

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by Gulf Power Company for  
Limited Proceeding for Recovery of  
Incremental Storm Restoration Costs Related  
to Hurricane Michael.

Docket No: 20190038-EI

Date: August 25, 2020

**JOINT MOTION OF THE OFFICE OF PUBLIC COUNSEL, GULF POWER  
COMPANY, AND FEDERAL EXECUTIVE AGENCIES FOR EXPEDITED  
APPROVAL OF A STIPULATION AND SETTLEMENT AGREEMENT**

Pursuant to Rule 28-106.204(1), Florida Administrative Code (“F.A.C.”), the Office of Public Counsel (“OPC”), Gulf Power Company (“Gulf”), and Federal Executive Agencies (“FEA”) (unless the context clearly requires otherwise, the term “Party” or “Parties” means a signatory to this Joint Motion), by and through their respective undersigned counsel, hereby file this Joint Motion and request that the Florida Public Service Commission (“Commission”) review and approve on an expedited basis the Stipulation and Settlement Agreement (“Agreement”), provided as Attachment A to this Joint Motion, as a full and complete resolution of all matters presented in Docket No. 20190038-EI in accordance with Section 120.57(4), Florida Statutes (“F.S.”), and enter a final order reflecting such approval to effectuate implementation of the Agreement. In support of this motion, the Parties jointly state, as follows:

1. On February 6, 2019, Gulf filed a Petition for Limited Proceeding (“Petition”), pursuant to the provisions of the Stipulation and Settlement Agreement approved by the Commission in Order No. PSC-2017-0178-S-EEI,<sup>1</sup> requesting that the Commission authorize commencement of interim recovery of incremental storm restoration costs related to Hurricane Michael and the replenishment of its retail storm reserve, maintained in accordance with Rule 25-

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<sup>1</sup> Order No. PSC-2017-0178-S-EI, issued May 16, 2017, in Docket No. 160186-EI, *In re: Petition for rate increase by Gulf Power Company*; and Docket No. 160170-EI, *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*.

6.0143, F.A.C., through a surcharge on customers' electric bills. In the Petition, Gulf requested that the Commission approve implementation of the surcharge beginning 60 days following its filing.

2. On February 19, 2019, OPC filed its Notice of Intervention in this proceeding, and the Commission acknowledged OPC's Intervention on March 6, 2019, in Order No. PSC-2019-0087-PCO-EI.

3. On March 13, 2019, Gulf requested that the Commission suspend the 60-day timeframe set forth in the Settlement and requested that the Commission approve the storm restoration recovery charge to become effective with the first billing cycle in July 2019.

4. On April 16, 2019, FEA filed a Motion to Intervene in this proceeding, and the Commission granted OPC's Motion on December 6, 2019 in Order No. PSC-2019-0512-PCO-EI.

5. On June 3, 2019, the Commission issued Order No. PSC-2019-0221-PCO-EI approving Gulf's request to implement an interim storm restoration recovery charge, subject to refund, for incremental storm restoration costs related to Hurricane Michael. The Commission's Order also approved Gulf's related interim storm restoration recovery tariffs to become effective with the first billing cycle of July 2019.

6. On November 15, 2019, Gulf submitted a petition to the Commission requesting approval of its: (i) final/actual Recoverable Storm Amount; (ii) proposed Storm Restoration Recovery Surcharges; (iii) proposed Recovery Period; and (iv) proposed process for determining a one-time true-up to be applied to customer bills once the approved Recoverable Storm Amount for Hurricane Michael storm restoration costs and the actual revenues collected through the end of the Proposed Recovery Period are known. Gulf's November 15 petition included the supporting

direct testimony and exhibits of Gulf witnesses Paul A. Talley, Mitchell Goldstein, Tracy G. Clark, and Charles Shane Boyett.

7. On June 11, 2020, OPC submitted the direct testimony and exhibits of OPC witness Lane Kollen, and FEA submitted the direct testimony and exhibits of FEA witness Michael P. Gorman.

8. On June 26, 2020, Commission Staff submitted the direct testimony and exhibits of Staff witnesses Debra M. Dobiac and Carl Vinson.

9. On July 9, 2020, Gulf submitted its rebuttal testimony and supporting exhibits of Gulf witnesses Paul A. Talley and Mitchell Goldstein.

10. On August 5, 2020, Gulf filed a Notice of Adoption of Direct Testimony of Tracy G. Clark by Gulf witness Mitchell Goldstein.

11. OPC, FEA, and Gulf have engaged in extensive discovery throughout this proceeding. Through this process, OPC and FEA thoroughly reviewed and evaluated Gulf's Hurricane Michael storm restoration costs, and Gulf thoroughly reviewed and evaluated OPC's and FEA's positions related to those costs.

12. As a direct result of these efforts, OPC, FEA, and Gulf engaged in negotiations for the purpose of reaching a comprehensive stipulation and settlement of all issues pending in the docket, thereby avoiding the uncertainty associated with the outcome on the issues. These negotiations have culminated in the Agreement attached hereto as Attachment A.

13. OPC, FEA, and Gulf request that the direct testimony of Gulf witnesses Paul A. Talley, Mitchell Goldstein, Tracy G. Clark, and Charles Shane Boyett; the direct testimony of OPC witness Lane Kollen; the direct testimony of FEA witness Michael P. Gorman; the direct testimony of Staff witnesses Debra M. Dobiac and Carl Vinson, and the rebuttal testimony of Gulf witnesses

Paul A. Talley and Mitchell Goldstein be entered into the record, along with the stipulated Comprehensive Exhibit list and listed exhibits. Where applicable, confidential classification shall be maintained as determined by the Commission, Commission rules or applicable provisions of Chapter 366, F.S.

14. The Agreement sets forth in detail the financial and process issues to be resolved through this settlement. Importantly, while the financial issues addressed by the Agreement are premised upon issues raised during the litigation of this matter, the process issues, not part of the litigation, have been added to the Agreement in an effort to facilitate more efficient storm cost recovery proceedings in the future.

15. The Signatories to the Agreement request that, following the Commission's review of this Joint Motion and the Agreement, the Commission grant the Joint Motion and approve the Agreement in order to allow for orderly implementation thereof and to provide certainty to the parties and their respective constituents and customers with respect to the outcome of the proceedings.

16. The Commission has a "long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." *In Re: Florida Power & Light Company*, Docket No. 20050045-EI, Order No. PSC-2005-0902-S-EI (FPSC Sept. 14, 2005). The proper standard for the Commission's approval of a settlement agreement is whether it is in the public interest. *Sierra Club v. Brown*, 243 So.3d 903, 910-913 (Fla. 2018) (citing *Citizens of State v. FPSC*, 146 So.3d 1143, 1164 (Fla. 2014)).

17. The Florida Supreme Court has explained that the "determination of what is in the public interest rests exclusively with the Commission." *Citizens*, 146 So.3d at 1173. The Commission has broad discretion in deciding what is in the public interest and may consider a

variety of factors in reaching its decision. See *In Re: The Woodlands of Lake Placid L.P.*, Docket No. 20030102-WS, Order No. PSC-2004-1162-FOF-WS, p. 7, (FPSC Nov. 22, 2004); *In Re: Petition for approval of plan to bring generating units into compliance with the Clean Air Act by Gulf Power Company*, Docket No. 19921155-EI, Order No. PSC-1993-1376-FOF-EI, p. 15 (FPSC Sept. 20, 2003). However, the Commission is not required to resolve the merits of every issue independently. *Sierra Club*, 243 So.3d at 913 (citing *Citizens*, 146 So.3d at 1153). Rather, a "determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole." *In re: Petition for Rate Increase by Gulf Power Co.*, Docket No. 20160186-EI, Order No. PSC-2017-0178-S-EI, 2017 WL 2212158, at \*6 (FPSC May 16, 2017).

18. In this case, after an extensive review and evaluation of Gulf's Hurricane Michael storm restoration costs and activities, OPC, FEA, and Gulf entered into the Agreement which addresses issues raised during the course of the proceedings and process issues beyond the scope of these proceedings. The Agreement represents a reasonable and mutually agreeable compromise of competing positions and fully resolves all issues raised in this docket, and many matters beyond the scope of this docket.

19. Considered as a whole, the Agreement fairly and reasonably balances the interests of Gulf's customers and Gulf. Approving the Agreement is consistent with the Commission's long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to the Commission's regulatory jurisdiction. Accordingly, OPC, FEA, and Gulf submit that the Agreement is in the public interest, and respectfully request that the Commission review and approve the Agreement in its entirety and without modification.

20. Pursuant to Rule 28-106.204(3), F.A.C., Gulf has conferred with OPC and FEA. These entities are signatories to the Agreement and have advised that they consent to Gulf's filing of this Joint Motion.

WHEREFORE, for the reasons stated above, the OPC, FEA, and Gulf jointly and respectfully request that the Florida Public Service Commission expeditiously approve the Stipulation and Settlement Agreement provided as Attachment A to this Joint Motion.

Respectfully submitted this 25<sup>th</sup> day of August, 2020.

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By: /s/ Russell A. Badders  
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Florida Bar No.0007455

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by Gulf Power Company  
for Limited Proceeding for Recovery of  
Incremental Storm Restoration Costs Related  
to Hurricane Michael

Docket No: 20190038-EI

Date: August 24, 2020

**STIPULATION AND SETTLEMENT**

WHEREAS, Gulf Power Company (“Gulf”), Citizens through the Office of Public Counsel (“OPC”), and Federal Executive Agencies (“FEA”) have signed this Stipulation and Settlement (the “Agreement”; unless the context clearly requires otherwise, the term “Party” or “Parties” means a signatory to this Agreement); and

WHEREAS, Hurricane Michael, a catastrophic Category 5 hurricane, ravaged the Northwest Florida Gulf Coast on October 10, 2018 in the eastern portion of Gulf’s service area. The storm was the third strongest (in terms of barometric pressure) and fourth strongest (in terms of wind speed) hurricane to ever make landfall in the continental U.S. It was the strongest storm to ever make landfall in Northwest Florida; and

WHEREAS, in response to Hurricane Michael, Gulf ultimately coordinated approximately 8,000 restoration personnel (approximately 1,000 Gulf employees and 7,000 external resources) – the largest restoration workforce that the Company has ever assembled. The restoration of service in the Panama City area, from the ground up in many cases, was much more extensive than the restoration work that was encountered in other areas across Gulf’s system; and

WHEREAS, Gulf’s preparation for and execution of its storm response enabled it to complete the major portion of restoration activities in just 13 days, at which time 99% of Gulf’s

customers who could receive electric service from Gulf had been restored. Due to the extensive damage caused by Hurricane Michael, Gulf's storm-related work extended into mid-2019.

WHEREAS, on February 5, 2019, pursuant to Section 366.076(1), Florida Statutes (F.S.), and the provisions of the Stipulation and Settlement Agreement approved by Order No. PSC-2017-0178-S-EI, Gulf filed its Petition for Limited Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricane Michael; and

WHEREAS, by Order No. PSC-2019-0221-PCO-EI, issued on June 3, 2019, the Commission approved the requested 2019 Interim Storm Restoration Recovery Charge for a period of 60 months and required Gulf to submit documentation of the actual storm costs for review and true up of any excess or shortfall; and

WHEREAS, on November 15, 2019, Gulf petitioned the Commission for approval of the final/actual recoverable storm amount of \$295.0 million, and submitted the direct testimony and exhibits of witnesses Paul A. Talley, Mitchell Goldstein, Tracy G. Clark, and Charles Shane Boyett in support thereof; and

WHEREAS, the Office of Public Counsel intervened in this docket and, on June 11, 2020, filed the direct testimony and exhibits of Lane Kollen in support of its position; and

WHEREAS, the Federal Executive Agencies intervened in this docket and, on June 11, 2020, filed the direct testimony and exhibit of Michael P. Gorman in support of its position; and

WHEREAS, on July 9, 2020, Gulf filed the rebuttal testimony and exhibits of Gulf witnesses Paul A. Talley and Mitchell Goldstein; and



WHEREAS, the Parties engaged in significant discovery including the production of tens of thousands of pages of documents and hundreds of interrogatories; and

WHEREAS, after an extensive review and evaluation of the testimony and discovery, the Parties to this Agreement have reached a full and complete resolution of all matters in this docket; and

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366, and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the Agreement as provided herein and upon approval as in the public interest; and

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

#### **FINANCIAL TERMS**

1. This agreement will become effective on the date of the Final Order in Docket No. 20190038-EI (the "Implementation Date").
2. The Parties are not in agreement on the proper regulatory treatment of certain amounts claimed by Gulf as incremental to base rates and therefore recoverable through the storm cost recovery mechanism. It is OPC's and FEA's position that these disputed amounts are properly recoverable through base rates, and therefore not recoverable through the storm

cost recovery mechanism. To resolve this dispute on these amounts, OPC, FEA, and Gulf have mutually agreed in compromise, without any party conceding that any opposing party is correct, that an aggregate negotiated adjustment in the amount of \$5 million shall be made to reduce the amount recoverable by Gulf through the storm cost recovery mechanism. This adjustment includes \$2.25 million of costs recoverable in base rates, and not incremental to base rates, and \$2.75 million of costs being reclassified as capital. This adjustment resolves all issues raised related to contractors' costs, employee payroll, and materials and supplies costs.

3. The parties agree that interest on the Unamortized Reserve Balance will be calculated by Gulf monthly, in arrears, on a base that is net of Accumulated Deferred Income Taxes due to the temporary differences caused by the deferral of storm costs and due to the casualty loss deduction for the tax basis of plant in service that was damaged and retired, as well as all other tax savings due to the storm. The parties agree that Gulf will use a simple average of the daily commercial paper interest rates for the calculation of interest. The parties agree that Gulf will use the 30-day commercial paper interest rates as published by the Federal Reserve at <https://www.federalreserve.gov/releases/cp/rates.htm> or a comparable source for the daily commercial paper interest rates each month.

#### **PROCESS PROVISIONS**

4. Beginning with the 2021 storm season, Gulf will implement paragraphs 5 through 20 of the "Process Provisions" contained in the FPSC-approved settlement in Docket 20180049-EI for In re: Evaluation of storm restoration costs for Florida Power & Light Company related to Hurricane Irma. The threshold for the Initial Independent Audit referenced in paragraph 18 is \$150 million for Gulf. Gulf agrees to implement these "Process

Provisions” before the 2021 storm season to help minimize the hourly contractor costs and equipment rental rates.


#### **OTHER PROVISIONS**

5. Nothing in the Agreement will have precedential value.
6. The parties agree the direct testimony of Gulf witnesses Paul A. Talley, Mitchell Goldstein, Tracy G. Clark, and Charles Shane Boyett; the direct testimony of OPC witness Lane Kollen; the direct testimony of FEA witness Michael P. Gorman; and the rebuttal testimony of Gulf witnesses Paul A. Talley and Mitchell Goldstein shall be entered into the record along with the stipulated Comprehensive Exhibit List and the listed exhibits.
7. The provisions of this Agreement are contingent upon approval by the Commission in its entirety without modification. Except as expressly set out herein, no Party agrees, concedes, or waives any position with respect to any of the issues identified in the Prehearing Order, and this Agreement does not expressly address any specific issue or any position taken thereon. The Parties will support approval of this Agreement and will not request or support any order, relief, outcome, or result in conflict with it. No Party to the Agreement will request, support, or seek to impose a change to any provision of this Agreement. Approval of this Agreement in its entirety will resolve all matters and issues in this docket. This docket will be closed effective on the date that the Commission Order approving this Agreement is final, and no Party to this Agreement will seek appellate review of any order issued in this docket.
8. The Parties agree that approval of this Agreement is in the public interest.

9. This Agreement may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

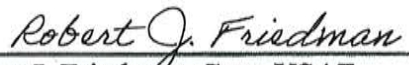
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: **Petition for limited proceeding for recovery of  
incremental storm restoration costs related to  
Hurricane Michael, by Gulf Power Company** )  
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Docket No.: **20190038-EI**


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail this 25th day of August, 2020 to the following:

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c/o Thomas A. Jernigan  
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