

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
ORDER NO. PSC-2019-0205-PHO-EI
ISSUED: May 31, 2019

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on May 20, 2019, in Tallahassee, Florida, before Commissioner Julie I. Brown, as Prehearing Officer.

APPEARANCES:

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On behalf of Florida Power & Light Company (FPL)

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On behalf of the Citizens of the State of Florida (OPC)

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On behalf of the Florida Public Service Commission (Staff)

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Florida Public Service Commission General Counsel

PREHEARING ORDER

I. CASE BACKGROUND

This docket was opened by the Florida Public Service Commission (Commission) on February 22, 2018, to evaluate the storm restoration costs for Florida Power & Light Company (FPL) related to Hurricane Irma. An administrative hearing will be held by the Commission on June 11-14, 2019. The Commission will address the issues listed in this Prehearing Order. The Commission has the option to render a bench decision with agreement of the parties on any or all of the issues listed below.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Manuel B. Miranda	FPL	2-5, 7, 8, 9
Keith Ferguson	FPL	1-11
Eduardo DeVarona	FPL	2-4
Helmuth W. Schultz, III	OPC	1-11, 1A, 4A, 4B, 4C
<u>Rebuttal</u>		
Manuel B. Miranda	FPL	2-5, 7, 8, 9
Thomas W. Gwaltney	FPL	4, 5
Ronald R. Reagan	FPL	4, 5, 8
Kristin Manz	FPL	4, 5
Keith Ferguson	FPL	1-11

VII. BASIC POSITIONS

FPL: 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.

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

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, 410 So.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, 448 So.2d 1024 (Fla. 1982); GTE Florida Inc. v. Clark, 668 So.2d 971 (Fla. 1996).

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.

OPC: The central tenet governing the approval of any costs which a utility proposes to pass through to customers as the ultimate payors is that the costs must have been incurred in a reasonable and prudent manner. In this case, FPL claims it is not seeking to establish a charge for recovery of costs related to Hurricane Irma; however, FPL does in fact intend that customers use their funds to pay for its Hurricane Irma costs. FPL states it is asking the Commission to approve its own calculation of storm costs FPL has or plans to "offset" or retain from the amounts customers would otherwise receive in refunds as a result of the huge tax cut windfall FPL realized from the Tax Cuts and Jobs Act of 2017. For purposes of this docket, the principal point of emphasis and concern is that FPL spent money with the intent that customers would ultimately be responsible for paying the costs in the end. The Public Counsel is concerned that a company spending someone else's money has less incentive to prioritize strong fiscal controls as would a party spending their own money. As such, a thorough review of the costs and the manner in which they were incurred by FPL is required in order to protect the public interest.

OPC recognizes that Hurricane Irma caused extraordinary damage. In fact, the scope of the damage, the large number of contractors managed, and the resulting volume of invoices paid merely provide support for OPC's position that the costs must be carefully scrutinized to ensure that customers do not pay for improper

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).

costs that slipped through FPL's system. In its analysis, OPC did not take issue with the utility's restoration times, which appear to be consistent with Rule 25-6.044(3), Florida Administrative Code. However, FPL's processes and emergency contractor rate structures perhaps inadvertently have built in perverse incentives which could lead to fiscal lapses for which customers might be stuck paying in the end. Adjustments for reasonableness and prudence related to many of the issues OPC raises regarding contractor crew mobilization and demobilization costs would not increase restoration times, but instead could serve to reduce restoration times by properly incentivizing contractors to travel in a more efficient manner and timely arrive at areas requiring restoration.

Additionally, a distinction must be made among the types of costs for which FPL seeks approval in this docket. Some of the costs included in FPL's petition must be accounted for differently in order to avoid improperly understating the rate for capitalization and to avoid creating intergenerational inequities. The incremental cost recovery and capitalization approach (ICCA) must be applied to determine the reasonable and prudent amount of contractor costs associated with embedded crew expense (crews doing regular, year-round capital maintenance and improvement work for FPL) to be included in the Hurricane Irma restoration costs.

OPC's analysis shows that several of the costs listed in FPL's Petition must be adjusted due to excessive or improper payments. For example, the storm costs must be reduced to account for duplicated payments (invoices FPL improperly paid twice). Regular and overtime payroll should be reduced by at least \$4.104 million and \$17.158 million, respectively, to exclude non-incremental payroll. Similarly, in order to reflect the proper capitalization of certain restoration work and contractor costs, the amounts must be reduced by at least \$291.197 million. Additionally, a reduction of at least \$94.227 million is required due to excessive hourly rates, excessive mobilization/demobilization charges, and excessive standby times. Finally, a \$26.039 million reduction is required due to the lack of documentary support to justify logistics costs, and a \$50.076 million adjustment is required due to unsupported contractor accruals and mutual assistance. In summary, based on the adjustments recommended by Mr. Schultz, \$486.769 million of FPL's overall storm restoration costs chargeable to expense must be removed from the costs for which FPL seeks approval.

FIPUG: Florida Power & Light Company (FPL) must carry its burden of proof to establish that Hurricane Irma expenditures, for which it seeks Commission approval to recover such expenditures from rate payers, are reasonable and prudent. Adjustments as recommended by the Office of Public Counsel should be enacted.

FRF: Subject to meeting its burden of proof, FPL is entitled to recover incremental costs, calculated and determined consistently with the Commission's rules, of restoring service following Hurricane Irma. Excessive costs are not reasonable or

prudent. Costs claimed by FPL for which FPL has not supplied adequate documentation should be disallowed: failure to supply adequate documentation is a failure to meet its burden of proof. Ultimately, the Commission must ensure that customers do not bear, either directly or indirectly, in either the short term or the long term, any excessive or imprudently incurred costs. The appropriate protection of customers from such undue burdens will depend on the accounting treatment applied to FPL's Hurricane Irma restoration costs in the first instance.

Based on the available evidence, FPL's recoverable Hurricane Irma restoration costs should be reduced by \$486 million as recommended by the Citizens' witness Helmuth W. Schultz, III.

FPL was and is required to use the Storm Cost Recovery Mechanism (SCRM) described in Order No. PSC-16-0560-AS-EI for the recovery of FPL's reasonable and prudent Hurricane Irma restoration costs.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

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 Irma restoration costs?**

POSITIONS:

FPL: 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*)

OPC: Yes.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: Yes.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: The amount to be included should be zero, based on the \$4.153 million (\$4.104 million jurisdictional) of adjustments reflected on Exhibit No. HWS-2, Schedule B of Helmuth Schultz' direct testimony.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The amount of regular payroll expense to be included is zero, based on the \$4.153 million (\$4.104 million jurisdictional) of adjustments recommended by the Citizens' witness Helmuth Schultz.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: The amount to be included should be no more than \$8.723 million (\$8.595 million jurisdictional) after reflecting the \$29.938 million (\$29.571 million jurisdictional) of adjustments reflected on Exhibit No. HWS-2, Schedule B of Helmuth Schultz' direct testimony.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The amount of regular payroll expense to be included is zero, based on the \$4.153 million (\$4.104 million jurisdictional) of adjustments recommended by the Citizens' witness Helmuth Schultz.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: The amount to be included should be no more than \$324.683 million (\$322.457 million jurisdictional) after reflecting \$428.001 million (\$427.097 jurisdictional) of adjustments reflected on Exhibit No. HWS-2, Schedule C of Helmuth Schultz' direct testimony.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The amount of contractor costs to be included is no more than \$324.683 million (\$322.457 million jurisdictional) based on the \$428.001 million (\$427.097 jurisdictional) of adjustments recommended by the Citizens' witness Helmuth Schultz.

STAFF: No position at this time pending evidence adduced at hearing.

ISSUE 5: **What is the reasonable and prudent amount of vegetation and line clearing costs to be included in the Hurricane Irma restoration costs?**

POSITIONS:

FPL: 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*)

OPC: The amount to be included should be no more than \$134.828 million (\$134.706 million jurisdictional) as reflected on Exhibit No. HWS-2, Schedule D of Helmuth Schultz' direct testimony.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The amount of vegetation and line clearing costs to be included is no more than \$134.828 million (\$134.706 million jurisdictional) based on the recommendations of the Citizens' witness Helmuth Schultz.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: The OPC is not recommending a dollar-specific adjustment related to this issue.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The FRF is not challenging FPL's employee expenses associated with its Hurricane Irma restoration effort.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: The amount to be included should be no more than \$16.910 million (\$16.691 million jurisdictional), as reflected on Exhibit No. HWS-2, Schedule F of Helmuth Schultz' direct testimony.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The amount of materials and supplies expense to be included is no more than \$16.910 million (\$16.691 million jurisdictional), based on the adjustments recommended by the Citizens' witness Helmuth Schultz.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: The amount to be included should be no more than \$246.955 million (\$246.833 million jurisdictional) after reflecting the \$26.041 million (\$26.039 jurisdictional) of adjustments reflected on Exhibit No. HWS-2, Schedule G of Helmuth Schultz' direct testimony.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The amount of logistics costs to be included is no more than \$246.955 million (\$246.833 million jurisdictional), based on the adjustments of \$26.041 million (\$26.039 jurisdictional) recommended by the Citizens' witness Helmuth Schultz.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: The amount to be included should be no more than \$764.547 million (\$761.403 million jurisdictional), as reflected on Exhibit No. HWS-2, Schedule A of Helmuth Schultz' direct testimony.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The total amount of FPL's Hurricane Irma restoration costs to be approved for recovery from FPL's retail customers is no more than \$764.547 million (\$761.403 million jurisdictional), based on the adjustments recommended by the Citizens' witness Helmuth Schultz.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: The amount to be included should be at least \$390.591 million, after the \$285.464 million of adjustments reflected on Exhibit No. HWS-2, Schedule I of Helmuth Schultz' direct testimony.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: The amount of FPL's storm-related costs to be capitalized is \$390.591 million, after the \$285.464 million of adjustments recommended by the Citizens' witness Helmuth Schultz.

STAFF: No position at this time pending evidence adduced at hearing.

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

POSITIONS:

FPL: 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*)

OPC: Imprudently incurred costs should be disallowed.

FIPUG: Adopt the position of Office of Public Counsel.

FRF: All imprudently incurred costs should be disallowed from direct or indirect cost recovery, and the Commission should otherwise ensure that customers do not bear, directly or indirectly, in the short term or long term, any cost burden of imprudently incurred costs. The actual accounting treatment necessary to ensure that customers bear no burden of imprudently incurred costs will depend on the accounting treatment applied to FPL's storm costs in the first instance.

STAFF: No position at this time pending evidence adduced at hearing.

ISSUE 12: Should this docket be closed?

POSITIONS:

FPL: 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.

OPC: No position.

FIPUG: Yes.

FRF: When the final order has been issued and any appeals have been finally determined, this docket should be closed.

STAFF: No position at this time pending evidence adduced at hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
Manuel B. Miranda	FPL	MB-1	Satellite View of Hurricane Irma
Manuel B. Miranda	FPL	MB-2	FPL's T&D Hurricane Irma Restoration Costs

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Manuel B. Miranda	FPL	MB-3	OPC responses to FPL Interrogatory Nos. 13-17, 19
Manuel B. Miranda	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
Thomas W. Gwaltney	FPL	TWG-2	OPC responses to FPL Interrogatory Nos. 44-49
Ronald R. Reagan	FPL	RR-1	OPC response to FPL Interrogatory No. 13
Ronald R. Reagan	FPL	RR-2	OPC response to FPL Interrogatory No. 19
Ronald R. Reagan	FPL	RR-E and RR-3A	FPL original and amended responses to OPC Request for Production of Documents No 9 (without confidential supporting attachments)
Ronald R. Reagan	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
Kristin Manz	FPL	KM-2	FPL response and confidential attachment to OPC Interrogatory No. 154
Kristin Manz	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

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Keith Ferguson	FPL	KF-2	FPL Hurricane Irma Incremental Cost and Capitalization Approach as of May 31, 2018
Keith Ferguson	FPL	KF-3	FPL Updated Hurricane Irma Costs as of December 31, 2018
Keith Ferguson	FPL	KF-4	FPL Updated Hurricane Irma Incremental Cost and Capitalization Approach as of December 31, 2018
Keith Ferguson	FPL	KF-5	OPC response to FPL Interrogatory No. 27
Helmuth W. Schultz, III	OPC	HWS-1	Qualifications of Helmuth W. Schultz, III
Helmuth W. Schultz, III	OPC	HWS-2	Schedules A through I
Helmuth W. Schultz, III	OPC	HWS-3	Transcript of depositions of FPL's corporate representative panel on Nov. 15, 2018 and Dec. 13, 2018, with deposition exhibits

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no stipulations at this time.

XI. PENDING MOTIONS

Shortly before commencement of the Prehearing Conference on May 20, 2019, OPC filed a Motion to Strike Portions of Rebuttal Testimony of Witness Ronald R. Reagan (Motion) in which it stated that portions of his prefiled testimony and exhibits “do not meet the legal requirements for competent, substantial evidence” and “fail to meet the admissibility standard for expert testimony.”

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters.

XIII. POST-HEARING PROCEDURES

If no bench decision is made at the conclusion of the hearing, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and briefs, shall together total no more than 50 pages each and shall be filed at the same time.

XIV. RULINGS

Opening statements shall be limited to 10 minutes for FPL and 5 minutes each for OPC, FRF, and FIPUG. Witness summaries shall be limited to 5 minutes.

Objections to Qualifications of Witnesses

OPC and FIPUG have stated that they object to the qualifications of FPL's witnesses as experts "to the extent that any expert witness has not identified his or her area(s) of expertise." FRF states that it "reserves all rights to question witnesses as to their qualifications as related to the credibility and weight to be accorded to their testimony." The Order Establishing Procedure (OEP), Order No. PSC-2018-0290-PCO-EI, Section V.A.(8), requires that each witness to whom parties object must be identified and the portions of their testimony to which the party objects be identified by page and line number. Neither FIPUG nor FRF have done so. Because neither of these parties complied with the requirements of the OEP to *voir dire* or object to the expertise of any witness, FRF and FIPUG shall not be allowed to do so at the May 20, 2019 final hearing.³

In its Prehearing Statement FPL raised an objection to the expertise of Helmuth Schultz in the area of "utility storm restoration activities" and identified the portions of witness Schultz's direct testimony with which it takes issue. These areas concern storm restoration activities, management, contracting, and costs. FPL has followed the procedure for questioning the expertise of witnesses outlined in Section V.A.(8) of the OEP and shall be allowed to *voir dire* witness Schultz and object to the admission of the following testimony and exhibits at the final hearing on June 11-14:

³ Order No. PSC-2018-0520-PHO-EI, issued November 1, 2018, in Docket No. 20180001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor; Order No. PSC-2019-0050-PHO-EI, issued January 29, 2019, in Docket No. 20180046-EI, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company.

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

OPC's Motion to Strike Rebuttal Testimony of Witness Reagan

On May 20, 2019, OPC filed a Motion to Strike Portions of Rebuttal Testimony of Witness Ronald R. Reagan (Motion) in which it stated that portions of his prefiled testimony and exhibits “do not meet the legal requirements for competent, substantial evidence” and “fail to meet the admissibility standard for expert testimony.” OPC states that its Motion is based on the argument that the subject testimony is not competent and substantial evidence, not on the fact that the testimony is improper expert testimony. Therefore, OPC argues that its Motion should be granted whether or not witness Reagan is found to be an expert witness. Parties were given until Friday, May 24, 2019, to file responses to OPC's Motion and FPL complied.

In its Response in Opposition to the Office of Public Counsel's Motion to Strike (Response), FPL argues that OPC's Motion should be denied for three reasons: 1) it is untimely; 2) it fails to comply with the requirements of Section V.A(8) of the OEP; and 3) it seeks to deprive the Commission of the ability to weigh the credibility of witness Reagan's rebuttal testimony on a material and relevant factual issue, fair storm restoration contractor rates.

Upon review of the Motion and the parties' responses to the Motion, it is obvious that OPC is objecting to the testimony of witness Reagan which addresses market conditions for contractor costs for storm restoration activities. There appear to be two rationales for this: that witness Reagan does not have the required training, skill or specialized knowledge to render the opinion that FPL paid the lowest price for these services and/or that witness Reagan did not have access to the proper information (other utilities' contract rates) to validly reach this conclusion.

OPC's request shall be denied to the extent that portions of witness Reagan's testimony OPC wishes to strike for purposes of being an “expert” have been requested by OPC. While OPC has identified in its Motion the portions of witness Reagan's testimony and exhibits to which it objects and that it wishes to strike, it did not do so in its Prehearing Statement as required by Section V.A(8) of the OEP. Further, in its Motion, OPC has not given any “good cause” why it could not have done so or why it waited until roughly one hour before the Prehearing Conference to file its challenge to witness Reagan's expertise.

If the testimony OPC wishes to strike is “fact” testimony regarding FPL’s contractor procurement process it should be allowed for that very reason. Section 120.569(2)(g), F.S., allows the consideration of all relevant, non-cumulative evidence that is “the type commonly relied upon by a reasonably prudent [person] in the conduct of their affairs.” This standard allows for the consideration of any type of competent evidence that may support a finding of fact. Miller v. State, 796 So. 2d 644 (Fla.1st DCA 2001). Whether the contractor rates paid by FPL were reasonable and fair is clearly a question of material fact to be resolved in this case. The determination that the lack of knowledge about other utilities’ contractor rates renders witness Reagan’s testimony unpersuasive on this point is the prerogative of the Commission, not OPC, and does not constitute a basis for striking witness Reagan’s testimony. For these reasons, OPC’s Motion is denied.

Contested Issue 1A

Contested Issue 1A was raised by FRF and is as follows: “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?” FRF, supported by OPC and FIPUG, has argued that this issue is relevant to this docket as a either a legal or combined legal/factual issue and that *res judicata* does not apply to the Commission’s decision on Issue 18 in the FPL Tax Docket⁴ since no order has yet been issued. FPL responds that there is no testimony in this case on this issue and that the doctrine of *res judicata* applies as soon as the Commission votes on an issue which was done on May 14th in the FPL Tax Docket. FPL notes that the Commission’s staff recommendation in the FPL Tax Docket directly addresses this issue and concludes that “[i]t is clear that FPL’s use of the SCRM is completely discretionary and the SCRM is not intended to be the only means for recovery of storm restoration costs” and the Commission voted to approve staff’s recommendation with regard to Issue 18.

As stated by FRF, the reason that it wants this issue included in this docket is not that the use of SCRM to recover Hurricane Irma storm costs was not discussed at length in the FPL Tax Docket and voted on there, but that it wanted to make sure this issue was preserved for appeal presumably in both the FPL Tax Docket and this docket. OPC argues that use of SCRM is appropriately discussed in this docket because FPL’s witness Ferguson discusses the accounting treatment of Hurricane Irma costs utilized by FPL in lieu of using SCRM in his testimony. For this reason, OPC has stated that it will proffer evidence on the use of SCRM if cross examination on that topic is prevented at the final hearing.

After considering all of the arguments presented above, FRF Issue 1A shall be excluded from consideration in this docket. It is clear that the Commission has already voted that use of the SCRM was not mandated by FPL’s 2016 Settlement Agreement⁵ as part of its approval of Issue 18 in the FPL Tax Docket. Parties that disagree with the Commission’s decision on this

⁴ Docket No.PSC- 20180046-EI, In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs act of 2017 for Florida Power & Light Company.

⁵ Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket NO. 160021-EI, In re: Petition for rate increase by Florida Power & Light Company.

issue in the FPL Tax Docket have the ability to raise this issue by filing a timely appeal in Docket No. 20180046-EI.

Contested Issues 4A, 4B, and 4C

Contested Issues 4A, 4B, and 4C were raised by OPC. These issues are as follows:

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 Hurricane Irma restoration costs?

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?

Issue 4C: As the result of the evidence in this case, what action should the Florida Public Service Commission take to ensure contractor rates charged to utilities are reasonable and prudent?

With regard to Issue 4A, OPC and FIPUG argue that while there is a balance between framing issues broadly or with granularity, the large amount of money associated with standby time, mobilization time, and demobilization time support including a separate issue. Since OPC, FIPUG, and FPL all acknowledge that Issue 4A can be included and fully discussed within Issue 4, a separate issue is unnecessary.

With regard to Issue 4B, OPC argues that this is the first case interpreting Rule 25-6.0143, F.A.C., which addresses the capitalization treatment of embedded contractors since the Florida Public Utilities Company (FPUC) tax docket⁶ involved only company labor and the Tampa Electric Company (TECO) and Duke Energy Florida, LLC (DEF) tax dockets⁷ did not specifically address this issue. FPL argues that it is not seeking incremental recovery of Hurricane Irma costs since it has already expensed those costs in 2017. Therefore, no capitalization issue for any type of contractor cost exists in this docket. Further, FPL argues that embedded crews work under two contracts: an embedded rate “blue sky” contract and a “storm” contract. For these reasons, FPL concludes that OPC’s capitalization proposal would amount to imposing a new accounting treatment on FPL for embedded contractors retroactively without the benefit of a rulemaking proceeding. Having reviewed the parties’ positions, Issue 4B can be addressed by the parties in Issue 4 and a separate issue is unnecessary.

⁶ Docket No. 20180048-EI, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Electric.

⁷ Docket No. 20180045-EI, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Tampa Electric Company; Docket No. 20180047-EI, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Duke Energy Florida, LLC.

With regard to Issue 4C, it appears from discussion at the Prehearing Conference that the parties are in agreement that this is an issue addressing the broader policy of ensuring that contractor rates charged during storm restorations are reasonable and prudent using the lessons that have learned in the course of resolving the storm dockets for Gulf, DEF, FPUC, TECO and this docket. Issue 4C shall be dropped because it addresses the broader policy issues raised in all of the storm dockets. As previously stated, Commission staff shall meet with all interested parties as soon as possible to determine the best means of processing the lessons learned in these dockets.

OPC Witness Schultz, Exhibit HWS-3

Finally, FPL objected to witness Schultz's Exhibit (HWS-3) which consists of the depositions of a panel of FPL's witnesses (Thomas Gwaltney, Kristin Manz and Ray Lozano) taken on November 15 and December 13, 2018. FPL argues that Section V.G. of the OEP requires that parties seeking to introduce a deposition at hearing for any purpose other than impeachment must file a Notice of Intent to Use Deposition no later than the last day of discovery (in this case the date of the Prehearing Conference, May 20, 2019) which states the name of the witness deposed, the date of the deposition, and the page and line numbers of each deposition the party wishes to introduce. After the notice is filed, FPL has three days to object with a ruling on the issue rendered by the Prehearing Officer. FPL contends that OPC did not follow this process, instead attaching the depositions to witness Schultz's testimony without any indication of the page numbers or lines OPC wishes to introduce into evidence. Without any clarification from OPC, FPL concludes that the entire deposition is being tendered for admission.

FPL also argues that at the beginning of the depositions, all parties agreed that only objections as to form would be made which FPL would never have done if it knew that the depositions were going to be attached to witness Schultz's testimony as an exhibit and have the potential to be used as competent and substantial evidence.

OPC contends that it did not intend to circumvent the requirements of Section V.G. of the OEP and is offering the depositions as the "basis for some of the opinions that [Schultz] expressed in this testimony." OPC states that the depositions are not "independent testimony" but serve the same purpose as the discovery responses attached to some of FPL's rebuttal testimony.

Having heard arguments from both OPC and FPL, the parties were ordered to meet and attempt to work out an agreement regarding the use of Exhibit (HWS-3) at the final hearing. Further, the parties were ordered to file a written pleading on or before Friday, May 24, 2019, detailing the resolution reached for the use of Exhibit (HWS-3) or stating that no resolution could be reached. If the parties could not reach agreement on the use of Exhibit (HWS-3), each party was given the opportunity to file, on or before May 24, 2019, a written objection or response to the introduction of Exhibit (HWS-3) into the record of the final hearing for my consideration and ruling. On May 24, 2019, FPL filed its Objection to Office of Public Counsel's Use of Deposition at Hearing stating that it was filing the objection to preserve its rights but that the parties were actively engaged in efforts to reach a mutually agreeable

resolution and have each committed to working toward that goal. Given these facts, a ruling on this matter will be withheld in order to give the parties additional time to resolve this issue before the hearing commences.

It is therefore,

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 31th day of May, 2019.



JULIE I. BROWN

Commissioner and Prehearing Officer
Florida Public Service Commission
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.