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April 30, 2024

VIA ELECTRONIC FILING

Mr. Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20230019-EI; In re: Petition for recovery of costs associated with named tropical storm systems during the 2019-2022 hurricane seasons and replenishment of storm reserve, by Tampa Electric Company

Dear Mr. Teitzman:

Please find enclosed for filing the Motion for Reconsideration of Walmart Inc. in the above-referenced case.

Please contact me if you have any questions concerning this filing.

Sincerely,

/s/ Stephanie U. Eaton
Stephanie U. Eaton (Florida Bar No. 165610)

SUE:sds
Enclosures
c: Parties of Record

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for recovery of costs : **DOCKET NO. 20230019-EI**
associated with named tropical storm :
systems during the 2019-2022 hurricane :
seasons and replenishment of storm reserve, :
by Tampa Electric Company : **Filed: April 30, 2024**

**MOTION FOR RECONSIDERATION OF
WALMART INC.**

Pursuant to Rule 25-22.0376, F.A.C., Walmart Inc. ("Walmart") moves for reconsideration of the April 26, 2024, Prehearing Order, Order No. PSC-2024-0137-PHO-EI ("Prehearing Order"), that Walmart's Pre-Filed Direct Testimony and Exhibits be stricken from this Docket and not submitted for consideration by the Florida Public Service Commission ("Commission") at the Hearing in this Docket. Walmart further moves for reconsideration of Issue 13 to address how any refunds necessitated by over-collection of storm costs from customers will be handled. The grounds for Walmart's motion are as follows:

I. PROCEDURAL BACKGROUND

1. On March 6, 2023, Walmart filed a Petition to Intervene in this Docket.
2. On March 7, 2023, Walmart filed Comments, as counsel was not able to attend the Agenda Conference in person on that date.
3. On January 18, 2024, the Commission issued an Order approving Walmart's Petition to Intervene.
4. On February 16, 2024, Walmart filed the Pre-filed Direct Testimony of Lisa V. Perry that largely incorporated its filed Comments, and further submitted Exhibit LVP-1.

5. The primary issue that Walmart raised in both its Comments and in its Pre-filed Direct Testimony is whether Tampa Electric Company ("TECO") should recover storm costs from demand-metered customers on a demand basis, and this Issue was included in the draft Prehearing Order as Issue A, which Walmart clarified at the Prehearing is intended to apply to collection of costs on a going forward basis.

6. As to Issue A, neither Staff's Direct Testimony and Exhibits filed on March 1, 2024, nor Staff's Prehearing Statement filed on April 16, 2024, nor Staff's stated position in the draft Prehearing Order (*i.e.*, "No Position") circulated on April 19, 2024, and again circulated the day of the Prehearing, indicated that Staff objected to the inclusion of Walmart's Direct Testimony in this Docket.

7. Further, at no time during the litigation or at the Prehearing did TECO or the Office of Public Counsel ("OPC"), either in testimony or otherwise, indicate any objection to the inclusion of Walmart's Pre-filed Direct Testimony and Exhibits in this Docket, although TECO disagreed with Walmart's position on Issue A as set forth in its April 16, 2024, Prehearing Statement.

8. In fact, OPC, TECO, and Walmart agreed prior to the Prehearing that each party's Pre-filed Direct Testimony and Exhibits should be stipulated into the Record, and informed the Prehearing Officer that each agreed to waive cross-examination and objections to testimony and exhibits.

9. After the parties explained their positions on the Issues, including Contested Issue A, Staff recommended that Walmart's Pre-filed Direct Testimony and Exhibits should be stricken on the basis that the 2021 Stipulation and Settlement Agreement in TECO's base rate case, Docket No. 20210034-EI, filed August 6, 2021, corrected version filed October 16, 2021, ("2021 Settlement Agreement") precluded Walmart from asserting a position in this Docket. Walmart, a

party to the 2021 Settlement Agreement, disagreed with Staff's position that it was precluded by the 2021 Settlement Agreement from asserting its Contested Issue A in this Docket.

10. The Prehearing Officer ruled consistently with Staff's *sua sponte* recommendation, which had the effect of a motion to strike, but agreed to allow Walmart to proffer its Pre-filed Direct Testimony and Exhibits into the Record.

11. On April 26, 2024, the Prehearing Officer issued the Prehearing Order Striking Walmart's Contested Issue A and Walmart's Pre-filed Direct Testimony and Exhibits, for which Walmart requests the Commission to reconsider.

II. STANDARD OF REVIEW

12. The appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the decision-maker failed to consider in rendering its order. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc.* at 317.

III. ARGUMENT

13. The following points of fact and law were overlooked and/or not considered in issuing the Prehearing Order striking Walmart's Pre-filed Direct Testimony and Exhibits:

- a. During the Prehearing, Staff took the position that the 2021 Settlement Agreement precluded Walmart from raising its Contested Issue A in this matter.¹
- b. Walmart, OPC, and TECO, but not Staff, are parties to the 2021 Settlement Agreement, and none of them raised the argument that the 2021 Settlement Agreement precluded Walmart's Contested Issue A and Pre-filed Direct Testimony and Exhibits from being admitted to the record in this Docket.
- c. In connection with Staff's recommendation, specific portions of the 2021 Settlement Agreement relevant to Walmart's Issue in this Docket were not addressed during the Prehearing.
- d. Paragraph 8(a) of the 2021 Settlement Agreement, beginning on page 29, allows TECO to file a petition to recover storm costs as it has in this Docket. Further, it allows TECO to collect storm costs "on an interim basis (subject to refund following a hearing or a full opportunity for a formal proceeding) sixty days following" TECO's filed petition and tariff. The paragraph references energy charges in reference to "monthly residential bills." The paragraph provides for recovery of storm restoration costs and replenishment of the storm reserve, which TECO seeks in this Docket. The paragraph further provides that the "*[p]arties to this 2021 Agreement are not precluded from participating in any such proceedings and opposing the amount of Tampa Electric's claimed costs (for example, and without*

¹ Based upon Walmart's counsel's notes, Staff referenced pages 35-36 of the 2021 Settlement Agreement as providing support for its position, although those pages do not appear to be relevant to the issue; it is more likely Staff was referencing pages 24-26.

limitation, on grounds that such claimed costs were not reasonable or were not prudently incurred) or whether the proposed recovery is consistent with this Paragraph 8, but not the mechanism agreed to herein." (emphasis added). The example in parentheses in the foregoing sentence states "without limitation," and Walmart interprets this paragraph 8(a) to allow participation in this Docket to address the amount of TECO's costs charged to demand-metered customers via energy charges.

- e. To the extent that TECO and Walmart interpret the meaning of paragraph 8 of the 2021 Settlement Agreement differently, paragraph 17 of the 2021 Settlement Agreement on page 45 provides that "the Parties agree to meet and confer in an effort to resolve the dispute. To the extent the Parties cannot resolve any dispute within 30 days, the matter may be submitted to the Commission for resolution." Walmart and TECO did confer as to Walmart's Contested Issue A in this Docket numerous times before the Prehearing. At no time did TECO suggest that the 2021 Settlement Agreement prevented Walmart from raising Contested Issue A. Walmart and TECO agreed to each stipulate the other party's Direct (and Rebuttal) Testimony and Exhibits into the Record, waive objections, and waive cross-examination.
- f. The Commission and Florida Courts interpret settlement agreements as contracts. Under Florida law, if a contract is clear and unambiguous, it must be construed to mean what the language therein means. *Walgreen Co. v. Habitat Dev. Corp.*, 655 So.2d 164, 165 (Fla. 3d DCA 1995). If the contract

is deemed ambiguous, a court will "resort to parol evidence . . . in order to ascertain the parties' intent." *Douglass v. Buford*, 9 So. 3d 636, 637 (Fla. Dist. Ct. App. 2009) (emphasis added). The fact that none of the parties to the 2021 Settlement Agreement participating in this Docket raised any issue regarding Walmart's ability to raise its cost recovery issue as a result of the 2021 Settlement Agreement, speaks to the settling parties' intent (*i.e.*, that it does not violate the 2021 Settlement Agreement to raise the issue).

- g. Staff's recommendation is also untimely. Walmart's Comments were filed prior to TECO's collection of the storm costs in this Docket, and more than thirteen months before the Prehearing. Had Staff believed that the issue was precluded by the 2021 Settlement Agreement, or was filed in the wrong Docket, then Staff (and/or the other parties to this Docket) had thirteen months to raise the issue.²
- h. Lastly, Walmart states that inclusion of Walmart's Pre-filed Direct Testimony and Exhibit in the Record does not prejudice OPC or TECO, neither of whom objected to the parties' agreed upon Stipulation to enter all the Pre-filed Direct Testimony and Exhibits into the Record without objection or cross-examination.

² In a recent case, Staff recommended denying a motion to strike on the basis that the motion to strike was untimely because it was filed two hundred and fifty (250) days after the objection that was the subject of the motion to strike. *See Application for water and wastewater service in Duval, Baker, and Nassau Counties, by First Regional Utilities, Inc.*, Docket No. 20190168-WS, Staff Memorandum (filed Dec. 22, 2020). Here, Walmart's Comments providing its position on cost-recovery were filed over a year ago, well outside of the two hundred and fifty (250) days that Staff deems unreasonable for a motion to strike.

14. Additionally, Walmart respectfully moves for the Commission to reconsider the Type 2 Stipulation as to Issue 13, as the discussion among the parties and Staff was incomplete on this issue, as follows:

- a. Prior to the Prehearing, Walmart raised a potential issue with how collection of any over- or under-recovery from demand-metered customers may result in further storm costs being collected after the December 2024 true-up via an energy charge.
- b. The Prehearing Officer briefly stopped the Prehearing so the parties could discuss Issue 13 further with Staff. During the break, Staff and TECO confirmed that additional amounts required after the true-up would be processed through an adjustment to the energy conservation clause. Staff presented counsel for TECO and Walmart with TECO's rate sheet for the energy conservation clause, which indicated that costs under that clause are collected from demand-metered customers via demand charges. Thus, in the more likely situation in which TECO has under-collected storm costs, it would collect remaining amounts from demand-metered customers through demand charges, which Walmart supports (thus giving rise to the Type 2 Stipulation).
- c. However, the parties did not address specifics of how any refunds will be made if TECO has over-collected storm costs by the time of its true-up. Walmart would like clarification on Issue 13 that if refunds are required, then those refunds need to be made by the same matter in which the storm costs were collected (*i.e.*, the energy charge authorized by the Commission

for interim collection of storm costs from customers). Otherwise, when TECO is handling refunds through the rates set forth for customers via the energy conservation clause, there would be an inconsistency in amounts collected from (*i.e.*, via energy charge), and then refunded to (*i.e.*, via demand charge), demand-metered customers like Walmart.

IV. CONCLUSION

For the foregoing reasons, Walmart respectfully requests that the Commission (1) allow Walmart's Contested Issue A, Pre-filed Direct Testimony and Exhibits to remain in the Record in this Docket, and (2) re-open Issue 13 to address how any refunds necessitated by over-collection of storm costs from customers will be handled. If Walmart's Contested Issue A, Pre-filed Direct Testimony and Exhibits are allowed to remain in the Record for this Docket, then Walmart remains willing to Stipulate all parties' Direct (and Rebuttal) Testimonies and Exhibits into the Record, without objection and waiving cross-examination, as was the agreement Walmart, TECO, and OPC had reached before the Prehearing.

Respectfully submitted,

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Counsel to Walmart Inc.

Dated: April 30, 2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Motion for Reconsideration of Walmart Inc. has been furnished by electronic mail to the following parties this 30th day of April, 2024.

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