

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Re: Petition for Evaluation of Hurricane Dorian  
Storm Costs, by Florida Power & Light  
Company.

DOCKET NO. 20200172-EI

FILED: January 15, 2021

**PRE-HEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2020-0311-PCO-EI, issued September 14, 2020, and the Order Granting Motion to Extend Due Dates and First Order Modifying Order Establishing Procedure, Order No. PSC-2020-0418-PCO-EI, issued on November 6, 2020, hereby submit this Prehearing Statement.

**APPEARANCES:**

Charles Rehwinkel  
Deputy Public Counsel

Anastacia Pirrello  
Associate Public Counsel

Patty Christensen  
Associate Public Counsel

Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
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On behalf of the Citizens of the State of Florida

A. **WITNESSES:**

<b>Witness</b>	<b>Subject Matter</b>	<b>Issue #</b>
<b>Direct</b>		
Lane Kollen	Storm Costs, Incremental Costs, Prudent Planning and Management, Process, Methodology and	Issues 1-12 and OPC Issues 1-5

	Disallowances.	
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B. EXHIBITS:

<b>Witness</b>	<b>Proffered By</b>	<b>Exhibit No.</b>	<b>Description</b>	<b>Issue #</b>
<b>Direct</b>				
Lane Kollen	OPC	LK-1	Resume of Lane Kollen	N/A
Lane Kollen	OPC	LK-2	OPC's Second Set of Interrogatories No. 37	2, 3
Lane Kollen	OPC	LK-3	OPC's First Set of Interrogatories No. 7 and OPC's Second Set of Interrogatories No. 44	4
Lane Kollen	OPC	LK-4	OPC's First Set of Interrogatories No. 10	7
Lane Kollen	OPC	LK-5	OPC's First Set of Production of Documents No. 22 and Report	9, OPC Issue 2, OPC Issue 3
Lane Kollen	OPC	LK-6	OPC's First Set of Production of Documents No. 20	9
Lane Kollen	OPC	LK-7	OPC's First Set of Interrogatories No. 21	10
Lane Kollen	OPC	LK-8	OPC's First Set of Interrogatories No. 18	4

Lane Kollen	OPC	LK-9	OPC's First Request for Production of Documents No. 15	4
Lane Kollen	OPC	LK-10	OPC's First Set of Interrogatories No. 35	2
Lane Kollen	OPC	LK-11	OPC's First Set of Interrogatories No. 36	4
Lane Kollen	OPC	LK-12	OPC's First Set of Production of Documents No. 15 Storm Service Pages	4
Lane Kollen	OPC	LK-13	OPC's First Set of Production of Documents No. 15 BHI Pages	4
Lane Kollen	OPC	LK-14	OPC's First Set of Production of Documents No. 15 Pike Engineering Pages	4
Lane Kollen	OPC	LK-15	OPC's Second Set of Interrogatories Nos. 39 and 40	4

C. STATEMENT OF BASIC POSITION

FPL must demonstrate the prudence of the entirety of the \$239.833 million incurred for Hurricane Dorian storm costs for which it seeks final Commission approval of rate recovery from customers, nearly all of which was charged to base O&M expense. FPL's decision to charge the Hurricane Dorian costs to base O&M expense improperly resulted in \$1.936 million in excessive ratemaking recovery for costs incurred and another \$15.775 million for the return on the costs incurred in just the first year alone when compared to recovery of these cost through a storm surcharge. FPL has a depreciation reserve surplus ("Reserve"). Pursuant to the Commission Order approving a settlement in its last rate case, FPL is authorized to utilize (debit or reduce) that Reserve at its discretion to increase its

earnings to 11.60% or to restore (credit and increase) the Reserve to reduce its return on equity (ROE) to no more than 11.60% if its earnings in a given year would otherwise exceed that maximum threshold. In 2019, FPL's earnings exceeded the 11.60% maximum threshold even after it charged the costs of Hurricane Dorian to base O&M expense. If FPL had not charged the \$239.833 million to base O&M expense, then it would have charged \$237.896 million to the storm reserve account ("storm reserve") under its interpretation and application of the Incremental Cost and Capitalization Approach ("ICCA") set forth in Rule 25-6.0143(1)(e), Florida Administrative Code ("F.A.C."), according to its Petition filed in this proceeding. In other words, \$1.976 million (total Company) and \$1.936 million (jurisdictional) would have been non-incremental and disallowed in ratemaking recovery. The Commission should require the same disallowance even though FPL charged the costs of Hurricane Dorian to base O&M expense. The Commission should disallow these expenses and direct the Company to restore \$1.936 million to the Reserve.

Pursuant to Rule 25-6.0143, F.A.C., all storm costs for which the Company seeks recovery should be limited to incremental costs only, excluding costs otherwise being recovered in base rates. Any claimed storm costs which are not incremental should be disallowed. In addition to the non-incremental costs identified by FPL, the claimed costs included other non-incremental costs for regular payroll and related costs, overtime payroll and related costs, line contractor costs, and materials and supplies costs, which OPC's witness Lane Kollen recommends be disallowed and restored to the Reserve. These amounts are in addition to the non-incremental costs calculated by FPL and sum to \$6.712 million (jurisdictional). Further, at the time of filing OPC testimony, the information provided indicated that FPL improperly included estimated line contractor costs that have not been finalized or paid. Thus, OPC's Witness Kollen recommends that another \$3.142 (jurisdictional) be disallowed. To the extent this information is updated, this adjustment is subject to revision. Finally, the Commission should apply an incentive factor to reduce recovery based on the Company's failure to provide all information required by the Irma Settlement Agreement and to incentivize the company to balance the potential damage and outages with the restoration cost. Witness Kollen has provided and quantified alternatives that would result in an additional disallowance depending on the alternative adopted by the Commission.

While FPL provided Excel workbooks that included documentation for line contractor and vegetation management contractor invoices, it did not provide copies of contracts or other invoice documentation necessary for OPC to perform an audit of its storm costs either when it was filed or when it made its supplemental filing. The Company should institute a Binder file structure similar to the one that was used by Gulf Power Company in Docket No. 20190038-EI prior to the next storm and related cost review and/or recovery proceeding. Pursuant to the Gulf Power Company Binder file structure, each vendor is assigned a Binder number, which is referenced in the accounting system and used to collect the vendor's invoices for processing and reference purpose. In future storm proceedings, FPL should provide all contracts, all invoices, and all other relevant information in its initial filing. These process improvements will facilitate Commission staff, OPC, and other intervenor's review of storm costs in future proceedings.

D. STATEMENT OF FACTUAL ISSUES AND POSITIONS

GENERIC ISSUES

**ISSUE 1:** Should the incremental cost and capitalization approach (ICCA) found in Rule 25-6.0143, F.A.C., be used to determine the reasonable and prudent amounts to be included in the Hurricane Dorian restoration costs?

OPC: Yes, the ICCA methodology found in Rule 25-6.0143(1)(e), F.A.C. applies when calculating the costs to be charged to cover storm-related damages regardless of whether those damages are charged to the Storm Reserve or to base O&M. The Rule neither distinguishes between the types of storm-related damages that may be recovered from customers based on the recovery methodology sought, nor does it include an exclusionary term that relieves the utility from compliance with the Rule if it chooses to charge the storm costs to base O&M expense or through a reserve.

**ISSUE 2:** What is the reasonable and prudent amount of regular payroll expense to be included in the Hurricane Dorian restoration costs?

OPC: Pursuant to Rule 25-6.0143(1)(f), F.A.C., the reasonable and prudent amount of regular payroll expense to be included in the Hurricane Dorian restoration costs is \$0 in accordance with OPC's Adjustment to Hurricane Dorian Claimed Costs for Storm Restoration. The Rule prohibits the charging of base rate recoverable regular payroll and regular payroll-related costs for utility managerial and non-managerial personnel to the storm account under the ICCA methodology. Thus, the Commission should disallow all non-incremental regular payroll and related costs in the amount of \$1,883,000 (total Company) and \$1,853,000 (jurisdictional).

**ISSUE 3:** What is the reasonable and prudent amount of overtime payroll expense to be included in the Hurricane Dorian restoration costs?

OPC: Pursuant to Rule 25-6.0143(1)(e), F.A.C., the reasonable and prudent amount of overtime payroll expense to be included in the Hurricane Dorian restoration costs is \$6,943,000 (total Company) and \$6,812,000 (jurisdictional) in accordance with OPC's Adjustment to Hurricane Dorian Claimed Costs for Storm Restoration. The Rule allows the utility to charge overtime payroll and payroll-related costs for utility personnel included in storm restoration activities in the amounts charged to the storm account; however, the Company failed to remove the non-incremental portion of overtime payroll and related costs from the storm costs, as required by the rule. Thus, the Commission should disallow all non-incremental overtime payroll and related costs in the amount of \$2,314,000 (total Company) and \$2,271,000 (jurisdictional).

**ISSUE 4:** What is the reasonable and prudent amount of contractor costs to be included in the Hurricane Dorian restoration costs?

OPC: Pursuant to Rule 25-6.0143, F.A.C., the reasonable and prudent amount of contractor costs to be included in the Hurricane Dorian restoration costs is \$180,059,000 (total Company) and \$179,903,000 (jurisdictional) in accordance with OPC's Adjustment to Hurricane Dorian Claimed Costs for Storm Restoration. These amounts include costs the Company separated out between line clearing, line contractors, and all other contractors. The rule requires that costs that would normally be charged to non-cost recovery clause operating expenses in the absence of a storm not be included in the storm cost recovery. The Company failed to remove line contractor costs which fall into this category and therefore cannot be recovered through the storm clause. Thus, the Commission should disallow all non-incremental line contractor costs and related costs in the amount of \$2,589,000 (total Company) and \$2,588,000 (jurisdictional). In addition, the Commission should disallow all estimated line contractor costs and related costs that have not been finalized or paid in the amount of \$3,143,000 (total Company) and \$3,142,000 (jurisdictional). At the time of filing OPC testimony, the information provided indicated that these estimated line contractor costs and related costs did not have sufficient support or documentation to justify recovery at this time. To the extent this information is updated, this adjustment is subject to revision.

**ISSUE 5:** What is the reasonable and prudent amount of vehicle and fuel costs to be included in the Hurricane Dorian restoration costs?

OPC: Vehicle and fuel costs were captured separately in some instances and also were included in hourly rates paid to contractors and therefore cannot be separately set out. Therefore, no separate adjustment was recommended by Witness Kollen.

**ISSUE 6:** What is the reasonable and prudent amount of employee expenses to be included in the Hurricane Dorian restoration costs?

OPC: No position.

**ISSUE 7:** What is the reasonable and prudent amount of materials and supplies expense to be included in the Hurricane Dorian restoration costs?

OPC: Pursuant to Rule 25-6.0143, F.A.C., the reasonable and prudent amount of materials and supplies expense to be included in the Hurricane Dorian restoration costs is the historic three year average minus costs that normally would be charged to non-cost recovery clause operating expenses in the absence of a storm. Given the de minimis amount of costs, Witness Kollen does not recommend an adjustment.

**ISSUE 8:** What is the reasonable and prudent amount of logistics costs to be included in the Hurricane Dorian restoration costs?

OPC: No position.

**ISSUE 9:** What is the reasonable and prudent total amount of costs to be included in the Hurricane Dorian restoration costs?

OPC: Pursuant to Rule 25-6.0143, F.A.C., the reasonable and prudent total amount of costs to be included in the Hurricane Dorian restoration costs is \$228,431,000 (total Company) and \$228,041,000 (jurisdictional) in accordance with OPC's Adjustment to Hurricane Dorian Claimed Costs for Storm Restoration. The Rule requires that recoverable costs be limited to those which are incremental and not already included in base rates. OPC recommends that the non-incremental costs which we identified in this case be disallowed in the amount of \$9,929,000 (total Company) and \$9,855,000 (jurisdictional). These amounts do not include the \$1.976 million (total Company) and \$1.936 million (jurisdictional) that would have been non-incremental and disallowed for ratemaking recovery.

**ISSUE 10:** What is the reasonable and prudent amount of storm-related costs that should be capitalized?

OPC: Pursuant to Rule 25-6.0143, F.A.C., the reasonable and prudent total amount of costs capitalized and removed from incremental Hurricane Dorian restoration costs is \$209,000 (total Company and jurisdictional). No separate adjustment is recommended by Witness Kollen.

**ISSUE 11:** What is the appropriate accounting treatment associated with any storm costs found to have been imprudently incurred?

OPC: Pursuant to Rule 25-6.0143, F.A.C., all costs are subject to review for prudence and reasonableness by the Commission and therefore any claimed costs that are deemed imprudent should be disallowed and the Reserve should be restored for those amounts.

**ISSUE 12:** Should this docket be closed?

OPC: No position at this time.

#### CONTESTED ISSUES

##### **OPC**

**ISSUE 1:** Is the charge to the Reserve limited to the costs recoverable under the ICCA approach set forth in Rule 25-6.0143, F.A.C.?

OPC: Yes. Only incremental amounts which are consistent with the Rule should be charged to the Reserve. Any non-incremental amounts which were charged to the Reserve should be restored back to that balance.

**OPC**

**ISSUE 2:**

What written policies, if any, should be developed and adopted by the Company for future storm seasons?

OPC:

The Company should adopt written policies that describe and require it to assess the potential physical damages and outage risk exposures from storms at least annually before the storm season, incorporate ongoing improvements in storm hardening and storm protection since the last assessment, and then incorporate the results of these assessments into all storm planning and implementation processes, including the determination of resource requirements, procurement of external resources, mobilization, demobilization, and all other logistics.

In addition, the Company should adopt written policies that describe and require it to optimize the allocation of internal resources and acquisition of external resources necessary to respond to the potential physical damages and outage risk exposures identified in its periodic assessments of those risk exposures.

**OPC**

**ISSUE 3:**

Should the Commission provide a mechanism to ensure prudent use of resources before costs for a specific storm are incurred?

OPC:

Yes, the Commission should adopt a ratemaking incentive to ensure that FPL is focused on continuous improvement in planning and implementation and other processes to minimize costs before costs for a specific storm are incurred, contractors are mobilized, and invoices are issued by the contractors and paid by the Company. There are different forms that this incentive could take. For example, the incentive could take the form of no return on storm costs if the storm costs are deferred to the storm account. As another example, the incentive could be to apply a 90% or 95% “recovery factor” that results in a sharing of storm costs 90% or 95% to customers and 10% or 5% to the Company, if the storm costs are charged to base O&M expense and the Company otherwise would recover the costs and a return on the costs through the Reserve.

**OPC**

**ISSUE 4:**

Should the Company institute a Binder file structure similar to the one that was used by Gulf Power Company in Docket No. 20190038-EI for Hurricane Michael cost recovery in order to facilitate the review of the invoices, improve the efficiency of the auditing process, and potentially reduce the costs of the auditing process?

OPC:

Yes. The Company should institute a Binder file structure similar to the one that was used by Gulf Power Company in Docket No. 20190038-EI in which it sought recovery of the costs it incurred in response to Hurricane Michael. In such a system, each vendor is assigned a Binder number, which is referenced in the accounting system and used to collect the vendor’s invoices for processing and reference purposes. The Gulf Power Company file structure would facilitate the review of the invoices, improve the efficiency of the auditing process, and potentially reduce the



costs of the auditing process for the Company, Commission Staff, OPC, and other parties.

**OPC**

**ISSUE 5:**

Did the Company comply with the terms of the Hurricane Irma Stipulation and Settlement Agreement approved by the Commission in Order No. PSC-2019-0319-S-EI, Docket No. 20180049-EI, with regard to supplying documentation to the parties?

OPC: No, Section 16 of the Irma Settlement Agreement required the Company to provide “supporting documentation which includes the following virtual or physical files: summary of expenses in a format consistent with Company records showing total expenses incurred, that includes the following cost categories: regular payroll and related overheads, overtime payroll and related overheads, contractors, vegetation contractors, logistics, materials & supplies and other.” The Company failed to timely provide copies of all contracts, all invoices, and all other documents necessary to perform an audit of its storm costs either when it filed its request or made its supplemental filing. The Company did provide Excel workbooks that included documentation for line contractor and vegetation management contractor invoices. However, it did not provide copies of contracts or other invoice documentation until OPC sought this information in discovery; even then, those responses were incomplete and OPC had to issue further discovery to obtain all contracts, all invoices, and all other relevant information.

E. **STIPULATED ISSUES:**

None at this time.

F. **PENDING MOTIONS:**

None.

G. **REQUESTS FOR CONFIDENTIALITY:**

OPC have no pending requests for claims for confidentiality.

H. **OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:**

OPC has no objections to any witness’ qualifications as an expert in this proceeding.

I. **STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:**

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 15<sup>th</sup> day of January, 2021

Respectfully submitted,

Charles Rehwinkel  
Deputy Public Counsel

/s/ Anastacia Pirrello  
Anastacia Pirrello  
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Attorneys for Office of Public Counsel

**CERTIFICATE OF SERVICE**  
**Docket No. 20200172-EI**

I **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's Prehearing Statement has been furnished by electronic mail on this 15th day of January 2021, to the following:

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