

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Evaluation of storm restoration costs
for Florida Power & Light Company related
to Hurricane Irma.

Docket No: 20180049-EI

Date: January 4, 2019

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE IN OPPOSITION TO CITIZENS' MOTION FOR EXTENSION OF
TESTIMONY FILING DATES ESTABLISHED BY ORDER NO. PSC 2018-0539-PCO-EI**

Florida Power & Light Company ("FPL" or the "Company"), pursuant to Rule 28-106.204(1), Florida Administrative Code, files this its Response in Opposition to Citizens' Motion for Extension of Testimony Filing Dates Established by Order No. PSC 2018-0539-PCO-EI served Friday, December 28, 2018. The Office of Public Counsel ("OPC" or "Citizens") and presumably OPC's consultant have been in possession of the great majority of FPL's documents for more than five months and have had more than ample time to review and analyze these materials to prepare their direct testimony. OPC has served seven sets of interrogatories¹ and seven requests for production of documents² to date, all of which have been answered by FPL and available for review and analysis by OPC and OPC's consultant. Further, OPC has taken two full days of depositions of a panel of three FPL witnesses³, during which it was very apparent that OPC has carefully reviewed and analyzed the subject materials. In light of the foregoing, and in an effort to avoid further delay, FPL respectfully requests the Commission deny OPC's motion.

1. OPC's motion fails to fully explain the background resulting in the current due dates included in Order No. PSC-2018-0539-PCO-EI ("Order 0539"). Those dates from which OPC now seeks relief were established pursuant to an agreement between FPL and OPC which was ratified through the Commission's issuance of Order 0539.

¹ Counting subparts, OPC has asked nearly 250 questions through interrogatories.

² Counting subparts, OPC has requested approximately 60 types and categories of documents resulting in FPL's production of tens of thousands of pages of responsive documents.

³ OPC's deposition of an FPL panel of three witnesses was taken on November 15, 2018 from 9:50 a.m. to 6:33 p.m. and on December 13, 2018 from 9:00 a.m. to 6:29 p.m. It should be noted that OPC's consultant Helmuth Schultz was present for the December 13, 2018 portion of the deposition. The deponents were Thomas Gwaltney, Ray Lozano and Kristin Manz, three FPL employees with knowledge of the matters specified in OPC's Notice of Taking Deposition Duces Tecum. Pursuant to the directions in OPC's Notice of Taking Deposition Duces Tecum, Mr. Gwaltney was produced to address mutual assistance agreements involving utilities providing restoration support, and the management of contractor resources; Mr. Lozano was produced to address contractual provisions and contract compliance; and Ms. Manz was produced to address the accounts payable process, including the processing of invoices for payment, the preparation of invoices, and the review of invoices for correctness and appropriateness.

2. The Commission established this docket on February 22, 2018 to evaluate FPL's Hurricane Irma related storm costs. OPC intervened on April 25, 2018 and served its initial discovery May 18, 2018. Among the discovery served at that time was a series of requests which essentially asked FPL to produce virtually all invoices documenting the approximately \$1.3 billion in storm related costs incurred in connection with FPL's Hurricane Irma restoration activities.⁴

3. On June 7, 2018, the Commission issued Order No. PSC-2018-0290-PCO-EI ("Order 0290"), the initial Order Establishing Procedure in this docket. Order 0290 required FPL to file its direct testimony and exhibits August 31, 2018, to be followed by Intervenors' testimony and exhibits more than two months later on November 9, 2018.

4. Because of the large volume of documents FPL was required to retrieve, review and assemble in order to respond to OPC's First Set of Interrogatories and First Request for Production of Documents, FPL requested and OPC agreed to an extension of time that resulted in FPL's production of the requested documents in a series of responses, the last of which occurred on July 31, 2018. FPL's answers to OPC's First Set of Interrogatories, which do not appear to be at issue in OPC's pending motion, were also provided in a series of responses, the last of which occurred on August 15, 2018.⁵

5. On August 31, 2018, FPL filed its direct case in accordance with Order 0290.⁶

6. OPC waited almost two months after receiving the majority of FPL's discovery responses (namely, the invoices and supporting documentation produced on July 31, 2018) before serving its second set of discovery requests to FPL on September 25, 2018.

7. On October 22, 2018, OPC filed its first motion to extend the dates to file testimony. In that motion, OPC complained that its consultant would have less than two and a half months to conduct his review and prepare testimony. The motion concluded with a request "that Intervenors'

⁴ The request asked for documents above minimum dollar thresholds not pertinent to OPC's motion or this response.

⁵ FPL's response to OPC's First Request for Production of Documents was due, absent extension, on June 18, 2018. FPL's responses were filed June 14, 2018, June 19, 2018, and July 31, 2018. FPL's July 31, 2018 production contained the majority of the documents requested by OPC, including invoices and supporting documentation for FPL's Hurricane Irma related restoration costs. Thus, though OPC's motion describes this as an "extraordinarily long delay by FPL in producing documents in response to OPC's very first set of interrogatories and requests for production of documents" it bears repeating that FPL's responses, the latest of which was served July 31, 2018, provided OPC with the great majority of documents generated in connection with approximately \$1.3 billion in FPL's Hurricane Irma related costs. And while OPC describes this in their motion as "an extension of roughly two months", it is clear that the last of the requested documents was produced six weeks and one day after the date they would have been due absent extension.

⁶ FPL's direct case included its Petition and the direct testimony and exhibits of FPL witnesses Manuel B. Miranda, Keith Ferguson and Eduardo DeVarona.

testimony filing date be moved to January 11, 2019 *to allow OPC sufficient time to conduct a thorough analysis of FPL's Hurricane Irma storm costs.*" (Paragraph 12 of OPC's October 22, 2018 Motion for Extension of Testimony Filing Dates Established by Order No. PSC-2018-0290-PCO-EI, ("First Motion for Extension"), emphasis added). The motion was silent as to all other filing dates, and if granted as filed, OPC's testimony would have been due after FPL's rebuttal testimony.

8. After receiving OPC's October 22, 2018 motion, FPL contacted OPC to attempt to resolve the motion in a way that would provide OPC the requested additional time to prepare and file its direct testimony while also adjusting the other procedural dates that would be fair to all parties. The result of those communications was the Joint Motion of Florida Power & Light Company and Office of Public Counsel for Extension of Dates Established by Order No. PSC-2018-0290-PCO-EI ("Joint Motion") filed October 29, 2018. In that motion, FPL and OPC acknowledged the discovery extension noted above, and both parties agreed that "This Joint Motion is designed to provide all parties with the time necessary to complete discovery and fully prepare their respective cases." (Paragraph 3 of Joint Motion)

9. Additionally, in the Joint Motion FPL and OPC affirmatively stated that "the requested extension and revision to the dates in the OEP are fair, reasonable, will not prejudice any party to this proceeding, and should provide the Commission with the information and evidence necessary to fully evaluate and address FPL's Hurricane Irma storm restoration costs."⁷ (Paragraph 6 of Joint Motion)

10. With the filing of the Joint Motion, OPC withdrew its First Motion for Extension.

11. On November 16, 2018, the Commission entered Order 0539 from which OPC now seeks further relief. In granting the Joint Motion in part and providing OPC with an additional nine weeks to file their testimony on January 11, 2019, the Commission included the following cautionary note:

"The filing dates OPC and FPL seek to extend have been in place for five months and OPC, as well as all other intervenors, have had more than 2 months to review and conduct discovery on FPL's direct testimony in order to prepare their own

⁷ Notwithstanding the joint statement of OPC and FPL that the extension to January 11, 2019 for filing OPC testimony should provide the Commission with the information and evidence necessary to fully evaluate and address FPL's Hurricane Irma storm restoration costs, OPC now states that a denial of their current request for additional time "may erode the public's confidence that the PSC conducted a meaningful review" of those costs. Unlike OPC, FPL is confident that the Commission will have all of the evidence needed to conduct a thorough and meaningful review of FPL's Hurricane Irma restoration costs and to fully evaluate and address those costs.

testimony. The parties' request for more time to further develop their case through discovery must be balanced with the need to determine the actual costs ratepayers will bear in a timely manner. Under the schedule proposed in the Joint Motion, the State of Florida will be well into the 2019 hurricane season before a decision could be made on storm costs incurred two years prior. It should be underscored that the Commission diligently strives to avoid any unnecessary regulatory lag. Nevertheless, the collaborative request for additional time is somewhat persuasive." Order 0539 at page 2.

12. At the time that OPC agreed that a testimony filing date of January 11, 2019 was appropriate, they had been in possession of the requested documents for approximately three months. Now that they have had those documents for more than five months – more than ample time to review the materials - they claim to need still more time.

13. OPC argues that its consultant requires additional time due to the fact that the same consultant is also working for OPC on the FPUC, TECO and Duke storm cost dockets. This argument lacks merit. Witness Schultz filed his testimony in the FPUC case October 22, 2018, and the hearing on the FPUC docket was held on December 11, 2018. Additionally, Witness Schultz's testimony is not due in the Duke and TECO dockets until March 29, 2019. Nothing about the deadlines in any of those cases interferes with OPC's ability to prepare its direct testimony in this docket by the currently established due date of January 11, 2019. In fact, the manner in which the four storm cost cases have been staggered by the Commission should facilitate, not hinder, OPC and its consultant in their ability to prepare their case.

14. OPC's motion appears to suggest that additional time is needed because it and its consultant are doing a line-by-line analysis of the invoices and vendor documents for all of the FPL Hurricane Irma storm restoration costs. The purpose of this hearing is to determine whether FPL's Hurricane Irma storm restoration costs were reasonable and whether FPL's activities in restoring power following Hurricane Irma were prudent. FPL submits that the reasonableness of the costs and prudence of FPL storm activities could and should be determined by a reasonable risk-based sampling of relevant invoices and vendor documents, similar to any financial or regulatory internal audit. OPC's apparent desire to conduct a line-by-line review of essentially every single invoice and vendor document related to approximately \$1.3 billion in storm costs is unreasonable, inefficient, and unnecessary. In any case, OPC was well aware of and agreed to the ample 63-day extension and deadline approved by the Prehearing Officer to conduct its review of the information and documents provided by FPL to prepare for hearing.

15. Modification of the revised procedural dates requested by OPC in their motion would prejudice FPL by placing the Company in a position of responding to potentially significant discovery on its rebuttal case during what would be the shortened window between rebuttal and discovery cutoff, while at the same time FPL prepares for the final hearing in this proceeding.

16. In further support of its Motion, OPC incorrectly states that “this proceeding is simply designed to quantify the dollar amount of storm costs FPL may ‘offset’ or retain from the amounts customers are owed in refunds as a result of the huge tax cut windfall FPL realized from the Tax Cuts and Jobs Act of 2017.” (Paragraph 12 of OPC motion) Contrary to OPC’s statement, the purpose of this proceeding is to evaluate and determine whether FPL’s Hurricane Irma storm restoration costs were reasonable and whether FPL’s activities in restoring power following Hurricane Irma were prudent, consistent with “what a reasonable utility manager would do in light of the conditions and circumstances which he knew or reasonably should have known at the time the decision was made.” *In Re Fuel & Purchased Power Cost Recovery Clause*, Docket No. 080001-EI, Order No. PSC-2009-0024-FOF-EI, 2009 WL 692572 (FPSC Jan. 7, 2009) (emphasis added). The amount and appropriate use of the tax savings realized from the Tax Cuts and Jobs Act of 2017 will be addressed by the Commission in Docket No. 20180046-EI.⁸ Any appropriate issues or concerns about the amount or use of the tax savings by FPL under its Commission-approved settlement agreement are beyond the limited scope and purpose of this proceeding, and should be raised in the tax savings docket.⁹

17. This docket was established to evaluate FPL’s storm restoration costs related to Hurricane Irma. Staff developed a reasonable and appropriate schedule to provide the parties and the Commission adequate time to review and evaluate the reasonableness and prudence of FPL’s storm restoration costs and activities. That schedule was modified to accommodate OPC’s request for additional time to prepare its case, providing OPC and its consultant more than five months to review and analyze the great majority of FPL’s documents before filing testimony. Given the scope of this proceeding and OPC’s failure to adequately demonstrate that an extension is needed, FPL objects to any further extension of time for OPC to file its direct testimony.

⁸ OPC has intervened and is actively participating in Docket No. 20180046-EI.

⁹ OPC is inappropriately using its Motion in this proceeding to argue, erroneously, that FPL has a refund obligation as a result of the change in the tax law.

Conclusion

WHEREFORE, for the above and foregoing reasons, FPL respectfully requests that the Commission deny OPC's Motion for Extension of Testimony Filing Dates established by Order No. PSC-2018-0539-PCO-EI.

Respectfully submitted this 4th day of January, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished

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