

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.

DOCKET NO. 20170183-EI  
ORDER NO. PSC-2017-0345-PCO-EI  
ISSUED: September 6, 2017

PROCEDURAL ORDER

Petition for Limited Proceeding

On August 29, 2017, Duke Energy Florida, LLC (DEF) filed a Petition for a Limited Proceeding to Approve 2017 Second Revised and Restated Stipulation and Settlement Agreement (2017 Agreement), Including Certain Rate Adjustments (Petition). Pursuant to the Petition, DEF requested that the Florida Public Service Commission (Commission) hold a limited proceeding in accordance with Sections 366.06(3), 366.076(1) and Chapter 120, Florida Statutes (F.S.), and Rule 25-28.301, Florida Administrative Code (F.A.C.), to allow the Commission to review and approve the 2017 Agreement, which is attached as an exhibit to the Petition.

The 2017 Agreement, with noted exceptions, seeks to replace and supplant the 2013 Revised and Restated Stipulation and Settlement Agreement (2013 Agreement) approved by the Commission in Order No. PSC-13-0598-FOF-EI and its three subsequent stipulated amendments, Order Nos. PSC-15-0465-S-EI, PSC-16-0138-FOF-EI, and PSC-16-0425-PAA-EI. The 2017 Agreement is signed and executed by DEF, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (PCS Phosphate), and the Southern Alliance for Clean Energy (SACE) (collectively, the Parties).

DEF asserts that consideration of the 2017 Agreement under Section 366.076(1), F.S., is appropriate because it provides the Commission and the Parties with a single proceeding in which all remaining issues related to the Levy Nuclear Plant (LNP) Project and numerous base rate, infrastructure, and clean energy matters will be addressed.

The Agreement

DEF contends that if the 2017 Agreement is approved, it will resolve all issues currently pending relating to the LNP Project within the Commission's ongoing Nuclear Cost Recovery Clause (NCRC) Proceeding, Docket No. 20170009-EI. DEF filed a Motion to Defer or Continue the LNP Project portion of the NCRC Proceeding, concurrent with this Petition. DEF states that the 2017 Agreement determines, in a comprehensive manner, all remaining issues regarding the LNP Project, and that effective as of May 2015, there will never be any additional LNP-related costs recovered from DEF's retail customers. The 2017 Agreement also addresses the recovery of the 2017 actual/estimated under-recovery of fuel and purchased power costs in Docket No.

20170009-EI; and allows DEF to move the Commercial Silver Springs Network meters from recovery in the Energy Conservation Cost Recovery Clause (ECRC) Proceeding, Docket No. 20170002-EG, to recovery through base rates through a uniform percent increase to the demand and energy charges for all rate classes except Interruptible General Service and Curtailable General Service rate classes.

The 2017 Agreement also presents a base rate plan that would establish rates through the end of the year 2021. Exhibits 3 and 4 attached to the 2017 Agreement contain revised tariff sheets, which become effective January 1, 2018, if approved. DEF contends that the revenue increases contained within the 2017 Agreement, coupled with a base rate freeze and solar generation transformation, represent both a short-term and longer-term moderation of future rate impacts that would otherwise occur as a result of a conventional base rate proceeding in 2018 and thereafter.

DEF asserts, on behalf of itself and the Parties, that the 2017 Agreement in its totality is fair, just, and reasonable, and in the public interest. DEF states that the 2017 Agreement fairly and reasonably balances the various positions of the Parties on the issues resolved by the 2017 Agreement and serves the general interests of its customers and the public interest. DEF contends that approval of the 2017 Agreement promotes administrative efficiency and avoids the time and expense associated with litigating the settled issues in the various existing and continuing Commission dockets.

#### DEF's Statement of Commission Authority

DEF states that Section 366.076(1), F.S., provides that the Commission may conduct a limited proceeding to consider and act upon any issue within its jurisdiction, including any issue which once resolved, requires a public utility to adjust its rates. DEF asserts that approval of the 2017 Agreement is appropriate for Commission consideration under this statutory provision because it presents a comprehensive resolution of all remaining LNP Project issues and additional matters within various existing and continuing Commission dockets including numerous base rate, infrastructure, and clean energy matters.

#### DEF's Statement of No Disputed Issues of Material Fact

DEF requests and moves the Commission to grant the Petition and approve the 2017 Agreement. DEF states that the Parties to the 2017 Agreement believe that approval of the 2017 Agreement is in the best interests of the customers the Parties represent, and that the 2017 Agreement in its totality is fair, just, and reasonable and in the public interest. DEF believes, and represents that the other Parties believe, there are no disputed issues of material fact that must be resolved in order for the Commission to grant the Petition and approve the 2017 Agreement. Thus, DEF argues it is entitled to the relief requested pursuant to Chapters 366 and 120, F.S.

Request for Notice and Final Hearing

DEF requests that the Commission provide public notice of its Petition for approval of the 2017 Agreement in this and the other affected dockets.<sup>1</sup> DEF requests that the Commission proceed expeditiously to issue the public notice of the hearing on its Petition consistent with Rule 28-106.302(2), F.A.C. DEF requests that a final hearing date be set no later than December 1, 2017, such that the new and revised rates and tariff sheets can be implemented with the first billing cycle of January 2018. DEF asks that the Commission's consideration of the 2017 Agreement be decided by a bench vote at the conclusion of the requested final hearing. DEF affirms that it has conferred with the Parties, and represents that the Parties support this approach. DEF further states that the interests of customers and customer classes are fairly represented by the signatories to the 2017 Agreement.

**Ruling**

Based on its Petition and DEF's representation that the Parties to the 2017 Agreement are in support of the requested proceedings, the Final Commission Hearing on this matter, having no material issues of disputed fact, shall take place at 9:30 a.m. on October 25, 2017, pursuant to Section 120.57(2), F.S.

Discovery

Commission staff and the parties shall be permitted a limited time to send no more than 150 data requests. Parties are directed to respond to the data requests in writing so the response is received within 5 days of receipt of the request. Affidavits must accompany all written data responses. All data responses must be received by October 18, 2017. Information obtained through data request responses may be used by the parties in their oral arguments, by staff in advising the Commission, and by the Commissioners in consideration of the proposed 2017 Agreement.

Use of Confidential Information at Hearing

While it is the Commission's policy to have all Commission hearings open to the public at all times, the Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use at the hearing any proprietary confidential business information, as that term is defined in Section 366.093, F.S., shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in

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<sup>1</sup> Docket Nos. 20100437-EI, In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.; 20150171-EI, In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy; 20170001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor; 20170002-EG, In re: Energy conservation cost recovery clause; and 20170009-EI, In re: Nuclear cost recovery clause.

red envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such information is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidentiality filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### Hearing Procedures

Section 120.57(4), F.S., permits the Commission to informally dispose of any proceeding by stipulation, agreed settlement, or consent order. Section 120.57(2), F.S., permits the Commission to proceed with hearings not involving disputed issues of material fact. Pursuant to Rule 28-106.302(2), F.A.C., the purpose of this hearing is for the Commission to take oral evidence or argument regarding DEF's Petition for a Limited Proceeding and consider DEF's request for approval of the 2017 Agreement.

The hearing agenda for October 25, 2017, will include the following:

- Parties present Opening Statements no more than 8 minutes per party
- Public Testimony
- Commission Staff Presentation
- Parties present evidence and respond to questions from Commissioners regarding the 2017 Agreement

Upon completion of the Commission's questions, the hearing record will be closed and the Commission may render a bench decision. If a bench decision is not made, the Commission will render a decision during a Special Agenda Conference; date and time to be determined. Briefs, if any, will be due November 8, 2017.

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The Commission has jurisdiction in this matter pursuant to Chapters 120, and 366, F.S., and is proceeding under its authority under Sections 366.04, 366.041, 366.05, 366.06, 366.07, 366.076, 366.8255, 366.93, and 120.57, F.S., and Rules 28-106.301 and 28-106.302, F.A.C.

Based on the foregoing, it is

ORDERED by Chairman Julie I. Brown, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Chairman Julie I. Brown, as Prehearing Officer, this 6th day of September, 2017.



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Chairman and Prehearing Officer  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.