

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO.: 20200092-EI

FILED: June 22, 2020

**CITIZENS' RESPONSE TO JOINT MOTION OF FLORIDA POWER & LIGHT COMPANY,
GULF POWER COMPANY, TAMPA ELECTRIC COMPANY, AND DUKE ENERGY
FLORIDA, LLC TO MODIFY THE REBUTTAL TESTIMONY DATE AND DISCOVERY
COMPLETION DATE ESTABLISHED BY ORDER NO. PSC-2020-0170-PCO-EI**

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- 0170-PCO-EI, and Rule 28-106.204, F.A.C., hereby submit this response to the Joint Motion of Florida Power & Light Company, Gulf Power Company, Tampa Electric Company, and Duke Energy Florida, LLC to Modify the Rebuttal Testimony Date and Discovery Completion Date Established by Order No. PSC-2020-0170-PCO-EI.

1. The OPC appreciates the schedule that the Commission established for the brand-new Storm Protection Plan Cost Recovery Clause (SPPCRC) is causing concern about the tight time frame for providing conducting discovery and providing rebuttal testimony.

2. The OPC has sympathy for the predicament – having before been placed in similar positions to respond to major elements of a case that are presented for the first time in a rebuttal case filed on the eve of hearing with little time for written discovery and highly compressed time frame for conducting meaningful discovery. For this reason, we do not out-of-hand object to the adjustment of the schedule. Before addressing the possible solutions, however, the OPC would like to point to some background that we feel is relevant.

3. During the workshop, rule development and rule adoption process for Rules 25-6-030 and 25-6.031, F.A.C., the OPC strongly advocated for the separation of the newly created

clause from the already congested fall cost recovery clause “season” that involves the Fuel (01), Conservation (02), Purchased Gas (04), Environmental (07), and the now dormant Nuclear (09) cost recovery clause hearings (Clause Hearings) and the accompanying preceding testimony and related discovery schedules and activities. [At one point, this approach seemed to receive some support from the Commission.] The OPC joined in the staff’s initial view that the Commissioners’ significant, precedent-setting consideration of the very first SPP plans should be completed *before* the costs could actually be considered for recovery. In the end, the Commission decided differently and has approved an overlap that will allow a “running start” on the Petitions for cost recovery in this docket even before the Commission has held a hearing that should involve serious and thoughtful consideration of the plans that are essential for cost recovery. The OPC unsuccessfully challenged certain aspects of the Rules in another forum, but has accepted the Commission’s decision to allow both SPP and SPPCRC consideration in this calendar year. The Investor Owned Utilities (IOUs) aggressively sought this outcome. To some extent, this compacted schedule is of their own making.

4. In order to accommodate the ability of the IOUs to have the chance to recover SPP costs beginning on January 1, 2021, the Commission has established the filing, testimony, discovery and hearing schedule that is now being challenged. The schedules have “tight” timeframes for the individual IOUs. They also have extremely tight time frames for any intervenor, like the OPC, who files testimony in multiple SPP and SPPCRC dockets.

5. Suffice it to say that, without going through a point by point rebuttal to the IOU claims that the OPC will not be adversely affected and that the interests are “balanced,” significant differences of opinion and fact exist between the OPC’s and the Joint Movants’ positions and viewpoints. The essence of the disagreement is the notion that the convenient accommodation of more time for the IOUs to file rebuttal and conduct discovery does not adversely and negatively impact the OPC. The so-called balance that would be achieved would be closer to “reasonable” if

not for the fact that each individual IOU is only responsible for its own testimony and discovery while the OPC is responsible for participating in each docket on behalf of the IOU's customers.

6. The OPC strongly asserts that the changes to the schedule merely make a difficult schedule incredibly compacted, congested, and impossible. The most glaring negative impact is the 10-day turnaround for discovery responses. If discovery is served on September 4th on the eve of the Labor Day September 7th Weekend, there will only be 4 business days between service and response time. This would be onerous if there was only one company and not four companies potentially serving discovery with no identified limitation. Even if later discovery filing dates were used, if all or multiple IOUs filed discovery, the maximum number of business days for responses would be 8 days under the best of circumstances including expert witness availability.

7. Another practical limitation that is not readily apparent in the raw count of days contained in the motion is the impact of the purported discovery deadline extension. If IOU testimony is filed at 5:00 PM, on Wednesday, September 23rd, for a total of 4 different IOUs with an unknown number of rebuttal witnesses, the OPC will have a maximum of 6 business days to conduct whatever discovery can be achieved. Given that testimony could be filed at 5:00 PM on the 23rd, this would mean that however many rebuttal witnesses' testimonies that file would have to be read and digested, and discovery drafted, reviewed and prepared for service within a 2 day-period for all four companies. Even in this circumstance, that would only allow one chance at written discovery. The alternative of depositions would be even more severe in that there would only be 7 theoretical days for depositions to be scheduled and conducted IF zero time was required to prepare for depositions. Assuming that 1-2 days would be required for depositions – including the assistance from OPC experts – there would only be 5 days available for the scheduling of all of the IOU witnesses – in the aggregate. Of course, Monday, October 5th would not be reasonably available for deposition as it is also the day of the prehearing conference for all four IOUs.

8. What these two points illustrate is not that the IOU proposal is unreasonable, but instead they illustrate that the hearing dates are inadequate to accommodate the reasonable needs of all parties in this very first SPPCRC hearing. In the rush to accommodate the desires of the IOUs to begin collection on January 1, 2021, a scheduling nightmare has been created. Discovery options should not be so fragile as to be meaningless. Nothing in this discussion even considers the case activity events within other significant dockets that will be underway, such as the other clause hearings and two large utility rate cases (People's Gas and Utilities Inc. of Florida).

9. Having said all this, the OPC's request in response to the IOU's motion is a simple one. We ask that before making a ruling, the Commission schedule an informal conference where the parties can discuss this process now that an Order Establishing Procedure has been issued with all parties having expressed concerns in these pleadings. In this environment, the opportunity exists for reasonable compromise in the schedule. Although the intent of the OPC in making this request for the scheduling conference is to hew to the existing schedule, it would also be helpful if Commission staff could attend such a meeting — if scheduled — with hearing date and panel scheduling options, including dates in the time frame of the existing Clause hearings scheduled for two weeks later.

10. Even if consensus cannot be completely reached, the Commission would have the benefit of a more robust discussion before making any effort to make adjustments that could have unintended consequences.

Wherefore, the OPC requests that the Commission deny the relief requested by the IOUs and instead convene a scheduling meeting with all parties to further gather input and to facilitate consensus in the schedule. After considering the results of the meeting and discussions, the Commission should grant the relief that is fair and just and truly balances the interests of all parties.

Respectfully submitted,

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CERTIFICATE OF SERVICE
Docket No. 20200092-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 22nd day of June 2020, to the following:

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