

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light
Company for Approval of FPL SolarTogether
Program and Tariff

Docket No: 20190061-EI

Filed: October 1, 2019

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO OFFICE
OF PUBLIC COUNSEL'S MOTION TO CONTINUE THE HEARING DATE, EXPAND
THE DISCOVERY PERIOD AND FILE SUPPLEMENTAL DIRECT TESTIMONY, OR
IN THE ALTERNATIVE, TO STRIKE PORTIONS OF FPL'S REBUTTAL
TESTIMONY**

Pursuant to Rule 28-106.204, F.A.C, Florida Power & Light Company ("FPL") hereby responds in opposition to the Office of Public Counsel's ("OPC's") Motion to Continue the Hearing Date, Expand the Discovery Period and File Supplemental Direct Testimony, or in the Alternative, to Strike Portions of FPL's Rebuttal Testimony, filed on September 27, 2019 ("Motion"). As described below, OPC's Motion mischaracterizes FPL's rebuttal testimony, seeks an unnecessary, open ended, and protracted delay of the proceeding, and should therefore be denied. In support, FPL states:

1. On March 13, 2019, FPL filed its Petition for Approval of FPL SolarTogether Program and Tariff ("Petition"). On April 22, 2019, the Florida Public Service Commission ("Commission") entered an order suspending the tariff in order to allow Commission Staff sufficient time to gather all pertinent information in order to present this Commission with an informed recommendation on the tariff proposal. Order No. 2019-0143-PCO-EI.

2. On June 26, 2019, OPC filed a Motion for Administrative Hearing on FPL's proposed SolarTogether Program and Tariff. On July 5, 2019, the Commission issued an Order Establishing Procedure (Order No. PSC-2019-0272-PCO-EI, as amended by Order No. PSC-2019-0272A-PCO-EI) setting FPL's Petition for an administrative hearing and establishing a procedural schedule for this docket, include dates for the filing of Intervenor and Commission

Staff direct testimony (September 3, 2019), FPL rebuttal testimony (September 23, 2019), completion of discovery actions (October 3, 2019), and the hearing (October 15-16, 2019).

3. On July 29, 2019, FPL witnesses Matthew Valle, Scott Bores, Juan E. Enjamio, and William F. Brannen filed direct testimony supporting FPL's proposed SolarTogether program and tariff.

4. On September 3, 2019, Commission Staff (Cayce Hinton) and Intervenors OPC (James R. Dauphinais), the Southern Alliance for Clean Energy ("SACE") (Bryan A. Jacob), VoteSolar (Matt Cox), and Walmart (Steve W. Chriss) filed direct testimony.

5. On September 23, 2019, FPL filed the rebuttal testimony of witnesses Matthew Valle, William F. Brannen, Juan E. Enjamio, Scott Bores, Terry Deason, and Lon Huber, addressing the concerns raised by the Intervenor and Staff witnesses' testimony about the proposed program through, among other things, providing for a reduced rate (a minor revision to the proposed program tariff (Exhibit MV-2)) with a higher cost allocation for participants and greater benefits and significantly reduced costs and risks for the non-participating general body of FPL's customers, all based on an updated economic analysis. This updated analysis addressed a timing assumption for FPL's 2020 SOBRA (non-SolarTogether) solar, *i.e.*, which comes first in the analysis for 2020, SOBRA or SolarTogether, and the minor impact of new DSM Goals proposed by FPL, both issues raised by Commission Staff, as well as a numerical adjustment to remove the AFUDC expense in light of FPL's current construction plans for the program's solar facilities.

6. In response to FPL's rebuttal testimony, OPC now asks the Commission to continue the October 2019 hearing dates indefinitely to dates of OPC and its expert witness' liking, which would be "no earlier than mid-January or early February 2020", nearly one year

from the date FPL filed its petition initiating this proceeding.¹ OPC claims this continuance of the hearing dates is needed to provide itself, the other Intervenors, and presumably Commission Staff with the opportunity to conduct additional discovery and provide further testimony in response to FPL's rebuttal testimony. In the alternative, OPC asks that portions of the rebuttal testimony of FPL witnesses' Valle, Enjamio, Bores, and Brannen be stricken.

7. If accepted, OPC's position would prevent any petitioner in a future proceeding before the Commission from addressing any intervenor or Commission Staff testimony or concerns through rebuttal testimony in the form of revisions to a proposed tariff or program, without having to file a new case or face protracted proceedings. Such an outcome would be wasteful and inefficient, a disincentive for bringing innovative programs like SolarTogether forward, and not good public policy. OPC's overreaching motion geared toward its own convenience (and that of its expert) should be denied.

I. FPL's September 23, 2019 Testimony is Proper Rebuttal Testimony

8. FPL filed rebuttal testimony directly responding to the testimony submitted by Commission Staff witness Hinton, OPC witness Dauphinais, SACE witness Jacob, VoteSolar witness Cox, and Walmart Witness Chriss, as well as issues regarding the proposed SolarTogether program raised by Commission Staff and the other parties in their discovery requests directed to FPL. Specifically, FPL addressed the concerns raised by witness Dauphinais on pages 35-41 of his testimony that the proposed program does not represent "a reasonable voluntary solar program" for FPL's customers and by Commission Staff witness Hinton on pages 5-7 of his testimony regarding the appropriateness of the allocation of costs and benefits

¹ In fact, it would appear OPC seeks to delay this proceeding even further with its outrageous claim that FPL has now submitted a new tariff application adding an additional eight months in accordance with Section 366.06, Fla. Stat. to the current proceeding, insinuating a May 2020 deadline for a Commission decision would now be in order. *See* OPC Motion at 4.

between participants and the non-participating general body of customers, as well as the fact that a portion of the credits for the program would be recovered through the Fuel Clause from non-participating members of the general body of customers. As a result, FPL reviewed and updated its allocation of costs and benefits and underlying economic analyses for the program to ensure both accuracy and the highest level of savings while reducing risk for all of FPL's customers, both participants and non-participants alike.

9. Rebuttal testimony is permitted “to explain, repel, counteract, or disprove the evidence of the adverse party”, and if a party opens the door to the line of testimony, that party cannot successfully object to the other party “accepting the challenge and attempting to rebut the presumption asserted.” See *In re: Application for Increase in Water and Wastewater Rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida*, Docket No. 160101-WS, Order No. PSC-17-0147-PCO-WS, May 2, 2017 (citing *United States v. Delk*, 586 F.2d 513, 516 (5th Cir. 1978), quoting *Lutrell v. United States*, 320 F.2d 462, 464 (5th Cir. 1963)). The Commission has found that it (including its Prehearing Officer) has broad discretion to permit rebuttal testimony consistent with Section 120.569, Fla. Stat. and Section 120.57(1)(b), Fla. Stat. See *Id.* (citing *Dale v. Ford Motor Co.*, 409 So.2d 232 (Fla. 1st DCA 1982)).

10. The Commission should exercise its discretion here to permit FPL's rebuttal testimony and find that it is proper rebuttal testimony as filed, given that FPL's program enhancements do not represent fundamental changes correcting material errors in the proposed rate, but rather enable materially increased benefits and reduced risk for the general body of FPL's customers directly in response to concerns raised by the witnesses of OPC, Commission Staff, and other Intervenors regarding the costs and benefits and allocation thereof between

participants and the general body of customers. See *Id.* As a result, FPL, and not OPC, would be the party prejudiced if not permitted to present its rebuttal testimony, which goes to the heart of its defense regarding the voluntary, fair, and reasonable nature of its proposed program. See *In re: Petition for Increase in Rates by Gulf Power Company*, Order No. PSC-11-0563-PCO-EI, Docket No. 110138-EI, Dec. 8, 2011 (denying motion to strike and permitting rebuttal testimony rebutting matters raised by the testimony of intervenor witnesses).

11. FPL did not file a new case or supplemental testimony with its rebuttal testimony as alleged by OPC. Instead, FPL proposed specific enhancements to its proposed program in the form of a reallocation of the costs and benefits between the participants and general body of customers, supported by additional cost savings (*i.e.*, \$139 million CPVRR savings increased to \$249 million CPVRR) resulting from an updated economic analysis, all in response to concerns raised by OPC, Commission Staff, and other Intervenors in their direct testimony.

12. These enhancements could not have been raised in FPL's direct testimony given that (1) FPL did not know the specific concerns that have since been raised by OPC and the other Intervenors in their testimony; and (2) the updated economic analysis is the direct result of specific changes to FPL's construction plans for the program and requests from Commission Staff in discovery that occurred after FPL's filing of its direct testimony in this proceeding. As a result of these enhancements offered by FPL in its rebuttal testimony, participants would now pay charges that cover over 100% of the base revenue requirements, and non-participating members of the general body of customers will share in 45% of the benefits of the program, up from 20% in the original program proposal. While these enhancements clearly represent improvements to FPL's SolarTogether program, they do not represent material changes to FPL's

carefully crafted, cutting edge solar program designed to bring cost effective benefits and savings from renewable energy to all of FPL's customers.

II. OPC and the Other Intervenors Have a Fair and Reasonable Opportunity to Conduct Discovery and Cross Examine FPL Witnesses at the Hearing

13. Despite the fact this rebuttal testimony results in enhancements to FPL's SolarTogether program that benefit all of FPL's customers, OPC begrudgingly insists that the hearing schedule for FPL's Petition should be delayed indefinitely so it can propound additional discovery and its expert can provide additional testimony in response to FPL's rebuttal testimony. Further, OPC insists on an indefinite, extended hearing schedule potentially running well into 2020. See OPC Motion at 4.

14. Since the filing of FPL's rebuttal testimony on September 23, 2019, OPC has already issued on September 25, 2019, one set of additional written discovery on FPL's rebuttal testimony (containing 16 interrogatories and 4 requests for production of documents), in addition to extensive discovery previously served on FPL by OPC, Commission Staff, and other parties on FPL's Petition and direct testimony. In addition, on September 30, 2019, FPL voluntarily provided updated discovery responses to previously propounded discovery from OPC and Commission Staff that incorporate the program enhancements and associated updated economic analysis presented in FPL's rebuttal testimony.

15. OPC will be able to conduct further discovery including depositions at its own prerogative through an extended discovery deadline if approved by the Commission.² These depositions will allow live questioning at deposition on any and all aspects of the rebuttal testimony. Beyond that, OPC will also have an opportunity to cross examine FPL's rebuttal

² At an informal meeting of the parties (including OPC) on September 9, 2019, Commission Staff suggested an extended discovery deadline of October 18, 2019, with new hearing dates on October 29 and 30, 2019. FPL has no objections to these proposed changes to the procedural schedule in this proceeding.

witnesses at the hearing in this proceeding. OPC will not be prejudiced in any way by the full and fair process that the Commission has provided to address FPL's Petition to this point and will continue to provide going forward in this proceeding.

16. In contrast, if the proceeding were delayed indefinitely or until mid-2020 as suggested by OPC, FPL and its customers would be the ones prejudiced in that both the participants and the general body of customers would be delayed in receiving the benefits of this program. These are the very same customers OPC purports to represent. Projects 1 and 2 of the SolarTogether program will be coming online in January 2020 upon completion of construction (approximately 450 MW). Enrollment in the program is scheduled for January 2020 for all FPL customers, both residential and small business and commercial, government, and industrial customers. FPL's customers have been aware of and anticipating this enrollment date for over a year. Any delay beyond January 2020 may result in changes to the economics of the program for customers, i.e., costs (pricing) and benefits.

III. OPC's Alternative Motion to Strike is Without Merit

17. For the same reasons as discussed above as to why FPL's testimony is proper and permissible rebuttal testimony and the procedural schedule presents OPC with a full, fair, and reasonable opportunity to present its case, OPC's alternative and extreme motion to strike portions of the rebuttal testimony of four of FPL's witnesses is without merit and should be denied. Ironically, OPC is essentially asking the Commission to strike enhancements to FPL's program enabled by improvements to the underlying economic analysis that specifically address concerns raised by OPC—as well as by Staff and the other Intervenors through their testimony and discovery requests in this proceeding.

18. FPL has made no attempt to improperly supplement its earlier filed direct testimony, but instead FPL has simply addressed through its rebuttal testimony concerns raised

by Intervenors for the benefit of all of FPL's customers.³ FPL has made several responsive enhancements to its proposed program, notably shifting the cost burden for revenue requirements to program participants for over 100% of the program costs and more than doubling the benefits to the general body of customers provided in the original filing. These shifts were supported by additional cost savings FPL uncovered after the filing of FPL's direct testimony as a result of discovery requests from Commission Staff and new information regarding the construction plans for some of the solar facilities involved in the SolarTogether program. OPC and the other parties have been afforded the opportunity to conduct discovery, depose, and ultimately cross examine the FPL rebuttal witnesses, which the Commission has found to be a fair process that does not prejudice the rights of OPC or any party to this proceeding.⁴ Accordingly, there is no basis to exclude these very positive developments for FPL customers presented in FPL's rebuttal testimony from the record in this proceeding.

CONCLUSION

As demonstrated above, OPC's Motion should be denied as overreaching and meritless. OPC, Commission Staff, and the other Intervenors have had and will continue to have a full and

³ Even if the Commission does determine FPL's rebuttal testimony should be considered "supplemental testimony" based on a finding that there are material and significant changes to the assumptions supporting FPL's proposed program and associated tariff, which FPL disputes and does not concede, the Commission should permit the inclusion of this testimony in the record in this proceeding given that the program enhancements in FPL's testimony result in lower rates for program participants and lower cost risk and greater benefits for FPL's general body of customers. See *In Re: Request for Rate Increase by Florida Division of Chesapeake Utilities Corporation*, Docket No. 000108-GU, Order No. PSC-00-1874-PCO-GU, Oct. 13, 2003, (citing the Commission's allowing supplemental testimony in *Application for a Rate Increase by City Gas Company*, Docket No. 940276-GU when impact of change proposed by the utility was to reduce the revenue requirements); *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*, Docket No. 10000-EI, Order No. PSC-10-0612-PCO-EI, Oct. 8, 2010 (granting FPL's motion for leave to file supplemental petitions and testimony based on changes to assumptions that reduce costs and thereby lower factors charged to customers).

⁴ See, e.g., *In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company*, Docket No. 160186-EI, Order No. PSC-17-0096-PCO-EI, March 14, 2017 (denying OPC's motion to strike and permitting rebuttal testimony with new analysis purposed to rebut assertions of OPC and Sierra Club witnesses in their respective testimonies).

fair opportunity to conduct discovery for information from FPL in relation to its rebuttal testimony and to cross examine all FPL rebuttal witnesses at hearing. The Commission should not grant OPC its wishes to delay this proceeding indefinitely or even well into 2020, thereby depriving all of FPL's customers of over 1.5 GW of renewable energy and several hundred million dollars in savings.

In the event the Commission determines it is best to allow for additional discovery on FPL's rebuttal testimony and continue the hearing for a reasonable amount of time beyond the current scheduled dates, without waiving any arguments or positions asserted herein, FPL will not oppose a reasonable extension of the discovery deadline and a limited extension of the hearing dates consistent with the late October dates, as previously discussed by Commission Staff, FPL, and the other parties in this proceeding at the September 9, 2019 informal meeting, such to allow for a Commission decision prior to the end of 2019. If the Commission elects to provide for such a reasonable extension, a ruling on OPC's Motion and this response would not be required.

WHEREFORE, FPL respectfully requests that the Commission deny OPC's Motion.

Respectfully submitted this 1st day of October 2019.

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CERTIFICATE OF SERVICE
Docket No. 20190061-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service on this 1st day of October 2019 to the following:

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