

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for limited proceeding to recover incremental storm restoration costs, by Florida Public Utilities Company.

Docket No. 20180061-EI

Filed: December 07, 2018

**MOTION TO RECONSIDER THE DECISION IN PRE-HEARING ORDER NO. PSC-2018-0567-PHO-EI TO STRIKE ALL OR PART OF ISSUES 7 AND 10**

Comes now the Citizens of Florida, through the Office of Public Counsel (“Citizens” or “OPC”) and, pursuant to Rule 25-22.0376, Florida Administrative Code, requests the full Commission to reconsider the decision of the prehearing officer in Order No. PSC-2018-0567-PHO-EI (“Prehearing Order”) to strike, either in whole or in part, Issues 7 and 10. In support, the Citizens state as follows:

The Prehearing Order contains no explication of the reasoning behind the actions taken on Issues 7 and 10 against the customers’ interests; therefore, the Citizens have resorted to the attached transcript to identify errors, omissions or misapprehensions underlying the decision<sup>1</sup>. See Attachment 1 (Prehearing Order and Transcript of November 26, 2018 Prehearing Conference).

**The Full Commission should reconsider the rewording of Issue 7.**

The issues in this case involve the proper amounts of storm restoration costs that FPUC can recover in a surcharge. The Citizens have challenged FPUC’s claim for cost recovery on several bases. A principal reason is that FPUC sought recovery for workers whose averaged hourly

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<sup>1</sup> Given that the Prehearing Order contains no explication of the rationale behind the action complained about herein, the traditional threshold standard, as set forth in Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974), for success in achieving reconsideration should not apply and would likely be reversible error if applied. The Citizens urge that the Commission apply a *de novo* review to avoid the need for post-hearing relief. Nevertheless, the OPC will endeavor to demonstrate where the Commission erred, overlooked or failed to consider or accurately apprehend facts and law in striking issues in whole or in part.

rate for traveling to Florida is \$509/hour. This is a fact that cannot be disputed. Attachment 2 contains the actual PAR Electrical Contractors, Inc. (“PAR”) (the vendor) invoice that shows that FPUC was charged and paid \$309,575 for PAR doing nothing more than traveling. Included with the invoice in the same attachment is FPUC’s response to OPC’s Interrogatory Number 4-68, which shows the \$509/hour rate was actually negotiated by Florida Power & Light Company (“FPL”) and it reveals that FPUC played no role in negotiating or otherwise determining the basis for the rate. The Citizens have directly raised this specific circumstance for a distinct determination by the Commission.

The customers are entitled to know whether the Florida Public Service Commission supports them reimbursing FPUC for drive time at \$509/hour per man on an averaged basis – regardless of the hierarchical levels of employee skill – when other vendors are doing the same work for FPUC for an average of \$106/hour. Furthermore, the \$309,575 for just travelling is a material component of the overall request by the Company and the customers do not deserve to have adjudication of that amount buried or swept under the rug or melded into a reasonable rate by clever issue wording.

Prior to hearing, the Citizens had asked that the Issue No. 7 be phrased as set out below:

**ISSUE 7:** In connection with the restoration service associated with electric power outages affecting customers as a result of Hurricanes Matthew and Irma, were the contractor rates *of up to \$509 per hour* that FPUC paid for storm-recovery activities reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

(Emphasis supplied).

This language was removed by the presiding officer, without explanation given in the Prehearing Order. The Citizens seek the full Commission to reconsider this action.

In successfully urging the outcome contained in the Prehearing Order, FPUC complained about the issue wording and at the prehearing conference specifically objected to the ultimately stricken phrase (almost as an evidentiary objection such as would be found in Section 90.403, Fla.Stat.<sup>2</sup>) on the basis that it was “clearly designed to be inflammatory...” To the contrary, the OPC’s wording was only designed to be purely *factual* as is shown by the invoice and interrogatory explanation. Had they observed the prehearing, Shakespeare and Poe themselves could not have found more meaning in such over-protestation found in the Company’s self-inflicted characterization of “inflammatory.” Even so, the presiding officer seemed to be persuaded by the inapposite evidentiary standard that is used to exclude evidence that has inflammatory or prejudicial impact on the trier of fact that outweighs its probative value. This sentiment was expressed in terms of “bias” as shown in the relevant excerpts from the hearing found at the hearing transcript (TR) pages 17-18:

COMMISSIONER BROWN: I -- I do believe it does provide a little bit of bias in the wording.

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I think having language like this puts a bit of a skew to the Commission in an impartial technical, evidentiary hearing. I haven't seen anything like this –

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COMMISSIONER BROWN: ...when you have a final issue list, it has to be impartial. And it has to be able to convey a sentiment that will provide balance to the proceedings.

I think the way that it is worded is -- and --and Ms. Keating could probably offer the opposite, a minimum. So, you know, to that -- to that effect, I think that is skewed<sup>3</sup>.

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<sup>2</sup> Section 90. 403, Fla Stat. reads: Exclusion on grounds of prejudice or confusion.— Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. This section shall not be construed to mean that evidence of the existence of available third-party benefits is inadmissible.

<sup>3</sup> Given that the burden of proof is on the utility, the Citizens would welcome an insertion of a minimum number in the issue as the Davis H. Elliot Construction Company, Inc.’s average rate of \$106 provides a clear contrast between the two vendors. The Commission and customers alike will not find fault in a low rate, assuming the work is honestly performed and billed.

COMMISSIONER BROWN: ... I think if we took out "... of up to \$509 an hour," I think you can still make the exact same arguments within that issue and you would not be harmed, by any means, but I think phrasing it with including a maximum amount for this particular case may set a -- a dangerous bias towards the Commission.

In apparently basing the ruling on a rationale that inclusion of the factual basis for the issue constituted "bias" toward FPUC and the Commission (?), the Commission has overlooked that it has placed itself in the precarious position of expressing bias in *favor of* FPUC and *against* the customers insofar as it has expressed sympathy that the \$509/hour rate for just moving crews toward Florida somehow paints FPUC in a bad light and prejudices their case. While not seeking recusal through this motion, Citizens are expressing a concern that the Commission does not and did not comprehend that applying an evidentiary standard to evaluating the appropriateness of a purely factual issue. This exposes the Commission to a perception of bias in protecting the utility (and perhaps the Commission) from embarrassingly excessive hourly rates should the Commission somehow want to endorse such a grotesque profiteering rate.

The factual basis of the issue is found in the proper phrasing of the reason the issue is being raised at all. This level of hourly rate for doing nothing more than driving is a matter of great public concern. Accordingly, the Citizens ask the Commission to publicly either bless or reject the rate. Even the presiding officer acknowledged that the rate may well constitute price gouging or profiteering.<sup>4</sup> TR 27.

Protecting the Company from what it bluntly acknowledges -- by using the term "inflammatory" in its argument -- is an embarrassingly high rate is improper and if it stands should be reviewed by a court. The Citizens ask that the full Commission vote to reinstate the issue and agree to

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<sup>4</sup> Citizens would concede that it might have been inflammatory had the issue been worded using the phrase "... a price gouging rate of up to \$509/hour..."

make an express determination of the rate in question. It is irrelevant whether the Commission can exercise direct control over the vendor's rates. Yet, it is without question that the Commission has the authority and the obligation to disallow imprudent costs – especially those which shock the conscience.

**The Full Commission should reconsider the striking of Issue 10.**

Issue 10 – raised by the OPC at the first issue identification meeting on November 1, 2018, was submitted in revised fashion in the Citizens' November 13, 2018 Prehearing Statement with the following wording (with emphasis supplied in this motion):

ISSUE 10: As a result of the evidence in this case, what action, *if any*, should the Florida Public Service Commission (“Commission”) take, *in the future*, to ensure contractor rates charged to utilities are reasonable and prudent?

Despite the issue phrasing by the party raising it, the Staff apparently presented the issue as preliminarily worded for the presiding officer's consideration and in the draft Prehearing Order thusly:

ISSUE 10: As a result of the evidence in this case, what action should the Florida Public Service Commission take to ensure contractor rates charged to utilities are reasonable and prudent?

Issue 10 was summarily removed by the presiding officer with the one word “*stricken*” at page 9 of the Prehearing Order. No explanation or legal basis was provided in the Prehearing Order. Omission of the phrases “if any” and “in the future” created a misapprehension of the basis for the OPC's proposal of the issue. The Citizens were not and are not seeking a determination in this docket related to other utilities or the costs and rates charged by other vendors to other utilities. Rather, the issue was a decision point that the Commission could consider – if at all – in asking that its staff pursue other industry-wide relief or inquiry based on facts emanating from this case. This is not unlike what happened in the aftermath of the 2004 and 2005 hurricane cost recovery

dockets. The use of the phrase “in the future” made it abundantly clear that no “generic” or industry-wide outcome would be adjudicated in this docket.

Attachment 3 (Staff Recommendation in the 2007 storm cost recovery rulemaking Docket No. 20070011-EI), at page 6, contains a crystal clear example of exactly what happened after the company-specific decisions following the four cases emanating from the 2004 and 2005 seasons where they state:

New paragraph 25-6.0143(1)(f) contains a non-exhaustive list of the types of costs prohibited from being charged to the storm damage subaccount. ***This list of exceptions comes directly from the Commission’s decisions in the 2004 and 2005 hurricane cost recovery dockets.***

(Emphasis supplied).

The Citizens are asking that the Commission at the least consider any aspect of the evidence it learns about in this docket for referral to staff to propose action in a future proceeding – which could well be a rulemaking amendment proceeding. Unfortunately, with the language that was “teed-up” in the draft order, the Commission may not have adequately considered this aspect of the issue. In fact, the Citizens made a similar point in the statement of position as follows:

The Commission should take steps to compare the rates charged by Par Electrical Contractors and other vendors to other Irma-affected utilities and to consider rulemaking to address issues of price gouging and profiteering that unfairly impact Florida customers and the utilities who serve them. Since Commission policy is generally required to be embodied in rules pursuant to Section 120.54(1), Florida Statutes, and the only time the Commission can adjudicate and consider problems is in the specific storm dockets, the Commission must use this opportunity to address amendments to its policy found generally in Rule 25-6.0143, Florida Administrative Code, as it did in the aftermath of the 2004-2005 storm dockets when it adopted the current rule.

This argument was re-iterated at the prehearing conference; however, the discussion from the presiding officer and staff seemed to completely misapprehend the nature of what the Citizens were asking. It appears that the Commissioner's focus was on the recently completed proceedings in Docket No. 20170215-EU, Review of Electric Utility Hurricane Preparedness and Restoration Actions. That proceeding was an informal one, conducted on May 3, 2018 before any of the invoices at issue in this case or other storm cost recovery dockets were even filed in discovery responses. The discussion relative to this concept ensued along these lines at TR pages 23-25:

COMMISSIONER BROWN: And in looking back at the 2004-'05 seasons -- I mean, we had a hurricane, a generic hurricane docket, when all parties and re- -- interested persons were allowed an opportunity to raise issues and provide public testimony, public comment. And Public Counsel was a part of that process, a very integral part of that process. I don't know why that particular issue was not included in the process. We took forensic data. We took evidence. We have a fully-developed report. Why in the world would this come up right now in this particular docket when this is a generic issue that would have affected the entire industry?

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COMMISSIONER BROWN: I -- I would have like to have seen this a lot earlier, post-Hurricane Irma or Matthew, obviously.

It appears that there was a belief in hindsight that this aspect of the problems arising from this case could have or should have been aired out in that non-adjudicatory docket. This would clearly be error and a misapprehension of the obligation to regulate in the public interest where substantive issues arise.

The Commission and its staff also seemed to work together to formulate an additional erroneous basis to strike the issue in that they agreed among themselves that the Commission does not have jurisdiction over vendor rates as set forth in the discussion that is excerpted below at TR pages 26-28:

MS. HELTON: So, I'm a little bit con- --quite frankly, confused about this issue. And if it were to stay, I'm not sure how staff could address that, given the fact that I believe the Commission does not have jurisdiction over contractor rates, but --

COMMISSIONER BROWN: So, we're -- we are simpatico. We -- I -- I agree with you on that. I'm just trying to seek some guidance here.

COMMISSIONER BROWN: And I would like to develop the conversation a little bit more thoroughly, even given the limited scope of the Commission's jurisdiction over the specific price gouging and profiteering because I think it is imperative and important for consumers.

COMMISSIONER BROWN: And if not -- if it doesn't work within our jurisdiction, let's -- let's find another avenue to at least express our thoughts. Okay?

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COMMISSIONER BROWN: Thank you. So, we're going to remove Issue 10.

It appears that a mistaken notion manifested itself in the ultimate ruling regarding whether the Commission can regulate the commercial transactions between the utilities and vendors and whether this notion overrides the Commission's authority to exercise the police powers given to them by the Legislature to disallow costs based on imprudent decision making. This is clearly a fundamentally mistaken notion and, if maintained, would constitute an abdication of the Commission's obligation to regulate in the public interest. Like it did in the original storm cost recovery rule, the Commission can and should place limits on the type of costs that the utilities can recover. Only by placing such limits will the agency discourage runaway price gouging and profiteering. Utilities can pay whatever they want; however, customers cannot be compelled to reimburse them absent the Commission's acquiescence.

For this reason, the Citizens ask the Commission to keep open its options to regulate in the public interests and protect customers from price-gouging and to put each utility in each storm cost recovery docket on notice, including FPUC, that it is taking evidence for use in future proceedings if it finds abuse has occurred. We ask that the striking of Issue 10 be reversed and the issue be reinstated.



Counsel for OPC has conferred with counsel for Florida Public Utilities Company who opposes this motion.

WHEREFORE, the Citizens hereby request the Commission grant this Motion for Reconsideration of Order No. PSC-2018-0567-PHO-EI and enter an Order for reconsideration by the entire Commission of the actions taken on Issues 7 and 10.

Respectfully Submitted,

/s/Charles J. Rehwinkel  
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 7<sup>th</sup> Day of December, 2018, to the following:

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/s/ Charles J. Rehwinkel  
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# **ATTACHMENT 1**

Prehearing Order No. PSC-2018-0567-PHO-EI and  
November 26, 2018 Prehearing Conference

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding to recover incremental storm restoration costs, by Florida Public Utilities Company.

DOCKET NO. 20180061-EI  
ORDER NO. PSC-2018-0567-PHO-EI  
ISSUED: December 4, 2018

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on November 26, 2018, in Tallahassee, Florida, before Commissioner Julie I. Brown, as Prehearing Officer.

APPEARANCES:

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On behalf of Florida Public Utilities Company.

J.R. KELLY, VIRGINIA PONDER, CHARLES REHWINKEL, ESQUIRES, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399  
On behalf of the Citizens of the State of Florida (OPC).

RACHAEL DZIECHCIARZ, ASHLEY WEISENFELD, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (Staff).

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Florida Public Service Commission General Counsel.

**PREHEARING ORDER**

**I. CASE BACKGROUND**

On February 28, 2018, pursuant to Sections 366.076(1) and 366.041, Florida Statutes (F.S.), and Rules 25-6.0143 and 25-6.0431, Florida Administrative Code (F.A.C.), Florida Public Utilities Company (FPUC) filed a petition for limited proceeding to recover incremental storm restoration costs with the Florida Public Service Commission (Commission). The Office of Public Counsel (OPC) filed a notice of intervention on March 22, 2018, which was

acknowledged by Order No. PSC-2018-0173-PCO, issued on April 3, 2018. This docket is scheduled for final hearing on December 11-12, 2018.

## **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case. Issues for hearing were established by separate order.

## **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter, and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

## **IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

While it is the policy of this Commission for all Commission hearings be open to the public at all times, the Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary Staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### **V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES**

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand, which shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

**VI. ORDER OF WITNESSES**

Each witness whose name is followed by an asterisk (\*) has been stipulated to by the parties.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Michael Cassel	FPUC	1-19
Helmuth W. Schultz, III	OPC	1-20
Debra Dobiac*	STAFF	1-20
<u>Rebuttal</u>		
Michael Cassel	FPUC	1-19
P. Mark Cutshaw	FPUC	7-9

**VII. BASIC POSITIONS**

**FPUC:** FPUC's calculation of its incremental storm costs is correct, and FPUC is entitled to recover the full amount requested. Two major hurricanes, Matthew and Irma, as well as significant, named and unnamed tropical systems, produced significant damage to FPUC's system. FPUC took proactive measures to prepare for these storms in an effort to minimize the impact to its customers, and thereafter, undertook reasonable, prudent, and safe measures to ensure that the impacts of these storms were addressed in an expedited and safe manner. The storm preparations and subsequent recovery efforts required complex logistical efforts, particularly given the unique geography of FPUC's two service territories. Pre-storm activities included not only locating appropriate mutual aid and contract resources, but staging and logistics necessary to ensure that appropriate resources were staged in a safe location but within proximity necessary to ensure a quick, post-storm response. The Company's Northeast Division took a near-direct hit from Hurricane Matthew, resulting in an outage for 100% of the Company's service territory on Amelia Island. Hurricane Irma arrived just a few weeks following Hurricane Harvey and, as a result, recovery resources available to the Company following that event were uniquely constrained. In each instance, FPUC nonetheless took all reasonable and prudent actions necessary to ensure that it was able to respond appropriately and safely and expeditiously restore service. Other significant weather events, while not rising to the level of hurricanes, nonetheless required coordination and response of the Company in order to ensure the safe restoration of service to its customers in a timely manner. FPUC was, in fact, able

to achieve 100% restoration of service to its Amelia Island customers within 48 hours following Hurricane Matthew, and restoration of service to customers following Hurricane Irma within 101 hours. As such, the costs that the Company incurred in pursuit of these efforts were reasonable and prudent and should be allowed for recovery by the Company without adjustment. The adjustments proposed by OPC's witness have no basis in the Rule and should be rejected outright.

Upon determination by the Commission of the appropriate amount of storm costs to be recovered by the Company, the Commission should determine that the Company's storm reserve should be replenished to a level of \$1.5 million, which is the approximate level of the Company's reserve prior to Hurricane Irma.

**OPC:** Florida Public Utilities Company's ("FPUC" or "Company") petition of February 28, 2018, seeks recovery of \$2,280,815 to pay for alleged costs resulting from certain storms and to restore the Company's storm reserve to \$1,500,000. On June 12, 2018, the Florida Public Service Commission ("PSC") completed an audit of FPUC's docket and identified two findings that totaled a reduction to the Company's request of \$117,500. On August 20, 2018, FPUC filed direct testimony agreeing with PSC's adjustments and reducing the amount of its request to \$2,163,230.

OPC has reviewed the pre-filed testimony and supporting documentation filed by FPUC to support its direct case. Based on this comprehensive review, OPC, through its expert consultant, has determined that, based on the improper allocation of costs between expense and capital and grossly excessive contractor rates and standby and mobilization time, FPUC's storm restoration and reserve replenishment request should be reduced by at least \$1,475,189.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

## **VIII. ISSUES AND POSITIONS**

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

### **POSITIONS**

**FPUC:** FPUC's calculations of costs for this proceeding are based upon the appropriate baseline and calculated in accordance with Rule 25-6.0143, F.A.C. The methodology utilized is the Incremental Cost and Capitalization Methodology, whereby costs charged to cover storm-related damages exclude those costs that normally would be charged to non-cost recovery clause operating expenses in the



absence of a storm, while capital expenditures for the removal, retirement and replacement of damaged facilities charged to cover storm-related damages exclude the normal cost for the removal, retirement and replacement of those facilities in the absence of a storm. In terms of payroll, the Company assigned all overtime incurred during the storm restoration efforts to the storm account. While the Company does not agree that its Minimum Filing Requirements (MFRs) from the 2014 rate case are the appropriate baseline for any category of cost at issue, the Company cross-checked the regular and overtime pay included in those MFRs, excluding the additional pay increases and positions requested, to ensure that the payroll costs recorded to the storm account exceeded the payroll costs contemplated in the projected 2015 MFRs. (Cassel)

**OPC:** The minimum filing requirements filed by Florida Public Utilities Company in Docket No. 20140025-EI.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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 should be approved?**

#### **POSITIONS**

**FPUC:** Yes. FPUC's incremental payroll expense in the amount of \$192,490 was reasonably and prudently incurred in storm recovery activities and should be approved for recovery. (Cassel)

**OPC:** No. The amount that should be approved is no more than \$38,011. In addition, the proper capitalization rate, which includes labor, should be the amount in Exhibit No. HWS-2, Schedule B, Page 2 of 2, Helmuth Schultz' direct testimony.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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?**

#### **POSITIONS**

**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. (Cassel)

**OPC:** No, the "extra compensation" is not allowable compensation under Rule 21-6.0143, Florida Administrative Code.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**ISSUE 4:** *Stricken.*

**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?**

**POSITIONS**

**FPUC:** Yes, the benefit costs in the amount of \$38,424 were reasonably and prudently incurred by FPUC in storm-recovery activities and should be approved for recovery. (Cassel)

**OPC:** No. The amount that should be approved is no more than \$9,863. In addition, the proper capitalization rate, which includes benefit costs, should be the amount in Exhibit No. HWS-2, Schedule B, Page 2 of 2, Helmuth Schultz' direct testimony.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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?**

**POSITIONS**

**FPUC:** Yes, the overhead costs in the amount of \$22,856 were reasonably and prudently incurred by FPUC in storm-recovery activities and should be approved for recovery. (Cassel)

**OPC:** No. The amount that should be approved is no more than \$54,920. In addition, the proper capitalization rate, which includes overhead costs, should be the amount in Exhibit No. HWS-2, Schedule B, Page 2 of 2, Helmuth Schultz' direct testimony.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

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

**POSITIONS**

**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. (Cassel, Cutshaw)

**OPC:** No. A reduction of contractor costs of at least \$185,039 for a grossly excessive hourly rate charged by Par Electrical Contractors should be made.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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?**

**POSITIONS**

**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. (Cassel, Cutshaw)

**OPC:** No. A reduction to contractor costs of at least \$353,795 for an excessive amount of standby time should be made.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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?

**POSITIONS**

**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. (Cassel, Cutshaw)

**OPC:** No. FPUC's request for contractor costs related to recapitalization of contractor costs should be reduced by at least \$300,891. Additionally, FPUC's request for contractor costs should be reduced by \$170,019 for the reclassified costs from payroll benefits and overheads.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**ISSUE 10:** *Stricken.*

**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?

**POSITIONS**

**FPUC:** FPUC agrees that its initial request for recovery of line clearing costs in the amount of line clearing costs in the amount of \$261,431 should be adjusted downward by \$163,700. 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. (Cassel)

**OPC:** No. A reduction of at least \$163,700 to FPUC's request for line clearing cost recovery should be made.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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?

**POSITIONS**

**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. (Cassel)

**OPC:** The Citizens have not identified any issues related to vehicle and fuel costs, but the Commission should satisfy itself that FPUC has carried its burden to demonstrate that such costs were reasonable and prudent in the way they were incurred and in amount.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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?

**POSITIONS**

**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. (Cassel)

**OPC:** No. A reduction of at least \$32,800 to FPUC's request for materials and supplies cost recovery should be made.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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?

**POSITIONS**

**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. (Cassel)

**OPC:** No. More information is required from FPUC to determine what adjustments, if any, should be made. The Commission should satisfy itself that FPUC has carried its burden to demonstrate that such costs were reasonable and prudent in the way they were incurred and in amount.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**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?

**POSITIONS**

**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. (Cassel)

**OPC:** No. The request for \$67,548 should be disallowed.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

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

**POSITIONS**

**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 \$661,674. (Cassel)

**OPC:** No more than \$688,037 should be included in storm recovery to replenish the level of FPUC's storm reserve.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

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

**POSITIONS**

**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.

**OPC:** This is a fallout issue that would be decided by a sum of no more than the amounts decided on the individual issues.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

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

**POSITIONS**

**FPUC:** Yes, FPUC's tariff represents the appropriate calculation of the amount necessary to recover the storm-related costs that were appropriately incurred by FPUC and to replenish the Company's storm reserve to the appropriate level. (Cassel)

**OPC:** No, FPUC's proposed tariffs should be recalculated in accordance with Witness Schultz's recommended adjustments.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

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

**POSITIONS**

**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. (Cassel)

**OPC:** The over recovery should be handled as a one-time adjustment to customers' bills or, in the alternative, a one-time adjustment to the fuel clause for the remainder of 2019.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**ISSUE 20: Should the docket be closed?**

**POSITIONS**

**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.

**OPC:** This docket should remain open until FPUC's storm costs are finalized and any over or under-recovery has been determined.

**STAFF:** Staff has no position pending evidence adduced at the hearing.

**IX. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
			<u>Direct</u>
Michael Cassel	FPUC	MC-1	Storm Cost Recovery
Helmuth W. Schultz	OPC	HWS-1	Qualifications of Helmuth W. Schultz
Helmuth W. Schultz	OPC	HWS-2	Storm Restoration Costs Summary



<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Helmuth W. Schultz	OPC	HWS-3	Florida Public Utilities Company's summary provided in response to Staff Interrogatory No. 2-6
Debra Dobiac	STAFF	DMD-1	Auditor's Report – Limited Scope

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

**X. PROPOSED STIPULATIONS**

There are no proposed stipulations at this time.

**XI. PENDING MOTIONS**

There are no pending motions at this time.

**XII. PENDING CONFIDENTIALITY MATTERS**

There are no pending confidentiality matters at this time.

**XIII. POST-HEARING PROCEDURES**

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; if a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

**XIV. RULINGS**

Opening statements, if any, shall not exceed five minutes per party.

It is therefore, hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 4th day of December, 2018.



JULIE I. BROWN  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code.

ORDER NO. PSC-2018-0567-PHO-EI

DOCKET NO. 20180061-EI

PAGE 16

Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

FILED 12/5/2018  
DOCUMENT NO. 07388-2018  
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180061-EI

PETITION FOR LIMITED  
PROCEEDING TO RECOVER  
INCREMENTAL STORM  
RESTORATION COSTS, BY  
FLORIDA PUBLIC UTILITIES  
COMPANY.

\_\_\_\_\_ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: COMMISSIONER JULIE I. BROWN  
PREHEARING OFFICER

DATE: Monday, November 26, 2018

TIME: Commenced: 1:30 p.m.  
Concluded: 2:00 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

1 APPEARANCES:

2 BETH KEATING and GREGORY MUNSON ESQUIRES,  
3 Gunster Law Firm, 215 South Monroe Street, Suite 601,  
4 Tallahassee, Florida 32301-1839, appearing on behalf of  
5 Florida Public Utilities Company.

6 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,  
7 DEPUTY PUBLIC COUNSEL; and VIRGINIA PONDER, ESQUIRE,  
8 Office of Public Counsel, c/o the Florida Legislature,  
9 111 W. Madison Street, Room 812, Tallahassee, Florida  
10 32399-1400, appearing on behalf of the Citizens of the  
11 State of Florida.

12 RACHEL DZIECHCIARZ and ASHLEY WEISENFELD,  
13 ESQUIRES, FPSC General Counsel's Office, 2540 Shumard  
14 Oak Boulevard, Tallahassee, Florida 32399-0850,  
15 appearing on behalf of the Florida Public Service  
16 Commission Staff.

17 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE  
18 HELTON, DEPUTY GENERAL COUNSEL; Florida Public Service  
19 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
20 Florida 32399-0850, adviser to the Florida Public  
21 Service Commission.

22

23

24

25

1 P R O C E E D I N G S

2 COMMISSIONER BROWN: Good afternoon, everyone.

3 THE AUDIENCE: Good afternoon.

4 COMMISSIONER BROWN: Hope you all had a  
5 wonderful holiday week with your families and  
6 friends. And it's nice to see you here today.

7 Today is November 26th, and the time is 1:30.

8 We're here today to hear the prehearing conference  
9 in the FPUC storm recovery docket.

10 And at this time, I would like to ask staff to  
11 call -- or read the notice, please.

12 MS. DZIECHCIARZ: Thank you.

13 By notice issued November 15th, 2018, this  
14 time and place was set for a prehearing conference  
15 in Docket No. 20180061-EI.

16 The purpose of the prehearing is set out in  
17 the notice.

18 COMMISSIONER BROWN: Thank you,  
19 Ms. Dziechciarz.

20 And at this time, we'll take appearances,  
21 starting with FPUC.

22 MS. KEATING: Good afternoon, Commissioner.  
23 Beth Keating with the Gunster Law Firm here today  
24 on behalf of FPUC. I'd also like to enter an  
25 appearance for Greg Munson, also with the Gunster

1 Law Firm.

2 Also with me today is Mike Cassel with the  
3 company.

4 COMMISSIONER BROWN: Thank you.

5 OPC.

6 MS. PONDER: Good afternoon. Virginia Ponder  
7 with the Office of Public Counsel. I'd also like  
8 to make an appearance for Charles Rehwinkel and  
9 J.R. Kelly, the Public Counsel.

10 COMMISSIONER BROWN: Thank you.

11 Staff.

12 MS. DZIECHCIARZ: And I'd like to make an  
13 appearance for myself, Rachel Dziechciarz, and  
14 Ashley Weisenfeld.

15 MS. HELTON: And Mary Anne Helton. I'm here  
16 as your adviser. I'd also like to enter an  
17 appearance for your general counsel, Keith Hetrick.

18 COMMISSIONER BROWN: Thank you.

19 And we will go to preliminary matters. Staff,  
20 is there -- are there any preliminary matters?

21 MS. DZIECHCIARZ: Yes, thank you.

22 At present, there is disagreement about  
23 certain issues, such as the inclusion of Issue  
24 Nos. 4 and 10, and the wording for Issue No. 7.  
25 Staff recommends we address these in Section 8 of

1 the prehearing order.

2 COMMISSIONER BROWN: We'll go ahead and do  
3 that.

4 MS. DZIECHCIARZ: Okay. And staff would also  
5 like to advise the parties that we no longer take  
6 issue with the use of "reasonable and prudent"  
7 for -- as the standard for the issues in this  
8 particular docket due to the fact that the issues  
9 are related to actual costs. With the exception of  
10 Issues 4, 7, and 10, staff, FPUC, and OPC are now  
11 in agreement on the issue wording.

12 COMMISSIONER BROWN: Thank you.

13 Do any of the parties have any other  
14 preliminary matters to address? Seeing none -- all  
15 right.

16 We're going to go through the draft prehearing  
17 order at this time. As you know, I will identify  
18 sections. And if the parties have any changes or  
19 corrections to make, please go ahead and do so and  
20 speak up when I notify the sections.

21 Starting with Section 1: The case  
22 background -- any changes?

23 Seeing none, moving on to Section 2: The  
24 conduct of proceedings.

25 Seeing none, Section 3: Jurisdiction.



1           Seeing none, Section 4: Procedure for  
2 handling confidential information.

3           Staff.

4           MS. DZIECHCIARZ: When confidential  
5 information is used in the hearing, parties must  
6 have copies for the Commissioners, necessary staff,  
7 and the court reporter in red envelopes clearly  
8 marked with the nature of the contents.

9           Any party wishing to examine the confidential  
10 material that is not subject to an order granting  
11 confidentiality shall be provided a copy in the  
12 same fashion as provided to the Commissioners,  
13 subject to execution of any appropriate --  
14 appropriate protective agreement with the owner of  
15 the material.

16           COMMISSIONER BROWN: Okay. Thank you.

17           Any questions on that?

18           Seeing none, we'll move to Section 5, the  
19 prefiled testimony and exhibits and witnesses.

20           MS. DZIECHCIARZ: Thank you, Commissioner.

21           If witnesses are presented, staff will suggest  
22 that the witness summary testimony be no longer  
23 than three minutes.

24           COMMISSIONER BROWN: Are -- are the par- --  
25 parties okay with that time frame? Yes? Thank

1           you.   Okay.   Thank you.

2                   Moving on to Section 6:   Order of witnesses.  
3           Are there any witnesses that can be stipulated at  
4           this time?   Starting with Ms. Keating.

5                   MS. KEATING:   I believe that we've agreed to  
6           the stipulation of staff's witness, Ms. Dobiac.

7                   COMMISSIONER BROWN:   Is that correct?

8                   MS. PONDER:   As well as OPC has, yes.

9                   COMMISSIONER BROWN:   Okay.   Anyone else?

10                   MS. PONDER:   No.

11                   COMMISSIONER BROWN:   Thank you.

12                   MS. KEATING:   Not at this time.

13                   COMMISSIONER BROWN:   Okay.   Staff.

14                   MS. DZIECHCIARZ:   Staff has also -- we do have  
15           the stipulation of Ms. Dobiac as well as her  
16           exhibit, DMD-1.   I would also like to note that her  
17           name was inadvertently omitted from the witness and  
18           exhibit list in the prehearing order and we will  
19           correct that for the final prehearing order.

20                   COMMISSIONER BROWN:   Thank you.

21                   MS. DZIECHCIARZ:   And staff will reach out to  
22           the parties to determine if other witnesses can be  
23           stipulated to.   And any witnesses who may be  
24           stipulated to may be suggested by the parties at  
25           this time -- which we already went through.   Sorry.

1           We will also confirm with each Commissioner  
2           that any identified witness can be excused -- if  
3           Commissioners don't have questions for the  
4           witnesses they may be used excused from the hearing  
5           and his or her testimony and exhibits entered into  
6           the record as though read.

7           COMMISSIONER BROWN: All right. Thank you.  
8           Okay. Moving on to basic positions,  
9           Section 7. Any changes?

10           Seeing none, now, let's get into Section 8,  
11           the issues and positions. Other than Issues 4,  
12           10 -- 4, 7, and 10, are there any other issues  
13           or -- that need to be addressed or changed?

14           MS. KEATING: I hate to go back on what staff  
15           just said, but -- but if I could just give you a  
16           little bit of background on -- on the issues that  
17           arose with regard to what Ms. Dziechciarz mentioned  
18           with regard to "reasonable and prudent," and just  
19           say that the company still does have a level of  
20           concern with regard to the change from the way the  
21           issues have been worded in prior cases as opposed  
22           to now.

23           Let me be clear, we don't disagree that  
24           "reasonable and prudent" is the standard that's  
25           included in the rule. Our -- our greatest concern

1 is really -- you had a matter that was set for  
2 hearing earlier in the year that reflected a  
3 prehearing order that had the wording "appropriate"  
4 in it. And now, we're moving --

5 COMMISSIONER BROWN: Was it -- was it a storm-  
6 related ta- -- docket?

7 MS. KEATING: It was. It was the FP&L storm  
8 proceeding. And the issues in that proceeding were  
9 worded using the word "appropriate" as opposed to  
10 "reasonable and prudent."

11 And -- and our greatest concern is really  
12 that, without some level of explanation, it could  
13 be perceived, particularly by people looking back  
14 in time, that a different standard was --

15 COMMISSIONER BROWN: Absolutely.

16 MS. KEATING: -- applied --

17 COMMISSIONER BROWN: Could not agree more.

18 MS. KEATING: -- from one company to the next.  
19 So, we would just ask that, you know, some  
20 consideration be given to explaining that  
21 difference --

22 COMMISSIONER BROWN: I appreciate --

23 MS. KEATING: -- at some point.

24 COMMISSIONER BROWN: -- your sentiment, and  
25 I'm glad that you raised it. And I've talked about

1 this with my own staff as well as our staff.

2 And so, I do believe in being consistent. And  
3 I do believe in the standard of reasonable and  
4 prudent as the appropriate standard in guiding and  
5 governing cost recovery. I think -- I don't know  
6 how the word "appropriate" got in there. We'll  
7 take a look at that as well, moving forward.

8 I think that "reasonable and prudent" is the  
9 governing platform here, so -- and I would also  
10 caution the parties, Public Counsel, too, moving  
11 forward in the other storm cost recovery dockets  
12 to -- to be mindful of the fact that that is our  
13 guiding principle here.

14 Thank you.

15 MS. KEATING: Thank you, Commissioner.

16 COMMISSIONER BROWN: All right. So, with  
17 regard to the issues and positions on any other  
18 issues, four, seven, ten -- any changes before we  
19 address the arguments on those issues?

20 MS. PONDER: Yes, Issue 17 was -- was added  
21 and --

22 COMMISSIONER BROWN: If you don't mind, a  
23 little -- thank you.

24 MS. PONDER: Oh, my apologies.

25 On Issue 17, OPC would just like -- that was

1 added a little bit after the prehearing statements  
2 were filed. And OPC's position is that this is a  
3 fall-out issue that would be decided by a sum of no  
4 more than the amounts decided on the individual  
5 issues, so --

6 COMMISSIONER BROWN: Thank you.

7 MS. PONDER: That would be our position there.

8 COMMISSIONER BROWN: Thank you for your  
9 statement here as well.

10 And Issue 20, obviously, close the docket. I  
11 think that was an issue you took no position.

12 You're --

13 MS. PONDER: Right.

14 COMMISSIONER BROWN: Okay. So, let's dive  
15 into the issues. This is the time for you all to  
16 articulate your arguments on -- let's group four  
17 and ten, first, together. And then, I guess,  
18 the -- Issue 7 is the issue that you have with  
19 regard to wording.

20 I have -- I am very familiar with all three  
21 issues. So, whoever would like to address this  
22 here today -- we'll start with four.

23 MS. KEATING: Okay. And do you want us --  
24 just so I'm clear, Commissioner, do you want us to  
25 go issue by issue or stop at four and have

1 discussion on four first?

2 COMMISSIONER BROWN: We're fine with all other  
3 issues right now. So, I think you just go four,  
4 seven, ten, if you'd like.

5 MS. KEATING: Okay. Well, Commissioner, with  
6 regard to Issue 4, which is what is the proper  
7 capitalization rate for labor benefits and  
8 overhead -- this issue asked the Commission to  
9 determine the appropriate capitalization rate for  
10 FPU.

11 A decision on this issue is neither  
12 appropriate nor necessary for the Commission to  
13 address what costs FPUC should be allowed to  
14 reser- -- recover through the charge -- the reserve  
15 account. Sorry.

16 First, not only is this not an issue proposed  
17 for consideration in prior storm proceedings; this  
18 isn't an issue that arises under or is even  
19 contemplated by Rule 25-60143.

20 To the extent that OPC believes that certain  
21 costs should be capitalized, OPC clearly has an  
22 opportunity under other identified issues to  
23 present that argument as a basis for the Commission  
24 to reduce the amount to be charged to the reserve.

25 Second, attempting to define a capitalization

1 rate in this proceeding, particularly as it relates  
2 to labor, would be inappropriate and shortsighted.

3 Establishing a capitalization rate for FPUC in  
4 this context would assume there's some generally-  
5 definable point at which a facility or equipment is  
6 determined to be either repairable or a total loss  
7 when, in fact, in an actual storm-restoration  
8 situation, such decisions may depend on other  
9 factors.

10 While establishing a set capitalization rate  
11 might make it easier to simply eliminate a certain  
12 percentage of costs being charged to the reserve,  
13 doing so based on a capitalization rate that's  
14 established after the storm event would neglect the  
15 review of costs contemplated by the rule and fail  
16 to address whether, under the circumstances, the  
17 costs were appropriate for recovery through the  
18 reserve.

19 COMMISSIONER BROWN: Okay. Thank you.

20 If you will, I will hear OPC on Issue 4.

21 MS. PONDER: Yes, OPC contends this should be  
22 a separate issue here and -- as representative  
23 Witness Schultz's testimony -- the company  
24 understated the cost per hour by assuming, under  
25 their capitalization plan, that work was performed



1 by FPUC employees and not contractors that charge a  
2 higher hourly rate. And so, we contend it should  
3 be a separate issue.

4 COMMISSIONER BROWN: OPC, I have a question.  
5 Okay. So, I see Issues 2 -- I see a few issues  
6 that this type of issue could fall within: Two,  
7 five, six, poss- -- clearly, you could argue this  
8 particular issue within those different three  
9 parameters.

10 I mean, they -- they all deal with payroll-  
11 benefit overhead. I don't know why you would be  
12 harmed by having that issue subsumed in those  
13 issues. Do you have a response?

14 MS. PONDER: Again, based on Witness Schultz's  
15 testimony, it -- it seemed most appropriate to have  
16 it as a separate issue.

17 COMMISSIONER BROWN: I -- I tend to disagree.  
18 I think that you can easily argue the merits of the  
19 issue within either -- three different issues. So,  
20 we're going to go ahead and subsume Issue 4 in two,  
21 five, and six. I think you will not be harmed in  
22 any way.

23 MS. PONDER: Okay.

24 COMMISSIONER BROWN: Moving on to Issue 7,  
25 Ms. Keating.

1 MS. KEATING: Thank you, Commissioner.

2 So, with regard to Issue 7, FPU doesn't  
3 necessarily oppose including some form of this  
4 issue; although, we note that this is also another  
5 issue that hasn't been included in prior  
6 proceedings.

7 Plus, OPC could actually argue, under Issue 9,  
8 that certain contractor costs should not be  
9 included for recovery through the reserve because  
10 the rate charged was inappropriate, which would  
11 seem to render this issue duplicative.

12 Nonetheless, if this issue is going to be  
13 included, we oppose the inclusion of the phrase,  
14 "... of up to \$509 per hour." Inclusion of this  
15 phrase is clearly designed to be inflammatory and  
16 it suggests that the particular rate is somehow  
17 inappropriate, while presenting the rate out of  
18 context without identifying the activity or expense  
19 included in the rate.

20 Therefore, if this issue is going to be  
21 included, we would ask that the phrase "\$509-an-  
22 hour rate" be excluded.

23 COMMISSIONER BROWN: Thank you, Ms. Keating.

24 And -- all right. Let -- yes, OPC.

25 MS. PONDER: Thank you.

1           OPC contends the Commission must regulate in  
2           the public interest and in an open and transparent  
3           manner. Hiding the embarrassing factual basis for  
4           the issue is not good government and does not serve  
5           the public interest.

6           FPUC has not demonstrated that line crews  
7           receiving rates of \$509 per hour for standing in  
8           waiting, \$307 per hour for mobilization, and \$290  
9           per hour for actual -- actually working provided a  
10          faster, more-efficient, and reliable service than  
11          line crews charging half those amounts.

12          The issue is a grossly-excessive rate. The  
13          Commission should not hide the ball on this. The  
14          public deserves to know precisely the basis for the  
15          issue. And the Commission should squarely and in  
16          full, public view decide whether these iss- --  
17          these outrageous price-gouging rates are to be  
18          encouraged and endorsed by the Agency.

19          COMMISSIONER BROWN: Okay. I appreciate your  
20          argument here. I -- I really do. I have never  
21          seen wording like this in an issue in a hurricane  
22          docket, to my date. And also, this particular  
23          issue, seven, includes Hurricane Matthew and  
24          Hurricane Irma; is -- is that correct?

25          MS. KEATING: Yes.

1 MS. PONDER: Yes, that's correct.

2 COMMISSIONER BROWN: That's correct.

3 You're -- okay.

4 And -- and you referenced in your argument  
5 other hourly fees. Okay. But you went up to I  
6 guess, the --

7 MS. PONDER: Well -- yeah, the top of the  
8 range.

9 COMMISSIONER BROWN: I -- I do believe it does  
10 provide a little bit of bias in the wording. And  
11 your argument, obviously, is passionate and --  
12 and -- and geared towards highlighting the amount  
13 that is paid, but I do believe that you can  
14 encapsulate that and educate the public.

15 Obviously, the proceedings are going to be all  
16 televised and in the public and our dockets are all  
17 in the public. And we will absolutely educate the  
18 public, to the best of our ability, as well as  
19 yours.

20 I think having language like this puts a bit  
21 of a skew to the Commission in an impartial  
22 technical, evidentiary hearing. I haven't seen  
23 anything like this --

24 MS. PONDER: Well --

25 COMMISSIONER BROWN: -- to date.

1 MS. PONDER: And, perhaps, because there  
2 hasn't been a case like this where the evidence has  
3 shown this to -- to be at issue.

4 COMMISSIONER BROWN: Ms. --

5 MS. PONDER: And so, it is important to bring  
6 to light what is -- what the evidence demonstrates.

7 COMMISSIONER BROWN: I cannot wait for all the  
8 evidence to be deduced -- adduced at -- at the  
9 proper proceeding, but when you have a final issue  
10 list, it has to be impartial. And it has to be  
11 able to convey a sentiment that will provide  
12 balance to the proceedings.

13 I think the way that it is worded is -- and --  
14 and Ms. Keating could probably offer the opposite,  
15 a minimum. So, you know, to that -- to that  
16 effect, I think that is skewed.

17 I think striking the word -- but I will give  
18 Ms. Keating an opportunity -- I -- I read it and I  
19 was briefed on it beforehand, and I did not like  
20 the language at all. If there's a -- a better way  
21 to word it, I would be amenable to it, if you have  
22 a suggestion.

23 MS. KEATING: Well, Commissioner, obviously, I  
24 would caution against including any rate in there.  
25 The issue is really -- in addition to what we've

1 talked about so far, is looking back. So, suppose  
2 years into the future -- or just two years down the  
3 road, you have another storm-restoration case that  
4 comes before you, different circumstances,  
5 different area, different contractors, different  
6 availability.

7 And there's the potential that there could be  
8 rates above \$509. And with inflation, who's to say  
9 that that might not be a low number ten years into  
10 the future. But if you include a rate in an issue  
11 and specifically make a determination that  
12 ostensibly would say that \$509 an hour is some sort  
13 of limit, then you're -- I suspect you could run  
14 into problems down the road in terms of the  
15 precedential effect of that.

16 COMMISSIONER BROWN: Any rebuttal here?

17 MS. PONDER: Well, I -- OPC contends that it  
18 would not be harmful in that way. It's based on  
19 the evidence presented in this case, that FP- --  
20 FPUC paid for their storm costs.

21 COMMISSIONER BROWN: I am not comfortable with  
22 the language as proposed. I think it sends a  
23 message to the Commission -- the Commissioners  
24 of -- that would challenge it. I think if we took  
25 out "... of up to \$509 an hour," I think you can

1 still make the exact same arguments within that  
2 issue and you would not be harmed, by any means,  
3 but I think phrasing it with including a maximum  
4 amount for this particular case may set a -- a  
5 dangerous bias towards the Commission.

6 I think you will not be harmed in any way by  
7 having the issue with that language stricken. And  
8 you could argue the full merits of that in the  
9 proceeding.

10 MS. PONDER: Okay. Thank you.

11 COMMISSIONER BROWN: All right. We're going  
12 to move to Issue 10, which is -- all right.

13 MR. HETRICK: Excuse me, Commissioner.

14 COMMISSIONER BROWN: Sure.

15 MR. HETRICK: I don't mean to disrupt the  
16 settlement --

17 COMMISSIONER BROWN: But you are.

18 (Laughter.)

19 MR. HETRICK: I am.

20 When I do look at Issue 7, and when you take  
21 that language out, I'm -- I'm not sure I just  
22 really understand the distinction between Issue 7  
23 and Issue 9 at that point.

24 COMMISSIONER BROWN: So, you think Issue 7  
25 should be subsumed in Issue 9.

1 MR. HETRICK: I do.

2 COMMISSIONER BROWN: See, I'm okay with  
3 leaving Issue 7 as is to allow Public Counsel an  
4 opportunity to argue whatever merits that they want  
5 within that. I -- it is a little duplicative, as  
6 FPU argued earlier, but I was going to go ahead and  
7 allow it.

8 MR. HETRICK: Okay.

9 COMMISSIONER BROWN: All right. Let's move on  
10 to Issue 10.

11 Ms. Keating.

12 MS. KEATING: Thank you, Commissioner.

13 So, Issue 10 is the issue that asks: As a  
14 result of the evidence in this case, what action  
15 should the Florida Public Service Commission take  
16 to ensure contractor rates charged to utilities are  
17 reasonable and prudent.

18 We object to this issue in its entirety. This  
19 issue clearly goes well beyond the consideration of  
20 costs identified for recovery through the storm  
21 reserve as contemplated by the rule.

22 Not only does this issue contemplate  
23 Commission action that would impact entities that  
24 aren't parties to this proceeding, but as phrased,  
25 it contemplates action directed towards entities



1           that are arguably beyond the scope of the  
2           Commission's jurisdiction.

3           The Commission should not decide to take  
4           action impacting the entire industry based solely  
5           upon evidence adduced in this case, which would, at  
6           the very least, give rise to due-process questions.

7           Moreover, given that a decision resolving this  
8           issue would have direct effect on other utilities,  
9           could adversely affect substantive rights, and  
10          impose newer additional requirements, it would be  
11          much more appropriately considered, if at all, in  
12          the context of a rulemaking.

13          And even, then, if, arguably, policy decisions  
14          in the context of storm cost recovery are subject  
15          to the exemptions from rulemaking that are found in  
16          120.80, it's important to consider that only FPUC  
17          and OPC are parties to this proceeding.

18          The Commission has only established generally-  
19          applicable guidelines and procedures for recovery-  
20          clause proceedings through orders and proceedings  
21          to which all electric utilities are parties, such  
22          as the fuel clause.

23          As such, Commissioner, because of the due-  
24          process scope and concerns, we ask that this issue  
25          be eliminated in its entirety.

1 COMMISSIONER BROWN: OPC.

2 MS. PONDER: Yes.

3 COMMISSIONER BROWN: Ms. Ponder.

4 MS. PONDER: So, OPC, in its prehearing  
5 statement, had suggested qualifying language of:  
6 As a result of the evidence in this case, what  
7 action, if any, should -- should the Florida Public  
8 Service Commission take in the future to ensure  
9 contractor rates charged to utilities are  
10 reasonable and prudent.

11 And as stated in our position, we -- we  
12 believe that, just as in the 2004, 2005 storm  
13 dockets, here, the Commission should take steps to  
14 compare the rates against other utility dockets  
15 and -- and make sure that no amendment to the rule  
16 is -- is needed.

17 COMMISSIONER BROWN: All right. I -- I think  
18 your intent is well-intended.

19 Staff, I'd love a little bit of insight. I do  
20 have an opinion on it, but I would love to hear  
21 your opinion on this. I think that their intent is  
22 commendable, but I don't think this is the  
23 appropriate vehicle in this particular docket.

24 And in looking back at the 2004-'05 seasons --

25 I mean, we had a hurricane, a generic hurricane

1 docket, when all parties and re- -- interested  
2 persons were allowed an opportunity to raise issues  
3 and provide public testimony, public comment. And  
4 Public Counsel was a part of that process, a very  
5 integral part of that process.

6 I don't know why that particular issue was not  
7 included in the process. We took forensic data.  
8 We took evidence. We have a fully-developed  
9 report. Why in the world would this come up right  
10 now in this particular docket when this is a  
11 generic issue that would have affected the entire  
12 industry?

13 Any thoughts?

14 MS. DZIECHCIARZ: Staff agrees that this issue  
15 is beyond the scope of this docket and should not  
16 be included. And we also would agree that, if  
17 there -- some kind of look-back wanted to be done,  
18 it wouldn't be appropriate in this particular  
19 docket, on a generic basis.

20 COMMISSIONER BROWN: Is there a forum where  
21 Public Counsel and other interested parties could  
22 be able to provide this type of issue development?  
23 It is a -- it does seem very policy-driven. Is  
24 there some type of forum that you think would be an  
25 appropriate vehicle to at least have discussions

1 about --

2 MS. DZIECHCIARZ: I'll let Mary Anne take  
3 that.

4 COMMISSIONER BROWN: Hurricanes are not going  
5 away and I do think OPC's argument is somewhat  
6 commendable. I -- I would have like to have seen  
7 this a lot earlier, post-Hurricane Irma or Matthew,  
8 obviously.

9 MS. HELTON: Well, we do have other dockets  
10 open to deal with particular storms for cost  
11 recovery, but I don't --

12 COMMISSIONER BROWN: Don't --

13 MS. HELTON: -- think it's appropriate in any  
14 of those.

15 COMMISSIONER BROWN: No, I don't either.

16 MS. HELTON: I think we could have a meeting  
17 with OPC and other utilities to discuss that. I  
18 don't know whether I would, at this point in time,  
19 say it's appropriate for rulemaking because I'm not  
20 sure what policy we would bring forth.

21 And my concern is we don't have jurisdiction  
22 or any authority --

23 COMMISSIONER BROWN: The AG's office, right,  
24 the --

25 MS. HELTON: -- over the contractor rates.

1 COMMISSIONER BROWN: Right. So, the --

2 MS. HELTON: So, I'm a little bit con- --  
3 quite frankly, confused about this issue. And if  
4 it were to stay, I'm not sure how staff could  
5 address that, given the fact that I believe the  
6 Commission does not have jurisdiction over  
7 contractor rates, but --

8 COMMISSIONER BROWN: So, we're -- we are  
9 simpatico. We -- I -- I agree with you on that.  
10 I'm just trying to seek some guidance here.

11 MS. HELTON: I mean, we --

12 COMMISSIONER BROWN: I think the issue is  
13 commendable. So, I mean, it should be noted that  
14 it is commendable. I just don't know what our  
15 venue, our jurisdiction, and then the -- the  
16 applicability towards this particular docket --  
17 again, given all those other parameters, it just is  
18 not very appropriate.

19 MS. HELTON: Yes, I -- I definitely believe --  
20 agree with Ms. Dziechciarz that this is beyond the  
21 scope of this docket. If OPC would like to have --  
22 if they have some ideas, obviously, staff would be  
23 agreeable to discussing those ideas with OPC, but I  
24 just don't think that's appropriate to do here in  
25 this docket.

1 COMMISSIONER BROWN: Thank you.

2 Ms. Ponder.

3 MS. PONDER: Commissioner, if I may -- and  
4 you're addressing the previous dockets. This is --

5 COMMISSIONER BROWN: Generic dockets.

6 MS. PONDER: Yes. Right. And even since the  
7 storm -- the generic storm docket here in the  
8 meeting, this is all knowledge gained. And it has  
9 just come to light and been able to kind of compare  
10 and look back. So, now is the appropriate time  
11 to -- to raise that as a policy issue.

12 COMMISSIONER BROWN: Ms. Keating, any  
13 additional thoughts?

14 MS. KEATING: I would only add that it may be  
15 that it's information that's recently come to light  
16 and it may be something that's appropriate for  
17 another process, but we would say it's not  
18 appropriate for a proceeding of this nature  
19 involving only one utility.

20 COMMISSIONER BROWN: And I would like to  
21 develop the conversation a little bit more  
22 thoroughly, even given the limited scope of the  
23 Commission's jurisdiction over the specific price  
24 gouging and profiteering because I think it is  
25 imperative and important for consumers.

1           So, it is something that I would like to  
2           direct our staff to gather and have some  
3           discussions with the interested parties at a later  
4           juncture, and Office of Public Counsel, and have  
5           the discussion, and -- and find a way that we can  
6           make this work within our realm.

7           And if not -- if it doesn't work within our  
8           jurisdiction, let's -- let's find another avenue to  
9           at least express our thoughts.   Okay?

10          MS. PONDER:   Thank you.

11          COMMISSIONER BROWN:   Thank you.   So, we're  
12          going to remove Issue 10.

13          And I think that concludes Section 8, so --

14          MS. DZIECHCIARZ:   Apologies, Commissioner.  
15          Can I interrupt?

16          COMMISSIONER BROWN:   Yes.

17          MS. DZIECHCIARZ:   Ms. Ponder, did you want  
18          to -- you mentioned earlier that Issue 17 you  
19          wanted to say was a fall-out.   Did you want to  
20          remove Issue 17 or --

21          MS. PONDER:   No.

22          MS. DZIECHCIARZ:   Oh, okay.   I'm sorry.   I  
23          misunderstood.   Okay.

24          MS. PONDER:   No, I was just --

25          COMMISSIONER BROWN:   She was making her notes.

1 MS. PONDER: (Inaudible.)

2 MS. DZIECHCIARZ: Okay. Thank you.

3 COMMISSIONER BROWN: Did you get that?

4 THE COURT REPORTER: I did not.

5 COMMISSIONER BROWN: Could --

6 MS. PONDER: I guess I was acknowledging our  
7 position there. I did not want -- I was not  
8 advocating that it be removed.

9 COMMISSIONER BROWN: Thank you. And I  
10 appreciate all of the arguments today.

11 Staff, are there any other issues before we  
12 move on to Issue 9?

13 MS. DZIECHCIARZ: Yes, Commissioner. We'll  
14 note that the order establishing procedure requires  
15 that a party take a position at the prehearing  
16 conference unless good cause is shown as to why the  
17 party cannot take a position at this time.

18 Accordingly, if a party's position in the  
19 draft prehearing order is currently no position,  
20 then the party must change it.

21 Ms. Ponder, will you be giving us the wording  
22 that you would like for Issue 17?

23 MS. PONDER: Yes.

24 MS. DZIECHCIARZ: Okay.

25 COMMISSIONER BROWN: By tomorrow?



1 MS. PONDER: Sure.

2 MS. DZIECHCIARZ: And that's -- so, we would  
3 suggest, the parties who haven't taken a position,  
4 please submit their position in writing no later  
5 than close of business tomorrow, November 27th.  
6 And if the party fails to take a position by that  
7 time, the prehearing order will reflect -- will  
8 reflect no position.

9 Thank you.

10 COMMISSIONER BROWN: Thank you.

11 Any other issues before we move on to  
12 Section 9? No? Okay.

13 So, exhibit list. Staff, Section 9.

14 MS. DZIECHCIARZ: We have prepared a draft  
15 comprehensive exhibit list, which includes all  
16 prefiled exhibits and includes those exhibits staff  
17 wishes to include in the record.

18 Staff will -- has circulated the draft list to  
19 determine if there are any objections to the draft  
20 comprehensive exhibit list or to any of staff's  
21 exhibits being entered into the record.

22 COMMISSIONER BROWN: Thank you.

23 All right. Seeing nothing else there, we'll  
24 move to Section 10, proposed stipulations. Seeing  
25 that there are no proposed stipulations, from the

1 parties -- nope? All right.

2 We're going to move to a pending motion.

3 Staff, Section 11.

4 MS. DZIECHCIARZ: There are no pending motions  
5 at this time.

6 COMMISSIONER BROWN: And -- because you guys  
7 are awesome. Thank you.

8 Section 12: Pending confidentiality. Same?

9 MS. DZIECHCIARZ: No pending confidentiality.

10 COMMISSIONER BROWN: Thank you.

11 Section 13: Post-hearing.

12 MS. DZIECHCIARZ: If issues are stipulated and  
13 the parties agree to waive briefs, the Commission  
14 may make a bench decision for this portion of the  
15 docket. If there are any issues to be briefed,  
16 staff recommends post-hearing briefs be no longer  
17 than 40 pages.

18 COMMISSIONER BROWN: Are all parties in  
19 agreement with that?

20 MS. PONDER: Yes.

21 COMMISSIONER BROWN: Thank you.

22 MS. KEATING: Yes.

23 MS. DZIECHCIARZ: Staff notes that any briefs  
24 would be due on January 7th, 2018 -- 2019, excuse  
25 me.

1           COMMISSIONER BROWN: Oh, yeah. Wow. Time  
2 moves fast.

3           All right. Section 14.

4           MS. DZIECHCIARZ: Staff recommends that the  
5 prehearing officer make a ruling that opening  
6 statements, if any, should not exceed five minutes  
7 per party, unless any party chooses to waive its  
8 opening statements.

9           COMMISSIONER BROWN: Sound good to everybody?  
10 Thank you.

11          MS. KEATING: Thank you.

12          COMMISSIONER BROWN: All right. Section 6:  
13 Other matters. Are there any other matters to be  
14 addressed here at this prehearing conference?  
15 Seeing none -- okay.

16          All right. I think we are officially  
17 adjourned. Thank you so much for an efficient  
18 prehearing conference and for your arguments today.

19          MS. KEATING: Thank you, Commissioner.

20          COMMISSIONER BROWN: We're adjourned.

21          MS. PONDER: Thank you.

22          (Whereupon, proceedings concluded at 2:00  
23 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, ANDREA KOMARIDIS, Court Reporter, do hereby  
certify that the foregoing proceeding was heard at the  
time and place herein stated.

IT IS FURTHER CERTIFIED that I  
stenographically reported the said proceedings; that the  
same has been transcribed under my direct supervision;  
and that this transcript constitutes a true  
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,  
employee, attorney or counsel of any of the parties, nor  
am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am I  
financially interested in the action.

DATED THIS 5th day of December, 2018.



---

ANDREA KOMARIDIS  
NOTARY PUBLIC  
COMMISSION #GG060963  
EXPIRES February 9, 2021

## **ATTACHMENT 2**

\$509/hour Vendor Invoice and Related Interrogatory Response

## Contractor Storm Crew Invoice

NON-EMBEDDED

**Contractor Name:** PAR ELECTRICAL CONTRACTORS INC  
**Street Address:** 4770 N. BELLEVIEW SUITE 300  
**City/State/Zip:** KANSAS CITY MO 64116-2188  
**Storm Contract Number:** 4600015260

**Invoice Number:** 901710008  
**Invoice Date:** October 24, 2017  
**Storm Name:** HURRICANE IRMA  
**Work Order Number:** G/L:  
**Travel Team ID:**  
**Week Ending Sunday:** 9/10/17

	Hours/Quantity	K	Rate	Receipt \$ Amount	Product ID	=	Total
Work/Standby Hours Regular	0	X	\$ 215.52		5534	=	\$
Work/Standby Hours O.T.	1216	X	\$ 290.95		5026	=	\$ 353,795.20
Mobilize/Demobilize Regular Hours	608	X	\$ 377.16		5045	=	\$ 229,313.28
Mobilize/Demobilize O.T. Hours	608	X	\$ 509.17		5044	=	\$ 309,575.36
Per Diems (DAILY)	0	X	\$ 35.00		5532	=	\$
Per Diems (IND Meals)	413	X	\$ 11.66		7043	=	\$ 4,873.88
Fuel	ITEMIZE ON FUEL RECEIPT DETAIL				7045	=	\$
Housing	ENTER TOTAL RECEIPTS ATTACHED				7044	=	\$ 6,558.36
MISC	ENTER TOTAL RECEIPTS ATTACHED			\$ 958.00	7057	=	\$ 958.00
<b>Total Invoice</b>							<b>\$ 905,074.08</b>

O.K. TO PAY

Invoice Received By: DF on 12-9-17  
 (Initials) (Date)

STINV: YES | NO | NA STPR: YES | NO | NA

Received By: [Signature]

Scanned Date: 12/9/17 PR# 596015

68. Please refer to the Company's response to Citizens' POD 1-6. For the Par Electric invoice number 901710008, please explain the mobilization/demobilization rate differences, whether the rate was agreed to prior to Par Electric being contracted with, and why the rate was considered reasonable.

**Company Response:**

Par Electric Contracting was allocated to FPUC through the Southeastern Electric Exchange (SEE) mutual assistance process for Hurricane Irma. The SEE process dictates that when the Utility requests outside resources to assist in restoration efforts, the Utility agrees to start paying for the assigned Contractor at that time. This is done to assure there is no delays in getting resources to the affected Utility as quickly as possible. In general, responding SEE Companies and Contractors rely on each other to charge reasonable rates that only cover actual costs. Because speed of deployment is essential, we have not required responding outside resources to provide rates for approval prior to mobilizing.

Par Electric Contracting was originally assigned to Florida Power & Light under existing Contract rates. Only after the Par Crews started traveling to Florida from Des Moines did they get reassigned to FPUC utilizing the same FP&L rates.

Par explained the higher rate during mobilization/demobilization when compared to their standard rate was due to some extreme costs they have incurred while responding to other storm areas and that all the Utilities they assisted after Hurricane Irma were charged these same rates.

*Respondent: Drane "Buddy" Shelley*

AFFIDAVIT

STATE OF FLORIDA)

COUNTY OF NASSAU)

I hereby certify that on this 13 day of September, 2018, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Drane Shelley, who is personally known to me, and he/she acknowledged before me that he/she provided the answers to interrogatory number(s) 66,68,71 from in CITIZENS FOURTH SET OF INTERROGATORIES TO FLORIDA PUBLIC UTILITIES COMPANY (Nos. 64-71) in Docket No. 2018006I-EI, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 13<sup>th</sup> day of September, 2018.



Linda J. Gamble  
Notary Public  
State of Florida, at Large

My Commission Expires:

January 30, 2019



## **ATTACHMENT 3**

Staff Recommendation in Docket No. 20070011-EI,  
dated March 29, 2007



accumulated target level for the property damage reserve<sup>1</sup> and the appropriate annual accrual amount to achieve and maintain that target level over time. The target levels and annual accrual amounts were subject to review in rate change proceedings or whenever changes were sought in the target levels or the annual accrual amounts.

Until the 2004 hurricane season, each of the IOU's self-insurance programs was adequate to cover the costs incurred for storm damage restoration. However, the combined effects of the damages caused by Hurricanes Charley, Frances, Ivan and Jeanne during 2004 far exceeded the amounts that had been accumulated in four of the five IOU's property damage reserves. As a result, Florida Power & Light Company ("FPL") and Progress Energy Florida, Inc. ("PEF") filed petitions seeking to recover storm damage restoration costs that exceeded the amounts in their property damage reserves.<sup>2</sup> Gulf Power Company ("GULF") sought approval of a stipulation for recovery of storm damage costs between GULF and various parties.<sup>3</sup> Tampa Electric Company ("TECO") also filed a petition seeking approval of a stipulation with various parties concerning the accounting treatment of storm damage restoration costs.<sup>4</sup> TECO, however, did not request that a surcharge be implemented. To date, Florida Public Utilities Company ("FPUC") has not filed a petition for recovery of storm restoration expenses.

The GULF and TECO stipulations were approved as filed.<sup>5</sup> The FPL and PEF petitions, however, were litigated before the Commission. FPL and PEF were ultimately allowed to implement surcharges to recover the amount of storm damage restoration costs approved by the Commission.<sup>6</sup> In each of these four cases, each IOU employed a different methodology to determine the amount of storm damage restoration costs that should be charged to the property damage reserve and the amount, if any, to be recovered from ratepayers through a surcharge. Staff's primary objective for these recommended rule amendments is to establish a single, consistent, and uniform methodology for determining which storm damage restoration costs can appropriately be charged to the property damage reserve by each of the Florida IOUs.

Staff prepared a preliminary rule, which was published in the Florida Administrative Weekly ("FAW") on February 3, 2006, along with a notice of rule development workshop to be held March 10, 2006. Pre-workshop comments were received from the Edison Electric Institute ("EEI"), Florida Industrial Power User's Group ("FIPUG"), FPL, GULF, PEF, TECO, and the

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<sup>1</sup> Account 228.1 is titled "Accumulated Provision for Property Insurance." Throughout this recommendation, this account will be referred to as the "property damage reserve."

<sup>2</sup> Docket 041291-EI, Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company. Docket 041272-EI, Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.

<sup>3</sup> 050093-EI - Petition for approval of stipulation and settlement for special accounting treatment and recovery of costs associated with Hurricane Ivan's impact on Gulf Power Company.

<sup>4</sup> 050225-EI - Joint petition of Office of Public Counsel, Florida Industrial Power Users Group, and Tampa Electric Company for approval of stipulation and settlement as full and complete resolution of any and all matters and issues which might be addressed in connection with matters regarding effects of Hurricanes Charley, Frances, and Jeanne on Tampa.

<sup>5</sup> GULF in Order No. PSC-05-0250-PAA-EI, issued March 4, 2005; TECO in Order No. PSC-05-0675-PAA-EI, issued June 20, 2005.

<sup>6</sup> FPL in Order No. PSC-05-0937-FOF-EI, issued September 21, 2005; PEF in Order No. PSC-05-0748-FOF-EI, issued July 14, 2005.

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Office of Public Counsel (“OPC”). Representatives of these entities attended the rule development workshop held March 10, 2006, as well as a representative of the Florida Retail Federation (“FRF”).

On February 2, 2007, a second notice of rule development workshop was published in the FAW, with a copy of the rule as revised by staff following the first workshop. To facilitate discussion at the February 21, 2007, workshop, staff requested that interested persons provide comments on staff’s revised rule in type-and-strike format. Language was provided by GULF and a joint filing by FPL and PEF. FIPUG and OPC also provided brief comments prior to the workshop. At the February 21, 2007, workshop, representatives of PEF, FPL, GULF, TECO, OPC and FIPUG participated. GULF provided brief post-workshop comments on March 2, 2007. On March 15, 2007, staff conducted a conference call to take final comments and suggestions on the draft rule prior to the preparation of this Recommendation. Staff has made changes to the recommended rule, where appropriate, to reflect the comments and concerns raised by the workshop participants in their written comments and at the workshops and conference call.

This recommendation addresses whether the Commission should propose amendments to Rule 25-6.0143, F.A.C., Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4, included as Attachment A. The Commission has rulemaking jurisdiction pursuant to Sections 120.54 and 366.05(1), Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission propose amendments to Rule 25-6.0143, Florida Administrative Code, Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4?

**Recommendation:** Yes. (Harris, Slemkewicz, Hewett)

**Staff Analysis:** Staff recommends Rule 25-6.0143 be amended to provide guidance to investor-owned electric utilities for determining the types of storm damage restoration costs that can be charged to Account 228.1, Accumulated Provision for Property Insurance. Staff recommends no changes be made to Account 228.2, Accumulated Provision for Injuries and Damages, and one technical change to Account 228.4, Accumulated Miscellaneous Operating Provisions, to add a cross-reference to three new paragraphs in Account 228.1. Staff's recommended amendments to the rule only address which costs the IOUs can place in ("charge to") Account 228.1. These rule amendments do not affect which costs a utility may choose to include in a petition for cost recovery following a hurricane or other significant property loss. As explained in the background, staff recommends establishment of a standardized accounting methodology that all Florida IOUs will follow. This standardization will provide a benefit to staff, the IOUs, and other parties who participate in IOU cost recovery dockets.

The rule amendments will require the establishment of a separate subaccount for storm related damage expenses and accruals, the "storm damage subaccount." The recommended rule amendments will also require use of the Incremental Cost and Capitalization Approach ("ICCA") methodology and delineate types of expenses that are expressly allowed or prohibited from being charged to the storm damage subaccount.

### **Summary Of Staff's Recommended Rule Amendments:**

25-6.0143(1)(b) [page 13, lines 11-14] adds a reference to new paragraphs (1)(f), (g) and (h), and adds insurance proceeds to the list of credits to the account.

25-6.0143(1)(c) [page 13, lines 15-19] requires the establishment of a separate subaccount for storm-related damages to the utility's property, or property leased from others.

25-6.0143(1)(d) [page 13, line 20 – page 14, line 9] requires the use of an Incremental Cost and Capitalization Approach methodology.

25-6.0143(1)(e) [page 14, line 10 – page 15, line 4] provides a non-exclusive list of the types of costs which are allowed to be charged to the storm damage subaccount.

25-6.0143(1)(f) [page 15, line 5 – page 16, line 1] provides a non-exclusive list of types of costs which are prohibited from being charged to the storm damage subaccount.

25-6.0143(1)(g) [page 16, lines 2-16] allows deferred accounting treatment for storm restoration related costs prior to Commission determination of suitability for inclusion in the storm damage subaccount.

25-6.0143(1)(h) [page 16, lines 17-22] allows the utility the option of expensing storm related costs, rather than charging them to the storm damage subaccount.

25-6.0143(1)(i) [page 16, line 23 – page 17, line 1] specifies that negative storm damage subaccount balances may be treated as a debit balance, without the necessity of petitioning for establishment of a regulatory asset.

25-6.0143(1)(j) [page 17, lines 2-4] allows the utility to petition for recovery of a debit balance through a surcharge, securitization, or other cost recovery mechanism.

25-6.0143(1)(k) [page 17, lines 5-6] requires prior Commission approval before a utility changes a property damage reserve target accumulated balance.

25-6.0143(1)(l) [page 17, lines 7-12] establishes the requirement that IOUs file storm damage self-insurance studies by January, 2011, and every 5 years thereafter.

25-6.0143(1)(m) [page 17, lines 13-18] requires an annual report from each utility regarding its efforts to obtain commercial insurance.

25-6.0143(4)(b) [page 18, lines 21-22] is amended to add a reference to new paragraphs (1)(f), (g) and (h).

Incremental Cost and Capitalization Approach [Paragraph (1)(d), page 13, line 20 – page 14, line 9]

Currently, each of Florida's IOUs use different accounting methods for tracking expenses related to damage to its transmission and distribution systems. Also, the IOUs have used different methods for determining the amount of costs to be recovered in their 2004 and 2005 storm cost recovery petitions. This lack of consistency greatly increases the workload of staff and other interested parties seeking to review a utility's storm related costs. It also increases auditing efforts and creates a great deal of discovery.

In the cost recovery proceedings the Commission has decided, the Commission has consistently issued orders approving the ICCA methodology for storm cost recovery. The Commission has not established this policy for the accounting treatment of storm damage restoration costs and the charging of these costs to the property damage reserve. Staff believes that the policy to be established for storm accounting should be consistent with the guidance provided by the storm cost recovery orders, and therefore recommends the ICCA methodology be established for storm restoration cost accounting. Accordingly, staff has drafted new paragraph (1)(d) to Rule 25-6.0143 to require the use of the ICCA methodology for accounting purposes.

The ICCA methodology is designed to prevent double recovery. Under the ICCA, a utility only charges to the storm damage subaccount those storm restoration costs that are not already being recovered through base rates ("incremental" costs). For example, a utility would not be able to charge the normal base salaries of employees working on storm restoration, but would be able to charge overtime costs related to storm restoration activities to the storm damage subaccount.

In their first set of workshop comments, the IOUs disagreed with establishment of the ICCA methodology for accounting purposes. In their second set of pre-workshop comments, the IOUs did not seek to change the ICCA as the basic methodology to be used for storm accounting. At the February 21, 2007, workshop, all participants expressed support for the ICCA methodology. The IOUs expressed the need for the rule amendments to be drafted in such a way as to allow for a "full" ICCA approach: one which allows recovery of all incremental costs above base rates. In order to achieve this full approach, staff has drafted new paragraphs (1)(e), (f) and (g).

Items included in the Storm Damage Subaccount [Paragraph (1)(e), page 14, line 10 – page 15, line 4]

As previously discussed, the recommended rule amendments only prescribe a utility's accounting treatment of storm damage restoration costs. The rule amendments have no effect on costs an IOU might choose to include in a storm cost recovery petition. The intent of these rule amendments is to standardize the way all Florida IOUs account for storm damage restoration costs. Staff believes the Commission's previous storm cost recovery orders provide guidance on which costs are eligible for recovery through a storm cost recovery petition. Staff therefore recommends that this guidance be extended to the methodology IOUs use to account for such costs.

In its February 14, 2007, comments, GULF suggested the addition of a new paragraph 25-6.0143(1)(e), which would provide a non-exhaustive list of the types of costs which are allowed to be charged to the storm damage subaccount. GULF suggests that such a list is needed to balance the list of types of costs to be excluded from the storm damage subaccount in paragraph (1)(f), and is necessary to accomplish the purpose of the rule: to provide standardization and guidance to Florida IOUs on the accounting of storm damage restoration costs. At the February 21, 2007, workshop, there appeared to be general support for the inclusion of this paragraph in the rule.

Staff believes that any ICCA compatible cost, not specifically excluded, would be appropriate for inclusion in the storm damage subaccount. Staff agrees with GULF that the addition of a non-exhaustive list of types of costs to be charged to the storm damage subaccount assists in accomplishing the purpose of the rule, and will be helpful in providing guidance to Florida IOUs regarding accounting for storm damage restoration costs. Staff therefore recommends the inclusion of new paragraph (1)(e) in the amendments to Rule 25-6.0143. The specific list of items is taken from prior Commission orders where staff believes the Commission has clearly established the appropriateness of inclusion under the ICCA approach.

Items excluded from the Storm Damage Subaccount [Paragraph (1)(f), page 15, line 5 – page 16, line 1]

New paragraph 25-6.0143(1)(f) contains a non-exhaustive list of types of costs which are prohibited from being charged to the storm damage subaccount. This list of exceptions comes directly from the Commission's decisions in the 2004 and 2005 hurricane cost recovery dockets. In their type-and-strike comments at the second workshop, PEF and FPL propose deletion of this list. GULF proposed adding a new paragraph [(1)(e)] to add a list of items which would be suitable for inclusion in the subaccount, to balance the list of excluded items.

In their type-and-strike comments, PEF and FPL suggest the deletion of the list of types of costs to be excluded from the storm damage subaccount. The IOUs expressed the concern that the list of exclusions is too broad, and that some valid incremental costs will be disallowed based on their categorization as a type of excluded cost. As discussed above, GULF's comments

suggested retention of excluded types of costs, but inclusion of a corresponding list of types of costs that would be specifically included in the storm damage subaccount.

Staff does not agree with the type-and-strike comments of PEF and FPL to delete the list of costs which are excluded from the storm damage subaccount. Failure to include specific exclusions in the rule will result in different IOUs seeking to charge different costs, which frustrates the basic intent of the rule and will result in continued litigation. Further, staff does not agree that a list of types of excluded costs would prohibit recovery of a specific, valid incremental expense item. Staff believes the list of excluded types of costs creates the right balance, where the company bears the burden of demonstrating those costs which it seeks to charge to the storm damage subaccount are truly incremental to base rates.

Deferred Accounting Treatment [Paragraph (1)(g), page 16, lines 2-16]

Following the February 21, 2007, workshop, staff became aware of a potential omission in the framework of the draft rule amendments. The draft rule amendments contained provisions for those types of expenses which clearly could or could not be charged to the storm damage subaccount. There was, however, no provision for those types of costs relating to storm damage restoration activities which the Commission has not clearly determined should or should not be chargeable to the storm damage subaccount. Further, due to financial reporting requirements, a company would be required to report these costs on its balance sheet, whether or not a petition for recovery was pending. Staff therefore determined the need for a new paragraph which would allow deferred accounting treatment for this third category of storm restoration costs: those costs which the Commission has not yet established the appropriate disposition or accounting treatment.

Deferred accounting treatment means the company will not be required to report the impact of deferred costs on its income statement until the Commission makes a determination of the disposition of those costs. Once the Commission determines the appropriate treatment, those which are chargeable to the storm damage subaccount are charged to the account, while those that are not are reported on the income statement in some other way.

Paragraph (1)(g) was discussed at the March 15, 2007, conference call, and there is agreement that the concept of deferred accounting treatment for the third category of costs is valid and helps further the intent and purpose of the rule. Staff recommends that new paragraph (1)(g) be included in the amendments to Rule 25-6.0143.

Expensing Storm Costs [Paragraph (1)(h), page 16, lines 17-22]

New paragraph 25-6.0143(1)(h) allows IOUs to expense storm-related costs, rather than charge those costs to a storm damage subaccount and seek recovery through a surcharge or securitization. In 2004, TECO choose this method of recovering storm costs. Staff believes the IOUs should maintain the flexibility to expense storm damage restoration costs in one year, at the utility's discretion.



In their type-and-strike comments, PEF and FPL suggested deletion of this provision from the rule amendments. GULF's type-and-strike included this provision, with modifications to the language. OPC and FIPUG supported the inclusion of this paragraph. After review, staff believes the Commission's storm recovery orders clearly establish that a utility should have the option of expensing storm related costs. Staff recommends that this language remain in the rule amendments, with the wording changes suggested by GULF.

Debit Balances, Regulatory Assets, and Cost Recovery [Paragraphs (1)(i) and (j), page 16, line 23 – page 17, line 4]

Charging expenses to the storm damage subaccount, in excess of any accumulated balance, would create a negative balance in that account. New paragraphs 25-6.0143(1)(i) and (j) allow an IOU to create a negative (debit) balance in the storm damage subaccount, without the necessity of petitioning the Commission for creation of a regulatory asset. If the balance is negative, the utility has the option of petitioning the Commission for cost recovery or expensing the costs.

A "regulatory asset" is an accounting concept, whereby a regulated utility may create an account with a negative balance, but the utility is assured of the opportunity to recover that negative balance in the future, usually in the next rate case, by order of the regulatory commission. Regulatory assets are useful in promoting investor confidence, since the creation of a regulatory asset is assurance that the company will have the opportunity to recover the balance in the future, while preventing frequent rate adjustment proceedings.

Under current accounting practices, IOUs are required to petition the Commission to convert a negative balance into a regulatory asset. Staff recommends that the rule establish that such a petition is unnecessary for storm damage restoration costs only. Staff believes the automatic creation of a regulatory asset in the storm damage subaccount is consistent with the intent of these rule amendments: to establish one storm account where storm-related expenses are consolidated, for ease of eventual recovery, in a consistent manner. Paragraph (1)(j) allows a utility to petition the Commission for recovery of a negative balance.

Based on prior Commission orders, staff recommends that a utility be allowed to petition the Commission for recovery of negative storm damage subaccount balances through a surcharge, securitization, or other cost recovery mechanism.

Annual Reports and Target Balances [Paragraphs (1) (k) and (l), page 17, lines 5-12]

New paragraphs 25-6.0143(1)(k) and (l) require IOUs not change their storm reserve target balance without Commission approval and file self-insurance studies every five years. Staff recommends both these provisions are necessary to accomplish the intent of the rule amendments. Staff believes the IOUs should file a study, every five years, regarding their self-insurance programs. Receipt of this study will allow the Commission to determine whether the utility's target balance is appropriate or should be reset, whether the current accrual amounts are appropriate, etc. Staff makes the corresponding recommendation that IOUs not be allowed to change the property damage reserve target balance without prior Commission approval. The

storm reserve target balance is the benchmark for whether charges to the storm damage subaccount will create a negative account balance, which determines future cost recovery petitions. Staff believes it appropriate that the balance not be changed without prior Commission review and approval.

The IOU's comments suggested the deletion of the five year reporting requirement. The IOUs state that self-insurance studies are extremely intensive and require significant resources to prepare. The IOUs suggest that rather than a mandatory five year period, utilities only file self-insurance studies when necessary. Other workshop participants agreed with the reporting sections of the recommended rule amendments.

After review, staff believes the reporting sections of the rule are integral to the scheme of Commission oversight and monitoring of IOU storm management, accounting, and cost recovery. Staff therefore continues to recommend that utilities be required to file the self-insurance study at least every five years.

Insurance Studies and Commercial Insurance [Paragraph (m), page 17, lines 13-18]

Recommended new paragraph 25-6.0143(1)(m) requires each utility file an annual report on its ability to obtain commercial transmission and distribution insurance. As discussed in the case background, the Commission only created the self-insurance fund within the property damage reserve after 1992's Hurricane Andrew made commercially available insurance either unavailable or unaffordable. Staff believes that Florida's electric ratepayers should be the insurers of last resort only if commercial insurance cannot be obtained.

To this end, staff recommends that the rule amendments require each IOU report annually on its efforts to obtain commercial insurance. Staff believes IOUs should continue to seek commercial insurance, and if it becomes available, allow the Commission to determine whether purchasing such coverage is in the best interests of Florida's ratepayers, and how the costs of that insurance should be recovered.

During these rulemaking proceedings, FIPUG suggested that the possibility of a risk-management pool for Florida utilities be explored, not necessarily in this proceeding. GULF also brought to staff's attention efforts that it and other Florida IOUs are exploring regarding commercial insurance and the possible creation of some form of risk management pool or capture. Staff believes exploring these opportunities is in the best interests of Florida's ratepayers and that this issue is of great importance. Staff is concerned that mere inclusion of GULF's suggested language that a utility be allowed to charge the costs of subsequently purchased commercial insurance to the storm damage subaccount until the utility's next base rate case fails to give this issue the weight it deserves. Since the rule amendments recommended by staff only address the proper accounting treatment of storm damage restoration costs, staff does not believe language of the type suggested by GULF is suitable for inclusion in these rule amendments at this time.

Staff believes that further proceedings must be conducted to fully explore all options and assure all opportunities are pursued for the benefit of Florida ratepayers. Accordingly, staff

*will*

recommends that if the Commission votes to propose these rule amendments, once they are adopted and become effective staff conduct a workshop to fully explore the transmission and distribution insurance/risk-management pool issue and the proper method of recovery of insurance premiums or other costs of participation.

#### Treatment of Reimbursements from Mutual Aid Agreements

In the draft version of the rule amendments, staff included a requirement that the IOUs credit any revenues received from mutual aid agreements, in excess of the utility's incremental costs, to the storm damage subaccount.<sup>7</sup> All utility comments, as well as those from the Edison Electric Institute, raised concern with staff's treatment of revenues received as reimbursements for Florida utility crews which travel to other utility service territories to assist with storm restoration.

A utility's base rates are designed to recover all of the utility's operating costs, including the costs of its line crews. When a crew is dispatched to another utility as part of a mutual aid agreement, the crew's costs for that period of time are still being recovered in the sending utility's base rates. When the sending utility is reimbursed by the receiving utility for the costs of crews provided under a mutual aid agreement, a portion of the reimbursement constitutes double recovery, since the sending utility bills not only for the incremental costs (gas, travel time, food, etc.) but for the regular salaries of the crew and depreciation of its assigned equipment. In order to maintain consistency with the full ICCA approach, the draft rule amendments required any non-incremental revenues received by the sending utility be credited to the storm damage account, since those non-incremental revenues have already been recovered in base rates.

However, after review of the written comments submitted by the IOUs and the full discussion of this issue conducted at the February 21, 2007, workshop, staff now recommends the rule amendments not contain this provision. While staff still believes there could be some double-recovery of expenses, staff is persuaded that the benefits of mutual aid agreements to Florida ratepayers, combined with the extreme difficulty of the accounting that would be required to implement this provision, significantly outweigh any potential double recovery that may occur. By removing this provision from the recommended rule, staff only intends to continue the current treatment of mutual-aid reimbursements. Staff does not intend that removal of this provision from the recommended rule constitutes in any way a decision on the proper treatment of mutual-aid reimbursements, or a departure from current practices.

#### Statement of Estimated Regulatory Costs

Staff prepared a Statement of Estimated Regulatory Costs ("SERC") which is included as Attachment B. In summary, IOUs should have no significant additional costs because of these

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<sup>7</sup> Under Mutual Aid Agreements, IOUs pledge to assist one another with restoration of service following severe disruptions. For example, to recover from the 2004 storms, utilities from as far away as Canada traveled to Florida to assist with restoration. Florida crews do likewise, frequently traveling north to assist with restoration following severe winter storms. This mutual aid is intended to be "at-cost;" an IOU is not supposed to make any profit on this service, only being reimbursed by the receiving utility for the actual costs of sending crews.

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rule amendments, and there should be no significant costs on local governments, small businesses, or ratepayers.

IOUs should see lower overall total costs since the recommended rule amendments will reduce the amount of litigation over which charges to the property damage reserve are appropriate. While there might be higher IOU costs associated with more frequent storm damage study filings, the IOUs currently track and maintain separate records of storm damage costs and restoration activities.

There should be no negative impacts on small businesses, small cities, or small counties. Furthermore, to the extent that this rule reduces overall costs to IOUs, that reduction in costs should provide an indirect benefit to ratepayers.

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Harris)

**Staff Analysis:** Unless comments or requests for hearing are filed, the rule as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

1 **25-6.0143 Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4.**

2 (1) Account No. 228.1 Accumulated Provision for Property Insurance.

3 (a) This account may be established to provide for losses through accident, fire, flood,  
4 storms, nuclear accidents and similar type hazards to the utility's own property or property  
5 leased from others, which is not covered by insurance. This account would also include  
6 provision for the deductible amounts contained in property loss insurance policies held by the  
7 utility as well as retrospective premium assessments stemming from nuclear accidents under  
8 various insurance programs covering nuclear generating plants. A schedule of risks covered  
9 shall be maintained, giving a description of the property involved, the character of risks  
10 covered and the accrual rates used.

11 (b) Except as provided in paragraphs (1)(f), (1)(g), and (1)(h) Charges to this account  
12 shall be made for all occurrences in accordance with the schedule of risks to be covered which  
13 are not covered by insurance. Recoveries, insurance proceeds or reimbursements for losses  
14 charged to this account shall be credited to the account.

15 (c) A separate subaccount shall be established for that portion of Account No. 228.1  
16 which is designated to cover storm-related damages to the utility's own property or property  
17 leased from others that is not covered by insurance. The records supporting the entries to this  
18 account shall be so kept that the utility can furnish full information as to each storm event  
19 included in this account.

20 (d) In determining the costs to be charged to cover storm-related damages, the utility  
21 shall use an Incremental Cost and Capitalization Approach methodology (ICCA). Under the  
22 ICCA methodology, the costs charged to cover storm-related damages shall exclude those  
23 costs that normally would be charged to non-cost recovery clause operating expenses in the  
24 absence of a storm. Under the ICCA methodology for determining the allowable costs to be

25 CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from  
existing law.

1 charged to cover storm-related damages, the utility will be allowed to charge to Account No.  
2 228.1 costs that are incremental to costs normally charged to non-cost recovery clause  
3 operating expenses in the absence of a storm. All costs charged to Account 228.1 are subject  
4 to review for prudence and reasonableness by the Commission. In addition, capital  
5 expenditures for the removal, retirement and replacement of damaged facilities charged to  
6 cover storm-related damages shall exclude the normal cost for the removal, retirement and  
7 replacement of those facilities in the absence of a storm. The utility shall notify the Director  
8 of the Commission's Division of Economic Regulation in writing for each incident expected  
9 to exceed \$10 million.

10 (e) The types of storm related costs allowed to be charged to the reserve under the  
11 ICCA methodology include, but are not limited to, the following:

- 12 1. Additional contract labor hired for storm restoration activities;
- 13 2. Logistics costs of providing meals, lodging, and linens for tents and other staging  
14 areas;
- 15 3. Transportation of crews for storm restoration;
- 16 4. Vehicle costs for vehicles specifically rented for storm restoration activities;
- 17 5. Waste management costs specifically related to storm restoration activities;
- 18 6. Rental equipment specifically related to storm restoration activities;
- 19 7. Materials and supplies used to repair and restore service and facilities to pre-storm  
20 condition, such as poles, transformers, meters, light fixtures, wire, and other electrical  
21 equipment, excluding those costs that normally would be charged to non-cost recovery clause  
22 operating expenses in the absence of a storm;
- 23 8. Overtime payroll and payroll-related costs for utility personnel included in storm  
24 restoration activities;

1           9. Fuel cost for company and contractor vehicles used in storm restoration activities;

2 and

3           10. Cost of public service announcements regarding key storm-related issues, such as  
4 safety and service restoration estimates.

5           (f) The types of storm related costs prohibited from being charged to the reserve under  
6 the ICCA methodology include, but are not limited to, the following:

7           1. Base rate recoverable regular payroll and regular payroll-related costs for utility  
8 managerial and non-managerial personnel;

9           2. Bonuses or any other special compensation for utility personnel not eligible for  
10 overtime pay;

11           3. Base rate recoverable depreciation expenses, insurance costs and lease expenses for  
12 utility-owned or utility-leased vehicles and aircraft;

13           4. Utility employee assistance costs;

14           5. Utility employee training costs incurred prior to 72 hours before the storm event;

15           6. Utility advertising, media relations or public relations costs, except for public  
16 service announcements regarding key storm-related issues as listed above in subparagraph

17 (e)10.;

18           7. Utility call center and customer service costs, except for non-budgeted overtime or  
19 other non-budgeted incremental costs associated with the storm event;

20           8. Tree trimming expenses, incurred in any month in which storm damage restoration  
21 activities are conducted, that are less than the actual monthly average of tree trimming costs  
22 charged to operation and maintenance expense for the same month in the three previous  
23 calendar years;

24           9. Utility lost revenues from services not provided; and

25



1           10. Replenishment of the utility's materials and supplies inventories.  
2           (g) Under the ICCA methodology for determining the allowable costs to be charged to  
3 cover storm-related damages, certain costs may be charged to Account 228.1 only after review  
4 and approval by the Commission. Prior to the Commission's determination of the  
5 appropriateness of including such costs in Account No. 228.1, the costs may be deferred in  
6 Account No. 186, Miscellaneous Deferred Debits. The deferred costs must be incurred prior  
7 to June 1 of the year following the storm event. By September 30 a utility shall file a petition  
8 for the disposition of any costs deferred prior to June 1 of the year following the storm event  
9 giving rise to the deferred costs. These costs include, but are not limited to, the following:

10           1. Costs of normal non-storm related activities which must be performed by  
11 employees or contractors not assigned to storm damage restoration activities ("back-fill  
12 work") or normal non-storm related activities which must be performed following the  
13 restoration of service after a storm by an employee or contractor assigned to storm damage  
14 restoration activities in addition to the employee's or contractor's regular activities ("catch-up  
15 work"); and

16           2. Uncollectible accounts expenses.

17           (h) A utility may, at its own option, charge storm-related costs as operating expenses  
18 rather than charging them to Account No. 228.1. The utility shall notify the Director of the  
19 Commission's Division of Economic Regulation in writing and provide a schedule of the  
20 amounts charged to operating expenses for each incident exceeding \$5 million. The schedule  
21 shall be filed annually by February 15 of each year for information pertaining to the previous  
22 calendar year.

23           (i) If the charges to Account No. 228.1 exceed the account balance, the excess shall be  
24 carried as a debit balance in Account No. 228.1 and no request for a deferral of the excess or  
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1 for the establishment of a regulatory asset is necessary.

2 (j) A utility may petition the Commission for the recovery of a debit balance in  
3 Account No. 228.1 plus an amount to replenish the storm reserve through a surcharge,  
4 securitization or other cost recovery mechanism.

5 (k) A utility shall not establish or change an annual accrual amount or a target  
6 accumulated balance amount for Account No. 228.1 without prior Commission approval.

7 (l) Each utility shall file a Storm Damage Self-Insurance Reserve Study (Study) with  
8 the Commission Clerk by January 15, 2011 and at least once every 5 years thereafter from the  
9 submission date of the previously filed study. A Study shall be filed whenever the utility is  
10 seeking a change to either the target accumulated balance or the annual accrual amount for  
11 Account No. 228.1. At a minimum, the Study shall include data for determining a target  
12 balance for, and the annual accrual amount to, Account No. 228.1.

13 (m) Each utility shall file a report with the Director of the Commission's Division of  
14 Economic Regulation providing information concerning its efforts to obtain commercial  
15 insurance for its transmission and distribution facilities and any other programs or proposals  
16 that were considered. The report shall also include a summary of the amounts recorded in  
17 Account 228.1. The report shall be filed annually by February 15 of each year for information  
18 pertaining to the previous calendar year.

19 (2) Account No. 228.2 Accumulated Provision for Injuries and Damages.

20 (a) This account may be established to meet the probable liability, not covered by  
21 insurance, for deaths or injuries to employees or others and for damages to property neither  
22 owned nor held under lease by the utility. When liability for any injury or damage is admitted  
23 or settled by the utility either voluntarily or because of the decision of a Court or other lawful  
24 authority, such as a workman's compensation board, the admitted liability or the amount of the  
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1 settlement shall be charged to this account.

2 (b) Charges to this account shall be made for all losses covered. Detailed supporting  
3 records of charges made to this account shall be maintained in such a way that the year the  
4 event occurred which gave rise to the loss can be associated with the settlement. Recoveries  
5 or reimbursements for losses charged to the account shall be credited to the account.

6 (3) Account No. 228.4 Accumulated Miscellaneous Operating Provisions.

7 (a) This account may be established for operating provisions which are not covered  
8 elsewhere. This account shall be maintained in such a manner as to show the amount of each  
9 separate provision established by the utility and the nature and amounts of the debits and  
10 credits thereto. Each separate provision shall be identified as to purpose and the specific  
11 events to be charged to the account to ensure that all such events and only those events are  
12 charged to the provision accounts.

13 (b) Charges to this account shall be made for all costs or losses covered. Recoveries  
14 or reimbursements for amounts charged to this account shall be credited hereto.

15 (4)(a) The provision level and annual accrual rate for each account listed in  
16 subsections (1) through (3) shall be evaluated at the time of a rate proceeding and adjusted as  
17 necessary. However, a utility may petition the Commission for a change in the provision level  
18 and accrual outside a rate proceeding.

19 (b) If a utility elects to use any of the above listed accumulated provision accounts,  
20 each and every loss or cost which is covered by the account shall be charged to that account  
21 and shall not be charged directly to expenses except as provided for in paragraphs (1)(f),  
22 (1)(g) and (1)(h). Charges shall be made to accumulated provision accounts regardless of the  
23 balance in those accounts.

24 (c) No utility shall fund any account listed in subsections (1) through (3) unless the  
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1 Commission approves such funding. Existing funded provisions which have not been  
2 approved by the Commission shall be credited by the amount of the funded balance with a  
3 corresponding debit to the appropriate current asset account, resulting in an unfunded  
4 provision.

5 Specific Authority 366.05(1) FS.

6 Law Implemented 350.115, 366.04(2)(a) FS.

7 History-New 3-17-88, amended.

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State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

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**DATE:** October 31, 2006  
**TO:** Office of General Counsel (Harris)  
**FROM:** Division of Economic Regulation (Hewitt) *ORR # 10/31/06*  
**RE:** Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-6.0143, F.A.C., Use of Accumulated Prevision Accounts 228.1, 228.2, and 228.4

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SUMMARY OF THE RULES

Rule 25-6.0143, F.A.C., Use of Accumulated Prevision Accounts 228.1, 228.2, and 228.4, contains the guidance to investor owned electric utilities (IOUs) for dealing with storm damage accounting issues.

The proposed rule amendments would provide IOUs with a uniform and standardized methodology to identify and charge the costs of storm damage repairs. The proposed rule amendments would also create a separate subaccount to cover storm-related damages to the utility's owned or leased property that is not covered by insurance. An Incremental Cost and Capitalization Approach methodology would be required which would exclude normal costs that would ordinarily be charged elsewhere absent a storm. Included in the proposed rule changes are: the types of storm damage restoration costs that can be charged to Account 228.1, a uniform methodology for placing storm damage costs in a separate account; costs that are expressly prohibited, including base rate recoverable costs, regular payroll, employee training, tree trimming, replenishment of materials and supply inventories, and lost revenues for services not provided; the option of charging storm-related costs as operating expenses; and a requirement for a storm damage study to be filed at least once every five years.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND  
GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

All five electric investor owned utilities (IOUs) would be affected by the proposed rule changes.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES  
FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Commission would benefit because there should be less time spent litigating storm damage cost recoveries. However, there could be additional staff time required to review storm damage studies if there are more studies filed. The net cost savings is unknown. There should be no impact on agency revenues. There should be no negative impact on other state and local government entities.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

IOUs could have reduced total costs associated with the rule because there would be fewer reasons for litigation to determine the appropriate charges to the property damage reserve. IOUs could have some additional costs if they file storm damage studies on a more frequent basis than they would without the rule change. The amount of additional costs would be determined by the cost of a study and the number of additional studies. IOUs currently track and maintain separate records of storm damage restoration costs and activities. Therefore, the IOUs should have minimal additional costs to implement the proposed methodology for determining the appropriate costs to be charged to the property damage reserve.

The main benefit would be to establish a single, consistent, and uniform methodology for determining which storm damage costs can be charged to the property damage reserve.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

The rule applies to large utility businesses but could have an indirect benefit to the unregulated small businesses, small cities, and small counties that are customers of the IOUs if there are fewer litigation costs and more efficiency in booking storm damage costs. There should be no negative impacts on small businesses, cities, or counties.

CH:kb

cc: Mary Andrews Bane  
Chuck Hill  
John Slemkewicz  
Hurd Reeves