

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Review of 2020-2029 Storm Protection Plan  
pursuant to Rule 25-6.030, F.A.C.,  
Duke Energy Florida, LLC

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Docket No. 20200069-EI

Filed: July 31, 2020

**JOINT MOTION FOR EXPEDITED APPROVAL  
OF SETTLEMENT AGREEMENT**

Pursuant to Rule 28-106.204(1), Florida Administrative Code (“F.A.C.”), Duke Energy Florida, LLC (“DEF” or the “Company”), the Office of Public Counsel (“OPC” or “Citizens”), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (“PCS Phosphate”) (collectively, the “Parties), by and through their respective undersigned counsel, hereby file this Joint Motion and request that the Florida Public Service Commission (“Commission”) review and approve the Stipulation and Settlement Agreement (“Agreement), provided as Attachment A to this Joint Motion, as a full and complete resolution of all matters in Docket No. 20200069-EI, in accordance with Section 120.57(4), Florida Statutes (“F.S.”), and enter a final order reflecting such approval to effectuate implementation of the Agreements. In support of this motion, the Parties state as follows:

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

costs through a charge separate and apart from its base rates, to be referenced as the Storm Protection Plan Cost Recovery Clause (“SPPCRC”). *See* Section 366.96(7), F.S.

2. Rule 25-6.030, F.A.C., requires each utility to file an updated SPP at least every three years that covers the utility’s immediate ten-year planning period. Rule 25-6.031(2), F.A.C., provides that after a utility has filed its SPP it may petition the Commission for recovery of the costs associated with the SPP and implementation activities.
3. On March 11, 2020, the Prehearing Officer issued the Order Establishing Procedure, Order No. PSC-2020-0073-PCO-EI, in the SPP dockets, including Docket No. 20200069. The Order Establishing Procedure consolidated the SPP dockets for all utilities for purposes of hearings and disposition.
4. On April 10, 2020, DEF filed its Petition, supported by the testimonies and exhibits of Messrs. Jay Oliver and Thomas G. Foster, requesting Commission approval of the Company’s 2020-2029 SPP, comprised of Exhibits JWO-1 through JWO-5.<sup>1</sup> OPC filed the direct testimony and exhibits of Helmuth W. Schultz (Ex. Nos. HWS-1 through HWS-5) and Scott Norwood (Ex. Nos. SN-1 thru SN-3) and related exhibits addressing DEF’s SPP on May 26, 2020. DEF filed rebuttal testimony and exhibits of Jay Oliver (Exhibit No. JWO-6) and Thomas G. Foster on July 1, 2020.
5. The parties have engaged in extensive discovery in the SPP docket. Through this process, the Parties thoroughly reviewed and evaluated DEF’s 2020-2029 SPP.
6. As a direct result of these efforts, the Parties<sup>2</sup> initially entered into the 2020 SPP/SPPCRC Agreement on July 17, 2020 that resolved several SPP and SPPCRC issues. The agreement entered into today is intended to resolve all remaining issues raised in the SPP docket

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<sup>1</sup> On June 24, 2020, DEF filed updated Exhibits JWO-2 and JWO-4.

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

(Docket No. 20200069 - EI. This stipulation assumes that DEF's SPP is approved without modification as set forth in the Attached Settlement Agreement. The Parties hereby jointly request that the Commission review and approve the Agreement in its entirety and without modification.

7. The Commission has a “long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties.” *Re Florida Power & Light Co.*, Docket No. 20050045-EI, Order No. PSC-2005-0902-S-EI (FPSC Sept. 14, 2005). The proper standard for the Commission’s approval of a settlement agreement is whether it is in the public interest. *Sierra Club v. Brown*, 243 So. 3d 903, 910-913 (Fla. 2018) (citing *Citizens of State v. FPSC*, 146 So. 3d 1143, 1164 (Fla. 2014)); *see also Gulf Coast Elec. Coop., Inc. v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999) (“[I]n the final analysis, the public interest is the ultimate measuring stick to guide the PSC in its decisions”).
8. The proposed Agreement represents a reasonable compromise of competing positions and is a full and complete resolution of all matters in Docket No. 20200069-EI. If approved by the Commission, the Agreement will establish a series of stipulations that will eliminate all issues to be litigated in this docket.
9. The terms of the proposed Agreements reflect the Parties’ assessments of their respective litigation positions, as well as their efforts to reach a reasonable and mutually acceptable compromise. The respective Parties entered into the proposed Agreements, each for their own reasons, but all in recognition that the cumulative total of the regulatory activity before the Commission—now and for the rest of 2020 and through 2021—is anticipated to be greater than normal. To maximize the administrative and regulatory efficiency benefits

inherent in the proposed Agreement for the Parties and the Commission, the Parties ask that the Commission consider this Agreement on August 10, 2020.

10. Considered as a whole, the Agreements fairly and reasonably balances the interests of customers and the utilities, and is consistent with the stated purpose and intent of Section 366.96, F.S. Approving the Agreement is consistent with the Commission's long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to the Commission's regulatory jurisdiction. Accordingly, the Agreement is in the public interest and should be approved.
11. DEF has consulted with counsel for FIPUG and has been advised and authorized to represent that FIPUG takes no position on the relief sought by this Motion; Walmart did not provide a position prior to the filing of this Motion.

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

Respectfully submitted this 31<sup>st</sup> day of July, 2020,

By: /s/Matthew R. Bernier  
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FOR DUKE ENERGY FLORIDA, LLC

By: /s/ Charles J. Rehwinkel

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FOR OFFICE OF PUBLIC COUNSEL

By: /s/ James Brew

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FOR WHITE SPRINGS AGRICULTURAL CHEMICAL CO. dba PCS PHOSPHATE

**CERTIFICATE OF SERVICE**  
*(Dkt. No. 20200069-EI)*

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by electronic mail this 31<sup>st</sup> day of July, 2020, to all parties of record as indicated below.

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*/s/ Matthew R. Bernier*  
Attorney

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

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Review of 2020-2029 Storm Protection Plan  
pursuant to Rule 25-6.030, F.A.C., Duke Energy  
Florida, LLC

Docket No. 20200069-EI

Filed: July 31, 2020

**STIPULATION AND SETTLEMENT AGREEMENT**

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

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

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



WHEREAS, the Florida Legislature directed each utility to file a ten-year Storm Protection Plan (“SPP”) that explains the storm hardening programs and projects the utility will implement to achieve the legislative objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. *See* Section 366.96(3), F.S.;

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

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

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

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

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366, and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties regardless of whether a court ultimately determines such matters to reflect

Commission policy, upon acceptance of the Agreement as provided herein and upon approval as in the public interest; and

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

**DEF 2020-2029 Storm Protection Plan**  
**(Docket Nos. 20200069-EI)**

1. The Parties agree that the record supports a Commission finding that DEF's Feeder Hardening Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.
2. The Parties agree that the record supports a Commission finding that DEF's Lateral Hardening Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.
3. The Parties agree that the record supports a Commission finding that DEF's Self-Optimizing Grid – SOG Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.
4. The Parties agree that the record supports a Commission finding that DEF's Underground Flood Mitigation Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.
5. The Parties agree that the record supports a Commission finding that DEF's Distribution Vegetation Management Program is in the public interest and that DEF proceeding to

implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.

6. The Parties agree that the record supports a Commission finding that DEF's Transmission Structure Hardening Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.
7. The Parties agree that the record supports a Commission finding that DEF's Substation Flood Mitigation Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.
8. The Parties agree that the record supports a Commission finding that DEF's Loop Radially-Fed Substations Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.
9. The Parties agree that the record supports a Commission finding that DEF's Substation Hardening Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.
10. The Parties agree that the record supports a Commission finding that DEF's Transmission Vegetation Management Program is in the public interest and that DEF proceeding to implement the program (consistent with any action taken pursuant to the provisions of paragraph 11) is not evidence of imprudence.

11. The Parties agree that, in 2022, DEF will file its updated SPP for the period 2023-2032, required by section 366.96(6), F.S., to be filed at least every 3 years after approval of the Company's SPP. DEF agrees that it will not materially expand the scope of the programs and associated expenditures it seeks to recover in the SPPCRC for the years 2020 – 2022 beyond those that are included in the estimates shown on page 40 of Exhibit JWO-2 (the DEF SPP) filed on April 10, 2020, updated on June 24, 2020, and as modified in the filing made on July 24, 2020, in the SPPCRC. DEF will base its requests for cost recovery through the SPPCRC for the years 2023, 2024 and 2025 on the SPP update to be filed in 2022.
12. The Parties agree that the approval hereunder should not include or imply any determination of prudence for any particular project under said Program. OPC, PCS Phosphate, FIPUG, and Walmart retain the right to challenge the prudence or reasonableness of any projects or costs for any project submitted through the SPPCRC.

#### **OTHER PROVISIONS**

13. The Parties Stipulate to enter into the record the direct and rebuttal testimonies and exhibits of DEF witnesses Jay Oliver and Geoff Foster; the direct testimonies and exhibits of OPC witnesses Scott Norwood and Helmuth Schultz III, and the testimony and exhibits of Walmart witness Lisa Perry.
14. The Parties waive cross examination of all witnesses.
15. The Parties waive the right to file a post-hearing brief.
16. Nothing in the Agreement will have precedential value.
17. The provisions of the Agreement are contingent upon approval by the Commission in its entirety without modification. Except as expressly set out herein, no Party agrees,

concedes, or waives any position with respect to any of the issues identified in the Prehearing Order, and this Agreement does not expressly address any specific issue or any position taken thereon. The Parties will support approval of the Agreement and will not request or support any order, relief, outcome, or result in conflict with it. No Party to the Agreement will request, support, or seek to impose a change to any provision of the Agreement. Approval of the Agreement in its entirety will resolve all matters and issues in this docket. This docket will be closed effective on the date that the Commission Order approving this Agreement is final, and no Party to the Agreement will seek appellate review of any order issued in this docket.

18. The Parties agree that approval of the Agreement is in the public interest.
19. This Agreement may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original, or via electronic signature. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.

Executed this 31<sup>st</sup> day of July, 2020.

By: /s/ Catherine Stempien  
Catherine Stempien  
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**For Duke Energy Florida, LLC**

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**For White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate**