

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
ORDER NO. PSC-16-0456-PCO-EI
ISSUED: October 12, 2016

FOURTH ORDER REVISING ORDER ESTABLISHING PROCEDURE
AND SETTING PROCEDURAL SCHEDULE FOR COMMISSION CONSIDERATION
OF SETTLEMENT AGREEMENT

I. Background

This docket was opened to consider Florida Power & Light Company's (FPL) petition for a base rate increase. Nine parties were granted intervention in the docket.¹ An administrative hearing on FPL's request for a rate increase commenced on August 22, 2016, and concluded on September 1, 2016. On October 6, 2016, FPL and three of the nine intervening parties (signatories) filed a Joint Motion for Approval of Settlement Agreement (Settlement Agreement).² This Order addresses the scheduling of the Commission's consideration of the Settlement Agreement.

In compliance with Sections 120.569 and 120.57, Florida Statutes (F.S.), on October 27, 2016, an administrative hearing will be held, and the record reopened, to take supplemental testimony regarding terms of the Settlement Agreement not previously addressed in the prior hearing. The scope of the hearing is defined in Section III below. The hearing will be conducted according to the provisions of Chapter 120, F.S., and all administrative rules applicable to this Commission.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, (F.A.C.), which provides that the presiding officer before whom a case is

¹ Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), Wal-Mart Stores East, LP and Sam's East, Inc. (Walmart), Federal Executive Agencies (FEA), South Florida Hospital and Healthcare Association (SFHHA), American Association of Retired Persons (AARP), Florida Retail Federation (FRF), Sierra Club, and Daniel R. Larson and Alexandria Larson (Larsons).

² OPC, FRF, and SFHHA.

pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

II. General Filing Procedures

Filings pertaining to this docket must comply with Rule 28-106.104, F.A.C. Filing may be accomplished electronically as provided in the Commission's Statement of Agency Organization and Operation and the E-Filing Requirements link, posted on our website, www.floridapsc.com. If filing via mail, hand delivery, or courier service, the filing should be addressed to:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The Commission strongly encourages electronic filing, which is available from the Commission's Home Page under the Clerk's Office menu and Electronic Filing web form. The filing party is responsible for ensuring that no information protected by privacy or confidentiality laws is contained in any electronic document. To the extent possible, an electronic copy of all filings shall be provided to parties and staff in Microsoft Word format and all schedules shall be provided in Microsoft Excel format with formulas intact and unlocked.

III. Scope of Hearing

The purpose of this hearing is to give parties an opportunity to present testimony and conduct cross examination on terms of the Settlement Agreement which were not identified in the prior evidentiary hearing held on August 22, 2016, through August 26, 2016, and August 29, 2016, through September 2, 2016. The sole issue to be decided in this hearing is whether the Settlement Agreement dated October 6, 2016, is in the public interest and should be approved. In order to fully evaluate this Settlement Agreement, additional information on the terms of the Settlement Agreement discussed in Paragraphs 10 (Solar Base Rate Adjustment), 12 (theoretical depreciation reserve surplus), 16 (natural gas financial hedging), 18 (battery storage pilot program), and 19 (pilot demand side management opt-out program) is necessary. If the parties believe there are additional terms and conditions of the Settlement Agreement that were not addressed in the previous hearing, a Notice of Additional Terms must be filed with the Office of Commission Clerk by 5:00 p.m. on October 14, 2016. On or before October 19, 2016, the Presiding Officer will determine if such additional terms will be addressed at the hearing.

IV. Prefiled Testimony and Exhibits

Each party shall file all testimony and exhibits that it intends to sponsor, pursuant to the schedule set forth in Section VIII of this Order. Testimony and exhibits may be filed electronically. If filing paper copies, an original and 15 copies of all testimony and exhibits shall be filed with the Office of Commission Clerk, by 5:00 p.m. on the date due. A copy of all prefiled testimony and exhibits shall be served electronically or by regular mail, overnight mail,

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or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

The dimensions of each page of testimony shall be 8 ½ x 11 inches. Each page shall be consecutively numbered and double spaced, with 25 numbered lines per page and left margins of at least 1.25 inches. If filing paper copies of the testimony, all pages shall be filed on white, unglossed, three-holed paper and shall be unbound and without tabs.

Each exhibit sponsored by a witness in support of his or her prefiled testimony shall be:

- (1) Attached to that witness' testimony when filed;
- (2) If filing paper copies, on three-holed paper, unbound, and without tabs;
- (3) Sequentially numbered beginning with 1 (any exhibits attached to subsequently filed testimony of the same witness shall continue the sequential numbering system);
- (4) Identified in the upper right-hand corner of each page by the docket number, a brief title, and the witness' initials followed by the exhibit's number; and
- (5) Paginated by showing in the upper right-hand corner of each page the page number followed by the total number of pages in the exhibit.

An example of the information to appear in the upper right-hand corner of the exhibit is as follows:

Docket No. 012345-EI
Foreign Coal Shipments to Port of Tampa
Exhibit BLW-1, Page 1 of 2

After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing.

By October 21, 2016, non-signatory parties to the Settlement Agreement may pre-file testimony and exhibits in response to any testimony filed in support of the proposed Settlement Agreement and any additional terms and conditions of the Settlement Agreement approved by the Presiding Officer. On October 21, 2016, in lieu of pre-filing testimony and exhibits, a non-signatory party may file a notice listing the witness(es) it plans to sponsor and the terms and conditions of the Settlement Agreement each witness will address at the October 27, 2016, hearing. On October 21, 2016, if additional terms and conditions for discussion at the hearing have been approved by the Presiding Officer, signatory parties may file prefiled testimony to address those terms and conditions or may file a notice listing the witness(es) it plans to sponsor and the terms and conditions of the Settlement Agreement each witness will address at the October 27, 2016, hearing.

V. Discovery Procedures

A. General Requirements

Discovery shall be conducted in accordance with the provisions of Chapter 120, F.S., and the relevant provisions of Chapter 366, F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Presiding Officer.

Unless subsequently modified by the Presiding Officer, the following shall apply:

- (1) Discovery shall be completed by October 25, 2016.
- (2) Discovery requests and responses shall be served by e-mail, hand delivery, or overnight mail, and electronic service is encouraged. Discovery served via e-mail shall be limited to 5 MB per attachment, shall indicate how many e-mails are being sent related to the discovery (such as 1 of 6 e-mails), and shall be numbered sequentially. Documents provided in response to a document request may be provided via a CD, DVD, or flash drive if not served electronically.
- (3) Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery shall be numbered sequentially in order to facilitate their identification.
- (4) Within each set, discovery requests shall be numbered sequentially, and any discovery requests in subsequent sets shall continue the sequential numbering system.
- (5) Discovery responses shall be served within 2 calendar days (inclusive of mailing) of receipt of the discovery request. Discovery responses for interrogatories and requests for admission shall be served by electronic mail, hand delivery, or overnight mail. Parties are encouraged to serve discovery responses to requests for production electronically to all parties when possible.
- (6) Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties shall number their produced documents in an unbroken sequence through the final hearing.
- (7) Copies, whether hard copies or electronic, of discovery requests and responses shall be served on all parties and staff. In addition, copies of all responses to requests for production of documents shall be provided to the Commission staff at its Tallahassee office unless otherwise agreed.
- (8) Parties shall file in the Commission Clerk's Office a notice of service of any interrogatories or request for production of documents propounded and associated responses in this docket, giving the date of service and the name of the party to whom the discovery was directed.

Unless subsequently modified by the Presiding Officer, the following shall apply:

- (1) Interrogatories, including all subparts, shall be limited to 50.
- (2) Requests for production of documents, including all subparts, shall be limited to 50.

(3) Requests for admissions, including all subparts, shall be limited to 50.

B. Confidential Information Provided Pursuant to Discovery

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

Redacted versions of confidential filings may be served electronically, but in no instance may confidential information be electronically submitted. If the redacted version is served electronically, the confidential information (which may be on a CD, DVD, or flash drive) shall be filed with the Commission Clerk via hand-delivery, U.S. Mail, or overnight mail on the day that the redacted version was served via e-mail.

When a person provides information that it maintains as proprietary confidential business information to the Office of Public Counsel pursuant to a discovery request by the Office of Public Counsel or any other party, that party may request a temporary protective order pursuant to Rule 25-22.006(6)(c), F.A.C., exempting the information from Section 119.07(1), F.S.

When a party other than the Commission staff or the Office of Public Counsel requests information through discovery that the respondent maintains as proprietary confidential business information, or when such a party would otherwise be entitled to copies of such information requested by other parties through discovery (e.g., interrogatory responses), that party and respondent shall endeavor in good faith to reach agreement that will allow for the exchange of such information on reasonable terms, as set forth in Rule 25-22.006(7)(b), F.A.C.

VI. Hearing Procedures

A. Attendance at Hearing

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's positions on the issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date of the following:

- (1) All parties agree that the witness will not be needed for cross-examination.
- (2) All Commissioners do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness' testimony.

B. Cross-Examination

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

C. Use of Confidential Information at Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such information is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidentiality filed with the Commission, the source of the information must file a request for confidential

classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

VII. Post-Hearing Procedures

If no bench decision is made, each party may file a post-hearing statement of issues and positions. Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

VIII. Controlling Dates

The following dates have been established to govern the key activities of this case:

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|-----|---|-------------------|
| (1) | Supplemental testimony in support of Settlement Agreement | October 13, 2016 |
| (2) | Supplemental testimony in opposition to Settlement Agreement
or notification of witnesses to appear at hearing;
Signatory supplemental testimony for approved additional terms
or notification of witnesses to appear at hearing | October 21, 2016 |
| (3) | Discovery response deadline | October 25, 2016 |
| (4) | Hearing | October 27, 2016 |
| (5) | Briefs | November 10, 2016 |

Based on the foregoing, it is

ORDERED by Chairman Julie I. Brown that the provisions of this Order shall govern this proceeding to take supplemental testimony on the specific issues that are a part of the Settlement Agreement but supplemental to the issues in the rate case, unless modified by the Commission.

By ORDER of Chairman Julie I. Brown, as Presiding Officer, this 12th day of October, 2016.



JULIE I. BROWN
Chairman and Presiding Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.