

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Storm Protection Plan Cost  
Recovery Clause

Docket No. 20200092-EI

Dated: August 10, 2020

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**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

Pursuant to Rule 28-106.204(1), Florida Administrative Code (“F.A.C.”), Duke Energy Florida, LLC (“DEF” or the “Company”), the Office of Public Counsel (“OPC” or “Citizens”), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (“PCS Phosphate”), by and through their respective undersigned counsel, hereby file this Joint Motion and request that the Florida Public Service Commission (“Commission”) review and approve the Stipulation and Settlement Agreement (“Agreement”), provided as Attachment A to this Joint Motion, as a full and complete resolution of all matters pertaining to DEF in Docket No. 20200092-EI, in accordance with Section 120.57(4), Florida Statutes (“F.S.”), and enter a final order reflecting such approval to effectuate implementation of the Agreements. In support of this motion, the Parties state as follows:

1. On June 27, 2019, the Governor of Florida signed CS/CS/CS/SB 796 addressing Storm Protection Plan Cost Recovery, which was codified in Section 366.96, F.S. Therein, the Florida Legislature directed each utility to file a ten-year Storm Protection Plan (“SPP”) that explains the storm hardening programs and projects the utility will implement to achieve the legislative objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. *See* Section 366.96(3), F.S. The Florida Legislature also directed the Commission to conduct an annual proceeding to

determine the utility's prudently incurred SPP costs and to allow the utility to recover such costs through a charge separate and apart from its base rates, to be referenced as the Storm Protection Plan Cost Recovery Clause ("SPPCRC"). *See* Section 366.96(7), F.S.

2. Rule 25-6.030, F.A.C., requires each utility to file an updated SPP at least every three years that covers the utility's immediate ten-year planning period. Rule 25-6.031(2), F.A.C., provides that after a utility has filed its SPP it may petition the Commission for recovery of the costs associated with the SPP and implementation activities through the SPPCRC.
3. On July 17, 2020, the Prehearing Officer issued the Order Establishing Procedure ("OEP") in Docket No. 20200092-EI.
4. Pursuant to the schedule established in the OEP, on July 24, 2020, DEF filed its 2021 projection petition and supporting testimonies and exhibits of Thomas G. Foster (Exhibit No. TGF-1) and Jay Oliver ("SPPCRC Petition").
5. The SPPCRC Petition requests recovery of approximately \$10 million in revenue requirements through the SPPCRC during the period January – December 2021, which is the revenue requirements for its projected SPP related costs that are being passed through the SPPCRC in 2021 of approximately \$100.9M (capital) and \$4.6M (O&M).
6. As a direct result of the extensive discovery performed in DEF's SPP docket,<sup>1</sup> the Parties<sup>2</sup> initially entered into the 2020 SPP/SPPCRC Agreement on July 17, 2020 that resolved several SPP and SPPCRC issues. Subsequently, on July 31, 2020, the Parties<sup>3</sup> entered into a Stipulation and Settlement Agreement in the SPP Docket ("SPP Settlement") that, if approved by this Commission, will resolve all issues in the SPP Docket.

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<sup>1</sup> Docket No. 20200069-EI.

<sup>2</sup> With the exception of FIPUG, which did not respond with a position prior to the time of filing.

<sup>3</sup> Walmart, Inc., was also a party to the SPP Stipulation and Settlement Agreement.

7. The Agreement entered into today is intended to resolve all remaining DEF-specific issues raised in the SPPCRC docket (Docket No. 20200069 – EI). This Agreement is premised on approval of the SPP Settlement. The Parties hereby jointly request that the Commission review and approve this Agreement in its entirety and without modification.
8. 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.” *Re Florida Power & Light Co.*, 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)); *see also Gulf Coast Elec. Coop., Inc. v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999) (“[I]n the final analysis, the public interest is the ultimate measuring stick to guide the PSC in its decisions”).
9. The proposed Agreement represents a reasonable compromise of competing positions and is a full and complete resolution of all matters in Docket No. 20200092-EI. If approved by the Commission, the Agreement will establish a series of stipulations that will eliminate all issues to be litigated in this docket as pertaining to the Parties.
10. The terms of the proposed Agreements reflect the Parties’ assessments of their respective litigation positions, as well as their efforts to reach a reasonable and mutually acceptable compromise. The respective Parties entered into the proposed Agreements, each for their own reasons, but all in recognition that the cumulative total of the regulatory activity before the Commission—now and for the rest of 2020 and through 2021—is anticipated to be greater than normal. To maximize the administrative and regulatory efficiency benefits

inherent in the proposed Agreement for the Parties and the Commission, the Parties ask that the Commission consider this Agreement as soon as its schedule permits, but in any event prior to the need to conduct extensive discovery in this docket.

11. Considered as a whole, the Agreements fairly and reasonably balances the interests of customers and the utilities, and is consistent with the stated purpose and intent of Section 366.96, F.S. 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, the Agreement is in the public interest and should be approved.
12. DEF has consulted with counsel for FIPUG, which take no position on the relief sought by this motion, and Walmart Inc., which objects to the relief sought by this motion.

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

Respectfully submitted this 10th day of August, 2020,

By: /s/Matthew R. Bernier

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FOR DUKE ENERGY FLORIDA, LLC

By: /s/ Charles J. Rehwinkel

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FOR WHITE SPRINGS AGRICULTURAL CHEMICAL CO. dba PCS PHOSPHATE

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 10<sup>th</sup> day of August, 2020.

s/ Matthew R. Bernier

Attorney

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**ATTACHMENT A**  
**STIPULATION AND SETTLEMENT AGREEMENT**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Storm Protection Plan Cost  
Recovery Clause

Docket No. 20200092-EI

Dated: August 10, 2020

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**SPPCRC STIPULATION AND SETTLEMENT AGREEMENT**

WHEREAS, Duke Energy Florida, LLC (“DEF”), Citizens through the Office of Public Counsel (“OPC”), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (“PCS Phosphate”), and the Florida Industrial Power Users Group (“FIPUG”) (collectively, the “Parties”) have signed this SPPCRC Stipulation and Settlement Agreement (the “Agreement”); unless the context clearly requires otherwise, the term “Party” or “Parties” means a signatory to this Agreement;

WHEREAS, On June 27, 2019, the Governor of Florida signed CS/CS/CS/SB 796 addressing Storm Protection Plan Cost Recovery, which was codified in Section 366.96, F.S.;

WHEREAS, the Florida Legislature found in Section 366.96(1)(c), F.S., that it was in the State’s interest to “strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management,” and for each electric utility to “mitigate restoration costs and outage times to utility customers when developing transmission and distribution storm protection plans.” Section 366.96(1)(e), F.S.;

WHEREAS, the Florida Legislature directed each utility to file a ten-year Storm Protection Plan (“SPP”) that explains the storm hardening programs and projects the utility will implement to achieve the legislative objectives of reducing restoration costs and outage times associated with



extreme weather events and enhancing reliability. *See* Section 366.96(3), F.S.;

WHEREAS, The Florida Legislature directed the Florida Public Service Commission (“Commission”) to conduct an annual proceeding to determine the utility’s prudently incurred SPP costs and to allow the utility to recover such costs through a charge separate and apart from its base rates, to be referenced as the Storm Protection Plan Cost Recovery Clause (“SPPCRC”). *See* Section 366.96(7), F.S.;

WHEREAS, Section 366.96(8), F.S., and Rule 25-6.031(6)(b), F.A.C., provide that the SPP costs to be recovered through the SPPCRC may not include costs recovered through the utility’s base rates or any other cost recovery mechanism;

WHEREAS, Rule 25-6.030, F.A.C., requires each utility to file an updated SPP at least every three years that covers the utility’s immediate ten-year planning period and specifies the information to be included in each utility’s SPP;

WHEREAS, Rule 25-6.031, F.A.C., provides that after a utility has filed its SPP it may petition the Commission for recovery of the costs associated with the SPP and implementation activities and specifies the information to be included in each utility’s SPPCRC filings;

WHEREAS, on July 24, 2020, DEF filed its 2021 SPPCRC projection petition, supported by the testimonies and exhibits of Thomas G. Foster (Exhibit No. \_\_\_ (TGF-1) and Jay Oliver;

WHEREAS, the Parties engaged in significant discovery in the SPP docket, and have thoroughly reviewed and evaluated DEF’s 2020-2029 SPP 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 as in the public interest;

WHEREAS, the Parties have entered into a Stipulation and Settlement Agreement that, if approved, resolves all issues in the Docket No. 20200069-EI;

WHEREAS; the Parties have entered into this SPPCRC Stipulation and Settlement with the intent of resolving all issues in Docket No. 20200092-EI should the Commission approve the Stipulation and Settlement Agreement in the SPP Docket; and

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

**DEF 2021 PROJECTED SPPCRC FILING**

(Docket No. 20200092-EI)

1. The Parties agree that the Commission has a record basis to approve the reasonableness of costs presented in DEF's Petition and testimonies in Docket No. 20200092-EI for cost recovery in 2021.
2. The Parties agree that the Commission has a record basis presented in DEF's Petition and testimonies in Docket No. 20200092-EI to approve the reasonableness of the revenue requirements to be collected by DEF through the SPPCRC in 2021.
3. The Parties agree that DEF should implement the SPPCRC rate factors as shown on DEF exhibit TGF-1, page 14, for 2021, but that such rates shall not be deemed precedential for future SPPCRC purposes. The Parties further agree that the recovery of SPP costs through the SPPCRC may be affected by DEF's next base rate case if SPP-related expenditures (both capital and operating) shift from base rates to SPPCRC

recovery. The OPC takes no position with regard to this provision, and the other signatories agree that this issue should be addressed in the 2021 SPPCRC docket, consistent with any SPP related base rate changes, and with any changes to be implemented in the 2022 SPPCRC billings.

4. The Parties agree that DEF should be permitted to seek recovery of the development of its initial 2020-2029 SPP development costs through the SPPCRC, provided that DEF has the burden of proving the reasonableness and prudence of those costs, and all intervenor parties retain their right to challenge the reasonableness and prudence thereof, in the applicable SPPCRC proceeding. The Parties agree that to the extent this provision is construed to conflict with either the 2020 SPP/SPPCRC Settlement (filed July 17, 2020 in Docket Nos. 20200069-EI and 20200092-EI) or the 2020 SPP Settlement Agreement (filed July 31, 2020 in Docket No. 20200069-EI), this paragraph controls over the conflicting provision(s) in those Agreements.
5. OPC and PCS Phosphate retain the right to challenge the prudence of any project or costs submitted by DEF for recovery through the SPPCRC in 2021 at the appropriate time.
6. The Parties stipulate to enter into the record the testimonies and exhibits of Thomas G. Foster and Jay Oliver. If this Agreement is approved in its entirety, the Parties likewise waive cross-examination of any and all witnesses and waive the filing of post-hearing briefs.
7. Nothing in the Agreement will have precedential value.
8. The provisions of the Agreement are contingent upon approval by the Commission in its entirety without modification. Except as expressly set out herein, 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 expressly address any specific issue, or any position taken thereon. 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 will seek appellate review of any order issued in this docket.

9. The Parties agree that approval of the Agreement is in the public interest.
10. This Agreement may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original, or via electronic signature. 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.

Executed this 10th day of August, 2020.

By: /s/Matthew R. Bernier

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FOR DUKE ENERGY FLORIDA, LLC

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