

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Evaluation of storm restoration costs for
Florida Power & Light Company related to
Hurricane Irma.

DOCKET NO.: 20180049-EI

FILED: December 28, 2018

CITIZENS' MOTION FOR EXTENSION OF TESTIMONY FILING DATES
ESTABLISHED BY ORDER NO. PSC 2018-0539-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 2018-0539-PCO-EI, issued November 16, 2018, in the above docket. The Citizens request that this Motion be granted for good cause, and as grounds therefor state the following:

1. The First Order Modifying the Order Establishing Procedure ("OEP") in this case set the filing date for Intervenor Testimony and Exhibits as January 11, 2019.¹ Order No. PSC-2018-0539-PCO-EI, issued November 16, 2018.
2. Due to the huge volume and complexity of the information to be analyzed and incorporated into its testimony, OPC hereby requests an extension of its testimony filing date to February 8, 2019. To eliminate the risk of prejudice to any party, OPC requests that the all of the testimony filing dates be similarly shifted forward four weeks, such that Staff's testimony filing date would be February 15, 2019, and Florida Power and Light's ("FPL's") Rebuttal date would be April 12, 2019. OPC does not request changes to any other key activity dates, so the hearing date of June 11 – 14, 2019 would be unchanged. By this proposal, OPC's testimony would be filed a full four months prior to the hearing.

¹ The original Order Establishing Procedure in this case was issued June 7, 2018. Order No. 2018-0290-PCO-EI.

3. As of the date of this filing, there are three sets of interrogatories and two sets of requests for production outstanding; the outstanding discovery includes some 27 interrogatories; the utility's responses are due to OPC between January 2 and 14, 2019. Clearly, the January 14 responses would be received after OPC's testimony is currently due. Additionally, FPL declined to provide late-filed exhibits to the two depositions conducted to date, and instead expressed a preference that OPC use written discovery, including the 30 day turnaround process, rather than providing related documents and information directly after the depositions. This resulted in a delay in receiving information after the November 15, 2018 deposition. OPC will shortly serve requests for follow-up information and documents stemming from the Dec. 13, 2018 deposition.²

4. The Commission opened Docket No. 20180049-EI on February 22, 2018 to review the storm restoration costs of FPL related to Hurricane Irma. The hurricane hit Cudjoe Key, Florida on September 10, 2017 as a Category 4 storm, subsequently made a second landfall in Marco Island, Florida as a Category 3 storm, and moved throughout a substantial portion of FPL's service territory. It is well-documented in the public record that Hurricane Irma caused extensive damage. As explained elsewhere by the utility, FPL alleges it "executed the fastest, *most massive restoration in U.S. history*, resulting in about \$1.3 billion of incremental costs." FPSC Document No. 07661-2018, p. 4 (emphasis added).

5. Although the Commission previously granted an extension of time, based on a Joint Motion by FPL and OPC, it must be noted that part of the reason an initial extension was necessary was the extraordinarily long **delay by FPL** in producing documents in response to OPC's very first set of interrogatories and requests for production of documents. In that instance, **at FPL's request**,

² Although OPC requested expedited service for the transcript of the December 13, 2018 deposition, the transcript was not received in its offices until December 26, 2018. Due to the confidential nature of the testimony and exhibits, OPC uses transcript references to issue discovery, rather than issuing confidential discovery requests, in order to decrease the administrative burden on all parties.

OPC agreed to provide FPL an extension of roughly two months to produce responses on a rolling basis.³ When FPL finally produced the bulk of the documents requested, the production amounted to upwards of 10 gigabytes of data and tens of thousands of pages of invoices and receipts, **in addition to** the other types of documents produced. Since that time, even more documents have been produced, among which were hundreds, if not thousands, of pages comprising vendor contracts, purchase orders and related documents on or about November 16, 2018.

6. In its effort to prepare for all of the hearings related to Hurricane Irma, OPC hired an outside consultant, Larkin & Associates, to review the storm costs in this docket, along with the storm costs for Tampa Electric Company (TECO) in Docket No. 20170271-EI, Duke Energy Florida, LLC., (Duke) in Docket No. 20170272-EI, as well as Florida Public Utility Company (FPUC) in Docket No. 20180061-EI. OPC's expert consultants are simultaneously analyzing documents in the Duke and TECO dockets. The document review and analytical work required on these multiple dockets operating under similar timelines unavoidably hinders the ability of OPC's consultants to work exclusively on the FPL docket.

7. Currently, FPL's Hurricane Irma hearing is scheduled for the week of June 11, 2019. Intervenors' Testimony is currently due January 11, 2019, which is roughly five months prior to the scheduled hearing.

8. OPC served its seventh requests for production to FPL on December 3, 2018, and its seventh set of interrogatories on December 14, 2019. Despite the diligent efforts of both OPC and its consultant, the massive volume of the documents received by OPC - both those received to date and those due in January - require additional time for the in-depth evaluation and analysis necessary to incorporate the information into OPC's direct testimony. This time-consuming work

³ OPC served its first set of interrogatories and requests for production on May 18, 2018; many of FPL's responses were received between July 31 and August 15, 2018, and the response was amended on October 15, 2018.

is required in order for OPC to provide the Commission with the information it needs to conduct the full evaluation for which it opened this docket. Under the circumstances, the extension requested by OPC is reasonable and supported by precedent. *In re: Natural Gas Conservation Cost Recovery*, Order No. PSC-2007-0744 (finding an extension of time reasonable where a party had to use the same staff to conduct multiple reviews and filings in multiple dockets at or about the same time as the subject filing); *In re: Impact of AT&T/DOJ Anti-Trust Settlement, et al.*, Order No. 13479 (granting extension of testimony filing date where discovery responses to be used in developing testimony will be due after the date the testimony is due).

9. At this time, it is unknown how many pages over and above those already received will have to be reviewed and evaluated.

10. The requested extension of time will not harm or prejudice FPL in any way because the company has already written off the Hurricane Irma costs in 2017. As stated by FPL in the Petition it filed in this docket on August 31, 2018:

FPL is not seeking through this proceeding to establish a charge for the recovery of the Hurricane Irma costs or replenishment of the storm reserve FPL recorded the Hurricane Irma costs as a base operation and maintenance (“O&M”) expense and plans to offset this expense with the expected tax savings from the Tax Cuts and Jobs Act of 2017 (“Tax Act”).

Petition by Florida Power & Light Company for Evaluation of Storm Restoration Costs Related to Hurricane Irma, p. 1.

11. In other words, “FPL decided to forego seeking incremental rate recovery of the Hurricane Irma storm restoration costs ... and, instead, recorded the remaining amount of Hurricane Irma storm restoration casts accumulated in FERC Account 186 to base O&M expense.” Direct Testimony of Keith Ferguson, p. 11 (emphasis added). Granting this motion will not cause any delay in FPL’s ability to apply a storm charge or recover funds because FPL has already stated it

does not plan to take either of those actions. Rather, this proceeding is simply designed to quantify the dollar amount of storm costs FPL may “offset” or retain from the amounts customers are owed in refunds as a result of the huge tax cut windfall FPL realized from the Tax Cuts and Jobs Act of 2017.

12. No party will be prejudiced by the extension of time granted to all parties, in that all testimony deadlines will be extended equally. Additionally, the Commission’s calendar will otherwise be preserved, because all other key activity dates, including the hearing dates, would remain intact and the hearing would go forward on the date established in the First Modified OEP.

13. OPC will be severely prejudiced if the motion is not granted. FPL concedes that its response was an *historic* undertaking involving billions of dollars. It follows that the review of the upwards of 70,000 pages of documents requires a substantial amount of time, particularly where analysis of those documents requires the application of complex accounting work. Due process requires that Citizens be allowed a full opportunity to be heard regarding its analysis of the costs in this historic undertaking, and the primary opportunity for OPC to provide its analysis is in its direct prefiled testimony. It would defeat the Commission’s purpose of opening the docket if Citizens are denied the meaningful opportunity to conduct essential discovery and include the synthesis of said discovery responses into their testimony. Further, such a denial may erode the public’s confidence that the PSC conducted a meaningful review of costs for which the Citizens are ultimately responsible for paying one way or another – even if the costs are “credited” against tax savings, the point is that the money is ultimately subtracted from customers’ funds and recovered through customers’ rates, instead of being subtracted from company shareholders’ funds.

14. Therefore, for good cause shown, Citizens requests that Intervenors' testimony filing date be moved to February 8, 2019 to allow OPC sufficient time to conduct a thorough analysis of FPL's Hurricane Irma storm costs.
15. Citizens' Counsel conferred with the Parties to this matter. Florida Retail Federation advised that it supports the Motion. Florida Industrial Power Users Group informed OPC that it takes no position on the motion. FPL advised OPC that it objects to 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-2018-0539-PCO-EI, issued November 16, 2018, grant Intervenors an extension of time to and including February 8, 2019 to file their testimony, and amend the other testimony dates as described in this motion.

Respectfully Submitted

J.R. KELLY
PUBLIC COUNSEL

/s/Stephanie A. Morse
Stephanie Morse
Associate Public Counsel

Patricia A. Christensen
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 **Motion for Extension of Testimony Filing Dates** has been furnished by electronic mail on this 28th day of December, 2018, to the following:

Suzanne Brownless/Ashley Weisenfeld
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
sbrownle@psc.state.fl.us
aweißenf@psc.state.fl.us

Robert Scheffel Wright/John T. LaVia
Representing Florida Retail Federation
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee FL 32308
jlavia@gbwlegal.com
schef@gbwlegal.com

Ken Hoffman
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee FL 32301
ken.hoffman@fpl.com

Jon C. Moyle, Jr./Karen A. Putnal
c/o Moyle Law Firm, PA
Florida Industrial Power Users Group
118 North Gadsden Street
Tallahassee FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com

Kenneth M. Rubin/Kevin I.C. Donaldson
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408-0420
ken.rubin@fpl.com
kevin.donaldson@fpl.com

Eugene Hennelly
Balyasny Asset Management L.P.
101 California Street, Suite 4600
San Francisco CA 94111
ehennelly@bamfunds.com

/s/Stephanie A. Morse
Stephanie A. Morse
Associate Public Counsel
Florida. Bar No. 0068713

