

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm Protection Plan Cost Recovery
Clause

Docket No. 20200092-EI

Filed: June 16, 2020

**JOINT MOTION OF FLORIDA POWER & LIGHT COMPANY, GULF POWER
COMPANY, TAMPA ELECTRIC COMPANY, AND DUKE ENERGY FLORIDA, LLC
TO MODIFY THE REBUTTAL TESTIMONY DATE
AND DISCOVERY COMPLETION DATE ESTABLISHED BY
ORDER NO. PSC-2020-0170-PCO-EI**

Florida Power & Light Company (“FPL”), Gulf Power Company (“Gulf”), Tampa Electric Company (“TECO”), and Duke Energy Florida, LLC (“DEF”) (hereinafter, collectively, the “Utilities”) pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby jointly file this Motion requesting that the date for filing rebuttal testimony and the discovery deadline established in Order No. PSC-2020-0170-PCO-EI (“OEP”) issued May 29, 2020, be modified. Specifically, the Utilities request that the date for rebuttal testimony be modified from September 11, 2020 to September 23, 2020, and that the discovery deadline be modified from September 25, 2020 to October 5, 2020. For the reasons explained below, the Utilities submit that the proposed modification to the date for rebuttal testimony is necessary to avoid substantial prejudice to the Utilities, which have the burden of proof in this proceeding. The Utilities also submit that any potential impacts from the modified rebuttal date will be mitigated by the proposed modification to the discovery deadline, which will provide interested parties additional time for relevant discovery following rebuttal. The Utilities believe that proposed modifications to the rebuttal date, combined with the modified discovery deadline, reasonably balances the interests of all stakeholders. In support, the Utilities state as follows:

1. On June 27, 2019, the Governor of Florida signed CS/CS/CS/SB 796 addressing Storm Protection Plan Cost Recovery, which was codified in Section 366.96, Florida Statutes (“F.S”). Therein, the Florida Legislature directed each investor owned utility (“IOU”) to file a

transmission and distribution storm protection plan (“SPP”) that covers the immediate 10-year planning period and explains the systematic approach the utility will follow to achieve the legislative objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. Section 366.96(3), F.S.

2. The Florida Legislature also directed that the Florida Public Service Commission (“Commission”) conduct an annual proceeding to determine the IOUs’ prudently-incurred SPP costs and allow the IOUs to recover such costs through a charge separate and apart from their base rates, to be referred to as the storm protection plan cost recovery clause (“SPPCRC”). Section 366.96(7), F.S.

3. The Florida Legislature directed the Commission to propose rules to implement and administer Section 366.96 as soon as practicable but no later than October 31, 2019. Consistent with this mandate, the Commission initiated a rulemaking and voted at its October 3, 2019 Agenda Conference to adopt proposed Rules 25-6.030 and 25-6.031, F.A.C. However, as a result of the Office of Public Counsel’s challenges to the Commission’s proposed SPP Rules, including an appeal to and hearing before the Department of Administrative Hearings, which were denied, the SPP Rules did not become final and effective until February 18, 2020.

4. Pursuant to Rule 25-6.031(3), F.A.C., the annual SPPCRC hearing is limited to determining the reasonableness of projected SPP costs, the prudence of actual SPP costs incurred by the IOUs, and to establish SPP cost recovery factors.

5. The SPPCRC docket, Docket No. 20200092, was opened for all IOUs on March 13, 2020. Commission Staff held multiple informal meetings with all stakeholders to discuss the schedule and filings deadlines for the IOUs’ SPPCRC. Following an April 1, 2020 informal meeting, the participating stakeholders reached a consensus on the initial filing and hearing dates for the SPPCRC petitions. However, no consensus on the date for rebuttal was reached.

6. On May 29, 2020, the Commission issued the OEP, adopting the following milestones and deadlines for the SPPCRC docket:

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|----------------------------------------------|---------------------|
| (1) Utility’s testimony and exhibits | July 24, 2020 |
| (2) Intervenors’ testimony and exhibits | September 4, 2020 |
| (3) Staff’s testimony and exhibits, if any | September 8, 2020 |
| (4) Rebuttal testimony and exhibits | September 11, 2020 |
| (5) Prehearing Statements | September 25, 2020 |
| (6) Discovery Deadline | September 25, 2020 |
| (7) Motions to Strike Testimony and Exhibits | September 28, 2020 |
| (8) Responses to Motions to Strike | October 1, 2020 |
| (9) Prehearing Conference | October 5, 2020 |
| (10) Hearing | October 13-15, 2020 |
| (11) Briefs | October 28, 2020 |

7. Additionally, the OEP modified the time to respond to discovery from the standard thirty (30) day response period provided in Fla.R.Civ.P. Rules 1.340 and 1.350 to twenty (20) days for discovery requests served prior to rebuttal testimony, and ten (10) days for discovery served after rebuttal testimony.

8. “Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state *good cause* for the request.” Rule 28-106.204(4), F.A.C., (emphasis added). The Utilities respectfully submit that the very truncated time adopted for the rebuttal testimony is unreasonable and prejudicial against the Utilities.

9. Under the OEP, the Utilities will be required to file their rebuttal testimony seven (7) days after receipt of Intervenors’ testimony and exhibits. The Utilities respectfully submit that seven (7) days for rebuttal testimony is simply not sufficient time to properly review the

Intervenors' testimony, analyze the issues and concerns raised therein, and prepare and file meaningfully responsive rebuttal testimony. It also should be noted that this seven (7) day period to prepare rebuttal testimony spans Labor Day Weekend, which means that the Utilities will only be provided a total of four (4) business days to prepare and file their rebuttal testimony.

10. The rebuttal testimony deadline adopted by the OEP also forecloses any meaningful discovery by the Utilities. Indeed, under the OEP the Utilities are required to file their rebuttal testimony (within 7 days) long before Intervenors' responses to discovery requests would be due (within 20 days). As such, the Utilities would have no way to investigate or test the issues and claims asserted in the Intervenors' testimony before the Utilities submit their rebuttal.

11. Requiring the parties with the burden of proof to prepare rebuttal on such a compressed timeframe, and without any opportunity for discovery on Intervenors' testimony, is clearly prejudicial and would severely handicap the Utilities' ability to fully develop the record on the issues raised in the proceeding. This is particularly true given the fact that this is the very first SPPCRC proceeding before the Commission and the scope and number of issues to be addressed cannot reasonably be anticipated. The Utilities submit that it is in the best interest of all stakeholders, including the Commission and the public, to ensure that a fair and adequate record is fully developed.

12. To ensure fairness and a complete record, the Utilities propose that the rebuttal testimony deadline be modified from September 11, 2020, to September 23, 2020. This would provide the Utilities with a total of nineteen (19) days to analyze the claims asserted in the Intervenors' testimony and prepare meaningful and responsive rebuttal testimony. Notably, the Utilities are not seeking to achieve a more balanced schedule by suggesting a reduction in the time allowed by the OEP for Intervenor testimony.

13. Additionally, the Utilities request that the time to respond to discovery served after

Intervenors' testimony be modified to ten (10) days, which is the same discovery response period applicable to the Utilities after their rebuttal testimony is filed. This modification will ensure that the Utilities have an opportunity to receive responses to one set of discovery requests related to Intervenors' testimony before filing their rebuttal testimony.

14. The Utilities recognize that the proposed modification to the date for rebuttal testimony reduces the time for Intervenors' discovery on the rebuttal testimony before the discovery deadline. To mitigate this impact, if the rebuttal date is modified as requested herein, the Utilities propose that the discovery completion date be modified from September 25, 2020 to October 5, 2020. This will ensure that (a) Intervenors are provided with an opportunity to receive discovery responses related to the rebuttal testimony under the ten (10) day response period after rebuttal, and (b) that discovery is completed by the October 5, 2020 date of the Prehearing Conference.

15. The above-requested changes do not impact any other dates adopted in the OEP, including the dates for Intervenors' testimony, the Prehearing Conference, and the Evidentiary Hearings.

16. The Utilities submit that the above requested modifications to the OEP reasonably balance the interests of all stakeholders, and are necessary to achieve a fair and complete development of the record in this proceeding.

17. On behalf of all the Utilities, FPL conferred with all Parties of Record and Interested Parties in this docket as to whether they have any objection to the modifications to the OEP requested herein. Florida Public Utilities Company advised that it has no opposition to the proposed modifications, Walmart Inc. advised it takes no position on the proposed modifications, and the Office of Public Counsel advised that it objects to the proposed modifications. As of the date of this filing, no other Parties of Record or Interested Parties have responded.

WHEREFORE, for all the reasons stated above, the Utilities respectfully request that Order No. PSC-2020-0170-PCO-EI be modified as follows:

(a) The date for filing rebuttal testimony be modified from September 11, 2020 to September 23, 2020;

(b) The time to respond to discovery served after the date of Intervenors' Testimony be modified from twenty (20) days to ten (10) days; and

(c) The discovery deadline be modified from September 25, 2020 to October 5, 2020.

Respectfully submitted this 16th day of June, 2020,

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FOR DUKE ENERGY FLORIDA, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery to the following parties of record this 16th day of June, 2020:

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