

January 14, 2018

E-PORTAL FILING

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

Re:

DOCKET NO. 20180061-EI

In re: Petition for Limited Proceeding to
Recover Incremental Storm Restoration Costs
by FPUC.

Dear Mr. Teitzman:

Attached, for electronic filing in the above referenced docket, please find the **FLORIDA PUBLIC UTILITIES COMPANY'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND POST-HEARING BRIEF**. Should you have any questions whatsoever, please do not hesitate to contact me.

Thank you for your assistance in this matter.



Greg Munson
Florida Bar No. 188344
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1713

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Limited Proceeding to Recover Incremental Storm Restoration Costs by FPUC. | DOCKET NO. 20180061-EI
| DATED: January 14, 2018

**FLORIDA PUBLIC UTILITIES COMPANY'S
POST-HEARING STATEMENT OF ISSUES AND POSITIONS
AND POST-HEARING BRIEF**

Consistent with Order No. PSC-2018-0404-PCO-EI, issued August 14, 2018, and Order No. PSC-2018-0567-PHO-EI, issued December 4, 2018, Florida Public Utilities Company (“FPUC” or “Company”) files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

I. FPUC’s Position on the Issues – FPUC has reflected the stipulations of certain issues consistent with Hearing Exhibit 23.

ISSUE 1: What is the appropriate baseline from which incremental costs are derived?

Stipulated:

* This issue has been rendered moot for this particular case by the stipulation of Issue 2, 5 and 6.*

ISSUE 2: In undertaking storm-recovery activities, was the payroll expense Florida Public Utilities Company (“FPUC”) has requested to include for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount that should be approved?

Stipulated:

* OPC does not object to FPUC’s request to recover \$122,857 in incremental payroll costs. The amount identified by FPUC as “extra compensation” in the amount of \$69,632 remains in dispute and is the subject of Issue 3.*

ISSUE 3: Is the “extra compensation” included as part of the Inclement Weather Exempt Employee Compensation submitted for recovery by FPUC an allowable cost under Rule 25-6.0143, Florida Administrative Code?

FPUC: * Yes. The “extra compensation” in the amount of \$69,632 is compensation that is anticipated, regular pay for salaried employees engaged in storm restoration work as contemplated by the Company’s payroll policy. Such pay

does not constitute a bonus or special compensation, which are prohibited under Rule 25-6.0143, F.A.C., as these amounts are specifically contemplated by the Company's payroll policy and are not otherwise subject to discretion or being withheld based upon performance. *

ISSUE 4: Stricken by Order No. PSC-2018-0404-PCO-EI.

ISSUE 5: In undertaking storm-recovery activities, were the benefit costs requested by FPUC for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Stipulated:

* OPC does not object to FPUC's request to recover benefit costs in the amount of \$38,424. *

ISSUE 6: In undertaking storm-recovery activities, were the overhead costs requested by FPUC for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Stipulated:

* OPC does not object to FPUC's request to recover overhead costs in the amount of \$22,856. *

ISSUE 7: In connection with the restoration of service associated with electric power outages affecting customers as a result of Hurricanes Matthew and Irma, were the contractor rates FPUC paid for storm-recovery activities reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC:

* Yes, the contractor rates paid by FPUC for storm-recovery activities were reasonably and prudently incurred by FPUC for storm-recovery activities. Rates and total costs should be considered on a case-by-case basis and considered within the context of the utility and the storm-recovery efforts encountered. Given the contextual circumstances of FPUC's storm recovery efforts, the rates FPUC paid were appropriate and should be allowed for recovery in full. *

ISSUE 8: In connection with the restoration of service associated with electric power outages affecting customers as a result of Hurricanes Matthew and Irma, were the contractor costs associated with standby time, mobilization time, and demobilization time paid by FPUC for storm-recovery activities reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC:

* Yes, the contractor costs associated with standby time, mobilization time, and demobilization time were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts resulting from Hurricanes Matthew and Irma. There is no basis for any adjustment to these costs. *

ISSUE 9: In undertaking storm-recovery activities associated with Hurricanes Matthew and Irma, were the contractor costs FPUC has included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC: * Yes, the total amount of contractor costs associated with Hurricanes Matthew and Irma for which FPUC seeks recovery were reasonably and prudently incurred and should be approved. There is no basis for adjustments to these costs for recapitalization and reclassification. *

ISSUE 10: **Stricken by Order No. PSC-2018-0404-PCO-EI.**

ISSUE 11: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the line clearing costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC: * FPUC agrees that its initial request for recovery of line clearing costs in the amount of \$261,431 should be adjusted downward by \$163,707. The remaining \$97,731 in line clearing costs were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved. *

ISSUE 12: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the vehicle and fuel costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC: * Yes, the vehicle and fuel costs in the amount of \$34,231 were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved for recovery without adjustment. *

ISSUE 13: Were the material and supply costs FPUC included for storm recovery reasonable and prudently incurred in connection with the restoration of service associated with storm-related electric power outages affecting customers? If not, what adjustments, if any, should be made?

FPUC: * Yes, the material and supply costs in the amount of \$89,295 were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers. These costs are not associated with replenishment of the Company's supplies or inventories or related to capital additions, and should therefore be approved for recovery without adjustment. *

ISSUE 14: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the logistic costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC: * Yes, the logistics costs in the amount of \$245,705 were reasonably and prudently incurred in accordance with Rule 25-6.0143 (1)(e), and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved for recovery without adjustment. *

ISSUE 15: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the costs identified by FPUC as "Normal Expenses Not Recovered in Base Rates" and included as "other operating expenses" reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC: * Yes, the category of costs identified as "Normal Expenses Not Recovered in Base Rates" in the amount of \$67,548 were reasonably and prudently incurred in accordance with Rule 25-6.0143 (1)(e), and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers. These amounts reflect expenses that were anticipated in base rates, but not recovered as result of the storm outages. As such, these amounts should be approved for recovery without adjustment. *

ISSUE 16: What amount should be included in storm recovery to replenish the level of FPUC's storm reserve?

FPUC: * The Company's storm reserve should be replenished to its pre-storm level of \$1.5 million from its deficit as of December 31, 2017 of \$497,967. *

ISSUE 17: What is the [appropriate/reasonable and prudent] amount of storm-related costs and storm reserve replenishment FPUC is entitled to recover?

FPUC: * The Company has revised its request for recovery to exclude certain line clearing costs for a revised total request of \$1,999,523, which is the appropriate amount to recover costs incurred during the 2016-2017 storms and to replenish the Company's storm reserve. *

ISSUE 18: Should the Commission approve Florida Public Utility Company's proposed tariff and associated charge?

FPUC: * Yes. Given that the Company has agreed to additional adjustments since the tariff and charge were submitted, and other adjustments may be required by

the Commission, the Company should be directed to file a revised tariff within 7 days of the Commission's decision in this proceeding consistent with the Commission's decision. The Commission should direct the Commission staff to verify that said tariffs are consistent with the Commission's decision. *

ISSUE 19: If applicable, how should any under-recovery or over-recovery be handled?

FPUC: * Any over or under-recovery should be handled by way of a true-up rate, which applies interest at the commercial paper rate to the over or under-recovered amount. Any true-up rate calculation should be allocated consistent with the Company's current, Commission-approved cost allocation methodology. *

ISSUE 20: Should the docket be closed?

FPUC: * This docket should remain open until FPUC's costs are finalized and any over or under-recovery has been determined. Thereafter, the docket should be closed after the appropriate appellate period has concluded.*

II. BRIEF ON DISPUTED ISSUES

Overview

In October 2016, Hurricane Matthew drove up the east coast of Florida, impacting FPUC's northeast division electric customers with wind gusts up to 87 mph, and a storm surge of 8 feet. [Tr. at 37 (Cassel)]. Less than one year later, Hurricane Irma made its way north through the center of the state impacting both FPUC's northeast and northwest electric customers. [Tr. at 37 (Cassel)]. Hurricane Irma delivered winds up to 71 mph, with sustained winds of 45 to 50 mph, and included numerous tornadoes. [Tr. at 38 (Cassel)]. In both years, 100% of FPUC's customers on Amelia Island lost power. [Tr. at 30 (Cassel)]. In this proceeding, FPUC seeks to replenish a storm reserve balance that was depleted to a negative balance of nearly \$500,000 as the result of restoration costs associated with the devastation wrought by Hurricane Matthew, Hurricane Irma, Hurricane Hermine, Tropical Storm Cindy, and Tropical Storm Julia. [Tr. at 30, 31, 37, 39 (Cassel)]. After Hurricane Irma, FPUC restored power to its customers in five days. [Tr. at 267-68 (Cutshaw)]. Achieving FPUC's restoration goals, however, came at a price.

Before Hurricane Irma, FPUC had a storm reserve balance of approximately \$1,500,000. [Tr. at 40 (Cassel)]. Afterwards, FPUC had a negative balance of \$497,967 and now seeks to replenish its storm reserve balance in this proceeding by recovering \$1,999,405 over a two-year period at a cost to consumers of \$1.59 per 1,000 kWh. [Tr. at 30-31, 42 (Cassel)].

FPUC agreed with changes made by Staff's audit, and stipulated with the Office of Public Counsel ("OPC") on ten issues, including three "fall-out" issues that depend on the resolution of predicate disputed issues. OPC's challenges to FPUC's remaining recovery requests, however, largely stem from costs incurred by FPUC to pay an out-of-state contractor. At the time FPUC retained the contractor with 40 individual repair crew members (i.e., "resources"), Florida utilities statewide were requesting 9,000 contractor resources, and only 4,000 were available. [Tr. at 266-67 (Cutshaw)]. Had FPUC not accepted the contractor because of their rates, it would have caused a delay of almost a week in restoring power. [Tr. at 267-68 (Cutshaw)]. Clearly, this would not have been acceptable to FPUC customers or to the PSC. Therefore, FPUC made the prudent decision and retained the contractor.

OPC's Monday-morning quarterback analysis ignores the practical realities of virtually every facet of storm restoration work, including employee recruiting, O&M expenses, and contractor retention, distribution, and preparation. OPC also dismisses FPUC's obligation to serve. [Tr. at 157, 164, 171, 173 (Cassel)]. FPUC urges the Commission to reject OPC's after-the-fact bean-counting that, if accepted, would inevitably lead to widespread delays in restoring power throughout this Hurricane-prone state.

The only consistent theme throughout the contested issues is the narrowness of the alleged problems: an extra day of standby time for one contractor, payments totaling \$70,000 for storm restoration work to responding employees, recovery of \$60,000 in O&M expenses, and

disagreement over hourly rates during a four-day period. [Tr. At 107 (Schultz)]. While FPUC welcomes the opportunity to explain its decisions in seeking to recover these amounts, the Company is concerned that acceptance of OPC's counter positions on certain disputed issues would discourage Florida utilities from pursuing aggressive restoration of power during customers' time of greatest need. As such, OPC's arguments should be rejected.

There are five primary issues remaining in the case: whether a payment of \$69,632 to all exempt employees regardless of their level of performance and required by the Company's inclement weather policy is permissible under Rule 25-6.0143 (issue 3); whether the costs associated with the use of the only available storm restoration contractor were reasonably and prudently incurred (issues 7-9); and whether recovery of \$67,458 in O&M expenses constitutes recovery for lost revenue under Rule 25-6.0143 (issue 15). Issues 13 and 14 are also contested, relating to a \$32,800 accounting error mistakenly categorized as a transformer replenishment cost, and \$40,000 in logistics costs. Issues 16-19 depend on the resolution of previous issues, issues 4 and 10 were stricken by the prehearing officer, and the remaining issues were the subject of agreement between the parties.

Analysis of Disputed Issues

ISSUE 3: Is the “extra compensation” included as part of the Inclement Weather Exempt Employee Compensation submitted for recovery by FPUC an allowable cost under Rule 25-6.0143, Florida Administrative Code?

FPUC's employees' base salary is calculated based on certain hours and duties. However, in recognition of the additional hours and duties that can be required of employees during storm restoration efforts, a term of employment includes FPUC's commitment to

supplement the base salary during periods of inclement weather. [Tr. at 160, 214 (Cassel)]. This practice is documented in FPUC's Inclement Weather Exempt Employee Compensation Policy. [Tr. at 160 (Cassel)]. It is paid after every storm to every eligible employee, regardless of their level of performance. [Tr. at 214 (Cassel)]. Consequently, there is nothing "special" about this compensation, nor is it a "bonus" payment. [Tr. at 160 (Cassel)]. Instead, the extra compensation is part of FPUC's employees standard pay and benefit package. [Tr. at 160 (Cassel)]. It is an important tool used in recruiting new employees, who must accept that they will be asked to leave their families during hurricanes and perform storm restoration work. [Tr. at 178, 214 (Cassel)].

OPC's expert witness argues that FPUC is "attempting to circumvent" the prohibition of paying bonuses, but his testimony is devoid of any explanation for why these payments are "bonuses" or "special compensation." [Tr. at 72 (Schultz)]. He seems to oppose the payments because they are "an added form of employee compensation." [Tr. at 72 (Schultz)]. Such an approach misinterprets the rule, which bars special compensation, not any additional, supplemental compensation, and the two words should not be treated interchangeably. [Tr. at 186 (Cassel)]. *See Hechtman v. Nations Title Ins.*, 840 So.2d 993, 996 (Fla. 2003) ("[W]ords in a statute should not be construed as mere surplusage."); *Forsyth v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452, 455 (Fla. 1992) ("where possible courts must give full effect to all statutory provisions"). Rather than treating the payments as "special" it is more logical to treat these standard components of FPUC's pay and benefits package as permissible, non-special compensation because they are not discretionary, i.e., paid without regard to employee performance, the specific nature of the storm, or the number of hours worked, or the duties performed. [Tr. at 214 (Cassel)].

In addition to support from the Rule's text, FPUC's approach is consistent with sound policy. While one-time bonus payments made without any objective standard are subject to abuse, FPUC's policy is predictable and objective. Moreover, such a policy provides a meaningful recruiting tool for talented employees who may otherwise select positions that allow them to remain with their families following storm events. [Tr. at 214 (Cassel)].

ISSUE 7: In connection with the restoration of service associated with electric power outages affecting customers as a result of Hurricanes Matthew and Irma, were the contractor rates FPUC paid for storm-recovery activities reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC's reliance on contractors with higher than normal hourly rates, under the unique circumstances associated with Hurricane Irma, was reasonable and prudent. Those circumstances stem from the path of the hurricane and other storms that impacted the availability of contractors and the method of distributing contractors to perform storm restoration work.

As explained by Witness Cutshaw, FPUC and other utilities generally negotiate a right to retain contractors working on site when a hurricane impacts a utility's territory, and they negotiate hourly rates for such work with the contractors. [Tr. at 234, 250 (Cutshaw)]. These contractors, if on-site, form part of a utility's storm response team. [Tr. at 211 (Cassel), 263-64 (Cutshaw)]. Another source of contractors are those made available through the Southeastern Electric Exchange ("SEE"). [Tr. at 209-10 (Cassel)]. As further explained by Witness Cutshaw, SEE is composed of electric utilities in the Southeastern United States, each of whom pay for their membership based on their size. [Tr. at 224, 251-52 (Cutshaw)]. When a storm approaches, those utilities needing additional resources beyond the contractors retained on site

make their requests during mutual assistance calls convened by SEE. [Tr. at 224, 253-54 (Cutshaw)]. Any utility that can spare contractors from among those otherwise retained on site, will release those contractors to assist utilities with a shortfall in resources. [Tr. at 211 (Cassel), 225, 250, 254 (Cutshaw)]. These resources are released through a SEE-moderated process that includes mutual assistance calls to identify potentially available resources. [Tr. at 253-54 (Cutshaw)].

As a smaller utility, FPUC is less likely to have contractors already on-site to serve as part of their response team and during the approach of Hurricane Irma, FPUC had none on-site. [Tr. at 264 (Cutshaw)]. The path of Hurricane Irma – directly through the Florida peninsula – led to other utilities retaining their on-site contractor resources to aid in their own restoration activities. [Tr. at 250 (Cutshaw)].

Compounding the shortage of contractors caused by Hurricane Irma's path northward through the Florida peninsula was the recent passage of Hurricane Harvey through the western Gulf Coast, further tying up restoration contractors who might have otherwise been available to mobilize to Florida. [Tr. at 223, 227, 231 (Cutshaw)]. During this contractor shortage in late September as Irma approached Florida, SEE reached out to other similar exchanges located in the Northeast and upper Midwest to ascertain the availability of contractors in those regions. [Tr. at 235-36, 266 (Cutshaw)].¹ Utilities were made aware over the course of three mutual assistance calls that there were shortfalls of 8,400, 5,900, and 4,000 resources, respectively. [Tr. at 265-67 (Cutshaw)].

¹ The transcript at page 236 says "Northwest" not "Northeast," but this appears to be a misstatement or typographical error. The witness' immediately subsequent testimony summarizes the effort as encompassing the "eastern half of the United States" which would only be true if the exchanges being summarized were those in the upper Midwest, Southeast, and Northeast. Moreover, the same witness later says "Northeast and upper Midwest" when discussing the same event.

Consequently, when Florida Power & Light (“FPL”) released a 40-person crew from PAR electrical contractors (“PAR”) while PAR was enroute to Florida, it was obvious to FPUC that PAR would likely be the only contractor available to assist FPUC with storm restoration activities. FPUC knew that such assistance was the only way it could achieve its Estimated Time to Restoration (“ETR”) goal of one week, and ultimately it achieved its ETR goal by restoring power within 5 days. [Tr. at 267-68]. Had FPUC not hired PAR, it would likely have required almost two weeks to restore power. [Tr. at 267-68]. Knowing that, under SEE guidelines, PAR’s hourly rates would be no different than those charged to FPL and that PAR was unlikely to accept anything lower, FPUC made the responsible decision to put their customers’ safety first and retain PAR. [Tr. at 231-32, 256, 262-63 (Cutshaw)].² PAR proved to be an excellent contractor. [Tr. at 267-68 (Cutshaw)].

OPC’s expert witness Schultz provides several after-the-fact criticisms of FPUC’s payments to PAR. First and foremost, Witness Schultz objects that “the SEE process dictates the rates” and “FPUC’s practice (as well as the practice of other utilities) of consenting to SEE rates.” [Tr. at 81, 83, 128 (Schultz)]. Witness Schultz misunderstands SEE’s role and process.

SEE is essentially a moderator to help utilities appropriately allocate contractor resources. [Tr. at 254 (Cutshaw)]. It does not set rates. [Tr. at 237 (Cutshaw)]. Members agree to abide by guidelines governing, among other things, payment for resources utilized by a utility. [Ex. 33 at 9-10; Tr. at 262 (Cutshaw)]. Those guidelines provide:

17.1 Members understand and agree that the provision of emergency mutual assistance is a not-for-profit endeavor for Responding Companies [i.e.,

² FPUC’s previous rejection of PAR because of their higher rates, contrary to the suggestion of OPC, buttresses FPUC’s argument in this instance because it makes clear that, if FPUC had a realistic choice of contractors, it would have declined PAR again based on their rate. [Tr. at 212 (Cassel); and Tr. at 241 (Cutshaw)].

those providing restoration assistance]. Therefore, the Requesting Company [i.e., requesting restoration assistance] will reimburse all costs and expenses incurred by the Responding Company in the provision of emergency assistance for the entire emergency assistance period as defined in paragraph 6 above.

Exhibit 33, *Southeastern Electric Exchange*, 2016 Mutual Assistance Procedures and Guidelines (April 2016), at 9. This is a process that has worked well for FPUC over the years and is an improvement over the process utilized prior to the existence of SEE, as later discussed. [Tr. At 260-61 (Cutshaw)].

Again, SEE does not set rates. The rates are set based on the contracts between the releasing utility and the contractor, and the requesting utility pays those rates. [Tr. at 230, 239 (Cutshaw)]. Because the releasing utility has the same oversight and incentives to minimize contractor costs, it is reasonable to assume that contractors' rates are negotiated to be prudent and reasonable costs in advance of the storm and are, effectively, market-based rates.

Witness Schultz points to the higher rates charged by PAR compared to other contractors used during Hurricane Irma, during previous storms, and in his experience in other states as evidence that PAR's rates were not prudent and reasonable. [Tr. at 81, 83, 126-27 (Schultz)]. The record is clear that Witness Schultz is not, however, making an accurate apples-to-apples comparison. [Tr. at 124, line 11 – Tr. 126, Line 12 (Schultz); Tr 133, Line 3 – Tr. 134, Line 23 (Schultz); Tr. 137, 139, 146, (Schultz) and 207, Lines 11-15 (Cassel)] He also bases at least some portion of his analysis on time sheets reviewed in other jurisdictions. [Tr. at 114 (Schultz)]. Moreover, the fact remains that PAR was the only option for FPUC and rejecting PAR's assistance would have led to almost an additional week without power for many of FPUC's customers. [Tr. at 231, 267-68 (Cutshaw)]. Even OPC's Witness Schultz conceded that cost is not the sole basis upon which a contractor should be retained. [Tr. at 142 (Schultz)].

Witness Schultz's only response to the lack of available contractors was to pre-negotiate contracts with restoration contractors with more favorable rates than PAR offered. [Tr. at 130, 135 (Schultz)]. Again, this points to Witness Schultz's lack of knowledge about large-scale restoration efforts. Even if under a contract with FPUC, a contractor would not be expected to leave an active response situation, such as Hurricane Harvey, or ignore calls from other Florida utilities needing help with Hurricane Irma simply because the possibility exists that FPUC might be impacted by the storm. [Tr. at 264 (Cutshaw)]. As noted before, a utility can only "lock down" a contractor if they are already working on a utility's system at the time a storm approaches. Since FPUC does not regularly utilize contractors on its system, as do some of the larger utilities, there are typically few, if any, contractors that FPUC can immediately call upon when a storm is approaching. [Tr. at 264 (Cutshaw)]. Witness Schultz's proposal would effectively gut the SEE process by requiring individual utilities to "lock-down" restoration contractors in advance, including those not already working on a utility's system, and not make those contractors available to other utilities who might require their assistance. In fact, such a problem actually existed, as explained by Witness Cutshaw, before SEE's existence. [Tr. at 260 (Cutshaw)]. He explained that, before SEE, "someone like Florida Public Utilities got left out in the cold because we could not always afford to have a whole bunch of contractors on our system just in case a hurricane comes." [Tr. at 260 (Cutshaw)]. Mr. Schultz's approach would lead to increased costs for utilities statewide as utilities reverted to keeping contractors on-site or under contract. Instead, as FPUC's witnesses explained, the SEE process has withstood the test of time for providing restoration resources and, to the experienced eyes of Witness Cutshaw, left no contractor resource untouched during the Hurricane Irma response. [Tr. at 228 (Cutshaw)].

Witness Schultz's further suggestion under questioning from the Commission that FPUC reach outside the SEE region also fails. First, because SEE in fact reached out to sister exchanges in other parts of the United States seeking just such resources. [Tr. at 264(Cutshaw)]. Second, it fails as a logical matter, because at some distance, travel time more than eats up whatever saving might be reasonably expected from PAR's rates. [Tr. at 266-67 (Cutshaw)].

ISSUE 8: In connection with the restoration of service associated with electric power outages affecting customers as a result of Hurricanes Matthew and Irma, were the contractor costs associated with standby time, mobilization time, and demobilization time paid by FPUC for storm-recovery activities reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Mobilization of PAR occurred on September 7 and 8, and PAR crews were on standby during September 9 and 10. [Tr. at 165, 199 (Cassel)]. The length of PAR's mobilization and standby time was dictated by the timing of its release by FPL. PAR crews were originally mobilized by FPL on September 7, 2019, from Des Moines, Iowa. [Tr. at 239, 263 (Cutshaw)]. FPL subsequently released PAR and FPUC retained them through the SEE process. [Tr. at 263 (Cutshaw)]. PAR re-routed to FPUC and went on stand-by in Jacksonville on September 9. [Tr. at 115-16]. Hurricane Irma struck Florida very shortly thereafter, on September 10, and entered FPUC territory on September 11. [Tr. at 82 (Schultz), 200 (Cassel), 227 (Cutshaw)]. On September 10, while waiting for Hurricane Irma to approach North Florida on September 11, FPUC and PAR conducted necessary training to ensure that PAR could work safely and efficiently with FPUC's other resources. [Tr. at 202 (Cassel)]. If this training had not occurred on September 10, this training would have had to take place after Hurricane Irma passed through

FPUC's territory on September 11, thus delaying FPUC's restoration response. [Tr. at 202 (Cassel)].

Overall, PAR's standby time was driven by the timing of FPL's original request on September 7, and stopping in Jacksonville on September 9 was a reasonable measure given the other alternatives (such as returning to Des Moines or continuing to South Florida) which would have required additional pointless driving by PAR. [Tr. at 265 (Cutshaw)]. FPUC put that small additional day to good use by providing PAR with the necessary training to begin restoration immediately after Hurricane Irma cleared the area. [Tr. at 202 (Cassel)].

In addition to the logistical and preparation bases for the two days of mobilization time and two days of standby time, FPUC's payment for such is reasonable and prudent, because the paths and timing of hurricanes are notoriously difficult to predict. OPC Witness Schultz's strategy of waiting until the last possible day to mobilize contractors could easily end in disaster for customers when those contractors hit unexpected delays due to evacuations, gas shortages, and bad weather from the leading edge of the hurricane. [Tr. at 120, Line 10 – 121, Line 17 (Schultz); Tr. at 197, 202 (Cassel); and Tr. at 223 (Cutshaw)]. OPC's just-in-time resource response is bad policy for Florida's power customers who would inevitably suffer from the delays associated with mobilization problems. [Tr. at 225-26].

As Witness Schultz acknowledged at hearing, the actual hourly rate paid to PAR for standby was \$290.95, and the hourly rate for mobilization was \$377 and \$509 for regular and overtime, respectively. [Tr. at 81 (Schultz); Ex. 30, at 2-3]. These rates were established based on PAR's contract with FPL, and included fuel. [Tr. at 265 (Cutshaw)]. In Witness Cutshaw's

experience, including fuel in an hourly rate was atypical. [Tr. at 265 (Cutshaw)]. Under the SEE guidelines, FPUC became responsible for the full costs of mobilization and standby:

17.2 If Responding Company resources are released after mobilization but before being utilized, the Requesting Company will reimburse the Responding Company for *all* incurred preparation and travel expenses including reasonable time required to prepare the equipment for return to normal activities after returning to their point of origin.

Ex. 33, *Southeastern Electric Exchange*, 2016 Mutual Assistance Procedures and Guidelines (April 2016), at 9 (emphasis added). FPUC's payment of PAR's hourly rates was consistent with the written guidelines. [Tr. at 263 (Cutshaw)].

Because the amount of mobilization and standby time was fully justified under these unique circumstances (and even absent these circumstances), and the hourly rates for mobilization and standby were paid to the only available contractor consistent with SEE guidelines, FPUC's payments to PAR for mobilization and standby were reasonable and prudent in incurrence and amount.

ISSUE 9: In undertaking storm-recovery activities associated with Hurricanes Matthew and Irma, were the contractor costs FPUC has included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC's capitalization of costs associated with removing, retiring and replacing storm-damaged facilities is consistent with Rule 25-6.0143(1)(d). The Rule provides that "capital expenditures for the removal, retirement, and replacement of damaged facilities charged to cover storm-related damages shall exclude the normal cost for the removal, retirement, and replacement of those facilities in the absence of a storm."

FPUC's methodology did precisely what the rule requires. First, because FPUC normally uses its own crews to remove and replace assets, FPUC calculated the normal cost using in-house rates for each type of asset being installed or removed, including materials. [Tr. at 167 (Cassel)]. FPUC then subtracted the total costs resulting from the hourly rate of \$37.34, the average time for installation and removal in pre-storm conditions, and materials, from the costs incurred for the same work during the storm and charged the remainder to the storm reserve, as provided by the rule. [Tr. at 167, 208-09 (Cassel)].

Witness Schultz's objections are not entirely clear. Witness Schultz asserts "the method used by FPUC ignores the fact that, if the capital work was performed by FPUC employees incurring incremental time, then that work would be at an overtime rate and not at the \$37.34 an hour applied by FPUC. Moreover, the capitalized costs are further understated once you factor in the contractor's hourly rate which is even higher than FPUC's overtime rates." [Tr. at 86-87 (Cassel)]. Witness Schultz's view cannot be squared with the language of Rule 25-6.0143(1)(d) which requires excluding "the normal cost." Overtime rates and storm contractor's rates "performed during restoration," which Witness Schultz asserts are the appropriate rates for hourly work, and are not "normal" by definition.

He also criticizes the costs FPUC seeks to recover as not being incremental costs, and then continues that "If the FPUC labor is not incremental, then it cannot be capitalized which means the amount capitalized should be adjusted based on what capital labor dollars are incremental. The only such labor dollars available for capitalization are the contractor dollars." [Tr. at 88 (Schultz)]. These sentences are a series of non-sequiturs. FPUC backed out the normal costs from the storm costs so that it is seeking to only capitalize the normal costs and recover the remainder. [Tr. at 167, 208-09 (Cassel)]. It is not clear what Witness Schultz means

that only contractor dollars are available for capitalization. It ignores the reasonable and valid methodology used to separate “normal costs” which cannot and were not charged to the reserve.

Finally, Witness Schultz urges rejection of FPUC’s capitalized amounts using the normal cost rate that exists under normal conditions as being inconsistent with GAAP, and that restoration takes place under abnormal conditions. [Tr. at 90 (Schultz)]. This argument is at odds with the rule language which does not mention GAAP, and specifically addresses what to do with normal and abnormal costs. FPUC’s methodology is consistent with Rule 25-6.0143(1)(d) and should be approved.

ISSUE 11: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the line clearing costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

FPUC agrees with OPC’s downward adjustment of \$163,707 for recovery of line clearing costs. The remaining \$97,731 in line clearing costs were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved. [Tr. at 28, 31 (Cassel); Hearing Exhibit 24].

ISSUE 12: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the vehicle and fuel costs FPUC included for storm reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Yes, the vehicle and fuel costs in the amount of \$34,231 were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved for recovery without adjustment. [Hearing Exhibit 2]. OPC does not disagree. [Tr. at 92 (Schultz)].

ISSUE 13: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the material and supply costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Material and supply costs in the amount of \$89,295 were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers. [Hearing Exhibit 2]. These costs are not associated with replenishment of the Company's supplies or inventories or related to capital additions, and should therefore be approved for recovery without adjustment.

As Witness Cassel explained, FPUC includes \$32,800 to rectify an accounting error that began when FPUC removed this amount from its recovery request, mistakenly believing that it had originally been erroneously included in its recovery request. [Tr. at 168-69 (Cassel)]. This amount had not in fact been included in the recovery request (erroneously or otherwise). [Tr. at 168-69, 215 (Cassel)]. This reduction, therefore, was made for costs that were never categorized as recoverable costs. [Tr. at 169, 215 (Cassel); Hearing Exhibit 6]. FPUC now seeks to add this amount back into its recovery request to rectify this accounting error. [Hearing Exhibit 7; Response to Interrogatory 12].

OPC's expert witness opposes this request, apparently believing that FPUC is seeking to recover \$32,800 to replenish transformer supplies. He apparently misunderstands the adjustment as described above. The original transformer costs of \$32,800 were capitalized by FPUC, consistent with what Witness Schultz states would be appropriate. [Tr. at 93, 215]. He does not apparently realize that FPUC never sought to recover the amount before it was mistakenly removed. [Tr. at 169 (Cassel)].

FPUC should not be penalized for this short-term accounting mistake and should be allowed to recover the \$32,800, because it is not in fact associated with replenishment of transformer supplies, which FPUC agrees would be prohibited.

ISSUE 14: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the logistic costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

The logistics costs in the amount of \$245,705 were reasonably and prudently incurred in accordance with Rule 25-6.0143 (1)(e), and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved for recovery without adjustment. [Hearing Exhibit 2; Hearing Exhibit 14]. OPC is not recommending any adjustment to this amount, but questions FPUC's reasons for only seeking to recover \$40,000 out of \$82,390 incurred costs for the pertinent invoice. [Tr. at 94 (Schultz); Hearing Exhibits 10 and 14]. OPC chose not to inquire about this specific matter in discovery. Upon the record, there appears to be no dispute about the amount. FPUC's decision to ask for recovery of only \$40,000 of the subject contractor's invoice does not indicate that the

\$40,000 for which the Company seeks recovery was not prudently incurred, nor does it provide a basis to reject FPUC's request.

ISSUE 15: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the costs identified by FPUC as “Normal Expenses Not Recovered in Base Rates” and included as “other operating expenses” reasonable and prudent, in incurrence and amount? If not, what amount should be made?

The category of costs identified as "Normal Expenses Not Recovered in Base Rates" in the amount of \$67,548 were reasonably and prudently incurred in accordance with Rule 25-6.0143(1)(e), and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers. These amounts reflect O&M costs that were not recovered through base rates as result of the storm outages. [Tr. at 169, 180 (Cassel)].

Testifying for OPC, Witness Schultz argues that this amount constitutes impermissible recovery for lost revenue under Rule 25-6.0143(1)(f)9, and that it is not adequately supported. [Tr. at 95 (Schultz)]. Witness Schultz provides no basis for his opinion other than inserting FPUC's interrogatory response into his direct testimony,³ and simply stating that it “clearly” indicates the cost are for the recovery of lost revenue. His *ipse-dixit* answer, however, fails to undertake any analysis, let alone a proper analysis, of Rule 25-6.013(1)(f)9.

³ FPUC's response to interrogatory 5-84 provides:

Due to outages affecting Amelia Island, including the entire island as it relates to Hurricane Matthew, FPUC did not realize the level of base rate revenues expected to cover its normal O&M costs. These are the amounts included in the “Normal Expenses Not Recovered in Base Rates.” As for the additional request for invoices, FPUC states that there are no invoices.

Prior to the current formulation of the Rule, the Commission approved recovery of O&M expenses otherwise recovered in base rates, reasoning that “while ... lost revenues are not a cost, ... the normal O&M expenses” that were not included in base rates “should be eligible for recovery in the storm recovery mechanism.” Order No. PSC-05-0937-FOF-EI. The current rule text requires no change in this position, providing only that “Utility lost revenues from services not provided” are prohibited from recovery. FPUC, however, is not seeking lost revenue from any source, including profit from O&M expenses, but only the recovery of expenses which are not addressed in the Rule. [Tr. at 169 (Cassel)].

Moreover, these costs are for payroll *that was incurred*. FPUC’s charged overtime payroll for storm restoration work, but regular payroll expenses which were incurred (doing storm restoration work) were not recovered, leaving a significant cost uncovered as a result of the storm. [Tr. at 169 (Cassel)]. Distinguishing true costs from revenue, as the Commission did and as would be the case here, remains a valid distinction under the language of the rule. The more logical interpretation of Rule 25-6.013(1)(f)9 is to continue to make this distinction and allow FPUC to recover its O&M expenses associated with the storms.

ISSUE 16: What is the correct amount to be included in storm recovery to replenish the level of FPUC’s storm reserve?

FPUC should be allowed to fully replenish its storm reserve to \$1.5 million from its deficit of \$497,976, as of December 31, 2017. [Hearing Exhibit 24]. OPC disputes the recovery of the costs associated with replenishing the reserve and, consequently, the resolution of this issue depends on the resolution of the previous issues in dispute. [Tr. at 98 (Schultz)].

ISSUE 17: What is the total amount of storm-related costs and storm reserve replenishment FPUC is entitled to recover?

FPUC revised its request for recovery to exclude certain line clearing costs for a revised total request of \$1,999,405, which is the appropriate amount to recover costs incurred during the 2016-2017 storms and to replenish the Company's storm reserve. [Hearing Exhibit 24]. FPUC agrees with OPC's previously stated position that "this is a fallout issue that would be decided by a sum of no more than the amounts decided on the individual issues." Order No. PSC-2018-0567-PHO-EI at p. 12.

ISSUE 18: Should the Commission approve Florida Public Utilities Company's proposed tariff and associated charge?

Given that the Company has agreed to additional adjustments since the tariff and charge were submitted, and other adjustments may be required by the Commission, the Company should be directed to file a revised tariff within 7 days of the Commission's decision in this proceeding consistent with the Commission's decision. The Commission should direct the Commission staff to verify that said tariffs are consistent with the Commission's decision.

ISSUE 19: If applicable, how should any under-recovery or over-recovery be handled?

Any over or under-recovery should be handled by way of a single true-up, which applies interest at the commercial paper rate to the over or under-recovered amount. Any true-up rate calculation should be allocated consistent with the Company's current, Commission-approved cost allocation methodology.


ISSUE 20: Should the docket be closed?

FPUC and OPC agree that the docket should remain open until FPUC's storm costs are finalized and any over- or under-recovery has been determined. FPUC adds that the docket should be closed after the appropriate appellate period has concluded.

Conclusion

FPUC has met its burden of proof in this case. As it relates to recovery for the storms of 2016 and 2017, FPUC has demonstrated that: (1) the payment to exempt employees of additional compensation under FPUC's standard pay and benefit package without discretion is consistent with the Commission's rules; (2) the use of contractors at higher than normal hourly rates for storm restoration work was reasonable and prudent under the circumstances presented in this case; (3) the incurrence and amount of standby time and mobilization paid to PAR was fully justified under the circumstances but defensible in any storm-related situation; (4) contractor costs were correctly capitalized under the Commission's rule; (5) recovery of \$32,800 for supposed material costs was in fact recovery for an accounting error and permissible; (6) that recovery of \$67,548 for O&M expenses does not run afoul of the prohibition for recovering lost revenue; and that as a consequence, FPUC's request to replenish their reserve to \$1.5 million, by allowing a recovery of \$1,999,405, over a two-year period should be approved.

RESPECTFULLY SUBMITTED this 14th day of January, 2019.

By: 

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


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Florida Public Utilities Company's Post-Hearing Statement of Issues And Positions and Post-Hearing Brief, on behalf of Florida Public Utilities, has been served electronically this 14th day of January, 2018, upon the following:

Mr. Mike Cassel
Florida Public Utilities Company
1750 S.W. 14th Street, Suite 200
Fernandina Beach FL 32034
mcassel@fpuc.com

J.R. Kelly/V. Ponder
Charles J. Rehwinkel
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison St., Rm 812
Tallahassee, FL 32399-1400
kelly.jr@leg.state.fl.us
Ponder.Virginia@leg.state.fl.us
Rehwinkel.charles@leg.state.fl.us

Rachael Dziechciarz
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
mduval@psc.state.fl.us

By: 

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