

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Matthew by Florida Power & Light Company.

DOCKET NO. 20160251-EI

FILED: June 28, 2018

CITIZENS POST-HEARING BRIEF

The Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2017-0471-PCO-EI, issued January 18, 2017, and Order No. PSC-2018-0189-PCO-EI issued April 19, 2018, hereby submit this Post-Hearing Brief.

STATEMENT OF BASIC POSITION

Florida Power and Light Company (“FPL” or “the Company”) requested recovery of its Hurricane Matthew storm costs through the interim cost recovery methodology approved in its 2012 Settlement¹ in its December 29, 2016 petition. On October 16, 2017, FPL filed a two page schedule purporting to be its finalized Hurricane Matthew costs. (TR 265) FPL subsequently filed its testimony and schedules on February 20, 2018 in which it requested recovery of \$291.799 million (jurisdictional) of Hurricane Mathew restoration costs, net of the following: (1) less \$4.829 million of non-incremental costs; (2) less \$295,000 of third party reimbursements; (3) and less \$12.982 million of capitalized costs. The Company is also requesting the following additional

¹ See, Order No. PSC-2013-0023-S-EI, issued January 14, 2013, in Docket No. 20120015-EI.

costs: (1) \$599,000 of interest on the unamortized reserve balance; (2) \$228,000 for a regulatory assessment fee; and (3) \$24.026 million for replenishment of storm reserve for pre-Hurricane Matthew costs for a total storm cost recovery request of \$316.652 million. (TR 265-266) On March 15, 2018, FPL updated its request to reduce by \$152,000 its total Hurricane Matthew restoration costs to \$291.647 million (jurisdictional) for a total storm cost recovery and reserve replenishment request of \$316.500 million. (TR 265)

In OPC's litigation position, OPC advocated in pre-filed testimony that the requested Hurricane Matthew cost recovery should be reduced. OPC's litigation position recommended the following additional adjustments: (1) reclassification of capitalized regular payroll costs to capitalized overtime payroll costs to account for costs already recovered in base rates for a reduction of \$1.027 million; (2) a reduction of \$5.677 million to overtime expenses and \$21.710 million for contractor costs to properly reflect costs that should be capitalized; (3) a \$14,000 reduction due to a math error; (4) reductions of \$17.971 million to logistical costs, \$13.704 million for mobilization/demobilization and standby time, and \$24.026 million for pre-Hurricane Matthew replenishment of the storm reserve, due to a failure to provide evidentiary support to justify charging certain costs to the storm reserve. Based on all of OPC's litigation position adjustments, OPC recommended a total reduction of \$84.123 million to FPL's Hurricane Matthew cost recovery request.

OPC reviewed the pre-filed direct and rebuttal testimonies and exhibits filed by FPL to support its case and Commission Staff's pre-filed testimony. Further, OPC conducted extensive discovery and reviewed FPL's responses to Commission Staff's discovery requests. On May 14, 2018, OPC entered into a Settlement Agreement (Settlement) with FPL in this docket. Based on

the information OPC gathered in this proceeding, OPC believes that this Settlement represents a fair comprise of FPL's and OPC's litigation positions, and is in the public interest.

The Settlement is a "black box" settlement for a reduction of \$21.7 million to the overall storm recovery request resulting in a total of \$294.759 million to be recovered from customers which resolves all the issues in this case without specifically addressing each individual issue raised. (HE 29, Settlement at p. 2) The Settlement provides that "No Signatory agrees, concedes or waives any position with respect to any of the issues identified in the Prehearing Order and this settlement does not specifically address any such issues." (HE 29, Settlement at p. 3) The \$21.7 million reduction in the Settlement results from a reclassification of \$20 million of storm recovery costs to capital costs and added to Account 364.1- Poles, Towers and Fixtures (Wood). (HE 29, Settlement at p. 2) An additional \$1.7 million of storm costs will be reclassified to O&M base rates in 2018. (HE 29, Settlement at p. 3) Based on the agreed to reductions, FPL will make a one-time refund to customers of \$27.69 million. (HE 29, Settlement at pp. 2-3)

POSITIONS AND ARGUMENT ON DISPUTED ISSUES

ISSUE A: Should the Settlement be approved?

POSITION: *Yes, the provisions of the Settlement should be approved in their entirety without modification as the Settlement is in the public interest.*

ARGUMENT: FPL filed a petition to recover \$316.459 million (jurisdictional) of storm costs incurred for Hurricane Matthew in 2016. (HE 29, Settlement at p. 2) Through the interim storm cost recovery charge, FPL collected a total of \$322.449 million. (HE 29, Settlement at p. 2) OPC and FPL reached a "black box" settlement for a reduction of \$21.7 million to the overall storm

recovery request resulting in a total of \$294.759 million to be recovered from customers. (HE 29, Settlement at p. 2)

The Settlement resolves all the issues in this case without specifically addressing each individual issue raised. (HE 29, Settlement at p. 2) The \$21.7 million reduction in the Settlement results from a reclassification of \$20 million of storm recovery costs to capital costs and added to Account 364.1- Poles, Towers and Fixtures (Wood) and \$1.7 million of storm costs reclassified to O&M base rates in 2018. (HE 29, Settlement at p. 2-3) Based on the agreed to reductions, FPL will make a one-time refund to customers of \$27.69 million. (HE 29, Settlement at pp. 2-3)

The Florida Supreme Court in Sierra Club v. Brown, Case No. SC17-82, (2018) recently opined on the Commission's "public interest" standard which the Commission applies in evaluating settlements. Id. at pp.12-13. The Court referenced that it affirmed a previous settlement² where there was competent, substantial evidence "that the settlement agreement 'established rates that were just, reasonable, and fair, and that the agreement [wa]s in the public interest'". The Court observed that the Commission's public interest standard was "somewhat opaque." Id. at p. 14. They further observed the Commission has also stated that the public interest determination requires a case-specific analysis based on consideration of the proposed settlement taken as a whole. Id. at pp. 14-15. The Court noted the Commission has provided a more tangible definition that "*in the public interest,*" means the cost and effect on rates and services provided by Gulf Power Company [utility] to its ratepayers. This is not to say, however, that we are precluded from considering other factors where appropriate, including environmental and health concerns, in the interpretation of 'in the public interest.' " (Emphasis in original) Id. at 15. Finally,

² Citizens of the State v. Fla. Pub. Serv. Comm'n (Citizens I), 146 So. 3d 1143, 1153-54, 1164, 1173 (Fla. 2014)

the Court stated that “a reasonable distillation of the Commission’s public interest standard may be that it is a fact-dependent inquiry generally focused upon - but not limited to - the Commission’s historical and statutory role.” Id. at 16.

As part of the Sierra Club decision, the Court noted the Commission reviewed the sufficiency of the evidence to support that settlement by reviewing: (1) the quality of service at low rates; (2) rate stability and predictability; (3) the broad range of the customer base represented by signatories (including OPC- the statutorily created representative of all FPL ratepayers); (4) express resolution of many but not all of the 167 issues; (5) and reduction in overall request. Id. at 25-26. The Settlement herein results from a request by FPL to recover storm costs incurred as a result of Hurricane Matthew to restore service. While all the factors considered in this case do not need to be exactly the same as the Sierra Club factors, this Settlement meets many of the factors identified in the Sierra Club case. The Settlement resolves the ultimate issue of the amount of storm cost recovery, the refund amount, includes the statutory representative of all FPL customers, and reduces the request resulting in lower rates. Specifically, after a review of the costs, FPL and OPC agreed to reduce the storm cost recovery request by \$21.7 million. In addition, FPL ratepayers will receive a one-time refund of \$27.69 million. Based on the provisions of the Settlement, OPC submits the Settlement is in the public interest and the Commission should approve the provisions of the Settlement in its entirety without modification.

ISSUE 1: What is the appropriate baseline from which incremental costs are derived?

POSITION: *The Commission should approve the Settlement Agreement between FPL and OPC for the reasons set forth in the Basic Position and Issue A which resolves all outstanding issues.*

ARGUMENT: The Commission should approve the Settlement Agreement between FPL and OPC for the reasons set forth in the Basic Position and Issue A which resolves all outstanding issues.

ISSUE 2: What is the appropriate amount of FPL regular payroll expense to be included in storm recovery?

POSITION: *The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.*

ARGUMENT: The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.

ISSUE 3: What is the appropriate amount of FPL overtime payroll expense to be included in storm recovery?

POSITION: *The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.*

ARGUMENT: The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.

ISSUE 4: What is the appropriate amount of contractor costs to be included in storm recovery?

POSITION: *The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.*

ARGUMENT: The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.

ISSUE 5: What is the appropriate amount of logistic costs that should be included in storm recovery?

POSITION: *The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.*

ARGUMENT: The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.

ISSUE 6: Are the standby and mobilization/demobilization costs that are included in FPL's storm recovery appropriate? If not, what adjustments, if any, should be made?

POSITION: *The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.*

ARGUMENT: The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.

ISSUE 7: What is the appropriate amount to include in storm recovery to replenish the level of FPL's storm reserve?

POSITION: *The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.*

ARGUMENT: The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.

ISSUE 8: What is the appropriate amount of storm-related costs and storm reserve replenishment FPL is entitled to recover for Hurricane Matthew?

POSITION: *The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between

FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.*

ARGUMENT: The Commission should approve the storm-related costs amounts and storm reserve replenishment amounts set forth in the Settlement Agreement between FPL and OPC for the reasons stated in the Basic Position and Issue A which resolves all outstanding issues.

ISSUE 9: What is the total amount of storm-related revenues that FPL collected for Hurricane Matthew through their approved interim storm restoration recovery charge?

POSITION: *No position.*

ARGUMENT: No position

ISSUE 10: If applicable, how should any under-recovery or over-recovery be handled?

POSITION: *The Commission should approve the Settlement Agreement between FPL and OPC for the reasons set forth in the Basic Position and Issue A which resolves all outstanding issues. The over-recovery should be refunded to customers as outlined in the Settlement Agreement.*

ARGUMENT: The Commission should approve the Settlement Agreement between FPL and OPC for the reasons set forth in the Basic Position and Issue A which resolves all outstanding issues. The over-recovery should be refunded to customers as outlined in the Settlement Agreement.

ISSUE 11: Should this docket be closed?

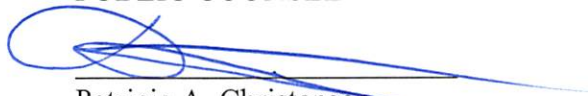
POSITION: *No position.*

ARGUMENT: No position.

Dated this 28th day of June, 2018

Respectfully Submitted

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CERTIFICATE OF SERVICE
20160251-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 28th day of June, 2018, to the following:

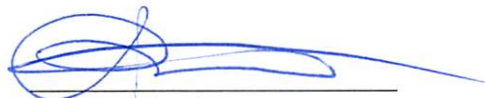
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