

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Fuel and Purchased Power  
Cost Recovery Clause with  
Generating Performance Incentive  
Factor

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DOCKET NO. 20200001-EI

FILED: November 10, 2020

**JOINT POST HEARING BRIEF OF THE OFFICE OF PUBLIC COUNSEL AND THE  
FLORIDA INDUSTRIAL POWER USERS GROUP**

The Citizens of the State of Florida, through the Office of Public Counsel, (“OPC”) and The Florida Industrial Power Users Group (“FIPUG”) collectively the Joint Parties,<sup>1</sup> pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2020-0041-PCO-EI, issued January 31, 2020, hereby submit this Joint Post Hearing Statement and Brief.

**STATEMENT OF POSITION**

The specific disputed issue related to Duke Energy Florida, LLC (“DEF” “Duke” or Company”) is simple. Duke has over collected \$16.1 million from its customers as a result of imprudently incurred replacement power costs. The Commission has determined that Duke operated the Bartow Unit 4 imprudently, and that Duke’s imprudence caused both the full unit outage and subsequently resulted in a 40 MW degraded generator. Duke has conceded that that the replacement power costs for both circumstances total \$16.1 million, before adding interest. On November 2, 2020, Duke filed a notice of appeal of Order No. PSC-2020-0368A-EI (“Bartow Order”) and a motion seeking a stay of that order pending appeal. On November 9, 2020, OPC, FIPUG and PCS filed a Joint Response to DEF’s Motion for Stay (“Joint Response”) asking the Commission to deny the stay request on the basis that the cited rule does not apply to the fuel clause’s self-correcting true-up mechanism.

Simply put, the customers want their money back, and they want it back now. The Commission has the power to order that the over collected money be included as a true-up in the calculation of the 2021 fuel factor, along with a reasonable estimate of interest (subject to true-up in a subsequent proceeding). The Commission should exercise this power.

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<sup>1</sup> White Springs Agricultural Chemicals d/b/a PCS Phosphate (“PCS”) is filing a separate brief. The Joint Parties concur in that brief.

**ISSUE 1:** What action should be taken in response to Commission Order No. PSC-2020-0368-FOF-EI regarding the Bartow Unit 4 February 2017 outage?

**Joint Parties:** \*\*DEF should credit the 2021 fuel (along with a reasonable estimate of interest (subject to true-up in a subsequent proceeding)), to adjust for the prior overcollection of imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4. \*\*

### **Argument**

The customers of DEF respectfully request a return of the money they began overpaying in 2018. The Commission determined in the Bartow Order Duke's customers had incurred damages in the amount of \$16.1 million in replacement power costs, which DEF has recovered from those customers in its adjusted and updated fuel factor charges collected in 2019 and 2020. Bartow Order at 18-21; 55-56. These damages are comprised of two elements. \$11.1 million is attributable to the two-month period in 2017 when the entire Bartow unit was off-line. Another \$5 million is attributable to the 40 MW de-rating of the unit that began in May 2017 and continued until mid- 2019, and was occasioned by the installation of a pressure plate that limited the output of the unit pending a more permanent repair to Bartow's damaged steam generator. Bartow Order at 18-21; 55-56.

In the Spring of 2017, after DEF had experienced the two-month outage at its Bartow Unit 4 (Steam Turbine) and installed the power limiting pressure plate, the Commission approved a stipulation between DEF and customer representatives in which DEF agreed it would not seek to recover the then estimated \$11 million in replacement power costs associated with the outage. Instead, DEF agreed to record the estimated replacement fuel costs in an "over/under account" for future recovery in the fuel clause. This recovery occurred throughout the year 2019. TR 356.<sup>2</sup> DEF witness Menendez conceded that the "over/under account" preserved the Company's opportunity to recover the costs in a future period. TR 356-357. DEF's fuel factor calculations accordingly were lower in 2018 than its actual/estimated costs by \$10.9 million because the Company

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<sup>2</sup> Transcript references are to the transcript of the November 2, 2020 hearing in Docket No. 20200001-EI and shown as "TR \_\_\_."

accounted for the unrecovered costs in the “over/under account” and not through its fuel clause cost recovery mechanism.

DEF witness Menendez testified in the fuel clause hearing this year that the Company was able to submit the 2017 outage replacement costs for clause recovery one year later because of the availability of the “over/under account.” He described the true-up function of the account in this manner:

The over/under account that is being referred to is otherwise known as the true-up balance, or the true-up variance.

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It is a variance between the revenues collected an [sic] the expense occurred [sic] in the clause account.

TR 355. This mechanism conclusively demonstrates that the fuel clause is self-correcting and adequately provides a mechanism for restoring the *status quo ante* on the chance that DEF may not have recovered the disputed replacement power costs addressed in the Bartow Order.

As noted, the outage costs were not the only costs at issue in the Bartow Order. In 2018, Duke began charging customers for replacement power costs attributable to the de-rating of the Bartow Unit 4 (steam turbine) that was determined by the Commission to have resulted from the 40 MW de-rating of the Steam Turbine. The de-rating of the Bartow unit occurred from May 2017 to September 2019. Order No. PSC-2020-0368A-EI (“Bartow Order”) at 56; TR 358-361 (Bernier stipulation). There was no evidence that the replacement power costs that were required because of the de-rating were ever recorded in the “over/under account” since these costs were apparently never withheld from recovery or separately identified by DEF. TR 362. Regardless, DEF collected this money from its customers with no Commission review until the conduct of the hearing that was referred to DOAH in 2019. These funds were ruled to be imprudently collected. Now DEF is seeking to retain for up to 2-3 more years funds that were never expressly approved or even considered by the Commission in a reasonableness or prudence determination until the vote on September 1, 2020 denying recovery. What’s more, collections of the replacement power costs began in 2017 and largely ended in 2019. Witness Menendez acknowledged that, if the credit is not made in the 2021 cycle and a stay is granted, customers would likely not begin to see their money returned until 2023 at the earliest and their money would not be fully returned until the end

of 2023 in the likely event DEF fails to convince the Supreme Court that its version of the conclusions of law can be supported by the 102 contrary findings of facts to which the Company agreed.

As noted in the Joint Response, if a stay were to be granted (and it should not be), these customer dollars would not be restored until as much as five to six years after the customers originally began paying for the imprudently incurred costs. TR. 373 - 374. Of particular note is that 31% of the funds (related to de-rate costs) that the DEF asks the Commission to let it hold for another two to three years, have never been approved by the Commission as reasonable or prudent for recovery as replacement power costs. Customers have over-paid these Bartow outage and replacement power costs for years now and are entitled to a return of the funds now. As also noted in the Joint Response, the Consumers are willing to stipulate, if necessary, to accommodate the return of long overdue customer funds.<sup>3</sup> In short, there is no reason for the Commission to not direct that the 2021 fuel factor reflect the credit of \$16.1 million. A reasonable estimate of interest can be added now and later adjusted in the true-up process, if necessary.

For the reasons stated herein and in the Joint Response, the Commission should expedite the return of long overdue overcollections of imprudently incurred replacement power costs.

**ISSUE 11:** What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?

**Joint Parties:** \*\*The fuel cost recovery factors for 2021 should reflect an adjustment for the overcollection of \$16.1 million (along with a reasonable estimate of interest (subject to true-up in a subsequent proceeding)) in imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4.\*\*

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<sup>3</sup> The Consumers are willing to stipulate, if necessary (and we think it is not given the self-correcting true-up nature of the fuel clause), that DEF would be able to credit the clause with the \$16.1 million (plus interest) for 2021 fuel factor purposes and correspondingly debit the “over/under account” in the same amount so that *if* DEF prevails on appeal, the process can be reversed and the “over/under account” would be credited and the fuel factor would be debited by the amount ordered collected from customers.

### Argument

See argument on Issue 1B. This issue is a fallout issue that should reflect an adjustment for the overcollection of \$16.1 million (plus reasonable interest) in imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4.

**ISSUE 18:** What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

**Consumers:** \*\*The net fuel and purchased power cost recovery and Generating Performance Incentive amounts included in the recovery factor for 2021 should reflect an adjustment for the overcollection of \$16.1 million (along with a reasonable estimate of interest (subject to true-up in a subsequent proceeding)) in imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4.\*\*

### Argument

See argument on Issue 1B. This issue is a fallout issue that should reflect an adjustment for the overcollection of \$16.1 million (plus reasonable interest) in imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4.

**ISSUE 20:** What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

**Consumers:** \*\*The levelized fuel cost recovery factors for the period January 2021 through December 2021 should reflect an adjustment for the overcollection of \$16.1 million (along with a reasonable estimate of interest (subject to true-up in a subsequent proceeding)) in imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4.\*\*

### Argument

See argument on Issue 1B. This issue is a fallout issue that should reflect an adjustment for the overcollection of \$16.1 million (plus reasonable interest) in imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4.

**ISSUE 22:** What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

**Consumers:** \*\*The allocation of fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses should reflect an adjustment for the overcollection of \$16.1 million (along with a reasonable estimate of interest (subject to true-up in a subsequent proceeding)) in imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4.\*\*

**Argument**

See argument on Issue 1B. This issue is a fallout issue that should reflect an adjustment for the overcollection of \$16.1 million (plus reasonable interest) in imprudently incurred replacement power costs emanating from the 2017 outage at Bartow Unit 4.

**ISSUE 36:** Should this docket be closed?

**Consumers:** \*No. The docket should remain open until any action approved, if at all, by the Commission is completed satisfactorily.\*

Dated this 10th day of November 2020.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**Docket No. 20200001-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Joint Parties' Brief has been furnished by electronic mail on this 10th day of November 2020, to the following:

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