

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** August 29, 2023

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of the General Counsel (Stiller, Dose) *JSC*  
Division of Accounting and Finance (Andrews, Norris) *ALM*  
Division of Economics (Draper) *EJD*  
Division of Engineering (King) *TB*

**RE:** Docket No. 20230017-EI – Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Ian and Nicole, by Florida Power & Light Company.

**AGENDA:** 09/12/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 11/01/23 (date by which Petition must be ruled on pursuant to Section 120.542, F.S.)

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On January 23, 2023, Florida Power & Light Company (FPL) filed a Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Ian and Nicole. The Commission granted FPL's petition by Order No. PSC-2023-0110-PCO-EI, issued March 3, 2023, and approved a consolidated interim storm surcharge to cover restoration costs and to replenish the storm reserve. The Commission ordered that this docket remain open pending final disposition (true-up) of storm costs. Intervention by the Office of Public Counsel (OPC) was acknowledged by Order No. PSC-2023-0081-FOF-EI.

On July 28, 2023, FPL filed in this docket a petition for a temporary waiver of or variance from Rule 25-6.0143(1)(g), Florida Administrative Code (F.A.C.) (Petition). Rule 25-6.0143, F.A.C., addresses electric utilities' use of accumulated provision accounts 228.1, 228.2, and 228.4.<sup>1</sup> Paragraph 1(g) of Rule 25-6.0143 requires that under the Incremental Cost and Capitalization Approach methodology for determining the allowable costs to be charged to cover storm-related damages, certain storm costs may be charged to Account 228.1 only after review and approval by the Commission. Before the Commission makes this determination, the utility may defer the costs if they were incurred prior to June 1 of the year following the storm event.

Rule 25-6.0143(1)(g), F.A.C., further requires that:

By September 30 a utility must file a petition for the disposition of any costs deferred prior to June 1 of the year following the storm event giving rise to the deferred costs.

Hurricanes Ian and Nicole impacted FPL's service area in September and November 2022, respectively. Because the costs for damage from those storms were incurred prior to June 1, 2023, FPL is required by Rule 25-6.0143(1)(g) to file its petition and documentation concerning disposition of deferred storm costs related to Hurricanes Ian and Nicole not later than September 30, 2023.

FPL is asking the Commission for a temporary variance from or waiver of the September 30 filing requirement. FPL asks that it be allowed until December 31, 2023, to file its petition and supporting documentation.

Notice of FPL's Petition was published in the August 1, 2023, edition of the *Florida Administrative Register*, Vol. 49, No. 148 as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the Petition within the 14-day comment period provided by Rule 28-104.003, F.A.C. Staff issued one data request, to which FPL filed responses on August 11, 2023. The Commission must approve or deny the Petition by November 1, 2023, under Section 120.542(8), F.S., or the Petition would be deemed approved.

The purpose of this recommendation is to address only the request for waiver or variance. The Commission has jurisdiction under Sections 120.542, 350.115, 366.04, 366.05, and 366.06, F.S.

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<sup>1</sup> Investor-owned electric utilities are required to maintain their accounts and records in conformity with the Uniform System of Accounts for Public Utilities and Licensees. Rule 25-6.014(1), F.A.C.

## Discussion of Issues

**Issue 1:** Should the Commission grant Florida Power & Light Company's Petition for a temporary waiver or variance from Rule 25-6.0143(1)(g), F.A.C.?

**Recommendation:** Yes. The Commission should grant Florida Power & Light Company's Petition for a temporary variance or waiver of Rule 25-6.0143(1)(g), F.A.C., to allow FPL to file its petition and documentation supporting the review and true-up of the total actual incremental storm restoration costs related to Hurricanes Ian and Nicole no later than December 31, 2023. (Stiller, Andrews)

**Staff Analysis:** FPL is requesting that the Commission grant it a temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C. Pursuant to this rule provision, as explained in the Case Background, FPL is required to file its petition for disposition of certain deferred costs by September 30, 2023.

### Legal Standard for Rule Variances or Waivers

Pursuant to Section 120.542(2), F.S., the Commission is required to grant waivers and variances from its rules "when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness." A "substantial hardship" is defined by statute as a "demonstrated economic, technological, legal, or other type of hardship."

Rule 25-6.0143, F.A.C., implements Section 350.115, F.S., which allows the Commission to prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges. The rule also implements Section 366.04(2)(a), F.S., which gives the Commission power over electric utilities to prescribe uniform systems and classifications of accounts.

### FPL's Petition

FPL stated that application of Rule 25-6.0143(1)(g), F.A.C., to require the preparation and filing of the petition and documentation supporting the review and true-up of the total actual incremental storm restoration costs related to Hurricanes Ian and Nicole no later than September 30, 2023, will create a substantial hardship. FPL stated that Hurricane Ian was a powerful Category 4 storm that impacted more than 2.1 million customers, with Hurricane Nicole following soon thereafter as a Category 1 and impacting 480,000 customers. FPL noted that it mobilized a workforce numbering in the tens of thousands to restore service to these customers. In its petition for recovery of incremental storm restoration costs in this docket, FPL initially estimated storm-related costs for Hurricanes Ian and Nicole to be \$1.3 billion and \$175.8 million, respectively. FPL stated that because of the large volume of invoices and financial records corresponding to these storm-related costs, it "was not able to finalize the internally approved storm restoration invoices until mid-2023."

Also due to the magnitude of restoration costs related to the damage caused by Hurricane Ian, FPL is required to engage an outside auditor to complete an audit of its requested restoration costs prior to submitting its petition for final disposition. Specifically, in a settlement agreement

approved by the Commission in 2019, FPL committed to “engage an independent outside audit firm to conduct an audit of the Company's filed recoverable storm costs of the first named tropical system named by the National Hurricane Center for which claimed damages exceed \$250 million.”<sup>2</sup> Hurricane Ian is that first named tropical system. FPL represented that because it does not anticipate this audit being complete until November 2023, it cannot comply with the September 30 deadline and the requirement to complete the independent audit prior to filing for final disposition of storm restoration costs.

FPL also argued that no anticipated party to the proceedings and no customers will be prejudiced by granting its Petition for temporary variance or waiver. Further, FPL alleged that the requested temporary variance or waiver does not contravene the rule’s implementing statutes.

FPL represented that OPC has no objection to the relief requested in the Petition for temporary variance or waiver, and asks that the Commission expedite consideration of the Petition and consider it at the September 2023 Commission Conference.

### **Purpose of the Underlying Statutes**

Sections 350.115 and 366.04(2)(a), F.S., give the Commission power to prescribe by rule uniform systems and classifications of accounts and to approve or establish adequate, fair, and reasonable depreciation rates and charges for electric utilities. The purpose of the September 30 filing date is to facilitate a timely review of storm restoration costs and afford the Commission adequate oversight on the use of Commission-approved storm reserves (Account 228.1). Often the initial filings made pursuant to Rule 25-6.0143, F.A.C., reflect estimated costs used to implement an interim cost recovery mechanism. As such, staff believes that the purpose of Sections 350.115 and 366.04(2), F.S., will be unaffected by granting the requested temporary variance or waiver.

Further, no anticipated party to any proceedings and no customers will be prejudiced or adversely affected by granting FPL’s Petition for temporary variance or waiver. For these reasons, the purpose of the statutes will still be achieved as required by Section 120.542, F.S., if FPL’s Petition for temporary variance or waiver is granted.

### **Substantial Hardship**

The facts presented by FPL to demonstrate a substantial hardship focus on the volume of work FPL needs to complete before filing its petition and supporting documentation for final storm restoration cost disposition. The cost estimates for restoration related to Hurricane Ian exceed by five times the threshold to trigger an independent audit. The consumption of utility staff and management time to take on this appreciable amount of work was increased by the addition of restoration costs related to Hurricane Nicole. All of this internal work needed to be completed before FPL could then turn to the task of an independent audit. The audit, in turn, must be completed before FPL can then file for final disposition.

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<sup>2</sup> Order No. PSC-2019-0319-S-EI, issued August 1, 2019, in Docket No. 20180049-EI, *In re: Evaluation of storm restoration costs for Florida Power & Light Company related to Hurricane Irma*.

The Commission considered and granted a similar request for waiver or variance from FPL in 2021.<sup>3</sup> In that docket, the enhanced workload arose from a rate case hearing that was proceeding on a contemporaneous track as storm recovery. As noted in the order granting FPL's petition in that docket, the Commission has in the past granted petitions for variance or waiver on the basis that application of a rule's filing deadline created substantial hardship because of utility staffing limitations caused by the specific circumstances alleged in those petitions.<sup>4</sup> Under the specific facts presented here, staff believes that FPL has demonstrated substantial hardship under Section 120.542, F.S.

### **Conclusion**

For the reasons explained above, the Commission should grant FPL's Petition for a temporary variance or waiver of Rule 25-6.0143(1)(g), F.A.C., to allow FPL to file its petition for certain deferred costs no later than December 31, 2023.

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<sup>3</sup> Order No. PSC-2021-0361-PAA-EI, issued September 16, 2021, in Docket No. 20210128-EI, *In re Petition for temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C., to file for prudence review of Florida Power & Light Company storm costs related to Hurricane Isaias and Tropical Storm Eta, and for prudence review and recovery of Gulf Power Company storms costs related to Hurricane Sally and Hurricane Zeta.*

<sup>4</sup> Order No. PSC-2019-0067-GU, issued February 22, 2019, in Docket No. 20180230-GU, *In re: Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company*; Order No. PSC-12-0354-PAA-GU, issued July 9, 2012, in Docket No. 20120081-GU, *In re: Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by August 17, 2012, by Florida Division of Chesapeake Utilities Corporation*; Order No. PSC-2002-0242-PAA-EI, issued February 25, 2002, in Docket No. 20011611-EI, *In Re: Petition for Waiver of Depreciation Study Filing Requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corporation*; Order No. PSC-01-2376-PAA-EI, issued December 10, 2001, in Docket No. 20011088-EI, *In re: Florida Power & Light Company*

**Issue 2:** Should this docket be closed?

**Recommendation:** No. Disposition of this petition for a waiver or variance serves only to extend the deadline for the Florida Power & Light Company to submit its petition and documentation supporting the review and true-up of the total actual incremental storm restoration costs related to Hurricanes Ian and Nicole. This docket should remain open until that review is complete and the Commission has approved the final disposition. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued granting the petition and this docket should remain open. (Stiller)

**Staff Analysis:** No. Disposition of this petition for a waiver or variance serves only to extend the deadline for the Florida Power & Light Company to submit its petition and documentation supporting the review and true-up of the total actual incremental storm restoration costs related to Hurricanes Ian and Nicole. This docket should remain open until that review is complete and the Commission has approved the final true-up. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued granting the petition and this docket should remain open.