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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20230020-EI

In re: Petition for limited proceeding for
recovery of incremental storm restoration
costs related to Hurricanes Elsa, Eta, Isaias,
Ian, Nicole, and Tropical Storm Fred, by
Duke Energy Florida, LLC.

_____/

DOCKET NO. 20230116-EI

In re: Petition for limited proceeding for
recovery of incremental storm restoration costs
related to Hurricane Idalia, by Duke Energy
Florida, LLC.

_____/

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: ART GRAHAM
PREHEARING OFFICER

DATE: Tuesday, May 7, 2024

TIME: Commenced: 11:04 a.m.
Concluded: 11:50 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter

PREMIER REPORTING
TALLAHASSEE, FLORIDA
(850) 894-0828

1 APPEARANCES:

2 MATTHEW R. BERNIER, ESQUIRE, 106 E. College
3 Avenue, Suite 800, Tallahassee, Florida 32301; appearing
4 on behalf of Duke Energy Florida, LLC (DEF).

5 WALT TRIERWEILER, PUBLIC COUNSEL; CHARLES
6 REHWINKEL, DEPUTY PUBLIC COUNSEL, OFFICE OF PUBLIC
7 COUNSEL, c/o The Florida Legislature, 111 West Madison
8 Street, Room 812, Tallahassee, Florida 32399-1400;
9 appearing on behalf of the Citizens of the State of
10 Florida (OPC).

11 STEPHANIE U. EATON, ESQUIRE, Spilman Law Firm,
12 110 Oakwood Drive, Suite 500, Winston-Salem, NC;
13 appearing on behalf of Walmart, Inc., (Walmart).

14 JAMES W. BREW, ESQUIRE, Stone Law Firm, 1025
15 Thomas Jefferson Street NW, Suite 800 West Washington,
16 DC 20007; appearing on behalf of Florida White Springs
17 Agricultural Chemicals, Inc., d/b/a PCS Phosphate -
18 White Springs (PCS).

19 SUZANNE BROWNLESS, ESQUIRE, FPSC General
20 Counsel's Office, 2540 Shumard Oak Boulevard,
21 Tallahassee, Florida 32399-0850; appearing on behalf of
22 the Florida Public Service Commission (Staff).

23 APPEARANCES CONTINUED:

24 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
25 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service

1 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
2 Florida 32399-0850, Advisor to the Florida Public
3 Service Commission.

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1 P R O C E E D I N G S

2 COMMISSIONER GRAHAM: Good morning, everyone.
3 Let's the record show it is Tuesday, March -- it is
4 not. Let the record show it is Tuesday, May 7th at
5 11:04, and we are going to call Docket 20230020-EI
6 to order.

7 If I can got you to read the notice, please.

8 MS. BROWNLESS: By notice issued on April
9 25th, 2024, this time and place has been set for a
10 Prehearing Conference in Docket No. 20230020-EI.
11 The purpose of the Prehearing is set forth more
12 fully in the notice.

13 COMMISSIONER GRAHAM: Okay. Staff, let's take
14 appearances.

15 MR. BERNIER: Good morning, Commissioner.
16 Matt Bernier for Duke Energy Florida.

17 MS. EATON: Stephanie Eaton for Walmart, Inc.

18 MR. BREW: James Brew for PCS Phosphate.

19 COMMISSIONER GRAHAM: Mr. Brew, I hadn't seen
20 you in a while.

21 MR. BREW: I keep coming back like a bad
22 penny.

23 MS. BROWNLESS: Suzanne Brownless for
24 Commission Staff.

25 MR. REHWINKEL: Charles Rehwinkel and Walt

1 Trierweiler, Public Counsel --

2 MS. BROWNLESS: Sorry.

3 MR. REHWINKEL: -- for the customers of Duke.
4 Good morning.

5 COMMISSIONER GRAHAM: Good morning.

6 MS. HELTON: And Mary Anne Helton is here as
7 your Advisor, along with your General Counsel,
8 Keith Hetrick.

9 COMMISSIONER GRAHAM: Okay. Preliminary
10 matters.

11 Staff, are there any preliminary matters?

12 MS. BROWNLESS: Stephanie, did you get to make
13 an appearance?

14 COMMISSIONER GRAHAM: Yes.

15 MS. EATON: I did.

16 MS. BROWNLESS: Yes. The costs at issue in
17 Docket 20230020-EI are for Hurricanes Elsa, Eta,
18 Isaias, Ian, Nicole and Tropical Storm Fred. These
19 costs were combined with the costs for Hurricane
20 Idalia by Order No. 2023-0375, issued in Docket
21 20230116-EI. All of the costs associated with all
22 of these storms are at issue in this proceeding.

23 For the purposes of administrative
24 convenience, staff would like to combine Docket No.
25 2023020-EI with Docket No. 20230116-EI pursuant to

1 the provisions of Rule 28-106.108, Florida
2 Administrative Code. Staff would also like to
3 designate Docket No. 20230020-EI as the primary
4 docket.

5 COMMISSIONER GRAHAM: Are there any
6 objections? No?

7 MS. EATON: No.

8 MR. BERNIER: Commissioner, could I -- I
9 understood that the idea of consolidating the
10 dockets was an administrative issue having to do
11 with filings the pleadings and everything.

12 MS. BROWNLESS: That's true.

13 MR. BERNIER: Ms. Brownless said something
14 that I'm not sure I completely agree with, which is
15 the costs for Hurricane Idalia are at issue in this
16 current proceeding. That is not -- I don't think
17 that that is accurate. The charge has been
18 combined for purposes of collecting it, but the
19 costs themselves are the subject of the, I think it
20 was 116 docket, and there will be a separate
21 proceeding later to determine those actual costs.
22 And I just wanted to make sure that I was
23 understanding here, that we weren't muddling it up
24 any even more.

25 MS. BROWNLESS: Here's my understanding. My

1 understanding is that combined costs for all Idalia
2 and the other hurricanes will be totally recovered
3 by December of 2024, is that correct?

4 MR. BERNIER: We hope so. Yes.

5 MS. BROWNLESS: Okay. And that there will be
6 another proceeding for those costs the first
7 quarter of next year, when you have the data as to
8 all the money received, all the money billed versus
9 all the money that have been determined to be
10 appropriate.

11 MR. BERNIER: I hadn't seen a schedule, but
12 yeah, agreed with the idea.

13 MS. BROWNLESS: And all we are doing here is
14 to make this stuff easier for the Clerk's Office,
15 so that we can put both dockets on all orders
16 associated with those charges.

17 MR. BERNIER: Understood. And with that
18 understanding, we have no objection.

19 I appreciate it.

20 COMMISSIONER GRAHAM: Everybody else is okay?

21 MS. EATON: Yes.

22 MR. BREW: Yes. It's my understanding that
23 given the combined recovery in the December interim
24 order, that this makes administrative sense.

25 MR. REHWINKEL: Commissioner, yes, I can

1 address the substance of this at the hearing, but
2 the Public Counsel's Office statements in this
3 docket I think are equally applicable to the Idalia
4 costs, but we will address that point at a
5 subsequent time.

6 COMMISSIONER GRAHAM: All right. So we
7 will -- with no objections, we will consolidate.

8 Are there any other preliminary matters to be
9 addressed?

10 Okay. Let's proceed through the draft
11 Prehearing Order.

12 MS. BROWNLESS: Thank you.

13 Section I?

14 MR. BERNIER: Actually, yes, in Section I, on
15 the second paragraph, it states -- it's the second
16 to last paragraph -- or sentence in that paragraph,
17 that the interim storm charge runs from April '23
18 through March of '24. That should be December of
19 '24 due to the consolidation that we just spoke of.

20 MS. BROWNLESS: Okay. Can you help me out
21 again, please?

22 MR. BERNIER: Yep. Second paragraph under
23 case background, it's the second to last sentence.
24 DEF's interim storm charge runs from April 2023
25 through and it says March 2024, that should be

1 December of 2024.

2 MS. BROWNLESS: I think the order that was
3 issued, that that's intended to be March of 2024
4 for the previous things, and that -- okay. I got
5 it. Sorry.

6 MR. BERNIER: No problem.

7 COMMISSIONER GRAHAM: Anything else in Section
8 I?

9 MS. BROWNLESS: Wait a minute. Wait a minute.
10 The September 29, 2023, petition just dealt with
11 the storms. The October 16th, 2023, petition
12 sought to consolidate. So in September of 2023, it
13 was through March of 2024. But subsequent to the
14 filing of the second docket is where everything got
15 pushed out through December of this year, and
16 that's what the third paragraph talks about.

17 MR. BREW: Commissioner, if I may?

18 COMMISSIONER GRAHAM: Sure.

19 MR. BREW: As confusing as this is, I do
20 believe the second paragraph is accurate. It's
21 referring to the context of the September '23 --
22 the first petition, and the third paragraph talks
23 about the amended petition.

24 MS. BROWNLESS: Right.

25 MR. BREW: So I -- it's confusing but

1 accurate.

2 COMMISSIONER GRAHAM: Mr. Bernier?

3 MR. BERNIER: I probably have an earlier
4 version of the prehearing in front of me. I am
5 looking at it now. I agree with them. My
6 apologies.

7 COMMISSIONER GRAHAM: Okay. So no changes?

8 MS. BROWNLESS: Yes, sir. Thank you.

9 COMMISSIONER GRAHAM: Section II.

10 We are going to click through this pretty
11 fast, so if you have got anything, call out or
12 waive your hand.

13 Section III.

14 Section IV.

15 Section V.

16 MS. BROWNLESS: Okay. Section V is the
17 Prefiled Testimony and Exhibits. And it appears at
18 this time that all parties are willing to stipulate
19 to the testimony of witness Ross, Fountain, Vinson
20 and Kopelovich -- Kopelovich. And it also appears
21 that the parties are willing to stipulate to the
22 prefiled exhibits of those witnesses, Exhibits SR-1
23 through SR-8 and TK-1.

24 Can the parties confirm that that is true?

25 MR. BERNIER: Yes, that's correct.

1 MS. EATON: Yes, that's correct.

2 MR. BREW: Yes, sir.

3 MR. REHWINKEL: Yes.

4 COMMISSIONER GRAHAM: Sounds good.

5 Staff.

6 MS. BROWNLESS: Okay. The staff will contact
7 the Commissioners and confirm that these witnesses
8 can be excused from the final hearing and advise
9 the parties of their decisions.

10 With regard to the other witnesses, Walmart's
11 proposed -- if Walmart's proposed Issue A is
12 dropped, it's my understanding that DEF would like
13 Ms. Perry's testimony and exhibits to be excluded.
14 Is that correct?

15 MR. BERNIER: I believe Ms. Perry's testimony
16 would go to Issue 16 as well.

17 MS. EATON: Yes, it does.

18 MR. BERNIER: So we would not ask to have it
19 excluded.

20 MS. BROWNLESS: Okay. All right. So if
21 Ms. Perry's testimony stays in, and everyone agrees
22 that it's relevant to Issue No. 16, which is non --
23 which is a non-contested issue, I assume that Mr.
24 Menendez's rebuttal testimony and direct testimony
25 would remain in the record as well, correct?

1 MR. BERNIER: That would be our position, yes.

2 MS. EATON: Yes.

3 MR. BREW: That's my understanding.

4 MS. BROWNLESS: OPC?

5 MR. REHWINKEL: Yes.

6 MS. BROWNLESS: Okay. Okay. Then let's move
7 on to the basic positions, and we will come back
8 to -- because all the witnesses now are as listed
9 in the Prehearing Order, Menendez, Ross, Fountain,
10 Perry, Vinson, Kopelovich.

11 MR. BERNIER: With just one small correction,
12 and that is on Mr. Menendez's rebuttal testimony,
13 Issue 16 and contested Issue A should be listed
14 there as well but --

15 MS. BROWNLESS: Thank you.

16 MR. BERNIER: -- that's pretty minor. You are
17 welcome.

18 MS. BROWNLESS: And his rebuttal ought to say
19 Issue A as well, sir, Issues 16 and A?

20 MR. BERNIER: That's correct.

21 MS. BROWNLESS: Okay. Oakie-doke.

22 COMMISSIONER GRAHAM: All right. Do the
23 parties have any changes to their basic positions?

24 All right. We'll move on to the issues, and I
25 will take these in numerical order. I will go

1 through these issues quickly, and let me know if
2 you have any changes.

3 MS. BROWNLESS: Can I make a comment before we
4 begin?

5 COMMISSIONER GRAHAM: Sure.

6 MS. BROWNLESS: In Walmart's prehearing
7 statement, Walmart has stated Walmart takes no
8 position at this time for Issues 1 through 15, 17,
9 and OPC's contested issue. Based on conversations
10 with Walmart, my understanding is that Walmart has
11 changed these positions to no position on these
12 issues. And that's what's reflected in the revised
13 draft prehearing order. And I just want to make
14 sure I got that correct, Ms. Eaton?

15 MS. EATON: Yes, that's correct. We would
16 take no position on Issues 1 through 15, 17 and
17 OPC's contested issue.

18 MS. BROWNLESS: Thank you.

19 COMMISSIONER GRAHAM: So the remaining issue
20 is just Issue 16?

21 MS. BROWNLESS: I can't hear.

22 COMMISSIONER GRAHAM: Just Issue 16?

23 MS. EATON: And our contested issue.

24 COMMISSIONER GRAHAM: And Issue A?

25 MS. EATON: Correct.

1 MS. BROWNLESS: Okay. So now we can go back
2 through the issues.

3 COMMISSIONER GRAHAM: Well, I don't think
4 there is a point to do that. Everybody else is
5 fine.

6 MS. BROWNLESS: I am sorry?

7 COMMISSIONER GRAHAM: Is there it necessary to
8 go through all those issues? Everybody else is
9 fine.

10 MS. BROWNLESS: No, that's fine. We can move
11 on to Issue A.

12 COMMISSIONER GRAHAM: Okay.

13 MR. BREW: Excuse me, Your Honor, PCS does
14 have a change to its position on Issue 16.

15 COMMISSIONER GRAHAM: Okay.

16 MR. BREW: And I can read it, and I would be
17 happy to provide it to the parties and staff
18 afterwards.

19 It currently reads that PCS agrees with OPC.
20 It should read: PCS supports the cost recovery
21 methods that Duke Energy Florida proposed and the
22 Commission approved in its two interim orders
23 issued in March and December of 2023. PCS does not
24 support changing interim cost recovery addressed by
25 those orders because there is no basis for

1 revisiting those determinations, and no timely
2 request for rehearing was filed. With respect to
3 any final differential between estimated and actual
4 costs, PCS does not oppose Walmart's suggestion
5 that any demonstrated over-recovery be recovered in
6 the same manner as those costs were collected,
7 i.e., on a dollar per kilowatt hour basis.

8 COMMISSIONER GRAHAM: You have that to present
9 to the staff?

10 MR. BREW: I will circulate it, yes, later
11 today.

12 COMMISSIONER GRAHAM: Okay. Any questions or
13 comments, Mr. Bernier?

14 MR. BERNIER: The only comment is that I was
15 very happy to hear Mr. Brew say that he agreed with
16 one of our positions.

17 MR. BREW: Well, check the clock. It's
18 unlikely going to happen again.

19 MR. BERNIER: If we can note the record.
20 Thank you.

21 COMMISSIONER GRAHAM: Staff, you are okay with
22 that?

23 MS. BROWNLESS: Yes. They are entitled to
24 have their position.

25 COMMISSIONER GRAHAM: I just want to make sure

1 that it was clear enough and he is going to provide
2 it to you. I just wanted to make sure that it was
3 clear enough and that he is going to provide it to
4 staff in written --

5 MS. BROWNLESS: As long as I get the written
6 version from Mr. Brew, which I am sure I will,
7 that's -- that will be great.

8 And I think we can go now to Issue No. A.

9 COMMISSIONER GRAHAM: Okay. Do we get to hear
10 arguments on Issue A?

11 MS. BROWNLESS: Yep.

12 COMMISSIONER GRAHAM: Let's start with
13 Walmart.

14 MS. EATON: Certainly.

15 As set forth in Walmart's testimony and
16 comments filed in March of 2023, Walmart contends
17 that, on a going-forward basis, DEF should be
18 required to recover storm costs from demand-metered
19 customers on a demand or dollar per kilowatt
20 charge, not through an energy or dollar per
21 kilowatt hour charge.

22 And Walmart's general concern is that
23 recovering demand related costs through an energy
24 cause could result in a shift in demand cost
25 responsibility from lower load factor customers to

1 higher load factor customers. This is not a new
2 issue raised by Walmart in proceedings before this
3 commission. I believe as early as 2020, Walmart
4 had raised the issue of the problem it had with
5 collecting energy charges from demand-metered
6 customers in regard to the storm protection plan
7 and storm protection plan cost recovery clause
8 dockets.

9 This commission might recall that in relation
10 to the storm protection plan dockets, I believe
11 both FPUC and Duke Energy Florida had originally
12 proposed collecting energy -- those storm
13 protection plan cost recovery through energy
14 charges, and then later changed those to demand
15 charges. And obviously, we recognize that those
16 dockets are different from the storm cost recovery.
17 Nevertheless, the analysis and the reasoning behind
18 Walmart's position remains the same.

19 We understand that -- and in Duke witness
20 Menendez has expressed a problem with going back
21 and changing the bills. And it is not Walmart's
22 position to have Duke undo all of the collection
23 that it has done to date. This position would only
24 have applied to costs on a going-forward basis in
25 this docket. Not saying this is what we wants you

1 to do in all the future dockets. We are talking
2 about this specific docket as to costs that remain
3 to be recovered.

4 It is our understanding that with regard to
5 the true-up, which would be done in -- potentially
6 in first quarter of 2025, that Duke proposes to
7 collect any under-recovery from customers via the
8 capacity charge in the fuel docket. And that would
9 be collecting demand charges from demand-metered
10 customers. And Walmart is happy with that approach
11 in that part of Duke's plan for addressing any
12 under-recovery in this docket.

13 So the only problem we would have would be
14 with an over-recovery, where refunds are needed to
15 be made to customers. To the extent they are
16 collected through an energy charge, Walmart would
17 maintain that they be refunded to customers by an
18 energy charge. And this relates to both Issue A
19 and Issue 16. They are just interrelated, so --
20 but that's all I have.

21 Thank you.

22 COMMISSIONER GRAHAM: Okay. Mr. Brew?

23 MR. BREW: It might be simpler if I followed
24 after the company.

25 COMMISSIONER GRAHAM: Okay.

1 MR. BERNIER: I would be happy. Thank you,
2 Commissioner.

3 Our position is that, as Ms. Eaton indicated,
4 this is not a new issue. This has been raised in
5 this docket already once. The Commission voted to
6 approve the surcharge on an energy basis in March
7 of '23, and stated that if approved, the surcharge
8 would be included in the non-fuel energy charge on
9 customer bills.

10 In December of 2023, when we consolidated with
11 the Idalia charge, same thing. It was done on an
12 energy charge. And the Commission's order noted
13 that the cost recovery surcharge was included in a
14 non-fuel energy charge.

15 That order was issued in December. Nobody
16 took issue with it, asked for reconsideration or
17 rehearing. So we think, largely, this issue has
18 already been determined and is not necessary going
19 forward in this docket.

20 Thank you.

21 MS. EATON: Can I clarify something that Mr.
22 Bernier just said? I think that you said this
23 issue was raised in March of 2023. I will say our
24 comments were filed in March of 2023, but Walmart's
25 intervention wasn't granted, and I wasn't

1 participating in any meaningful way in that Agenda
2 Conference. Just to clarify, we didn't make the
3 argument. We had raised it in comments, but that's
4 as far as we got at the time of that Agenda
5 Conference.

6 COMMISSIONER GRAHAM: Okay.

7 MS. EATON: Thank you.

8 MR. BREW: Commissioner, PCS is trying to stay
9 consistent here, and I think the Commission should
10 as well.

11 When Duke proposed the recovery, they
12 consulted with the parties to the rate case,
13 including us, and we agreed to their recovery going
14 forward. And so we support what the Commission has
15 done with the interim recovery letters, and I don't
16 think it's appropriate to back up over what it has
17 already determined.

18 And so to our mind, that covers the costs
19 authorized, collected and to be collected at least
20 through December of 2024, because that's covered by
21 the orders through the December 19th, 2023, order.
22 And we don't think it's appropriate -- it's
23 premature, not appropriate to talk about any rate
24 design changes in future dockets that haven't been
25 filed yet.

1 COMMISSIONER GRAHAM: Okay. No position,
2 right?

3 MR. REHWINKEL: No, the Public Counsel's
4 Issues 1 through 16 -- 1 through 15, 17 and B are
5 all about the size of the pie, and we will stay out
6 of the slicing of the pie.

7 COMMISSIONER GRAHAM: Okay. Staff.

8 MS. BROWNLESS: Thank you.

9 When we look at this, we think that the
10 original orders that approved both the initial set
11 of hurricanes, and the orders that came out in
12 December of 2023 that approved Idalia's
13 consolidation with the cost recovery were approvals
14 of an interim surcharge. And the 2017 and 2021
15 settlement agreements that initially proposed
16 surcharges for Duke, unlike for TECO, did not
17 specifically address the method -- the rate design
18 method by which the cost would be recovered. And
19 because of that, we think this is significantly
20 different.

21 And that we would also note that Walmart asked
22 to intervene on March 6th, the day before the
23 initial hearing in 2003. In its intervention, the
24 basis for its intervention was staff's
25 recommendation number three, which had to do with

1 approval of the surcharge. They also filed
2 comments, as Ms. Eaton has suggested, on March 7th.

3 So I think this is an interim, this approval
4 in both of those orders, and as stated in the
5 language of the settlement agreements, it says:
6 Interim surcharge can be imposed. It's interim.
7 And so I think it's fair and appropriate for
8 Walmart to be able to bring this issue up now.

9 Now, as we've heard today, there is kind of
10 three pots of money. There is money that's been
11 recovered pursuant to the energy surcharge to date.
12 There is money that will be recovered from now and
13 through December of this year. And there is the
14 final true-up, which, as Ms. Eaton has discussed,
15 won't take place until the first quarter of next
16 year.

17 So one can have different positions on what
18 the appropriate rate design is for those three
19 different types of recovered costs, or to be
20 recovered costs, but I think at this time, it's
21 appropriate to let Walmart have their Issue A.

22 COMMISSIONER GRAHAM: So walk me through again
23 how this is different than it was for TECO.

24 MS. BROWNLESS: There was language in the
25 settlement agreements that approved the

1 surcharge -- the hurricane surcharge mechanism in
2 the TECO settlement agreements that specifically
3 addressed it -- or more specifically addressed the
4 rate design to be imposed. There is no such
5 language in the 2017 or 2021 settlement agreements
6 for Duke.

7 COMMISSIONER GRAHAM: So if we don't allow
8 Walmart to do this, is it more of a due process
9 issue?

10 MS. BROWNLESS: Yes, I think so. I think it's
11 what was approved initially in the settlement
12 agreements, and I think Walmart did attempt on the
13 March of 2023, they filed comments, they filed
14 their intervention, they talked about it, so -- and
15 I think it's also the nature of the charge. It's
16 an interim charge.

17 COMMISSIONER GRAHAM: Mr. Bernier.

18 MR. BERNIER: Yeah, if I could respond to the
19 due process issue.

20 I would disagree with that contention. The
21 order in December of 2023 was issued, I believe,
22 the day before Walmart's intervention was granted.
23 And it does state that it is an interim restoration
24 recovery, but it does also say -- excuse me, the
25 proposed interim storm restoration recovery factors

1 shall remain in effect until a final true-up is
2 approved by this commission, which will be the
3 first quarter of 2025.

4 So if the factors shall remain in effect
5 through the remainder of this year, and nobody
6 moved for reconsideration or rehearing, and had the
7 opportunity do that, I don't think that it can be
8 argued that there was no -- that their due process
9 rights would have been in any way hindered by the
10 Commission ruling that the two previous orders have
11 settled the issue. That would be my response.

12 MS. BROWNLESS: Well, I think our position is
13 that it was the language in the settlement
14 agreements for TECO that created the surcharge that
15 is the significant difference between this instance
16 in which there is no such language in the
17 settlement agreements creating the surcharge and
18 TECO.

19 COMMISSIONER GRAHAM: Mary Anne, I am leaning
20 towards letting this happen just to cover our six,
21 but I just want to hear your thoughts.

22 MS. HELTON: Certainly. I agree with Ms.
23 Brownless, that we are in a different posture in
24 this proceeding than we were in the TECO proceeding
25 where you excluded Walmart's issue. I think the

1 appropriate avenue is for the -- Ms. Eaton to be
2 able to have the opportunity to have the Commission
3 address in here and litigate her Issue A. So I
4 believe that it's appropriate to keep that issue in
5 and for the Commission to hear that.

6 COMMISSIONER GRAHAM: Okay. Mr. Brew?

7 MR. BREW: Yeah, I have two concerns.

8 The first is we've already agreed that Walmart
9 and Duke testimony stays in because it's pertinent
10 to Issue 16. So there is no pending question to
11 exclude any testimony. My only concern with the
12 contested issue is that it's overbroad. We talked
13 about buckets of dollars.

14 To the extent that the issue goes to changing
15 the cost recovery already approved by the
16 Commission through December 24, I think it's
17 inappropriately backing up over what the Commission
18 already decided, how that interim surcharge should
19 work.

20 To the extent that we are talking about the
21 remaining amount, the differential between the
22 actual and the estimated, that's a fair issue. And
23 as we've indicated, we don't have a problem with
24 Walmart's suggestion on how the over- or
25 under-recovery should be addressed it.

1 So to the extent that the contested issue gets
2 to that point, it's a fair issue. I just don't
3 think the Commission should go back and change the
4 interim recovery that it covered through December
5 24 already.

6 COMMISSIONER GRAHAM: OPC?

7 MR. REHWINKEL: I said I was going to stay out
8 of this.

9 MR. BREW: But you couldn't help it.

10 MR. REHWINKEL: I just want to say that having
11 been a part of the origination originally with Duke
12 in 2010 with the creation of the SCRM, or the storm
13 cost recovery mechanism, what Ms. Brownless said
14 about it being interim I think is legally correct.

15 I think the question about whether you go back
16 on an interim recovery methodology is a policy
17 question for the Commission. But from a legal
18 standpoint -- and I am really talking about due
19 process from an overarching standpoint, not
20 necessarily in this docket. I think that your
21 counsel are on the right side, and it is the
22 conservative approach to take, is to err on the
23 side of due process. That's the only position I am
24 taking here. I am not trying to pick sides in
25 this, but I do think it's a policy and not a legal

1 issue as far as whether to change.

2 Thank you.

3 COMMISSIONER GRAHAM: Yeah, I think we are
4 going to leave it in, give her the opportunity to
5 plead her case.

6 Okay. Staff where are we?

7 MS. BROWNLESS: Okay. Let me see. The next
8 issue is OPC's Issue B. And it's my understanding
9 -- and that issue is: What additional storm
10 restoration process improvements, if any, should
11 DEF follow in future storms? My understanding is
12 that everybody agrees to the inclusion of this
13 issue, is that right?

14 MR. REHWINKEL: Yes.

15 MS. EATON: Yes.

16 COMMISSIONER GRAHAM: Everyone is nodding
17 their head yes.

18 MS. BROWNLESS: Okay. And so at this time, we
19 would ask for a ruling that it be included.

20 COMMISSIONER GRAHAM: We'll include it.

21 MS. BROWNLESS: Okay. We have -- we are up to
22 the exhibit list. We have prepared a Comprehensive
23 Exhibit List which lists all prefiled exhibits and
24 those exhibits staff wishes to include in the
25 record. The draft list was employed to the parties

1 to see if there were any changes or objections to
2 the CEL. And we would ask if there are any changes
3 to the CEL at this time, other than what you have
4 already provided me?

5 COMMISSIONER GRAHAM: Any objections to
6 entering the exhibits listed in the CEL?

7 MS. EATON: No objection.

8 MR. BERNIER: No.

9 COMMISSIONER GRAHAM: Okay.

10 MS. BROWNLESS: Okay.

11 COMMISSIONER GRAHAM: Staff, proposed
12 stipulations?

13 MS. BROWNLESS: I understand that the parties
14 may be able to enter into Type 2 stipulations for
15 Issues 1 through 15 and 17, and OPC's Issue B.
16 Type 2 means that all parties either agree to the
17 stipulation or have no objection to using DEF's
18 language. And we would like to get some feedback
19 on that, sir.

20 COMMISSIONER GRAHAM: DEF?

21 MR. BERNIER: We agree.

22 COMMISSIONER GRAHAM: Is there --

23 MR. BERNIER: We are good with the
24 stipulations on 1 through 15, 17, OPC's B, and the
25 language that we provided for that issue.

1 COMMISSIONER GRAHAM: Okay. Walmart?

2 MS. EATON: We agree.

3 COMMISSIONER GRAHAM: Mr. Brew?

4 MR. BREW: Yes.

5 MR. REHWINKEL: Yes, we are Type 1 Stipulation
6 with Walmart on 1 through 15, 17, B, but inasmuch
7 as there is no position from at least Walmart, it
8 is a Type 2 stipulation, but just for the record,
9 we are in affirmative agreement with Duke on those
10 issues.

11 COMMISSIONER GRAHAM: Okay.

12 MS. BROWNLESS: Okay. Thank you. We will
13 prepare the Type 2 stipulations and attach them to
14 the Prehearing Order.

15 Now, I want to go back and talk about
16 witnesses now that we have a decision on Issue A
17 being included. And I will just say that the
18 staff, for purposes of completing the record, would
19 like to have Mr. Menendez and Ms. Perry attend.
20 However, my understanding is that Duke and Walmart
21 have other desires, and I will let them address
22 those at this time.

23 MR. BERNIER: Yes. Thank you.

24 We have no questions, first, for Ms. Perry at
25 all, so we would be waiving cross. And our

1 position and what we would like to offer is that
2 due to a lot of the other workload that we have
3 going on at the moment, we would be more than
4 willing for staff to be able to ask any questions
5 via written discovery, and we would answer them
6 fully and put them in so that they could complete
7 the record that they feel is necessary to
8 facilitate y'all's decision without the need to
9 bring them here for cross-examination. And I
10 understand that there is no objection to that, but
11 I will let them speak.

12 MS. EATON: Sure. We would have the same
13 position, but before we came here, we had agreed
14 that Duke and Walmart were going to agree to waive
15 objections and cross with respect to each other's
16 witnesses, we agreed that we could stipulate the
17 testimony. And to the extent that staff has
18 specific questions for Ms. Perry that she didn't
19 cover in some way in her testimony, we are happy to
20 submit a verified interrogatory response, or
21 whatever the Commission might want.

22 I do -- I would say that our -- the Duke
23 Energy Carolinas base rate case begins on May 20th.
24 Ms. Perry is to testify in that. I am not sure --
25 we don't know what witness order is going to happen

1 in that matter at this time, but she and I were
2 scheduled to be up there. So I had made
3 arrangements for my colleague, Mr. Steven Lee, to
4 appear here for this hearing to the extent that
5 testimony is stipulated as we had discussed with
6 Mr. Bernier.

7 COMMISSIONER GRAHAM: Well, that allows for
8 staff to ask questions, but how does that -- how do
9 you deal with the fellow Commissioners, their
10 questions?

11 MS. EATON: To the extent Commissioners have
12 questions, obviously, you know, we can make them
13 available however the Commission would like. We
14 were -- we were speaking with, really, with respect
15 to any questions staff might have had on
16 cross-examination. We could certainly answer
17 whatever those questions are in a different way.

18 COMMISSIONER GRAHAM: Staff?

19 MS. BROWNLESS: I think that answering
20 questions is helpful, and I appreciate the offer.
21 However, I believe the Commissioners and the staff
22 would benefit from having actual testimony. And as
23 an alternative, perhaps we could move the hearing
24 to a later date, and that would allow us an
25 opportunity to cross-examine the witnesses, and

1 allow you to do what you need to in the Duke South
2 Carolina hearing.

3 MR. BERNIER: We would certainly prefer to
4 keep the hearing on the date that it's scheduled.
5 And if that means bringing Mr. Menendez here to
6 answer your questions, we are happy to do so.

7 MS. EATON: I mean, I can -- I can certainly
8 advise the other commission that -- that she's
9 being asked to be here and, I mean, we will make
10 arrangements to make that happen.

11 We just thought we would -- we would at least
12 offer to answer any questions the other, you know,
13 another way, through discovery, if that would be
14 satisfactory. That's all.

15 COMMISSIONER GRAHAM: Mr. Brew?

16 MR. BREW: Your Honor, PCS had expected to
17 waive cross-examination and stipulate the
18 witnesses. My only concern is so long as -- if the
19 discovery route is taken, my only concern is that
20 we would need to reserve our rights in the event
21 that there is -- responses amounted to a material
22 change in position. It's one thing to explain your
23 position. It's another thing to change it in a
24 response that you haven't seen yet. So that's my
25 only concern there.

1 As far as -- I will defer to both Walmart and
2 Duke as to the date for the hearing.

3 MS. BROWNLESS: Well, our preference is to
4 have the witnesses appear, so --

5 COMMISSIONER GRAHAM: You think you have quite
6 a bit of questions of the witnesses?

7 MS. BROWNLESS: We have questions that we
8 believe will allow the Commissioners to understand
9 the rate design issue being raised here, and to
10 further enhance the record available for the
11 disposal of the issues.

12 COMMISSIONER GRAHAM: And staff is fine either
13 with the current date, getting the witnesses in
14 here, or pushing the date back, either way, just as
15 long as we get the witnesses in here, is that
16 correct?

17 MS. BROWNLESS: Yes. We are happy to either
18 push the date back, or modify the date or --

19 COMMISSIONER GRAHAM: So it sounds like we are
20 going to have to get the witnesses in here. I
21 guess my question to the two of you is, is it more
22 convenient to stay with the current date and get
23 them in here, or push it back to a later date and
24 get them in here? Because we can go either way.

25 MS. EATON: I do need to check with my team

1 and the client to double check how we can cover,
2 because, to the extent our witness is being
3 cross-examined, I will be here. I will not be at
4 the other hearing. And so I just need to double
5 check with my team how we are going to do that, and
6 double check with Ms. Perry, that she can be here
7 instead of with us in South Carolina. Most likely
8 that's not a problem, but I will check.

9 I mean, I agree with Mr. Bernier. I would
10 rather not postpone it and proceed as it's planned
11 if we can make it improvement. I could -- I could
12 let the staff know, you know, probably by the end
13 of today, if that's possible.

14 COMMISSIONER GRAHAM: So then let's go with
15 sticking with the current date that we are using.
16 And if for some reason she can't be here, or we
17 can't work it out, then we may have to come back to
18 another prehearing.

19 MS. BROWNLESS: Yes, sir. Thank you.

20 COMMISSIONER GRAHAM: Okay. Ms. Brownless?

21 MS. BROWNLESS: Let's see.

22 COMMISSIONER GRAHAM: Take me home.

23 MS. BROWNLESS: I don't think there are any
24 pending motions at this time, nor do I think there
25 are any confidentiality orders that are

1 outstanding. The two that were filed have been
2 issued.

3 And as for post-hearing procedures, I think
4 depending upon what happens with how we go forward,
5 it's the same as always, that you have agreed to
6 insert the testimony of all direct and rebuttal
7 witnesses and exhibits into the record, if I
8 understand.

9 And, let's see. We would have to figure out
10 whether you wish to waive filing briefs or -- and
11 -- well, do you wish to waive filing briefs, or do
12 you want to wait and deal with that?

13 MR. BERNIER: I think if there is going to be
14 live cross-examination, I am going to have to wait
15 to see if we are able waive.

16 MS. BROWNLESS: Okay.

17 MS. EATON: I would agree.

18 MS. BROWNLESS: All right. And now we are to
19 -- we are recommending opening statements in the
20 hearing be limited to three minutes. And we would
21 ask if that's all right with the Prehearing
22 Officer?

23 COMMISSIONER GRAHAM: Without a doubt.

24 MS. BROWNLESS: Okay.

25 COMMISSIONER GRAHAM: So any other matters?

1 MS. BROWNLESS: I want to go back just a
2 second.

3 Could you do closing arguments in lieu of
4 briefs at the next hearing, or do you simply have
5 to wait and see?

6 MR. BERNIER: We will have to wait and see.

7 MS. EATON: Yeah, I would agree.

8 MS. BROWNLESS: All right.

9 COMMISSIONER GRAHAM: That's fine with me as
10 well.

11 MS. BROWNLESS: Let's see. We --

12 MS. EATON: I want to clarify, the issue --
13 the witnesses you are asking to be here are only
14 Menendez and Ms. Perry --

15 MS. BROWNLESS: Yes, ma'am.

16 MS. EATON: -- is it that correct? Okay.
17 Thank you.

18 MS. BROWNLESS: Everybody else has been
19 stipulated to.

20 MS. EATON: Okay. Thank you.

21 MS. BROWNLESS: So we do not have any other
22 matters at this time.

23 COMMISSIONER GRAHAM: Walmart, you are going
24 to get back to staff by the end of the day today?

25 MS. EATON: Yes, sir.

1 COMMISSIONER GRAHAM: Okay. Any other
2 matters?

3 Anything to come before us at this prehearing?

4 MS. BROWNLESS: No, sir. Thank you.

5 COMMISSIONER GRAHAM: Does that mean we are
6 adjourned?

7 MS. BROWNLESS: Yes, sir.

8 COMMISSIONER GRAHAM: Okay. We are adjourned.
9 Thank you very much for your time and patience
10 today.

11 (Proceedings concluded.)

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CERTIFICATE OF REPORTER


STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
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attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 21st day of April, 2024.


DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024