

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for evaluation of Hurricane Dorian storm costs, by Florida Power & Light Company.

Docket No: 20200172-EI
Date: March 15, 2021

**JOINT MOTION OF THE OFFICE OF PUBLIC COUNSEL
AND FLORIDA POWER & LIGHT COMPANY TO
APPROVE STIPULATION AND SETTLEMENT AGREEMENT**

Pursuant to Rule 28-106.204(1), Florida Administrative Code (“F.A.C.”), the Office of Public Counsel (“OPC”) and Florida Power & Light Company (“FPL”), by and through their respective undersigned counsel, hereby file this Joint Motion to Approve Stipulation and Settlement Agreement (“Joint Motion”) and request that the Florida Public Service Commission (“Commission”) review and approve the Stipulation and Settlement Agreement (“Agreement”) provided as Attachment A to this Joint Motion as a full and complete resolution of all matters related to the above-captioned matter in accordance with Section 120.57(4), Florida Statutes, and to enter a final order reflecting such approval to effectuate implementation of the Agreement. In support of this motion, OPC and FPL jointly state as follows:

1. On June 29, 2020, FPL filed a petition with the Commission requesting that the Commission find that FPL’s activities taken in response to Hurricane Dorian were prudent and that the related Hurricane Dorian costs incurred by FPL were reasonable. FPL’s petition was accompanied by the supporting testimony and exhibits of witnesses Manuel B. Miranda, David Hughes, and Clare Gerard.

2. Along with its June 29, 2020 petition, FPL filed with the Commission a notice of filing (“Notice of Filing”) of confidential sortable spreadsheets that support FPL’s Hurricane Dorian storm restoration costs. The confidential searchable spreadsheets contain data documenting the receipt, review, adjustment where appropriate, and payment of Hurricane Dorian costs incurred for line contractors and vegetation contractors, as well as the additional information

identified in paragraph 16 of the Hurricane Irma Stipulation and Settlement, which was approved by the Commission in Order No. PSC-2019-0319-S-EI, Docket No. 20180049-EI. FPL's testimony and exhibits, together with the information included on the confidential sortable spreadsheets, support all of FPL's Hurricane Dorian incremental storm-related costs subject to the Commission's prudence review in this proceeding.

3. OPC filed its notice of intervention on June 30, 2020, and later, on December 8, 2020, filed the direct testimony and exhibits of OPC witness Lane Kollen.

4. On January 12, 2021, FPL filed the rebuttal testimony and exhibits of Manuel B. Miranda, David Hughes, and Clare Gerard.

5. OPC and FPL have engaged in extensive discovery throughout this proceeding. In addition to the documents made available through the Notice of Filing, FPL has provided to OPC in discovery thousands of pages of documents related to FPL's Hurricane Dorian restoration efforts. Through this process, OPC thoroughly reviewed and evaluated FPL's Hurricane Dorian storm restoration costs.

6. OPC and FPL engaged in negotiations for the purpose of reaching a comprehensive stipulation and settlement of all issues pending in the docket. These negotiations have culminated in the Agreement attached hereto as Attachment A.

7. OPC and FPL request that the direct testimony and exhibits of FPL witnesses Manuel B. Miranda, David Hughes and Clare Gerard and OPC witness Lane Kollen, and the rebuttal testimony and exhibits of FPL witnesses Manuel B. Miranda, David Hughes and Clare Gerard be entered into the record. Where applicable, confidential classification shall be maintained as determined by the Commission, Commission rules or applicable provisions of Chapter 366, Florida Statutes.

8. The Signatories to the Agreement request that, following the Commission's review of this Joint Motion and the Agreement, the Commission grant the Joint Motion and approve the Agreement in order to allow for orderly implementation thereof and to provide certainty to the parties and their respective constituents and customers with respect to the outcome of the proceedings.

9. The Commission has a "long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." *In Re: Florida Power & Light Company*, Docket No. 20050045-EI, Order No. PSC-2005-0902-S-EI (FPSC Sept. 14, 2005). The proper standard for the Commission's approval of a settlement agreement is whether it is in the public interest. *Sierra Club v. Brown*, 243 So.3d 903, 910-913 (Fla. 2018) (citing *Citizens of State v. FPSC*, 146 So.3d 1143, 1164 (Fla. 2014)).

10. The Florida Supreme Court has explained that the "determination of what is in the public interest rests exclusively with the Commission." *Citizens*, 146 So.3d at 1173. The Commission has broad discretion in deciding what is in the public interest and may consider a variety of factors in reaching its decision. *See In Re: The Woodlands of Lake Placid L.P.*, Docket No. 20030102-WS, Order No. PSC-2004-1162-FOF-WS, p. 7, (FPSC Nov. 22, 2004); *In Re: Petition for approval of plan to bring generating units into compliance with the Clean Air Act by Gulf Power Company*, Docket No. 19921155-EI, Order No. PSC-1993-1376-FOF-EI, p. 15, (FPSC Sept. 20, 2003). However, the Commission is not required to resolve the merits of every issue independently. *Sierra Club*, 243 So.3d at 913 (citing *Citizens*, 146 So.3d at 1153). Rather, a "determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole." *In re: Petition for Rate Increase by Gulf Power Co.*, Docket No. 20160186-EI, Order No. PSC-2017-0178-S-EI, p. 6, (FPSC May 16, 2017).

11. In this case, after an extensive review and evaluation of FPL's Hurricane Dorian costs and activities, OPC and FPL entered into the Agreement which addresses issues raised during the course of the proceeding. The Agreement represents a reasonable and mutually agreeable compromise of competing positions and fully resolves all issues raised in this docket.

12. Considered as a whole, the Agreement fairly and reasonably balances the interests of FPL's customers and FPL. Approving the Agreement is consistent with the Commission's long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to the Commission's regulatory jurisdiction. Accordingly, OPC and FPL submit that the Agreement is in the public interest, and respectfully request that the Commission review and approve the Agreement in its entirety and without modification.

WHEREFORE, for the reasons stated above, the OPC and FPL jointly and respectfully request that the Florida Public Service Commission approve the Stipulation and Settlement Agreement provided as Attachment A to this Joint Motion.

Respectfully submitted this 15th day of March, 2021.

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CERTIFICATE OF SERVICE
Docket No. 20200172-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 15th day of March, 2021 to the following:

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Florida Power & Light Company

By: s/ **Richard Gentry**
Richard Gentry, Public Counsel
Office of Public Counsel

Attachment "A"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for evaluation of Hurricane Dorian storm costs by Florida Power & Light Company.

Docket No. 20200172-EI

Filed: March 9, 2021

STIPULATION AND SETTLEMENT

WHEREAS, Florida Power & Light Company ("FPL" or the "Company") and Citizens through the Office of Public Counsel ("OPC") have signed this Stipulation and Settlement (the "Agreement"; unless the context clearly requires otherwise, the term "Party" or "Parties" means a signatory to this Agreement); and

WHEREAS, Dorian formed on August 24, 2019, from a tropical wave in the Central Atlantic, and gradually strengthened as it moved toward the Lesser Antilles, becoming a hurricane on August 28, 2019; and

WHEREAS, the National Hurricane Center's forecasts issued on August 28, 2019 brought the center of Hurricane Dorian over the Florida peninsula as a major hurricane; and

WHEREAS, on August 28, 2019, Governor Ron DeSantis declared a state of emergency in all 67 Florida counties; and

WHEREAS, on August 29, 2019, FPL activated its Command Center and began actively mobilizing a restoration workforce of employees and contractors, began to open staging sites, and started to pre-position crews in the areas of FPL's service territory anticipated to be hardest hit by Hurricane Dorian; and

WHEREAS, on August 30, 2019, the National Hurricane Center forecast projected Hurricane Dorian to make landfall in South Florida, including the most populous counties in FPL's service territory, which would have caused potentially catastrophic results; and

WHEREAS, on August 31, 2019, after rapid intensification, Dorian became a Category 4 hurricane; and

WHEREAS, on September 1, 2019, Hurricane Dorian reached Category 5 intensity, with maximum sustained winds of 185 mph and a minimum central pressure of 910 mb (26.87 in Hg), while making landfall in Elbow Cay, Bahamas, followed by a second landfall on Grand Bahama several hours later, causing massive destruction and devastation in the Bahamas; and

WHEREAS, Hurricane Dorian's outer bands began to directly impact FPL's service territory on September 1, 2019. Its impacts continued through the morning hours of September 5, 2019 as Dorian's path essentially paralleled the east coast of Florida as it traveled north; and

WHEREAS, even a slight deviation to the left of the official forecast would have brought Hurricane Dorian's core and dangerous winds near or over the Florida east coast; and

WHEREAS, Florida remained within the National Hurricane Center forecasted cone of uncertainty from August 26, 2019 until September 2, 2019, and a Hurricane Warning issued by the National Hurricane Center was in effect for portions of Florida's east coast from September 1 into September 4, 2019; and

WHEREAS, Hurricane Dorian was the fourth named storm, second hurricane, and first major hurricane of the 2019 hurricane season; and

WHEREAS, Hurricane Dorian threatened FPL's service territory as a major hurricane (Category 3 or higher), but ultimately did not make landfall. Notwithstanding this fact, FPL had to prepare for a powerful storm that was projected to make landfall in FPL's service territory; and

WHEREAS, FPL restored service to more than 184,000 customers. Toppled trees, vegetation outside of FPL's trim zone, and wind-blown debris were the leading causes of outages. On average, customers' outages were restored in just over an hour and no outage exceeded more than 24 hours; and

WHEREAS, FPL incurred \$241.4 million in storm related costs, but did not implement a storm surcharge or deplete the storm reserve, and instead expensed all costs after removing below the line costs, third party reimbursements, and capitalizable costs; and

WHEREAS, after removing below the line costs, third party reimbursements, and capitalizable costs, FPL's costs that would otherwise be recoverable through the implementation of a storm surcharge and depletion of the storm reserve totaled \$238.8 million; and

WHEREAS, on June 29, 2020, FPL petitioned the Commission for evaluation of storm restoration costs related to Hurricane Dorian, and filed the direct testimony and exhibits of FPL witnesses Manuel B. Miranda, David Hughes, and Clare Gerard in support of the requested evaluation; and

WHEREAS, on June 29, 2020, FPL filed more than 100 confidential line and vegetation contractor flat files with detailed invoice-related information (e.g., crew timesheet and expenses,

documentation of exceptions, adjustments, etc.), and a compilation of confidential data exported from the REDi system providing certain contractor travel information; and

WHEREAS, OPC intervened in this docket and, on December 8, 2020, filed the direct testimony and exhibits of OPC Witness Lane Kollen in support of OPC's position; and

WHEREAS, on January 12, 2021, FPL filed the rebuttal testimony and exhibits of FPL witnesses Manuel B. Miranda, David Hughes, and Clare Gerard; and

WHEREAS, the Parties engaged in significant discovery including the production of documents and interrogatories; and

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this docket; and

WHEREAS, the Parties agree that no FPL Hurricane Dorian storm related costs were imprudently incurred; and

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the other with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to the Parties, regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the Agreement as provided herein and upon approval by the Commission in the public interest;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

FINANCIAL TERMS

1. This Agreement will become effective on the date of the Final Order in Docket No. 20200172-EI (the “Implementation Date”).
2. FPL will treat \$5 million of incremental storm restoration costs as non-incremental costs recognized as base Operations & Maintenance expense.
3. FPL will reduce the overall Reserve Amount (as defined in Section 12 of the 2016 Rate Case Settlement Agreement in Docket No. 20160021-EI) available for amortization by \$5 million.

OTHER PROVISIONS

4. Nothing in the Agreement will have precedential value.
5. The direct testimony and exhibits of FPL witnesses Manuel B. Miranda, David Hughes, and Clare Gerard and OPC Witness Lane Kollen, and the rebuttal testimony and exhibits of FPL witnesses Manuel B. Miranda, David Hughes, and Clare Gerard shall be entered into the record. Where applicable, confidential classification shall be maintained as determined by the Commission, Commission rules or applicable provisions of Chapter 366, Florida Statutes.
6. The provisions of the Agreement are contingent upon approval by the Commission in its entirety without modification. No Party agrees, concedes or waives any position with respect to any of the issues identified in the Prehearing Order and this Agreement does not specifically address any such issue. The Parties will support approval of the Agreement

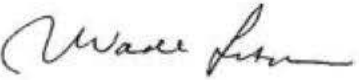
and will not request or support any order, relief, outcome or result in conflict with it. No Party to the Agreement will request, support or seek to impose a change to any provision of the Agreement. Approval of the Agreement in its entirety will resolve all matters and issues in this docket. This docket will be closed effective on the date that the Commission Order approving this Agreement is final, and no Party to the Agreement shall seek appellate review of any order issued in this docket.

7. The Parties agree that approval of the Agreement is in the public interest.
8. This Agreement may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

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