# State of Florida



# **Public Service Commission**

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE:

May 30, 2019

TO:

Office of Commission Clerk (Teitzman)

FROM:

Division of Accounting and Finance (D. Smith, Mouring, Snyder, L. Smith, D.

Buys)

Division of Economics (Draper, Galloway, Guffey) & Kgrsc 14 WH

Division of Engineering (Buys, Thompson)

Office of the General Counsel (Dziechciarz, Weisenfeld)

RE:

Docket No. 20190110-EI - 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.

**AGENDA:** 06/11/19 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

PREHEARING OFFICER:

Fay

**CRITICAL DATES:** 

06/28/19 (Requested Implementation Date)

**SPECIAL INSTRUCTIONS:** 

None

# Case Background

On April 30, 2019, Duke Energy Florida, LLC (DEF or Company) filed a petition for a limited proceeding seeking authority to implement an interim storm restoration recovery charge to recover a total of \$223.5 million for the incremental restoration costs related to Hurricane Michael and to replenish its storm reserve. This amount includes \$2.5 million for: interest, bond issuance expense, and the regulatory assessment fee gross-up. DEF's storm reserve was depleted as a result of Hurricanes Irma and Nate and DEF is seeking to replenish the storm reserve to the Docket No. 20190110-EI Date: May 30, 2019

level authorized in the Second Revised and Restated 2017 Settlement Agreement (2017 Settlement) approved by the Commission in Order No. PSC-2017-0451-AS-EU.

DEF filed its petition pursuant to the provisions of the 2017 Settlement. Pursuant to the 2017 Settlement, DEF can recover storm costs, without a cap on the level of charges on customer bills, on an interim basis beginning 60 days following the filing of a petition for recovery. DEF proposes to implement an interim charge for a 12-month period effective July 2019. The interim charge results in an increase of \$6.95 per 1,000 kilowatt hour (kWh) on a residential bill.

Included in the petition (and attached to this recommendation as Attachment A) is a proposed Second Implementation Stipulation (Stipulation). The Stipulation, if approved, would allow DEF to apply the tax savings approved by the Commission in Order No. PSC-2019-0053-FOF-EI to offset the storm recovery surcharge that was requested in this docket, and would replenish the storm reserve to a level authorized in the 2017 Settlement.<sup>2</sup> The authorized level in the 2017 Settlement was \$132 million.<sup>3</sup> DEF, the Office of Public Counsel, Southern Alliance for Clean Energy, and White Springs Agricultural Chemical, Inc. agreed to the Stipulation. Florida Retail Federation, and Florida Industrial Power Users group took no position on the Stipulation.

The appropriate time for the Commission to discuss and vote on the Stipulation is after the Commission renders a decision on Issue 1. If approved, then pursuant to Paragraph 4 of the Stipulation DEF will withdraw the proposed Eighty-Fifth Revised Tariff Sheet No. 6.105, and Issue 2 will be rendered moot.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, 366.06, and 366.076, Florida Statutes.

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<sup>&</sup>lt;sup>1</sup> 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.* 

<sup>&</sup>lt;sup>2</sup> The Stipulation seeks to avoid volatility in customer rates by recognizing and then utilizing annual tax reform benefits resulting from the 2017 Tax Act as a direct offset to avoid implementing separate cost recovery of storm damage costs that customers would have otherwise have been obligated to pay. If approved, DEF will be entitled to record a monthly storm reserve accrual equal to one-twelfth of the approved annual revenue requirement impact of the Tax Act (approximately \$12.9 million), and credit the retail storm reserve from May 2020 through full recovery of the final approved actual storm recovery amount. Once the final approved actual storm recovery amount has been recovered, or offset, DEF will reduce base rates in the manner prescribed in the 2017 Settlement.

<sup>&</sup>lt;sup>3</sup> Order No PSC-2019-0053-FOF-EI, issued February 1, 2019, in Docket No. 20180047-EI, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Duke Energy Florida, LLC.* 

Date: May 30, 2019

## **Discussion of Issues**

**Issue 1**: Should the Commission authorize DEF to implement an interim storm restoration recovery charge?

**Recommendation:** Yes, the Commission should authorize DEF to implement an interim storm restoration recovery charge. Once the total actual storm costs are known, DEF should be required to file documentation of the total storm costs for Commission review and true-up of any excess or shortfall. (Snyder, Mouring)

**Staff Analysis:** As stated in the Case Background, DEF filed a petition for a limited proceeding seeking authority to implement an interim storm restoration recovery charge to recover a total of \$223.5 million for the incremental restoration costs related to Hurricane Michael. The \$223.5 million includes \$2.5 million for interest, bond issuance expense, and a regulatory assessment fee gross-up. The petition was filed pursuant to the provisions of the 2017 Settlement approved by the Commission in Order No. PSC-2017-0451-AS-EU. Pursuant to Paragraph 38 of the 2017 Settlement, DEF can begin recovery of storm costs, without a cap, 60 days following the filing of a petition for recovery. DEF has requested an interim storm restoration recovery charge to implement for a 12-month period, effective July 2019 through June 2020.

In its petition, DEF asserts that it incurred total retail recoverable costs of approximately \$223.5 million as a result of Hurricane Michael. DEF further asserts that this amount was calculated in accordance with the Incremental Cost and Capitalization Approach (ICCA) methodology prescribed in Rule 25-6.0143, Florida Administrative Code (F.A.C.).

The approval of an interim storm restoration recovery charge is preliminary in nature and is subject to refund pending further review once the total actual storm restoration costs are known. After the actual costs are reviewed for prudence and reasonableness, and are compared to the actual amount recovered through the interim storm restoration recovery charge, a determination will be made whether any over/under recovery has occurred. The disposition of any over/under recovery, and associated interest, would be considered by the Commission at a later date.

Based on a review of the information provided by DEF in its petition, staff recommends that the Commission authorize DEF to implement an interim storm restoration recovery charge subject to refund. Once the total actual storm costs are known, DEF should be required to file documentation of the storm costs for Commission review and true-up of any excess or shortfall. Staff emphasizes that this recommendation is only for interim recovery charges and is not a confirmation or endorsement of the prudence of DEF's forecasted costs and plans. This recommendation only allows DEF to begin recovery on an interim basis in accordance with the 2017 Settlement. This interim recovery is subject to refund following a hearing or formal proceeding where the veracity and prudence of DEF's actual restoration costs can be fully vetted.

Date: May 30, 2019

**Issue 2:** Should the Commission approve DEF's proposed Hurricane Michael interim storm cost recovery surcharges?

**Recommendation:** Yes. The Commission should approve DEF's Hurricane Michael interim storm cost recovery surcharges as proposed in the petition effective with the first billing cycle of July 2019, subject to a final true-up. (Guffey)

**Staff Analysis:** DEF is seeking approval of interim storm cost recovery surcharges associated with Hurricane Michael as shown in revised Tariff Sheet Nos. 6.105 and 6.106 (Attachment B to this recommendation). The surcharges will be applicable to all rate classes. Tariff Sheet Nos. 6.105 and 6.106 describe the proposed interim storm cost recovery surcharges and define the storm cost recovery surcharge, respectively. Page 4 of Appendix A of DEF's petition shows the storm cost recovery allocation factors for all rate classes. For residential customers, the surcharge is 0.695 cents per kilowatt hour (kWh), which equates to \$6.95 on a 1,000 kWh residential bill.

**Conclusion:** Staff recommends that the Commission approve DEF's proposed Hurricane Michael interim storm cost recovery surcharges to be effective with the first billing cycle of July 2019 and ending with the last billing cycle of June 2020, subject to a final true-up.

Date: May 30, 2019

**Issue 3:** What is the appropriate security to guarantee the amount collected subject to refund through the interim storm restoration recovery charge?

**Recommendation:** The appropriate security to guarantee the funds collected subject to refund is a corporate undertaking. (L. Smith, D. Buys)

**Staff Analysis:** Staff recommends that all funds collected subject to refund be secured by a corporate undertaking. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed DEF's financial statements to determine if the Company can support a corporate undertaking to guarantee the funds collected for recovery of incremental storm restoration costs related to Hurricane Michael. DEF's 2016, 2017, and 2018 financial statements were used to determine the financial condition of the Company. DEF's financial performance demonstrates adequate levels of ownership equity, profitability, and interest coverage, but marginal liquidity due to negative working capital. However, the Company participates in Duke Energy Corporation's money pool and has access to additional funds if needed.

Staff believes DEF has adequate resources to support a corporate undertaking in the amount requested. Based on this analysis, staff recommends that a corporate undertaking of \$223.5 million is acceptable. This brief financial analysis is only appropriate for deciding if the Company can support a corporate undertaking in the amount proposed and should not be considered a finding regarding staff's position on other issues in this proceeding.

Date: May 30, 2019

# **Issue 4:** Should this docket be closed?

**Recommendation:** No, this docket should remain open pending final reconciliation of actual recoverable Hurricane Michael storm costs with the amount collected pursuant to the interim storm restoration recovery charge, and the calculation of a refund or additional charge if warranted. (Dziechciarz, Weisenfeld)

**Staff Analysis:** This docket should remain open pending final reconciliation of actual recoverable Hurricane Michael storm costs with the amount collected pursuant to the interim storm restoration recovery charge, and the calculation of a refund or additional charge if warranted.

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### **Second Implementation Stipulation**

- The 2017 Second Revised and Restated Settlement Agreement ("Agreement") was
  approved by the Commission in Order No. PSC-2017-0451-AS-EU. As explained more
  fully below, the signatories to the Agreement enter into this Second Implementation
  Stipulation ("Stipulation") to implement specific provisions related to the timing of rate
  treatment of certain events contemplated in the Agreement that have become manifest (i.e.,
  storm restoration costs and federal tax reform).
- 2. Paragraph 38(c) of the Agreement grants Duke Energy Florida, LLC ("DEF") the right to recover, on an interim basis, storm damage costs sixty days after filing a petition with the Commission. Pursuant to this paragraph, simultaneous with the filing of this Stipulation, DEF filed for the recovery of \$221 million (retail) estimated for storm damage costs associated with Hurricane Michael.
- 3. Paragraph 16 of the Agreement provides a mechanism for calculating and implementing the impact of tax reform on DEF's rates, which will inure to the benefit of customers on the effective date of tax reform changes. On December 22, 2017, the President signed the Tax Cuts and Jobs Act ("Tax Act") into law. Part of the Tax Act includes a reduction in the corporate tax rate from 35 percent to 21 percent. In Docket No. 20180047-EI, the FPSC approved a stipulation that established the impact of the Tax Act results in a reduction in revenue requirements of approximately \$154.7 million per year (after taking into account the \$50 million accelerated depreciation of Crystal River ("CR") Units 4 and 5 as expressly provided in the Agreement). As specified in the Agreement, DEF was obligated to reduce customer base rates within 120 days of the December 22, 2017 enactment date, or by April 21, 2018, to account for the impacts of the Tax Act. However, in Docket No. 20170272-EI, the Commission approved an Implementation Stipulation that permitted DEF to apply the tax savings to offset the storm costs and replenish DEF's storm reserve DEF petitioned to recover in that docket.
- 4. Per the Agreement, DEF's storm damage costs are allocated to customer rate classes in the same manner as base rates. Absent this Stipulation, DEF would be authorized to increase rates by \$221 million for the period July 2019 through the last billing cycle of June 2020, which equates to a \$6.95/1,000 kWh impact on a standard residential bill. This increase would have a significant impact on our customers. The Signatory Parties seek to avoid this impact and agree that after full recovery of the costs authorized for recovery by the Commission in Docket No. 20170272-EI but before starting the replenishment of the reserve, DEF will utilize the annual Tax Act benefits to avoid implementing the charge to customers for storm damage costs that they would have otherwise been obligated to pay. To accomplish this goal, DEF shall, after Commission approval of the Stipulation in this

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Docket, withdraw the tariff sheets it filed simultaneously with the filing of this Stipulation (i.e., the tariff surcharge shall never become effective).

- 5. DEF anticipates the storm costs that are the subject of Docket No. 20170272-EI, before replenishment of the reserve, will be fully recovered by the end of April, 2020. At that time, the signatories agree that DEF shall be entitled to continue to record a monthly storm reserve accrual equal to one-twelfth of the annual Commission-approved revenue requirement impact of the Tax Act (i.e., 1/12 of \$154.7 million or approximately \$12.9 million) and credit the retail storm reserve from May 2020 until DEF's estimated Hurricane Michael -related costs have been fully recovered and the storm reserve has been replenished (any unrecovered portion of the storm reserve balance would subsequently be recovered in 2022). Attached to this implementation stipulation as Appendix C is an example of the estimated application of this treatment to the storm costs. These amounts are subject to final true-up based on the results of Docket 20170272-EI as well as the current Docket upon final determination of the appropriate recoverable storm costs by the Commission. A specific condition of the signatories agreeing to this Stipulation is that the Commission will issue an order explicitly authorizing such action. The signatories agree that once the final Commission-approved actual storm recovery and storm reserve replenishment amount has been recovered, DEF shall reduce base rates in the manner prescribed in the Agreement and commensurate with the Commission-approved Tax Act savings beginning in the month following the final month of storm recovery (including reserve replenishment). DEF agrees to file tariff sheets at least 60 days before to reflect the reduced rates. The intent of this recovery schedule is to allow for DEF to recover all costs authorized for recovery in Docket No. 20170272-EI and the docket in which the Commission will consider this Stipulation.
- 6. All signatories maintain and do not waive their rights to raise any argument that is allowed under the Agreement with respect to the reasonable and prudent level of storm damage costs that are the subject of the docket that will be opened to consider DEF's Hurricane Michael costs. It is the intent of the signatories, and a condition of this Stipulation, that the proceeding contemplated in Paragraph 38(c) shall be conducted as if this Stipulation did not exist.
- 7. The parties intend that the storm damage costs be transparent and ascertainable on a standalone basis. DEF shall file quarterly a storm cost overview which accounts and reports on the storm damage costs, the costs remaining to be satisfied, the projected date such costs will be satisfied, and the amount of Tax Act savings applied to storm damage costs.

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Duke Energy Florida, LLC

Catherine Stempien 299 I<sup>st</sup> Ave N St. Petersburg, Florida 33701

By.

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Office of Public Counsel

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Florida Industrial Power Users Group

By

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White Springs Agricultural Chemicals, Inc.

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DC 20007

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# Florida Retail Federation

By

Robert Scheffel Wright, Esq. Gardner Law Firm 1300 Thomaswood Drive Tallahassee, FL 32308

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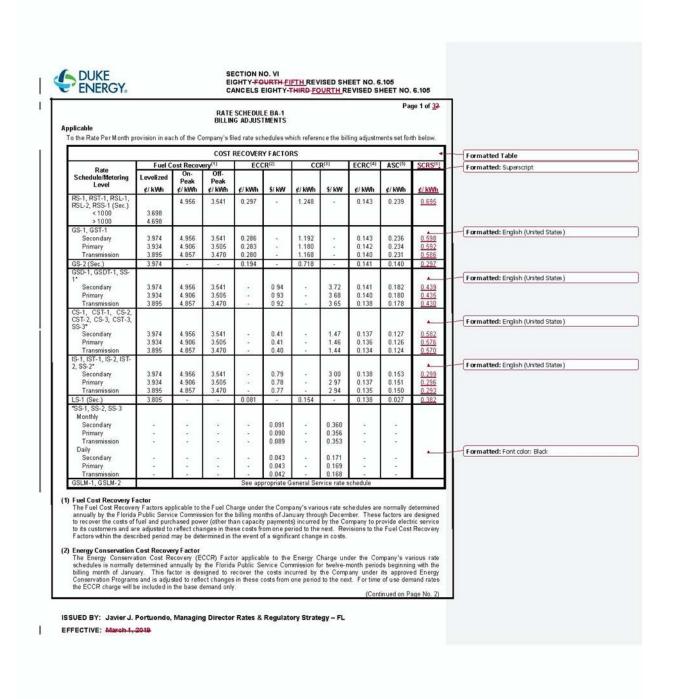
Southern Alliance for Clean Energy

George Cavros, Esquire Attorney for SACE 120 E. Oakland Park Blvd.,

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SECTION NO. VI TWENTY SEVENTH EIGHTH REVISED SHEET NO. 6.106
CANCELS TWENTY SIXTH SEVENTH REVISED SHEET NO. 6.106

#### RATE SCHEDULE BA-1 BILLING ADJUSTMENTS (Continued from Page 1)

### (3) Capacity Cost Recovery Factor

The Capacity Cost Recovery (CCR) Factors applicable to the Energy Charge under the Company's various rate schedules are normally determined annually by the Florida Public Service Commission for the billing months of January through December. This factor is designed to recover the cost of capacity payments made by the Company for off-system capacity and is adjusted to reflect changes in these costs from one period to the next. For time of use demand rates the CCR charge will be included in the base demand only.

#### (4) Environmental Cost Recovery Clause Factor

The Environmental Cost Recovery Clause (ECRC) Factors applicable to the Energy Charge under the Company's various rate schedules are normally determined annually by the Florida Public Service Commission for the billing months of January through December. This factor is designed to recover environmental compliance costs incurred by the Company and is adjusted to reflect changes in these costs from one period to the next.

#### (5) Asset Securitization Charge Factor

Asset Securitization Charge (ASC) Factors applicable to the Energy Charge under the Company's various rate schedules represent a Nuclear Asset-Recovery Charge approved in a financing order issued to the Company by the Florida Public Service Commission and are adjusted at least semi-annually to ensure timely payment of principal, interest and financing costs of nuclear asset-recovery bonds from the effective date of the ASC until the nuclear asset-recovery bonds have been paid in full or legally discharged and the financing costs have been fully recovered. As approved by the -Commission, a Special Purpose Entity (SPE) has been created and is the owner of all rights to the Nuclear Asset-Recovery Charge. The Company shall act as the SPE's collection agent or servicer for the Nuclear Asset-Recovery Charge. The Nuclear Asset-Recovery Charge shall be paid by all existing or future customers receiving transmission or distribution service from the Company or its successors or assignees under Commission-approved rate schedules or under special contracts, even if the customer elects to purchase electricity from alternative electric suppliers following a fundamental charge in regulation of public utilities in this state.

#### (6) Storm Cost Recovery Surcharge

In accordance with a Florida Public Service Commission ruling a Storm Cost Recovery Surcharge (SCRS) factor is applicable to the Energy Charge under the Company's various rate schedules for the billing morths of July 1 2019 through June 30 2020. This surcharge is designed to recover incremental storm-related costs incurred by the Company related to Hurricane Michael in 2018, as well as funds to replenish the Company's storm reserve.

In accordance with Section 203.01(1)(a)1 of the Florida Statutes, a factor of 2.5641% is applicable to electric sales charges for collection of the state Gross Receipts Tax.

Int. of. Way Utilization Fee
A Right-of-Way Utilization Fee is applied to the charges for electric service (exclusive of any Municipal, County, or State Sales Tax) provided to customers within the jurisdictional limits of each municipal or county governmental body or any unit of special-purpose government or other entity with authority requiring the payment of a franchise fee, tax, charge, or other imposition whether in money, service, or other things of value for utilization of rights-of-way for location of Company distribution or transmission facilities. The Right-of-Way Utilization Fee shall be determined in a negotiated agreement (i.e., franchise and other agreements) in a manner which reflects the Company's payments to a governmental body or other entity with authority plus the appropriate Gross Receipts Taxes and Regulatory Assessment Fees resulting from such additional revenue. The Right-of-Way Utilization Fee is added to the charges for electric service prior to the application of any appropriate taxes.

### Municipal Tax

A Municipal Tax is applied to the charge for electric service provided to customers within the jurisdictional limits of each municipal or other governmental body imposing a utility tax on such service. The Municipal Tax shall be determined in accordance with the governmental body's utility tax ordinance, and the amount collected by the Company from the Municipal Tax shall be remitted to the governmental body in the manner required by law. No Municipal Tax shall apply to fuel charges in excess of 0.693¢/NWh.

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A State Sales Tax is applied to the charge for electric service provided to all non-residential customers and equipment rental provided to all customers (unless a qualified sales tax exemption status is on record with the Company). The State Sales Tax shall be determined in accordance with the State's sales tax laws. The amount collected by the Company shall be remitted to the State in the manner required by law. In those counties that have enacted a County Discretionary Sales Surtax, such tax shall be applied and paid in a like manner. An additional tax factor is applied to the charge for electric service consistent with the applicability of State Sales Tax as described in this paragraph, in accordance with Section 203.01(1)(a)3 and (b)4 of the Florida Statutes.

(Continued on Page No. 3)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy - FL

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SECTION NO. VI ORIGINAL SHEET NO. 6.107 DUKE ENERGY. Formatted: Tab stops: 3.5", Left Page 32 of 23 RATE SCHEDULE BA-1 BILLING ADJUSTMENTS [Continued from Page 2] Governmental Undergrounding Fee Applicable to customers located in a designated Underground Assessment Area within a local government (a municipality or a country) that requires the Company to collect a Governmental Undergrounding Fee from such customers to recover the local government's costs of converting overhead electric distribution facilities to underground facilities. The Governmental Undergrounding Fee billed to a customer's secount shall not exceed the lesser of (i) 15 percent of a customer's total net electric service charges, or (ii) a maximum monthly amount of \$30 for residential customers and \$50 for each 5,000 kilowath-hour increment of consumption for consumption for consumptions. The Company of the Commission approves a higher percentage or maximum monthly amount. The maximum monthly amount shall apply to each line of billing in the case of a customer receiving a single bill for multiple service points, and to each occupancy unt in the case of a master metered customer. The Governmental Undergrounding Fee shall be calculated on the customer's charges for electric service before the addition of any applicable taxes. ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy - FL EFFECTIVE: July 1, 2016