

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:** March 24, 2016

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

**FROM:** Division of Accounting and Finance (Cicchetti) *MC ALM*  
Office of the General Counsel (Gervasi) *RSJ S.M.C.*

**RE:** Docket No. 150148-EI – Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.

Docket No. 150171-EI – Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy.

**AGENDA:** 04/05/16 – Regular Agenda – Motion to Approve Stipulation – Parties May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brisé

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

In February 2013, Duke Energy Florida, Inc. (DEF) announced its decision to retire its nuclear plant, Crystal River Unit 3 (CR3), in Citrus County, Florida. The retirement of CR3 was the subject of two settlement agreements. The first settlement agreement, reached in 2012, was a global settlement that addressed several issues, including issues related to the CR3 retirement.<sup>1</sup> The second settlement agreement, the Revised and Restated Stipulation and Settlement Agreement (RRSSA), reached in 2013, replaced and supplanted the 2012 settlement agreement.

<sup>1</sup> Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, as amended by Order No. PSC-12-0104A-FOF-EI, issued March 15, 2012, in Docket No. 120022-EI, In re: Petition for limited proceeding to approve stipulation and settlement agreement by Progress Energy Florida, Inc. (approving the 2012 settlement agreement).

The Commission approved the RRSSA by Order No. PSC-13-0598-FOF-EI.<sup>2</sup> Among other things, the RRSSA contemplated that DEF would create a regulatory asset to account for the recovery of costs associated with the retirement of CR3. The parties to the RRSSA were DEF, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), and White Springs Agriculture Chemicals, Inc. d/b/a PCS Phosphate (PCS Phosphate).

### **Docket No. 150148-EI – CR3 Regulatory Asset**

On May 22, 2015, pursuant to Sections 366.04 and 366.05, Florida Statutes (F.S.), DEF filed its Petition for Approval to Include in Base Rates the Revenue Requirement for the Crystal River Unit 3 Regulatory Asset (CR3 Regulatory Asset Petition), along with supporting testimony and exhibits. DEF intended its petition to be the first step in the securitization process, authorized by Section 366.95, F.S.

### **Docket No. 150171-EI – Financing Order**

On July 27, 2015, pursuant to Sections 366.04, 366.05, and 366.95, F.S., and consistent with the RRSSA and its CR3 Regulatory Asset Petition, DEF filed its Petition for Issuance of a Nuclear Asset-Recovery Financing Order (Financing Order Petition), along with supporting testimony and exhibits, requesting that the Commission issue a financing order to permit DEF to securitize certain costs, including the CR3 Regulatory Asset value as outlined in its CR3 Regulatory Asset Petition filed in Docket No. 150148-EI.

### **Consolidation of Dockets**

Along with its Financing Order Petition, DEF also filed a Motion to Consolidate, requesting that its CR3 Regulatory Asset Petition and Financing Order Petition be consolidated pursuant to Rule 28-106.108, Florida Administrative Code (F.A.C.). By Order No. PSC-15-0327-PCO-EI, issued on August 13, 2015, Docket Nos. 150148-EI and 150171-EI were consolidated into Docket No. 150171-EI.

### **First RRSSA Amendment**

On August 31, 2015, DEF filed a Motion for Approval of Stipulation. DEF requested that the Commission approve the proposed Stipulation reached by the parties to amend the RRSSA. The proposed Stipulation was intended to resolve the CR3 Regulatory Asset-related issues in Docket No. 150148-EI to ensure that the financing order issued in Docket No. 150171-EI would be consistent with the RRSSA.

By Order No. PSC-15-0465-S-EI, issued October 14, 2015, the Commission granted DEF's Motion for Approval of Stipulation and found that the RRSSA, as amended, was in the public interest.

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<sup>2</sup> Order No. PSC-13-0598-FOF-EI, issued November 12, 2013, in Docket No. 130208-EI, as amended by Order No. PSC-13-0598A-FOF-EI, issued November 13, 2013, In re: Petition for limited proceeding to approve revised and restated stipulation and settlement agreement by Duke Energy Florida, Inc. d/b/a Duke Energy.

Docket Nos. 150148-EI, 150171-EI

Date: March 24, 2016

### **Financing Order**

By Order No. PSC-15-0537-FOF-EI, issued November 19, 2015, the Commission approved DEF's Petition for Issuance of a Nuclear Asset-Recovery Financing Order. The financing order permits DEF to securitize certain costs, including the CR3 Regulatory Asset value as outlined in its CR3 Regulatory Asset Petition filed in Docket No. 150148-EI.

### **Motion for Approval of Second RRSSA Amendment**

On March 9, 2016, DEF filed a Motion for Approval of Stipulation to Amend the RRSSA (Second RRSSA Amendment), as reflected in Exhibit 1 to the Stipulation. All parties to the RRSSA, including DEF, OPC, PCS Phosphate, FRF, and FIPUG, are signatories to the Second RRSSA Amendment. This recommendation addresses the Motion for approval of the Second RRSSA Amendment. The Commission has jurisdiction pursuant to Sections 366.04 and 366.05, F.S. The motion and stipulation are attached.

## Discussion of Issues

**Issue 1:** Should DEF's Motion for Approval of Stipulation to Amend RRSSA as reflected in Exhibit 1 to the Stipulation (Second RRSSA Amendment) be approved?

**Recommendation:** Yes, DEF's Motion for Approval of Stipulation to Amend RRSSA as reflected in Exhibit 1 to the Stipulation (Second RRSSA Amendment) is in the public interest and should be approved. (Cicchetti, Gervasi)

**Staff Analysis:** In the Motion for approval of the Second RRSSA Amendment, DEF states that the parties request that the RRSSA be amended as reflected in Exhibit 1 to the Stipulation. Exhibit 1 to the Stipulation contains targeted and limited changes to clarify how certain Extended Power Uprate ("EPU") costs should be recovered through the capacity cost recovery clause in a manner that preserves, and is consistent with, the original intent of the parties at the time the RRSSA was found by the Commission to be in the public interest. Exhibit 1 to the Stipulation reads as follows:

The fourth sentence of paragraph 9(a) is amended to read: "Intervenor Parties agree that CR3 EPU assets that were placed in-service and closed to electric plant in-service FERC 101, which amount equals \$35,894,547 as of December 31, 2015 and includes carrying charges through December 31, 2015, shall not be included in, or recovered or further trued up as part of, the CR3 Regulatory Asset but instead shall be recovered in an amount estimated to be \$38,108,444 as of December 31, 2016 (subject to true up), through the CCR Clause over the years 2017 and 2018 at a carrying cost rate of 3 percent, and CR3 EPU Assets never closed to electric plant in-service FERC 101 shall be recovered as a part of the CR3 EPU Regulatory Asset through the NCRC or other appropriate docket(s).

DEF further states that it is the intent of the parties that all provisions of the RRSSA remain in full force and effect, except for the matters specifically addressed in the proposed Second RRSSA Amendment. According to DEF, the method of recovery outlined in the Second RRSSA Amendment gives certainty to customers and is superior in terms of carrying costs than the recovery contemplated in the original RRSSA. The stipulating parties each agree that the Second RRSSA Amendment is therefore in the best interest of DEF's customers and in the public interest.

For the reasons stated in the Motion, staff agrees that the proposed Second RRSSA Amendment as reflected in Exhibit 1 to the Stipulation is in the public interest, and therefore recommends that it should be approved.

**Issue 2:** Should these dockets be closed?

**Recommendation:** No, these dockets should remain open through completion of the Commission's review of the actual costs of the nuclear asset-recovery bond issuance conducted pursuant to Section 366.95(2)(c)5., F.S., and the financing order. (Gervasi)

**Staff Analysis:** These dockets should remain open through completion of the Commission's review of the actual costs of the nuclear asset-recovery bond issuance conducted pursuant to Section 366.95(2)(c)5., F.S., and the financing order.

FILED MAR 09, 2016  
DOCUMENT NO. 01271-16  
FPSC - COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.	DOCKET NO. 150148-EI
In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy.	DOCKET NO. 150171-EI
	DATED: March 9, 2016

**DUKE ENERGY FLORIDA, LLC'S MOTION FOR APPROVAL OF STIPULATION TO AMEND RRSSA**

Duke Energy Florida, LLC ("DEF" or the "Company") hereby moves the Florida Public Service Commission ("Commission") to approve the attached Proposed Stipulation to Amend the Revised and Restated Stipulation and Settlement Agreement ("Stipulation"), including Exhibit 1 to the Stipulation ("Second RRSSA Amendment").

1. DEF, the Office of Public Counsel ("OPC"), White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate ("PCS Phosphate"), the Florida Retail Federation ("FRF"), and the Florida Industrial Power Users Group ("FIPUG") (collectively the "Parties") have entered into the Stipulation to amend the Revised and Restated Stipulation and Settlement Agreement ("RRSSA").

2. The parties also request that the RRSSA be amended as reflected in Exhibit 1 to the Stipulation. The Second RRSSA Amendment contains targeted and limited changes to clarify how certain Extended Power Uprate ("EPU") costs should be recovered through the capacity cost recovery clause in a manner that preserves and is consistent with the original intent of the parties at the time the RRSSA was found by the Commission to be in the public interest. It is the intent of the parties that all provisions of the RRSSA remain in full force and effect, except for the matters specifically addressed in the proposed second amendment, reflected in the attached

Stipulation. The method of recovery outlined in the Second RRSSA Amendment gives certainty to customers and is superior in terms of carrying costs than the recovery contemplated in the original RRSSA. The stipulating parties each agree that the Second RRSSA Amendment is, therefore, in the best interest of DEF's customers and in the public interest.

3. DEF is authorized to represent that OPC, PCS Phosphate, FRF, and FIPUG support the motion to approve the Stipulation.

WHEREFORE, DEF respectfully requests that the Commission approve the Stipulation attached hereto and approve the Second RRSSA Amendment.

Respectfully submitted this 9th day of March, 2016.

/s/ Dianne M. Triplett  
DIANNE M. TRIPLETT  
Associate General Counsel  
DUKE ENERGY FLORIDA, LLC  
Post Office Box 14042  
St. Petersburg, Florida 33733-4042  
Telephone: (727) 820-4692  
Facsimile: (727) 820-5041  
Email: dianne.triplett@duke-energy.com

**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 9th day of March, 2016.

/s/ Dianne M. Triplett  
Attorney

Rosanne Gervasi Keino Young Kelley Corbari Theresa Tan Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 <a href="mailto:kyoung@psc.state.fl.us">kyoung@psc.state.fl.us</a> <a href="mailto:kcorbari@psc.state.fl.us">kcorbari@psc.state.fl.us</a> <a href="mailto:ltan@psc.state.fl.us">ltan@psc.state.fl.us</a> <a href="mailto:rgervasi@psc.state.fl.us">rgervasi@psc.state.fl.us</a>	Charles Rehwinkel J. R. Kelly Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, Florida 32399-1400 <a href="mailto:kelly.jr@leg.state.fl.us">kelly.jr@leg.state.fl.us</a> <a href="mailto:rehwinkel.charles@leg.state.fl.us">rehwinkel.charles@leg.state.fl.us</a> <a href="mailto:woods.monica@leg.state.fl.us">woods.monica@leg.state.fl.us</a>
Florida Industrial Power Users Group c/o Moyle Law Firm, P.A. Jon C. Moyle, Jr. Karen A. Putnal 118 North Gadsden Street Tallahassee, Florida 32301 <a href="mailto:jmoyle@moylelaw.com">jmoyle@moylelaw.com</a> <a href="mailto:kputnal@moylelaw.com">kputnal@moylelaw.com</a>	PSC Phosphate – White Springs c/o James W. Brew Owen J. Kopon Stone Mattheis Xenopoulos & Brew, PC 1025 Thomas Jefferson Street, NW Eighth Floor, West Tower Washington, DC 20007-5201 <a href="mailto:jbrew@smxblaw.com">jbrew@smxblaw.com</a> <a href="mailto:ojk@smxblaw.com">ojk@smxblaw.com</a>
Joseph Fichera Saber Partners, LLC 44 Wall Street New York, NY 10005 <a href="mailto:jfichera@saberpartners.com">jfichera@saberpartners.com</a>	Dean E. Criddle Orrick, Herrington & Sutcliffe 405 Howard Street, #11 San Francisco, CA 94105 <a href="mailto:dcriddle@orrick.com">dcriddle@orrick.com</a>
Robert Scheffel Wright John T. LaVia, III Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A. 1300 Thomaswood Drive Tallahassee, FL 32308 <a href="mailto:schef@gbwlegal.com">schef@gbwlegal.com</a> <a href="mailto:jlavia@gbwlegal.com">jlavia@gbwlegal.com</a>	



**Stipulation of Parties to Amend RRSSA  
(Second RRSSA Amendment)  
Attachment to Motion  
Dockets 150148 and 150171**

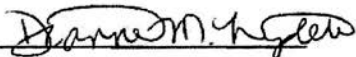
**Attachment to Motion – Stipulation to Amend RRSSA**

1. The signatories to the RRSSA agree to and approve the Second RRSSA Amendment, attached to this Stipulation as Exhibit 1. The signatories agree that the Second RRSSA Amendment contains changes to clarify the recovery of certain CR3 EPU related charges. The signatories, by executing this Stipulation, agree that paragraph 22 of the RRSSA, which requires that “no provision may be changed or altered without the consent of each signatory Party in a written document duly executed by all Parties to this Revised and Restated Settlement Agreement” is fully satisfied.
2. Except as set forth in the Second RRSSA Amendment attached as Exhibit 1 to this Stipulation, the Parties do not intend to affect the intent, or the provisions, of the RRSSA.
3. This Stipulation may be executed in counterpart originals, and a facsimile or PDF email of any original signature shall be deemed an original.

In Witness Whereof, the signatories to the RRSSA evidence their acceptance and agreement with the provisions of this Stipulation and the Second RRSSA Amendment by their signatures below.

Stipulation of Parties to Amend RRSSA  
(Second RRSSA Amendment)  
Attachment to Motion  
Dockets 150148 and 150171

**Duke Energy Florida, LLC**

By: 

Dianne M. Triplett  
P.O. Box 14042  
St. Petersburg, FL 33733

Stipulation of Parties to Amend RRSSA  
(Second RRSSA Amendment)  
Attachment to Motion  
Dockets 150148 and 150171

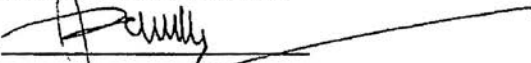
Office of Public Counsel

By: 

J. R. Kelly, Esq.  
Charles Rehwinkel, Esq.  
111 W. Madison St., Room 812  
Tallahassee, FL 32399

Stipulation of Parties to Amend RRSSA  
(Second RRSSA Amendment)  
Attachment to Motion  
Dockets 150148 and 150171

Florida Industrial Power Users Group

By: 

Jon C. Moyle, Esq.

March 23, 2016

Moyle Law Firm

118 North Gadsden Street

Tallahassee, FL 32301

Stipulation of Parties to Amend RRSSA  
(Second RRSSA Amendment)  
Attachment to Motion  
Dockets 150148 and 150171

White Springs Agricultural Chemicals, Inc.

By: 

James W. Brew, Esquire  
Stone Mattheis Xenopoulos & Brew, LC  
1025 Thomas Jefferson St., NW  
Eighth Floor, West Tower  
Washington, DC 20007

Stipulation of Parties to Amend RRSSA  
(Second RRSSA Amendment)  
Attachment to Motion  
Dockets 150148 and 150171

Florida Retail Federation

By: 

Robert Scheffel Wright  
John T. LaVia III  
Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, FL 32308

Stipulation of Parties to Amend RRSSA  
(Second RRSSA Amendment)  
Attachment to Motion  
Dockets 150148 and 150171

Exhibit 1 to Stipulation

Second RRSSA Amendment

The fourth sentence of paragraph 9(a) is amended to read: "Intervenor Parties agree that CR3 EPU assets that were placed in-service and closed to electric plant in-service FERC 101, which amount equals \$35,894,547 as of December 31, 2015 and includes carrying charges through December 31, 2015, shall not be included in, or recovered or further trueed up as part of, the CR3 Regulatory Asset but instead shall be recovered in an amount estimated to be \$38,108,444 as of December 31, 2016 (subject to true up), through the CCR Clause over the years 2017 and 2018 at a carrying cost rate of 3 percent, and CR3 EPU Assets never closed to electric plant in-service FERC 101 shall be recovered as a part of the CR3 EPU Regulatory Asset through the NCRC or other appropriate docket(s)."