

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition for Limited Proceeding for Recovery of
Incremental Storm Restoration Costs Related to
Hurricane Matthew by Florida Power & Light Company

Docket No.: 160251-EI

Filed: February 6, 2017

**CITIZENS' OBJECTION TO PETITION FOR LIMITED PROCEEDING FOR RECOVERY
OF INCREMENTAL STORM RESTORATION COSTS RELATED TO HURRICANE
MATTHEW BY FLORIDA POWER & LIGHT COMPANY (FPL) AND REQUEST FOR A
SECTION 120.57(1) HEARING**

Pursuant to Sections 366.04, 366.05, 366.06, and 366.076, Florida Statutes, Citizens v. Wilson, 568 So. 2d 904 (1990), and Paragraph 5 of the 2012 Stipulation and Settlement approved by Order No. PSC-13-0023-S-EI, in Docket No. 120015-EI, issued January 14, 2013 (2012 Stipulation), Citizens, by and through the Office of Public Counsel, hereby object to FPL's Petition for Limited Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricane Matthew in the amount of \$318.5 million and request a Section 120.57(1) Hearing.

1. On December 29, 2016, FPL filed its Petition requesting a Limited Proceeding to recover the incremental restoration costs due to Hurricane Matthew. FPL has also requested that the Commission allow it to implement an "interim" storm restoration recovery charge pursuant to Paragraph 5 of the 2012 Stipulation. Pursuant to its request, FPL is seeking to collect its estimated restoration recovery storm costs of \$3.36 per 1,000 kWh from the residential class and costs from the other rate classes over a 12-month period as set forth in Original Tariff Sheet No. 8.042. FPL has also filed its Fifty-Sixth Revised Tariff Sheet No. 8.010, Index of Rate Schedule. FPL further states in its Petition that once all the invoices are received and insurance recovery (if any) are confirmed, FPL will file documentation of all restoration and follow up costs for Commission review and

approval. Petition at p. 9. FPL requests that the Commission enter an order approving its Petition and keep the docket open for true-up. Petition at pp. 10- 11.

2. Pursuant to Paragraph 5 of the 2012 Stipulation, FPL is allowed to seek recovery for storm incremental restoration costs without application of any form of earnings test or measure and irrespective of previous or current base rate earnings or level of theoretical depreciation reserve. 2012 Stipulation at p. 4. Further, the 2012 Stipulation allows the recovery of storm costs from customers beginning, on an interim basis, sixty days following the filing of a cost recovery petition and tariff with the Commission and to be based on a 12-month recovery period if the storm costs do not exceed \$4.00/1,000 kWh for residential customers on a monthly basis. Finally, Paragraph 5 clearly states that parties are not 1) precluded from participating in any such proceedings and; 2) opposing the amount of FPL's claimed costs but not the mechanism agreed to in the Stipulation. 2012 Stipulation at p. 4.
3. The Public Counsel, pursuant to Section 350.0611, Florida Statutes, is the authorized statutory representative of the people of the state in proceedings before the Commission. By Order No. PSC 17-0030-PCO-EI, issued January 18, 2017, the Commission acknowledged intervention by the Office of the Public Counsel in this docket. Citizens dispute the amount of costs in this Petition for Limited Proceeding that FPL is seeking to recover for restoration costs related to Hurricane Matthew.
4. Pursuant to Citizens v. Wilson, 568 So. 2d 904, 908 (1990), under the file and suspend law, Section 366.06, Florida Statutes, when the Commission approves in an order or chooses not to withhold its consent within 60 days of a new tariff filing, the new tariff rates that go into effect are merely interim rates pending a final order. The Florida Supreme Court opined that the "file and suspend" statute survived the adoption of the

Administrative Procedure Act, Chapter 120. Id. at 905. Footnote 1 clearly shows that the Court contemplated the then applicable electric “file and suspend” provision in this analysis as well as the then applicable telephone “file and suspend” provision. Id. Further, under Citizen v. Wilson, the Commission cannot enter a final order without giving interested parties the right to a hearing. Moreover, pursuant to Citizens v. Wilson, FPL will have the burden to show that its proposed storm restoration costs are fair – in this case based upon reasonable and prudent costs consistent with Rule 25-6.0143, Florida Administrative Code (F.A.C.) – as it would in any other request for a rate increase. Id.

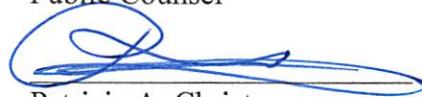
5. Section 120.569 (1), Florida Statutes, states that it applies in all proceeding in which the substantial interests of a party are determined by an agency and further, states that “[u]less waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material facts.” In the instant docket, Citizen aver that the substantial interests of FPL ratepayers, represented by and through the Public Counsel, are affected by the determination of any costs to be recovered from them by the Commission. Further, Citizens assert that there are disputed issues of material facts in the instant case as it relates to the total amount of storm restoration costs FPL is seeking to recover which entitle Citizens to request a full evidentiary hearing pursuant to Section 120.57(1), Florida Statutes.
6. Citizens aver that the issues include, but are not limited to, the following issues for resolution in the Section 120.57(1), proceeding:
 - a) What are the appropriate costs to be included for storm cost recovery for Hurricane Matthew pursuant to Rule 25-6.0143, F.A.C.?
 - b) What is the appropriate amount to be used to replenish the Storm Reserve?

- c) What is the appropriate amount to be collected or refunded to customers for the incremental storm cost recovery amount?
7. FPL has acknowledged in its Petition that the costs related to Hurricane Matthew have yet to be finalized. Citizens request that any evidentiary hearing in this matter be set with sufficient time after the costs are finalized to allow Citizens ample opportunity to conduct discovery to vet FPL's request.

Wherefore, Citizens, by and through the Public Counsel, hereby request that the Commission set this matter for a Section 120.57(1), Florida Statutes, evidentiary hearing. Further, Citizens request that FPL be required to identify when the costs related to Hurricane Matthew will be finalized, so that a procedural schedule can be established.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to the following parties on this 6th day of February, 2017

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