

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Irma and Nate, by Duke Energy Florida, LLC.

DOCKET NO. 20170272-EI  
ORDER NO. PSC-2019-0232-AS-EI  
ISSUED: June 13, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
JULIE I. BROWN  
DONALD J. POLMANN  
GARY F. CLARK  
ANDREW GILES FAY

ORDER APPROVING SETTLEMENT AGREEMENT

APPEARANCES

MATTHEW BERNIER and DIANNE TRIPLETT, ESQUIRES, Duke Energy Florida, LLC, 106 East College Avenue, Suite 800, Tallahassee, Florida 32301-7740

On behalf of Duke Energy Florida, LLC (DEF).

J.R. KELLY, CHARLES J. REHWINKEL, and THOMAS A. DAVID, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400

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

JON C. MOYLE, JR., ESQUIRE, Moyle Law Firm, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301

On behalf of Florida Industrial Power Users Group (FIPUG).

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A. 1300 Thomaswood Drive, Tallahassee, FL 32308

On behalf of the Florida Retail Federation (FRF).

RACHAEL DZIECHCIARZ and ASHLEY WEISENFELD, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission.

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Florida Public Service Commission General Counsel.

BY THE COMMISSION:

Background

On December 28, 2017, pursuant to Rules 28-106.201 and 25-6.0143, Florida Administrative Code (F.A.C.), and Order No. PSC-2017-0451-AS-EU,<sup>1</sup> Duke Energy Florida, LLC (DEF) filed its application for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Irma and Nate. In its application, DEF sought to recover a total of \$513.2 million, which includes \$371 million in net retail costs, \$132 million to replenish its storm reserve balance, and \$10.2 million in costs associated with interest, bond issuance, and regulatory fees.

On January 24, 2018, DEF filed a Motion to Approve Implementation Stipulation, which was subsequently amended on February 5, 2018. The Amended Implementation Stipulation sought to avoid volatility in customer rates by recognizing and then utilizing annual tax reform benefits resulting from the 2017 Tax Act as a direct offset to avoid implementing a separate cost recovery of storm damage costs that customers would have otherwise been obligated to pay. By Order No. PSC-2018-0103-PCO-EI, issued on February 26, 2018, we approved the Amended Implementation Stipulation.

On February 16, 2018, an Order Establishing Procedure, Order No. PSC-2018-0082-PCO-EI, was issued in which the hearing procedures were established to govern the determination of the final storm recovery costs. The Office of Public Counsel (OPC), Florida Retail Federation (FRF), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs (PCS Phosphate), and the Florida Industrial Power Users Group (FIPUG) intervened. On May 31, 2018, DEF filed its petition for approval of actual storm restoration costs and associated recovery process related to Hurricane Irma and Nate, revising its requested recovery to \$510 million in actual recoverable costs. On August 17, 2018, DEF filed a Motion for Continuance to process, review, and organize a large amount of cost data and associated information pertaining to restoration costs. By Order No. PSC-2018-0410-PCO-EI, issued on August 20, 2018, DEF's Motion for Continuance was granted.

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<sup>1</sup> Order No. PSC-2017-0451-AS-EU, issued on November 20, 2017, in Docket No. 20170183-EI, In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.

On January 28, 2019, DEF filed supplemental exhibits to its May 31, 2019, petition, and further reduced its request to \$508 million. On March 29, 2019, DEF filed a Motion to Abate seeking to abate the remaining filing dates as modified by Order No. PSC-2019-0116-PCO-EI (the Fourth Order Modifying Order Establishing Procedure), with the exception of the prehearing, hearing, and brief dates. In its motion to abate, DEF asserted that OPC, FRF, PCS Phosphate, and FIPUG had reached an agreement in principle to resolve all issues. DEF further asserted that the parties were working to finalize their agreement for filing with the Commission for approval. On April 3, 2019, by Order No. PSC-2019-0119-PCO-EI, the remaining controlling dates were abated, except the dates for the prehearing conference, hearing, and filing post-hearing briefs.

On April 9, 2019, DEF filed an unopposed Motion to Approve Storm Cost Settlement Agreement (Motion). In its Motion, DEF asserted that the Storm Cost Settlement Agreement is in the best interest of DEF's customers, and requested our approval. On April 18, 2019, to correct a scrivener's error, DEF filed a Corrected Storm Cost Settlement Agreement. On May 15, 2019, DEF filed an unopposed Motion to Approve Amended Storm Cost Settlement Agreement. The amendment provided clarification for the "Capitalized Costs" bullet point on page 15 of the Corrected Storm Cost Settlement Agreement. The Corrected Storm Cost Settlement Agreement and the Amended Storm Cost Settlement Agreement, collectively referred to as the Settlement Agreement, are appended to this Order as Attachment A. OPC, FRF, PCS Phosphate, and FIPUG support the Settlement Agreement.

We held an administrative hearing on May 21, 2019. At the conclusion of the evidentiary portion of the hearing, the parties indicated that they were willing to waive the filing of post-hearing briefs, and we approved the Settlement Agreement, as set forth herein, by bench vote.

#### The Settlement Agreement

The Settlement Agreement provides a compromise between the parties regarding the amount of recoverable storm costs, and also sets forth an extensive set of procedures for DEF to follow during future storms which are expected to provide substantial value to both DEF and its customers. The major elements of the Settlement Agreement are as follows:

- The Settlement Agreement will be effective upon issuance of this Order, after the time for filing an appeal has run.
- DEF will make a specific adjustment to capitalize contractor labor in the amount of \$18 million, and make a corresponding reduction in the amount of storm damage costs charged.
- DEF will reclassify \$995,000 of incremental storm costs to non-incremental costs, which can then be considered for recovery as part of base rates.
- The parties agreed to an aggregate adjustment of \$5.005 million.
- DEF will be authorized to recover approximately \$343 million in net retail costs and \$10.2 million in costs associated with interest, bond issuance, and regulatory fees. DEF

will be authorized to replenish its storm reserve balance to \$132 million, under the conditions set forth in the Second Implementation Stipulation, filed in Docket No. 20190110-EI.<sup>2</sup>

- The parties agreed to a set of principles and process changes intended to promote cost effective and timely storm damage recovery and service restoration. The future process improvements cover a broad range of storm cost recovery issues, including: contracting and vendor engagement, travel and work policies, cost documentation, auditing and regulatory recovery processes, and a methodology for determining incremental costs.
- The parties agreed to meet to evaluate the new procedures and consider the need to amend them during the first quarter of 2022, and every three years thereafter.

In addition, at the administrative hearing, DEF provided clarification regarding the implementation of the process improvements. DEF advised that all parties are in agreement regarding DEF's primary objective following a storm, which is power restoration to its customers, and that "the company will not allow the policies and procedures to impede speedy power restoration for its customers." DEF further clarified that the phrase "superseded by action of the PSC," which is located in paragraph six of the Settlement Agreement, "means an action taken by the Commission in any rule-making proceeding or in any evidentiary proceeding to which the company is subject, whether initiated by DEF, third parties, or the Commission on its own motion, which addresses storm cost recovery and which has the effect of overriding or supplanting any provision of the settlement."

### Decision

The standard for approval of a settlement agreement is whether it is in the public interest.<sup>3</sup> A determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.<sup>4</sup> By implementing the specific and aggregate adjustments above, as well as reclassifying \$995,000 to non-incremental costs, the Settlement Agreement provides a fair and balanced resolution of the costs that were incurred by DEF. Further, as noted above, the Settlement Agreement and Amended Implementation

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<sup>2</sup> See Document No. 04039-2019, in Docket No. 20190110-EI, In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael and approval of second implementation stipulation, by Duke Energy Florida, LLC.

<sup>3</sup> Order No. PSC-13-0023-S-EI, issued on January 14, 2013, in Docket No. 120015-EI, In re: Petition for increase in rates by Florida Power & Light Company; Order No. PSC-11-0089-S-EI, issued February 1, 2011, in Docket Nos. 080677 and 090130, In re: Petition for increase in rates by Florida Power & Light Company and In re: 2009 depreciation and dismantlement study by Florida Power & Light Company; Order No. PSC-10-0398-S-EI, issued June 18, 2010, in Docket Nos. 090079-EI, 090144-EI, 090145-EI, 100136-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc., In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc., In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc., and In re: Petition for approval of an accounting order to record a depreciation expense credit, by Progress Energy Florida, Inc.; Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.

<sup>4</sup> Order No. PSC-13-0023-S-EI, at p. 7.

Stipulation authorize DEF to credit the retail storm reserve from January 2018 through full recovery of the actual storm costs, without imposing an interim rate on its customers, due to the tax savings realized by DEF as a result of the 2017 Tax Act.

In addition, the future process improvements identified in the Settlement Agreement represent a good-faith effort by the parties to recognize and mitigate the kinds of issues that present themselves in the storm restoration process. The processes provide a range of guidance to DEF regarding documentation, communication, and expectations when storm cost recovery is sought. The parties articulated that their goal was to implement the best practices for how to safely, quickly, and efficiently restore power, and that the procedures will not impede future storm recovery efforts. The procedures are designed such that DEF maintains its priority of power restoration during a storm event, while also decreasing the time and expense of litigation post-storm when cost recovery is sought.

Based upon DEF's application, its subsequent filings, our review of the Settlement Agreement, the testimony and evidence on the record, and the clarification provided by DEF at the hearing, we find that the Settlement Agreement is in the public interest and shall be approved. The Settlement Agreement resolves all of the issues in this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the attached Settlement Agreement is approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 13th day of June, 2019.



ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
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Tallahassee, Florida 32399  
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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.

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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.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding for )  
recovery of incremental storm restoration costs )  
related to Hurricanes Irma and Nate, by Duke ) DOCKET NO. 20170272-EI  
Energy Florida, LLC. )  
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**CORRECTED STORM COST SETTLEMENT AGREEMENT**

THIS AGREEMENT is by and between Duke Energy Florida, LLC (“DEF” or the “Company”), the Office of Public Counsel (“OPC” or “Citizens”), the Florida Industrial Power Users Group (“FIPUG”), the Florida Retail Federation (“FRF”), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (“White Springs”). Collectively, DEF, OPC, FIPUG, FRF, and White Springs shall be referred to herein as the “Parties” and the term “Party” shall be the singular form of the term “Parties.” OPC, FIPUG, FRF, and White Springs will be referred to herein as the “Consumer Parties.” This document shall be referred to as the “Storm Cost Settlement Agreement.”

**Procedural Background**

This Storm Cost Settlement Agreement resolves all issues in this Docket No. 20170272-EI and establishes for Florida Public Service Commission (“FPSC”) approval the amount of storm costs to be netted against the Company’s 2018 annual federal income tax savings as contemplated in the Amended Implementation Stipulation approved in this Docket by Order No. PSC-2018-0103-PCO-EI, issued February 26, 2018.

The FPSC approved the 2017 Second Revised and Restated Stipulation and Settlement Agreement (“2017 Agreement”) by Order No. PSC-2017-0451-AS-EU, issued on November 20, 2017, in Docket Nos. 20170183-EI, 20100437-EI, 20150171-EI, 20170001-EI, 20170002-EG, and

20170009-EI. The Parties entered into an Amended Implementation Stipulation memorializing their understanding and agreement regarding the manner in which DEF would implement specific provisions of the 2017 Agreement related to the timing of rate treatment of certain events contemplated in the 2017 Agreement that subsequently became manifest (i.e., storm restoration costs and federal income tax reform). The Amended Implementation Stipulation states, in part:

2. Paragraph 38(c) of the [2017] Agreement grants Duke Energy Florida, LLC (“DEF”) the right to recover, on an interim basis, storm damage costs sixty days after filing a petition with the Commission. Pursuant to this paragraph, on December 28, 2017, DEF filed for the recovery of \$513 million estimated for storm damage costs associated with Hurricanes Irma and Nate and replenishment of DEF’s retail storm damage reserve to the level specified in the Agreement. To reduce rate impacts to customers, DEF proposed to recover this amount over three years, resulting in approximately \$171 million of costs to be recovered from customers annually starting in March 2018. The Commission has opened Docket No. 20170272-EI to consider DEF’s request.

3. Paragraph 16 of the Agreement provides a mechanism for calculating and implementing the impact of tax reform on DEF’s rates, which will inure to the benefit of customers on the effective date of tax reform changes. On December 22, 2017, the President signed the Tax Cuts and Jobs Act (“Tax Act”) into law. Part of the Tax Act includes a reduction in the corporate tax rate from 35 percent to 21 percent. DEF, using the methodologies set forth in Paragraphs 16(b) and 16(c) of the [2017] Agreement, has preliminarily estimated the impact of the Tax Act to result in a reduction in revenue requirements of approximately \$135 million per year (after taking into account the \$50 million accelerated depreciation of Crystal River (“CR”) Units 4 and 5 as expressly provided in the Agreement). DEF and the other signatories to the [2017] Agreement agree that the \$135 million estimated annual Tax Act revenue requirement impact is based on preliminary data and is subject to final true-up. As specified in the [2017] Agreement, DEF is obligated to reduce customer base rates within 120 days of the December 22, 2017 enactment date, or by April 21, 2018, upon a thorough review of the effects of the Tax Act on base revenue requirements to account for the impacts of the Tax Act. Any final true-up associated with further refinement of the estimate and recognition of the pre-implementation will be reflected in the amount recognized consistent with paragraph 5 below.

4. The storm damage costs are allocated to customer rate classes in the same manner as base rates. Absent this [Amended] Implementation Stipulation, DEF would be authorized to increase rates by an average of \$171 million per year starting in March 2018, and would subsequently reduce base rates at a later date



in 2018 by an estimated \$135 million per year. The Signatory Parties seek to avoid this volatility in customer rates and agree that DEF should effectively utilize the annual Tax Act benefits to avoid implementing the charge to customers for storm damage costs that they would have otherwise been obligated to pay. To accomplish this goal, DEF shall, after Commission approval of the interim storm restoration recovery charge, withdraw the tariff sheets it filed with its December 28, 2017 filing. The parties request that the Commission consider this stipulation in conjunction with its approval of this interim charge. Because those tariff sheets also included the impact of the Asset Securitization Charge True-Up (Docket 2015071-EI), DEF shall simultaneously submit revised tariff sheets to reflect only the changes associated with the Asset Securitization Charge True-Up.

5. Based on the current storm restoration cost estimates, which are subject to change pending a final Commission order in Docket No. 20170272-EI and the yet-to-be filed docket regarding the Tax Act, DEF projects that the full estimated storm costs shall be recovered by approximately mid-2021. The signatories agree that DEF shall be entitled to record a monthly storm reserve accrual equal to one-twelfth of the annual Commission-approved revenue requirement impact of the Tax Act and credit the retail storm reserve from January 2018 through full recovery of the final Commission-approved actual storm recovery amount, and that a specific condition of the net bill impacts of this stipulation is that the Commission will issue an order explicitly authorizing such action. The signatories agree that once the final Commission-approved actual storm recovery amount has been recovered, DEF shall reduce base rates in the manner prescribed in the Agreement and commensurate with the Commission-approved Tax Act savings beginning in the month following the final month of storm recovery (including reserve replenishment). DEF agrees to file tariff sheets at least 60 days before this date to reflect the reduced rates.

By a stipulation filed on November 2, 2018 in Docket No 20180047-EI, DEF and OPC stipulated that the annual impact of the Tax Cuts and Jobs Act of 2017 ("Tax Act") on the Company's revenue requirement was \$150.9 million, subject to true-up based on DEF's actual 2017 tax return. The Commission approved this stipulation by its Order No. PSC-2019-0053-FOF-EI, issued February 1, 2019. The Company filed updated exhibits on December 27, 2018, in Docket No. 20180047-EI reflecting the impact of annual Tax Act savings (based on the Company's 2017 federal income tax return) on the Company's revenue requirements of \$154.7 million, and the Parties acknowledge that \$154.7 million is the current estimated annual amount of Tax Act

savings to be applied toward storm cost recovery. The only remaining outstanding issue in Docket No. 20180047-EI that could even remotely impact the amount of Tax Act savings to be applied toward storm cost recovery is the classification of excess accumulated deferred income taxes related to cost of removal.

**Current Docket Background**

The current proceeding began on December 28, 2017, when DEF filed its Petition by Duke Energy Florida, LLC for Limited Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricanes Irma and Nate (“Initial Petition”) seeking to recover storm costs and to replenish its storm reserve. The requested recovery of \$513.2 million represents net retail recoverable costs of approximately \$371 million, plus an additional \$132 million to replenish its storm reserve to the balance that existed in February 2012. In addition, the \$513.2 million includes \$10.2 million for interest, bond issuance costs, and a regulatory assessment fee true-up. To alleviate the rate impact to customers, DEF proposed recovery over three years, or approximately \$171 million per year. Then, on January 24, 2018, DEF filed a Motion to Approve an Implementation Stipulation, to avoid an immediate rate impact to customers and utilize the tax savings to offset the otherwise allowable storm cost recovery charge. In that filing, based on the then-current estimates, DEF estimated that it would realize tax savings of \$135 million a year that could be used to offset the storm costs; DEF estimated that the storm costs would be fully recovered by mid-2021.

On May 31, 2018, DEF filed a Petition for Approval of Actual Storm Restoration Costs (“Amended Petition”), along with accompanying testimony and exhibits, and requested recovery of actual recoverable storm costs in the amount of \$510 million (of which \$132 million was to replenish the storm reserve). DEF presented testimony explaining how its claimed recoverable

storm damage restoration costs (referred to herein as “storm costs”) were calculated in accordance with the Incremental Cost and Capitalization Approach (ICCA) methodology prescribed in Rule 25-6.0143, F.A.C. On January 28, 2019, the Company filed supplemental exhibits further reducing the amount of storm costs for which the Company was seeking recovery from a total of \$510 million to \$508 million to reflect adjustments received after the Company’s May 31, 2018, filing of actual costs. The Consumer Parties, led primarily by OPC, have conducted extensive discovery on and about the request for cost recovery in the Company’s Amended Petition.

During the course of discovery, OPC identified and shared with the Company items and categories of items that OPC asserted should not have been included in the Company’s request for cost recovery and/or for which prudence and recoverability were questionable. Examples include: (a) costs for which the underlying documentation was inadequate; (b) costs billed to the Company that should have been billed to another utility; (c) meals incurred during times or at places when it appeared vendor crews should have been working to restore service instead of dining; (d) costs associated with vendors that could be construed to be incurred through apparently excessive mobilization and travel time; and (e) costs that appeared to constitute duplicate billing for the same services provided.

Through these efforts, the Parties have gained considerable knowledge about utility storm restoration practices and have become well informed about their respective positions, the kinds of issues that presented themselves in the storm restoration process, and the risks associated with pursuing a fully litigated resolution in this docket. The Parties have also engaged in extensive and constructive discussions focused on (a) reaching agreement on a mutually agreeable and fair compromise regarding the amount of recoverable storm costs; and (b) equally, and perhaps more

importantly, developing an extensive set of improved procedures for use during future storms that will provide substantial value to the Company and its customers.

With this background, the Parties have entered into this Storm Cost Settlement Agreement in compromise of positions taken or that could have been taken in accord with their rights and interests under chapters 350, 366 and 120, Florida Statutes, as applicable, and as part of a negotiated exchange of consideration among the Parties, in which each Party has agreed to concessions to the others with the expectation, intent, and understanding that all provisions of this Storm Cost Settlement Agreement, upon approval by the Commission, will be enforced by the Commission as to all matters addressed herein with respect to all Parties. By entering into this Storm Cost Settlement Agreement, DEF does not admit any liability, wrongdoing, or imprudence with respect to its filing.

NOW, THEREFORE, in light of the mutual covenants of the Parties and the benefits accruing to all Parties through this Storm Cost Settlement Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The foregoing “Procedural Background” and “Current Docket Background” sections of this Storm Cost Settlement Agreement are fully incorporated in and made a part of this Storm Cost Settlement Agreement. This Storm Cost Settlement Agreement will become effective when it is approved by the Commission, a final order has been issued, and the final order becomes unappealable (“Implementation Date”).

**Storm Cost Recovery Amount**

2. Specific adjustments:

A. DEF will capitalize contractor labor, pursuant to Rule 25-6.0143, F.A.C., in the amount of \$18 million, effective as of the Implementation Date, and DEF's storm damage costs previously charged to DEF's storm reserve will simultaneously be reduced by the same amount.

B. The Parties have disputed the amounts claimed by DEF as recoverable storm costs as being either incremental to base rates, and therefore recoverable through the storm cost recovery mechanism, or properly recoverable through base rates, and therefore not recoverable through the storm cost recovery mechanism. To resolve their dispute on this subject, the Parties have mutually agreed in compromise that amounts recoverable in base rates and not incremental to base rates are \$995,000. Without conceding that either side is correct, an aggregate negotiated adjustment in this amount (\$995,000) shall be made to reduce the amount recoverable through the storm cost recovery mechanism. This adjustment satisfies issues raised relating to employee payroll and embedded or native contractor labor that may be considered recoverable in base rates.

3. Aggregate adjustments:

The Parties have further agreed in compromise that aggregate adjustments totaling \$5.005 million to DEF's recoverable storm costs shall be made to recognize that certain errors in billing (including, for example, errors relating to hours and charges), invoicing, contractor oversight, or other restoration process matters may have occurred to varying degrees of materiality. Without conceding that such errors occurred in a material degree, DEF acknowledges that such errors may have led to customers paying for costs that they otherwise should not have paid for. The Parties agree that DEF will make a non-specific adjustment of \$5.005 million to reduce the amount

recoverable through the storm cost recovery mechanism (and any other rate, charge, or mechanism). No dollar amount is assigned to a specific allegation of error by this adjustment. The Parties agree that a copy of the deposition of DEF witnesses (including any subsequently filed errata) and exhibits dated March 14th and 15th, 2019 will be filed under appropriate requests for confidential protection or classification, or both, and incorporated by reference into this Storm Cost Settlement Agreement, so that it will be maintained by the Commission's official records as would any such order and incorporated settlement agreement.

4. Based on the annual tax act benefits amount established in Docket No. 20180047-EI, and pursuant to the 2017 Agreement and the Amended Implementation Stipulation, the time period for recovery of the storm costs subject to DEF's Amended Petition in this docket, as modified by DEF's updated exhibits filed on January 28, 2019, and by this Storm Cost Settlement Agreement, will be adjusted to reflect the resulting earlier recovery under the methodology contained in the Amended Implementation Stipulation.

**Future Process Improvements**

5. In recognition of the evidence gathered, examples listed herein, and the adjustments described in paragraph 3 above, the Parties have further agreed to a set of principles and mutually agreeable process changes intended to allow cost effective and timely storm damage recovery and service restoration that reasonably balances the customers' right to have service promptly restored with the customers' equal right not to pay excessive or improper costs to achieve that restoration.

6. The process changes generally described in the previous paragraph are more fully specified below. Beginning on the Implementation Date, the Company will make a good faith effort to implement as many of the new processes and procedures reflected below for the 2019 hurricane season as possible and will fully implement the processes and procedures for the 2020

hurricane season. The policies and procedures reflected below will remain in effect until amended by agreement of the Parties to this Storm Cost Settlement Agreement or superseded by action of the FPSC applicable to DEF. The Parties will meet to evaluate the procedures and consider the need to amend them during the first quarter of 2022 and every three years thereafter.

**STORM RESTORATION COST PROCESS IMPROVEMENTS**

[Where Items I.A-I contain policies (and expectations) that are to be communicated to vendors through inclusion in the engagement documentation (*i.e.* the documentation which is to be transmitted to a vendor immediately after it has agreed to perform storm restoration work for the Company), an asterisk (\*) is placed in front of each applicable term. Additional specific guidance or reinforcement may be contained in individual policy statements.]

**I. Contracting and Vendor Engagement, Travel and Work Policies**

- A. Contracting Policy. The Company will (for damage assessment, line clearing and repair work) make a good-faith effort to contract and establish major terms and conditions with independent vendors who have non-embedded crews. Where applicable, the terms and conditions should reflect the procedures, policies and expectations outlined under I. A through I. An embedded crew provides storm restoration services and also performs similar or additional types of services for the Company in non-storm-restoration (non-emergency) conditions on a year-round basis. A non-embedded crew does not provide similar or additional types of services for the Company in non-storm-restoration (non-emergency) conditions on a year-round basis.
- B. \*Billing Start Point Policy. The Company will establish a policy that vendor billing should begin at the point crews mobilize after acquisition. The term “mobilize” does not include the time or activity associated with crew members traveling to the point of travel departure, but may include reasonable and prudent time and activity associated with stocking supplies and making vehicles ready to travel. Any exceptions to this requirement will be documented.
- C. \*Travel Time Billing Policy. The Company will establish a policy and use its best efforts to ensure that contracts with vendors include terms and conditions designed to limit compensation for travel time to the actual time traveled, with no minimum hours, and to require documentation of any exceptions to the policy and the reason therefor. For safety, timing, and logistics purposes, Company will request an electronic version of the proposed route that will be taken.

- D. *\*Pace of Travel Guidance Policy.* The Company will establish a policy for invoice review and storm filing documentation purposes that it expects distribution vendor crews that bill for 12 or more hours of travel in a day to travel 500 miles per day and it will require explanations sufficient to explain the degree of divergence from the expected travel distance.
- E. *\*GPS Tracking Capability Policy.* The Company will establish a policy that GPS tracking of vendor crews using ARCOS or a similar application will be required of vendors where reasonably practicable and GPS tracking will be utilized to the maximum extent possible. The mandatory nature of this requirement will be communicated in the engagement documentation. Any exceptions to this requirement will be documented.
- F. *\*Anti-Poaching Policy.* The Company declares that, on an informed basis, it does not, and will not, “poach” vendors or vendor crews who are committed to another utility or are part of another utility’s mutual aid allocation without the consent of the other utility. The Company will use its best efforts to communicate with Florida utilities regarding the engagement and the release of vendors. The standardized engagement documentation will communicate that the Company expects that vendors will communicate honestly with other utilities about any prior engagement to provide assistance to decrease the opportunity for “poaching.”
- G. *\*Daily Time Sheet Review and Documentation Policy.* The Company will require, review, verify, and approve the daily time sheets for all applicable vendor crews (*i.e.*, other than those of an investor-owned utility (“IOU”) allocated through a mutual assistance organization) and will maintain documentation of the Company’s approval and any exceptions noted by the Company. Electronic interfacing for time sheet review and approval will be utilized by vendors where reasonably practicable, and a spreadsheet template will be made available to all contractors to facilitate consistent application to the maximum extent possible.
- H. *\*16 Hour Work/8 Hour Rest Policy.* The Company will establish a policy (and use its best efforts to ensure that contracts with vendors include necessary terms and conditions) to limit work time to 16 hours on, with 8 hours of rest, with no minimum hours, including the avoidance of double-time billing through efficient management of prior day’s work time and/or current day’s end of rest time/start time. The Company will document any exceptions if it is unable to include such provisions in its contract (in accordance with I. A.), and the reasons therefor. The Company will also document exceptions to the policy, if any, in the implementation of the policy, and the reasons



therefor. The expectations in this policy will be communicated in the engagement documentation provided to all vendors.

- I. *\*Meal and Fuel Policy.* The Company will establish a policy for all vendors that all meals and fueling after vendor crews are on-boarded will occur at or be provided by the base camp; exceptions to this policy should be rare and all exceptions must be documented. Any authorized exception where meals are eaten off-site will not be reimbursed if they exceed a reasonable and customary amount. This Company policy will also include an expectation that no vendor crews will eat sit down meals outside the base camp or will purchase fuel off-site during working hours. The Company will establish a policy that vendor crews receiving meal stipends are expected to eat or receive all meals at or by the base camp once on-boarded. Time related to any unauthorized meals will not be paid. A sit-down meal is defined as a meal served in a restaurant where the crew park and leave their vehicles, enter the restaurant and sit down for a meal served by a server, and the meal is eaten inside the restaurant. The policies in I.I will be communicated to all vendors through the standard engagement documentation and, where possible, spelled out in the terms and conditions
- J. *Mutual Assistance Group Advocacy Commitments.* The Company will use reasonable best efforts to recommend to Southeastern Electric Exchange (“SEE”) and/or Edison Electric Institute (“EEI”) and advocate for/achieve changes to mutual aid IOU and vendor policies that are inconsistent with the receiving utility’s company policies. In discussions with SEE and/or EEI, the Company will encourage SEE to establish policies to eliminate billing for management double-time and mandatory meal stipends, and to establish standardized meal policies (reasonable *per diem*, if any). The Company will update the consumer parties annually in writing as to the status of this item.

**II. Cost Documentation, Auditing and Regulatory Recovery Process**

- A. *Storm Cost Documentation.* The Company will provide, for each named tropical storm, supporting documentation which includes binders (files) segregated by vendor with summaries and invoices, time sheets, etc., as follows:
  - Summary identifying vendor, any reference number associated with discreet vendor crews, billing and point of origin location, distance to travel, assumed travel days, dates secured, date started travel, date arrived, date released, time released, released to whom and, if vendor travels home, the date arrived at home.

- Contractor review showing the results of the Company's internal review that contains the detail listed on a Storm Audit Narrative, including all exceptions documented pursuant to I.A. through I.
- Summary of expenses in a format that shows total billing (all invoices are listed separately).
- Filings will be very similar in organization, showing cost by storm and by cost category, including but not limited to Regular Payroll, Overtime Payroll, Payroll Overheads, Contractors Cost for line restoration, Line Clearing Contractor costs, Logistics, Materials & Supplies, Other.

The Company will provide the information outlined above in a format that comports with the Company's record keeping and accounting practices on the timeline discussed below. Testimony will be filed after any required independent audit is concluded.

B. *Initial Audit Required.* The Company will engage an independent outside audit firm to conduct an audit of the Company's presentation of recoverable costs of the first named-storm for which claimed damages exceed at least 50% of its full authorized storm reserve amount or \$40 million, whichever is greater. The purpose, scope and activities of this audit will include, at a minimum, the following:

(1) Audit Purpose and Scope

- (a) The purpose of the audit is to validate that any and all storm costs paid were allowable, legitimate, accurate, incurred within the appropriate time period, adequately and completely supported, and properly approved, ensuring that only actual and approved storm costs are recovered in customer rates.
- (b) The scope of the audit should be sufficient to enable the auditor to evaluate the adequacy and effectiveness of the Company's internal controls (or processes) governing the vendor procurement process, including (1) complete rate agreement, (2) invoice/billing payment review process, and (3) the approval/denial/resolution process, including but not limited to, the Company's payment approval logic for reasonableness, allowability and compliance with contract terms.

(2) Audit Activities should include:

- (a) Interviews with key personnel
- (b) Review of operating policies and procedures

- (c) Review of relevant documents, such as executed contracts, labor and equipment rates, established work day hours, over time and double time criteria, and vendor employee rosters
  - (d) Comparisons between vendor employee rosters and approved timesheets, and expense receipts (hotel, fuel or meal)
  - (e) Inspection and comparison of paid invoices to submitted expense receipts, submitted timesheets
  - (f) Recalculation and reconciliation of paid invoices
  - (g) Reconciliation of paid invoices with overall vendor invoice summaries or utility expense recap documents
- C. Provision of Supporting Documentation. All supporting documentation referenced under **II.A** will be provided to Interveners in response to an agreed, standardized discovery request shortly after the filing of testimony.
- D. Cost recovery for initial process implementation. For the first qualifying storm described under **II.B**, the Consumer Parties will not object to and will support the Company recovering the start-up costs for the new procedures required under these processes (e.g. audit costs, base rate payroll for employees needed to implement the process).
- E. Incremental cost methodology. The Company will provide in its testimony full details as to how incremental and non-incremental costs were determined in accordance with the Incremental Cost Methodology Addendum below and Rule 25-6.0143, F.A.C. The Consumer Parties agree that the methodology explained below is a reasonable approach to identifying incremental storm costs as that concept is used in the rule.

**Incremental Cost Methodology Addendum**

- **Base Payroll:**
  - Affiliate employees: Charge time to the storm reserve charge codes. Then remove the difference between the actual and the 3-year historical average Affiliate base payroll dollars charged to IOU total Operation and Maintenance expense (“O&M”) for the month(s) of the activities directly related to the storm in the absence of a storm. This is the non-incremental portion.
  - IOU employees in Transmission and Distribution (“T & D”): Charge all time to the storm reserve charge codes. For each T & D function, remove the difference between the actual and the 3-year historical average functional O&M base payroll dollars for the month(s) of the activities directly related to the storm in the absence of a storm. This is the non-incremental portion.
  - IOU employees not in T & D and not clause recoverable: Charge all base payroll time to normal charge codes as non-incremental.
  - IOU employees who are clause recoverable: Charge all base payroll time to the storm reserve charge codes. This amount is incremental and recoverable.
  - The costs attributed to the new processes agreed to by the parties will be treated the same as the “IOU employees who are clause recoverable” bullet above for the first storm these processes are in place, and thereafter will be treated the same as the “IOU employees not in T&D and not clause recoverable” bullet above.
- **Overtime (OT):**
  - All IOU and Affiliate employees on storm duty charge OT to storm reserve charge codes.
  - Remove the difference between the actual and the 3-year historical average total IOU OT (including Affiliate OT charged to the IOU) for the month(s) of the activities directly related to the storm in the absence of a storm. This is the non-incremental portion.
- **Burdens:**
  - Labor burdens follow base and OT payroll charge codes. Follow the same procedures as base and OT payroll above.

- Exempt Supplemental Compensation (ESC):
  - All ESC associated with storm duty for employees who are eligible for overtime is charged to the storm reserve charge codes and is incremental recoverable.
  
- T & D Non-Vegetation Management Contractor Costs:
  - Non-native contractors: Charge all invoices to storm reserve charge codes as incremental recoverable.
  - Native contractors: Charge all time to storm reserve charge codes. For each T & D function, remove the difference between the actual and the 3-year historical average native contractor O&M costs for the month(s) of the activities directly related to the storm plus the month(s) following the storm in the absence of a storm. This is the non-incremental portion.
  
- T & D Vegetation Management Costs:
  - Charge all native and non-native vegetation contractor costs to the storm reserve charge codes.
  - For each T & D function, remove the difference between the actual and the 3-year historical average of vegetation management costs for the month(s) of the activities directly related to the storm plus the month(s) following the storm in the absence of a storm. This is the non-incremental portion.
  
- Capitalized Costs:
  - Use a combined simple average of hourly foreign and native contractor costs to determine amounts to capitalize to plant, property and equipment along with the materials and other cost of equipment.
  - IOUs will be authorized to defer the depreciation expense impact on 40% of the total capitalized amount as a regulatory asset until the next rate case or settlement, and then will amortize and recover said regulatory asset over a 4-year period.

**Notes:**

The term "IOU" (investor owned utility) is the same as Company and is used here to distinguish the operating regulated company from any affiliate.

To the extent that the three-year period referenced above in this Addendum includes a rate case or settlement test period, the approved rate case or settlement test period data for that year will be used in lieu of the actuals for that year that would otherwise be used in setting the 3-year average, and the other two years will be based on the actual results for those years.

The Company will include workpapers and journal entries that support the above calculations as part of its data request responses.

**Other Provisions**

7. The provisions of this Storm Cost Settlement Agreement are contingent upon approval of this Storm Cost Settlement Agreement in its entirety without modification. The Parties agree that approval of this Storm Cost Settlement Agreement is in the public interest. The Parties will support approval of this Storm Cost Settlement Agreement and will not request or support any order, relief, outcome or result in conflict with it. No Party to this Storm Cost Settlement Agreement will request, support or seek to impose a change to any provision of this Storm Cost Settlement Agreement without the agreement of the other Parties. Approval of this Storm Cost Settlement Agreement in its entirety will resolve all matters and issues in this docket. This docket will be closed effective on the date the Commission Order approving this Storm Cost Settlement Agreement is final, and no Party shall seek appellate review of any order issued in this docket.

8. The Parties agree that the non-confidential discovery answers and responses provided to the Parties in this docket will be admitted without cross-examination or objection into the evidentiary record in this docket to support this Storm Cost Settlement Agreement.

9. If any conflict between the terms of this Storm Cost Settlement Agreement, the 2017 Agreement, and the Amended Implementation Stipulation shall arise, the terms of the 2017 Agreement and the Amended Implementation Stipulation shall control over the provisions of this Storm Cost Settlement Agreement.

10. This Storm Cost Settlement Agreement may be executed in counterpart originals, and a scanned pdf copy of an original signature will be deemed an original. Any principal or entity that executes, or causes to be executed, a signature page to this Storm Cost Settlement Agreement will be deemed and become a Party with the full range of rights, obligations, and responsibilities

provide hereunder, notwithstanding that such principal or entity is not listed in the first recital above or executes the signature page subsequent to the date of this Storm Cost Settlement Agreement. It is expressly understood that the addition of any such additional Party or Parties will not disturb or diminish the benefits of this Storm Cost Settlement Agreement to any current Party.

DATED this 18<sup>th</sup> day of April, 2019.

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this Storm Cost Recovery Agreement by their signature(s):

[Remainder of Page Intentionally Left Blank]

Signature Page to DEF Storm Cost Settlement Agreement

Duke Energy Florida, LLC  
299 1<sup>st</sup> Ave. N  
St. Petersburg, FL 33701

By:   
Catherine Stempien  
Duke Energy Florida, State President



Signature Page to DEF Storm Cost Settlement Agreement

Office of Public Counsel  
J. R. Kelly, Esquire  
Public Counsel  
Charles Rehwinkel, Esquire  
Deputy Public Counsel  
Thomas A. David  
Associate Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

By:   
J.R. Kelly

Signature Page to DEF Storm Cost Settlement Agreement

White Springs Agricultural Chemicals, Inc.  
James W. Brew, Esquire  
Stone Mattheis Xenopoulos & Brew  
1025 Thomas Jefferson Street, N.W.  
Eighth Floor, West Tower  
Washington, DC 20007

By:   
James W. Brew, Esquire

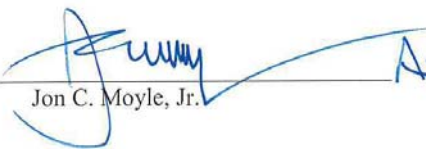
Signature Page to DEF Storm Cost Settlement Agreement

Florida Retail Federation  
Robert Scheffel Wright  
Gardner, Bist, Bowden, Bush, Dec, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, FL 32308

By:   
Robert Scheffel Wright

Signature Page to DEF Storm Cost Settlement Agreement

The Florida Industrial Power Users Group  
Jon C. Moyle, Jr., Esquire  
Moyle Law Firm  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

By:  April 9, 2019  
Jon C. Moyle, Jr.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In re: Application for limited proceeding for  
recovery of incremental storm restoration  
costs related to Hurricanes Irma and Nate by  
Duke Energy Florida, LLC

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Docket No. 20170272-EI

Dated: May 15, 2019

**AMENDMENT TO DUKE ENERGY FLORIDA, LLC'S  
STORM COST SETTLEMENT AGREEMENT**

THIS AMENDMENT is dated as of this 14<sup>th</sup> day of May, 2019 and amends Duke Energy Florida, LLC's Storm Cost Corrected Settlement Agreement ("Settlement Agreement") filed with the Florida Public Service Commission ("FPSC" or "Commission") on April 18, 2019.<sup>1</sup> This Amendment complies with paragraph 7 of the Settlement Agreement, because it is executed by each of the parties to the Settlement Agreement, namely: Duke Energy Florida, LLC ("DEF" or the "Company"), the Office of Public Counsel ("OPC" or "Citizens"), the Florida Industrial Power Users Group ("FIPUG"), PCS White Springs ("PCS"), the Southern Alliance for Clean Energy ("SACE"), and the Florida Retail Federation ("FRF"). This document shall be referred to as the "Settlement Agreement Amendment" or the "Amendment."

**Terms**

1. The first unnumbered paragraph in the "Capitalized Costs" bullet on page 15 of the Settlement Agreement (in the Incremental Cost Methodology Addendum in Exhibit One) is amended with changes shown in legislative format [additions underlined ~~deletions struck through~~] to read as follows:

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<sup>1</sup> DEF's Original Storm Cost Settlement Agreement as filed on April 9, 2019 contained a scrivener's error that was corrected in the version filed on April 18, 2019.

Use a combined simple average of hourly internal company foreign and native contractor costs that are the type normally incurred in the absence of a storm to determine amounts to capitalize to plant, property and equipment along with the materials and other cost of equipment.

2. All other provisions of the Settlement Agreement shall remain in full force and effect as originally stated therein.

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this Amendment to the Duke Energy Florida, LLC's Storm Cost Recovery Agreement by their signature(s):

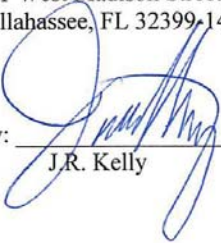
Duke Energy Florida, LLC  
299 1<sup>ST</sup> Avenue North  
St. Petersburg, FL 33701

By   
Catherine Stempien  
Duke Energy Florida, State President

Signature Page to Amendment to Duke Energy Florida, LLC's Storm Cost Settlement Agreement

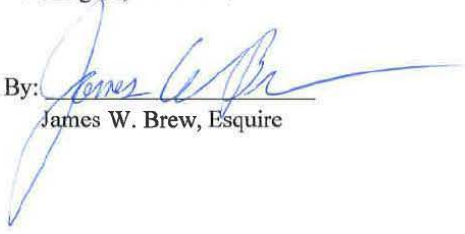
Office of Public Counsel  
J. R. Kelly, Esquire  
Public Counsel  
Charles Rehwinkel, Esquire  
Deputy Public Counsel  
Thomas A. David  
Associate Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

By:

  
\_\_\_\_\_  
J.R. Kelly

Signature Page to Amendment to Duke Energy Florida, LLC's Storm Cost Settlement Agreement

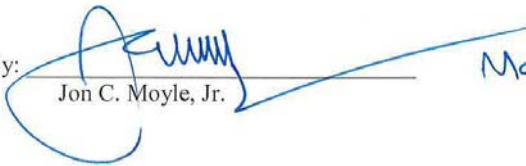
White Springs Agricultural Chemicals, Inc.  
James W. Brew, Esquire  
Stone Mattheis Xenopoulos & Brew  
1025 Thomas Jefferson Street, N.W.  
Eighth Floor, West Tower  
Washington, DC 20007

By:   
James W. Brew, Esquire



Signature Page to Amendment to Duke Energy Florida, LLC's Storm Cost Settlement Agreement

The Florida Industrial Power Users Group  
Jon C. Moyle, Jr., Esquire  
Moyle Law Firm  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

By:  \_\_\_\_\_ May 15, 2019  
Jon C. Moyle, Jr.

Signature Page to Amendment to Duke Energy Florida, LLC's Storm Cost Settlement Agreement

Florida Retail Federation  
Robert Scheffel Wright  
Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, FL 32308

By:   
Robert Scheffel Wright