

**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: August 31, 2015

**DUKE ENERGY FLORIDA, LLC’S MOTION FOR APPROVAL OF STIPULATION AND FOR RELIEF FROM REBUTTAL TESTIMONY DEADLINE SET FORTH IN ORDER ESTABLISHING PROCEDURE**

Duke Energy Florida, LLC (“DEF” or the “Company”) hereby moves the Florida Public Service Commission (“Commission”) to: (1) approve the attached Proposed Stipulation for CR3 Regulatory Asset Issues, with Exhibits 1 and 2 (“Stipulation”); and (2) provide relief from the rebuttal testimony filing deadline.

**Approval of Stipulation**

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 resolve the CR3 Regulatory Asset-related issues in this Docket and to amend the RRSSA.

2. The attached Stipulation addresses only the CR3 Regulatory Asset-related issues in this docket and the wording of the RRSSA. The Stipulation does not address the issues related to the Petition for Financing Order<sup>1</sup>. If approved, the pre-filed testimony and exhibits of DEF’s and OPC’s witnesses that relate to the CR3 Regulatory Asset Docket would be moved into the

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<sup>1</sup> The PSC consolidated the CR3 Regulatory Asset Docket, 150148, with the Financing Order Docket, 150171.

record. Opening statements, cross-examination of witnesses, closing statements, and post-hearing briefing would be waived only for the CR3 Regulatory Asset-related issues, but not with respect to the Financing Order issues. The parties' positions on the CR3 Regulatory Asset-related issues are stated in the attached Stipulation, specifically Exhibit 1, which the parties request the Commission attach to its final order.

3. The parties also request, in this Stipulation, that the Revised and Restated Stipulation and Settlement Agreement ("RRSSA") be amended as explained below. Specifically, this Commission approved the RRSSA in Order No. PSC-13-0598-FO-EI. The RRSSA provides, among other things, for the recovery of the CR3 Regulatory Asset. Subsequent to the parties' execution of the RRSSA, Section 366.95, Florida Statutes, became law. Pursuant to the RRSSA, DEF filed a petition to include the CR3 Regulatory Asset in base rates (Docket 150148-EI). Pursuant to Section 366.95, DEF filed a petition for issuance of a nuclear asset-recovery financing order (Docket 150171-EI).

4. Because Section 366.95 had not been enacted when the parties executed the RRSSA, the RRSSA necessarily does not contain provisions that apply to a proposed securitization pursuant to Section 366.95. Accordingly, it is necessary to amend certain provisions of the RRSSA to ensure that a financing order, if issued, will be consistent with the RRSSA. The RRSSA Amendment is attached as Exhibit 2 to the Stipulation. The RRSSA Amendment contains targeted and limited changes to those sections of the RRSSA that reference the recovery period for the CR3 Regulatory Asset, specifically paragraphs 5 and 21, to clarify the appropriate recovery period if the nuclear asset-recovery bonds are issued pursuant to Section 366.95, 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 amendment, attached as Exhibit 2 to the Stipulation.

5. The RRSSA Amendment is in the best interest of DEF's customers and in the public interest. The RRSSA Amendment provides a clear path forward with respect to the potential securitization of the CR3 Regulatory Asset and preserves the Company's ability to obtain low-cost nuclear asset-recovery bonds for the benefit of its customers. Without the RRSSA Amendment, DEF may not be able to securitize the CR3 Regulatory Asset and be consistent with the intended recovery period for the CR3 Regulatory Asset that is set forth in the RRSSA and preserved and clarified as set forth herein.

**Rebuttal Testimony**

6. In Order No. PSC-15-0238-FOF-EI, the Commission ordered that DEF file its rebuttal testimony on September 1, 2015. If this Stipulation is approved, DEF will not have a need to file any rebuttal testimony. However, if the Stipulation is not approved, then DEF would request relief from the date established in Order 15-0238, such that it could file its rebuttal testimony within 2 business days of the Commission vote disapproving the Stipulation.

7. Such a ruling will provide for administrative efficiency and ensure that DEF is not prejudiced by entering into this Stipulation.

8. DEF is authorized to represent that OPC, PCS Phosphate, FRF, and FIPUG support the motion to approve the Stipulation and the request for relief from the rebuttal testimony deadline.

WHEREFORE, DEF respectfully requests that:

(1) the Commission approve the Stipulation attached hereto, excuse DEF's and OPC's CR3 Regulatory Asset-related witnesses from attending the hearing in this matter and approve the RRSSA Amendment; and

(2) if the Stipulation is not approved, that DEF be relieved from the rebuttal testimony filing date set forth in Order 15-0238 and be permitted to file rebuttal within 2 business days of the Commission vote on this Motion.

Respectfully submitted this 31<sup>st</sup> day of August, 2015.

/s/ Dianne M. Triplett

DIANNE M. TRIPLETT

Associate General Counsel

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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 31<sup>st</sup> day of August, 2015.

*s/ Dianne M. Triplett*  
\_\_\_\_\_  
Attorney

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<p>Joseph Fichera Saber Partners, LLC 44 Wall Street New York, NY 10005 <a href="mailto:jfichera@saberpartners.com">jfichera@saberpartners.com</a></p>	<p>Dean E. Criddle Orrick, Herrington &amp; Sutcliffe 405 Howard Street, #11 San Francisco, CA 94105 <a href="mailto:dcriddle@orrick.com">dcriddle@orrick.com</a></p>

Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
Dockets 150148 and 150171

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- I. The signatories to the RRSSA agree that there should be certain adjustments to the value of the CR3 Regulatory Asset that DEF has proposed to include in base rates, per its Petition on May 22, 2015. Specifically, the signatories agree that DEF should reduce the value of its CR3 Regulatory Asset by \$15 million.
- II. This is a negotiated settlement that resolves any and all issues that interveners have raised or could raise with respect to DEF's CR3 Regulatory Asset filing, including but not limited to the issues raised in Donna Ramas' testimony, filed on August 12 on behalf of the Office of Public Counsel ("OPC"). In consideration for the reduction of value referenced in paragraph I above, the signatories to the RRSSA fully and forever waive, release, discharge, and otherwise extinguish any and all of their rights, claims, and interests of whatever kind or nature, whether now known or unknown, to challenge the reasonableness and prudence of any DEF action, including inaction, or decision, of any kind, type, or nature, arising out of, or related or in any way connected, directly or indirectly, to the issues in Docket 150148. Absent evidence of fraud, intentional misrepresentation, or intentional misconduct by DEF, the interveners cannot and will not challenge in any PSC or judicial proceeding the prudence of DEF's actions in connection with the issues in Docket 150148. The current list of issues for consideration with respect to Docket 150148 is attached as Exhibit 1. For clarity, the signatories to the RRSSA reserve all rights with respect to the securitization or financing order portion of Docket 150171.
- III. The interveners will take positions on issues 2 through 13, as reflected in Exhibit 1, and will take "No Position" with respect to the remaining issue (issue 1) in the above dockets related to the CR3 Regulatory Asset, thus removing any obstacle to "Type 2" stipulations on that issue.
- IV. Nothing in this Stipulation is intended to affect the intent, or the provisions, of the RRSSA, except as set forth in the RRSSA Amendment.
- V. If this Stipulation is not approved by the Commission, then DEF reserves its right, and the parties do not object, to file rebuttal testimony to respond to OPC's testimony.
- VI. The signatories to the RRSSA approve the RRSSA Amendment, attached to this Stipulation as Exhibit 2. The signatories agree that the RRSSA Amendment contains changes to clarify the appropriate recovery period if the nuclear asset-recovery bonds are issued pursuant to Section 366.95. 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.
- VII. This Stipulation may be executed in counterpart originals, and a facsimile or PDF email of an original signature shall be deemed an original.

Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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In Witness Whereof, the signatories to the RRSSA evidence their acceptance and agreement with the provisions of this Stipulation by their signatures below.

Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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Duke Energy Florida, LLC

By: \_\_\_\_\_

John T. Burnett  
P.O. Box 14042  
St. Petersburg, FL 33733



Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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Office of Public Counsel

By: \_\_\_\_\_

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

Proposed Stipulation for CR3 Regulatory Asset Issues -  
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Florida Industrial Power Users Group

By: \_\_\_\_\_

Jon C. Moyle, Esq.  
Moyle Law Firm  
118 North Gadsen Street  
Tallahassee, FL 32301

*2/3/15*

Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
Dockets 150148 and 150171

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White Springs Agricultural Chemicals, Inc.

By 

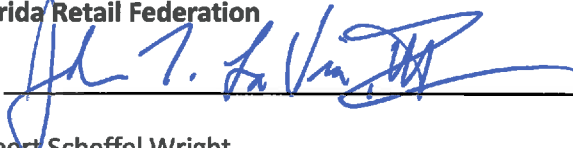
James W. Brew, Esquire  
Stone Mattheis Xenopolous & Brew, PC  
1025 Thomas Jefferson St., NW  
Eighth Floor, West Tower  
Washington, DC 20007

**Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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**Florida Retail Federation**

By: \_\_\_\_\_



Robert Scheffel Wright

John T. LaVia III

Garder, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.

1300 Thomaswood Drive

Tallahassee, FL 32308

Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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**Exhibit 1**

**CR3 Regulatory Asset Issues**

**Issue 1:** Has DEF provided adequate internal controls and management oversight of its CR3 investment recovery procedure and plan?

Type 2 Stipulation

**Issue 2:** Did DEF minimize the current and future costs of the CR3 Regulatory Asset and use reasonable and prudent efforts to curtail avoidable costs or to sell or otherwise salvage assets that would otherwise be included in the CR3 Regulatory Asset, as required by the Revised and Restated Stipulation and Settlement Agreement (RRSSA)?

Stipulation: Yes, DEF fully complied with its obligations under the RRSSA.

**Issue 3:** Should DEF be required to collect the 2016 CR3 Regulatory Asset carrying cost of \$1.50/mWh through the fuel clause as provided in the RRSSA and to reduce the CR3 Regulatory Asset by the projected amount to be recovered?

Stipulation: No, recovery of the carrying cost through the fuel clause pursuant to Paragraph 7.a. of the RRSSA should terminate with the last billing cycle for December 2015. DEF will not implement the \$1.50 per megawatt hour rate increase for 2016.

**Issue 4:** Has DEF properly categorized and recorded costs associated with the CR3 Regulatory Asset as contemplated by the RRSSA?

Stipulation: Yes, DEF has properly categorized and recorded costs consistent with the RRSSA.

**Issue 5:** Did DEF appropriately apply the accelerated recovery of the carrying charge collected through the Fuel Adjustment Clause to the CR3 Regulatory Asset?

Stipulation: Yes.

**Issue 6:** What is the appropriate projected amount of the CR3 Regulatory Asset at December 31, 2015?

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Stipulation: The appropriate amount of the CR3 Regulatory Asset at December 31, 2015 is \$1,283,012,000. This amount reflects the original amount projected in DEF's petition of \$1,298,012,000 reduced by the adjustment of \$15 million referenced in the parties' stipulation.

**Issue 7:** Has DEF calculated the annual revenue requirement for the CR3 Regulatory Asset consistent with the requirements of the RRSSA?

Stipulation: Yes.

**Issue 8:** What is the appropriate amortization period and annual revenue requirement to amortize the CR3 Regulatory Asset?

Stipulation: The appropriate amortization period is 240 months consistent with the RRSSA. The appropriate annual revenue requirement is \$168,331,000 calculated on Exhibit\_\_(MO-2) as revised on 8/31/15 and attached to this Stipulation.

**Issue 9:** Should the Commission approve DEF's proposed treatment to account for nuclear fuel proceeds, that will not be received until the future, through the capacity cost recovery clause?

Stipulation: Yes, DEF should be allowed to recover through the capacity cost recovery clause the return on the future nuclear fuel proceeds until they are received and recover the difference between the actual amounts received and the amount credited to the CR3 Regulatory Asset in the December 31, 2015 balance. The pretax rate of return should be 8.12% consistent with the RRSSA Exhibit 10, line 20. .

**Issue 10:** Has DEF calculated the base rate increase consistent with the requirements of the RRSSA?

Stipulation: Yes, the base rate increase including the \$15 million stipulated reduction is calculated to be .496 cents/kWh as shown in Exhibit \_\_\_\_(MO-4) as revised on 8/31/15 and attached to this Stipulation.

**Issue 11:** If the Commission does not issue a financing order pursuant to DEF's Petition, should the projected amounts included in the CR3 Regulatory Asset be true-up? If so, how should the true-up be accomplished?

Stipulation: Yes, DEF will do the true-up consistent with the RRSSA.

Attachment A to Motion  
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**Issue 12:** If the Commission does not issue a financing order pursuant to DEF's Petition, what is the proposed uniform percentage rate increase to the demand and energy charges by customer rate schedule?

Stipulation: The proposed uniform percentage rate increase to the demand and energy charges by customer rate schedule is that provided in Exhibit\_\_(MO-4) as revised on 8/31/15 and attached to this Stipulation.

**Issue 13:** If the Commission does not issue a financing order pursuant to DEF's Petition, what should be the effective date of the requested base rate increase for billing purposes?

Stipulation: If the Commission does not issue a financing order pursuant to DEF's Petition, the effective date of the requested base rate increase should be six months after the Commission's vote rejecting the financing order.

Attachment A to Motion  
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Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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Attachment A to Motion  
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Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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**Exhibit 2**

**RRSSA Amendment**

The next to the last sentence of paragraph 5(e)(1) is amended to read: "After a final decision by the Commission, DEF shall adjust the CR3 Regulatory Asset to true-up for the final Commission-determined total (retail jurisdictional) value of the DCS facility capital costs, and shall amortize the adjusted final CR3 Regulatory Asset over the recovery period ~~of 240 months~~ consistent with set forth in paragraph 5g."

The last sentence in Paragraph 5g is amended to read: "The CR3 Regulatory Asset recovery factor charges shall cease no later than the last billing cycle for the 240th month from inception of the recovery of the CR3 Regulatory Asset; provided, however, in the event that the nuclear asset-recovery costs (as defined in Florida Statutes Section 366.95(1)(k)) are to be recovered through the issuance of nuclear asset recovery bonds (as defined in Florida Statutes Section 366.95(1)(i)), the nuclear asset-recovery charge (as defined in Florida Statutes Section 366.95(1)(j)) shall remain in effect until the nuclear asset-recovery bonds have been paid in full and the Commission-approved financing costs (as defined in Florida Statutes Section 366.95(1)(e)) have been recovered in full, but in no event for a period longer than the close of the last billing cycle for the 276th month from inception of the nuclear asset-recovery charge, with the understanding that: (i) the nuclear asset-recovery bonds will be structured in a manner such that the scheduled final maturity date for the last maturing tranche of the nuclear asset-recovery bonds is as close as is reasonably possible to the last billing cycle for the close of the 240th month from inception of imposition of the nuclear asset-recovery charge; and (ii) any portion of the recovery period beyond the scheduled final maturity date for the last tranche of the nuclear asset-recovery bonds shall be strictly limited to the purpose of recovery of charges pursuant to the true-up mechanism permitted under any Financing Order that may be issued by the Commission and any adjustments approved by the Commission (in accordance with Florida Statutes Section 366.95(2)(c)4)."

The first sentence of paragraph 5h is amended to read: "The Parties intend that retail base rate recovery for the CR3 Regulatory Asset shall continue for 240 months from its inception, a recovery period consistent with the last sentence in paragraph 5g, including a scheduled final maturity date for the last maturing tranche of the nuclear asset-recovery bonds as close as is reasonably possible to the close of the last billing cycle for the 240th month from inception of imposition of the nuclear asset-recovery charge."

The second sentence in paragraph 21 is amended to read: "In addition, the Parties agree that the base rate increases or charges that, pursuant to the terms of this Revised and Restated Settlement Agreement, extend beyond the last billing cycle for December 2018 and survive the expiration of the term or termination of this Revised and Restated Settlement Agreement, specifically include,

Attachment A to Motion  
Proposed Stipulation for CR3 Regulatory Asset Issues and RRSSA Amendment  
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without limitation, (A) the recovery of the CR3 Regulatory Asset through either (1) the last billing cycle for the 240th month from inception of the recovery of the CR3 Regulatory Asset pursuant to paragraph 5 of this Revised and Restated Settlement Agreement or (2) in the event that the nuclear asset-recovery costs are to be recovered through the issuance of nuclear asset-recovery bonds, until the nuclear asset-recovery bonds have been paid in full and the Commission-approved financing costs have been recovered in full, and for such a period consistent with the proviso in paragraph 5g of this Revised and Restated Settlement Agreement (as amended); (B) the potential recovery of additional funds to fund the CR3 Nuclear Decommissioning Trust pursuant to paragraph 7b of this Revised and Restated Settlement Agreement; (C) the potential recovery of the CRS net book value pursuant to paragraph 8 of this Revised and Restated Settlement Agreement; and (D) the recovery of the LNP and EPU costs through the time periods established by this Revised and Restated Settlement Agreement and Section 366.93(6), F.S., and Commission Rule 25-6.0423(6), F.A.C. ”