

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

FILED: May 24, 2019

**SECOND AMENDED PREHEARING STATEMENT OF
THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2018-0290-PCO-EI, issued on June 7, 2018, as amended by Order No. PSC 2018-0539-PCO-EI, issued November 16, 2018, and the directions of the Prehearing Officer, hereby submit this Second Amended Prehearing Statement.

APPEARANCES:

STEPHANIE MORSE, Esquire
Associate Public Counsel
PATRICIA A. CHRISTENSEN, Esquire
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CHARLES REHWINKEL, Esquire
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Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
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On behalf of the Citizens of the State of Florida.

1. **WITNESSES:**

The Citizens intend to call the following witnesses, who will address the issues indicated:

<u>NAME</u>	<u>ISSUES</u>
Helmuth W. Schultz, III	1-11, 1A, 4A, 4B, 11A

2. EXHIBITS:

Witness	Proffered By	Exhibit #	Description
Direct			
Helmuth W. Schultz, III	OPC	Exhibit HWS-1	Qualifications of Helmuth W. Schultz, III
Helmuth W. Schultz, III	OPC	Exhibit HWS-2	Schedules A through I
Helmuth W. Schultz, III.	OPC	Exhibit HWS-3	Transcript of Depositions of FPL's corporate representative panel on Nov. 15, 2018 and Dec. 13, 2018, with deposition exhibits

3. STATEMENT OF BASIC POSITION

OPC: The central tenet governing the approval of any costs which a utility proposes to pass through to customers as the ultimate payors is that the costs must have been incurred in a reasonable and prudent manner. In this case, FPL claims it is not seeking to establish a charge for recovery of costs related to Hurricane Irma; however, FPL does in fact intend that customers use their funds to pay for its Hurricane Irma costs. FPL states it is asking the Commission to approve its own calculation of storm costs FPL has or plans to “offset” or retain from the amounts customers would otherwise receive in refunds as a result of the huge tax cut windfall FPL realized from the Tax Cuts and Jobs Act of 2017. For purposes of this docket, the principal point of emphasis and concern is that FPL spent money with the intent that customers would ultimately be responsible for paying the costs in the end. The Public Counsel is concerned that a company spending someone else’s money has less incentive to prioritize strong fiscal controls as would a party spending their own money. As such, a thorough review of the costs and the manner in which they were incurred by FPL is required in order to protect the public interest.

OPC recognizes that Hurricane Irma caused extraordinary damage. In fact, the scope of the damage, the large number of contractors managed, and the resulting volume of invoices paid merely provide support for OPC’s position that the costs must be carefully scrutinized to ensure that customers do not pay for improper costs that slipped through FPL’s system. In its analysis, OPC did not take issue with the utility’s restoration times, which appear to be consistent with Rule 25-6.044(3), Florida Administrative Code. However, FPL’s processes and emergency contractor rate structures perhaps inadvertently have built in perverse incentives which could lead to fiscal lapses for which customers might be stuck paying in the end. Adjustments for reasonableness and prudence related to many of the issues OPC raises regarding contractor crew mobilization and demobilization costs would not increase restoration times, but instead could serve to reduce restoration times by properly incentivizing contractors to travel in a more efficient manner and timely arrive at areas requiring restoration.

Additionally, a distinction must be made among the types of costs for which FPL seeks approval in this docket. Some of the costs included in FPL's petition must be accounted for differently in order to avoid improperly understating the rate for capitalization and to avoid creating intergenerational inequities. The incremental cost recovery and capitalization approach (ICCA) must be applied to determine the reasonable and prudent amount of contractor costs associated with embedded crew expense (crews doing regular, year-round capital maintenance and improvement work for FPL) to be included in the Hurricane Irma restoration costs.

OPC's analysis shows that several of the costs listed in FPL's Petition must be adjusted due to excessive or improper payments. For example, the storm costs must be reduced to account for duplicated payments (invoices FPL improperly paid twice). Regular and overtime payroll should be reduced by at least \$4.104 million and \$17.158 million, respectively, to exclude non-incremental payroll. Similarly, in order to reflect the proper capitalization of certain restoration work and contractor costs, the amounts must be reduced by at least \$291.197 million. Additionally, a reduction of at least \$94.227 million is required due to excessive hourly rates, excessive mobilization/demobilization charges, and excessive standby times. Finally, a \$26.039 million reduction is required due to the lack of documentary support to justify logistics costs, and a \$50.076 million adjustment is required due to unsupported contractor accruals and mutual assistance. In summary, based on the adjustments recommended by Mr. Schultz, \$486.769 million of FPL's overall storm restoration costs chargeable to expense must be removed from the costs for which FPL seeks approval.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

I. ISSUES

ISSUE 1: Should the incremental cost and capitalization approach (ICCA) found in Rule 25-6.0143, F.A.C., be used to determine the reasonable and prudent amounts to be included in the Hurricane Irma restoration costs?

OPC: Yes.

ISSUE 2: What is the reasonable and prudent amount of regular payroll expense to be included in the Hurricane Irma restoration costs?

OPC: The amount to be included should be zero, based on the \$4.153 million (\$4.104 million jurisdictional) of adjustments reflected on Exhibit No. HWS-2, Schedule B of Helmuth Schultz' direct testimony.

ISSUE 3: What is the reasonable and prudent amount of overtime payroll expense to be included in the Hurricane Irma restoration costs?

OPC: The amount to be included should be no more than \$8.723 million (\$8.595 million jurisdictional) after reflecting the \$29.938 million (\$29.571 million jurisdictional) of adjustments reflected on Exhibit No. HWS-2, Schedule B of Helmuth Schultz' direct testimony.

ISSUE 4: What is the reasonable and prudent amount of contractor costs to be included in the Hurricane Irma restoration costs?

OPC: The amount to be included should be no more than \$324.683 million (\$322.457 million jurisdictional) after reflecting \$428.001 million (\$427.097 jurisdictional) of adjustments reflected on Exhibit No. HWS-2, Schedule C of Helmuth Schultz' direct testimony.

ISSUE 5: What is the reasonable and prudent amount of vegetation and line clearing costs to be included in the Hurricane Irma restoration costs?

OPC: The amount to be included should be no more than \$134.828 million (\$134.706 million jurisdictional) as reflected on Exhibit No. HWS-2, Schedule D of Helmuth Schultz' direct testimony.

ISSUE 6: What is the reasonable and prudent amount of employee expenses to be included in the Hurricane Irma restoration costs?

OPC: The OPC is not recommending a dollar-specific adjustment related to this issue.

ISSUE 7: What is the reasonable and prudent amount of materials and supplies expense to be included in the Hurricane Irma restoration costs?

OPC: The amount to be included should be no more than \$16.910 million (\$16.691 million jurisdictional), as reflected on Exhibit No. HWS-2, Schedule F of Helmuth Schultz' direct testimony.

ISSUE 8: What is the reasonable and prudent amount of logistics costs to be included in the Hurricane Irma restoration costs?

OPC: The amount to be included should be no more than \$246.955 million (\$246.833 million jurisdictional) after reflecting the \$26.041 million (\$26.039 jurisdictional) of adjustments reflected on Exhibit No. HWS-2, Schedule G of Helmuth Schultz' direct testimony.

ISSUE 9: What is the reasonable and prudent total amount of costs to be included in the Hurricane Irma restoration costs?

OPC: The amount to be included should be no more than \$764.547 million (\$761.403 million jurisdictional), as reflected on Exhibit No. HWS-2, Schedule A of Helmuth Schultz' direct testimony.

ISSUE 10: What is the reasonable and prudent amount of storm-related costs that should be capitalized?

OPC: The amount to be included should be at least \$390.591 million, after the \$285.464 million of adjustments reflected on Exhibit No. HWS-2, Schedule I of Helmuth Schultz' direct testimony.

ISSUE 11: What is the appropriate accounting treatment associated with any storm costs found to have been imprudently incurred?

OPC: Imprudently incurred costs should be disallowed.

ISSUE 12: Should this docket be closed?

OPC: No position at this time.

CONTESTED ISSUES

OPC

ISSUE 4A: What is the reasonable and prudent amount of contractor costs associated with standby time, mobilization time, and demobilization time to be included in the Hurricane Irma restoration costs?

OPC: The amount to be included should be consistent with the adjustments reflected on Exhibit No. HWS-2, Schedule C of Helmuth Schultz' direct testimony.

ISSUE 4B: Should the incremental cost recovery and capitalization approach (ICCA) be applied to determine the reasonable and prudent amount of contractor costs associated with embedded crew expense (crews working year-round for FPL) to be included in the Hurricane Irma restoration costs?

OPC: Yes.

ISSUE 11A: 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?

OPC: The Commission should consider rulemaking to address issues regarding emergency contractor rates authorized by utilities to ensure that Florida customers are not victimized during post storm restoration efforts, which is the time customers are most vulnerable to profiteering. Since Commission policy is generally required to enact 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.

FRF

ISSUE 1A: Was FPL required to use the Storm Cost Recovery Mechanism (SCRM) described in Order No. PSC-2016-0560-AS-EI for the recovery of FPL's reasonable and prudent Hurricane Irma restoration costs?

OPC: Yes, Order No. PSC-2016-0560-AS-EI requires the use of the SCRM for cost recovery for damage caused by Hurricane Irma.

5. STIPULATED ISSUES

None at this time.

6. PENDING MOTIONS

OPC's timely filed Motion to Strike, which was filed prior to the Prehearing Conference, pursuant to the terms of Section V. (D) of the OEP. The Motion is explicitly based on the argument that the subject testimony is not competent and substantial, and includes the express statement that the argument applies whether the witness is considered a *fact witness* or an expert witness; therefore the Motion stands whether or not the witness is later disclosed or classified as an expert witness. OPC's Motion is not solely based on a question of expertise.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

Portions of the testimony and exhibits of Helmuth Schultz have been designated as confidential, due to claims of confidentiality by FPL regarding documents and

information they produced in discovery. Otherwise, OPC has no pending requests for confidentiality at this time.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT

To the extent that any expert witness has not identified his or her area(s) of expertise, OPC objects. OPC reserves all rights to question all witnesses as to their qualifications as related to the credibility and weight to be accorded their testimony.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

There are no requirements of the OEP with which OPC cannot comply at this time.

Dated this 24th day of May, 2019

Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Second Amended Prehearing Statement has been furnished by electronic mail on this 24th day of May, 2019, to the following:

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