

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 25, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Gatlin, Norris, Vogel) *ALM*
Division of Economics (Draper) *EJD*
Office of the General Counsel (Brownless) *JSC*

RE: Docket No. 20230020-EI – 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 – Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Idalia, by Duke Energy Florida, LLC.

AGENDA: 08/06/24 – Regular Agenda – Post-hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham (20230020-EI)
Passidomo (20230116-EI)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Vote required on Issues 16 and 17 only; all other issues were approved at the May 21, 2024 hearing.

Case Background

On January 23, 2023, Duke Energy Florida, LLC (DEF or Company) filed a petition for a limited proceeding seeking authority to recover \$442.1 million for the incremental storm restoration costs related to Hurricanes Elsa, Eta, Ian, Isaias, and Nicole and Tropical Storm Fred (Storms),

as well as replenish its storm reserve.¹ This amount includes approximately \$4.5 million in interest. DEF filed its petition pursuant to the provisions of the 2021 Settlement Agreement (2021 Settlement) approved by Order No. PSC-2021-0202A-AS-EI. By Order No. PSC-2023-0111-PCO-EI, issued March 23, 2023, in Docket No. 20230020-EI, the Commission granted DEF's request to recover these costs through an interim storm restoration recovery surcharge. The interim surcharges, made subject to true-up, was made effective with the first billing cycle of April 2023, ending the earlier of full recovery or with the last billing cycle of March 2024, whichever occurs first. The intervention of the Office of Public Counsel (OPC) was recognized by Order No. PSC-2023-0085-PCO-EI, issued February 15, 2023. Walmart, Inc. (Walmart) filed a petition to intervene on March 6, 2023, which was granted by Order No. PSC-2023-0377-PCO-EI, issued December 20, 2023. White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate –White Springs (PCS Phosphate) also requested permission to intervene in this proceeding, which was granted by Order No. PSC-2024-0098-PCO-EI, which was issued April 17, 2024.

On September 29, 2023, DEF filed its petition for approval of actual costs related to the Storms, in the amount of \$431.4 million, an approximate reduction of \$10.7 million. DEF also requested to continue the storm restoration charge through the end of March 2024, as initially approved in Order No. PSC-2023-0111-PCO-EI. DEF requested that the disposition of any over- or under-recovery be handled through the capacity cost recovery clause. Docket No. 20230020-EI was set for hearing on May 21-22, 2024.²

On October 16, 2023, the Company filed a petition for a limited proceeding in Docket No. 20230116-EI seeking authority to implement an interim storm restoration recovery surcharge to recover approximately \$166.1 million in incremental storm restoration costs, replenishment of the storm reserve, and interest related to Hurricane Idalia, to begin with the first billing cycle of January 2024 through December 31, 2024, subject to final true-up. The Company requested approval to include and spread the recovery of the remaining interim incremental storm restoration costs for the Storms in the surcharge for Hurricane Idalia, thereby amending the currently-approved surcharge. The \$166.1 million includes \$73.9 million related to the uncollected restoration costs from the Storms and \$91.9 million related to Hurricane Idalia. Order No. PSC-2023-0375-PCO-EI, issued on December 19, 2023, approved the consolidated storm restoration recovery surcharge subject to final true-up.

Docket Nos. 20230020-EI and 20230116-EI were consolidated by Order No. PSC-2024-0151-PHO-EI, issued May 14, 2024, placing the costs for the Storms and for Hurricane Idalia at issue in the final hearing held on May 21-22, 2024. At the final hearing, the testimonies of Shelly Ross, William T. Fountain, Carl Vinson, Tomer Kopelovich, Christopher Menendez and Lisa Perry were admitted into the record. Exhibits 1-21 were also admitted into the record.

All parties have either agreed with, or taken no position, on Issues 1-15 and 18-19 in this docket; those issues deal with the actual dollar amounts for costs recoverable under DEF's 2017 and

¹ 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.

² Order No. PSC-2023-0333-PCO-EI, issued November 2, 2023, in 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.

2021 Settlement Agreements.³ These issues were approved by the Commission at the May 21 final hearing, resulting in prudent and reasonable retail Total Recoverable Storm Costs of \$431,380,637 plus estimated interest.⁴ These issues are included in staff's recommendation for purposes of completeness; because they have already been approved, no vote is necessary for Issues 1-15 and 18-19. The only two remaining issues are Issue 16: Should any cost recovery approved in this docket be recovered from demand-metered customers through the demand charge? and Issue 17: If applicable, how should any under-recovery or over-recovery be handled? Post-hearing briefs addressing these remaining issues were filed by DEF, PCS Phosphate, and Walmart on June 14, 2024.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, 366.06, and 366.076, Florida Statutes (F.S.).

³ Order No. PSC-2017-0451-AS-EI, issued November 20, 2017, in Docket No. 20170183-EI, *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC*; Order No. PSC-2021-0202A, issued June 28, 2021, in Docket No. 20210016-EI, *In re: Petition for limited proceeding to approve 2021 settlement agreement, by Duke Energy Florida, LLC*.

⁴ EXH 21.

Discussion of Issues

Issue 1: Should the incremental cost and capitalization approach (ICAA) found in Rule 25-6.0143, F.A.C., be used to determine the reasonable and prudent amounts to be included in the restoration costs?

Approved Type 2 Stipulation: The ICCA approach in Rule 25-6.0143, F.A.C. and the terms of the 2019 Irma Settlement Agreement approved by Order No. PSC-2019-0232-AS-EI should be used to determine the reasonable and prudent amounts included in the restoration costs.

Issue 2: Have the terms of DEF's 2019 Settlement Agreement, approved by Order No. PSC-2019-0232-AS-EI, issued June 13, 2019, been complied with? If not, why not?

Approved Type 2 Stipulation: Yes.

Issue 3: What is the reasonable and prudent amount of regular payroll expense to be included in Total Storm Related Restoration Costs?

Approved Type 2 Stipulation: Below is the reasonable and prudent regular payroll expense for each storm.

**Table 3-1
Regular Payroll Expense**

Storm	Amount
Nicole	\$1,370,120
Ian	\$4,674,377
Fred	\$167,704
Elsa	\$492,800
Isaias	\$66,191
Eta	\$347,959

The reasonable and prudent amount of regular payroll expense to be included in Total Storm Related Restoration Costs is \$7,119,151.

Issue 4: What is the reasonable and prudent amount of overtime payroll expense to be included in Total Storm Related Restoration Costs?

Approved Type 2 Stipulation: Below is the reasonable and prudent overtime payroll expense for each storm.

**Table 4-1
Overtime Payroll Expense**

Storm	Amount
Nicole	\$3,377,663
Ian	\$9,965,271
Fred	\$258,537
Elsa	\$807,888
Isaias	\$366,526
Eta	\$962,313

The reasonable and prudent amount of overtime payroll expense to be included in Total Storm Related Restoration Costs is \$15,738,198.

Issue 5: What is the reasonable and prudent amount of contractor costs, including vegetation and line clearing, to be included in Total Storm Related Restoration Costs?

Approved Type 2 Stipulation: Below are the reasonable and prudent contractor costs for each storm.

**Table 5-1
Contractor Costs**

Storm	Amount
Nicole	\$29,149,136
Ian	\$267,394,755
Fred	\$108,304
Elsa	\$8,257,533
Isaias	\$279,861
Eta	\$13,084,650

The reasonable and prudent amount of contractor costs, including vegetation and line clearing, to be included in Total Storm Related Restoration Costs is \$318,274,239.

Issue 6: What is the reasonable and prudent amount of vehicle and fuel expense to be included in Total Storm Related Restoration Costs?

Approved Type 2 Stipulation: Below is the reasonable and prudent vehicle and fuel expense for each storm.

**Table 6-1
Vehicle and Fuel Expense**

Storm	Amount
Nicole	\$1,526,358
Ian	\$9,397,616
Fred	\$40,969
Elsa	\$426,169
Isaias	\$37,817
Eta	\$747,426

The reasonable and prudent amount of vehicle and fuel expense to be included in Total Storm Related Restoration Costs is \$12,176,355.

Issue 7: What is the reasonable and prudent amount of employee expenses to be included in Total Storm Related Restoration Costs?

Approved type 2 Stipulation: Below are the reasonable and prudent employee expenses for each storm.

**Table 7-1
Employee Expenses**

Storm	Amount
Nicole	\$3,453,759
Ian	\$16,510,677
Fred	\$24,606
Elsa	\$836,059
Isaias	\$16,232
Eta	\$800,782

The reasonable and prudent amount of employee expenses to be included in Total Storm Related Restoration Costs is \$21,642,115.

Issue 8: What is the reasonable and prudent amount of materials and supplies expense to be included in Total Storm Related Restoration Costs?

Approved Type 2 Stipulation: Below is the reasonable and prudent materials and supplies expense for each storm.

**Table 8-1
Materials and Supplies Expense**

Storm	Amount
Nicole	\$3,245,543
Ian	\$18,603,008
Fred	\$34,668
Elsa	\$1,002,905
Isaias	\$37,432
Eta	\$1,003,640

The reasonable and prudent amount of materials and supplies expense to be included in Total Storm Related Restoration Costs is \$23,927,196.

Issue 9: What is the reasonable and prudent amount of logistics costs to be included in Total Storm Related Restoration Costs?

Approved Type 2 Stipulation: Below are the reasonable and prudent logistics costs for each storm.

**Table 9-1
Logistics Costs**

Storm	Amount
Nicole	\$4,917,493
Ian	\$44,649,681
Fred	\$59,127
Elsa	\$3,403,957
Isaias	\$12,301
Eta	\$2,768,223

The reasonable and prudent amount of logistics costs to be included in Total Storm Related Restoration Costs is \$55,810,782.

Issue 10: What is the reasonable and prudent amount of other costs to be included in Total Storm Related Restoration Costs?

Approved Type 2 Stipulation: Below are the reasonable and prudent other costs for each storm. These amounts include labor burdens/incentives, overhead allocations, external audit, insurance deductible and Irma settlement implementation costs.

**Table 10-1
Other Costs**

Storm	Amount
Nicole	\$1,470,546
Ian	\$10,083,533
Fred	\$192,958
Elsa	\$914,981
Isaias	\$225,532
Eta	\$1,357,418

The reasonable and prudent amount of other costs to be included in Total Storm Related Restoration Costs is \$14,244,968.

Issue 11: What is the reasonable and prudent total amount of costs to be included in Total Storm Related Restoration Costs?

Approved Type 2 Stipulation: Below are the reasonable and prudent Total Storm Related Restoration Costs for each storm.

**Table 11-1
Total Storm Related Restoration Costs**

Storm	Amount
Nicole	\$48,510,617
Ian	\$381,278,918
Fred	\$886,874
Elsa	\$16,142,291
Isaias	\$1,041,892
Eta	\$21,072,410

The reasonable and prudent total amount of costs to be included in Total Storm Related Restoration Costs is \$468,933,002.

Issue 12: What is the reasonable and prudent amount of storm-related costs that should be capitalized?

Approved Type 2 Stipulation: Below are the reasonable and prudent storm-related costs that should be capitalized.

**Table 12-1
Capitalized Costs**

Storm	Amount
Nicole	\$3,992,784
Ian	\$13,714,654
Fred	\$31,017
Elsa	\$171,265
Isaias	\$0
Eta	\$395,117

The reasonable and prudent amount of storm-related costs that should be capitalized is \$18,304,837.

Issue 13: What is the reasonable and prudent amount of storm-related costs that should be ICCA non-incremental O&M adjustment?

Approved Type 2 Stipulation: Below are the reasonable and prudent storm-related costs that should be ICCA non-incremental O&M adjustment.

**Table 13-1
ICCA Non-Incremental O&M Adjustment**

Storm	Amount
Nicole	\$1,274,876
Ian	\$4,096,655
Fred	\$690,427
Elsa	\$688,770
Isaias	\$760,300
Eta	\$376,694

The reasonable and prudent amount of storm-related costs that should be ICCA non-incremental O&M adjustments is \$7,887,722.

Issue 14: What is the reasonable and prudent total amount of retail Recoverable Storm Costs?

Approved Type 2 Stipulation: Below are the reasonable and prudent Recoverable Storm Costs including any true-up to prior storm recovery and estimated interest on the unamortized reserve deficiency balance, subject to true-up as stated in Issue 16.

**Table 14-1
Retail Recoverable Storm Costs**

Storm	Amount
Nicole	\$42,928,330 retail
Ian	\$359,576,056 retail
Fred	\$155,094 retail
Elsa	\$14,608,576 retail
Isaias	\$258,952 retail
Eta	\$20,160,165 retail
Previous Partial Recovery of Storm Costs	\$10,976,144

The prudent and reasonable retail Total Recoverable Storm Costs plus estimated interest of \$4,669,608 is \$431,380,637.

Issue 15: What is the appropriate accounting treatment associated with any storm costs found to have been imprudently incurred?

Approved Type 2 Stipulation: Imprudently incurred storm costs should not be charged to the storm reserve or recovered through a storm restoration charge on customer bills. No storm restoration costs were imprudently incurred; therefore, no such adjustment is necessary.

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

Recommendation: No. Staff recommends that the recovery of storm restoration costs from demand-metered customers through an energy charge is more appropriate than through a demand charge because the costs recovered through a storm restoration surcharge are highly variable and are largely associated with non-recurring contractor costs. Therefore, staff recommends that no change be made to the collection of DEF's storm restoration surcharge and that it continue to be collected from demand-metered customers on an energy (\$/kWh) basis. (Draper, Brownless)

Position of the Parties

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.

Walmart: Walmart recommends that any cost recovery approved in this Docket going forward should be recovered from demand-metered customers through the demand charge, i.e., on a \$/kW basis, and not through the energy charge, or on a \$/kWh basis, as proposed by the Company.

PCS Phosphate: No. PCS supports continuation of the cost recovery method that DEF proposed and the Commission approved in its two interim orders issued in March and December 2023 as appropriate and in the public interest.

Staff Analysis:

PARTIES' ARGUMENTS

DEF

DEF argues that the storm restoration costs should be recovered from all classes of customers via a non-fuel energy charge, i.e., \$/kWh basis. In support of this position, DEF makes four arguments. First, the collection of the surcharges on an energy basis was approved by two separate orders, Order No. PSC-2023-0111-PCO-EI, issued March 23, 2023, and Order No. PSC-2023-0375-PCO-EI, issued December 19, 2023. (DEF BR 3) Order No. PSC-2023-0111-PCO-EI approved a storm restoration surcharge recovery tariff for demand customers based on an energy charge.⁵ Order No. PSC-2023-0375-PCO-EI approved a consolidated storm restoration recovery surcharge for all customer classes to be included in the "non-fuel energy charge on customer bills."⁶ Order No. PSC-2023-0375-PCO-EI further stated that "(t)he

⁵ Order No. PSC-2023-0111-PCO-EI at 6-7.

⁶ Order No. PSC-2023-0375-PCO-EI at 4.

proposed interim storm restoration recovery factors shall remain in effect until a final true-up is approved by this Commission.”⁷

DEF states that Walmart filed its request for intervention on March 6, 2023, but did not appear at the March 7, 2023 Commission Conference to voice its opposition to billing of the first storm restoration surcharge via an energy charge. And although Walmart did e-mail comments to the parties and Commission staff on March 7th objecting to the energy billing for demand customers, it did not file for reconsideration of Order No. PSC-2023-0111-PCO-EI approving energy billing. Further, when DEF later petitioned for a consolidation of the first surcharge with a surcharge for Hurricane Idalia storm restoration recovery costs, Walmart did not appear at all at the December 5, 2023 Commission Conference at which the consolidated energy charge was approved and did not file for reconsideration of Order No. PSC-2023-0375-PCO-EI.

Second, DEF argues that if Walmart’s request to stop recovering storm restoration costs through an energy charge for demand side customers is granted, the time needed to develop, test and implement a new charge could not take place before DEF’s October billing cycle at the earliest. (DEF BR 4) That being the case, the charge would only be in effect for three months of the twenty-one month recovery period. Changing the billing process this late in the process, DEF witness Menendez testified, would lead to customer confusion and frustration. (TR 110-111)

Third, DEF states that changing the method of collection would be the wrong policy. (DEF BR 4) The types of costs recovered through a storm restoration surcharge are directly related to restoring electric service – energy - to all customers. (TR 141) Restoration of the electric grid benefits all customers equally regardless of how they are billed. (TR 144-145) DEF further argues that Walmart’s attempt to compare storm restoration costs to storm hardening costs is incorrect. (DEF BR 5)

Fourth, DEF argues that the Commission staff and Walmart have interpreted the term “interim” in the phrase “interim storm restoration recovery charge” incorrectly. DEF states that Walmart and Commission staff interpret “interim” to mean that the surcharges approved by Order Nos. PSC-2023-0111-PCO-EI and PSC-2023-0375-CFO-EI are not final but are subject to modification. DEF contends that “interim” simply means the limited period between implementation of the surcharge and determination of final storm restoration costs and calculation of refund or true-up charges.

Walmart

Walmart contends that the Commission should require DEF to recover storm restoration costs on a going forward basis from demand-metered customers through the demand charge and not the energy charge. (Walmart BR 4) Walmart argues that the recovery of storm restoration costs through an energy charge for demand customers is not cost-based because “it fails to properly reflect the demand-related nature of the underlying costs, thus creating intra-class subsidies within the demand-metered customer classes.” (Walmart BR 1) Walmart is not requesting recalculation and rebilling of storm restoration costs recovered before the May 21, 2024 final hearing. However, Walmart is requesting that the billing be changed from an energy charge (\$/kWh) to a demand charge (\$/kw) for costs which will be recovered during the rest of 2024.

⁷ Order No. PSC-2023-0375-PCO-EI at 3.

Further, Walmart is requesting that any over-recovery be refunded to Walmart through an energy charge (\$/kWh), the same method by which it was collected, and any under-recovery be collected using a demand charge (\$/kW) for demand-metered classes. (TR 129)

In support of this position, Walmart argues that the transmission and distribution costs associated with storm hardening recovered through the Storm Protection Plan Cost Recovery Clause (SPPCRC) are identical to the transmission and distribution costs, as well as the line clearing and vegetation removal costs, recovered through the storm restoration surcharge at issue here. (EXH 13) For DEF, Florida Power & Light Company (FPL) and Tampa Electric Company (TECO) the Commission has approved the use of a demand charge to recover identified Storm Protection Plan costs from demand-metered customers.⁸ In order to be consistent, Walmart argues, a demand charge should be used for demand-metered customers here. (TR 125, 128)

Walmart further argues that distribution costs associated with storm restoration are fixed in nature and do not vary with the amount of energy consumed by a particular customer. (Walmart BR 5) When these costs are recovered through an energy charge, Walmart contends that the result is a misallocation of cost responsibility leading to intra-class subsidies, i.e., higher load factor customers within the same rate class will overpay while lower load factor customers within the same class will underpay. (TR 124) Walmart states that even accepting the fact that a change to using a demand charge rather than an energy charge would take several months, that is not a reason to abandon the principle that customers should pay the costs associated with providing them service. (Walmart BR 5-6)

PCS Phosphate

For costs collected prior to the May 21, 2024 final hearing and costs to be collected from the May 21, 2024 hearing until the end of the year, PCS Phosphate agrees with DEF's collection using an energy charge (\$/kWh). (PCS Phosphate BR 3-4) PCS Phosphate gives several reasons for its position. First, use of an energy charge for the collection of storm restoration costs has been a long standing practice for DEF, TECO and FPL. (PCS Phosphate BR 2) Second, Walmart has not provided any analysis or quantification of the intraclass subsidies it alleges exist when an energy charge is used. (PCS Phosphate BR 4) Third, Walmart did not ask for reconsideration of either order approving the original storm restoration surcharge or the amended storm restoration surcharge. That being the case, a request to change the approved surcharge methodology is untimely. (PCS Phosphate BR 5) Fourth, due to the time needed to implement a change in the recovery method for the surcharge, it is unlikely that the change could be made much before the expiration of the interim cost recovery period, i.e., December 31, 2024. (*Id.*) That being the case, change to a demand charge for demand-metered customers for the remainder of this year is impractical. (PCS Phosphate BR 5-6)

⁸ Order No. PSC-2021-0202A-AS-EI, issued June 28, 2021, in Docket No. 20210016-EI, *In re: Petition for limited proceeding to approve 2021 settlement agreement, including general base rate increases, by Duke Energy Florida, LLC*; Order No. PSC-2022-0418-FOF-EI, issued December 12, 2022, in Docket No. 20220010-EI, *In re: Storm Protection Plan Cost Recovery Clause*.

ANALYSIS

The parties in this docket have agreed to stipulations for Issues 1-15 and 18-19 which were approved by the Commission at the May 21, 2024 final hearing. These issues concern the prudent and reasonable costs for the storm restoration cost activities identified in DEF's 2017 and 2021 Settlement Agreements,⁹ i.e., regular payroll expense, overtime payroll expense, contractor costs, vegetation and line clearing, vehicle and fuel expense, employee expenses, materials and supplies, logistics, and other storm related costs.¹⁰ What remains to be decided is how the cost of these storm restoration activities will be recovered from the different classes of customers. There are three separate types of costs at issue here: costs that have already been recovered as of the May 21, 2024 final hearing; costs that will be recovered between the May 21, 2024 final hearing and December 31 of this year; and costs that will be either the subject of a refund or true-up charge. This issue addresses the appropriate recovery from demand customers for previously recovered storm restoration costs and storm restoration costs to be recovered until the end of 2024. As stated at the final hearing, Walmart is not requesting adjustments to any storm restoration costs that already have been collected but is requesting to collect the remaining storm restoration costs from demand-metered customers through a demand charge. (TR 129)

Staff agrees with Walmart that this issue is properly before the Commission based on the Prehearing Officer's previous ruling.¹¹ Neither DEF nor PCS Phosphate have raised any new issues of fact or law but have simply reiterated the same arguments. Staff also agrees with Walmart that the fact that a change from an energy to demand charge can't take place until October of this year should not affect whether the change is made, if warranted. However, Walmart's arguments to change the recovery method for the previously approved storm recovery surcharges from an energy charge to a demand charge for demand-metered customers for costs to be recovered until the end of the year are not persuasive. Walmart did not provide any analysis or quantification of the amount of its alleged overpayment due to the use of an energy rather than demand charge. (TR 139-140) While witness Perry testified that Walmart is a high load factor customer (TR 138), Walmart also did not provide any evidence that a shift in demand-related costs from per kW demand to per kWh energy results in a shift in demand cost responsibility from lower load factor to higher load factor customers.(TR 140) Further, staff agrees with PCS Phosphate that all customers within a rate class are not similarly affected by any charge, but that does not necessarily mean that there are unacceptable intra-class subsidies in effect.

⁹ Order No. PSC-2017-0451-AS-EU, issued November 20, 2017, in Docket No. 20170183-EI, *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC*; Order No. PSC-2021-0202A-AS-EI, issued June 28, 2021, in Docket No. 20210016-EI, *In re: Petition for limited proceeding to approve 2021 settlement agreement, by Duke Energy Florida, LLC*.

¹⁰ EXH 21.

¹¹ Order No. PSC-2024-0151-PHO-EI, issued May 14, 2024, in Docket No. 20230020-EI, *In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Idalia, by Duke Energy Florida, LLC.*, p. 18 (In allowing Walmart's proposed Issue 16 to be included in this proceeding, the Prehearing Officer stated that "This is the point of entry for parties to raise all issues dealing with the replacement storm costs collected through the surcharge.")

Date: July 25, 2024

Walmart's argument that storm restoration costs are identical to those recovered through the Storm Protection Plan Cost Recovery Clause (SPPCRC)¹² and should be treated similarly also falls short. Storm hardening costs are intended to protect and strengthen transmission and distribution infrastructure from extreme weather conditions to reduce restoration costs. (DEF BR 5) At issue here are storm restoration costs.

Costs recovered through the storm recovery cost surcharge for Hurricane Ian are listed on Exhibit 3. (TR 105) The type of costs shown are payroll, employee expenses, contractor costs, and material and supplies. Witness Menendez testified that these types of costs are the same for all of the storms at issue here, but vary greatly in amount due to how long the storm remains in the utility's service area, the size and strength of the storm, the location of the storm, and the type of service territory affected. (TR 105-6) Staff agrees with DEF that restoration costs are heavily dependent on the amount of damage. (DEF BR 5) For instance, the total recovery restoration costs for Hurricane Ian are \$359,576,056 (EXH 6), while for Hurricane Elsa the total recoverable costs are \$14,609,576 (EXH 8).

The evidence shows that the storm restoration costs are not fixed and predictable as are the costs considered in the SPPCRC, but are highly variable. Contractor costs represent the time and equipment costs incurred by third party contractors hired for storm restoration activities. (EXH 3) Of the \$367,587,217 in requested costs associated with Hurricane Ian, the largest expense, \$317,562,371 or 86 percent of the total, is associated with contractor costs that are unique to each tropical storm or hurricane. (EXH 3)

Witness Perry testified that replacing a pole under the storm protection plan is the same asset as replacing a pole after a hurricane and represent fixed costs. (TR 146) As shown on Exhibit 3, material and supplies included in Hurricane Ian incremental storm restoration costs are \$19,036,828 or 5 percent of the total. While poles would be included in materials and supplies they represent a small percentage of the total incremental storm restoration costs. The majority of the expenses requested for Hurricane Ian, and the other storms for which costs are being requested, are associated with the labor needed to restore the energy grid, i.e., employee expenses, which include the cost of lodging and meals (\$16,457,252); regular payroll (\$4,312,733); labor burdens/incentives (\$5,075,949) and overtime payroll (\$9,874,448).

CONCLUSION

The evidence presented shows that the costs recovered through a storm restoration surcharge are highly variable and are largely associated with non-recurring contractor costs and payroll. That being the case, the use of an energy charge is more appropriate than a demand charge for demand-metered customers. Therefore, staff recommends that no change be made to the collection of DEF's storm restoration surcharge and that it continue to be collected from demand-metered customers on an energy (\$/kWh) basis.

¹² See Docket No. 20240010-EI, *In re: Storm protection plan cost recovery clause*.

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

Recommendation: In order to avoid mismatching the method used to collect storm restoration costs with that used to refund those costs, and consistent with our recommendation on Issue 16, staff recommends that DEF be required to use the fuel energy charge to either refund or collect true-up storm restoration costs. (Draper, Brownless)

Position of the Parties

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.

Walmart: DEF proposes to handle any under-recovery or over-recovery through the Capacity Charge. Walmart supports that methodology for collection of any under-recovery via demand charges for demand-metered customers, but opposes any refunds of amounts collected by energy charges via demand-charge rates for demand-metered customers.

PCS Phosphate: PCS supports the cost recovery methods that DEF proposed in this proceeding, but PCS does not oppose Walmart's suggestion that any demonstrated over-recovery be refunded in the same manner as those costs were collected (i.e., on an \$/kWh basis).

Staff Analysis:

PARTIES' ARGUMENTS

DEF

DEF has proposed to collect or refund any under- or over-recovery through the capacity cost recovery clause for two reasons. First, that is the way it has been done in the past. Second, it is administratively the most convenient method to handle the inevitable true-up. (DEF BR 7, TR 108-9) Finally, regardless of whether there is an over- or under-recovery, DEF would like to use one type of cost recovery. (*Id.*)

Walmart

Walmart is fine using the capacity cost recovery clause to recover any additional costs as it is a demand charge (\$/kW). However, Walmart wants any refund to be given back on the same basis as it was collected, i.e., using an energy charge (\$/kW). Walmart contends that using the capacity cost recovery clause for refunds will refund it less than it originally paid.

PCS Phosphate

PCS Phosphate argues that over- or under-recoveries should be recovered through additional months of surcharges or a sur-credit if one is to be fully consistent. (PCS Phosphate BR 6) PCS Phosphate also notes that in September 2023 when DEF filed its request to combine Hurricane Idalia storm restoration costs with those of the Storms, DEF had already recovered approximately \$10 million more than its total projected storm restoration costs. That being the

case, PCS Phosphate does not anticipate that there will be either a significant over- or under-recovery when the final true-up takes place next year. (*Id.*) PCS Phosphate does not oppose Walmart's request that any over-recovery be refunded on an energy basis while any under-recovery be collected on a demand basis. However, it points out that Walmart has agreed to a stipulation in FPL's storm restoration docket¹³ that states true-up rates will be recovered "through the non-fuel energy charge on customers' bills" regardless of whether the true-up results in an excess or shortfall.¹⁴ (PCS Phosphate BR 7) Like DEF, PCS Phosphate prefers that only one type of recovery be used for both under- or over-recoveries.

ANALYSIS

DEF would like to use one type of cost recovery clause to implement the final true-up of storm restoration costs next year whether it results in a refund or the collection of additional funds. DEF has proposed using the capacity cost recovery charge to implement the storm restoration cost true-up which is a demand charge. Walmart argues that a mismatch is created when you collect money on an energy basis, as was done here, but refund any over-collection on a demand basis. Consistent with its position in Issue 16, Walmart is fine collecting any additional funds using the capacity cost recovery charge, since it is a demand charge.

DEF witness Menendez agrees with Walmart that a mismatch is created when costs are collected on an energy basis and refunded on a demand basis. (TR 108) DEF has the ability to use either its environmental cost recovery (ECRC) or fuel clause, both of which use energy charges, to implement the storm restoration cost true-up. (TR 110) Witness Menendez stated that DEF wasn't sure whether the ECRC clause could be used for storm cost recovery and comply with the provisions of Section 366.8255, F.S. (TR 108)

Staff agrees with DEF and Walmart that a mismatch is created when funds are collected using an energy charge but refunded using a demand charge. Collection from demand customers using an energy charge results in a greater amount of money being collected than if those customers had been billed using a demand charge for the same amount of power. Since Walmart was billed using an energy charge, an energy charge should be used to make any refunds required.

The ECRC and fuel clause are both billed using an energy charge. Section 366.8255, F.S., authorizes the collection of costs for compliance with environmental laws or regulations. Section 366.8255(d), F.S., defines "environmental compliance costs" recoverable through the ECRC as including the following: inservice capital investments; operation and maintenance expenses; fuel procurement costs; purchased power costs; emission allowance costs; and direct taxes on environmental equipment. Storm restoration costs are not costs directly associated with "environmental compliance" although materials and supplies necessary to implement compliance with environmental requirements maybe damaged during a storm and need to be replaced.

¹³ See Docket No. 20230017-EI, *In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Ian and Nicole*, by Florida Power & Light Company.

¹⁴ Docket No. 20230017-EI, *In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Ian and Nicole*, by Florida Power & Light Company.

Staff agrees with DEF that only one cost recovery method should be used for both collection and refund of storm restoration costs. Given the language of Section 366.8255(d), F.S., staff concludes that it is more appropriate to use the fuel energy charge rather than the ECRC for both collection and any refund of storm restoration costs.

CONCLUSION

Given these facts, and consistent with our recommendation on Issue 16, staff recommends that DEF be required to use the fuel energy charge to either refund or collect true-up storm restoration costs.

Issue 18: What additional storm restoration process improvements, if any, should DEF follow in future storms?

Approved Type 2 Stipulation: DEF has fully implemented the Process Improvements approved in Order No. PSC-2019-0232-AS-EI. As part of DEF's process of continuous improvements, to the extent practicable without hindering safe and efficient storm restoration, DEF has agreed to work to implement the additional process refinements included in Attachment A.

Issue 19: Should this docket be closed?

Approved Type 2 Stipulation: No. This docket should remain open so that DEF can file supplemental schedules that compare the final storm recovery amount approved by the Commission to actual revenues from the storm restoration charge and calculate the resulting excess or shortfall for recovery.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

CORRECTED STORM COST SETTLEMENT AGREEMENT

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

Procedural Background

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

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

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

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

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

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

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

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

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

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

Current Docket Background

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

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

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

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

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

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

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

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

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

Storm Cost Recovery Amount

2. Specific adjustments:

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

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

3. Aggregate adjustments:

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

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

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

Future Process Improvements

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

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

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

STORM RESTORATION COST PROCESS IMPROVEMENTS

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

I. Contracting and Vendor Engagement, Travel and Work Policies

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

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

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

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

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

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

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

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

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

(1) Audit Purpose and Scope

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

(2) Audit Activities should include:

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

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

Incremental Cost Methodology Addendum

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

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

Notes:

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

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

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

Other Provisions

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

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

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

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

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

DATED this 18th day of April, 2019.

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

[Remainder of Page Intentionally Left Blank]

Signature Page to DEF Storm Cost Settlement Agreement

Duke Energy Florida, LLC
299 1st Ave. N
St. Petersburg, FL 33701

By: 
Catherine Stempien
Duke Energy Florida, State President

Signature Page to DEF Storm Cost Settlement Agreement

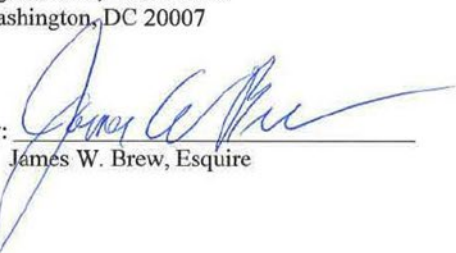
Office of Public Counsel
J. R. Kelly, Esquire
Public Counsel
Charles Rehwinkel, Esquire
Deputy Public Counsel
Thomas A. David
Associate Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

By: 
J.R. Kelly

Signature Page to DEF Storm Cost Settlement Agreement

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

By:



James W. Brew, Esquire

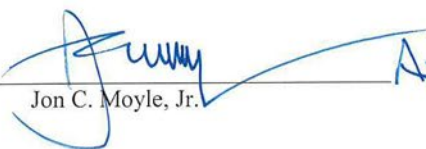
Signature Page to DEF Storm Cost Settlement Agreement

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

By: 
Robert Scheffel Wright

Signature Page to DEF Storm Cost Settlement Agreement

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

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

