

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

Filed: June 6, 2019

**JOINT MOTION OF THE OFFICE OF PUBLIC COUNSEL
AND FLORIDA POWER & LIGHT COMPANY
TO APPROVE STIPULATION AND SETTLEMENT AGREEMENT**

Pursuant to Rule 28-106.204(1), Florida Administrative Code (“F.A.C.”), the Office of Public Counsel (“OPC”) and Florida Power & Light Company (“FPL”), by and through their respective undersigned counsel, hereby file this Joint Motion to Approve Stipulation and Settlement Agreement (“Joint Motion”) and request that the Florida Public Service Commission (“Commission”) review and approve on an expedited basis the Stipulation and Settlement Agreement (“Agreement”) provided as Attachment A to this Joint Motion as a full and complete resolution of all matters related to the above-captioned matter in accordance with Section 120.57(4), Florida Statutes, and to enter a final order reflecting such approval to effectuate implementation of the Agreement. In support of this motion, OPC and FPL jointly state as follows:

1. On February 22, 2018, the Commission opened the above-captioned docket for the limited purpose of evaluating FPL’s storm restoration costs related to Hurricane Irma.
2. On August 31, 2018, FPL submitted its Petition and supporting testimony and exhibits of FPL witnesses Manuel B. Miranda, Eduardo DeVarona and Keith Ferguson to facilitate the Commission’s evaluation of the Hurricane Irma storm restoration costs.
3. OPC intervened and on January 11, 2019, submitted the direct testimony and exhibits of OPC witness Helmuth W. Schultz III.
4. On March 15, 2019, FPL submitted its rebuttal testimony and supporting exhibits of FPL witnesses Manuel B. Miranda, Thomas W. Gwaltney, Ronald R. Reagan, Kristin Manz and Keith Ferguson.

5. OPC and FPL have engaged in extensive discovery throughout this proceeding, with FPL responding to hundreds of interrogatories and producing approximately 100,000 pages of documents in response to requests for production of documents, and with OPC responding to approximately 100 interrogatories and 100 requests for production of documents. Additionally, OPC deposed five FPL witnesses. Through this process, OPC thoroughly reviewed and evaluated FPL's Hurricane Irma storm restoration costs, and FPL thoroughly reviewed and evaluated OPC's positions related to those costs.

6. As a direct result of these efforts, OPC and FPL engaged in negotiations for the purpose of reaching a comprehensive stipulation and settlement of all issues pending in the docket, and a number of additional issues beyond the scope of the docket, thereby avoiding the uncertainty associated with the outcome on the issues. These negotiations have culminated in the Agreement attached hereto as Attachment A.

7. OPC and FPL request that the direct testimony of FPL witnesses Manuel B. Miranda, Eduardo DeVarona and Keith Ferguson and OPC Witness Helmuth Schultz III, and the rebuttal testimony of FPL witnesses Manuel B. Miranda, Thomas W. Gwaltney, Ronald R. Reagan, Kristin Manz and Keith Ferguson be entered into the record, along with the stipulated Comprehensive Exhibit list and listed exhibits, with the agreement that only portions of Exhibit HWS-3 will be entered into the record. Where applicable, confidential classification shall be maintained as determined by the Commission, Commission rules or applicable provisions of Chapter 366, Florida Statutes. The Parties further stipulate that the entry of portions of Exhibit HWS-3 into the record does not constitute a waiver of any objections that FPL would lodge or maintain in the event a contested hearing were to be held in this proceeding, nor does it constitute precedent in any future proceeding for the wholesale entry of an entire deposition transcript absent a stipulation of all parties to a proceeding.

8. The Agreement sets forth in detail the financial and process issues to be resolved through this settlement. Importantly, while the financial issues addressed by the Agreement are premised upon issues raised during the litigation of this matter, the process issues, not part of the litigation, have been added to the Agreement in an effort to facilitate more efficient storm cost recovery proceedings in the future.

9. The Signatories to the Agreement request that, following the Commission's review of this Joint Motion and the Agreement, the Commission grant the Joint Motion and approve the Agreement in order to allow for orderly implementation thereof and to provide certainty to the parties and their respective constituents and customers with respect to the outcome of the proceedings.

10. The Commission has a "long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." *In Re: Florida Power & Light Company*, Docket No. 20050045-EI, Order No. PSC-2005-0902-S-EI (FPSC Sept. 14, 2005). The proper standard for the Commission's approval of a settlement agreement is whether it is in the public interest. *Sierra Club v. Brown*, 243 So.3d 903, 910-913 (Fla. 2018) (citing *Citizens of State v. FPSC*, 146 So.3d 1143, 1164 (Fla. 2014)).

11. The Florida Supreme Court has explained that the "determination of what is in the public interest rests exclusively with the Commission." *Citizens*, 146 So.3d at 1173. The Commission has broad discretion in deciding what is in the public interest and may consider a variety of factors in reaching its decision. See *In Re: The Woodlands of Lake Placid L.P.*, Docket No. 20030102-WS, Order No. PSC-2004-1162-FOF-WS, p. 7, (FPSC Nov. 22, 2004); *In Re: Petition for approval of plan to bring generating units into compliance with the Clean Air Act by Gulf Power Company*, Docket No. 19921155-EI, Order No. PSC-1993-1376-FOF-EI, p. 15 (FPSC Sept. 20, 2003). However, the Commission is not required to resolve the merits of

every issue independently. *Sierra Club*, 243 So.3d at 913 (citing *Citizens*, 146 So.3d at 1153). Rather, a “determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.” *In re: Petition for Rate Increase by Gulf Power Co.*, Docket No. 20160186-EI, Order No. PSC-2017-0178-S-EI, 2017 WL 2212158, at *6 (FPSC May 16, 2017).

12. Finally, the Florida Supreme Court has affirmed that the Commission has the authority and discretion to approve a non-unanimous settlement over the objections of intervenors if the Commission finds the settlement is in the public interest. *Citizens*, 146 So.3d at 1152-54; *see also S. Fla. Hosp. & Healthcare Ass’n v. Jaber*, 887 So.2d 1210, 1212–13 (Fla. 2004) (affirming the Commission’s approval of a non-unanimous settlement agreement despite the absence of a full evidentiary hearing).

13. In this case, after an extensive review and evaluation of FPL’s Hurricane Irma storm restoration costs and activities, OPC and FPL entered into the Agreement which addresses issues raised during the course of the proceedings, and process issues beyond the scope of these proceedings. The Agreement represents a reasonable and mutually agreeable compromise of competing positions and fully resolves all issues raised in this docket, and many matters beyond the scope of this docket.

14. Considered as a whole, the Agreement fairly and reasonably balances the interests of FPL’s customers and FPL. Approving the Agreement is consistent with the Commission’s long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to the Commission’s regulatory jurisdiction. Accordingly, OPC and FPL submit that the Agreement is in the public interest, and respectfully request that the Commission review and approve the Agreement in its entirety and without modification.

15. Pursuant to Rule 28-106.204(3), F.A.C., OPC and FPL have conferred with the Florida Industrial Power Users Group (“FIPUG”) and the Florida Retail Federation (“FRF”), which were granted intervention by Order Nos. PSC-2018-0299-PCO-EI and PSC-2018-0298-PCO-EI, respectively. As of the date of this Joint Motion, FRF has indicated that it does not anticipate joining the Agreement and FIPUG has yet to make a decision whether to join the Agreement. FRF has authorized the Joint Movants to state that FRF is unable to state a position on the Agreement at this time. The Joint Movants were unable to reach FIPUG in order to receive a position to communicate. Notwithstanding, OPC and FPL jointly submit that the Agreement is in the public interest and should be approved in its entirety for the reasons stated above.

WHEREFORE, for the reasons stated above, the OPC and FPL jointly and respectfully request that the Florida Public Service Commission expeditiously approve the Stipulation and Settlement Agreement provided as Attachment A to this Joint Motion.

Respectfully submitted this 6th day of June, 2019.

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CERTIFICATE OF SERVICE
Docket No. 20180049-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished
by electronic service on this 6th day of June, 2019 to the following:

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ATTACHMENT A

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

Filed: June 6, 2019

STIPULATION AND SETTLEMENT

WHEREAS, Florida Power & Light Company (“FPL” or the “Company”) and Citizens through the Office of Public Counsel (“OPC”) have signed this Stipulation and Settlement (the “Agreement”; unless the context clearly requires otherwise, the term “Party” or “Parties” means a signatory to this Agreement); and

WHEREAS, on August 30, 2017, Tropical Storm Irma intensified into a major hurricane. On September 4, 2017, as forecasts projected potential Florida impacts, Governor Rick Scott declared a state of emergency in all 67 Florida counties; and

WHEREAS, by September 5, 2017, Hurricane Irma intensified into a Category 5 hurricane with sustained winds reaching 180 mph; and

WHEREAS, on September 6, 2017, the National Hurricane Center’s Hurricane Irma five-day forecast cone encompassed the entire Florida peninsula, and FPL began actively mobilizing a restoration workforce of more than 11,000 employees and contractors, activated more than 20 staging sites, and started to pre-position crews in the areas of FPL’s service territory anticipated to be hardest hit by Hurricane Irma; and

WHEREAS, as Hurricane Irma approached Florida, forecasts increased in certainty that the state would be seriously impacted, with possible landfall in Miami-Dade County, the most heavily populated area served by FPL. As FPL and its customers proceeded with their final

storm preparations, Hurricane Irma made landfall as a Category 5 storm in northern Cuba on September 9; and

WHEREAS, 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; and

WHEREAS, Hurricane Irma impacted FPL's entire service area, requiring FPL to ensure that restoration crews that had been pre-positioned were out of harm's way to ensure the crews could safely begin the restoration process when the storm passed their area; and

WHEREAS, Hurricane Irma impacted all 35 counties and 27,000 square miles of FPL's service territory, and caused more than 4.4 million FPL customers to lose power. FPL's overall preparation for the hurricane resulted in the assembly and deployment of workers from 30 states and Canada, a number that grew to more than 28,000 at its peak and spread across 29 staging sites the Company established throughout its service territory; and

WHEREAS, FPL's preparation and ensuing coordinated response enabled the Company to restore service to 50% of 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. According to FPL, 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; and

WHEREAS, FPL incurred \$1.375 billion in storm restoration costs, but did not implement a storm surcharge or deplete the storm reserve, and instead expensed all costs after removing below the line costs, third party reimbursements, and capitalizable costs; and

WHEREAS, on February 22, 2018, the Staff of the Florida Public Service Commission (the “Commission”) requested the Commission to open a docket for the evaluation of storm restoration costs for FPL related to Hurricane Irma; and

WHEREAS, on August 31, 2018, FPL petitioned the Commission for evaluation of storm restoration costs related to Hurricane Irma, and filed the direct testimony and exhibits of FPL witnesses Manuel B. Miranda, Eduardo DeVarona and Keith Ferguson in support of the requested evaluation; and

WHEREAS, OPC intervened in this docket and, on January 11, 2019, filed the direct testimony and exhibits of OPC Witness Helmuth Schultz III in support of OPC’s position; and

WHEREAS, on March 15, 2019, FPL filed the rebuttal testimony and exhibits of FPL witnesses Manuel B. Miranda, Thomas W. Gwaltney, Ronald R. Reagan, Kristin Manz and Keith Ferguson; and

WHEREAS, the Parties engaged in significant discovery including the production of more than 100,000 pages of documents, hundreds of interrogatories, and depositions of five FPL witnesses; and

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this docket, and the Parties have also agreed to address certain process issues separate and distinct from the matters at issue in this proceeding; and

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the Parties to this

Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the Agreement as provided herein and upon approval by the Commission in the public interest;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

FINANCIAL TERMS

1. This Agreement will become effective on the date of the Final Order in Docket No. 20180049-EI (the “Implementation Date”).
2. FPL will reclassify \$25 million of the storm restoration costs as capital, which will be added to FPL’s retail Plant in Service balance for all surveillance and future rate setting purposes. OPC agrees not to dispute the reasonableness or prudence of this additional \$25 million of capital in any future rate proceeding.
3. FPL will treat an additional \$20 million of incremental storm restoration costs as non-incremental costs recognized as base Operations & Maintenance expense.
4. FPL will treat an additional \$5 million of Other Expense of the storm restoration costs as an adjustment to expenses and will reduce the overall Reserve Amount (as defined in Section 12 of the 2016 Settlement Agreement in Docket No. 20160021-EI) available for amortization by this amount.

PROCESS PROVISIONS

5. For purposes of the “Process Provisions” section of this Agreement, any reference to contractor(s), crews or vendors excludes the employees and personnel working on behalf of and billed through mutual aid utilities.

6. FPL Application Phase I: For the 2019 storm season, FPL will introduce a new smart phone application (“App”) for entry, recording, and approval of time and expenses for line crews and vegetation management crews. FPL’s contracts with vendors will require the use of this App where reasonably practicable. The data from the App can be exported to sortable and searchable Excel files to provide reports of specific information on crews, billing, exceptions, etc. These reports will be provided to the parties and Staff with or shortly after the filing of pre-filed direct testimony in future storm cost recovery dockets.
 - A. The App will not apply at this time to activities or personnel other than non-mutual aid line crews and vegetation management crews (e.g., patrollers, damage assessors, logistics vendors, both turn-key and a la carte providers for expenses incurred in connection with the establishment of staging sites and the provision of services at staging sites, etc.).

 - B. The App will allow FPL to review time and track miscellaneous expenses incurred by crews. All expenses entered in the App after a line contractor crew or vegetation management crew has been on-boarded require a reason, since the majority of services resulting in expenses after on-boarding (e.g., food, fuel, lodging) should be directly provided for by FPL while on system (i.e., between the point of on-boarding and release). During mobilization and demobilization, only those expenses excluded by the contract with the line contractor or

vegetation management contractor will require a reason for approval in the App, since line contractors and vegetation management contractors are entitled to reimbursement for certain expenses, such as lodging, during mobilization and demobilization.

- C. Where the App is utilized, this process will largely eliminate the paper time sheet support that was required to review and approve the thousands of invoice packets for line contractors received, reviewed, and processed following Hurricane Irma.
7. FPL Application Phase II: For the 2020 storm season, FPL plans to introduce additional functionalities for the App to further automate reporting and invoice and receipt uploading where reasonably practicable. Current plans for the proposed additional functions include flagging non-compliant charges and time as well as documenting exceptions relative to the items addressed by Phase II of the App using drop-down boxes.
 8. Crew Tracking App: FPL will use (where reasonably practicable) its Crew Tracking App (which runs on iOS or Android cellular phones) to geographically track storm crews during mobilization and demobilization. The Crew Tracking App will only be provided to the leader of each travel module (i.e., only one truck per travel module). The Crew Tracking App provides detailed visualization regarding travel teams' geographic position and attributes about the team. Where applicable, the Company will use the Crew Tracking App to continue and/or implement procedures to document exceptions to the items addressed in this Paragraph 8 of the Agreement. In instances where exceptions are not documented, the Company will not be precluded from generating such documentation through reference to or consultation with personnel involved in restoration management or efforts.

9. Billing Start Point: The Parties agree that for external contractors, billing begins when crews begin to travel after acquisition. In this regard, the Company will continue and/or implement procedures to document exceptions to the items addressed in this Paragraph 9 of the Agreement. In instances where exceptions are not documented, the Company will not be precluded from generating such documentation through reference to or consultation with personnel involved in restoration management or efforts.
10. Travel Time Billing: The Parties agree that for external contractors, vendors are only compensated for actual travel time which includes stops (e.g., for fuel, meals, weigh stations, repairs). The Company will continue and/or implement procedures to document exceptions to the items addressed in this Paragraph 10 of the Agreement. In instances where exceptions are not documented, the Company will not be precluded from generating such documentation through reference to or consultation with personnel involved in restoration management or efforts.
11. Pace of Travel: For external contractor storm documentation purposes, FPL will establish a 500 miles per 16-hour day threshold which includes stops (e.g., fuel, meals, weigh stations, repairs). The Company will continue and/or implement procedures to document exceptions to the items addressed in this Paragraph 11 of the Agreement. In instances where exceptions are not documented, the Company will not be precluded from generating such documentation through reference to or consultation with personnel involved in restoration management or efforts.
12. FPL will continue to manage external line crew contracts to avoid paying double time rates. The Company will continue and/or implement procedures to document exceptions to the items addressed in this Paragraph 12 of the Agreement. In instances where

exceptions are not documented, the Company will not be precluded from generating such documentation through reference to or consultation with personnel involved in restoration management or efforts.

13. The Company will continue to maintain a process for external vendors that meals and fueling, after vendor crews are on-boarded, are expected to be provided at or by the base camp with exceptions entered into the App as referenced in Paragraph 6 B above where practicable. The Company will continue and/or implement procedures to document exceptions to the items addressed in this Paragraph 13 of the Agreement. In instances where exceptions are not documented, the company will not be precluded from generating such documentation through reference to or consultation with personnel involved in restoration management or efforts.
14. No Poaching of Vendor Crews: FPL agrees that 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.
15. In the spirit of continuous improvement, the Company will continue to participate in the Southeastern Electric Exchange and Edison Electric Institute mutual assistance groups.
16. Storm Cost Documentation: The Company will provide, for each named tropical system named by the National Hurricane Center, supporting documentation which includes the following virtual (sortable spreadsheet) or physical files:
 - Summary of expenses in a format consistent with Company records showing total expenses incurred, that includes the following cost categories:
 - Regular Payroll and Related Overheads, Overtime Payroll and Related Overheads, Contractors, Vegetation Contractors, Logistics, Materials & Supplies, and Other.
 - Data exported from the App including vendor crews, time reported, and travel days.

- Data exported from REDi for travel contingents including date committed, billing and city of origin, date started travel, date arrived, date released, and home location city and date arrived.
 - Filings involving more than one storm will be similar in format and organization.
17. 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. Pre-filed direct testimony will be filed after any required independent audit is concluded. In the event it is not practicable or feasible to utilize the App, and/or in instances where the App does not capture the data and information described in this Agreement, FPL will provide Staff and parties with the data and information in the format that it has been captured or documented by FPL in the absence of the App, and the Company will continue and/or implement procedures to document exceptions as more fully described in Paragraphs 6 through 13 of this Agreement. In instances where exceptions are not documented, the Company will not be precluded from generating such documentation through reference to or consultation with personnel involved in restoration management or efforts.
18. Initial Independent Audit: FPL will engage an independent outside audit firm to conduct an audit of the Company's filed recoverable storm costs of the first named tropical system named by the National Hurricane Center for which claimed damages exceed \$250 million. The audit will be conducted utilizing generally accepted sampling techniques.
- a. Audit Purpose and Scope
 - i. The purpose of the audit is to validate that storm costs paid were accurate, incurred within the appropriate time period, adequately and completely supported, and properly approved.
 - ii. 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 (1) contractor time and expenses, (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 compliance with contract terms.

- b. The Parties agree that the completion of the audit should not delay cost recovery.
 - c. The Parties agree that Audit Activities should include:
 - i. Interviews with key personnel
 - ii. Review of operating policies and procedures
 - iii. 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
 - iv. Comparisons between vendor employee rosters and approved timesheets, and expense receipts (hotel, fuel or meal)
 - v. Inspection and comparison of paid invoices to submitted expense receipts and submitted timesheets
 - d. The Parties will not object to and will support the Company recovering audit costs through the storm surcharge or storm reserve.
19. The Parties agree that the terms and conditions of this Agreement are intended to reduce the amount of discovery in future storm cost recovery proceedings. The Parties will meet within three months following the issuance of a final order in FPL's next storm cost recovery proceeding to discuss limitations on written discovery in future storm cost recovery proceedings. Any agreed express limitations on written discovery for future FPL storm cost recovery proceedings will be provided to Staff as recommended for inclusion in the Order Establishing Procedure issued in future FPL storm cost recovery proceedings.
20. Incremental Cost Methodology of Capitalized Costs: FPL will use a combined simple average of hourly internal Company and embedded contractor rates 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.

OTHER PROVISIONS

21. Nothing in the Agreement will have precedential value.
22. The direct testimony of FPL witnesses Manuel B. Miranda, Eduardo DeVarona and Keith Ferguson and OPC Witness Helmuth Schultz III and the rebuttal testimony of FPL witnesses Manuel B. Miranda, Thomas W. Gwaltney, Ronald R. Reagan, Kristin Manz and Keith Ferguson shall be entered into the record along with the stipulated Comprehensive Exhibit List and listed exhibits, with the agreement that only portions of Exhibit HWS-3 will be entered into the record. Where applicable, confidential classification shall be maintained as determined by the Commission, Commission rules or applicable provisions of Chapter 366, Florida Statutes. The Parties further stipulate that the entry of portions of Exhibit HWS-3 into the record does not constitute a waiver of any objections that FPL would lodge or maintain in the event a contested hearing were to be held in this proceeding, nor does it constitute precedent in any future proceeding for the wholesale entry of an entire deposition transcript absent a stipulation of all parties to a proceeding.
23. The provisions of the Agreement are contingent upon approval by the Commission in its entirety without modification. No Party agrees, concedes or waives any position with respect to any of the issues identified in the Prehearing Order and this Agreement does not specifically address any such issue. The Parties will support approval of the Agreement and will not request or support any order, relief, outcome or result in conflict with it. No Party to the Agreement will request, support or seek to impose a change to

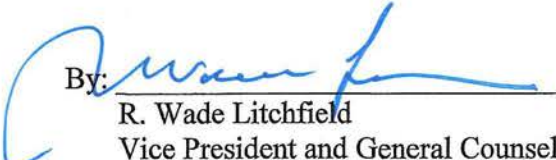
any provision of the Agreement. Approval of the Agreement in its entirety will resolve all matters and issues in this docket. This docket will be closed effective on the date that the Commission Order approving this Agreement is final, and no Party to the Agreement shall seek appellate review of any order issued in this docket.

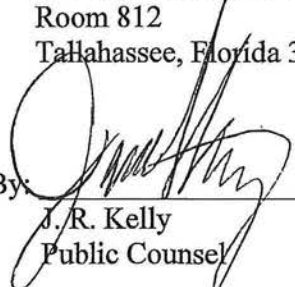
24. The Parties agree that approval of the Agreement is in the public interest.
25. The Parties agree and stipulate that no party shall advocate, assert or otherwise represent that the issue identified and proposed as 1A by certain parties in Docket No. 20180049-EI should have been addressed or was waived in Docket No. 20180049-EI.
26. This Agreement may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

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