DUKE ENERGY
FLORIDA

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March 26, 2020

VIA ELECTRONIC DELIVERY

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

Re: *Amended Unopposed Joint Motion to Modify Order No. PSC-2012-0425-PAA-EU Regarding Weighted Average Cost of Capital Methodology*; Docket Nos. 20200001-EI, 20200002-EG, and 20200007-EI

Dear Mr. Teitzman:

Enclosed to be filed in the above-referenced Dockets on behalf of Duke Energy Florida, LLC, Florida Power & Light Company, Gulf Power Company, Tampa Electric Company, and Florida Public Utilities Company is an Amended Unopposed Joint Motion to Modify Order No. PSC-2012-0425-PAA-EU Regarding Weighted Average Cost of Capital Methodology.

Thank you for your assistance in this matter. Please feel free to call me at (727) 820-4692 should you have any questions concerning this filing.

Respectfully,

/s/ Dianne M. Triplett

Dianne M. Triplett

DMT/cmk
Enclosure

cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 20200001-EI
In re: Energy conservation cost recovery clause.	DOCKET NO. 20200002-EG
In re: Environmental cost recovery clause.	DOCKET NO. 20200007-EI
	Filed: March 26, 2020

AMENDED UNOPPOSED JOINT MOTION TO MODIFY ORDER NO. PSC-2012-0425-PAA-EU REGARDING WEIGHTED AVERAGE COST OF CAPITAL METHODOLOGY

Duke Energy Florida, LLC ("DEF"), Florida Power & Light Company ("FPL"), Gulf Power Company ("Gulf"), Tampa Electric Company ("Tampa Electric"), and Florida Public Utilities Company ("FPUC") (collectively, "the IOUs"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby file this Amended Unopposed Joint Motion ("Amended Motion") for the Florida Public Service Commission ("FPSC" or "Commission") to approve modifications to Order No. PSC-2012-0425-PAA-EU (the "Order") in which the Commission approved a stipulation and settlement agreement entered into by the IOUs, the Office of Public Counsel ("OPC"), and the Florida Industrial Power Users Group ("FIPUG") to specify the methodology for calculating the weighted average cost of capital ("WACC") applicable to clause-recoverable investments. Following productive discussions with Commission Staff at a February 2020 workshop, the IOUs submit this Amended Motion, revising the original, August 21, 2019 Joint Motion as it relates to the methodology proposed to comply with the Internal Revenue Code ("IRC") Treasury Regulation Section §1.167(1)-1(h)(6) which requires public utilities to apply Normalization by utilizing a consistency adjustment and proration formula to compute the depreciation-related Accumulated Deferred Federal Income Tax ("ADFIT") balance to be included for ratemaking purposes when a forecasted test period is utilized to set rates unless the Limitation Provision is met or exceeded. The IOUs maintain that the modifications proposed herein are in the public interest because the modified methodology will accurately align current costs with cost recovery while enabling compliance to IRC Treasury Regulation Section §1.167(1)-1(h)(6). In support of this Amended Motion, the IOUs state as follows:

1. On August 16, 2012, the Commission issued Order No. PSC-2012-0425-PAA-EU approving a stipulation and settlement agreement entered into by the IOUs, OPC, and FIPUG to specify the methodology for calculating the WACC applicable to clause-recoverable investments. A timeline example of the methodology was provided with the stipulation and settlement agreement, as follows:

(a) For the Projection Filing, use the May Earnings Surveillance Report ("ESR") WACC for the calendar year in which the filing is made.

(b) For the Actual/Estimated True-up Filing, use the May ESR WACC from the prior calendar year for January-June of the year being trued-up, and the current calendar year May ESR WACC for July-December of the year being trued-up.

(c) For the Final True-up Filing regarding a particular calendar year, use the same WACCs that were used for the Actual/Estimated True-up Filing regarding that same particular calendar year.

(d) In the event that a base rate decision is rendered by the Commission subsequent to the period captured by the relevant May ESR, then the Commission's decision on the cost of capital and capital structure as reflected in the order implementing the base rate decision will supersede the actuals used in the May ESR from the effective date of the Order, until the next actual May ESR.

2. The Order also reaffirmed that questions regarding the appropriate capital structure and return on equity should be the subject of a proceeding other than clause proceedings.

3. The Internal Revenue Service ("IRS") issued Private Letter Rulings ("PLR") on October 3, 2017 and August 11, 2017 regarding IRS Normalization Rules. These PLRs state that the IRC Treasury Regulation Section §1.167(1)-1(h)(6)(ii) requires public utilities to apply Normalization by utilizing a consistency adjustment and proration formula to compute the depreciation-related ADFIT balance to be included for ratemaking purposes when a forecasted test period is utilized to set rates unless the Limitation Provision is met or exceeded. The Limitation Provision in Treasury Regulation Section §1.167(1)-1(h)(6)(i) states that as long as the amount of depreciation-related ADFIT used in ratemaking is lower than the amount that would have been used under the Consistency Rule, then there is no violation of Normalization. The purpose of the IRS Normalization Rules is to preserve for regulated utilities the benefits of accelerated depreciation as a source of cost-free capital. Further, the purpose of both the Consistency Rule and the Proration Formula is to prevent the immediate flow-through of the benefits of accelerated depreciation to ratepayers.

4. The PLRs go on to state that the Consistency Rule, Code Section 168(i)(9)(B), provides that "…one way the Normalization Rules are not satisfied is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which uses an estimate or projection of tax expense, depreciation expense, or a reserve for deferred taxes unless such estimate or projection is also used with respect to the other two items and with respect to rate base." Therefore, if an IOU uses an

estimate or projection of tax expense, depreciation expense, or a reserve for deferred taxes, the IOU would also use a consistent time period for rate base so long as the Limitation Provision is not met.

5. Treasury Regulation Section §1.167(1)-1(h)(6)(ii) provides that if solely a future period is used for such determination, the limit on the amount of depreciation-related ADFIT for the period is the amount at the beginning of the future period with a pro rata adjustment for any increases or decreases during that period. There is a specific "Proration Formula" that must be applied to project changes in depreciation-related ADFIT so long as the Limitation Provision is not met. The Proration Requirement is as follows:

> The pro rata portion of any increase to be credited or decrease to be charged during a future period…shall be determined by multiplying any such increase or decrease by a fraction, the numerator of which is the number of days remaining in the period at the time such increase or decrease is to be accrued, and the denominator of which is the total number of days in the period.

6. A potential inconsistency exists between the Order and the IRS regulations in that the Order is prescriptive regarding the time period of the WACC that will be applied to clause investments, which does not allow for the modifications required to avoid a Normalization violation if the Limitation Provision is not met.

7. Consistent with the IOUs' March 13, 2020, Joint Comments, by this Amended Motion, the IOUs propose the following to address the potential inconsistency:

a) For the Projection Filing, in all cases, the IOUs propose to project their WACC using their current approved mid-point return on equity ("ROE") for the clause projection year and to apply the Proration Formula prescribed by Treasury Regulation Section §1.167(l)-1(h)(6)(i) to the depreciation-related ADFIT included in capital structure. For example, in the projection filing that will be filed in July/August/September of 2020 for the year 2021 ("the 2021 Projection Filing"), the IOUs would project the mid-point ROE 13-month average WACC for 2021 and apply a proration adjustment to the depreciation-related ADFIT. If this proposal is approved, the resulting WACC calculation will be used to calculate a monthly return on all projected clause investments in the 2021 Projection Filing.

b) For the Actual/Estimated True-up Filing, in all cases, the IOUs propose to use the mid-point ROE WACC calculation from the current year Forecasted Earnings Surveillance Report ("FESR") for the Actual/Estimated true-up year and will carry forward the proration adjustment included in the Projection Filing. However, if the depreciation-related ADFIT balance in the Projection Filing was over-estimated, the Proration Formula adjustment will then need to be reduced to reflect the difference between the originally projected and prorated depreciation-related ADFIT balance and the re-projected depreciation-related ADFIT balance. For example, in the Actual/Estimated True-Up that will be filed July/August 2021 ("2021 Actual/Estimated Filing"), the IOUs will utilize the mid-point ROE 13-month average WACC from the 2021 FESR and carry forward the same proration adjustment reflected in the 2021 Projection Filing or adjust it downward if it had been over-projected. If this proposal is approved, the resulting WACC calculation would then be used to calculate a monthly return on all projected clause investments in the 2021 Actual/Estimated Filing.

c) For the Final True-up Filing, in all cases, the IOUs propose to use the mid-point ROE WACC calculation from the December ESR for the true-up year and carry forward the proration adjustment that was included in the Projection Filing. However, similar to the Actual/Estimated Filing, if the depreciation-related ADFIT balance in the Projection Filing was over-estimated, the Proration Formula adjustment will then need to be reduced to reflect the difference between the originally projected and prorated depreciation-related ADFIT balance and the actual depreciation-related ADFIT balance. For example, in the Final True-Up filing to be made in the Spring of 2022 ("2021 Final True-Up"), the IOUs will utilize the mid-point ROE 13-month average WACC from the 2021 December ESR and carry forward the same proration adjustment reflected in the 2021 Projection Filing or adjust it downward if it had been over-projected. If this proposal is approved, the resulting WACC calculation will be used to calculate a monthly return on all projected clause investments in the 2021 Final True-Up Filing.

8. Since the methodology described above does not require a consistency adjustment and will reflect the application of the Proration Formula each year, the IOUs do not believe it is necessary to provide a separate calculation demonstrating the Limitation Provision has been met or exceeded, and request that one not be required.

9. The IOUs further propose that the Final True-Up Filing date for all clauses be no earlier than April 1 of each year in order to allow the IOUs enough time to incorporate the WACC from the December ESR, which is completed and filed with the Commission on about February 15 each year.

10. The IOUs also propose to begin the process outlined herein with their 2021 Projection Filings. Therefore, the IOUs would apply the new methodology starting with the 2021 clause filing cycle, which would begin with the 2021 Projection Filings to be filed in 2020, and then carried through to the 2021 Actual/Estimated Filings to be filed in 2021 and the 2021 Final True-Up Filings to be filed in 2022. For the 2019 and 2020 true-up filings, the methodology outlined in Order No. PSC-2012-0425-PAA-EU would continue to apply. This will allow the WACC used in the clauses to be consistent with budgets that have already been prepared for 2020 by the IOUs.

11. As noted above, in its Order No. PSC-2012-0425-PAA-EU, the Commission concluded that "[e]videntiary debates regarding the appropriate capital structure and the return on equity shall be the subject of proceedings other than the clause proceedings." The Commission's conclusion was correct then and is equally applicable now. The IOUs request that the Commission, in ruling upon this Amended Motion, confirm that updating the WACC calculation methodology to comply with IRS regulations does not open the door to evidentiary debates that should be the subject of proceedings other than clause proceedings.

12. The proposed modifications will avoid the potential inconsistency described above, thereby enabling the IOUs to remain in compliance with the Normalization provisions of the IRS Treasury Regulations.

13. Pursuant to Rule 28-106.204(3), the IOUs have conferred with all parties to these proceedings and can confirm that the SACE and Commission Staff take no position on the motion. By the time of the filing of this motion, the IOUs did not receive a position from OPC, PCS White Springs, and FIPUG.

WHEREFORE, for the reasons stated herein, the IOUs respectfully request that the Commission approve the above-described proposed modifications to the methodology for calculating the WACC applicable to clause-recoverable investments set forth in Order No. PSC-2012-0425-PAA-EU.

Respectfully submitted this 26th day of March, 2020.

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<u>CERTIFICATE OF SERVICE</u>

Dkt. Nos. 20200001-EI, 20200002-EG, 20200007-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 26th day of March, 2020.

/s/ Dianne M. Triplett
Attorney

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