

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**REVIEW OF STORM PROTECTION PLAN, PURSUANT TO RULE 25-6.030, F.A.C.,**  
**DUKE ENERGY FLORIDA, LLC**

**DOCKET NO. 20220050-EI**

**REBUTTAL TESTIMONY OF CHRISTOPHER A. MENENDEZ**  
**ON BEHALF OF DUKE ENERGY FLORIDA, LLC**

**JUNE 30, 2022**

**I. INTRODUCTION AND QUALIFICATIONS.**

**Q. Please state your name and business address.**

A. My name is Christopher A. Menendez. My business address is Duke Energy Florida, LLC,  
299 1st Avenue North, St. Petersburg, Florida 33701.

**Q. Have you previously filed direct testimony in this docket?**

A. Yes, I filed direct testimony supporting the Company's Storm Protection Plan ("SPP" or  
"DEF 2023 SPP") on April 11, 2022.

**Q. Has your employment status and job responsibilities remained the same since  
discussed in your previous testimony?**

A. Yes.

**II. PURPOSE AND SUMMARY OF TESTIMONY.**

1 **Q. What is the purpose of your rebuttal testimony?**

2 A. The purpose of my testimony is to provide the Company's rebuttal to certain assertions and  
3 conclusions contained in the direct testimonies of OPC's witnesses Kollen and Mara. Mr.  
4 Lloyd and Ms. Howe will present additional rebuttal of the testimonies of OPC's witnesses  
5 Kollen and Mara.  
6

7 **Q. Do you have any exhibits to your testimony?**

8 A. No..  
9

10 **Q. Please summarize your testimony.**

11 A. My testimony addresses certain assertions and conclusions contained in OPC Witness  
12 Mara's and Witness Kollen's testimonies. I have not attempted to rebut each and every  
13 factual error or misconception contained in these testimonies.

14 With regard to Witness Mara's testimony, I generally focus on the capital investment level  
15 for the 10-year plan (2023-2032). With regard to Witness Kollen's testimony, I generally  
16 focus on five topics:

- 17 • Clarification on how DEF implemented Paragraph 4 of DEF's 2021 Settlement  
18 Agreement in Docket No. 20210016-EI<sup>1</sup> into DEF's 2023 SPP filing;
- 19 • Clarification on DEF's 2020 Settlement Agreement,<sup>2</sup> where the Signatories agreed that  
20 the record supports a finding that DEF's SPP programs are in the public interest, and  
21 that DEF proceeding to implement these SPP programs is not evidence of imprudence  
22 and how that Agreement impacts DEF's 2023 SPP filing;

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<sup>1</sup> Approved by Final Order No. PSC-2021-0202-AS-EI.

<sup>2</sup> Approved by Order No. PSC-2020-0293-AS-EI.

- Address Witness Kollen’s misinterpretations of Section 366.96, Florida Statutes, SPP Rule 25-6.030, and the Storm Protection Plan Cost Recovery Clause (“SPPCRC”) Rule 25-6.031;
- Address Witness Kollen’s incorrect concerns regarding DEF’s calculations of the estimated revenue requirements; and
- Address Witness Kollen’s concern that ratepayers will not receive the benefits of future reduced costs in base rates that result from SPP implementation.

### III. WITNESS MARA

**Q. Do you agree with the assertion that, “All of the utilities’ SPPs are based on the premise that by investing in storm hardening activities the electric utility infrastructure will be more resilient to the effects of extreme weather events. This resiliency means lower costs for restoration from the storms and reduced outage times experienced by the customers. Some programs have a greater impact on reducing outages times and lowering restoration costs than other programs. Clearly, the goal is to invest in storm hardening activities that benefit the customers of the electric utilities at a cost that is reasonable relative to those benefits.”**

A. Yes, DEF agrees with Mr. Mara’s premise and while I cannot speak for the other companies’ filings, DEF’s 2023 SPP filing was predicated on these very ideas, which are irrefutable. To that end, DEF agrees with Mr. Mara’s assertion.

**Q. Witness Mara asserts DEF’s proposed SPP includes a substantial increase in capital expenditures when compared to DEF’s SPP 2020-2029. Do you agree with his conclusion?**

1 A. No. To call the proposed Plan’s capital expenditures “a substantial increase” is a gross  
2 mischaracterization of the data being compared. Without going line by line through his  
3 table and pointing out exceptions by program, I can state in fact, that the investment levels  
4 presented over the common years 2023-2029 decreased in total in DEF’s 2023 SPP; the  
5 years that extend beyond DEF’s 2020 SPP (i.e., 2030-2032) are merely an extension of the  
6 2029 investment levels. The “significant increase” Mr. Mara identified is simply a result  
7 of comparing the first three years of DEF’s original SPP, where the SPP programs were  
8 either in the planning stage or the infancy of implementation, with three years of  
9 investments in programs that are fully up and running, delivering value to our customers.

10 Recalling Mr. Oliver’s testimony in Docket No. 20200069-EI:

11 The current Storm Hardening Plan (and its previous iterations) provided the  
12 foundation upon which the SPP builds. Indeed, because Year 1 of the SPP  
13 is 2020, the activities included in the Storm Hardening Plan for 2020 are  
14 already planned and in flight, DEF was unable to pivot and change course  
15 on those projects for 2020. Accordingly, DEF has summarized the activities  
16 in the Storm Hardening Plan that will carry over as projects for year 1 of  
17 the SPP, as required by the SPP Rule. Starting in year 2021 (or year 2 of the  
18 SPP), DEF will begin a transition to a more holistic system vision for  
19 hardening against extreme weather events and enhancing reliability.<sup>3</sup>

20 It was not until year 3 (2022) of the 2020 SPP that DEF began fully funding the original  
21 SPP. Of course, when Mr. Mara compares 8 years of full program funding to 10 years of  
22 full program funding as presented in this docket, there will be a variance, but to characterize  
23 it as a “significant increase” is simply incorrect.

24  
25 **IV. WITNESS KOLLEN**

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<sup>3</sup> Oliver Testimony, p. 5, ll. 5-17 (doc. No. 01943-2020, Docket No. 20200069-EI).

1 **Q. Witness Kollen asserts that, “section 366.96(8), Fla. Stat. limits SPP programs and**  
2 **projects to costs not recovered through the utility’s base rates.” Do you agree with**  
3 **this assertion?**

4 A: No, because section 366.96(8) is referring to cost recovery through the SPPCRC, not the  
5 SPP. There is no requirement in this statute to exclude programs with costs recovered  
6 through base rates from the SPP. To this point, DEF’s 2020-2029 SPP included both  
7 programs with costs recovered through base rates and programs with costs recovered  
8 through the SPPCRC. This argument underscores Mr. Kollen’s and OPC’s confusion over  
9 the purpose of this proceeding versus the purpose of the SPPCRC. This proceeding is  
10 intended to determine the proper scope of the Plan, the SPPCRC is intended to determine  
11 the proper amount to be collected through the clause itself and to ensure there is no double-  
12 recovery. I discuss this concept in a little more detail below.

13  
14 **Q. With the understanding that you disagree that programs recovered through base**  
15 **rates are ineligible for inclusion in the Plan, what evidence do you have that shows**  
16 **DEF’s compliance with the requirement that Storm Protection Plan costs are not**  
17 **recovered through both base rates and the SPPCRC?**

18 A. In Paragraph 4 of DEF’s 2021 Settlement Agreement,<sup>4</sup> the Parties (including OPC) agreed  
19 that DEF has properly removed all costs associated with the Storm Protection Plan from  
20 the costs included in DEF’s MFRs as all such costs spent on approved SPP programs are  
21 properly recoverable through the SPP Cost Recovery Clause. This clearly shows that DEF  
22 removed all SPP costs from base rates for the settlement period, 2022-2024. Further, Mr.

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<sup>4</sup> See Docket No. 20210016-EI (approved by Final Order PSC-2021-0202-AS-EI).

Kollen and OPC are once again conflating the SPP docket and the SPPCRC docket. The SPPCRC docket is the appropriate place to ensure no costs are being recovered through both base rates and SPPCRC; however, as is clear from DEF's 2021 Settlement Agreement, both OPC and DEF agree this is properly reflected in DEF's filings.

**Q. As part of DEF's updated SPP filing for the period 2023-2032 ("SPP 2023"), did DEF include any new programs beyond those approved in DEF's originally approved SPP ("SPP 2020")?**

**A.** No. DEF's SPP 2023 contains no new programs from those previously approved for inclusion in DEF's SPP 2020.<sup>5</sup>

**Q. As part of DEF's SPP 2023, did DEF materially expand the scope of the programs and associated expenditures it seeks to recover for the years 2020-2022 beyond those that are included in the estimates shown on page 40 of Exhibit JWO-2, filed on April 10, 2020, updated on June 24, 2020?**

**A.** No. DEF held to the terms of the 2020 Settlement Agreement. In fact, the investment levels presented over the common years 2023-2029 decreased in total over this time period.

2023 SPP	2023	2024	2025	2026	2027	2028	2029	TOTAL
Capital	\$ 602,662,131	\$ 693,408,744	\$ 775,170,171	\$ 748,783,297	\$ 747,669,844	\$ 749,676,339	\$ 748,511,641	\$ 5,065,882,169
O&M	\$ 72,094,065	\$ 77,093,403	\$ 78,955,292	\$ 78,099,796	\$ 78,985,429	\$ 81,823,026	\$ 82,413,243	\$ 549,464,254
2020 SPP	2023	2024	2025	2026	2027	2028	2029	TOTAL
Capital	\$ 596,980,947	\$ 685,818,676	\$ 767,965,146	\$ 813,820,584	\$ 779,185,223	\$ 739,559,303	\$ 739,943,069	\$ 5,123,272,948
O&M	\$ 74,785,933	\$ 78,218,981	\$ 81,350,604	\$ 84,259,130	\$ 85,273,993	\$ 86,239,131	\$ 88,056,022	\$ 578,183,793
Variance 2023 vs. 2020	2023	2024	2025	2026	2027	2028	2029	TOTAL
Capital Variance	\$ 5,681,184	\$ 7,590,068	\$ 7,205,025	\$ (65,037,287)	\$ (31,515,379)	\$ 10,117,036	\$ 8,568,572	\$ (57,390,779)
O&M Variance	\$ (2,691,868)	\$ (1,125,578)	\$ (2,395,312)	\$ (6,159,334)	\$ (6,288,564)	\$ (4,416,105)	\$ (5,642,779)	\$ (28,719,539)
Total Variance	\$ 2,989,316	\$ 6,464,490	\$ 4,809,713	\$ (71,196,620)	\$ (37,803,942)	\$ 5,700,932	\$ 2,925,794	\$ (86,110,318)

<sup>5</sup> Approved by Order PSC-2020-0293-AS-EI, issued on August 28, 2020.

1  
2 **Q. Witness Kollen alleges that, “DEF [has] included programs and projects that are**  
3 **within the scope of their existing base rate programs and base rate recoveries in the**  
4 **normal course of business. These programs and projects are listed and addressed in**  
5 **greater detail by Witness Mara. These programs and projects should be excluded**  
6 **from the SPPs, and the costs should be excluded from recovery through the**  
7 **SPPCRCs...” Do you agree with this conclusion?**

8 A. No. This argument is beyond dispute. As Messrs. Mara and Kollen recognize in their  
9 amended testimony, the 2021 Settlement Agreement eliminates any and all doubt that  
10 DEF’s programs are appropriately included in DEF’s SPP 2023. That said, Mr. Kollen is  
11 again conflating recovery of costs through the SPPCRC with the inclusion of programs in  
12 the SPP; regardless, as DEF’s 2021 Settlement Agreement and OPC’s Motion to amend  
13 Messrs. Mara and Kollen’s testimony makes clear, the recovery of these costs in the current  
14 SPPCRC is also appropriate. Further, DEF’s SPP 2023 only contains programs that were  
15 carried over from its SPP 2020. Per the terms of the 2021 Settlement Agreement, any  
16 argument to the contrary has been rendered moot, as recognized by the amended  
17 testimonies.

18  
19 **Q. Is Witness Kollen’s interpretation of the Statute correct when he states, "To qualify**  
20 **for inclusion in the SPP proceedings and cost recovery in the SPPCRC proceedings,**  
21 **the projects and the costs of the projects must be incremental, not simply**  
22 **displacements of base rate costs that would have been incurred during the normal**  
23 **course of business...”?**

1 A. No. I note that this is a very similar argument to one addressed earlier (i.e., that the Plan  
2 cannot include any programs with costs recovered through base rates). OPC is again  
3 conflating two related, but distinct, concepts: the Plan and the SPPCRC. DEF agrees it is  
4 impermissible to recover SPP program costs through the SPPCRC if those same program  
5 costs are also included in base rates, but DEF disagrees that the cost recovery component  
6 has any bearing on the Plan's suite of programs. As referenced previously, DEF's SPP  
7 2020 included programs with costs that were at the time being recovered through either  
8 base rates or the SPPCRC – when DEF reset its base rates through the 2021 Settlement  
9 Agreement, those programs being recovered through base rates were shifted to the clause  
10 – but the point is, DEF does not believe the means of cost recovery controls the make-up  
11 of the SPP.

12  
13 **Q. Is Witness Kollen's interpretation that "Section 366.96, Fla. Stat., and the SPPCRC**  
14 **Rule limit the costs eligible for recovery through the SPPCRC to incremental costs**  
15 **net of avoided costs (savings)" accurate?**

16 A. No. Witness Kollen's interpretations are woefully inaccurate. Nothing in the Statute nor  
17 the Rule states or implies anything remotely close to the effect of limiting the costs eligible  
18 for recovery through the SPPCRC to incremental costs net of avoided costs (savings), as  
19 Witness Kollen alleges.

20 The statute and the rule sections that he cites<sup>6</sup> specifically require the exclusion of costs  
21 recovered through base rates and other clause forms of ratemaking recovery from recovery  
22 through the SPPCRC, which fundamentally is a different concept altogether than he argues.

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<sup>6</sup> Mr. Kollen cites section 366.96(8), Florida Statutes, and Rule 25-6.031(6)(a), Florida Administrative Code. See, pg. 14, fn. 3. Again, it is worth noting that the rule cited governs the SPPCRC, not the SPP.



1 Neither the statute nor the rules limit SPP programs or program costs to only incremental  
2 costs or require a reduction for avoided costs or savings, as these concepts are simply not  
3 “double-recovery.” Mr. Kollen is either misconstruing the purpose of these sections or is  
4 trying to expand the limitations and definition of double-recovery; both are improper and  
5 should be disregarded.

6  
7 **Q. Witness Kollen believes that the return on Construction Work In Process (“CWIP”)**  
8 **should not be included in calculation of the SPP revenue requirement, do you agree?**

9 A. No. Mr. Kollen uses the SPPCRC Rule and section 366.96(9) in his attempt to argue that  
10 SPP projects should not earn a return on CWIP; this is incorrect and contradictory with  
11 traditional ratemaking. Florida utilities are permitted to earn a return on invested capital,  
12 including CWIP; this is true in base rates as well as the other cost recovery clauses. Rule  
13 25-6.0141, “AFUDC Rule”, addresses the return on invested capital. Projects that meet  
14 that rule’s eligibility requirement may earn AFUDC. Part 2 states “Construction work in  
15 progress (CWIP)... not under a lease agreement that is not included in rate base may accrue  
16 allowance for funds used during construction (AFUDC).” The AFUDC rule recognizes  
17 that projects that do not meet the AFUDC requirements, will be included in rate base. For  
18 the 2023 SPP, DEF’s projects do not meet the requirements to accrue AFUDC; therefore,  
19 DEF has included these projects in SPP rate base and the revenue requirements calculations  
20 for the 2023 SPP.

21 Additionally, a return on CWIP is recognized in other clauses. For example, in Order No.  
22 PSC-1994-0044-FOF-EI, the Commission found that

23 [t]he utility's investment in plant under construction can be accounted for  
24 by either of two methods. An Allowance for Funds Used During

1 Construction (AFUDC) may be applied to the balance to be capitalized and  
2 later recovered through depreciation charges once the plant is placed in  
3 service. When this method is chosen, the financial statements of the utility  
4 reflect income 'credits' associated with AFUDC, but the utility realizes no  
5 current cash earnings from the investment in CWIP. Alternatively, CWIP  
6 may be included as a portion of rate base. Where the latter treatment is  
7 allowed, CWIP generates cash earnings.  
8

9 Further paragraph 3(a) of the 2020 SPP/SPPCRC Agreement<sup>7</sup> states that “[f]or those  
10 programs that are approved by the Commission in DEF’s proposed SPP in 2020, DEF will  
11 include the Construction Work In Progress (‘CWIP’) balances as of January 1, 2021 as the  
12 beginning SPPCRC Rate Base balances and calculate a return on these costs from January  
13 1, 2021 forward for cost recovery in 2021.” DEF’s treatment of CWIP in the 2023 SPP is  
14 consistent with DEF’s treatment of CWIP in the 2020 SPP and the SPPCRC filings made  
15 in 2020, 2021 and 2022.

16 In summary, traditional ratemaking allows a utility to earn a return on invested capital,  
17 including CWIP; to deny this return in SPP (or more accurately, SPPCRC) is improper  
18 ratemaking.  
19

20 **Q. Witness Kollen offers alternatives to recovering a return on CWIP immediately, such**  
21 **as deferring CWIP either as allowance for funds used during construction**  
22 **(“AFUDC”) or as a miscellaneous deferred debit, do you agree with either approach?**

23 **A.** No. As previously stated, section 2(a) of the AFUDC Rule addresses the eligibility for a  
24 project to accrue AFUDC, and DEF’s SPP 2023 projects do not meet those requirements  
25 and are thus ineligible to accrue AFUDC. Moreover, the use of miscellaneous deferred  
26 debit is wholly inappropriate and is inconsistent with the AFUDC rule. This idea of

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<sup>7</sup> Approved in Order No. PSC-2020-0410-AS-EI (Docket No. 20200092-EI, issued Oct. 27, 2020).

1 deferring debits was discussed and rejected by Commission Staff during the SPP and  
2 SPPCRC rulemaking process and properly rejected in Staff's Recommendation and  
3 Analysis:<sup>8</sup>

4 Under OPC's interpretation, an IOU would incur costs in one year but  
5 couldn't request recovery of those costs until the next year's SPPCRC. If  
6 the Commission approved those costs in the SPPCRC, the utility could not  
7 begin recovering the costs until the year after. This leaves customers paying  
8 carrying costs for two years. Thus, using a cost recovery mechanism that  
9 should minimize that regulatory lag, as staff is recommending in draft Rule  
10 25-6.031, F.A.C., should also minimize the carrying costs customers have  
11 to pay.

12  
13 Further in Staff's analysis,

14 Staff envisions the SPPCRC mirroring other Commission cost recovery  
15 clauses. In the Nuclear Cost Recovery Clause (NCRC), Energy  
16 Conservation Cost Recovery Clause (ECCR), and Environmental Cost  
17 Recovery Clause (ECRC), the Commission projects the costs the utility will  
18 incur in the next year and sets a factor that will allow the company to recover  
19 those costs from customers as the costs are incurred.

20  
21 Finally Staff stated,

22 Second, allowing for the recovery of projected costs enables the IOUs to  
23 recover costs as they are incurred. This reduces regulatory lag and,  
24 ultimately, the costs passed on to customers, which is the purpose of cost  
25 recovery clauses. Staff believes IOUs will be entitled to recover carrying  
26 costs associated with the lag between when they incurred costs and when  
27 they recover them.

28  
29 **Q. Mr. Kollen asserts that, "[c]osts cannot be deemed prudent or reasonable unless and**  
30 **until the costs are charged to specific projects, construction is completed (or**  
31 **prudently abandoned), and the CWIP is converted to plant in service." Do you agree**  
32 **that this is the appropriate docket to make such an argument?**

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<sup>8</sup> See Docket No. 20190131-EU, Issue 1 (filed Sept. 20, 2019).

1 A. No, Mr. Kollen is addressing items specific to the SPPCRC. Rule 25-6.031(3) requires the  
2 Commission to hold an annual SPPCRC hearing to address petitions for recovery of SPP  
3 costs that “will be limited to determining the reasonableness of projected Storm Protection  
4 Plan costs, the prudence of actual Storm Protection Plan costs incurred by the utility, and  
5 to establish Storm Protection Plan cost recovery factors . . .” That is, this docket is not the  
6 appropriate forum for determining cost recovery issues.

7 In fact, the only place where “reasonableness” is mentioned with regard to the Plan itself  
8 is in Rule 25-6.030(3)(c), which requires a utility to provide a description its service area,  
9 including prioritized areas and any areas the “utility has determined that enhancement of  
10 the utility’s existing transmission and distribution facilities would not be feasible,  
11 *reasonable*, or practical. Such description must include . . . the utility’s reasoning for  
12 prioritizing certain areas for enhanced performance and for designating other areas of the  
13 system as not feasible, *reasonable*, or practical.” Nowhere in Rule 25-6.030 is the word  
14 “prudent” or a test of “prudence” mentioned or required because the Plan establishment  
15 phase is not the point for determining cost recovery, where prudence becomes an issue, but  
16 rather it is the time for the Commission to determine whether the Plan as a whole is in the  
17 public interest.

18  
19 **Q. Mr. Kollen asserts that DEF’s calculations of the estimated revenue requirements had**  
20 **errors that needed to be corrected. Do you agree with that allegation?**

21 A. No. DEF fully complied with Rule 25-6.030(3)(g)’s requirement that it provide “An  
22 estimate of the annual jurisdictional revenue requirements for each year of the Storm  
23 Protection Plan.” It is important to recognize these estimates are not used to set rates or

1 clause factors; these are calculations to provide reasonable estimates for the capital, O&M,  
2 and revenue requirements of the SPP for planning purposes. The actual clause factors will  
3 be determined in the SPPCRC. DEF properly included the appropriate elements for  
4 ratemaking in its calculations: CWIP; Depreciation; and Property Tax.

5 Witness Kollen claims that DEF improperly calculated depreciation expense on CWIP at  
6 the end of the prior year, but also failed to calculate depreciation expense on current year  
7 plant additions. Mr. Kollen's statements are incorrect as explained in DEF's response to  
8 OPC Interrogatory No. 58:

9 Consistent with the revenue requirement calculation in DEF's SPP 2020,  
10 DEF's CWIP balance is incorporated into the 'Investment' line for each SPP  
11 program. DEF has accounted for CWIP within the depreciation expense  
12 calculation. Within the current year, a portion of each program is assumed  
13 to be placed in-service. Therefore, the amount of investment not yet placed  
14 in-service is representative of the CWIP balance.

15  
16 For programs that assumed that CWIP was placed in service throughout the current year  
17 (e.g., Transmission Structure Hardening), DEF did calculate depreciation expense on  
18 current year plant additions. DEF also has programs that incur investment on individual  
19 projects throughout the year but are placed in-service when all work within a target location  
20 is complete; for financial modeling purposes, DEF assumed an end of year in-service for  
21 these programs.

22 Regarding Mr. Kollen's statements on the calculation of property tax expense, the expenses  
23 included in DEF's SPP 2023 are simply estimates for the 10-year period developed to  
24 provide the estimate of the annual jurisdictional revenue requirements as required by Rule  
25 25-6.030(3)(g). DEF uses reasonable methods to estimate the property tax expense for the  
26 SPP programs over the planning timeframe, but ultimately property tax expenses collected  
27 from customers are based on the projections filed in the SPPCRC filings, not DEF's 2023

1 SPP, and those projected amounts are subject to true-up based on the actual property taxes  
2 incurred. Therefore, a revision to the calculation of estimated property tax expense in  
3 DEF's SPP 2023 filing is unnecessary. Further, the Commission should not establish a  
4 property tax expense calculation, as contemplated by Mr. Kollen, that would override the  
5 true-up based on actual expenses as that would defeat the purpose of the true-up to actual  
6 expenses in the SPPCRC and would create a departure in the true-up of property tax  
7 expense in the SPPCRC compared to other clauses such as ECRC and ECCR. Finally, the  
8 Commission, Commission Staff and intervenor parties have the right to review the actual  
9 property tax expenses submitted in the SPPCRC filings.

10 DEF believes the figures presented on page 56 of 56 in Exhibit No.\_\_(BML-1)  
11 appropriately represent the estimated annual jurisdictional revenue requirements for each  
12 year of the SPP. Actual cost recovery will occur through the annual SPPCRC process.

13  
14 **Q. Mr. Kollen contends that the utilities will retain the avoided cost savings for costs**  
15 **presently recovered in base rates unless these costs are addressed in this proceeding**  
16 **and the SPPCRC proceedings or otherwise included in a negotiated resolution. Do**  
17 **you agree?**

18 A. No. It is not true now, just as it was not true when then OPC Witness Schultz made a similar  
19 statement in Docket No. 20200069-EI, "that there is a risk that ratepayers will be paying  
20 for improvements that will reduce the Company's costs in base rates, but those savings will  
21 not be passed through to the ratepayers." In rebuttal, DEF Witness Foster stated:

22 The SPP statute addresses new investments to strengthen the electric utility  
23 infrastructure to withstand extreme weather conditions and improve overall  
24 service reliability. It creates a cost recovery clause for investments to  
25 accomplish this goal. It also ensures there is no double recovery for these

1 costs by stating in paragraph (8) that “storm protection plan costs may not  
2 include costs recovered through the public utility’s base rates.” This clearly  
3 addresses the double recovery concern. Rule 25-6.031(6)(b) implements  
4 this statutory directive by stating “Storm Protection Plan costs recoverable  
5 through the clause shall not include costs recovered through the utility’s  
6 base rates or any other cost recovery mechanism.”  
7

8 It is the normal process for base rate costs to change over time and this  
9 creates regulatory lag. Some costs will decrease, others will increase. The  
10 SPP Statute was not developed to address appropriate levels of costs in base  
11 rates, it was developed to facilitate investment in work that will strengthen  
12 the transmission and distribution systems from extreme weather to help  
13 reduce restoration times and costs. There is in fact already a way that the  
14 Commission monitors Florida utilities to ensure no excessive recovery is  
15 occurring. The Commission requires monthly Earnings Surveillance  
16 reports. These reports show the earned return on equity (ROE). In a rate  
17 case, the FPSC authorizes an allowed ROE for utilities. If a utility reports a  
18 ROE that is too high, the parties or the Commission itself may call the  
19 Utility in for a rate case. Unlike cost recovery clauses, the normal and  
20 established process for base rates involves regulatory lag.  
21

22 Mr. Foster’s remarks still hold true and I would reiterate them in response to Mr. Kollen’s  
23 contention.

24 DEF addressed compliance on this issue in the response to OPC’s Interrogatory 59. In that  
25 response, DEF explained that these adjustments are included in the SPPCRC filings.

26 “Consistent with the model that was developed by DEF for its April 10,  
27 2020, SPP filing, DEF did not include any assumptions for reductions  
28 assumed in the calculation of depreciation expense associated with  
29 retirements for plant that was previously recovered in base rates. In DEF’s  
30 annual SPPCRC filings, DEF includes credits associated with the  
31 depreciation expense for base rate assets retired as part of an SPP program.  
32 When the value of the base asset is removed from EPIS during a subsequent  
33 rate case, the depreciation expense credit included in the SPPCRC filings  
34 associated with these assets should simultaneously cease. DEF does not  
35 make assumptions for timing and outcomes of rate cases that would be  
36 necessary to accurately reflect a reasonable amount of credit within the SPP  
37 Revenue Requirement model. DEF believes that this is the appropriate  
38 approach since the credits are included in the SPPCRC filings which are  
39 used to set customer rates and are subject to true-up.  
40

1 Again, the purpose of the SPP is not to prepare the precise calculations for clause factor  
2 development; that process takes place in the SPPCRC. As DEF notes in its response, DEF  
3 has included these credits in the SPPCRC filings in Docket 20220010-EI.  
4

## 5 **V. CONCLUSION**

6 **Q. Mr. Menendez, your rebuttal covers a lot of ground, but did you respond to every**  
7 **contention regarding the Company's proposed plan in your rebuttal?**

8 A. No. Intervenor testimony on the SPP involved many pages of testimony and I could not  
9 reasonably respond to every single statement or assertion and, therefore, I focused on the  
10 issues that I thought were most important. As a result, my silence on any particular  
11 assertion in the intervenor testimony should not be read as agreement with or consent to  
12 that assertion.

13 I specifically did not challenge many of Mr. Kollen's suggestions or recommendations he  
14 makes related to changing methodologies for calculating revenue requirements and rate  
15 calculations in the SPPCRC proceeding, again not because I agree with them, but rather I  
16 believe he is treading on Rulemaking grounds which is not appropriate for consideration  
17 or argument at this time.  
18

19 **Q. Does this conclude your testimony?**

20 A. Yes.