

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-**

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**DATE:** September 24, 2020

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of Industry Development and Market Analysis (Eichler, Breman, Clark, Crawford, Hinton) *CH*  
Division of Accounting and Finance (Fletcher, Maurey, Mouring) *ALM*  
Division of Economics (Coston, Galloway) *JH*  
Office of the General Counsel (Stiller, Crawford) *JSC*

**RE:** Docket No. 20200092-EI – Storm protection plan cost recovery clause.

**AGENDA:** 09/24/20 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On September 1, 2020, the Florida Public Service Commission (Commission) conducted an administrative hearing to consider two Motions for Approval of Settlement Agreement. Both Motions were filed by Duke Energy Florida, LLC (Duke or Company) in Docket No. 20200069-EI (Storm Protection Plan or SPP) and Docket No. 20200092-EI (Storm Protection Plan Cost Recovery Clause or SPPCRC). The first Motion was filed July 17, 2020, and requested approval of the “2020 SPP/SPPCRC Agreement” (July Agreement). The second Motion was filed August

10, 2020, and requested approval of the “SPPCRC Stipulation and Settlement Agreement” (August Agreement), attached hereto.<sup>1</sup>

The signatories to both Agreements are Duke, the Office of Public Counsel (OPC), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (PCS). The Florida Industrial Power Users Group (FIPUG) is a party to both dockets but did not sign and takes no position regarding either Agreement. Walmart, Inc. (Walmart) is a party to both dockets, takes no position regarding the July Agreement, and objects to the August Agreement.

The July Agreement contains a series of stipulations regarding the reasonable costs Duke should be permitted to recover through the SPPCRC in 2021. The Commission approved the July Agreement at the conclusion of the September 1, 2020 hearing, without objection from any party.

The August Agreement also contains a series of stipulations. Specifically, the signatories agree that the prefiled testimony provides the Commission with a record basis to approve the reasonableness of Duke’s 2021 SPPCRC costs and revenue requirements. The signatories further agree that the SPPCRC rate factors should be approved, but that such rates should not have precedential value in future SPPCRC proceedings. Finally, the signatories agree that Duke should be permitted to seek recovery of its initial 2020-2029 SPP development costs through the SPPCRC, where Duke will bear the burden of proving reasonableness and prudence.

At the September 1, 2020 public hearing, counsel for Duke, OPC, and PCS made presentations in favor of the August Agreement. Duke also introduced into evidence the testimony of witnesses Jay W. Oliver and Thomas G. Foster. Counsel for Walmart presented argument in opposition to the August Agreement. Walmart also introduced into evidence the testimony of its witness Steve W. Chriss and conducted cross examination of Duke witness Geoff Foster. Exhibits 1 through 8 on the Comprehensive Exhibit List were admitted without objection. At the conclusion of the hearing, the Commission established September 11, 2020, as the deadline for any party wishing to file a brief to do so. Duke, PCS, and Walmart timely filed post-hearing briefs.

Walmart made one argument at the September 1<sup>st</sup> hearing and in its post-hearing brief: to wit, Duke’s proposal to recover SPP costs from demand-metered customers through a \$/kWh energy charge is not appropriate. Walmart notes that this portion of Duke’s proposal is inconsistent with the approach taken by the other utilities in Docket No. 20200092-EI, and contends that it will result in costs being recovered differently from how they are incurred and allocated, which is further alleged to violate cost causation principles.

In its brief, Duke counters that focusing on this one provision is not consistent with the law governing consideration of settlement agreements, which directs the Commission to examine such agreements as a whole to determine whether they are in the public interest. Looking to the

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<sup>1</sup> On August 10, 2020, after these Settlement Agreements were executed and filed, the Commission approved a Settlement in Docket No. 20200069-EI. Based on that approval, that docket was closed August 28, 2020. The closing of that docket was a ministerial act and does not affect the substance of the two Agreements, which were both properly considered by the Commission at the public hearing as part of Docket No. 20200092-EI.

other numerous negotiated provisions that can serve to avoid a full evidentiary hearing, Duke asserts that Commission approval of the August Agreement is in the public interest.

On the issue specifically contested by Walmart, Duke points out that the billing methodology will be in place for 2021 only, with it being revisited when the 2022 SPPCRC factors are set. Duke continues that \$10 million in revenue requirements it is seeking to recover through the SPPCRC in 2021 is a relatively modest amount. Finally, Duke notes that the Commission has previously approved storm cost recovery on both an energy and demand basis, and that Duke's choice of one for 2021 only should not override the public interest served by the August Agreement in its entirety.

In its brief, PCS supports Duke and approval of the August Agreement. PCS also argues that because a hearing in this matter would involve litigating complex legal and factual issues relating to a comprehensive 2017 settlement agreement, and that the opportunity for those issues to be fully vetted is anticipated in a base rate proceeding involving Duke in 2022, the one year bridge on the billing issue crafted into the August Agreement as part of an overall negotiated settlement serves the public interest.

The Commission should vote on whether or not to grant the Motion filed August 10, 2020, requesting approval of the SPPCRC Stipulation and Settlement Agreement (August Agreement).

The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.05, and 366.06, Florida Statutes.

FILED 8/10/2020  
DOCUMENT NO. 04332-2020  
FPSC - COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Storm Protection Plan Cost  
Recovery Clause

Docket No. 20200092-EI

Dated: August 10, 2020

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**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

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

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

- determine the utility's prudently incurred SPP costs and to allow the utility to recover such costs through a charge separate and apart from its base rates, to be referenced as the Storm Protection Plan Cost Recovery Clause ("SPPCRC"). *See* Section 366.96(7), F.S.
2. Rule 25-6.030, F.A.C., requires each utility to file an updated SPP at least every three years that covers the utility's immediate ten-year planning period. Rule 25-6.031(2), F.A.C., provides that after a utility has filed its SPP it may petition the Commission for recovery of the costs associated with the SPP and implementation activities through the SPPCRC.
  3. On July 17, 2020, the Prehearing Officer issued the Order Establishing Procedure ("OEP") in Docket No. 20200092-EI.
  4. Pursuant to the schedule established in the OEP, on July 24, 2020, DEF filed its 2021 projection petition and supporting testimonies and exhibits of Thomas G. Foster (Exhibit No. TGF-1) and Jay Oliver ("SPPCRC Petition").
  5. The SPPCRC Petition requests recovery of approximately \$10 million in revenue requirements through the SPPCRC during the period January – December 2021, which is the revenue requirements for its projected SPP related costs that are being passed through the SPPCRC in 2021 of approximately \$100.9M (capital) and \$4.6M (O&M).
  6. As a direct result of the extensive discovery performed in DEF's SPP docket,<sup>1</sup> the Parties<sup>2</sup> initially entered into the 2020 SPP/SPPCRC Agreement on July 17, 2020 that resolved several SPP and SPPCRC issues. Subsequently, on July 31, 2020, the Parties<sup>3</sup> entered into a Stipulation and Settlement Agreement in the SPP Docket ("SPP Settlement") that, if approved by this Commission, will resolve all issues in the SPP Docket.

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

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

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

7. The Agreement entered into today is intended to resolve all remaining DEF-specific issues raised in the SPPCRC docket (Docket No. 20200069 – EI). This Agreement is premised on approval of the SPP Settlement. The Parties hereby jointly request that the Commission review and approve this Agreement in its entirety and without modification.
8. The Commission has a “long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties.” *Re Florida Power & Light Co.*, Docket No. 20050045-EI, Order No. PSC-2005-0902-S-EI (FPSC Sept. 14, 2005). The proper standard for the Commission’s approval of a settlement agreement is whether it is in the public interest. *Sierra Club v. Brown*, 243 So. 3d 903, 910-913 (Fla. 2018) (citing *Citizens of State v. FPSC*, 146 So. 3d 1143, 1164 (Fla. 2014)); *see also Gulf Coast Elec. Coop., Inc. v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999) (“[I]n the final analysis, the public interest is the ultimate measuring stick to guide the PSC in its decisions”).
9. The proposed Agreement represents a reasonable compromise of competing positions and is a full and complete resolution of all matters in Docket No. 20200092-EI. If approved by the Commission, the Agreement will establish a series of stipulations that will eliminate all issues to be litigated in this docket as pertaining to the Parties.
10. The terms of the proposed Agreements reflect the Parties’ assessments of their respective litigation positions, as well as their efforts to reach a reasonable and mutually acceptable compromise. The respective Parties entered into the proposed Agreements, each for their own reasons, but all in recognition that the cumulative total of the regulatory activity before the Commission—now and for the rest of 2020 and through 2021—is anticipated to be greater than normal. To maximize the administrative and regulatory efficiency benefits

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

11. Considered as a whole, the Agreements fairly and reasonably balances the interests of customers and the utilities, and is consistent with the stated purpose and intent of Section 366.96, F.S. Approving the Agreement is consistent with the Commission's long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to the Commission's regulatory jurisdiction. Accordingly, the Agreement is in the public interest and should be approved.
12. DEF has consulted with counsel for FIPUG, which take no position on the relief sought by this motion, and Walmart Inc., which objects to the relief sought by this motion.

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

Respectfully submitted this 10th day of August, 2020,

By: /s/Matthew R. Bernier

Matthew R. Bernier  
Associate General Counsel  
106 East College Avenue, Suite 800  
Tallahassee, Florida 32301

FOR DUKE ENERGY FLORIDA, LLC

By: /s/ Charles J. Rehwinkel

Charles J. Rehwinkel  
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FOR OFFICE OF PUBLIC COUNSEL

By: /s/ James Brew

James W. Brew  
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FOR WHITE SPRINGS AGRICULTURAL CHEMICAL CO. dba PCS PHOSPHATE

**CERTIFICATE OF SERVICE**

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

s/ Matthew R. Bernier  
Attorney

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

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Storm Protection Plan Cost  
Recovery Clause

Docket No. 20200092-EI

Dated: August 10, 2020

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**SPPCRC STIPULATION AND SETTLEMENT AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366, and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of

the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the Agreement as provided herein and upon approval as in the public interest;

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

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

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

**DEF 2021 PROJECTED SPPCRC FILING**

(Docket No. 20200092-EI)

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

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

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

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

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

Executed this 10th day of August, 2020.

By: /s/Matthew R. Bernier

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FOR DUKE ENERGY FLORIDA, LLC

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