

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: April 24, 2025

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Vogel) *ALM*
Division of Economics (Hampson, McClelland) *ED*
Division of Engineering (Thompson, Ellis) *TB*
Office of the General Counsel (Dose) *JSC*

RE: Docket No. 20240173-EI – Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Debby, Helene and Milton, by Duke Energy Florida, LLC.

AGENDA: 05/06/25 – Regular Agenda – Motions to Dismiss – Oral argument not requested; participation is at the discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On December 27, 2024, Duke Energy Florida, LLC (DEF or Company) filed its petition for a limited proceeding seeking authority to implement an interim storm restoration recovery charge to recover \$1.09 billion for the incremental restoration costs related to Hurricanes Debby, Helene, and Milton, as well as the replenishment of its retail storm reserve. Included in the \$1.09 billion is interest charged on unrecovered costs for Hurricanes Debby, Helene, and Milton. Pursuant to the 2024 Settlement Agreement (2024 Settlement) approved by the Commission in Order No. PSC-2024-0472-AS-EI, the recovery of storm costs from customers will begin, on an interim

basis, 60 days after the filing of a cost recovery petition and tariff with the Commission.¹ DEF requested a 12-month recovery period, applied to all bills from March 2025 through February 2026.

On January 31, 2025, DEF submitted updated rate calculations for all rate classes and revised tariffs, as well as an updated response to staff's first data request. The updated calculations reflect revised cost allocation factors, resulting in minor changes to the storm cost recovery factors for all customers. Specifically, DEF included in its petition a distribution allocation factor for customers taking service at transmission level that overallocated distribution storm costs to transmission-level customers. The revised rate calculation is consistent with the calculation of previous storm cost recovery charges approved in Order No. PSC-2024-0377-FOF-EI.² The updated rate calculations do not change the total \$1.09 billion incremental storm costs proposed for recovery. On February 4, 2025, the Commission approved DEF's interim storm restoration recovery charges consistent with DEF's January 31, 2025, updated rate calculations and revised tariffs by Order No. PSC-2025-0061-PCO-EI issued on February 24, 2025.

On March 6, 2025, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs (PCS) timely filed a Motion for Reconsideration of Order No. PSC-2025-0061-PCO-EI (PCS's Motion) pursuant to Rule 25-22.0376, Florida Administrative Code (F.A.C.). In its Motion, PCS argues that the approved allocation factors did not accurately reflect the cost allocation factors utilized in DEF's 2021 and 2024 Rate Settlements.³

On March 6, 2025, Nucor Steel Florida, Inc. (Nucor) also timely filed a Motion for Reconsideration of Order No. PSC-2025-0061-PCO-EI (Nucor's Motion) pursuant to Rule 25-22.0376, F.A.C. In its Motion, Nucor asks that the Commission grant reconsideration in order to clarify that cost allocation and rate design treatment remain open issues in this case that can be addressed by parties later in this proceeding.

On March 13, 2025, DEF timely filed its Response to PCS's Motion (DEF's Response to PCS's Motion) as well as its Response to Nucor's Motion (DEF's Response to Nucor's Motion). DEF argued that neither PCS nor Nucor identified any issue of fact or law that the Commission overlooked or failed to consider that would justify reconsideration of Order No. PSC-2025-0061-PCO-EI.

Also on March 13, 2025, Nucor filed its Response to PCS's Motion agreeing with PCS's position and asserting its own position that final allocation and rate design of the storm

¹ Order No. PSC-2024-0472-AS-EI, issued November 12, 2024, in Docket No. 20240025-EI, *In re: Petition for rate increase by Duke Energy Florida, LLC*.

² Order No. PSC-2024-0377-FOF-EI, issued August 27, 2024, in Docket No. 20230020-EI, *In re: Petition for limited proceeding for recovery cf 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, *In re: Petition for limited proceeding for recovery cf incremental storm restoration costs related to Hurricane Idalia*, by Duke Energy Florida, LLC.

³ Order No. PSC-2021-0202-AS-EI, issued June 4, 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 (2021 Settlement).

restoration recovery charges remains an open issue that parties should be afforded the opportunity to litigate at a later point in this case.

This recommendation addresses the appropriate disposition of PCS's and Nucor's motions for reconsideration. No request for oral argument was concurrently filed with either motion, as required under Rule 25-22.0022(1), F.A.C., however, oral argument may be heard at the Commission's discretion under Rule 25-22.0022(7)(b), F.A.C. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, 366.06, and 366.076, Florida Statutes.

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Discussion of Issues

Issue 1: Should PCS's Motion for Reconsideration of Order No. PSC-2025-0061-PCO-EI be granted?

Recommendation: No. Reconsideration should be denied because PCS's Motion for Reconsideration fails to raise a point of fact or law that the Commission overlooked or failed to consider in rendering its decision. (Dose)

Staff Analysis:

Law

The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order under review. *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). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d 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.*, 294 So. 2d at 317.

PCS's Motion

In its Motion, PCS argues that the approved allocation factors did not accurately reflect the cost allocation factors utilized in DEF's 2021 and 2024 Settlements. More specifically, PCS claims that DEF failed to sub-functionalize⁴ Distribution costs between Distribution – Primary and Distribution – Secondary, which each have different allocators pursuant to the 2021 and 2024 Rate Settlements. PCS asks that the Commission direct DEF to re-calculate its storm surcharge exhibits to be consistent with allocation factors in its base rate method and to submit a compliance filing to allocate costs consistent with the 2021 and 2024 Settlements.

DEF's Response

In DEF's Response to PCS's Motion, DEF argued that PCS did not identify any issue of fact or law that the Commission overlooked or failed to consider that would justify reconsideration of Order No. PSC-2025-0061-PCO-EI. More specifically, DEF argues that there is no requirement that storm recovery costs be allocated using the same allocation utilized for base rates. DEF asserts that previous storm cost recovery filings used the same language, utilized the same treatment for distribution costs, and referenced the same controlling settlement agreements. DEF additionally asserts that it does not sub-functionalize storm restoration costs between Distribution – Primary and Distribution – Secondary because costs are not tracked or recorded in

⁴ Sub-functionalization occurs when a cost category is further broken down into component parts with separate allocation factors.

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a manner to facilitate that sub-functionalization, and so DEF does not have the information necessary to perform such a calculation. While DEF accepts that PCS accurately described the allocation of base rates under Paragraph 30(c) of the 2021 Settlement Agreement and Paragraph 29(c) of the 2024 Settlement, DEF contends that these apply only to base rates and not to storm cost recovery.

Nucor's Response

In Nucor's Response to PCS's Motion, Nucor agreed with PCS's position. Nucor's response also reiterates its position from its own motion that final allocation and rate design of the storm restoration recovery charges remains an open issue that parties should be afforded the opportunity to litigate at a later point in this case. This second point is addressed in Issue 2.

Analysis

The 2021 and 2024 DEF Settlements were entered in base rate proceedings and, accordingly, address a wide range of issues. Both Settlements set forth the allocation factors to be used for base rates. In a base rate case, DEF sub-functionalizes distribution costs between "Distribution – Primary" and "Distribution – Secondary" and the allocation factors for distribution primary and distribution secondary costs differ. DEF does not sub-functionalize storm restoration costs between distribution primary and distribution secondary and, therefore, applies the distribution primary allocation factor to all distribution costs (both primary and secondary).

The Settlements separately set forth the procedures applicable to the storm surcharge. These procedures include allowing DEF to maintain a storm reserve of approximately \$132 million and allowing DEF to collect a storm surcharge on a 12-month recovery period subject to approval and true-up. These storm cost recovery procedures allow DEF to avoid regulatory lag by recovering costs due to storm damage quickly and effectively, subject to true-up, while allowing all parties and the Commission the opportunity to review all costs. Neither Settlement sets allocation factors specific to storm surcharge, and neither otherwise requires DEF to sub-functionalize between "Distribution – Primary" and "Distribution – Secondary" in a storm cost recovery filing. Previous storm surcharges have not sub-functionalized distribution costs.⁵

PCS contends that the approved allocation factors did not accurately reflect those approved in DEF's 2021 and 2024 Settlements. The instant case concerns a storm surcharge rather than base rates, and DEF applies a distribution allocation factor that is consistent with the 2021 and 2024 Settlements to the allocation of distribution storm restoration costs consistent with its past storm recovery surcharges. DEF complied with all relevant portions of the 2024 Settlement as it pertains to storm surcharges. Therefore, staff believes that PCS failed to raise a point of fact or

⁵ See Order No. PSC-2023-0111-PCO-EI, issued March 23, 2023, in Docket No. 20230020-EI, *In re: Petition for limited proceeding for recovery cf incremental storm restoration costs related to Hurricanes Elsa, Eta, Isaias, Ian, Nicole, and Tropical Storm Fred*, by Duke Energy Florida, LLC; Order No. PSC-2024-0377-FOF-EI, issued August 27, 2024, in Docket No. 20230023-EI, *In re: Petition for limited proceeding for recovery cf 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, *In re: Petition for limited proceeding for recovery cf incremental storm restoration costs related to Hurricane Idalia*, by Duke Energy Florida, LLC.

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law that the Commission overlooked or failed to consider. Consequently, staff recommends that the Commission deny PCS's Motion for Reconsideration.

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Issue 2: Should Nucor's Motion for Reconsideration of Order No. PSC-2025-0061-PCO-EI be granted?

Recommendation: No. Reconsideration should be denied because Nucor's Motion for Reconsideration fails to raise a point of fact or law that the Commission overlooked or failed to consider in rendering its decision. Staff recommends however that the Commission clarify on its own motion that the cost allocation and rate design treatment have not been finally determined in this docket and may still be raised for final determination later in this proceeding. (Dose)

Staff Analysis:

Law

As stated more fully in Issue 1, the appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order under review. 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.

Nucor's Motion

In Nucor's Motion, it argues that neither the 2021 nor the 2024 settlement prescribes the appropriate cost allocation and rate design for the storm cost recovery surcharge at issue in this docket. Nucor asks that the Commission grant reconsideration in order to clarify that cost allocation and rate design treatment remain open issues in this case that can be addressed by parties later in this proceeding. Nucor further contends that parties should have a full opportunity to conduct discovery on the costs that DEF seeks to recover through the interim storm cost recovery charge, the reasoning for the cost allocation and rate design selected by DEF to recover storm costs, and to develop positions on the appropriate cost allocation and rate design used to recover such costs from customers.

DEF's Response

In DEF's Response to Nucor's Motion, DEF argued that Nucor failed to identify a point of fact or law that the Commission overlooked. Additionally, DEF contends that Nucor's Motion does not request the Commission to take action on any specific portion of Order No. PSC-2025-0061-PCO-EI. DEF claims that petitioning the Commission for a statement of "clarification" of the Order is inappropriate for a motion for reconsideration. Further, DEF asserts that Nucor has not been denied the opportunity to conduct discovery on this matter and that Nucor waited until the day after Order No. PSC-2025-0061-PCO-EI issued to serve discovery.

Analysis

Nucor's instant Motion failed to raise a point of fact or law that the Commission overlooked or failed to consider. Therefore, staff recommends that the Commission deny Nucor's Motion for Reconsideration. However, staff agrees that the cost allocation and rate design treatment have

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not been finally determined in this proceeding. Therefore, staff recommends that the Commission clarify on its own motion that the final allocation and rate design of the storm restoration recovery charges remains an open issue and that parties should be afforded the opportunity to conduct discovery and develop positions on these issues in this proceeding.

Issue 3: Should this docket be closed?

Recommendation: No, this docket should remain open pending final reconciliation of actual recoverable storm costs with the amount collected pursuant to the interim storm restoration recovery charge and the calculation of a refund or additional charge if warranted. (Dose)

Staff Analysis: No, this docket should remain open pending final reconciliation of actual recoverable storm costs with the amount collected pursuant to the interim storm restoration recovery charge and the calculation of a refund or additional charge if warranted.