

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm Protection Plan Cost
Recovery Clause

Docket No. 20200092-EI

Dated: September 11, 2020

**DUKE ENERGY FLORIDA, LLC'S POST-HEARING BRIEF IN
SUPPORT OF SPPCRC STIPULATION AND SETTLEMENT AGREEMENT**

Duke Energy Florida, LLC (“DEF” or the “Company”), pursuant to Commission direction, hereby files its Post-Hearing Brief in support of the Storm Protection Plan Cost Recovery Clause (“SPPCRC”) Stipulation and Settlement Agreement, dated August 10, 2020 (the “August 10th SPPCRC Agreement” or the “Agreement”). DEF, the Office of Public Counsel (“OPC”), and White Springs Agricultural Chemical Co. d/b/a/ PCS Phosphate (collectively, the “Parties”), believe and therefore represent that the August 10th SPPCRC Agreement is in the public interest and should be approved by the Commission.

In support, DEF states:

Introduction

On June 27, 2019, the Governor of Florida signed CS/CS/CS/SB 796 addressing Storm Protection Plan Cost Recovery, which was codified in Section 366.96, Fla. Stat. Therein, the Florida Legislature directed each utility to file a ten-year Storm Protection Plan (“SPP”) that explains the storm-hardening programs and projects the utility will implement to achieve the legislative objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. *See* § 366.96(3), Fla. Stat. The Florida Legislature also directed the Commission to conduct an annual proceeding to determine the utility’s prudently-incurred SPP costs and to allow the utility to recover such costs through a charge separate and

apart from its base rates, to be referenced as the Storm Protection Plan Cost Recovery Clause (“SPPCRC”). *See id.* at (7).

Rule 25-6.030, F.A.C., requires each utility to file an updated SPP at least every three years covering the utility’s immediate ten-year planning period. Pursuant to this rule, DEF filed its 2020-2029 SPP in Docket No. 20200069-EI (the “SPP Docket”) on April 10, 2020.

Rule 25-6.031(2), F.A.C., provides that after a utility has filed its SPP it may petition the Commission for recovery of the costs associated with the SPP and implementation activities through the SPPCRC. Accordingly, in March of 2020, the Commission established Docket No. 20200092-EI (the “SPPCRC Docket”) to consider requests for recovery of SPP-related costs. On July 17, 2020, the Prehearing Officer issued the Order Establishing Procedure (“OEP”) in the SPPCRC Docket. Pursuant to the schedule established in the OEP, on July 24, 2020, DEF filed its 2021 projection petition and supporting testimonies and exhibits of Thomas G. Foster (Exhibit No. TGF-1) and Jay Oliver (“SPPCRC Petition”).

The SPPCRC Petition requests recovery of approximately \$10 million in revenue requirements through the SPPCRC during the period January – December 2021, which is the revenue requirements for DEF’s projected SPP-related costs that are being passed through the SPPCRC in 2021 of approximately \$100.9M (capital) and \$4.6M (O&M).

As a direct result of the extensive discovery performed in DEF’s SPP Docket, the Parties initially entered into a 2020 SPP/SPPCRC Agreement on July 17, 2020, resolving several SPP and SPPCRC issues (the “July 17th SPP/SPPCRC Agreement”). The remaining issues in DEF’s SPP Docket were resolved by a July 31, 2020 Stipulation and Settlement Agreement (the “July 31st SPP Agreement”), which the Commission approved on August 10, 2020. The Final Order on the

July 31st SPP Agreement was subsequently issued on August 28, 2020. *See* Order No. PSC-2020-0293-AS-EI.

Also, on August 10, 2020, the Parties jointly moved for approval of the August 10th SPPCRC Agreement, which would resolve the remaining issues in DEF's SPPCRC Docket. FIPUG took no position and Walmart opposed the August 10th SPPCRC Agreement.

On September 1, 2020, this Commission held a hearing to consider both the July 17th SPP/SPPCRC Agreement and the August 10th SPPCRC Agreement. By unanimous vote, the Commission approved the July 17th SPP/SPPCRC Agreement.

The Commission then turned to the August 10th SPPCRC Agreement. The Commission took into evidence the eight (8) exhibits identified on Staff's Comprehensive Exhibit List, the direct testimonies of DEF witnesses Foster and Oliver and the direct testimony of Walmart witness Chriss. Finally, the Commission heard live testimony, including cross-examination of Mr. Foster on behalf of DEF and Mr. Chriss on behalf of Walmart. At Walmart's request, the Commission reserved ruling to allow for the filing of post-hearing briefs. Pursuant to the Commission's instruction, DEF submits this supporting post-hearing brief and requests that the Commission approve the August 10th SPPCRC Agreement.

Legal Standard

The proper standard for the Commission's approval of a settlement agreement is whether it is in the public interest. *Sierra Club v. Brown*, 243 So. 3d 903, 909-913 (Fla. 2018) (citing *Citizens of State v. FPSC*, 146 So. 3d 1143 (Fla. 2014)); *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.*, Order No. PSC-2017-0451-AS-EU (Fla. PSC Nov. 20, 2017).

The “determination of what is in the public interest rests exclusively with the Commission.” *Citizens*, 146 So. 3d at 1173. A “determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.” *In re: Application for limited proceeding*, Order No. PSC-2017-0451-AS-EU, at p. 5. However, the Commission is not required to resolve the merits of every issue independently. *Sierra Club*, 243 So. 3d at 912 (citing *Citizens*, 146 So. 3d at 1153).

Finally, this Commission has a long-standing practice of encouraging parties to settle contested dockets when possible,¹ and the Commission has the authority to approve a non-unanimous settlement agreement when it deems it in the public interest to do so. *Citizens*, 146 So. 3d at 1152-1153.

The August 10th SPPCRC Agreement is in the Public Interest

The August 10th SPPCRC Agreement fully disposes of all outstanding issues pertaining to DEF in this year’s SPPCRC Docket. More specifically, the Agreement established the reasonable costs and revenue requirements DEF is entitled to collect through the SPPCRC in 2021, subject to all parties retaining their right to challenge the prudence of all such costs. The Agreement also permits DEF to seek recovery through the SPPCRC of its 2020-2029 SPP development costs, again subject to DEF’s burden of proving the reasonableness and prudence of such costs. OPC and PCS

¹ See e.g., *In re: Request for approval of amendment to connection/transfer sheets, increase in returned check charge, amendment to miscellaneous service charges, increase in meter installation charges, and imposition of new tap-in fee, in Marion County, by East Marion Sanitary Systems Inc.*, Order No. PSC-2011-0566-AS-WU (Fla. PSC Dec. 11, 2011); *In re: Application for staff-assisted rate case in Lee County by Mobile Manor Water Company, Inc.*, Order No. PSC-2010-0299-AS-WU (Fla. PSC May 10, 2010); *In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.*, Order No. PSC-2009-0711-AS-WS (Fla. PSC Oct. 26, 2009); *In re: Petition of Tampa Electric Company to close Rate Schedules IS-3 and IST-3, and approve new Rate Schedules GSLM-2 and GSLM-3.*, Order No. PSC-2000-0374-S-EI (Fla. PSC Feb. 22, 2000); *In re: Application for staff-assisted rate case in Pasco County by Orangeland Water Supply.*, Order No. PSC-2008-0640-AS-WU (Fla. PSC Oct. 3, 2008); *In re: Application for increase in water and wastewater rates in Lake County by Utilities, Inc. of Pennbrooke.*, Order No. PSC-2007-0534-AS-WS (Fla. PSC June 26, 2007).

Phosphate agree that these stipulations are in the public interest and should be approved by the Commission; moreover, no other party has contended that these provisions are not in the public interest.

The sole remaining issue being contested is the billing methodology. DEF proposed billing all customers on an energy basis for 2021 only, with the understanding that this issue will be revisited in setting the 2022 SPPCRC factors. PCS Phosphate concurs with this position, and both OPC and FIPUG take no position.

As noted above, the Commission is simply not required to specifically determine this issue; rather, the question for the Commission is whether the Agreement, *as a whole*, is in the public interest. *See Sierra Club*, 243 So. 3d at 909; *Citizens*, 146 So. 3d at 1173. This Agreement, as a whole, is undoubtedly in the public interest: it promotes administrative efficiency by eliminating the need for what could be extensive discovery; it eliminates the need for the Commission to hold a formal hearing to adjudicate the DEF-specific issues in this docket, thereby freeing up the Commission's and parties' resources for other pending and future matters; and, it furthers the Commission's long-standing policy of encouraging settlement agreements. *See* fn. 1, *supra*.

However, even if the Commission were to address this specific issue, the proposed resolution remains in the public interest. Simply put, the contested issue is not of sufficient import to negate the remaining benefits of the Agreement. As Mr. Foster testified, the revenue requirements DEF is seeking to recover through the SPPCRC in 2021 are approximately \$10M. Foster, p. 3, ll. 1-2. This a relatively small amount and the Agreement makes clear, the billing methodology DEF has proposed will be used to collect 2021 costs and then the issue will be revisited next year for 2022 SPPCRC billings, and nothing in the Agreement has precedential value. *See* Agreement, ¶¶ 3 & 7. The present situation is exactly what the Florida Supreme Court

meant when it explained that “it would be unreasonable to allow a single holdout party that does not get its way on one issue during settlement negotiations to derail the entire settlement process if settlement is fully in the public’s interest all along.” *Sierra Club*, 243 So. 3d at 913.

Walmart’s witness Chriss argues that collecting these costs on an energy, rather than a demand, basis violates cost-causation principles. *See, e.g.*, Chriss, p. 8, ll. 13-19. That is, he believes that costs must be collected from customers on the same basis as they are allocated to those customers. *See id.* However, as witness Foster testified, the SPP costs proposed to be collected through the SPPCRC are intended to defray storm restoration costs, *see* § 366.96(1)(d), Fla. Stat., and DEF currently collects those costs from customers on an energy basis. Foster, p. 9, ll. 5-10 (citing instances where the Commission approved DEF’s – as well as other Florida utilities’ – collection of storm restoration costs on an energy basis). Thus, it is illogical to conclude that setting the SPPCRC factors on an energy basis violates cost-causation principles; it is more accurate to conclude that both billing approaches are permissible. Permitting these costs to be collected on an energy basis, for one year, is in the public interest, and the Commission should approve the Agreement.

Conclusion

For the reasons discussed herein, and based on all evidence in the record, DEF believes the August 10th SPPCRC Agreement to be in the public interest and urges the Commission to approve it.

Respectfully submitted this 11th day of September, 2020.

/s/ Matthew R. Bernier

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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 11th day of September, 2020.

/s/ Matthew R. Bernier

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