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VIA ELECTRONIC FILING

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Duke Energy Florida, LLC's Post Rule Development Workshop Comments;*
Docket No. 20190131-EU

Dear Mr. Teitzman:

Attached for filing on behalf of Duke Energy Florida, LLC's (DEF) are DEF's Post Rule Development Workshop Comments regarding the above-referenced Docket.

DEF gave many comments at the Rule Development Workshop on August 20, 2019, related to Staff's draft rules and identified topics for discussion. Below we have summarized those comments and supplemented with additional detail. All paragraph references are to the draft rules as originally provided by Staff on August 8, 2019. We have also provided suggested edits to the rules in redline and strikethrough.

1. Draft Rule 25-6.030, Storm Protection Plan

Storm Protection Plan (SPP) – DEF believes the Rule as written contemplates evaluating the SPP at a Program level, and DEF supports that approach. Each Program may consist of hundreds or even thousands of individual projects. DEF continues to believe review of the utility's SPPs at the Program-level will foster administrative efficiency and allow the Commission to meet the statutorily required 180-day review schedule; moreover, the Commission and interested stakeholders will retain the ability to review project level plans and decisions in the annual cost-recovery docket.

DEF continues to caution against Rule language requiring project-level information for each of the first 3 years as it could lead to utilities providing information that could have limited fidelity in the outer years or numerous situations requiring a Rule waiver. Some Programs may not lend themselves to having 3 years of project-level information as part of the normal business planning process (e.g., vegetation management). This would force the companies to make a

choice, create data that will be subject to extensive revision and has no business purpose - an inefficient use of resources to both create and review - or file for a Rule waiver. DEF agrees that to the extent such detail is available as part of the normal planning process it could be made available to the Commission in either the SPP filing or as part of a standard data request at the same time as the filing.

However, if project-level information is required for the first 3 years of the SPP, DEF understood from Staff's comments that movement in projects from year-to-year or elimination and/or addition of specific projects within an approved SPP would not constitute a modification to the approved SPP requiring Commission approval. DEF agrees that, to the extent project-level information is required in the SPP, project-level shifts within an approved program should not constitute an "SPP modification" requiring Commission action. That said, DEF continues to believe focusing on the Program level will mitigate against constant "SPP modifications" and lead to a more efficient process which benefits all DEF's customers.

Significance of Approval of a SPP – At the workshop OPC expressed concern and uncertainty with the level of prudence that attaches upon approval of an SPP. DEF believes that Commission approval of an SPP constitutes an affirmation that the Programs or activities described in the Plan are prudent to pursue. The SPP will include and thus the Commission will be asked to approve the methodology by which the utilities are selecting and prioritizing projects within the various Programs. The Commission would still be able to review and determine whether the companies were prudent in their execution of projects within a Program in the annual clause filings or when cost recovery is otherwise sought. For instance, if the cost of an approved project or Program increased ten-fold and the utility did not consider whether it was still prudent to pursue or did not evaluate lower-cost options, the Commission would be able to make a decision on whether the company has acted prudently. However, the Commission could not determine a company had acted imprudently based on no-other evidence than the company had followed its approved SPP.

Sub-Paragraph (2)(b): the meaning of the phrases "enhancement of a specified portion of existing ..." facilities and "improving overall service reliability" – As a general point, DEF agrees with Staff's inclusion of definitions for both "storm protection programs" and "storm protection projects"; as discussed above, DEF continues to believe that SPPs should be submitted and approved at the Program-level, with project-level information required for the first year of a program and beyond that as available. Additional project-level information should be provided in the annual clause proceeding and/or as part of the annual report required under subsection (4).

Based on the workshop discussion, DEF understands that the "specified portion of existing" T&D facilities in the "project" definition (subsection (2)(b)) was included to specify that project should include a geographic locator (e.g., identification of which lateral would be undergrounded as part of an undergrounding Program). With that clarification, DEF agrees with its inclusion at the project level, and further agrees with its exclusion from the definition of a "storm protection program" in subparagraph (2)(a), as Programs do not necessarily lend themselves to identification by location.

Regarding the phrase, whether set off with an oxford comma or not, “improving overall service reliability”, DEF understands and agrees that the use of this language is not intended to prevent inclusion of projects that benefit the general electric transmission and distribution facilities, nor is it intended to mean that a project that so benefits the system as a whole is properly included in a Program/SPP unless it fulfills the purposes of section 366.96. For instance, there could be telecommunications projects that provide significant storm restoration benefits to the entire system and also “improv[e] overall service reliability” on a day-today basis and it is not the intent of this section to exclude such a program or project.

As discussed at the workshop, DEF continues to believe that the word “existing” in this sub-paragraph is not intended to preclude cost-recovery of new assets added to or supplementing existing transmission and/or distribution facilities. It should be interpreted as distinguishing between new assets needed to serve new load as opposed to new assets that serve the function of strengthening or enhancing existing infrastructure.

Non-exclusive examples of new assets that would be allowed under this interpretation could be:

- A new pole that is designed to be more resilient or shorten the span between existing poles;
- New technology or equipment that makes restoration more efficient and therefore reduces outage times; or
- A new line segment designed to increase the reliability of existing infrastructure.

Non-exclusive examples of new assets that would not be considered storm protection programs or projects pursuant to rule 25-6.030 and thus cost recovery would not be allowed through the Storm Protection Plan Cost Recovery Clause (Rule 25-6.031) are:

- New infrastructure to serve a new development; or
- New infrastructure extending beyond a utility’s service territory

An interpretation that prohibited investment in new assets to strengthen or enhance the existing facilities could result in too narrow a definition of both “storm protection program” and “storm protection project” resulting in a failure to capture solutions intended to provide storm protection benefits but potentially requiring the installation of “new”(i.e., non “existing”) assets or deployment of new technologies that do not specifically fit into the definition of transmission and distribution facilities. The Rule should be agnostic as to what asset is being invested in and more focused on the intended benefit of the new asset, so long as the asset is being added to existing Transmission or Distribution Facilities.

Sub-Paragraph (2)(c): definition of “transmission and distribution facilities” – Based on discussion at the workshop, DEF understands that the intent of the definition is not to limit Programs to investments in the specific assets listed. Rather, Staff indicated that the currently-

proposed subsection (3)(i)¹ would allow SPP inclusion of “Any other factors the utility requests the Commission to consider.” Specifically, DEF understands that items such as vaults, manholes, pole-mounted transformers and switchgear, as well as potential telecommunications and data system improvements would be eligible for consideration as part of the SPP pursuant to subsection (3)(i), even if those items are not specifically delineated in the definition. DEF agrees that the definition should not be narrowly drafted or interpreted, as such a definition could interfere with achieving the purposes of the statute and rule, but, DEF remains concerned that some will read the definition and believe it to be limiting; therefore, DEF recommends adding “and associated facilities” at the end of this definition. DEF would also support a broader definition using FERC accounts or a similar means of identification.

Sub-Paragraph (3)(c) – DEF appreciates the clarification that the intent of this sub-paragraph is, to the extent any exist, identify and describe areas identified in the normal planning process where enhancement of the existing transmission and distribution facilities was found not to be feasible, reasonable, or practical as opposed to an exhaustive analysis aimed at complete identification of any such areas. During the workshop, OPC raised the prospect of including a requirement that each SPP submission include specifics related to Franchise Agreements (e.g., expired agreements, pending expirations, status of renewal negotiations) to ensure that Programs or projects are not proposed or modified to influence renewals. DEF believes such a provision would be beyond the scope and intent of the statute, and unnecessary to the Commission’s review of an SPP. To the extent OPC desired such information, it could be provided in discovery. Moreover, given the typical length of such agreements (DEF’s standard Franchise Agreement lasts 10 to 30 years), it would seem like such a rule requirement would result in the inclusion of redundant information in filings required every three years.

Sub-Paragraph (3)(d): relating to line 20 on page 5 of the draft Rule – As discussed above, DEF does not believe the Rule should require this level of information at the project level for the first three years of the SPP. If this is a requirement and the utility’s normal business process does not have this fidelity it could result in the inefficient creation of unnecessary information or continuous Rule waiver requests (similar to what occurred in ECCR due to the Rule requiring a certain number of actual months of data but the clause filing schedule did not allow for it). DEF is willing to provide this level of detail to the extent it is generated in the normal course of business.

Sub-Paragraph (3)(g): rate impact estimates – DEF suggests that a simple table like that shown below extended to cover the estimated three-year period (which is included annually in the ECRC docket) would satisfy this requirement.

¹ DEF notes that the current draft of the rule contains two subsection (3)(d)s, thus the current (3)(i) should be re-designated (3)(j). For clarity, DEF has continued use of the designation included in the rule draft attached to the August 8th meeting notice.

RATE CLASS	ECRC FACTORS
Residential	0.143 cents/kWh
General Service Non-Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.143 cents/kWh 0.142 cents/kWh 0.140 cents/kWh
General Service 100% Load Factor	0.141 cents/kWh
General Service Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.141 cents/kWh 0.140 cents/kWh 0.138 cents/kWh
Curtable @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.137 cents/kWh 0.136 cents/kWh 0.134 cents/kWh
Interruptible @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.138 cents/kWh 0.137 cents/kWh 0.135 cents/kWh
Lighting	0.138 cents/kWh

2. Draft Rule 25-6.031, Storm Protection Plan Cost Recovery Clause

Paragraph (2): timing of cost recovery filing – DEF believes companies should be able to submit their cost recovery clause filings in parallel with their SPP filings subject to revision if the Commission modifies the SPP. This promotes administrative efficiency. Additionally, it prevents a situation from occurring every three years where a Utility cannot file its annual clause filings due to a pending SPP review.

Paragraph (6)(a) - DEF believes that companies should be able to recover costs associated with development of their SPP. These costs must be incurred prior to filing the SPP and not contemplated in base rates and therefore should be recoverable through the cost recovery clause.

Paragraph (7)(d): variance analysis – DEF agrees variance analysis has merit and should be included for any significant variances similar to the ECRC process.

3. Comments on Whether Existing PSC Rules Should be Amended or Repealed

The Storm Hardening Rule (25-6.0342) should be repealed and any requirements that need to continue should be rolled into the SPP Rule (25-6.030). The over-arching goal should be to provide for an efficient process that accomplishes the Legislature’s intent. If this cannot be

completed in the initial drafting of the new SPP Rule the Commission should direct Staff to undertake this subsequent rule making immediately following adoption of the initial Rules.

DEF agrees with comments made by the Florida Retail Federation at the workshop that to the extent necessary, any rules related to valuing overhead versus underground should be aligned with these rules. There will likely be impacts to how CIAC due is calculated on some future projects. For example, if a customer is requesting undergrounding and they are currently scheduled for hardening work under an approved SPP, there will likely need to be consideration of the avoided costs of that hardening included in the CIAC calculation.

4. Inclusion of Projected Costs

OPC questioned the legislative authority for the Commission to allow the recovery of projected costs, given that the enabling statute does not explicitly include the words “projected costs” but rather discusses “prudently incurred costs.” The Commission has plenary authority to allow the recovery of projected costs, pursuant to the broad authority granted to it over public utilities in Chapter 366. *See* Section 366.06(1), the Commission has “the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service.” If the legislature intended to preclude the recovery of projected costs, the enabling statute would have expressly provided for that prohibition. Such a prohibition is notably absent from the statute. *See* § 366.041(2), Fla. Stat. (the authority to set rates “shall be construed liberally to further the legislative intent that adequate service be rendered by public utilities in the state in consideration for the rates, charges, fares, tolls and rentals fixed by the commission...”). The legislature clearly intended to create a new cost recovery clause and left it to the Commission’s discretion to determine the best method to implement the clause. Accordingly, the Commission has authority to permit projected costs, subject to true up, just as it has done in multiple other clauses (i.e., fuel and capacity, environmental cost recovery, energy conservation, and nuclear cost recovery), only two of which have enabling legislation that specifically authorizes the collection of projected costs (i.e., environmental cost recovery and nuclear cost recovery).

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Sincerely,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmk
Enclosure

1 **25-6.030 Storm Protection Plan.**

2 (1) Application and Scope. Each investor-owned electric utility (utility) must file a petition
3 with the Commission for the approval of a Transmission and Distribution Storm Protection
4 Plan (Storm Protection Plan) that covers the utility’s immediate 10-year planning period. Each
5 utility must file, for Commission approval, an updated Storm Protection Plan at least every 3
6 years.

7 (2) For the purpose of this rule, the following definitions apply:

8 (a) “Storm protection program” – a category or type of activity that is undertaken to
9 enhance the utility’s existing infrastructure for the purpose of reducing restoration costs,
10 reducing outage times, and improving overall service reliability.

11 (b) “Storm protection project” – a specific activity within a storm protection program
12 designed for the enhancement of a specified portion of existing electric transmission or
13 distribution facilities for the purpose of reducing restoration costs, reducing outage times, and
14 improving overall service reliability.

15 (c) “Transmission and distribution facilities” – all utility owned poles and fixtures, towers
16 and fixtures, overhead conductors and devices, substations and related facilities, land and land
17 rights, roads and trails, underground conduits, and underground conductors as well as other
18 associated equipment.

19 (3) Contents of the Storm Protection Plan. For each Storm Protection Plan, the following
20 information must be provided:

21 (a) A description of how implementation of the proposed Storm Protection Plan will
22 strengthen electric utility infrastructure to withstand extreme weather conditions by promoting
23 the overhead hardening of electrical transmission and distribution facilities, the
24 undergrounding of certain electrical distribution lines, and vegetation management.

25 (b) A description of how implementation of the proposed Storm Protection Plan will

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1 reduce restoration costs and outage times associated with extreme weather events and improve
2 overall service reliability.

3 (c) A description of the utility's service area, including areas prioritized for enhancement
4 and any areas where the utility has determined that enhancement of the utility's existing
5 transmission and distribution facilities would not be feasible, reasonable, or practical. Such
6 description must include a general map, number of customers served within each area, and the
7 utility's reasoning for prioritizing certain areas for enhanced performance and for designating
8 other areas of the system as not feasible, reasonable, or -practical.

9 (d) A description of each proposed storm protection program that includes:

10 1. A description of how each proposed storm protection program is designed to enhance
11 the utility's existing transmission and distribution facilities including an estimate of the
12 resulting reduction in outage times and restoration costs due to extreme weather events;

13 2. If applicable, the actual or estimated start and completion dates of the program;

14 3. A description of any storm protection programs that were considered but not included in
15 the Storm Protection Plan, and an explanation for why the program was not included;

16 4. A cost estimate including capital and operating expenses, both fixed and variable;

17 5. ~~At a minimum, a~~ comparison of the costs identified in subparagraph (3)(d)4. and the
18 benefits identified in subparagraph (3)(d)1.; and

19 6. A description of the criteria used to select and prioritize proposed storm protection
20 programs.

21 (~~e~~) For each of the first three years in a utility's Storm Protection Plan, the utility must
22 provide a description of ~~each proposed~~ known storm protection projects that includes:

23 1. The actual or estimated construction start and completion dates;

24 2. A description of the affected existing facilities, including number and type(s) of
25 customers served, historic service reliability performance during extreme weather events, and

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Commented [FG1]: Projects known as part of the utility's normal business planning process should be identified. If unknown the utility will provide current plans that give reasonable insight into planned activities broken down in some meaningful manner. For example, for TUG it could be line miles with estimated number of customers impacted and estimated costs

1 how this data was used to prioritize the proposed storm protection project; and
2 3. A cost estimate including capital and operating expenses, both fixed and variable; and
3 4. A description of the criteria used to select and prioritize proposed storm protection
4 projects.
5 5. If project level information is not available as part of the utility's normal business
6 practices for some part of the first three years the utility will provide known current activities
7 broken down in a manner that will allow the Commission to understand the impacts of scaling
8 up or down the pace of implementation.
9 (ef) For each of the first three years in a utility's Storm Protection Plan, the utility must
10 provide a description of its proposed vegetation management ~~known~~ activities including:
11 1. The projected locations and frequency;
12 2. The projected miles of affected transmission and distribution overhead facilities;
13 3. The estimated annual labor and equipment costs for both utility and contractor
14 personnel; and
15 4. A description of how the vegetation management activity will reduce outage times and
16 restoration costs due to extreme weather events.
17 5. If detail at this level is not available as part of the utility's normal business planning
18 practices for some portion of the first three years, the utility will provide detail that will enable
19 the Commission to understand the impacts of scaling up or down the pace of implementation.
20 (fg) An estimate of the annual jurisdictional revenue requirements for each year of the
21 Storm Protection Plan.
22 (eh) An estimate of rate impacts for each of the first three years of the Storm Protection
23 Plan ~~for residential, commercial, and industrial customers by rate class.~~
24 (h) A description of any implementation alternatives that could mitigate the resulting rate
25 impact for each of the first three years of the proposed Storm Protection Plan.

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Commented [FG2]: Please see DEF's attached comments for an example. This change makes it clear that the information is meant to be consistent with how it is provided each year for the other cost recovery clauses. This is the best way to show this information because it gives customers the information they need to see the impact on their usage.

Commented [FG3]: This is not a requirement of the Statute and should not be in the Rule. The utility should be responsible for submitting a SPP that they believe is appropriate. To the extent the Commission wishes to mitigate rate impacts they should modify the SPP as they deem appropriate. The detailed data this Rule requires to be filed or made available with the SPP will give the Commission enough information to modify as they see fit.

- 1 (i) Any other factors the utility requests the Commission to consider.
2 (4) By June 1, each utility must submit to the Commission Clerk an annual status report on
3 the utility's Storm Protection Plan programs and projects. The annual status report shall
4 include:
5 (a) Identification of all Storm Protection Plan programs and projects completed in the prior
6 year or planned for completion in the current year;
7 (b) Actual costs and rate impacts associated with completed programs and projects as
8 compared to the estimated costs and rate impacts for those programs and projects; and
9 (c) Estimated costs and rate impacts associated with programs and projects planned for
10 completion during the next year of the Storm Protection Plan.
11 *Rulemaking Authority 366.96, FS. Law Implemented 366.96, FS. History--New _____.*
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1 **25-6.031 Storm Protection Plan Cost Recovery Clause.**

2 (1) Application and Scope. This rule applies to each investor-owned electric utility
3 (utility).

4 (2) ~~After the Commission has issued a final order approving a utility's~~Once the utility has
5 filed its Transmission and Distribution Storm Protection Plan (Storm Protection Plan), a utility
6 may file a petition for recovery of associated costs through the Storm Protection Plan cost
7 recovery clause. The utility's petition shall be supported by testimony that provides details on
8 the annual Storm Protection Plan implementation activities and associated costs, and how
9 those activities and costs are consistent with its approved Storm Protection Plan.

10 (3) An annual hearing to address petitions for recovery of Storm Protection Plan costs will
11 be limited to determining the reasonableness of projected Storm Protection Plan costs, the
12 prudence of actual Storm Protection Plan costs incurred by the utility, and ~~to~~
13 establish~~ing~~ Storm Protection Plan cost recovery factors consistent with the
14 requirements of this rule.

15 (4) Deferred accounting treatment. Storm Protection Plan cost recovery clause true-up
16 amounts shall be afforded deferred accounting treatment at the 30-day commercial paper rate.

17 (5) Subaccounts. To ensure separation of costs subject to recovery through the clause, the
18 utility filing for cost recovery shall maintain subaccounts for all items consistent with the
19 Uniform System of Accounts prescribed by this Commission, pursuant to Rule 25-6.014,
20 F.A.C.

21 (6) Recoverable costs.

22 (a) The utility's petition for recovery of costs associated with its Storm Protection Plan
23 may include costs ~~incurred to develop the Storm Protection Plan as well as costs~~ incurred after
24 the filing of the utility's Storm Protection Plan.

25 (b) Storm Protection Plan costs recoverable through the clause shall not include costs
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existing law.

1 recovered through the utility's base rates or any other cost recovery mechanism.

2 (c) The utility may recover the annual depreciation expense on capitalized Storm
3 Protection Plan expenditures using the utility's most recent Commission-approved
4 depreciation rates. The utility may recover a return on the undepreciated balance of the costs
5 calculated at the utility's weighted average cost of capital using the return on equity most
6 recently approved by the Commission.

7 (7) Pursuant to the order establishing procedure in the annual cost recovery proceeding, a
8 utility shall submit the following for Commission review and approval as part of its cost
9 recovery filings:

10 (a) Final True-Up for Previous Year. The utility shall submit its final true-up of Storm
11 Protection Plan revenue requirements based on actual costs for the prior year and previously
12 filed costs and revenue requirements for such prior year and a description of the work actually
13 performed during such year.

14 (b) Estimated True-Up for Current Year. The utility shall submit its actual/estimated true-
15 up of Storm Protection Plan revenue requirements based on a comparison of current year
16 actual/estimated costs and the previously-filed projected costs and revenue requirements for
17 such current year and a description of the work projected to be performed during such year.

18 (c) Projected Costs for Subsequent Year. The utility shall submit its projected Storm
19 Protection Plan costs and revenue requirements for the subsequent year and a description of
20 the work projected to be performed during such year.

21 (d) True-Up of Variances. The utility shall report observed true-up variances including
22 sales forecasting variances, changes in the utility's prices of services and/or equipment, and
23 changes in the scope of work relative to the estimates provided pursuant to subparagraphs
24 (7)(b) and (7)(c). The utility shall also provide explanations for variances regarding the
25 implementation of the approved Storm Protection Plan.

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1 (e) Proposed Storm Protection Plan Cost Recovery Factors. The utility shall provide the
2 calculations of its proposed factors and effective 12-month billing period

3 (8) Recovery of costs under this rule does not preclude a utility from proposing inclusion
4 of future Storm Protection Plan costs in base rates in a subsequent rate proceeding.

5 *Rulemaking Authority 366.96, FS. Law Implemented 366.96, FS. History--New _____.*

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