

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: May 6, 2019

**FLORIDA POWER & LIGHT COMPANY'S
PREHEARING STATEMENT**

Florida Power & Light Company, by and through its undersigned counsel, hereby submits this Preheating Statement pursuant to Order Nos. PSC-2018-0290-PCO-EI and PSC-2018-0539-PCO-EI, and states:

1. FPL WITNESSES

A. Direct Testimony

<u>Witness</u>	<u>Subject Matter - Direct</u>	<u>Issue #</u>
Manuel B. Miranda	Describes the scope, size, changing path and strength of Hurricane Irma as it approached and impacted FPL's service territory. Supports the reasonableness and prudence of Transmission and Distribution (T&D) storm restoration activities and costs. Provides an overview of FPL's emergency preparedness plans and processes and details for the work and costs incurred by FPL's T&D organization in connection with Hurricane Irma. Describes FPL's T&D response and restoration efforts, follow-up work activities necessary to restore FPL's facilities to their pre-storm condition and details on T&D storm restoration costs, including follow-up work, and a breakdown of costs by major cost category. Discusses the key factors contributing to FPL's overall successful performance in quickly restoring service to those customers impacted by Hurricane Irma. Provides examples of key restoration plan/process enhancements that FPL has implemented.	2-5, 7, 8, 9
Keith Ferguson	Presents the final amount of Hurricane Irma storm restoration costs incurred by FPL and the accounting treatment for those costs. Demonstrates that FPL's storm restoration and recovery accounting processes and controls are well established, documented, and implemented by personnel that are suitably trained to ensure proper storm accounting and ratemaking. Discusses the applicability of the Incremental Cost and Capitalization Approach ("ICCA") methodology and FPL's capitalization of costs consistent with Rule 25-6.0143, F.A.C. (the "Rule"), and explains that FPL is not seeking any incremental recovery for the storm restoration costs through either a surcharge or due to depletion of the storm reserve because the non-capitalized storm-related costs were all charged to base	1-11

	Operation and Maintenance (“O&M”) expense in accordance with Part (1)(h) of the Rule.	
Eduardo DeVarona	Provides an overview of FPL’s non-T&D (Nuclear, General, Customer Service and Power Generation) activities, restoration efforts and cost details related to Hurricane Irma. Supports the reasonableness and prudence of those activities and the associated costs for which FPL is seeking recovery.	2-4

B. Rebuttal Testimony

<u>Witness</u>	<u>Subject Matter - Rebuttal</u>	<u>Issue #</u>
Manuel B. Miranda	Rebuts the direct testimony of Office of Public Counsel (“OPC”) witness Helmuth Schultz and demonstrates that Mr. Schultz’s proposed adjustments to contractor costs are unwarranted and should be rejected. Demonstrates that FPL’s decisions to acquire additional restoration line contractor resources prior to and during the most severe hurricane to impact FPL’s service territory and the state of Florida were reasonable and prudent and necessary in order to quickly restore service to FPL’s customers. Explains that Mr. Schultz’s proposed “conservative” 20% adjustment to reduce contractor standby times and costs fails to recognize the uncertainty associated with forecasting the path and intensity of a major storm and ignores FPL’s valuable lessons learned and the excellent restoration results achieved by pre-staging restoration resources. Also explains that Mr. Schultz’s proposed adjustments would ultimately be detrimental to FPL’s customers and to the state as a whole, as they would result in longer restoration times and hamper FPL’s ability to attempt to safely restore service within the shortest time practicable consistent with Rule 25-6.044(3), F.A.C.	2-5, 7, 8, 9
Thomas W. Gwaltney	Rebuts the direct testimony of OPC witness Helmuth Schultz and demonstrates that Mr. Schultz’s proposed adjustments to contractor costs are unwarranted and should be rejected. Demonstrates that Mr. Schultz’s proposed adjustment to reduce contractor mobilization/demobilization times and costs is not factually supported, as the vast majority of his alleged “problems”, once investigated, were determined to be non-issues. Explains that Mr. Schultz’s purported basis for his “conservative” 25% adjustment is inaccurate and, more importantly, his idealized mobilization/demobilization travel theories do not reflect the reality of the circumstances surrounding Hurricane Irma. Demonstrates that Mr. Schultz’s proposed 50% reduction for mutual aid utility costs is arbitrary and shows a lack of understanding of mutual aid processes and guidelines.	4, 5

Ronald R. Reagan	<p>Rebuts the direct testimony of OPC witness Helmuth Schultz and demonstrates that Mr. Schultz’s proposed adjustments to contractor costs are unwarranted and should be rejected. Explains that Mr. Schultz’s criticism of the contractor rates fails to take into account the actual circumstances FPL faced in responding to the significant and widespread damage caused by the storm, and fails to recognize that the vast majority of the non-mutual assistance contracts were pre-negotiated, based on market rates obtained through a competitive bid process, well in advance of the storm, and include the lowest rates that could be obtained at the time. Explains that, although FPL’s practice is to follow and enforce the terms and conditions of the contracts, FPL must have the flexibility to approve exceptions to contract terms as necessary to respond to the emergent circumstances faced during storm restoration. Describes the services provided by and supports the costs associated with the six logistics vendors whose costs are questioned by Mr. Schultz, and explains how the services provided by these vendors play a crucial role in FPL’s restoration efforts to safely restore power to customers as quickly and safely as possible.</p>	4, 8, 5
Kristin Manz	<p>Rebuts the direct testimony of OPC witness Helmuth Schultz related to FPL’s review and processing of invoices submitted by contractors that provided restoration services to FPL as a result of Hurricane Irma. Demonstrates that FPL’s accounts payable (“AP”) organization followed a prudent and effective restoration invoice review process that functioned well in facilitating the effective, efficient and timely processing of approximately 12,000 Hurricane Irma storm restoration invoice packets. Explains that FPL’s invoice review process identified numerous billing adjustments, resulting in credits, reversals and reimbursements in the millions of dollars.</p>	4, 5
Keith Ferguson	<p>Rebuts the direct testimony of OPC witness Helmuth Schultz related to FPL’s accounting treatment of the Hurricane Irma storm restoration costs. Explains that FPL followed the Rule, but certain provisions of the ICCA methodology related to the incremental O&M costs are not applicable because they make no difference to FPL’s total Hurricane Irma storm restoration costs since FPL is not seeking any incremental recovery of storm costs. Addresses comments regarding FPL’s use of the reserve amortization mechanism to charge the Hurricane Irma storm restoration costs to base O&M expense, notwithstanding the fact that this is not an issue to be determined in this proceeding. Explains why Mr. Schultz’s recommended adjustments to the Hurricane Irma regular payroll expense, overtime payroll expense, and capital costs are inappropriate, contrary to the Rule, and ignore the facts. Refutes Mr. Schultz’s claim that the distribution and nuclear accruals associated with Hurricane Irma storm restoration costs should be disallowed due to lack of supporting detail. Provides an update to the total Hurricane Irma storm restoration costs to reflect additional immaterial reductions to storm costs and corrections that have been identified during the course of the litigation.</p>	1-11

2. KNOWN EXHIBITS FOR DIRECT CASE

<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit #</u>	<u>Description</u>
Manuel B. Miranda	FPL	MB-1	Satellite View of Hurricane Irma
	FPL	MB-2	FPL’s T&D Hurricane Irma Restoration Costs
	FPL	MB-3	OPC Responses to FPL Interrogatory Nos. 13-17, 19
	FPL	MB-4	Aerial View of an FPL Staging Site
Thomas W. Gwaltney	FPL	TWG-1	FPL Responses to OPC Interrogatory Nos. 51,132-134, 137, 138, 140-146, 174-182
	FPL	TWG-2	OPC Responses to FPL Interrogatory Nos. 44-49
Ronald R. Reagan	FPL	RR-1	OPC Response to FPL Interrogatory No. 13
	FPL	RR-2	OPC Response to FPL Interrogatory No. 19
	FPL	RR-3 and RR-3A	FPL Original and Amended Responses to OPC Request for Production of Documents 9 (without confidential supporting attachments)
	FPL	RR-4 and RR-4A	FPL Original and Amended Responses to OPC Interrogatory No. 162.
Kristin Manz	FPL	KM-1	FPL Response and Confidential Attachment to OPC Interrogatory No. 156
	FPL	KM-2	FPL Response and Confidential Attachment to OPC Interrogatory No. 154
	FPL	KM-3	FPL Responses and Attachments to OPC Interrogatory Nos. 148 and 174, and Production of Documents No. 35
Keith Ferguson	FPL	KF-1	FPL Hurricane Irma Final Storm Restoration Costs as of May 31, 2018
	FPL	KF-2	FPL Hurricane Irma Incremental Cost and Capitalization Approach as of May 31, 2018
	FPL	KF-3	FPL Updated Hurricane Irma Costs as of December 31, 2018
	FPL	KF-4	FPL Updated Hurricane Irma Incremental Cost and Capitalization Approach as of December 31, 2018
	FPL	KF-5	OPC Response to FPL Interrogatory No. 27.

3. STATEMENT OF BASIC POSITION

The Florida Public Service Commission (“FPSC” or the “Commission”) established this docket to evaluate FPL’s storm restoration costs related to Hurricane Irma. FPL submitted its Petition and supporting testimony to facilitate the Commission’s evaluation of the Hurricane Irma storm restoration costs, and to support a finding that the costs were reasonable and FPL’s

activities in restoring power following Hurricane Irma were prudent. Importantly, however, FPL is not seeking approval in this proceeding to recover, through a storm surcharge or due to depletion of the storm reserve, any of the Hurricane Irma storm restoration costs because all non-capitalized storm-related costs were charged to base O&M expense as permitted under Part (1)(h) of the Rule. There is nothing in the Rule or the 2016 Settlement Agreement approved by the Commission in Order No. PSC-2016-0560-AS-EI in Docket No. 20160021-EI that requires FPL to file a petition for and obtain Commission approval to charge storm-related costs to base O&M expense. To the contrary, the Rule expressly allows a utility to do so “at its own option.” Accordingly, although the Commission initiated this docket to evaluate the Hurricane Irma storm restoration costs incurred by FPL, the recovery of these costs, through a storm surcharge or due to depletion of the storm reserve, has not been requested by FPL and is not an issue in this proceeding.¹

In September of 2017, Tropical Storm Irma quickly developed into a major hurricane and by September 5, 2017 had intensified into a rare Category 5 hurricane with sustained winds reaching 180 miles per hour. As the storm moved towards Florida, it caused catastrophic damage throughout the Caribbean. By September 6, the five-day forecast of the massive, slow-moving storm encompassed the entire Florida peninsula. As Irma moved closer to Florida, projected paths included possible landfall in Miami-Dade County, the most heavily populated area served by FPL.

¹ All of the Hurricane Irma storm restoration costs were charged to capital or base O&M expense in December 2017. Stated otherwise, these costs have already been charged to base rates and any adjustment would constitute retroactive ratemaking, which this Commission has consistently held is prohibited. *See City of Miami; Gulf Power Co. v. Cresse*, 410so.2d 492 (Fla. 1982); *Meadowbrook Utility Systems, Inc. v. Florida Public Service Commission*, 518so.2d, 326 (Fla. 1987); *Citizens of the State of Florida v. Florida Public Service Commission*, 448so.2d 1024 (Fla. 1982); *GTE Florida Inc. v. Clark*, 668so.2d 971 (Fla. 1996).

Hurricane Irma made its first direct U.S. landfall in the Florida Keys during the morning of Sunday, September 10, 2017, as a Category 4 hurricane, causing extensive damage to, and in many cases, the destruction of structures and knocking out power, telecommunications and other services throughout the area. Hurricane Irma made its second direct U.S. landfall in the Marco Island/Naples area of Southwest Florida as a Category 3 hurricane, with sustained winds of 115 mph. Throughout Sunday, virtually all of southern Florida, from the east coast to the west coast, experienced hurricane-force winds, tropical storm-force winds and tornadic activity as Hurricane Irma's reach expanded outward up to 400 miles from its center. Hurricane Irma turned out to be the largest and most damaging hurricane event FPL and Florida have ever faced. The destructive storm impacted all 35 counties and 27,000 square miles of FPL's service territory, causing more than 4.4 million FPL customers to lose power.

FPL undertook reasonable, necessary, and prudent measures to prepare for and respond to the impacts of the storm. FPL's overall preparation for the hurricane resulted in the assembly and deployment of the largest storm restoration workforce in U.S. history, with workers from 30 states and Canada, a number that grew to more than 28,000 at its peak (more than three times the size of FPL's normal workforce) and spread across 29 staging sites the Company established throughout its service territory. These preparations included complex and comprehensive logistical arrangements for mobilizing FPL employees, external contractors, and mutual aid utilities to support the restoration effort. These logistical arrangements and coordination of resources included, but were not limited to, staging sites, lodging, laundry, food, communications, and fuel delivery.

FPL's proactive approach to storm preparation, mobilization and pre-staging of resources, and execution of storm restoration was not just prudent and reasonable, it was highly successful in restoring service to its customers safely and as quickly as possible. FPL's

preparation and ensuing coordinated response enabled the Company to restore service to 50% of its customers within one day, 95% of its customers within one week, and 99% of its customers within ten days after the storm left FPL's service territory. This effort represents the fastest post-hurricane restoration of electric service to the largest number of people by any one utility in U.S. history.

FPL's restoration activities and around the clock efforts involved logistical coordination and restoration activities that were executed in real time. In order to maximize the efficiency of restoration activities and respond to the exigent circumstances faced during the storm restoration, FPL supervisors, especially those tasked with overseeing contractors in the field, had authority to approve exceptions to contract terms as necessary, and did so appropriately. During the invoice review process, FPL's AP team worked with Power Delivery to validate those exceptions and to ensure the verification, rejection, adjustment, and payment of more than 12,000 invoice packets. And, while it is impossible to eliminate 100% of all potential human error from a process involving the review of such a large volume of documents, the AP process resulted in the timely, effective, and efficient review, processing, and payment of vendor invoices.

FPL incurred a total of \$1.375 billion in storm restoration costs associated with Hurricane Irma. FPL applied Rule 25-6.0143, F.A.C., and charged \$98.2 million as capitalized costs and \$822,000 as below-the-line expenses. While Section 6 of the 2016 Settlement Agreement gives FPL the option to seek incremental storm cost recovery, it does not require FPL to do so. In this case, FPL elected to forgo that option, and instead charged the remaining \$1.274 billion to base O&M expense as permitted by Rule 25-6.0143(1)(h), F.A.C. Therefore, FPL is not seeking any incremental recovery for the Hurricane Irma storm restoration costs through either a surcharge or due to depletion of the storm reserve. FPL's accounting treatment for the Hurricane Irma storm restoration costs avoided the need to charge customers a multi-year incremental storm charge.

OPC does not assert that FPL's storm restoration activities or the time it took to restore power to customers was unreasonable or imprudent. Rather, OPC is focused solely on the costs incurred by FPL to restore service to its customers safely and as quickly as possible. OPC's proposed adjustments ignore the fact that the non-capital storm restoration costs have been charged to base O&M expense and, instead, OPC incorrectly treats the Hurricane Irma storm restoration costs as though FPL is requesting approval for incremental recovery through a storm surcharge or depletion of the storm reserve.

Moreover, OPC's proposed adjustments are contrary to the Rule, arbitrary, not factually supported, and do not reflect the reality of the circumstances FPL faced in responding to the significant and widespread damage caused by Hurricane Irma.² OPC's proposed adjustments ultimately would be detrimental to FPL's customers and to the state as a whole because they would result in longer restoration times and hamper FPL's ability to safely restore service within the shortest time practicable consistent with Rule 25-6.044(3), F.A.C. OPC's proposed adjustments to FPL's prudent and reasonable storm restoration costs should be rejected by the Commission.

4. STATEMENT OF ISSUES AND POSITIONS

A. Uncontested Issues

Issue No. 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 Irma restoration costs?

² The OPC's Monday-morning quarterback review of and proposed adjustments to FPL's Hurricane Irma storm restoration costs are inconsistent with the prudence standard of review applicable in this case – "what a reasonable utility manager would do in light of the conditions and circumstances which he knew or reasonably should have known at the time the decision was made." *In Re Fuel & Purchased Power Cost Recovery Clause*, Docket No. 080001-EI, Order No. PSC-2009-0024-FOF-EI, 2009 WL 692572 (FPSC Jan. 7, 2009) (emphasis added).

FPL Position: The applicable provisions of the ICCA methodology should be used to calculate FPL's Hurricane Irma storm costs, including removing below-the-line expenses and calculating storm capital costs. However, as a result of FPL's decision to charge both the incremental and non-incremental Hurricane Irma storm restoration costs to base O&M expense, as permitted by Part (1)(h) of the Rule, certain provisions of the ICCA methodology related to incremental O&M costs (*i.e.*, regular payroll, vegetation management, etc.) which might otherwise be charged to the storm reserve are not applicable because they make no difference to the total Hurricane Irma storm restoration costs charged to base O&M. (*Ferguson*)

Issue No. 2: What is the reasonable and prudent amount of regular payroll expense to be included in the Hurricane Irma restoration costs?

FPL Position: A total of \$10,824,000 is the reasonable and prudent amount of regular payroll expense (both incremental and non-incremental) that FPL charged to base O&M expense for employee time spent in direct support of storm restoration, which excludes bonuses and incentive compensation. OPC does not claim that any of these costs are unreasonable or imprudent. OPC's proposed adjustment to reclassify the entire regular payroll expense as non-incremental and disallow these costs fails to recognize that all of the regular payroll expense associated with Hurricane Irma was charged to base O&M expense or capital and, unless the non-incremental regular payroll expense is found to be unreasonable or imprudent, it will be charged to base O&M expense. (*Miranda, DeVarona, Ferguson*)

Issue No. 3: What is the reasonable and prudent amount of overtime payroll expense to be included in the Hurricane Irma restoration costs?

FPL Position: A total of \$38,058,000 is the reasonable and prudent amount of overtime payroll expense that FPL charged to base O&M expense for employee time spent in direct support of storm restoration, which excludes bonuses and incentive compensation. OPC does not claim that any of these costs are unreasonable or imprudent. Further, OPC's proposal to reduce the overtime payroll expense by the non-incremental overtime payroll expense fails to recognize that all of the overtime payroll expense associated with Hurricane Irma was charged to base O&M expense and, unless the non-incremental overtime payroll expense is found to be unreasonable or imprudent, it will be charged to base O&M expense. Moreover, OPC's adjustment fails to recognize that qualifying storm events and the associated overtime payroll expense are neither budgeted nor planned – they are, by definition, incremental in nature. (*Miranda, DeVarona, Ferguson*)

Issue No. 4: What is the reasonable and prudent amount of contractor costs to be included in the Hurricane Irma restoration costs?

FPL Position: A total of \$752,304,000 is the reasonable and prudent amount of contractor costs that FPL charged to base O&M expense for line crews and mutual aid utilities that were necessary to support FPL's Hurricane Irma storm restoration effort. FPL's decisions to acquire storm restoration line contractor resources prior to and during the most severe hurricane to impact FPL's service territory and the state of Florida were reasonable and prudent. OPC's proposed adjustments to FPL's contractor costs for alleged excessive rates, excessive mobilization/demobilization and standby time, and alleged invoices and payment issues are arbitrary, not factually supported, and do not reflect the reality of the circumstances FPL faced in responding to the significant and

widespread damage caused by Hurricane Irma. (*Miranda, DeVarona, Gwaltney, Reagan, Manz, Ferguson*)

Issue No. 5: What is the reasonable and prudent amount of vegetation and line clearing costs to be included in the Hurricane Irma restoration costs?

FPL Position: A total of \$142,908,000 is the reasonable and prudent amount of vegetation and line clearing costs associated with Hurricane Irma that FPL charged to base O&M expense. OPC does not claim that any of these costs are unreasonable or imprudent. (*Miranda, Ferguson, Gwaltney, Reagan, Manz*)

Issue No. 6: What is the reasonable and prudent amount of employee expenses to be included in the Hurricane Irma restoration costs?

FPL Position: A total of \$934,000 is the reasonable and prudent amount of employee expenses associated with Hurricane Irma that FPL charged to base O&M expense. OPC does not claim that any of these costs are unreasonable or imprudent. (*Ferguson*)

Issue No. 7: What is the reasonable and prudent amount of materials and supplies expense to be included in the Hurricane Irma restoration costs?

FPL Position: A total of \$16,354,000 is the reasonable and prudent amount of material and supply expenses associated with Hurricane Irma that FPL charged to base O&M expense. OPC does not claim that any of these costs are unreasonable or imprudent. (*Miranda, Ferguson*)

Issue No. 8: What is the reasonable and prudent amount of logistics costs to be included in the Hurricane Irma restoration costs?

FPL Position: A total of \$273,864,000 of logistics costs including all related costs for staging and processing sites, meals, lodging, buses and transportation, and rental equipment used by employees and contractors in direct support of storm restoration is the appropriate amount of logistic costs that FPL charged to base O&M expense. OPC does not claim that any of these costs are unreasonable or imprudent. OPC's proposed reduction of \$26,041,487 to the logistics costs is based solely on the factually incorrect position that the logistics costs for six vendors lacked sufficient support. These just and reasonable logistics costs have been fully supported, and OPC's proposed adjustment should be rejected. (*Miranda, Reagan, Ferguson*)

Issue No. 9: What is the reasonable and prudent total amount of costs to be included in the Hurricane Irma restoration costs?

FPL Position: A total of \$1,273,545,000, which excludes capital costs and below-the-line expenses, is the reasonable and prudent amount of Hurricane Irma storm restoration costs that FPL charged to base O&M expense as permitted by Part(1)(h) of the Rule and Section 6 of the 2016 Settlement Agreement approved by the Commission in Order No. PSC-2016-0560-AS-EI in Docket No. 20160021-EI. (*Miranda, Ferguson*)

Issue No. 10: What is the reasonable and prudent amount of storm-related costs that should be capitalized?

FPL Position: A total of \$98,200,000 is the reasonable and prudent amount of Hurricane Irma storm restoration costs that should be and were capitalized, which includes \$5,318,000 for regular payroll costs, \$68,298,000 for contractor costs, \$26,254,000 for

materials and supplies, \$770,000 for other, and (\$2,440,000) for third-party reimbursements. To determine the amount of capitalized costs, FPL used Part (1)(d) of the Rule, which states that “...the normal cost for the removal, retirement and replacement of those facilities in the absence of a storm, is the basis for calculating storm restoration capital.” OPC’s proposed adjustment to the Hurricane Irma capital costs completely ignores and is inconsistent with the requirements of the Rule and should be rejected. (*Ferguson*)

Issue No. 11: What is the appropriate accounting treatment associated with any storm costs found to have been imprudently incurred?

FPL Position: All of FPL’s Hurricane Irma storm restoration costs have been charged as either capital costs, below-the-line expense, or base O&M expense. In the event that the Commission were to find that any of FPL’s Hurricane Irma storm restoration costs charged as either capital or base O&M expense were imprudently incurred based on the actual conditions and circumstances at the time decisions were made, such costs would be charged below-the-line with a corresponding reduction in capital or above-the-line base O&M, which effectively would increase the balance in FPL’s amortization reserve mechanism. (*Ferguson*)

Issue No. 12: Should this docket be closed?

FPL Position: Yes. FPL is not seeking approval in this proceeding to recover any of the Hurricane Irma storm restoration costs because all non-capitalized storm-related costs were charged to base O&M expense as permitted under Part (1)(h) of the Rule. Upon the issuance of an appropriate order finding that FPL’s costs were reasonable and FPL’s

activities in restoring power following Hurricane Irma were prudent, this docket should be closed.

B. Contested Issues

FRF Issue 1A: Was FPL required to use the Storm Cost Recovery Mechanism (SCRM) described in Order No. PSC-2016-0560-AS-EI for the recovery of FPL's reasonable and prudent Hurricane Irma restoration costs?

FPL Position: No. The proposed FRF Issue 1A is not an appropriate issue for this docket, which was opened for the specific purpose of evaluating FPL's Hurricane Irma storm restoration costs. The proposed FRF Issue 1A is the subject of an ongoing proceeding in Docket No. 20180046-EI, where it has been fully briefed and argued by the parties, and where it should be fully resolved by the Commission. The proposed FRF Issue 1A is nothing more than a request for the proverbial "second bite at the apple" that violates the well-established principles of res judicata and collateral estoppel.³ Further, FRF's desire to engage in redundant litigation is wasteful, inefficient, and imposes unnecessary time and costs on the parties, and on the resources of the Commission. For these reasons, proposed FRF issue 1A should be rejected as an issue in this proceeding. To the extent FRF's issue 1A is adopted or entertained to any degree in this docket, FPL incorporates by reference its position on this issue as set forth in its briefs in Docket No. 20180046-EI.

³ Res judicata is claim preclusion, and bars a later suit between the same parties upon the same cause of action; collateral estoppel is issue preclusion, and is applicable only in cases where the parties are the same in the second suit as in the former, but the cause of action is different. *See In re: Application for original certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation*, Order No. PSC-01-1916-FOF-WS, Docket No. 990696-WS, 2001 Fla. PUC LEXIS 1146 (FPSC Sept. 24, 2001). *See also, In re: Applications for certificates by Turkey Creek Utilities*, Order No. PSC -96-0350-FOF-WS, Docket No. 921098-WS (FPSC Mar. 11, 1996) (finding that the defenses of collateral estoppel and res judicata applied where the Commission had already ruled upon the same question).

(In the event the Commission determines that FRF Issue 1A is an appropriate issue for this proceeding, *Ferguson*)

OPC Issue 4A: What is the reasonable and prudent amount of contractor costs associated with standby time, mobilization time, and demobilization time to be included in the Hurricane Irma restoration costs?

FPL Position: The proposed OPC Issue 4A is duplicative and unnecessary. The proposed OPC Issue 4A is subsumed and fully addressed in Issue No. 4, which provides “What is the reasonable and prudent amount of contractor costs to be included in the Hurricane Irma restoration costs?” Indeed, Issue No. 4 cannot be addressed without also addressing, among other costs, the reasonable and prudent amount of contractor costs associated with standby time, mobilization time, and demobilization time. FPL submits that it is reasonable, logical, and appropriate to address all of the line contractor costs that make up the total costs in Issue No. 4. The parties are free to address specific categories of contractor costs (*e.g.*, mobilization) that make up the total contractor costs in subparts or subsections of their post-hearing briefs under Issue No. 4. For these reasons, proposed OPC Issue 4A should be rejected as an independent issue in this proceeding. To the extent OPC’s Issue 4A is adopted or entertained to any degree in this docket, FPL incorporates by reference its position on issue No. 4. (In the event the Commission determines that OPC Issue 4A is an appropriate issue for this proceeding, *Miranda, Gwaltney, Ferguson*)

OPC Issue 4B: Should the incremental cost recovery and capitalization approach (ICCA) be applied to determine the reasonable and prudent amount of contractor costs associated with embedded crew expense (crews working year-round for FPL) to be included in the Hurricane Irma restoration costs?

FPL Position: No. The proposed OPC Issue 4B is not appropriate or relevant to the facts of this case and should be rejected as an issue in this proceeding for multiple reasons.

First, the ICCA methodology under Rule 25-6.0143, F.A.C. is already applicable to contractor storm restoration costs. Part (1)(e) of the Rule clearly provides that the “types of storm related costs allowed to be charged to the reserve under the ICCA methodology include, but are not limited to...[a]dditional contract labor hired for storm restoration activities.” Rule 25-6.0143(1)(e), F.A.C. Thus, there is no need to address OPC Issue 4B.

Second, there is nothing in the Rule, nor is there a Commission order, that distinguishes between embedded and non-embedded contractors for purposes of determining storm related costs to be charged to the reserve. OPC is essentially asking the Commission to promulgate a new rule or an amendment to the existing Rule, without a rulemaking proceeding, that would create a new requirement for determining contractor costs allowed to be charged to the storm reserve. Any such requirement, if adopted, should be equally applicable to all of the investor owned utilities that the Commission regulates. Thus, any potential further action by the Commission in response to this issue should properly begin with the rulemaking/workshop process. The proposed OPC Issue 4B clearly is not appropriate to this FPL-specific proceeding. If the Commission were to consider OPC’s proposal, it should be addressed in a generic workshop or a rulemaking

proceeding where all interested parties, including other utilities, would be afforded the opportunity to participate and comment on the risks and benefits of the proposal.

Third, OPC is not only asking the Commission to adopt a new requirement without a rulemaking proceeding, OPC is also improperly asking that this new requirement be applied retroactively to FPL. Adopting and retroactively applying new requirements to FPL's storm restoration efforts and costs incurred over one and one-half years ago raises serious due process concerns and is contrary to the Commission's statutory rulemaking authority.⁴ Thus, even if the Commission were to adopt the new requirement proposed by OPC in this proceeding, which it should not absent a formal rulemaking proceeding, any such new requirement should be prospective and should not be retroactively applied to FPL's Hurricane Irma storm restoration costs.

Finally, OPC Issue 4B is based on an incorrect premise. FPL is not seeking any incremental recovery for the Hurricane Irma storm restoration costs. Rather, all non-capitalized storm-related costs, including costs for both embedded and non-embedded contractors, were charged to base O&M expense as permitted under Part (1)(h) of the Rule. As such, applying the ICCA methodology to embedded contractor O&M costs (*i.e.*, to determine the incremental and non-incremental costs) would make no difference to the total Hurricane Irma storm restoration costs charged to base O&M.

For these reasons, proposed OPC Issue 4B should be rejected as an issue in this proceeding. To the extent OPC's issue 4B is adopted or entertained to any degree in this docket, FPL takes the position that the ICCA methodology under Rule 25-6.0143, F.A.C., should not be applied separately or differently to embedded contractors (crews working year-round for FPL) as suggested by OPC Issue 4B. Part (1)(e) of the Rule clearly

⁴ See Section 120.54(1)(f), Florida Statutes ("an agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute").

provides that “[a]dditional contract labor hired for storm restoration activities” are permitted be charged to the reserve under the ICCA methodology. Rule 25-6.0143(1)(e), F.A.C. The Rule does not differentiate or otherwise provide for different accounting treatment of embedded contractor costs as compared to non-embedded contractor costs for purposes of the reasonable and prudent amount of contractor costs under the ICCA. (In the event the Commission determines that OPC Issue 4B is an appropriate issue for this proceeding, *Miranda, Gwaltney, Ferguson*)

5. STIPULATED ISSUES

FPL is not aware of any stipulated issues at this time. However, FPL remains willing and available to discuss settlement and/or stipulated facts and issues with the parties.

6. PENDING MOTIONS

As of the date of this filing, there is a pending Motion for Temporary Protective Order filed by FPL on April 24, 2019, for certain confidential information provided with FPL’s amended response to OPC Request for Production No. 9. FPL is not aware of any other pending motions at this time.

7. PENDING REQUESTS FOR CONFIDENTIALITY

As of the date of this filing, FPL is not aware of any pending requests for confidential classification.

8. OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT

FPL has no objection to OPC witness Helmuth Schultz being offered as an expert in accounting. However, in the event that Mr. Schultz is offered as an expert in utility storm restoration activities, management, contracting, or costs, FPL reserves the right to *voir dire* Mr. Schultz's qualifications, experience, and opinions as an expert in utility storm restoration activities, management, contracting, and costs. Subject to *voir dire*, FPL reserves the right to object to Mr. Schultz testimony and exhibits if he is offered as an expert in utility storm restoration activities, management, contracting, or costs, including, but not limited to the following:

- Direct Testimony, page 15, lines 12-21;
- Direct Testimony, page 22, line 13 through page 23, line 3;
- Direct Testimony, page 24, lines 15-18;
- Direct Testimony, page 40, lines 14-16;
- Direct Testimony, page 40, lines 23-24;
- Direct Testimony, page 41, line 5 through page 50, line 21;
- Direct Testimony, page 60, line 11 through page 61, line 11;
- Direct Testimony, page 70, lines 10-12;
- Direct Testimony, page 71, line 1 through page 72, line 8;
- Direct Testimony, page 98, lines 21-24;
- Direct Testimony, page 99, lines 1-8;
- Exhibit HWS-2, Schedule C, page 1, lines 9-11 and 19; and
- Exhibit HWS-2, Schedule C, page 4.

9. REQUEST FOR SEQUESTRATION OF WITNESSES

None at this time.

10. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

There are no requirements of the Order Establishing Procedure with which FPL cannot comply.

Respectfully submitted this 6th day of May, 2019

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CERTIFICATE OF SERVICE

Docket No. 20180049-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished

by electronic service on this 6th day of May, 2019 to the following:

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