

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
ORDER NO. PSC-2019-0017-PCO-EI
ISSUED: January 8, 2019

ORDER DENYING MOTION FOR EXTENSION
OF TESTIMONY FILING DATES

On December 28, 2018, the Office of Public Counsel (OPC) filed a Motion for Extension of Testimony Filing Dates Established by Order No. PSC-2018-0539-PCO-EI (Motion). In its Motion, OPC is requesting that its testimony filing date be extended from January 11, 2019, until February 8, 2019. OPC is also requesting that the filing dates for Commission staff testimony and Florida Power & Light Company's (FPL) rebuttal testimony be extended to February 15, 2019, and April 12, 2019, respectively. OPC is not seeking to move the final hearing date which is scheduled for June 11-14, 2019. The Florida Retail Federation (FRF) supports the Motion and the Florida Industrial Power Users Group (FIPUG) takes no position on the Motion. FPL filed a Response in Opposition to Citizen's Motion for Extension of Testimony Filing Dates Established by Order No. PSC-2018-0539-PCO-EI (Response) on January 4, 2019.

OPC proffers a request for more time to file its testimony with several arguments. First, OPC states that FPL did not provide late-filed deposition exhibits associated with OPC's depositions of FPL witnesses on November 15, 2018 and December 13, 2018, and required written discovery with the 30-day turnaround time consistent with the Order Establishing Procedure, Order No. PSC-2018-0290-PCO-EI. Given the 30-day turnaround time, OPC states that responses to all of its November 15th deposition discovery will not be available until January 14, 2019, three days after its testimony is currently due.¹ Second, OPC argues that it has been delayed in asking follow-up questions regarding its December 13th deposition of FPL's witnesses due to the fact that a transcript of the deposition was only made available to it on December 26, 2018. Third, OPC states that its expert must review more than 70,000 pages of vendor contracts, purchase orders and related documents as well as "upwards of 10 gigabytes of data"² provided by FPL. Additionally, OPC states that its consultant is also responsible for simultaneously analyzing large numbers of documents in the Tampa Electric Company (TECO), Duke Energy Florida, LLC (DEF), and Florida Public Utility Company (FPUC) storm cost dockets.³ In short, OPC concludes that its consultant has not had enough time to collect all of the documents needed or to fully review the documents already received. Fifth, given all of the above, OPC states that it will be severely prejudiced if its Motion is not granted since it will not have had the time

¹ OPC's Sixth Set of Interrogatories to FPL Nos. 128-148 and Seventh Set of Production of Documents Request were served on December 3, 2018, and consist of questions related to the November 15 FPL depositions. The Sixth Set of Interrogatories and Seventh Request for Production of Documents were answered by FPL on January 2, 2019. OPC's Seventh Set of Interrogatories Nos. 149-153, which requests information regarding journal entries for 2017-2018 and support for 2017 FERC Form 1 information, was served on December 14, 2018 and was answered by FPL on January 4, 2019. Therefore, at this time all OPC discovery has been answered and none is outstanding.

² Motion at pps. 3, 5.

³ Docket Nos. 20170271-EI, 20170272-EI, and 20180061-EI, respectively.

needed to adequately prepare or present its case since the “primary opportunity for OPC to provide its analysis is in its direct prefiled testimony.”⁴

In its Response, FPL cites several reasons why OPC’s Motion should be denied. First, FPL states that OPC’s consultant has had answers to OPC’s First Set of Interrogatories Nos. 1-34 and First Request for Production of Documents Nos. 1-11, which constitute the great majority of FPL’s documents which need to be reviewed, since July 31, 2018 and August 15, 2018, respectively, or about five months.

Second, FPL argues that this is OPC’s *second* request for extension of time to file testimony. In its first motion to extend the dates to file testimony filed on October 22, 2018, OPC stated that a filing date of January 11, 2019, would allow it “sufficient time to conduct a thorough analysis of FPL’s Hurricane Irma Storm costs.”⁵ On October 29, 2018, FPL joined with OPC to file the Joint Motion of FPL and OPC for Extension of Dates Established by Order No. PSC-2018-0290-PCO-EI (Joint Motion). The Joint Motion again requested an OPC testimony filing date of January 11, 2019, and stated that “[t]his Joint Motion is designed to provide all parties with the time necessary to complete discovery and fully prepare their respective cases.”⁶ Further, the Joint Motion states that “FPL and OPC submit 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 FPL notes that OPC made these statements when it had already had the bulk of the discovery for three months. FPL concludes that based on these representations, OPC agreed to a 63 day extension from the original filing date with full knowledge of the tasks that needed to be done to prepare its case.⁸

Third, FPL states that the TECO, DEF and FPUC dockets do not present an obstacle to review of documents or preparation of testimony in this docket. Witness Schultz filed his testimony in the FPUC docket on October 22, 2018 and the hearing was held on December 11, 2018. Testimony in both the DEF and TECO docket is not due until March 29, 2019. FPL concludes given the filing dates in these dockets, OPC’s ability to prepare its direct testimony on January 11, 2019, is not affected. Additionally, FPL does not agree that OPC’s consultant must review each and every invoice or vendor document. FPL argues that a more reasonable approach would be to conduct a reasonable, risk-based sampling of relevant invoices and vendor documents as is routinely done in financial and regulatory internal audits. Finally, FPL argues that it will be prejudiced by granting OPC’s Motion since FPL will be potentially forced to

⁴ Motion at p. 5.

⁵ Motion for Extension of Testimony Filing Dates Established by Order No. PSC-2018-0290-PCO-EI (First Motion) at p. 4.

⁶ Joint Motion at p. 2.

⁷ Joint Motion at pp. 2-3.

⁸ FPL also takes issue with OPC’s representation that tax savings generated by the Tax Cuts and Jobs Act of 2017 are to be used to “offset” Hurricane Irma costs found to be reasonable and prudent in this docket. Docket No. 20180046-EI, according to FPL, will resolve the amount and use of the tax savings. Therefore, FPL concludes that no time or effort needs to be expended in this docket to address any tax savings issues.

respond to discovery regarding its rebuttal testimony while simultaneously preparing for final hearing.

Having reviewed the Motion and Response as well as OPC's First Motion and the Joint Motion, OPC's arguments for more time to file its testimony in this docket are without merit for several reasons. Most importantly, this is OPC's *second* request to extend the date to file its testimony and if granted, OPC would have been given a total of three additional months to file testimony from the original testimony filing date of November 9, 2018. If OPC's second request is granted, OPC will have been given six months from the time that FPL filed its direct testimony on August 31, 2018, to file its testimony. In comparison, under Order No. PSC-2018-0290-PCO FPL was given 30 days to file its rebuttal to OPC's testimony and Order No. PSC-2018-0539-PCO-EI extended that time to 60 days. Under the current schedule OPC has been given 120 days to prepare its testimony, or double the time given to FPL to file rebuttal.

At the time that OPC requested the first extension of time to file its testimony, OPC had in its possession the bulk of the information and documents requested from FPL and clearly represented in its Joint Motion with FPL that no additional time would be needed. The only event that OPC alleges happened between its October 29, 2018 Joint Motion and the Motion under consideration here is its inability to do additional discovery on its second deposition of FPL witnesses on December 13, 2018, prior to filing its testimony on January 11, 2019. OPC may well have additional questions based on its second full day of deposition of FPL's witnesses on December 13. However, OPC agreed to a deposition date of December 13, one month after its first deposition, with full knowledge of the fact that its testimony was due on January 11, one month later. While OPC may prefer to have information gleaned from its second FPL deposition discussed in its prefiled testimony, all parties are aware that is not the only means to provide relevant, material information for the Commission's consideration in this docket.

OPC's argument that its consultant is unable to review all the documents and data produced in this docket in light of his responsibilities in the FPUC, TECO and DEF storm dockets are also not persuasive. The schedules in all of the storm dockets were the result of Commission staff working diligently with all affected parties, including OPC, to stagger the testimony filing dates in order to accommodate everyone's caseload. The schedules in these dockets have been in place before October 29, 2018, when the Joint Motion was filed.⁹ It is the Commission's responsibility to balance the desire of OPC for every last bit of potentially relevant information to be discovered and analyzed against the need for ratepayers and FPL to have a timely determination of the actual storm costs to be passed on to ratepayers. The current filing schedule contained in Order No. PSC-2018-0539-PCO-EI, put in place at OPC's request, achieves that balance.

⁹ Order No. PSC-2018-0126-PCO-EI, issued on March 7, 2018, in Docket No. 20170271-EI, In re: Petition for recovery of costs associated with named tropical systems during the 2015, 2016 and 2017 hurricane seasons and replenishment of storm reserve subject to final true-up by Tampa Electric Company; Order No. PSC-2018-0404-PCO-EI, issued on August 14, 2018, in Docket No. 20180061-EI, In re: Petition for limited proceeding to recover incremental storm restoration costs by Florida Public Utilities Company; Order No. PSC-2018-0487-PCO-EI, issued on September 27, 2018, in Docket No. 20170272-EI, In re: Application for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Irma and Nate by Duke Energy Florida, LLC.

Finally, a line-by-line review by OPC's consultant of all of the invoices provided for each of FPL's vendors is unnecessary and a risk-based sampling of relevant invoices and vendor documents is reasonable, in keeping with standard Commission practice, and takes far less time. For these reasons, the Motion does not state good cause for an extension of time to file OPC's testimony and is hereby denied.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Office of Public Counsel's Motion for Extension of Testimony Filing Dates Established by Order No. PSC-2018-0539-PCO-EI, is hereby denied. It is further

ORDERED that the filing schedule set forth in Order No. PSC-2018-0539-PCO-EI, issued on November 16, 2018, shall continue to be in effect.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 8th day of January, 2019.



JULIE I. BROWN

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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. 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.