

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael and approval of second implementation stipulation, by Duke Energy Florida, LLC.

DOCKET NO. 20190110-EI

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Dorian and Tropical Storm Nestor, by Duke Energy Florida, LLC.

DOCKET NO. 20190222-EI

In re: Petition for limited proceeding to approve 2021 settlement agreement, including general base rate increases, by Duke Energy Florida, LLC.

DOCKET NO. 20210016-EI
ORDER NO. PSC-2021-0101-PCO-EI
ISSUED: March 9, 2021

ORDER ON PROCEDURE AND CONSOLIDATING DOCKETS

I. Case Background

Duke Energy Florida, LLC (DEF), the Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), Nucor Steel Florida, Inc. (NUCOR), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (PCS Phosphate) (collectively, Signatories), filed a petition for limited proceeding to approve their 2021 Settlement Agreement on January 14, 2021. The Signatories assert that the 2021 Settlement Agreement is intended to completely resolve all matters contained within DEF's petition for base rates in Docket No. 20210016-EI, and the petitions to recover incremental storm restoration costs in Docket Nos. 20190110-EI and 20190222-EI.¹ The petition and 2021 Settlement Agreement were filed pursuant to the provisions of the Second Revised and Restated 2017 Settlement Agreement, which the Commission approved by Order No. PSC-2017-0451-AS-EU.² These matters have been scheduled for hearing on May 4, 2021. The purpose of the hearing will be to consider whether it is in the public interest to approve the 2021 Settlement Agreement.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Due to COVID-19,

¹ 2021 Settlement Agreement, pages 17 – 18.

² Order No. PSC-2017-0451-AS-EU, issued November 20, 2017, in Docket No. 20170183-EI, *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.*

participation in the hearing or this docket may be handled remotely in accordance with Chapter 28-109, F.A.C. Modifications to procedures governing parties to this docket may be made by subsequent procedural order.

II. Consolidation of Dockets

Pursuant to Rule 28-106.108, F.A.C., matters may be consolidated when separate proceedings involve similar issues of law or fact, it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and consolidation would not unduly prejudice the rights of a party. All of the parties in Docket Nos. 20190110-EI and 20190222-EI are also Signatories of the 2021 Settlement Agreement. Consistent with the Signatories' intent that the 2021 Settlement Agreement completely resolves all matters within Docket Nos. 20190110-EI, 20190222-EI, and 20210016-EI, I find that consolidation promotes the just, speedy, and inexpensive resolution of the proceedings in accordance with Rule 28-106.108, F.A.C. From the date this order is issued, Docket No. 20210016-EI shall become the primary docket, and all future filings for all three dockets shall be filed in Docket No. 20210016-EI.

III. Procedural Matters

Data Requests

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 7 days of receipt of the request. All written data responses must be accompanied by an Affidavit identifying the persons providing the responses. All data responses must be received by April 27, 2021. Information obtained through data requests 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 2021 Settlement Agreement.

B. Confidential Information Provided Pursuant to Data Requests

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and for which proprietary confidential business information status is requested pursuant to Section 366.093 F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

Redacted versions of confidential filings may be served electronically, but in no instance may confidential information be electronically submitted. If the redacted version is served electronically, the confidential information (which may be on a CD, DVD, or flash drive) shall be filed with the Commission Clerk via hand-delivery, U.S. Mail, or overnight mail on the day that the redacted version was served via e-mail.

When a party other than the Commission staff requests information through discovery that the respondent maintains as proprietary confidential business information, or when such a party would otherwise be entitled to copies of such information requested by other parties through discovery (e.g., interrogatory responses), that party and respondent shall endeavor in good faith to reach agreement that will allow for the exchange of such information on reasonable terms, as set forth in Rule 25-22.006(7)(b), F.A.C.

Confidential Information at Hearing

It is the policy of this Commission that all Commission hearings be 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 any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When a party wishes to use confidential information in a hearing conducted remotely that has not been filed as prefiled testimony or prefiled exhibits, parties must provide an electronic copy of this material to the Commission Clerk marked as confidential in accord with the provisions set forth in Section III.B., no later than 5 days before the hearing. Any party wishing to examine confidential material that is not subject to an order granting confidentiality shall be provided access to this material subject to execution of an 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 must be presented by electronic exhibit.

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 material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification 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.

Special Considerations Due to the COVID-19 Pandemic

State buildings are currently closed to the public and other restrictions on gatherings remain in place due to COVID-19. Accordingly, the hearing will be conducted remotely, and all parties and witnesses shall be prepared to present argument and testimony by communications media technology. The Commission shall act as the host of the hearing and will use a combination of technologies to ensure full participation. The Commission will employ GoToMeeting as an audio and video platform for the hearing, which will include a telephone number for audio-only participation. A GoToMeeting invitation shall be provided to counsel for each party. It shall be the responsibility of counsel to provide their clients, client representatives, and witnesses with the invitation, which will allow them to access the hearing, as necessary. Counsel for each party will also be provided the call-in number for audio participation.

Any member of the public who wants to observe or listen to the proceedings may do so by accessing the live video broadcast the day of the hearing, which is available from the Commission website. Upon completion of the hearing, the archived video will also be available.

IV. Hearing Procedures

Section 120.57(4), F.S., permits the Commission to informally dispose of any proceeding by stipulation, agreed settlement, or consent order. Pursuant to Rule 28-106.302(2), F.A.C., the purpose of this hearing is for the Commission to take oral and written evidence or argument regarding the approval of the 2021 Settlement Agreement as being in the public interest.

The hearing agenda for May 4, 2021, will include the following:

- Parties present Opening Statements of no more than five minutes per party;
- Public comment;
- Parties present evidence and respond to questions from Commissioners regarding the 2021 Settlement Agreement.

Upon the admission of all testimony and evidence, and completion of the Commission's questions at hearing, the hearing record will be closed. At that time, the Commission may render a bench decision, provided all parties are willing to waive filing of post-hearing briefs. If a bench decision is not made, the Commission will render a decision during an Agenda Conference; date and time to be determined. Briefs, if any, will be due May 14, 2021.

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, 366.05, 366.06, and 120.57, F.S.

Based on the foregoing, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 9th day of March, 2021.



Mike La Rosa
Commissioner 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.

WLT

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

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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.