

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 17, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Dziechciarz, Murphy) *TLT*
Division of Engineering (Buys, Ramos) *TB*

RE: Docket No. 20200228-EI – Request to modify filing dates set forth in Order PSC-2020-0097-PCO-EI for storm protection plan and first plan update, by Florida Public Utilities Company.

AGENDA: 12/01/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: April 12, 2021 (Current filing date for Florida Public Utilities Company’s initial Storm Protection Plan)

SPECIAL INSTRUCTIONS: None

Case Background

The 2019 Florida Legislature enacted Section 366.96, Florida Statutes (F.S.), entitled “Storm protection plan cost recovery.” Section 366.96(3), F.S., requires each public utility to file a transmission and distribution storm protection plan (SPP) that covers the immediate 10-year planning period, and explains the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. Pursuant to Sections 366.96(5) and 366.96(6), F.S., every three years, each public utility is required to update their plans for a new 10-year planning horizon, and the Florida Public Service Commission (Commission) is required to determine whether it is in the public interest to approve, approve with modification, or deny each utility’s storm protection plan no later than 180 days after the utility files a plan that contains all of the elements required

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by Commission Rule. Rules 25-6.030 and 25-6.031, Florida Administrative Code (F.A.C.), implement Section 366.96, F.S.

The Commission has jurisdiction pursuant to Section 366.96, F.S.

Discussion of Issues

Issue 1: Should the Commission approve FPUC's Request to Modify Filing Dates Set Forth in Order No. PSC-2020-0097-PCO-EI for the Company's Storm Protection Plan and Plan Update?

Recommendation: Yes. FPUC should be permitted to defer the filing of its initial Storm Protection Plan from April 12, 2021, as set forth in Order No. PSC-2020-0072-PCO-EI, to April 2022, and the effective period for FPUC's Storm Hardening Plan should be extended from 2021 to 2022. (Buys, Ramos, Dziechciarz, Murphy)

Staff Analysis:

FPUC's Request

On October 16, 2020, FPUC submitted a Request to Modify Filing Dates Set Forth in Order No. PSC-2020-0097-PCO-EI for the Company's Storm Protection Plan and Plan Update (Request). In its Request, FPUC asks that it be allowed to defer the filing of its initial SPP for a period of one year, until 2022, and that it be allowed to follow the applicable provisions of Rule 25-6.030, F.A.C., for subsequent updates to its SPP.

FPUC states that on March 3, 2020, the following dockets were opened to facilitate the Commission's review of the SPPs for each of the investor-owned electric utilities that are subject to the requirements of Section 366.96, F.S.:

- Docket No. 20200067-EI – Tampa Electric Company (TECO) SPP docket
- Docket No. 20200068-EI – Florida Public Utilities Company (FPUC) SPP docket
- Docket No. 20200069-EI – Duke Energy Florida, LLC (DEF) SPP docket
- Docket No. 20200070-EI – Gulf Power Company (Gulf) SPP docket
- Docket No. 20200071-EI – Florida Power & Light Company (FPL) SPP docket

FPUC further states that on March 17, 2020, FPUC requested that it be allowed to defer the filing of its first SPP for a period of one year, from April 10, 2020, to April 10, 2021. FPUC requested the deferral because the full capacity of its limited resources were already being used for the extraordinary and significant rebuilding process following Hurricane Michael, and the regulatory proceedings that were already underway.¹ In addition, FPUC agreed to submit its updated SPP in 2 years (in 2023), instead of within 3 years, as required by Rule 25-6.030, F.A.C., in order to re-align itself with the review period for the updated SPPs of the other investor-owned utilities (TECO, DEF, Gulf, and FPL).

By Order No. PSC-2020-0097-PCO-EI (Extension Order), issued on April 6, 2020, the Prehearing Officer granted FPUC's request to defer the filing of its first SPP, and instructed FPUC to submit its initial SPP on or before April 12, 2021. The Prehearing Officer also instructed FPUC to submit its updated SPP in 2023 (instead of 2024, as contemplated by Rule

¹ See Docket No. 20190156-EI, *In re: Petition for a limited proceeding to recover incremental storm restoration costs, capital costs, revenue reduction for permanently lost customers, and regulatory assets related to Hurricane Michael*, by Florida Public Utilities Company.

25-6.030, F.A.C.), in order to re-align the review of FPUC's SPP update with the review of the other investor-owned utilities.

FPUC notes that following the issuance of the Extension Order, the other investor-owned utilities filed their SPPs, and subsequently entered into a series of settlement agreements.² By Order No. PSC-2020-0293-AS-EI, issued on August 28, 2020, the Commission approved the settlement agreements. A common term in each of the approved settlement agreements was that the investor-owned utilities would file their updated SPPs in 2022, rather than 2023. Accordingly, FPUC asserts that the SPP filing timeline contemplated in the Extension Order will no longer re-align FPUC's SPP review period with the other investor-owned utilities, since it was instructed to file its updated SPP in 2023.

As a result, FPUC argues that it could either: (1) file its initial plan in April 2021, as contemplated by the Extension Order, and then file its update in the next year (in 2022), or (2) delay its initial filing one additional year such that it files in 2022 for the first time. FPUC notes that neither Section 366.96, F.S., nor Rule 25-6.030, F.A.C., provides a specific timeframe by which an investor-owned utility must file its first SPP. In addition, FPUC asserts that given the overall complexity of the SPP filing, it would be unduly burdensome and administratively inefficient to submit its initial SPP in 2021, and then submit an update in 2022, since there would likely be only minimal changes in a 12-month period. Therefore, FPUC requests that the Commission allow it to further defer the filing of its first SPP for an additional year, in April 2022. FPUC also asserts that if the Request is granted, it would not seek to participate in the Commission's SPP Cost Recovery Clause proceeding, conducted pursuant to Rule 25-6.031, F.A.C., in 2021.

In addition, FPUC also requests that the Commission extend the effective period from 2021 to 2022 for its current Storm Hardening Plan, approved by Order No. PSC-2019-0313-PAA-EI, issued on July 29, 2019, in Docket No. 20180148-EI. FPUC emphasizes that if its Request is approved, it will continue to ensure the safety, reliability, and storm resiliency of its transmission and distribution facilities pending the deferred filing of its SPP. FPUC also notes that it is authorized to represent that the Office of Public Counsel (OPC) is not opposed to its Request.

Analysis

Staff recommends that FPUC has demonstrated good cause to defer the filing of its initial SPP for an additional year (from April 2021 to April 2022), and to extend the effective period of its current Storm Hardening Plan for an additional year. Staff concurs with FPUC that neither Section 366.96, F.S., nor Rule 25-6.030, F.A.C., mandates a time by which an investor-owned utility must file its initial SPP. Furthermore, staff recommends that it would be administratively efficient to review all of the SPPs for the investor-owned utilities at the same time. By deferring its initial SPP filing to April 2022, the review of FPUC's initial SPP would take place at the

² The parties to TECO's settlement agreement were the Office of Public Counsel (OPC), Walmart Inc. (Walmart), and the Florida Industrial Power Users Group (FIPUG). The parties to DEF's settlement agreement were OPC, Walmart, and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate). The parties to the Gulf and FPL settlement agreements were OPC and Walmart.

same time as the Commission's review of the updated SPPs for the other investor-owned utilities (TECO, DEF, Gulf, and FPL). In addition, staff recommends that it would be inefficient for FPUC to be required to submit its initial SPP in 2021, and then to subsequently be required to file an update one year later in order to re-align the review of its SPP with the review for the other investor-owned utilities.

Staff further recommends that FPUC's request to extend the effective period of its current Storm Hardening Plan from 2021 to 2022 should be granted. Staff recommends that FPUC should be allowed to continue its existing programs and initiatives, without any changes, through 2022, so that FPUC can continue to harden its infrastructure in anticipation of future storms and pending the filing of its initial SPP. Staff notes that FPUC has committed to ensuring the safety, reliability, and storm resiliency of its transmission and distribution facilities pending the deferred filing of its SPP. In addition, FPUC agreed it would not seek to participate in the Commission's SPP Cost Recovery Clause proceeding, conducted pursuant to Rule 25-6.031, F.A.C., in 2021.

Therefore, staff recommends that FPUC's Request should be approved. Staff recommends that FPUC should be permitted to defer the filing of its initial SPP from April 12, 2021, to April 2022, and that the effective period for FPUC's Storm Hardening Plan should be extended from 2021 to 2022.³

³ The exact filing date for the Commission's 2022 review of the SPPs submitted by the investor-owned utilities will be determined by the Prehearing Officer assigned to the dockets when they are established.

Issue 2: Should the docket be closed?

Recommendation: Yes. Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon issuance of a Consummating Order, and this docket should be closed. (Dziechciarz, Murphy)

Staff Analysis:

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon issuance of a Consummating Order, and this docket should be closed.