

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.

DOCKET NO. 160021-EI

In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company.

DOCKET NO. 160061-EI

In re: 2016 depreciation and dismantlement study by Florida Power & Light Company.

DOCKET NO. 160062-EI

In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company.

DOCKET NO. 160088-EI
FILED: May 9, 2016

**CITIZENS' MOTION FOR RECONSIDERATION OF ORDER NO. PSC16-0182-PCO-EI
BEFORE THE FULL COMMISSION**

The Citizens of the State of Florida (Citizens), pursuant to Rule 25-22.0376, Florida Administrative Code, hereby file Citizens' Motion for Reconsideration of Order No. PSC 16-0182-PCO-EI (Consolidation Order), issued May 4, 2016, in the above dockets. In the interest of time, the Citizens seek review and reconsideration by the full Commission and as grounds state the following:

1. By Order No. PSC-082-POC-EI (Consolidation Order), Dockets Nos. 160061-EI, Storm Harding Plan, and 160088-EI, Incentive Mechanism, and 160062-EI, Depreciation and Dismantlement, were consolidated into the FPL base rate case, Docket No. 160021-EI. Pursuant to Rule 25-22.0376, Florida Administrative Code, OPC may seek Reconsideration of Non-Final Orders, within 10 days after the issuance of the order by the Commission panel assigned to the proceeding. In the instant case, the full Commission is the panel assigned to these proceedings.

2. In the Motion to Consolidate Dockets, filed April 22, 2016, Commission staff averred that granting the consolidation would not adversely affect any party. Commission staff specifically stated that the Company's testimony in support of the Storm Hardening, Docket No. 160061-EI, and Depreciation and Dismantlement, Docket No. 160062-EI cases were filed on March 15, 2016, which was the same day that the testimony and Minimum Filing Requirements (MFRs) was filed in the base rate case, Docket No. 160021-EI. Commission staff noted that the Company's testimony on the Incentive Mechanism, Docket 160088-EI, was not filed until April 15, 2016, one month later. However, Commission Staff asserted that no parties would be adversely affected by the one month delay in the Incentive Mechanism testimony because ". . . all parties will have approximately three months to review and conduct discovery on one additional issue, the Incentive Mechanism."

3. By Order No. PSC-16-0125-PCO-EI, issued March 25, 2016, Order Establishing Procedure (OEP), the key activities dates were originally established as follows:

- a) Intervenors' testimony and exhibits due July 14, 2016;
- b) Staff's testimony and exhibits, if any, due July 25, 2016;
- c) Rebuttal testimony and exhibits due August 8, 2016;
- d) Discovery Cutoff established as August 12, 2016; and
- e) Briefs due September 12, 2016.

4. Based on discussions at the informal meeting held April 5, 2016, the Parties (FPL, FIPUG, OPC, and Walmart) agreed to modified key activities dates as follows:

- a) Intervenors' testimony and exhibits due July 7, 2016;

- b) Staff's testimony and exhibits, if any, due July 18, 2016;
- c) Rebuttal testimony and exhibits due August 1, 2016;
- d) Discovery Cutoff for Rebuttal testimony established as August 16, 2016; and
- e) Briefs due September 16, 2016.

5. On April 8, 2016, OPC filed its Unopposed Motion to Modify Key Activities Dates and Discovery Timeframe. By Order No. PSC-082-POC-EI, issued May 4, 2016, these key activities dates and timeframes were modified as requested for the base rate case, Docket No. 160021-EI and the Depreciation and Dismantlement, Docket No. 160062-EI

6. In the Consolidation Order, all other key activities dates and timeframes in the base rate case and the Depreciation and Dismantlement case were harmonized with the agreed dates and timeframes as presented by Staff's Motion except for the Storm Hardening Plan, Docket No. 160061-EI, and Incentive Mechanism, Docket No. 160088-EI, where the testimony filing dates were set as follows:

- a) Intervenors' testimony and exhibits due May 31, 2016;
- b) Staff's testimony and exhibits, if any, due June 21, 2016;
- c) Rebuttal testimony and exhibits due July 5, 2016;

7. In filing this motion, OPC is aware that on reconsideration the Commission will limit its review to matters of fact or law that it overlooked or failed to consider. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146

So.2d 889 (Fla. 1962). The instant motion for reconsideration satisfies these criteria as discussed in the paragraphs below.

8. Rule 28-106.108, Florida Administrative Code, states that “If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.” In the instant case, the mistake of fact or law is that the Consolidation Order overlooked Intervenors’ ability to adequately prepare meaningful testimony that is being significantly adversely impacted by the manner in which these matters which have been consolidated for hearing and placed on separate and in some cases accelerated testimony filing tracks. Specifically, Citizens are seriously impacted by the setting of the Intervenors’ testimony dates for the Storm Hardening Plan and Incentive Mechanism, a month and half before all other testimony on all other issues in these dockets and thereby shortening the time period in which to review and conduct discovery on these rate case issues. OPC no longer has “approximately three months to review and conduct discovery” on the Incentive Mechanism. Due to this bifurcation of testimony dates, OPC now has only one and half months on the Incentive Mechanism issue (from the date of filing) and a little over two months on the Storm Hardening Plan issues to review and conduct discovery sufficient to file meaningful testimony. As a practical matter, with respect to the Incentive Mechanism Docket, the impact is more severe given that witness procurement, discovery preparation and logistics have assumed that that docket would proceed on no more accelerated a schedule than the rate case itself. It was never assumed that the last filed matter would have the most expedited testimony deadline with little to no meaningful opportunity to conduct discovery and prepare testimony. Thus, from the effective date of notice

contained in the Consolidation order, the truly effective planning and logistical timeframe to prepare testimony for the Incentive Mechanism aspect is no more than 27 days and the due date follows a national holiday weekend. In both of the “fast-tracked” phases of the rate case, the OPC had already contracted to use witnesses who are also engaged to file testimony on matters in the other two dockets. For the Storm Hardening docket, the matters involved there are especially inextricably tied to the vegetation management issues that are central to the O&M cost levels that are at issue in the base rates case.

9. Further, the Consolidation Order was mistaken in fact and law in that the Consolidation Order overlooked the inextricable interrelationship of the Storm Hardening Plan and Incentive Mechanism issues by creating a bifurcated and partially accelerated testimony filing track. As a practical matter, given the complexity of the Incentive Mechanism issue, notwithstanding all the Storm Hardening issues and their inter-relationship to all the other rate case issues, the schedule does not provide sufficient time for our experts to be reasonably able to conduct discovery, review that discovery and formulate meaningful testimony while working on the concurrent discovery and testimony development for the rate case in general. For example, with respect to the Storm Hardening case, as noted in the Consolidation Order, “. . .the issues and information in the Depreciation and Storm Hardening Studies are so embedded in the rate case MFR calculations that the request to approve these studies is naturally and rationally included in the rate case.” The Consolidation Order also stated that “[t]he Incentive Mechanism should also be consolidated with the rate case since the assets generating the incentive and their associated O&M costs are included in the rate case MFRs.” Since the Storm Hardening and Incentive Mechanism are naturally and rationally embedded with the rate case, bifurcation of the testimony tracks incredibly complicates

the work of the Intervenors and creates an impossible diversion of resources and time in the preparation of the base rate testimony. This confusion and duplication of resources is contrary to the very purposes of consolidation embedded in Rule 28-106.108, Florida Administrative Code.

10. In addition, no Party, or even Commission Staff in its Motion for Consolidation, requested bifurcation of testimony. In fact, Commission Staff in its Motion for Consolidation appears to have relied on all these dockets having the same testimony filing dates as a basis for the Consolidation not being prejudicial. It appears that the Consolidation Order overlooked the fact that all the Parties had agreed on the dates for rate case proceeding and that the parties had come to reasonably rely for logistics, discovery, and general planning purposes on a unified testimony schedule for the single, consolidated hearing.

11. Moreover, no specific issues have been identified to be addressed in Incentive Mechanism and Storm Hardening Plan testimony track. Given the inter-related nature of these issues to all the other issues in the rate case, it is very difficult to determine in the next 27 days how, if at all, to extricate the Incentive Mechanism and Storm Hardening Plan issues from the other issues in the rate case and their impact on those other issues, and to then file cogent and meaningful testimony.

12. Based on the foregoing reasons, Intervenors should be afforded the same timeframe for discovery and testimony filing on all these rate case related issues. The appropriate timeframe should be the testimony timeframe that was agreed to by the Parties:

- a) Intervenors' testimony and exhibits due July 7, 2016;
- b) Staff's testimony and exhibits, if any, due July 18, 2016;

c) Rebuttal testimony and exhibits due August 1, 2016;

13. Citizens' Counsel conferred with the Parties to this matter. AARP, Florida Retail Federation, Florida Industrial Power User Group, and South Florida Hospital and Healthcare Association support the Motion. FPL does not support the Motion. Walmart has no objection to the Motion. Counsel representing Federal Executive Agencies did not respond prior to the filing of the Motion.

WHEREFORE, the Citizens hereby request that the Commission grant their Motion for Reconsideration of Order No. PSC 16-0182-PCO-EI (Consolidation Order), and amend the Consolidation Order in accordance with the testimony filing dates in Docket No. 160021-EI as outlined in the body of this Motion.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy if the foregoing has been furnished by electronic mail on this 9th day of May, 2016, to the following:

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