

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200176-EI

Petition for a limited proceeding
to approve clean energy connection
program and tariff and stipulation,
by Duke Energy Florida, LLC.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 7

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER ANDREW GILES FAY
COMMISSIONER MIKE LA ROSA

DATE: Tuesday, January 5, 2021

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right. Next up is Item
3 No. 7.

4 Mr. Futrell.

5 MR. FUTRELL: Thank you, Mr. Chairman. Good
6 morning, Commissioners. I am Mark Futrell with
7 staff.

8 Item 7 is the stipulation entered into by
9 several parties regarding Duke Energy Florida's
10 Clean Energy Connection Program and associated
11 tariffs.

12 On July 1st, 2020, Duke filed a petition and
13 stipulation seeking approval of the Clean Energy
14 Connection Program, a voluntarily community solar
15 program that allows participating customers to pay
16 a subscription fee in exchange for receiving bill
17 credits related to the solar generation produced by
18 the program's solar facilities. The program will
19 consist of 10 projects totaling 750 megawatts of
20 solar generation, which will be placed in service
21 between 2022 and 2024.

22 Following the technical hearing on November
23 17th and 18th, parties filed post-hearing briefs by
24 December 9th. Additionally, staff is has provided
25 you with an oral modification that adds one of the

1 signatory pages that was inadvertently excluded
2 from Attachment A to the recommendation. This
3 document is also available in the docket file.

4 This is a post-hearing item, and discussion is
5 limited to Commissioners and staff.

6 CHAIRMAN CLARK: Thank you, Mr. Futrell.

7 All right. Commissioners, this is limited
8 strictly to Commissioners and staff and,
9 Commissioner La Rosa, you are recognized.

10 COMMISSIONER LA ROSA: Thank you, Chairman.

11 Chairman, I have reviewed the record on this
12 case. I have watched the recording of the hearings
13 and have had briefings both of my staff and, of
14 course, with technical staff. With their help, Mr.
15 Chairman, I am prepared to discuss and vote on this
16 issue.

17 Thank you.

18 CHAIRMAN CLARK: All right. Very good. Thank
19 you.

20 All right. Commissioners, is there any -- are
21 there any comments or questions?

22 Any discussion on the item?

23 Commissioner Fay.

24 COMMISSIONER FAY: Thank you, Mr. Chairman.

25 I have some, I guess they would be questions

1 for legal. I just -- I want to make sure we are in
2 the right posture. This is an important docket
3 item, and I know there are some things that might
4 be somewhat unusual about it, so maybe -- I
5 don't -- I don't necessarily care who in legal
6 could respond to this, but just get clarification
7 kind of how we -- we got here and the related
8 settlement and what's unusual about that.

9 MS. HELTON: Mr. Chairman, Shaw Stiller was
10 the lawyer on this case, so if we could direct the
11 questions to him, that might get the best answer.

12 CHAIRMAN CLARK: Mr. Stiller, are you on the
13 line?

14 MR. STILLER: Yes, I am. Good morning,
15 Mr. Chair --

16 CHAIRMAN CLARK: You are recognized.

17 MR. STILLER: -- Shaw Stiller -- thank you.
18 Shaw Stiller from legal staff.

19 Commissioner Fay, as was noted in the
20 introduction, the petition filed by Duke Energy
21 Florida that opened this docket was accompanied by
22 a stipulation. The stipulation was entered into by
23 Walmart, Vote Solar and -- and SACE.

24 Because this was a stipulation that was
25 immediately protested by one party, LULAC, staff

1 treated it as a nonunanimous settlement consistent
2 with Commission practice and Florida Supreme Court
3 precedent. A hearing was set with sufficient
4 notice. Opportunity was given for discovery. The
5 parties did engage in written discovery. Every
6 witness who ultimately appeared before the
7 Commission at the hearing was deposed by the
8 adverse party prior to the hearing. As the
9 Commission is aware, there was a day plus hearing
10 and then post-hearing briefs.

11 So what was -- it was, quote, a bit unusual in
12 that the case was settled when it was commenced,
13 the process from filing to today is entirely
14 consistent, again, with Commission practice and
15 Florida Supreme Court precedent.

16 Thank you.

17 CHAIRMAN CLARK: Thank you, Mr. Stiller.

18 COMMISSIONER FAY: Thank you, Mr. Chair.

19 If I -- I have a follow-up, please.

20 CHAIRMAN CLARK: Yes, sir.

21 COMMISSIONER FAY: So I think that -- that --
22 I appreciate the description of the procedure.
23 I -- it does seem like having the settlement up
24 front is somewhat unusual. To me, it doesn't make
25 what difference really when that settlement comes

1 in. I think the key components of it are that that
2 due process you are speaking about, and it sounds
3 like you are fairly confident that based on the
4 discovery process, the filings and then the briefs
5 that were filed, that that process was not abnormal
6 and sufficient for the parties.

7 The other part of it, Mr. Shaw, if I could ask
8 you that there is some discussion in the briefs
9 about the -- the nonunanimous settlement components
10 and can the parties that are or aren't part of that
11 and in addition to what issues we could take up.

12 So I know -- I know the Supreme Court has
13 spoken on some of this, and I think it's -- the
14 2014 ruling of the 2012 rate case, but we are in
15 sort of a similar posture where the Court has
16 spoken as to the mandates of what you are required
17 to -- if it's a nonunanimous settlement, we can
18 still take that component up and make a public
19 interest determination based on that precedent in
20 the Supreme Court, correct?

21 MR. STILLER: Again, Shaw Stiller from legal
22 staff.

23 Commissioner Fay, that is correct. In the
24 Citizens case you are referencing -- and that is,
25 just for the record, reported at 146 So.3d. 1143 --

1 it was a nonunanimous settlement, and the Supreme
2 Court emphasized that Commission consideration and
3 approval of a nonunanimous settlement is
4 appropriate where due process is afforded, as it
5 was here, and then the Commission makes record
6 findings regarding the public interest served by
7 the stipulation.

8 COMMISSIONER FAY: Okay. Great. Thank you.

9 I think that -- Mr. Chairman, I think that
10 puts, at least for me, puts us in the right posture
11 to move forward with a decision. I have some
12 thoughts on the public interest standard and the
13 facts in this case. I am happy to lay those out
14 now, but my colleagues might have some other
15 comments before I move on.

16 CHAIRMAN CLARK: Any comments before
17 Commissioner Fay lays out the public interest
18 factors?

19 Commissioner Brown, I'm sorry.

20 COMMISSIONER BROWN: Thank you. And I just
21 have a comment before Commissioner Fay moves
22 forward with this, and not -- not -- I am going to
23 be voting against this project.

24 During the hearing, I had questions and the
25 witnesses were unable to really clearly answer

1 them. Reading the briefs, also I was not persuaded
2 by -- really, it's -- I am not opposed to this
3 concept. Obviously, I actively supported the FPL
4 SolarTogether. But looking at the two pro-- which
5 is the first of its kind in the country. But
6 looking at the two projects in terms of scale and
7 the projected costs, it -- the Duke project is half
8 the size of the FPL SolarTogether, but costs almost
9 exactly as much. And I think that taking that into
10 consideration along with the post-hearing briefs
11 about cost shifting and benefits, while I think the
12 program, in essence, has some great
13 characteristics, notably the third-party projects
14 that they would be encouraging as well, and the --
15 and some of the benefits, but I think the scale of
16 this project is too big to support it as
17 cost-effective, so I will be voting no.

18 CHAIRMAN CLARK: Thank you.

19 Any other comments?

20 All right. Commissioner Fay.

21 COMMISSIONER FAY: Great. Thank you, Mr.
22 Chairman.

23 You know, first I just want to say I think the
24 parties did -- all the parties did a good job
25 litigating this case. And in particular, I think

1 we've got parties that are usually on opposite
2 sides that come before us, and they are -- they are
3 serving a common interest in this settlement before
4 us, which I think there is some -- some weight
5 given to that, I think is a good example of when
6 those parties work together trying to find
7 innovative creative solutions.

8 With that said, I do think the -- the decision
9 does hinge on the public interest standard and the
10 components of fair, just and reasonable rates. And
11 I have looked at the statutes, just like I did with
12 the SolarTogether Program. I think both LULAC, and
13 Commissioner Brown just mentioned, there are some
14 distinctive factors in this program from
15 SolarTogether, and I think that it's -- it's made
16 clear, good or bad today, that that program has
17 been voted on, and the time for challenging that
18 program has passed, and this is the item that we
19 are taking up today, the specific program and the
20 record that's before us.

21 So I think, you know, looking at the statutes,
22 you have got the standard -- the general public
23 interest standards, the fair, just and reasonable
24 rates, and then you have the specifics of renewable
25 energy that, in my opinion, should be applied to

1 the decision.

2 I think more importantly 366.91 explicitly
3 states in the public interest to promote,
4 development of renewable energy resources,
5 that's -- that's about as clear as it can get to
6 me.

7 So I think when we are weighing out the -- the
8 benefits and the challenges of this program, the
9 Commission has to make a determination if something
10 on its face provides a -- an inconsistency to
11 those -- those statutes, or if the implementation
12 of it allows for components to be used in a way
13 that would basically exempt it from this type of
14 process.

15 And my concern is if is that extension goes
16 too far, it really doesn't allow for the
17 opportunity for the creativity of these renewable
18 programs-- to keep coming forward and be supported.
19 And I think it puts into question some of the
20 components of -- of these settlements directly, and
21 I think that's -- that's a challenge that I think
22 not only will potentially slow down the -- the
23 growth of renewables, but could complicate the --
24 the process as a whole.

25 So I respect that some of my colleagues feel

1 that this extends beyond that threshold, and they
2 might not feel this settlement is an appropriate
3 mechanism for it, but based on the record that I
4 have looked at, there is absolutely competent,
5 substantial evidence to make of that decision that
6 it's in the public interest in a way that's
7 consistent with the fair, just and reasonable
8 rates.

9 So with that, Mr. Chairman, I am going to
10 support this item, and I am sure my colleagues have
11 other comments.

12 CHAIRMAN CLARK: All right. Any other
13 comments?

14 I will express my concerns. I think
15 Commissioner Fay did an excellent job of
16 summarizing the public interest concept, and where
17 this project stands, but I also acknowledge
18 Commissioner Brown's in-depth study of the rate and
19 the price and the cost, and I have been on the
20 fence with this issue the entire time. I see pros
21 and cons. I do -- I am leaning out toward the
22 public interest side and believing that the
23 settlement was, in fact, for all of these parties
24 coming to agreement is certainly a major component
25 in the consideration, but to the general body of

1 ratepayers, there is a significant amount of funds
2 that are going to be coming back to them over a
3 long period of time. There is going to be
4 substantial benefits from the renewable energy
5 perspective. And, again, I have weighed this thing
6 out, and I am really, really back and forth on the
7 issue, but I do believe that it does meet the
8 public interest test.

9 Commissioners, any other questions?

10 I will entertain a motion.

11 COMMISSIONER FAY: Mr. Chairman, I would move
12 for approval on all issues of the settlement.

13 COMMISSIONER GRAHAM: Second.

14 CHAIRMAN CLARK: I have a motion and a second
15 to it approve.

16 Any discussion?

17 On the motion, all in favor say aye.

18 (Chorus of ayes.)

19 CHAIRMAN CLARK: All opposed?

20 (No response.)

21 CHAIRMAN CLARK: Motion carries.

22 Thank you very much.

23 MS. PIRRELLO: Mr. Chairman?

24 CHAIRMAN CLARK: Yes, someone?

25 MS. PIRRELLO: My apologies. This is

1 Anastacia Pirrello with OPC.

2 If we could return to Item 5, I did wish do
3 comment on that item.

4 CHAIRMAN CLARK: I am sorry, who is this?

5 MS. PIRRELLO: Anastacia Pirrello with the
6 Office of Public Counsel.

7 CHAIRMAN CLARK: Yes, Ms. Pirrello. I'm
8 sorry. I am having a hard time hearing you. If
9 you can get a little closer to your microphone,
10 maybe that would be a big help.

11 You have a question on Item 5?

12 MS. PIRRELLO: I wish to comment on the item.

13 MS. HELTON: Mr. Chairman, you all have
14 already voted on Item 5.

15 CHAIRMAN CLARK: Yeah. I would think that the
16 appropriate response, Ms. Pirrello, would be to
17 submit those comments to us in writing.

18 MS. PIRRELLO: Okay. Thank you.

19 CHAIRMAN CLARK: Thank you.

20 (Agenda item concluded.)

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 13th day of January, 2021.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024