than raising a point of law the Commission failed to consider as required for a valid motion for reconsideration, OPC instead attempts to establish a constraint on the Commission's decision-making ability that has no mooring in the law and actually runs counter to the Commission's delegated authority and precedent.

OPC, with no citation to any statute or controlling case law, attempts to fashion an "all or nothing" standard contending that anything else "effectively abrogate[s] the burden of proof in all future prudence cases." *See* Motion at p. 2. If accepted, this overly simplistic formulation would diminish the Commission's authority and discretion to "prescribe fair and reasonable rates and charges." *See* § 366.05(1)(a), Fla. Stat.; *see also* § 366.01, Fla. Stat. (" . . . this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose."); *Citizens of Fla. v. Pub. Serv. Comm'n*, 425 So. 2d 534, 540 (Fla. 1982) (discussing the authority granted by section 366.05(1) and 366.06(2), "This Court has consistently recognized the broad legislative grant of authority which these statutes confer and the considerable license the Commission enjoys as a result of this delegation."); *Storey v. Mayo*, 217 So. 2d 304, 307 (Fla. 1968) ("The powers of the Commission over these privately-owned utilities is omnipotent within the confines of the statute and the limits of organic law.").

Additionally, this proposed-standard runs counter to precedent established in *In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers $143 million*.[2] In that case, OPC challenged PEF's coal purchasing decisions for Crystal River 4 & 5 from 1996-2005. Ultimately, the Commission determined PEF was prudent in its purchases for 1996-2000, but imprudent from 2001-2005; however, because the alternative coal blend became an economic alternative in 2001, and because it would have taken "a number of months" to modify the plant to burn the alternative fuel, the Commission only ordered refunds for 2003-2005. *Id.* at pp. 9-10. Thus, the Commission determined that the time it would have taken to modify the plant acted to mitigate the increased fuel costs caused by the imprudent actions.

In this case, the Commission was presented with testimony and evidence showing an event and resulting outage were caused by two primary root causes; to determine that the Company bore responsibility and should thus bear the costs for one cause but the other cause was out of the Company's control resulting in a mitigation of the costs assessed does not abrogate the burden of proof or otherwise run counter to precedent. It recognizes that complicated, inherently subjective questions such as what a *reasonable* utility manager would do *in light of the conditions and circumstances that were known or should have been known* do not always have simple binary answers, but rather sometimes the answer lies on the spectrum between two extremes. In absence of controlling authority to the contrary, which OPC has not identified, the Commission's authority to establish "fair and reasonable rates and charges" is more than sufficient to exercise its discretion and determine mitigating factors warrant such a decision in line with precedent.

2. <u>OPC's Argument that the Commission based its Decision on "Inconsistent Mitigating Factors" points to no overlooked facts but rather inappropriately asks the Commission to Reweigh the Evidence</u>.

[2] Order No. PSC-2007-0816-FOF-EI (Oct. 10, 2007) ("*Petition of Citizens*").

OPC's second point of contention simply asks the Commission to reconsider its conclusions regarding the impact of facts elicited at hearing. For example, OPC states, "The Commission cannot rationally consider this circumstance [following a practice the operator expected from experience to continue to work] to be a mitigating factor in a prudence determination. This is an error." Motion, at p. 3. And also, "the Commission noted that DEF's testing of the check relay caused DEF employees to believe the relay was reliable and was not expected to fail when implementing the un-authorized startup synchronization procedure. However, even DEF's witness agreed that regardless of whether that relay was working or not, if the operator had performed his or her job properly, then no damage would have occurred." *Id.*[3]

OPC then asks the Commission to reverse its determination, but points to no new evidence or no evidence the Commission failed to consider in rendering its decision; this is precisely the type of reweighing of the evidence the Commission has correctly refused to perform in the past. *See* Order No. PSC-2012-0400-FOF-EI, p. 4 (*citing State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817, 818-19 (Fla. 1st DCA 1958) ("Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily

[3] DEF believes the cited testimony is being taken out of context by omitting the Mr. Simpson's clarifying language that the Operator's error was one of timing, and a mere second at that. Mr. Simpson testified: "Q: Was the operator's actions a result of a failure to properly train the operator? A: No, the operator was properly trained and had the supporting materials necessary to correctly and safely operate the unit. In this case, the operator simply made a physical error by red-flagging (closing) the breaker approximately one (1) second prior to the appropriate time in reliance on the relay. In fact, had the operator closed the breaker one second later, no damage would have occurred (and the failure of the relay would have gone unnoticed until the next scheduled test or potentially the next attempt at manual synchronization). Thus, the failure was not of training, but was rather a human performance error." Tr. p. 339, ll. 1-10. Of course, had the relay functioned properly, no damage would have occurred notwithstanding the error. *Id.* at p. 338, ll. 14-24. Regardless, these facts were well-known and considered by the Commission, and thus do not provide a basis for reconsideration.

considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges . . .")).

The Commission should deny OPC's request to improperly reweigh evidence.

3. OPC's Argument that the Commission must Reconsider its Decision because there is no Evidence or Precedent to base the "Apportionment" decision on fails to point to any overlooked issue of fact or law and should be rejected.

OPC's third contention suffers from the same defects as the previous two – it fails to identify a point of fact or law that was overlooked by the Commission and should therefore be rejected.

OPC's primary contention is the Commission lacks precedent to apportion damages, *see* Motion, at pp. 4 & 5. Even assuming that were true, the fuel adjustment clause has been developed over time by Commission order,[4] and OPC fails to explain why the Commission could not establish precedent in this instance (within its delegated authority) or how a lack of precedent amounts to overlooking an issue of law sufficient to justify the requested remedy of reconsideration, given the limited scope of review. *See* Order No. PSC-2012-0400-FOF-EI, at p. 3 ("The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, ***precedent or rule of law*** which the court has overlooked in rendering its decision.") (*citing Jaytex*, 105 So. 2d at 818) (e.s.). OPC cites to no precedent or rule of law the Commission overlooked which would support OPC's requested relief because there is no such precedent or rule of law.

Moreover, OPC misconstrues the issue the Commission was asked to resolve in this matter. OPC asserts, "The issue before the Commission in this case was to determine if DEF met its burden of proof to demonstrate by a preponderance of the evidence that DEF's actions related to CR4

[4] *See Petition of Citizens*, at pp. 4-10 (describing the development of the fuel adjustment clause in Florida).

were prudent, not to determine to what degree DEF should be financially responsible for those actions if they failed to meet that burden." Motion, at pp. 3-4. DEF respectfully disagrees.

Issue 1C, agreed to by the parties, provided:

> **ISSUE 1C**: Has DEF made appropriate adjustments, if any are needed, to account for replacement power costs associated with the January 2021 to April 2021 Crystal River Unit No. 4 outage? If appropriate adjustments are needed and have not been made, ***what adjustments should be performed***?

Order No. PSC-2021-0403-PHO-EI, at p. 9 (e.s.).

DEF agrees that to resolve the issue presented, the Commission was required to determine the prudence of DEF's actions leading up to and in response to the outage event, but it is simply inaccurate to say the Commission was not asked "to determine to what degree DEF should be financially responsible for those actions" when the very issue presented required the Commission to determine what adjustments, if any, should be performed.

Finally, OPC contends the Commissioners' use of colloquial expressions[5] regarding the desire to apportion costs on something other than an all-or-nothing basis resulted in a "whimsical and thus arbitrary and capricious" decision making process. Motion, at p. 5. Again, OPC does not point to any fact or point of law that was overlooked, rather it simply asks the Commission to reach a different decision. Nonetheless, a review of the remainder of the transcript reveals the opposite; the Commissioners in turn discussed the evidence adduced at hearing and elaborated on the reasons why the Commission ultimately determined to act as it did.[6] Moreover, the

[5] *See* Motion, at p. 5, n. 4 ("The discussion among the Commissioners was framed thus: 'I said, you know, this is one of those Solomon decisions, can you split the baby.") and *id.* at p. 5, n. 5 ("… [T]here's not a formula we can use here, we're going to have to lean on what our gut tells us in some of these regards.") (citations omitted).

[6] *See, e.g.*, December 7, 2021 Agenda Conference, Item 4B, Transcript at p. 3 ([Commissioner La Rosa] "You know, I've certainly spent a lot of time on this issue and kind of gone back and forth and I think I read

Commission received legal advice advising the apportionment approach was permissible[7] and the Commissioners further discussed their how they reached the decision to apportion half the costs to DEF and half to customers.[8] In sum, OPC has not and cannot point to any fact or point of law the Commission overlooked or failed to consider, OPC is again simply asking for the Commission to reweigh the evidence and reach its preferred result.

Conclusion

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the root cause analysis more times than I was certainly planning to, but I can't say that I agree with staff's recommendation a hundred percent. Don't necessarily feel that they're pointing to the exact cause by looking -- or by reading through the root cause analysis, I do think that the equipment failure is a massive problem and was significant. And after, you know, going through testimony and hearing testimony, I do believe the witness was very credible. Didn't see a whole lot of contention against the witness."); *id.* at pp. 3-4 ([Commissioner Clark] "Reflecting back on the testimony and reading back through some of the testimony, again, there -- to me, it's not a hundred percent conclusive in either direction. I think you can absolutely -- and, staff, I think you did a great job in your description and in your analysis, but I think from a purely subjective perspective, you can look at this and go, I can assign some blame and some responsibility and I can understand that there's equipment failure that happens and occurs."); *id.* at p. 6 ([Chairman Fay] "this is very fact intensive. And I think there's components of it that support, you know, was the policy actually followed. There's also the question if the relay would have -- could have been known based on its age. There's just a number of components in the case itself, I think, that question if there is a full allocation one way or another."); *id.* at pp. 7-8 ([Commissioner Graham] "I think facts are pretty intensive in this case. I think you can look at the same set of facts and, as staff did, come up with reasons to deny the recovery. I think there's good arguments to allow the recovery. I think the operator did exactly what he was supposed to do for the three times that he tried the auto sync. But I don't believe -- the one witness that was there said that he -- that he did that exactly. There is no written procedure for the troubleshoot. And so, he did what he normally would do for the troubleshooting. You got to remember this is an operator that's been there for 15 years. And so, he's very experienced. He's done this a bunch of times. The only thing that failed this time was that Beckwith relay. And there was no way for him to know that that relay was -- it's something that he's normally done, something that normally worked. He just wasn't there to save the day this time. And so, it's kind of problematic for me to point my finger at that operator and say he did something wrong, because I don't think he did. I just think that the equipment failed."); *id.* at p. 8 ("I know it's factually intensive and it really hinges on that. So I do kind of want to flesh that out a little bit and just, you know, play devil's advocate in the sense of I understand the check relay, it did fail, but if it hadn't -- had not have failed, operators still proceeded, as they did, you know, accordingly. For the evidence in the record, would that have changed the outcome in any way? Is that even possible?").

[7] *See* December 7, 2021 Agenda Conference, Item 4B, Transcript at pp. 5-6.

[8] *See* December 7, 2021 Agenda Conference, Item 4B, Transcript at pp. 4-5; *id.* at p. 6; *id.* at p. 8; *id.* at pp. 10-11; *id.* at pp. 11-12.

The Commission has been statutorily charged with establishing rates that it, not OPC, finds to be just and reasonable. *See* § 366.05(1)(a), Fla. Stat. That is what the Commission did in this instance and OPC has presented no overlooked points of fact or law that warrant reconsideration. The Motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 12th day of January, 2022

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 20220001-EI Filed: January 25, 2022

CITIZENS' NOTICE OF VOLUNTARY WITHDRAWAL OF MOTION FOR RECONSIDERATION

The Citizens of Florida, through the Office of Public Counsel ("Citizens") hereby voluntarily withdraw Citizen's Motion for Reconsideration (Document No. 00082-2022), filed on January 5, 2022.

Respectfully submitted this 25th day of January, 2022.

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Public Counsel

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CERTIFICATE OF SERVICE
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