

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company (FPL) for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction.

Docket No: 20170235-EI

In re: Joint petition to terminate territorial agreement, by Florida Power & Light and the City of Vero Beach.

Docket No. 20170236-EU

Date: October 15, 2018

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE IN OPPOSITION TO CIVIC ASSOCIATION OF INDIAN
RIVER COUNTY, INC.'s MOTION FOR RELIEF**

Pursuant to Rule 28-106.204, Florida Administrative Code, Florida Power & Light Company ("FPL") hereby files this response in opposition to the Civic Association of Indian River County, Inc.'s ("CAIRC") Motion for Relief from Rescheduling of Proceedings in Light of Conflicts with Hearing Dates ("Motion") filed October 12, 2018 and requests the Florida Public Service Commission ("Commission") to deny the request.¹

A. Background

1. FPL filed the two petitions at issue nearly a year ago on November 3, 2017. CAIRC chose not to seek the opportunity to intervene or participate until July 20, 2018 when it filed its protest of the Commission's July 2, 2018 Proposed Agency Action Order.

2. On July 25, 2018, the Commission issued its Order Establishing Procedure, including all relevant dates for discovery and testimony, and scheduling the evidentiary hearing for October 10 and 11, 2018.

¹ Counsel for the City of Vero Beach, the Town of Indian River Shores, and the Indian River County Board of County Commissioners have been contacted regarding this Response and have authorized FPL to represent that they join in FPL's opposition to CAIRC's Motion.

3. On July 27, 2018, CAIRC filed a “Motion for Resetting Hearing Date” in the above-captioned dockets asking to advance the scheduled hearing one day to begin on October 9, 2018 so that CAIRC counsel could attend a family wedding. Motion for Resetting Hearing Date at 1. Parties to the proceeding agreed to accommodate the request.

4. On August 9, 2018, the Commission issued Order No. PSC-2018-0397-PCO-EU granting CAIRC’s request to move the hearing to October 9 and 10, 2018.

5. During the week prior to the scheduled hearing, all parties and Commission Staff advised counsel for CAIRC that it had no questions for the 5 CAIRC witnesses and that pending approval by the Commission, all CAIRC witnesses could be stipulated such that their attendance at the hearing would not be required.

6. On October 8, 2018, as Hurricane Michael, a devastating hurricane², was approaching the mid to eastern portion of the Florida Panhandle through the Gulf of Mexico, the Chairman and Presiding Officer issued Order No. PSC-2018-0496-PCO-EU continuing the evidentiary hearing and rescheduling it for October 18-19, 2018. The Order rendered moot the CAIRC Motion filed on October 8 to again reschedule the hearing dates. Consistent with the Order, the Commission also issued a revised hearing notice resetting the hearing date to October 18 and 19, 2018.

7. On October 12, 2018, CAIRC filed its third Motion to reschedule hearing dates now claiming that the Commission’s rescheduled October 18-19 hearing dates have caused CAIRC’s due process rights to be infringed and that it has been denied sufficient time to complete discovery. Motion at ¶11, 18.

B. Legal Standard

² Hurricane Michael made landfall near Mexico Beach, Florida, on October 10, 2018 as a Category 4 hurricane, with maximum sustained winds of approximately 155 mph.

8. The Florida Supreme Court has previously addressed the extent of due process in the context of administrative hearings, stating, “[t]he extent of procedural due process protections varies with the character of the interest and nature of the proceeding involved.” *Hadley v. Dep’t of Admin.*, 411 So.2d 184, 187 (Fla.1982) (citing *In Interest of D.B.*, 385 So.2d 83, 89 (Fla.1980)). Although the Florida Supreme Court has stated that there is no single test to determine whether the requirements of due process have been met, *see Hadley*, 411 So.2d at 187, “[t]he fundamental requirements of due process are satisfied by reasonable notice and a reasonable opportunity to be heard.” *Fla. Pub. Serv. Comm’n v. Triple “A” Enter., Inc.*, 387 So.2d 940, 943 (Fla.1980) (citing *Ryan v. Ryan*, 277 So.2d 266 (Fla.1973); *Powell v. State of Ala.*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932); *Dohany v. Rogers*, 281 U.S. 362, 50 S.Ct. 299, 74 L.Ed. 904 (1930)).

C. Response to CAIRC Motion

9. CAIRC’s assertion that the Commission has infringed upon its due process rights is entirely without merit. CAIRC continues to have a reasonable opportunity to be heard; in fact, because of the unforeseen delay in the hearing dates caused by the impact of Hurricane Michael, CAIRC’s counsel – whose geographic location was not impacted by the storm – has had an extra week to prepare her case. CAIRC may examine witnesses at the hearing now scheduled for October 18 and 19, 2018, just as she would have done had the hearing taken place on October 9 and 10 as scheduled. Further, based upon the agreements of all other parties and Commission Staff to stipulate all of CAIRC’s witnesses, if the Commission consents to these stipulations, only counsel for CAIRC need be in attendance at the October 18 hearing. The Commission and parties to this proceeding have previously worked to accommodate the scheduling requests of CAIRC’s counsel; absent the direct impact of Hurricane Michael on the Commission and Staff, there is no legitimate reason for further delay, nor has any been raised by CAIRC. While the devastation

caused by Hurricane Michael has impacted the Commission and its Staff, all participants to this proceeding other than CAIRC have made the necessary arrangements to move forward with the hearing in accordance with the revised schedule.

10. CAIRC's assertion that it has been denied an opportunity to conduct discovery is vexing at best. On July 25, 2018, the Commission issued its Order Establishing Procedure for these dockets (Order No. PSC-2018-0370-PCO-EU), which explicitly indicated that the discovery period for the proceeding would close October 2, 2018. Thus, there was nearly 10 full weeks from the date of the Order Establishing Procedure for CAIRC to conduct proper discovery. During those 10 weeks CAIRC did not propound a single interrogatory or request a single document from any party. CAIRC's only effort to take any discovery was to notice one individual – a person who had not filed testimony in this case – for deposition.³

11. Rule 28-106.211, Florida Administrative Code, provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. FPL urges the Commission to exercise such discretion in denying the subject Motion.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission deny CAIRC's Motion.

³ The Prehearing Officer considered and granted two Motions for Protective Order in this case, and as a result no depositions were taken. CAIRC filed its motion to block the deposition of one of its witnesses who had provided pre-filed testimony in this case, based upon asserted scheduling issues. The second motion was filed by the City of Vero Beach to prevent CAIRC from unilaterally identifying as a party representative and deposing a city representative – one who had not filed testimony in this case – while at the same time offering to make available for deposition the City representative who had submitted pre-filed testimony and who will be available for cross-examination in this case.

Respectfully submitted this 15th day of October 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Docket Nos. 20170235-EI and 20170236-EU

I HEREBY CERTIFY that a true and correct copy of FPL's Motion for Extension of Time was served electronically this 15th day of October 2018 to the following:

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