

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Duke Energy Florida, LLC for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael and Tropical Storm Alberto.

Docket No. 20190110-EI

Filed: June 23, 2020

**DUKE ENERGY FLORIDA, LLC'S UNOPPOSED MOTION TO MODIFY
REBUTTAL TESTIMONY AND DISCOVERY DEADLINES
ESTABLISHED BY ORDER NO. PSC-2020-0138-PCO-EI**

Duke Energy Florida, LLC, ("DEF") pursuant to Rule 28-106.204, Florida Administrative Code, ("F.A.C.") hereby files this Motion requesting that the deadlines for filing rebuttal testimony and conducting discovery established in Order No. PSC-2020-0138-PCO-EI ("First Order Modifying OEP") issued on May 11, 2020, be modified. Specifically, DEF requests that the deadline for filing rebuttal testimony be modified from July 16, 2020, to July 31, 2020, and the deadline for conducting discovery be modified from August 24, 2020, to August 28, 2020. For the reasons explained below, DEF submits that the proposed modification to the deadline for filing rebuttal testimony is necessary to avoid substantial prejudice to DEF, which has the burden of proof in this proceeding. DEF also submits that any potential impacts from the modified rebuttal deadline will be mitigated by the proposed modification to the discovery deadline, which will provide all parties additional time to conduct discovery following rebuttal. The proposed modifications to the rebuttal and discovery deadlines reasonably balance the interests of all parties and stakeholders. In support, DEF states as follows:

1. On April 30, 2019, DEF filed a petition for a limited proceeding seeking authority to recover the incremental storm restoration costs related to Hurricane Michael and to replenish

DEF's storm reserve to the level authorized by the Second Revised and Restated 2017 Settlement Agreement (2017 Settlement) approved by this Commission on November 20, 2017.¹

2. On July 1, 2019, the Commission approved DEF's requested interim storm recovery charge and second implementation stipulation to the 2017, Settlement.²

3. On November 22, 2019, DEF filed its petition for approval of actual storm restoration costs and associated recovery process related to Hurricane Michael and Tropical Storm Alberto.

4. On May 11, 2020, the Commission issued the First Order Modifying OEP, adopting the following milestones and deadlines for the Michael restoration costs docket:

(1) Utility's testimony and exhibits	November 22, 2019
(2) Intervenors' testimony and exhibits	June 19, 2020
(3) Staff's testimony and exhibits, if any	July 2, 2020
(4) Rebuttal testimony and exhibits	July 16, 2020
(5) Prehearing Statements	August 20, 2020
(6) Discovery deadline	August 24, 2020
(7) Prehearing Conference	August 31, 2020
(8) Hearing	September 15-16, 2020
(9) Briefs	October 14, 2020

5. Under the OEP³, DEF's rebuttal to Intervenors' testimony must be filed twenty-seven days after DEF's receipt of Intervenors' testimony. In contrast, the OEP provides

¹ Order No. PSC-2017-04510AS-EU.

² Order No. PSC-2019-0268-PCO-EI.

³ Order No. PSC-2020-0039-PCO-EI.

Intervenors with thirty days (inclusive of mailing) to respond to any discovery propounded by DEF on Intervenors following DEF's receipt of Intervenors' testimony.

6. The disparity between the discovery deadline and the rebuttal testimony deadline precludes DEF from conducting important discovery as to Intervenors' testimony in preparation for its rebuttal testimony. For example, if DEF serves Intervenors with discovery requests following its receipt of Intervenors' testimony⁴, Intervenors will have a total of thirty days to respond to DEF's discovery requests. If, as currently required under the OEP, DEF is required to file its rebuttal testimony to Intervenors' testimony in just twenty-seven days, however, DEF will not have an opportunity to review Intervenors' responses to DEF's discovery requests before DEF must file its rebuttal testimony.

7. Requiring the party with the burden of proof to prepare rebuttal testimony without any opportunity to conduct discovery with respect to Intervenors' testimony is clearly prejudicial and would severely handicap DEF's ability to fully develop the record on the issues raised in the proceeding. DEF submits that it is in the best interest of all stakeholders, including the Commission and the public, to ensure that a fair and adequate record is fully developed.

8. To ensure fairness and a complete record, DEF proposes that the rebuttal testimony deadline be modified from July 16, 2020, to July 31, 2020. This would provide DEF with a total of forty-two days to conduct important discovery regarding Intervenors' testimony, fully develop the record, and prepare meaningful and responsive rebuttal testimony.

9. Additionally, DEF requests that the discovery deadline be modified from August 24, 2020, to August 28, 2020. This will ensure that (a) Intervenors are provided with an opportunity to receive discover responses related to the rebuttal testimony under the OEP's

⁴ DEF has every intention of propounding discovery on Intervenors.

fifteen day response period after rebuttal, and (b) that discovery is completed prior to the August 31, 2020, Prehearing Conference.

10. The requested changes do not impact any other dates adopted by the First Order Modifying OEP. Moreover, the requested changes balance the interests of all stakeholders and are necessary to achieve a fair and complete development of the record in this proceeding.

11. DEF conferred with all Parties of Record and Interested Parties in this docket concerning the relief requested herein. The Office of the Public Counsel advised that it has no objection to the proposed modifications and the Commission Staff advised that it takes no position on the proposed modification.

WHEREFORE, DEF respectfully requests that Order No. PSC-2020-0138-PCO-EI be modified as follows:

- (a) The rebuttal testimony filing deadline be modified from July 16, 2020, to July 31, 2020; and
- (b) The discovery deadline be modified from August 24, 2020, to August 28, 2020.

Respectfully submitted this 23rd day of June 2020.

/s/ Daniel Hernandez
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CERTIFICATE OF SERVICE (DOCKET. NO. 20190110-EI)

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail this 23rd day of June 2020 to all parties of record as indicated below.

/s/ Daniel Hernandez
Attorney

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