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December 11, 2018

**E-PORTAL FILING**

Ms. Carlotta Stauffer, Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

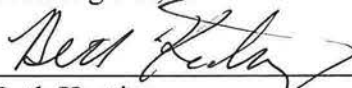
**Re: Docket No. 20180061-EI – In Re: Petition for Limited Proceeding to Recovery Incremental Storm Restoration Costs by Florida Public Utilities Company.**

Dear Ms. Stauffer:

Attached for filing, please find Florida Public Utilities Company's Response in Opposition to OPC's Motion to Reconsider Order No. PSC-2018-0567-PHO-EI.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

Kind regards,



Beth Keating  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Limited Proceeding to Recovery Incremental Storm Restoration Costs by Florida Public Utilities Company.	DOCKET NO. 20180061-EI Filed: December 11, 2018
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FLORIDA PUBLIC UTILITIES COMPANY'S RESPONSE IN  
OPPOSITION TO CITIZENS' MOTION TO RECONSIDER PORTIONS OF  
ORDER NO. PSC-2018-0567-PHO-EI

Florida Public Utilities Company ("FPUC" or "Company"), by and through its undersigned counsel, hereby submits its Response in Opposition to Citizens' Motion to Reconsider The Decision in Prehearing Order No. PSC-15-0461-CFO-EI To Strike All or Part of Issues 7 and 10, which was filed on December 7, 2018. The Company notes that, pursuant to Rule 28-106.204, Florida Administrative Code, a response, if any, may be filed within seven days of service of the motion and a ruling is not typically made until that response period has run. Nonetheless, in the interest of ensuring a complete record, as well as administrative expediency, given that this matter is noticed for hearing December 11, FPUC submits this written response in advance of the seven-day deadline. By this Response, FPUC asks that the Citizens' Motion be denied. In support of this Response, FPUC states that:

1. As the Commission has recognized time and again, the appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Prehearing Officer failed to consider in rendering his Final Order. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set

forth in the record and susceptible to review."<sup>1</sup> Applying the foregoing standard, Citizens' Motion must be denied, because it fails to identify any mistake of fact or law in the Prehearing Officer's decision, or anything that was overlooked in rendering the decision. Instead, Citizens simply disagree with the Prehearing Officer's conclusions, which is not sufficient to meet the high standard required for reconsideration. A motion for reconsideration is not the appropriate vehicle for merely rearguing issues that have already been considered.<sup>2</sup>

2. Citizens' arguments can be boiled down to the following two points: (1) by excluding the phrase "of up to \$509 an hour" the Commission has expressed bias in favor of FPU and against customers;<sup>3</sup> and (2) that exclusion of Issue 10, is "an abdication of the Commission's obligation to regulate in the public interest."<sup>4</sup> While neither argument is accurate, more importantly, neither presents a mistake of fact or law or anything that the Prehearing Officer overlooked in rendering her decision.

3. As it relates to OPCs rather dramatic contention that deleting a specific reference to the rate in question promotes bias *against customers*,<sup>5</sup> OPC seems to ignore the Prehearing Officer's assessment that OPC would not be prevented from making its arguments that the \$509 is excessive. (TR 20). As such, exclusion of that phrase has no material impact on the issues to be addressed in this case, nor OPC's ability to make its arguments. There is no legal ramification of the decision to exclude the language in question nor does the decision involve a factual assessment; rather, it reflects a prudent decision by the Prehearing Officer not to parse

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<sup>1</sup> Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d at 317. *See, e.g.* Order No. PSC-13-0180-CO-EI, issued April 29, 2013, in Docket No. 120192-EI; *citing* Order No. PSC-11-0222-FOF-TP, issued May 16, 2011, in Docket No. 090538-TP.

<sup>2</sup> Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3<sup>rd</sup> DCA 1959)(citing State ex. Rel. Jaytex Realty Co v. Green, 105 So. 2d. 817 (Fla. 1<sup>st</sup> DCA 1958).

<sup>3</sup> Motion at page 4,.

<sup>4</sup> Motion at page 8.

<sup>5</sup> Motion at page 4.

one particular rate for purposes of the Commission's consideration. There simply is no mistake of fact or law to be had on this point.

4. OPC also takes some liberties in its interpretation of the transcript that are worth noting. OPC suggests that FPUC's use of the term "inflammatory" indicates that FPUC finds the rate "embarrassingly high".<sup>6</sup> This is, however, quite different than what was actually presented in argument at the prehearing, as reflected in the transcript. FPUC's actual statement with regard to the "inflammatory" nature of OPC's desired language was that the language "suggests that the particular rate is somehow inappropriate, while presenting the rate out of context without identifying the activity or expense included in the rate." (TR 15). OPC has also overlooked the further argument offered by FPUC, and considered by the Prehearing Officer, that in establishing a presumption that the rate in question is at the upper end of an undefined rate spectrum, any decision by the Commission on the issue, as worded by OPC, could present a precedential issue for future storm proceedings in which, at a different time and under different circumstances, a similar or higher rate might be entirely appropriate.<sup>7</sup> Ultimately, the Prehearing Officer agreed with FPUC that inclusion of the language as offered by OPC creates an inappropriate presumption that the rate is neither reasonable nor prudent. As she clearly stated at the Prehearing, ". . . when you have a final issue list, it has to be impartial" and provide the basis for a balanced proceeding. (TR 18). OPC's disagreement with this conclusion does not identify a mistake of fact or law in the Prehearing Officer's decision, nor anything overlooked. As such, FPUC asks that the Motion be denied as it relates to the language stricken from Issue 7.

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<sup>6</sup> Motion at p. 4.

<sup>7</sup> To be perfectly clear, FPUC has no problem with the rate identified. It is, in fact, a rate charged by one of FPUC's contractor's during Hurricane Irma. Rather, FPUC objects to OPC's proposed language because it suggests by its very wording ("of up to \$509 an hour") that the rate is at the top of some undefined spectrum and is therefore inappropriate.

5. With regard to the exclusion of Issue 10, OPC has likewise failed to identify a basis for reconsideration. The discussion in the transcript clearly reflects that the Prehearing Officer did not misapprehend any aspect of OPC's argument. To the contrary, the Prehearing Officer noted that she found OPC's intent in proposing the issue "commendable," but that this is not "the appropriate vehicle in this particular docket." As reflected in the conversation had between the Prehearing Officer and the Commission's counsel, it was made clear that OPC's concerns did not fall on deaf ears because the Prehearing Officer specifically directed Commission staff to gather information on the subject and find the appropriate vehicle or venue for future consideration of the question raised. (TR 28). The Prehearing Officer agreed however with FPUC that this Docket, which involves only one electric utility, is not the appropriate vehicle for a broad policy question with potential impacts extending far beyond the parties to this case. The Prehearing Officer also agreed that the issue, as worded, presents potential jurisdictional questions that should be fully analyzed, but not within the context of this narrow proceeding. (TR 26).<sup>8</sup>

6. It is OPC that appears to misapprehend the concern regarding its proposed Issue 10. OPC states that "the Commission can and should place limits on the type of costs that the utilities can recover." Motion at p. 8. The issue it proposed, however, asked the Commission to consider what action should be taken "to ensure contractor rates charged to utilities are reasonable and prudent," which is an entirely different question. Because the proposed issue contemplates action by the Commission with regard to rates charged by contractors, as a general proposition, the concerns discussed regarding scope and jurisdiction are wholly valid.

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<sup>8</sup> FPUC notes that OPC suggests that "a mistaken notion manifested itself in the ultimate ruling regarding whether the Commission can regulate the commercial transactions between the utilities and vendors. . . ." Motion at p. 8. OPC did not, however, provide any case law or statutory citation to support its apparent conclusion to the contrary.

For the foregoing reasons, FPUC respectfully requests that OPC's Motion to Reconsider Order No. PSC-2018-0567-PHO-EI be denied.

Respectfully submitted,



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*Attorneys for Florida Public Utilities Company*

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Response in Opposition to Motion to Reconsider filed in the referenced docket have been served by Electronic Mail this 11th day of December, 2018, upon the following:

Rachael Dziechciarz Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 <a href="mailto:rdziehc@psc.state.fl.us">rdziehc@psc.state.fl.us</a>	J.R. Kelly / Virginia Ponder Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 <a href="mailto:Ponder.Virginia@leg.state.fl.us">Ponder.Virginia@leg.state.fl.us</a>
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