

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for rate increase by Florida Power & Light Company.

DOCKET NO. 160021-EI

In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company.

DOCKET NO. 160061-EI

In re: 2016 depreciation and dismantlement study by Florida Power & Light Company.

DOCKET NO. 160062-EI

In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company.

DOCKET NO. 160088-EI

FILED: May 25, 2016

**CITIZENS' MOTION FOR EXTENSION OF TESTIMONY FILING DATES ESTABLISHED BY ORDER NO. PSC 16-0182-PCO-EI**

The Citizens of the State of Florida (Citizens), by and through the Office of Public Counsel (OPC), pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby file Citizens' Motion for Extension of Testimony Filing Dates established by Order No. PSC 16-0182-PCO-EI (Consolidation Order), issued May 4, 2016, in the above dockets. The Citizens request that this Motion be granted for good cause, and as grounds state the following:

1. On January 1, 2016, Florida Power & Light Company (FPL) filed its request for test year letter with the Florida Public Service Commission, notifying the Commission of its intent to request a general base rate increase. Docket No. 160021-EI was opened. The test year letter indicated that FPL would contemporaneously file its depreciation study with the rate case. In addition, every three years, all the Florida investor owned utilities were required to file storm hardening plans with the Commission by Rule 25-6.0342(2), F.A.C. FPL elected to file its storm hardening plan contemporaneously with its rate case because many of the issues in the storm

hardening plan are embedded in and intertwined with rate case issues (e.g., vegetation management and other O&M related issues).

2. On March 15, 2016, FPL filed petitions in each of the following three dockets: Dockets Nos. 160061-EI (Storm Hardening Plan), 160062-EI (Depreciation and Dismantlement), and Docket No. 160021-EI (Rate Case).

3. On March 25, 2016, prior to the consolidation of these three dockets, the Commission issued Order Establishing Procedure Order No. PSC-16-0125-PCO-EI, issued March 25, 2016 (Rate Case OEP).<sup>1</sup> The key activities dates for the Rate Case were initially established as follows:

- a) Intervenors' testimony and exhibits due July 14, 2016;
- b) Staff's testimony and exhibits, if any, due July 25, 2016;
- c) Rebuttal testimony and exhibits due August 8, 2016;
- d) Discovery Cutoff established as August 12, 2016; and
- e) Briefs due September 12, 2016.

4. Based on discussions at the informal meeting held on April 5, 2016, the Parties of record at that time (FPL, FIPUG, OPC, and Walmart), along with input from Commission staff, agreed to modified key activities dates as follows:

- a) Intervenors' testimony and exhibits due July 7, 2016;
- b) Staff's testimony and exhibits, if any, due July 18, 2016;
- c) Rebuttal testimony and exhibits due August 1, 2016;
- d) Discovery Cutoff for Rebuttal testimony established as August 16, 2016; and
- e) Briefs due September 16, 2016.

---

<sup>1</sup> No Orders Establishing Procedure had been issued for Docket No. 160061, Storm Hardening, and 160062-EI, Depreciation and Dismantlement prior to consolidation with the Docket No. 160021-EI, the Rate Case.

5. On April 8, 2016, OPC filed its Unopposed Motion to Modify Key Activities Dates and Discovery Timeframe.
6. On April 15, 2016, FPL initiated Docket No. 160088-EI (Incentive Mechanism), petition for a limited proceeding to modify and continue its incentive mechanism.
7. On April 22, 2016, Commission staff filed a motion to consolidate the four dockets.

Paragraph 6 of Staff's motion stated:

Granting consolidation of these four dockets with the rate case will not adversely affect any party. Testimony supporting the 2016 Depreciation and Dismantlement Study was filed on March 15, 2016, as part of the rate case. Testimony supporting the 2016-2018 Storm Hardening Plan was filed on March 15, 2016, as well. Testimony supporting the Incentive Mechanism was filed on April 15, 2016, one month later. *The Order Establishing Procedure sets the deadline for Intervenor testimony as July 14, 2016. However, all parties have agreed that Intervenor testimony can be moved up to July 7, 2016, and OPC has filed an Unopposed Motion to Modify Key Activities Dates and Discovery Timeframes requesting that modification to the prehearing schedule.* Since the 2016 Depreciation and Dismantlement Study and 2016-2018 Storm Hardening Plan, and associated testimonies, were filed on the same date as the rate case testimony, no party can be harmed by the consolidation of those dockets. Likewise, all parties will have approximately three months to review and conduct discovery on one additional issue, the Incentive Mechanism.

(emphasis added, footnotes omitted).

8. On May 4, 2016, the Commission issued Order No. PSC-082-POC-EI (Consolidation Order), modifying and establishing different intervenor, staff, and utility testimony dates from those dates contained in OPC's unopposed motion.
9. On May 9, OPC filed Citizens' Motion for Reconsideration of Order No. PSC-16-0182-PCO- EI Before the Full Commission, which the Commission denied on May 23, 2016.
10. Pursuant to Rule 28-106.204(4), F.A.C., "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." (emphasis added).

*Good Cause Shown*

11. While Commission staff's motion for consolidation did not expressly request that all key activity dates remain the same, paragraph 6 appears to request that all key activity dates be the same for all four dockets.<sup>2</sup>

12. OPC reasonably relied upon the Commission's past precedent and historical practice<sup>3</sup> in consolidating dockets and synchronizing key activity dates when planning its litigation strategy, contacting and hiring expert witness consultants, preparing discovery, and scheduling and coordinating critical path pre-filed testimony deadlines.

13. The consolidation order has caused OPC significant disruption and hardship.

14. The modification of testimony filing dates will serve to stretch the limited time and resources of OPC and also that of its expert witness rate case consultants. When contracting with an outside expert witness consultant to provide pre-filed testimony, Citizens provide the consultant an assumed testimony filing and hearing schedule based on the best available information, including formal and informal conversations with staff and the Parties regarding an agreed to revised testimony schedule. The consultant then relies upon that assumed schedule to determine whether to take or decline a consulting contract with the Citizens because these outside expert witness consultants routinely have multiple clients, in various jurisdictions, and operate on very tight time schedules to provide consulting and testimony services. Therefore, any changes to an

---

<sup>2</sup> If staff had requested that the key activity dates be on a different track from OPC's unopposed motion to modify key activity dates agreed to by all parties, OPC would have opposed the dual track testimony filing dates.

<sup>3</sup> See Order No. PSC-05-0499-PCO-EI (consolidating the 2005 rate case and depreciation study dockets; key activity dates synchronized); Order No. PSC-05-0518-PCO-EI (revising order establishing procedure); and Order No. PSC-09-0311-PCO-EI (consolidating 2009 rate case and depreciation and dismantlement study dockets for purposes of a single evidentiary hearing; key activity dates synchronized).

assumed schedule causes hardship to the consultant, potential conflicts with other client contracts and schedules, and potential increases in costs to the Citizens due to the unexpected change in the assumed schedule. Thus, the current dual track testimony dates for intervenors, staff, and the utility have created a substantial hardship to the Citizens, and otherwise impede the preparation of the Citizens' testimony for the overall rate case. Moreover, the dual testimony tracking requires that Citizens' consultants contracted to address these issues must prepare for a case within a case. Specifically, the Citizens represent that the separate effort to prepare adequate testimony for the Storm Hardening and Asset Optimization Mechanism Dockets apart from the interrelatedness of the costs at issue in those dockets with the costs in the base rate docket is untenable. The time and effort to make this special effort by experts who are also testifying about major elements of the rate case essentially requires them to forego the time and effort to prepare the comprehensive testimony on the overall rate relief sought by FPL. This "displacement" effect is a significant disruption occasioned by FPL's separate filing of dockets with direct impact on the rate relief they have requested. Citizens urge the Prehearing officer to take this into consideration in fashioning relief. Thus, Citizens believe it is in the interest of justice – and for good cause shown – that all issues for the four consolidated dockets should be addressed by testimony that is pre-filed at the same time.

15. Therefore, for good cause shown, Citizens submit that the appropriate testimony filing schedule is the schedule that was agreed to by the Parties and FPL for the base rate case and should be used for the consolidated dockets:

- a) Intervenors' testimony and exhibits due July 7, 2016;
- b) Staff's testimony and exhibits, if any, due July 18, 2016;
- c) Rebuttal testimony and exhibits due August 1, 2016;

16. Citizens' Counsel conferred with the Parties to this matter. AARP, Florida Retail Federation, and Florida Industrial Power User Group support the Motion. South Florida Hospital and Healthcare Association does not oppose the Motion. Walmart has no objection to the Motion. FPL opposes the Motion. Counsel representing Federal Executive Agencies did not respond prior to the filing of the Motion.

WHEREFORE, the Citizens hereby request that the Prehearing Officer grant their Motion for Extension of Testimony Filing Dates established by Order No. PSC 16-0182-PCO-EI, and amend the Consolidation Order to synchronize the testimony filing dates for the consolidated dockets as outlined in the body of this Motion.

Respectfully Submitted

J.R. KELLY  
PUBLIC COUNSEL

s/Erik L. Sayler  
Patricia A. Christensen  
Associate Public Counsel  
Erik L. Sayler  
Associate Public Counsel  
Charles J. Rehwinkel  
Deputy Public Counsel

Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
(850) 488-9330

Attorneys for the Citizens  
of the State of Florida

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy if the foregoing has been furnished by electronic mail on this 25<sup>th</sup> day of May, 2016, to the following:

Suzanne Brownless  
Adria Harper / Danijela Janjic  
Kyesha Mapp / Margo Leathers  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
[sbrownle@psc.state.fl.us](mailto:sbrownle@psc.state.fl.us)

Ken Hoffman  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301-1858  
[ken.hoffman@fpl.com](mailto:ken.hoffman@fpl.com)

John T. Butler  
R. Wade Litchfield  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
[john.butler@fpl.com](mailto:john.butler@fpl.com)  
[wade.litchfield@fpl.com](mailto:wade.litchfield@fpl.com)

Jon C. Moyle, Jr.  
118 North Gadsden Street  
Tallahassee, FL 32301  
[jmoyle@moylelaw.com](mailto:jmoyle@moylelaw.com)

K. Wiseman/M. Sundback/W. Rappolt  
Andrews Law Firm  
1350 I Street NW, Suite 1100  
Washington DC20005  
[kwiseman@andrewskurth.com](mailto:kwiseman@andrewskurth.com)  
[msundback@andrewskurth.com](mailto:msundback@andrewskurth.com)  
[wrappolt@andrewskurth.com](mailto:wrappolt@andrewskurth.com)

Derrick Price Williamson  
Spilman Thomas & Battle, PLLC  
1100 Bent Creek Boulevard, Suite 101  
Mechanicsburg, PA 17050  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)

Stephanie U. Roberts  
Spilman Thomas & Battle, PLLC  
110 Oakwood Drive, Suite 500  
Winston-Salem, NC 27103  
[sroberts@spilmanlaw.com](mailto:sroberts@spilmanlaw.com)

Federal Executive Agencies  
Thomas A. Jernigan  
c/o AFCEC/JA-ULFSC  
139 Barnes Drive, Suite 1  
Tyndall AFB FL32403  
[Thomas.Jernigan.3@us.af.mil](mailto:Thomas.Jernigan.3@us.af.mil)

John B. Coffman, LLC  
Coffman Law Firm  
871 Tuxedo Blvd.  
St. Louis MO63119-2044  
[john@johncoffman.net](mailto:john@johncoffman.net)

Jack McRay  
AARP Florida  
200 W. College Ave., #304  
Tallahassee FL32301  
[jmcray@aarp.org](mailto:jmcray@aarp.org)

Robert Scheffel Wright/John T. LaVia, III  
Gardner Law Firm  
1300 Thomaswood Drive  
Tallahassee FL32308  
[schef@gbwlegal.com](mailto:schef@gbwlegal.com)  
[jlavia@gbwlegal.com](mailto:jlavia@gbwlegal.com)

s/Erik L. Sayler  
Patricia A. Christensen  
Associate Public Counsel

Erik L. Sayler  
Associate Public Counsel

Charles J. Rehwinkel  
Deputy Public Counsel