BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Duke Energy Florida, LLC for limited proceeding to approve 2021 Settlement Agreement, including general base rate increases	DOCKET NO. 20210016-EI Filed: December 9, 2021

DUKE ENERGY FLORIDA, LLC'S MOTION FOR APPROVAL
OF CALCULATION OF TAX IMPACTS

Pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), Duke Energy Florida, LLC ("DEF" or "Company") hereby moves the Florida Public Service Commission ("FPSC" or the "Commission") for approval of its calculation of Tax Impacts, performed consistent with the 2021 Settlement Agreement ("2021 Settlement") approved by this Commission in Order Number PSC-2021-0202-AS-EI.

In support of this Motion, DEF states:

1. On September 14, 2021, the Florida Department of Revenue issued a Tax Information Publication ("TIP"). The TIP states that the "Florida corporate income/franchise tax rate is reduced from 4.458% to 3.535% for taxable years beginning on or after January 1, 2021, but before January 1, 2022. The tax rate returns to 5.5% for taxable years beginning on or after January 1, 2022."

2. Paragraph 18 of the 2021 Settlement sets forth the methodology for calculating tax impacts and flow back associated with tax reform, including changes such as those provided for in the TIP. Here is the full text of Paragraph 18:

> The Parties agree to the following terms relating to federal and state corporate income taxes:
>
> (a) Federal or state corporate income tax changes occurring after the Effective Date ("Tax Reform") can take many forms, including changes to tax rates, changes to deductibility of certain costs, and changes to the timing of

deductibility of certain costs. Therefore, the impact of Tax Reform could impact the effective tax rate recognized by DEF in FPSC adjusted reported net operating income and the measurement of existing and prospective deferred federal income tax assets and liabilities reflected in the FPSC adjusted capital structure. Congress last reduced the maximum federal corporate income tax rate in the Tax Cuts and Jobs Act of 2017 ("TCJA"), which amended parts of the Internal Revenue Code and resulted in a maximum federal corporate income tax rate reduction from 35% to 21%. Prior to the TCJA, Congress last reduced the maximum federal corporate income tax rate in the Tax Reform Act of 1986 ("TRA"). As parts of TCJA and TRA, Congress included a transition rule that, as an eligibility requirement for using accelerated depreciation with respect to public utility property, specified the method and period for returning to customers the portion of the resulting excess deferred income taxes attributable to the use of accelerated depreciation. This is referred to as tax normalization for public utilities and results in "protected" items. Specifically, for DEF, the Average Rate Assumption Method was used to comply with the transition rules. To the extent future Tax Reform includes a transition rule applicable to excess deferred federal income tax assets and liabilities ("Excess Deferred Taxes") or deficient deferred federal income tax assets and liabilities ("Deficient Deferred Taxes"), defined as those that arise from the re-measurement of those deferred federal income tax assets and liabilities at the new applicable corporate tax rate(s), those "protected" Excess and/or Deficient Deferred Taxes will be governed by the Tax Reform transition rule. Excess and/or Deficient Deferred Taxes not governed by the Tax Reform transition rule will be referred to as "unprotected."

(b) If Tax Reform is enacted during the Term, DEF will quantify the impact of Tax Reform on its Florida Jurisdictional base revenue requirement as projected in DEF's forecasted earnings surveillance report for the calendar year that includes the period in which Tax Reform is effective. If Tax Reform is enacted effective for the tax years 2021, 2022, or 2023, the impacts of Tax Reform on base revenue requirements, primarily driven by an income tax rate increase/decrease, will be adjusted for retail customers within the later of 120 days of when the Tax Reform becomes law or the effective date of the law, through a prospective adjustment to base rates upon a thorough review of the effects of the tax reform on base revenue requirements. This adjustment shall be accomplished through a uniform percentage decrease or increase to customer, demand, and energy base rate charges, excluding delivery voltage credits, for all retail customer classes. Any effects of tax reform on retail revenue requirements from the effective date through the date of the base rate adjustment shall be flowed back or collected from customers through the CCR Clause on the same basis as used in any base rate adjustment. If Tax Reform is enacted effective for the tax year 2024, the impacts of Tax Reform shall be calculated as set forth above, but DEF will utilize deferral accounting as permitted by the Commission, thereby neutralizing the FPSC adjusted net operating income impact of the Tax Reform to a net zero, through the Term of this 2021 Settlement Agreement. In this situation, DEF shall defer the revenue requirement impacts to a regulatory asset or liability to be considered for prospective recovery in a change to base rates to be addressed in DEF's next base rate proceeding or in a limited scope proceeding before the Commission no sooner than the expiration of this 2021 Settlement Agreement.

(c) Excess and/or Deficient Deferred Taxes shall be deferred to a regulatory asset or liability, which shall be included in the FPSC-adjusted capital structure and flowed back to customers over a term consistent with law. If the same Average Rate Assumption Method used in the TCJA and TRA is prescribed, then the regulatory asset or liability will be flowed back or collected from customers over the remaining life of the assets associated with the Excess and/or Deficient Deferred Taxes subject to the provisions related to FPSC adjusted operating income impacts of Tax Reform noted above. If the Tax Reform law or act is silent on the flow-back or collection period for parts or all of the Excess and/or Deficient Deferred Taxes, and there are no other statutes or rules that govern the flow-back or collection period for these "unprotected" amounts, then there is a rebuttable presumption that the following flow-back or collection period(s) will apply: (1) if the cumulative "unprotected" regulatory asset/liability balance, including any remaining unamortized TCJA balances, is less than $200 million, the flow-back/collection period for the cumulative balance will be five years; or (2) if the cumulative "unprotected" regulatory asset/liability balance, including any remaining unamortized TCJA balances, is greater than $200 million, the flow-back/collection period for the cumulative balance will be ten years. These "protected", and "unprotected" Excess and/or Deficient Deferred Taxes will be flowed back/collected for retail customers within the later of 120 days of when the Tax Reform becomes law or the effective date of the law. As subsequent information becomes available, such as the federal tax return being filed, any true-ups or adjustments will be evaluated and implemented within 120 days of that information becoming available.

(d) If the applicable federal or state income tax rate for DEF changes before the effective date of any of the rate increases provided for in Paragraph 3, DEF will adjust the amount of the base rate increase to reflect the new tax rate before the implementation of such increase. Any base rate adjustments or changes that are implemented before the effective date of the applicable federal or state income tax rate change will be adjusted as part of the overall method outlined in Paragraph 9 and section b. of Paragraph 18.

3. As described further below, although the state corporate income tax rate is decreasing for calendar year 2021, the resulting calculation shows a deficiency that would allow DEF to collect additional dollars from customers. DEF has a deficiency because it has a state income tax net operating loss on an FPSC adjusted retail basis, which results in a revenue requirement of $98,969.

4. The impact of reducing the Florida corporate income tax rate from 4.458 percent to 3.535 percent was quantified using the Company's 2021 forecasted earnings surveillance report submitted on February 25, 2021. The calculation of the 2021 state income tax deficiency is provided in Exhibit 1. Total income tax expense on a system-per-books basis is recalculated using the new corporate income tax rate and compared to the system-per-books total income tax under the old corporate income tax rate, resulting in system-per-books tax savings of $389,287. The system-per-books tax savings is multiplied by the retail separation factor of 91.57%, resulting in retail tax savings before FPSC adjustments of $356,484. When adjusting for the impact of the reduced corporate income tax rate on the FPSC adjustments, which is a tax deficiency of $431,905, the FPSC adjusted tax deficiency is $75,421 and the revenue requirement is $98,969.

5. Although the 2021 Settlement allows DEF to collect any deficiency resulting from changes in taxes due to tax reform, DEF is willing to forego the collection of this particular deficiency. DEF's agreement to forego its right does not have precedential value, whether to future proceedings involving other tax reform changes during the term of the 2021 Settlement or otherwise.

6. DEF has made this filing to request Commission approval of DEF's calculation of the tax reform impacts and to document DEF's agreement to forego collection of the deficiency. DEF has conferred with the signatories to the 2021 Settlement and Nucor Steel Florida, Inc., PCS Phosphate d/b/a White Springs and the Office of the Public Counsel concur with DEF's calculation set forth in this filing. The Florida Industrial Power Users Group takes no position.

WHEREFORE, DEF requests that the Commission enter an order (a) approving the calculation of tax reform impacts as set forth in this Motion and Exhibit 1; and (b) noting DEF's agreement to forego collection of the deficiency.

Respectfully submitted,

s/Dianne M. Triplett

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CERTIFICATE OF SERVICE
Docket No. 20210016-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 9th day of December, 2021.

s/ Dianne M. Triplett
Attorney

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Duke Energy Florida, LLC
Docket No. 20210016
Exhibit 1

Duke Energy Florida, LLC
Calculation of Tax Savings Resulting from State Corporate Income Tax Rate Reduction from 4.458% to 3.535%
Based on 2021 Forecasted Earnings Surveillance Report

Line		System per Books - New State Corporate Tax Rate					System per Books - Old State Corporate Tax Rate				
		Current Tax		Deferred Tax			Current Tax		Deferred Tax		
		State	Federal	State	Federal	Total	State	Federal	State	Federal	Total
1	Net Utility Operating Income	$1,001,514,648	$1,001,514,648				$1,001,514,648	$1,001,514,648			
2	Add Income Tax Accounts	179,932,523	179,932,523				179,932,523	179,932,523			
3	Less Interest Charges	(294,418,119)	(294,418,119)				(294,418,119)	(294,418,119)			
4	Taxable Income	887,029,053	887,029,053				887,029,053	887,029,053			
5											
6	Temporary Differences	(855,919,303)	(610,815,007)	$855,919,303	$610,815,007		(855,919,303)	(610,815,007)	$855,919,303	$610,815,007	
7	Permanent Differences	22,278,000	22,278,000				22,278,000	22,278,000			
8											
9	State Taxable Income	53,387,750		855,919,303			53,387,750		855,919,303		
10	State Income Tax Rate	**3.535%**		5.500%			**4.458%**		5.500%		
11	Other	868,000					868,000				
12	State Income Tax	2,755,257	(1,887,257)	47,075,562	(47,075,562)	49,830,819	3,248,026	(2,380,026)	47,075,562	(47,075,562)	50,323,588
13											
14	Federal Taxable Income		296,604,789		563,739,445			296,112,020		563,739,445	
15	Federal Income Tax Rate		21.0%		21.0%			21.0%		21.0%	
16	Federal Income Tax		62,287,006		118,385,283			62,183,524		118,385,283	
17	Federal Net Operating Loss (NOL)		(3,409,812)		3,409,812			(3,409,812)		3,409,812	
18	Excess ADIT Amort.				(50,411,915)					(50,411,915)	
19	Tax Rate Differential (34% to 35%)				(129,000)					(129,000)	
20	R&D Credit				(300,168)					(300,168)	
21	Other		(118,000)					(118,000)			
22	Federal Income Tax		58,759,194		70,954,012	129,713,206		58,655,712		70,954,012	129,609,725
23											
24	Summary of Income Tax Expense:										
25	Current Tax Expense	2,755,257	58,759,194			61,514,451	3,248,026	58,655,712			61,903,738
26	Deferred Income Tax			47,075,562	70,954,012	118,029,574			47,075,562	70,954,012	118,029,574
27	Total Income Tax Expense - System					**$179,544,025**					**$179,933,312**
28											

29		
30	**CALCULATION OF ANNUAL TAX SAVINGS:**	
31	Income Tax at New Rate - System per Books	$179,544,025
32	Income Tax at Old Rate - System per Books	179,933,312
33	Difference = Savings - System per Books	389,287
34		
35	Total Income Tax per Surveillance Schedule 2 page 2 - System per Books	179,932,523
36	Total Income Tax per Surveillance Schedule 2 page 2 - Retail	164,770,430
37	Ratio	91.57%
38		
39	Difference - Retail Savings (line 33 x line 37)	356,484
40		
41	Net Operating Impact of Tax on FPSC Adjustments per Surveillance Schedule 2 page 2	14,528,363
42	Divide by old Statutory Rate (24.522%) an Multiply by New Statutory Rate (23.793%)	14,096,458
43	Difference in Net Operating Income due to Tax Savings on FPSC Adjustments	(431,905)
44		
45	Difference - Retail FPSC Adjusted Tax Savings/(Cost) (line 39 + line 43)	($75,421)
46	Gross-up to Pre-Tax Revenue Requirement Flow Back/(Collection) (divide by 1 - .23793)	**($98,969)**