

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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. 20230020-EI

Dated: June 14, 2024

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

Docket No. 20230116-EI

Dated: June 14, 2024

**DUKE ENERGY FLORIDA’S POST-HEARING STATEMENT
OF ISSUES, POSITIONS, AND BRIEF IN SUPPORT**

Duke Energy Florida, LLC (“DEF” or the “Company”), pursuant to the Order Establishing Procedure,¹ hereby files its Post-Hearing Statement of Issues, Positions, and Brief in Support of its proposed method of collecting the remaining storm cost recovery surcharge and proposed method of true-up.

At the Final Hearing held May 21, 2024, this Commission approved Type 2 Stipulations on Issues 1-15 and 18-19 as identified in the Prehearing Order (“PHO”),² including the Continuous Storm Restoration Process Improvements included as Attachment A to that Order. As such, this Post-Hearing Filing will only pertain to the remaining two issues, Issues 16 and 17 as identified in the PHO.

In support, DEF states as follows:

¹ See Order No. PSC-2023-0333-PCO-EI.

² See Order No. PSC-2024-0151-PHO-EI.

Issues, Positions, and Brief in Support

ISSUE 16: Should any cost recovery approved in this docket be recovered from demand-metered customers through the demand charge?

DEF: *No. The cost recovery approved in this docket should be recovered on an energy basis from all customers, as approved by the Commission in Order Nos. PSC-2023-0111-PCO-EI and PSC-2023-0375-PCO-EI. Because Walmart has provided no new information to justify diverging from the previously approved treatment, the Commission should maintain the storm surcharge recovery as twice previously approved.*

Supporting Brief:

This docket was opened on January 23, 2023, when DEF filed its estimated costs of \$442.1 million (retail) incurred in responding to Hurricanes Elsa, Eta, Isaias, Ian, Nicole, and Tropical Storm Fred (the “Storms”) and sought recovery of those costs through an interim storm cost recovery surcharge (“SCRS”), subject to true-up once actual costs were finalized and filed for review, as permitted by the 2017 and 2021 Settlement Agreements. *See* doc. no. 00418-2023.³ On February 23, 2023, Commission Staff filed its recommendation that the Commission approve DEF’s requested surcharge and stated, “If approved by the Commission, the storm cost recovery surcharge would be included in the non-fuel energy charge on customer bills.” *See* doc. no. 01242-2023, p. 6.

Thereafter, on March 6, 2023, Walmart petitioned for intervention and on March 7, 2023, filed comments arguing precisely what it has continued to argue, that is, that the proposed surcharge should be collected from demand-metered customers (e.g., Walmart) on a demand

³ Due to the dates the Storms impacted DEF’s service territory both the 2017 and 2021 Settlement Agreements are applicable. *See id.* at ¶¶ 6-24. The 2021 Settlement Agreement, ¶ 30(c), provides: “The Parties agree that recovery from customers for storm damage costs will begin, subject to Commission approval on an interim basis, sixty (60) days following the filing of a cost recovery petition with the Commission, and subject to true-up pursuant to further proceedings before the Commission and will be based on a 12-month recovery period.”

basis.⁴ At its March 7, 2023 Agenda Conference the Commission voted unanimously to approve DEF's requested SCRS as proposed by the Company. *See* Vote Sheet, doc. no. 02031-2023. The Commission then issued Order No. PSC-2023-0111-PCO-EI, which adopted unchanged the language from Staff's recommendation quoted above.

On September 29, 2023, DEF filed its Petition for Approval of actual restoration costs of \$431.4 million (retail) associated with the Storms, resulting in a reduction of approximately \$10.7 million from the original estimate, together with supporting testimonies and exhibits ("Petition"). *See* doc. no. 05453-2023. Subsequently, DEF filed a Petition for a Limited Proceeding to implement a SCRS to recover its Hurricane Idalia restoration costs and sought approval to collect the remaining Storm costs over the 12-month period January through December of 2024. *See* Idalia Petition, doc. no. 05689-2023.⁵ This proposed treatment resulted in a decrease to the storm cost surcharge on customers' bills and provided rate stability over the 12-month recovery period. *See id.* at ¶ 14.

By Order No. PSC-2023-0375-PCO-EI, issued December 19, 2023, the Commission approved DEF's proposal, and specifically stated the "storm cost recovery surcharge would be included in the non-fuel energy charge on customer bills" and the "proposed interim storm restoration recovery factors shall remain in effect until a final true-up is approved by this Commission." *See id.* at pp. 4 & 3, respectively. Walmart was then granted intervention on December 20, 2023, Order No. PSC-2023-0377-PCO-EI, and notwithstanding that there remained

⁴ DEF has been unable to locate Walmart's March 7, 2023, comments on the Commission's website in either this docket or Docket No. 20230116-EI, which the Commission consolidated with this docket through Order No. PSC-2024-0151-PHO-EI. As such, DEF has attached its service copy of Walmart's comments as Attachment A and the service email as Attachment B.

⁵ Docket No. 20230116-EI.

nine (9) days within which Walmart could have sought reconsideration, it opted not to make such a filing.

While DEF continues to believe that no new information has been provided that would justify abandoning its two previous orders approving the surcharge and modified surcharge on an energy basis and urges the Commission to maintain the course through the previously approved recovery period on that basis alone, as Mr. Menendez testified at hearing, redesigning the rates for the demand-metered customers, testing, and implementing the billing changes in the billing system would take a matter of months. Tr. 111, ll. 9-14. This work would not begin until DEF was directed to implement the change and would also need to be implemented at the beginning of a billing period to ensure like-situated customers are billed consistently. There is no date provided on the Commission's website for a planned vote on this docket, but with briefs filed mid-June, allowing time for a Staff recommendation, it is entirely possible no vote would occur until August's Agenda Conference. At that point, it would not be possible to make the changes before the October billing period at the absolute earliest – meaning any change would be in effect for three (3) months of the total twenty-month (21) recovery period. In short, it is simply not practical to make such a change at this late stage in the recovery process.

But moreover, even if it were feasible to modify the method of collection for these specific customers, it is the wrong policy to do so. As was discussed at hearing, the SCRS is intended to allow DEF to recover the costs the Company expended in restoring the delivery of electric service – energy - to customers. Tr. 141, ll. 8-12. That is, the Company works as efficiently and safely to restore service to customers as possible regardless of the manner in which those customers are billed; thus, the demand-metered customers are receiving the same value – speedy service

restoration – as the energy-metered customers in the same area and therefore it is entirely reasonable to bill *these specific costs* in a similar manner. Tr. 144, l. 18 – 145, l. 6.

Walmart also argues that the restoration costs at issue are “demand-related” costs because, similar to costs incurred in proactively strengthening the system (such as SPP costs), during a restoration event the company is “still investing money in the same assets” but in a “reactive” manner. Tr. 145, l. 21 – 146, l. 2. “Whether you are restoring it after a hurricane, or you are trying to harden it so that maybe it’s not impacted by the next hurricane, I guess in my mind, these are still, you know, fixed cost assets that are generally classified as demand.” Tr. 146, ll. 3-8. The costs incurred when restoring service after an extreme weather event are different in type and magnitude than those incurred to strengthen the harden the system including such additional functions as storm modeling, damage assessment, additional logistics concerns (base camps, lodgings, meals, etc.), and the mobilization of mutual aid and non-native contractors as appropriate. *See* Tr. 33, ll. 17 – 43, l. 14 (discussing DEF’s Storm Plan and Restoration Processes). For this reason, the restoration costs are heavily dependent on the amount of damage and therefore the number of contractors/aid resources and the length of the restoration event. *See* Tr. 48-62(identification of the incremental costs of each of the Storms, the number of aid resources, and length of the restoration event); Exs. 5-10 (identification of restoration costs by category).

Walmart’s attempt to analogize storm *restoration* costs to storm *hardening* costs which are intended to “[p]rotect[] and strengthen[] transmission and distribution electric utility infrastructure from extreme weather conditions [to] effectively reduce restoration costs and outage times to customers and improve overall service reliability for customers”⁶ must fail.

⁶ § 366.96(1)(d), Fla. Stat.

Finally, DEF believes the intent and purpose of the term “interim” as used in establishing the SCRS is being misinterpreted by some parties and Staff to mean that the SCRS is temporarily approved and is subject to later modifications. *See, e.g.*, Tr. 82, ll. 3-8 (opening comments from Walmart’s counsel noting that “both orders authorized, quote, ‘interim collection of storm costs’. The use of the word interim in these orders conveys to the parties that the collection method was authorized by a temporary edict.”); doc. no. 04701-2024,⁷ p. 22, ll. 3-8 (comments of Staff attorney, “So I think this is an interim, this approval in both of those orders, and as stated in the language of the settlement agreements, it says: Interim surcharge can be imposed. It is interim. And so I think it is fair and appropriate for Walmart to be able to bring this issue up now.”).

A proper interpretation of “interim” as used in the Settlement Agreements requires additional context. The SCRS created by settlement altered the process for recovering storm restoration costs by allowing DEF to petition for authorization to implement a surcharge based on estimated costs but before final, actual costs were known, let alone filed and reviewed for prudence. *See* fn. 3, *supra*. The Commission’s storm cost recovery rule, Rule 25-6.0143, does not explicitly provide for recovery of costs prior to Commission review for prudence, and thus the SCRS framework was intended to allow DEF to begin recovering costs closer in time to when they were incurred, which ultimately benefits both the Company by recouping its cash outlay sooner and customer by decreasing the amount of interest that would otherwise accrue.

That is, the SCRS allows DEF to recover costs in the *interim* period between incurring the unplanned and unavoidable expense of restoration and the final prudence review by the Commission, which could very well take place a year or more after the costs are incurred. Indeed, in this instance, had DEF not received permission to combine this SCRS with the Idalia SCRS and

⁷ Transcript of the Prehearing Conference.

spread the recovery over 2024, the issue Walmart has raised would have been moot because the final hearing in this docket was not even scheduled to occur until almost two months after the originally approved SCRS would have concluded.

The Commission should approve DEF's continued recovery of the Storm restoration surcharge from customers as part of the non-fuel energy charge.

ISSUE 17: If applicable, how should any under-recovery or over-recovery be handled?

DEF: *DEF will compare the final storm recovery amount approved by the Commission to actual revenues from the storm restoration charge to determine any excess or shortfall. Interest will be applied to this amount at the 30-day commercial paper rate. Thereafter, DEF will collect or refund the excess or shortfall through the capacity cost recovery clause in the normal true-up process.*

Supporting Brief:

DEF has proposed to collect or refund any under- or over-collection through the capacity cost recovery clause. Tr. 94, ll. 16-17. As Mr. Menendez explained, DEF's proposal was offered for two main purposes, the first being that has been DEF's past practice and the second that it is the most administratively convenient means of handling the inevitable true-up. Tr. 108, ll. 2-7. DEF also has concerns with issuing a refund through one of the statutorily created clauses as the costs that flow through those clauses have been identified by the legislature. Finally, DEF does not believe it is good precedent to determine how a true-up will be effectuated based on whether there is an over- or under-recovery, but rather the means of handling the true-up should be consistent regardless of which way it flows. Tr. 108, ll. 9-12. That said, DEF will handle the eventual true-up however the Commission orders it to do so.

/s/ Matthew R. Bernier

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CERTIFICATE OF SERVICE

Docket No. 20230116-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 14th day of June, 2024, to the following:

/s/ Matthew R. Bernier

Matthew R. Bernier

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CERTIFICATE OF SERVICE

Docket No. 20230020-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 14th day of June, 2024, to the following:

/s/ Matthew R. Bernier
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