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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20220143-EI

Petition for a limited proceeding to  
implement return on equity trigger  
provision of 2021 settlement agreement,  
by Duke Energy Florida, LLC.

PROCEEDINGS: HEARING

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER GARY F. CLARK  
COMMISSIONER MIKE LA ROSA  
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, October 4, 2022

TIME: Commenced: 11:45 a.m.  
Concluded: 12:04 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK  
Court Reporter

PREMIER REPORTING  
112 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

1 APPEARANCES:

2 DIANNE TRIPLETT, ESQUIRE 299 First Avenue  
3 North, St. Petersburg, Florida 33701; appearing on  
4 behalf of Duke Energy Florida, LLC (DEF).

5 RICHARD GENTRY, PUBLIC COUNSEL; CHARLES J.  
6 REHWINKEL, DEPUTY PUBLIC COUNSEL, OFFICE OF PUBLIC  
7 COUNSEL, c/o The Florida Legislature, 111 West Madison  
8 Street, Room 812, Tallahassee, Florida 32399-1400;  
9 appearing on behalf of the Citizens of the State of  
10 Florida (OPC).

11 JON C. MOYLE, JR., ESQUIRE, Moyle Law Firm,  
12 118 North Gadsden Street, Tallahassee, FL 32301;  
13 appearing on behalf of Florida Industrial Users Group  
14 (FIPUG).

15 JAMES W. BREW, ESQUIRE, Stone Law Firm, 1025  
16 Thomas Jefferson Street NW, Suite 800 West Washington,  
17 DC 20007; appearing on behalf of Florida White Springs  
18 Agricultural Chemicals, Inc., d/b/a PCS Phosphate -  
19 White Springs (PCS).

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1 APPEARANCES CONTINUED:

2 SUZANNE BROWNLESS and SHAW STILLER, ESQUIRES,  
3 FPSC General Counsel's Office, 2540 Shumard Oak  
4 Boulevard, Tallahassee, Florida 32399-0850, appearing on  
5 behalf of the Florida Public Service Commission (Staff).

6 KEITH C. HETRICK, GENERAL COUNSEL; MARY ANNE  
7 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service  
8 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
9 Florida 32399-0850, Advisor to the Florida Public  
10 Service Commission.

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I N D E X

WITNESSES

NAME :

PAGE

MARCIA OLIVIER

No questions for this witness

JOSEPH PHALEN

No questions for this witness

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EXHIBITS

NUMBER:		ID	ADMITTED
1	Comprehensive Exhibit List	12	12
2-7	As identified on the CEL	12	12

## 1 P R O C E E D I N G S

2 COMMISSIONER GRAHAM: Okay. Let the record  
3 show it is Tuesday, October 4th. This is Docket  
4 No. 20220143-EI. We are going to convene this  
5 hearing.

6 Madam staff, can I get you to read the notice,  
7 please?

8 MS. BROWNLESS: Yes, sir.

9 By notice, this time and place is scheduled  
10 for a hearing in Docket No. 20220143-EI, to  
11 consider Duke Energy Florida, LLC's, petition for a  
12 limited proceeding to implement the return on  
13 equity trigger provision in its 2021 rate  
14 settlement agreement. The purpose of the hearing  
15 is more fully set forth in the notice.

16 The petition under consideration today arises  
17 from provisions in DEF's 2021 settlement agreement  
18 related to its 2021 base rate proceeding approved  
19 by Order No. PSC-2021-0202-AS-EI as amended by  
20 Order No. PSC-2021-0202-A-AS-EI. The signatories  
21 to that agreement have been made parties to this  
22 proceeding.

23 The purpose of today's hearing is to address  
24 whether DEF's authorized ROE and range of return on  
25 equity should be revised due to the trigger

1 provisions of the 2021 settlement agreement, and,  
2 if so, what the appropriate annual base revenue  
3 increase should be.

4 The Office of Public Counsel, Florida  
5 Industrial Power Users Group, PCS Phosphate White  
6 Springs and Nucor Steel Florida, Inc., are  
7 signatories to the 2021 settlement agreement.  
8 Nucor has been excused from today's hearing and has  
9 represented to staff counsel that they do not  
10 object to DEF's request.

11 COMMISSIONER GRAHAM: Okay. Let's take  
12 appearances.

13 MS. TRIPLETT: Good morning. Dianne Triplett  
14 on behalf of Duke Energy Florida.

15 MR. MOYLE: Jon Moyle with the Moyle Law Firm  
16 on behalf of the Florida Industrial Power Users  
17 Group, FIPUG.

18 MR. REHWINKEL: Charles Rehwinkel with the  
19 Office of Public Counsel on behalf of Duke's  
20 customers.

21 COMMISSIONER GRAHAM: Staff, is --

22 MS. BROWNLESS: Suzanne Brownless and Shaw  
23 Stiller on behalf of the PSC staff.

24 MS. HELTON: Mary Anne Helton is here as your  
25 Advisor, along with your General Counsel, Keith

1 Hetrick.

2 COMMISSIONER GRAHAM: Staff, is there anybody  
3 here for PCS Phosphate?

4 MS. BROWNLESS: I believe Jay Brew --

5 MR. BREW: Mr. Chairman, this is James Brew  
6 remotely.

7 COMMISSIONER GRAHAM: Okay. Thank you, Mr.  
8 Brew. I just wanted to make sure.

9 Okay. Preliminary matters?

10 MS. BROWNLESS: We do not believe there are  
11 any preliminary matters, sir.

12 COMMISSIONER GRAHAM: Okay. Opening  
13 statements.

14 We will now hear opening statements. They are  
15 limited to five minutes each, and Duke will speak  
16 first, followed by OPC, FIPUG and PCS Phosphate.

17 MS. TRIPLETT: Thank you, sir.

18 As Ms. Brownless noted, this Commission  
19 approved our comprehensive 2021 settlement  
20 agreement over a year ago. It included many  
21 favorable provisions for both our customers and the  
22 company. And in recognition of the potential for  
23 interest rates to change, the parties agreed to a  
24 provision by which our return on equity could be  
25 increased if the treasury bond rates increased.



1           DEF has demonstrated in its petition and its  
2           exhibits that it has met the requirements of the  
3           2021 settlement agreement. We respectfully ask the  
4           Commission to approve it in full as an  
5           implementation of that already approved 2021  
6           settlement agreement. And we have witnesses  
7           available to answer any questions you may have.

8           Thank you.

9           COMMISSIONER GRAHAM: Thank you.

10          OPC.

11          MR. REHWINKEL: Yes. Briefly, Mr. Chairman.

12          Public Counsel was a signatory to this  
13          agreement. We have negotiated many agreements with  
14          Duke that are, on balance, favorable to the  
15          customers and good for the provision of utility  
16          service by this company. This agreement in 2021  
17          was no different. We negotiated what we believed  
18          was a very favorable return on equity.

19          Part of that negotiation was an agreement for  
20          a trigger provision, a one-time event, if cost of  
21          money increased, and it has. The Commission  
22          approved that agreement based on all the benefits  
23          to the customers, and we agree that the math  
24          supports the triggering of this provision and,  
25          therefore, we do not object to the rate increase

1           because it was -- it is called for by the  
2           agreement, and we stand by that.

3           Thank you.

4           COMMISSIONER GRAHAM: Thank you, sir.

5           Mr. Moyle.

6           MR. MOYLE: Thank you, Mr. Chairman.

7           And I am going to just make some general  
8           comments that I think will help put things in  
9           context for the Duke issue that's before you, and  
10          they can similarly apply to the FPL request that is  
11          coming before you later.

12          But the Florida Industrial Power Users Group,  
13          we do not want to see this rate increase. I don't  
14          think any customers do. You all had a lot of  
15          discussion earlier about what natural gas is doing,  
16          and other things, and there are upward pressures on  
17          rates. The economic times are challenging, so, you  
18          know, that is some context.

19          But I think the important context is that this  
20          provision has been embedded in settlement  
21          agreements for many, many years. And without going  
22          into settlement discussions and negotiations,  
23          sometimes in those conversations you will get stuck  
24          on an issue. And this mechanism, whereby there is  
25          some flexibility, if the interest rates go up, you

1 can make an adjustment with something that  
2 creatively was hatched as a way to, you know, to  
3 get past sticking points, and get to a deal. And I  
4 think it's worked well. It's been in place for  
5 many years. And we've negotiated and gotten in  
6 place, we think, favorable settlement agreements  
7 throughout the years.

8 So the FIPUG members, we've said this before.  
9 A deal is a deal, and this is part of the deal. We  
10 have no objection to it going in. There are some  
11 things in those settlement agreements that will at  
12 some point -- and they already have -- but that run  
13 in the benefit of the customers. And you may be  
14 back here at some point asking -- hearing the  
15 customers saying, well, this is part of the deal.

16 So I just wanted to spend a couple of minutes  
17 and put some context on what is before you today.  
18 It was part of the agreement. We are fine with  
19 living with that provision, and all the other  
20 provisions that we negotiated and that you  
21 approved, so thank you.

22 COMMISSIONER GRAHAM: Thank you, sir.

23 Mr. Brew.

24 MR. BREW: Mr. Chairman, very briefly.

25 PCS is a signatory to the agreement, and we

1 stand by it as well. Like everyone else, we are  
2 concerned at the upward pressure on rates from all  
3 sorts of factors, but we do not have an objection  
4 to implementing the ROE trigger as provided by in  
5 the agreement.

6 COMMISSIONER GRAHAM: Thank you, sir.

7 Staff, exhibits.

8 MS. BROWNLESS: Staff has prepared a  
9 comprehensive exhibit list which consists of DEF's  
10 petition and DEF's responses to staff's data  
11 request. The list has been provided to the  
12 parties, to the Commissioners and to the court  
13 reporter.

14 Staff requests that the list itself be marked  
15 as Exhibit No. 1, with the other items marked as  
16 identified on the list.

17 COMMISSIONER GRAHAM: The exhibits are marked  
18 as indicated.

19 (Whereupon, Exhibit Nos. 1-7 were marked for  
20 identification.)

21 MS. BROWNLESS: The parties have indicated  
22 that they do not oppose the entry of the exhibits  
23 listed on the CEL.

24 At this time, staff would request that  
25 Exhibits 1 through 7 be entered into the record.

1 COMMISSIONER GRAHAM: If there is no  
2 objections, we will enter those into the record.

3 Let the record show everybody is nodding  
4 affirmatively.

5 (Whereupon, Exhibit Nos. 1-7 were received  
6 into evidence.)

7 COMMISSIONER GRAHAM: Okay. Witness  
8 testimony. Duke, you got witnesses?

9 MS. TRIPLETT: Yes, sir. We have Marcia  
10 Olivier, who is the Director of Rates and  
11 Regulatory Planning. She should probably be able  
12 to answer most of the questions that you have.  
13 Mr. Joseph Phalen is Principle Load Forecaster, and  
14 he is appearing remotely, and he can answer any  
15 questions that you may have about our weather  
16 normalized normal load forecast.

17 COMMISSIONER GRAHAM: Okay. Staff, how do I  
18 best swear in the witnesses? Just have them raise  
19 their hands?

20 MS. HELTON: Yes, sir.

21 COMMISSIONER GRAHAM: Okay. So if the  
22 witnesses would raise their right hand.

23 Whereupon,

24 MARCIA OLIVIER  
25 JOSEPH PHALEN  
WERE called as a witnesses, having been first duly sworn

1 to speak the truth, the whole truth, and nothing but the  
2 truth, was examined and testified as follows:

3 COMMISSIONER GRAHAM: Okay. Let the record  
4 show both said yes.

5 All right. Counsel, can you introduce your  
6 two witnesses? I think you have already done that.

7 Parties, questions for the witnesses? We will  
8 start with OPC.

9 MR. REHWINKEL: No.

10 COMMISSIONER GRAHAM: FIPUG?

11 MR. MOYLE: No questions.

12 COMMISSIONER GRAHAM: Mr. Brew?

13 MR. BREW: No questions. And by the way, Mr.  
14 Chairman, I appreciate the opportunity to appear  
15 remotely at this particular item.

16 COMMISSIONER GRAHAM: That's quite all right.  
17 And you sound perfect on the speaker, so thank you.  
18 Staff.

19 MS. BROWNLESS: No, sir, we have no questions.

20 COMMISSIONER GRAHAM: Commissioners?

21 No questions from Commissioners.

22 Okay. I guess there is no redirect.

23 MS. TRIPLETT: No.

24 COMMISSIONER GRAHAM: Okay. Staff, are there  
25 any other -- I guess we can excuse the witnesses.

1 (Witnesses excused.)

2 COMMISSIONER GRAHAM: Any other matters that  
3 come before us?

4 MS. BROWNLESS: We are aware of none, Your  
5 Honor.

6 If the parties wish to file a post-hearing  
7 briefs, the briefs shall be due on October 6th,  
8 2022. This hearing will be continued and a vote on  
9 the issues will then be taken on October 7th, 2022.

10 If the parties are willing to waive the filing  
11 of post-hearing briefs, the Commission may take --  
12 may make a bench decision at this time.

13 COMMISSIONER GRAHAM: Anybody want to file  
14 post-hearing briefs?

15 MR. REHWINKEL: No.

16 MS. TRIPLETT: No.

17 COMMISSIONER GRAHAM: Mr. Brew?

18 MR. BREW: No.

19 COMMISSIONER GRAHAM: Okay. So we are ready  
20 for a bench decision, is that correct, staff?

21 MS. BROWNLESS: Yes, sir.

22 COMMISSIONER GRAHAM: Commissioners.

23 MS. BROWNLESS: At this time, the staff is  
24 prepared to make an oral recommendation to the  
25 Commission with respect to the issues listed in

1 Order on Procedure number PSC-2022-0311-PCO-EI,  
2 should the Commission wish to hear their  
3 recommendation.

4 COMMISSIONER GRAHAM: Commissioners, we want  
5 to hear staff's recommendation, correct?

6 COMMISSIONER CLARK: Correct.

7 COMMISSIONER GRAHAM: Okay, staff.

8 MS. NORRIS: Issue 1: Should DEF's authorized  
9 ROE and range of return on equity be revised due to  
10 the trigger provisions of the 2021 settlement  
11 agreement effective as of August 1st, 2022?

12 Staff's recommendation is, yes. Based on the  
13 calculation methodology in DEF's 2021 settlement,  
14 the average 30-year U.S. Treasury beyond yield rate  
15 for the six-month period from January 26th, 2022,  
16 through July 25th, 2022, was 2.764 percent, which  
17 is 50 basis points greater than the yield rate of  
18 2.2646 percent on May 4th, 2021, when the  
19 Commission voted to approve the 2021 settlement  
20 agreement.

21 Therefore, DEF's authorized ROE should be  
22 increased by 24 basis points -- 25 basis points to  
23 a midpoint of 10.10 percent, and the authorized  
24 range adjusted to 9.10 percent to 11.10 percent  
25 effective as of August 1st, 2022.



1            Issue 2: Should DEF's proposed AFUDC rates of  
2            6.20 percent for 2022 and 6.26 percent for 2023 and  
3            2024, as found in Exhibit C to the petition, be  
4            approved?

5            Staff's recommendation is, yes. Staff  
6            reviewed DEF's calculations to derive the rate for  
7            allowance of funds used during construction and  
8            found no discrepancies. Therefore, staff  
9            recommends DEF's AFUDC rate for 2022, effective  
10           August 1st, 2022, through December 31st, 2022,  
11           should be 6.20 percent. The monthly compounding  
12           rate for the period August 1st, 2022, through  
13           December 31st, 2022, should be 0.005027.

14           DEF's AFUDC rate for 2023 and 2024, effective  
15           on January 1st, 2023 should be 6.26 percent. The  
16           monthly compounding rate for calendar years 2023  
17           and 2024 should be 0.005071.

18           Staff would like to state for the record that  
19           for the period from January 1st, 2022, through  
20           July 31st, 2022, the AFUDC was 6.09 percent per the  
21           settlement agreement. The monthly compounding rate  
22           for that period was 0.004939.

23           MR. KUNKLER: Issue 3: What is the  
24           appropriate annual base revenue increase associated  
25           with the trigger provision of the 2021 settlement

1 agreement?

2 Commissioners, staff recommends that the  
3 annual base revenue increase associated with the  
4 trigger provision of the 2021 settlement agreement  
5 is \$24.428 million.

6 Staff has reviewed the proforma weather  
7 adjustment to DEF's May 2022 ESR, which reflected  
8 warmer than average weather for the period. To  
9 account for the warmer than average weather, DEF  
10 included a downward adjustment to operating revenue  
11 of \$45.9 million, resulting in a weather normalized  
12 ROE of 9.20 percent.

13 Staff evaluated both DEF's weather  
14 normalization methodology and the inputs it used to  
15 arrive at the stated \$45.9 million downward revenue  
16 adjustment. The inputs are correct and the  
17 methodology is consistent with the methodology used  
18 by the company in previous filings before the  
19 Commission.

20 After including the full \$24.428 million  
21 revenue increase allowed by the settlement, the  
22 company's proforma weather normalized ROE increase  
23 from 9.20 percent to 9.46 percent, which is still  
24 significantly lower than the new ROE midpoint of  
25 10.10 percent.

1           Staff believes the \$45.9 million revenue  
2           adjustment due to weather, and the \$24.428 million  
3           annual base rate increase will not cause the  
4           company's proforma weather adjusted earnings in its  
5           May 2022 ESR to exceed the 10.10 percent midpoint  
6           ROE. Therefore, staff believes the \$24.428 million  
7           annual base rate revenue increase associated with  
8           the trigger provision of the 2021 settlement  
9           agreement is appropriate.

10           Thank you.

11           MR. HAMPSON: This is Corey Hampson with the  
12           Division of Economics.

13           Issue 4: Should DEF's base rates be increased  
14           to reflect the trigger provisions of the 2026  
15           settlement agreement effective as of the first  
16           billing cycle of January 2023?

17           Yes, DEF's base rates should be increased  
18           effective with the first billing cycling of January  
19           2023. Staff recommends that DEF's proposed base  
20           rates as filed in the petition should be approved  
21           to reflect the ROE trigger provision of the 2021  
22           settlement agreement. The base rates should be  
23           effective the first billing cycle of January 2023  
24           as proposed in the petition.

25           Issue 5: Should Commission staff be given

1 authority to administratively approval tariff  
2 sheets that will effectuate the January 2023  
3 proposed increase?

4 Yes, the Commission should grant staff the  
5 authority to administratively approve DEF's tariff  
6 sheets to be effective January 1st, 2023.

7 MS. BROWNLESS: And the final issue: Should  
8 this docketed be closed? And our recommendation  
9 is, yes, this docket should be closed.

10 COMMISSIONER GRAHAM: Okay. Commissioners,  
11 any questions, comments or concerns to staff  
12 recommendation that was given to us orally?

13 Commissioner La Rosa.

14 COMMISSIONER LA ROSA: I will just simply say  
15 I think FIPUG laid it out perfectly. I don't want  
16 to -- I don't want rates to go up, but I think a  
17 deal is a deal, and I think, you know, there is a  
18 little bit of thought in how they explained it and  
19 how they came to this conclusion, and that's  
20 clearly understood by myself. I intend to support  
21 staff's recommendation.

22 COMMISSIONER GRAHAM: Is that a motion?

23 COMMISSIONER LA ROSA: If no one else is  
24 speaking, yes, that is a motion to approve staff's  
25 recommendation.

1 COMMISSIONER CLARK: Second.

2 COMMISSIONER GRAHAM: There is a motion and  
3 duly seconded.

4 Any further discussion?

5 All seeing none, all in favor say aye.

6 (Chorus of ayes.)

7 COMMISSIONER GRAHAM: Any opposed?

8 (No response.)

9 COMMISSIONER GRAHAM: By your action, you have  
10 approved the staff recommendation on Issues 1  
11 through 6.

12 Any other matters?

13 MS. BROWNLESS: No, sir.

14 Oh, the order commemorating your vote is due  
15 to be issued on October 24th, 2022, and staff is  
16 aware of no other matters.

17 COMMISSIONER GRAHAM: Okay. Well, I thank  
18 everybody for their time and their patience. And  
19 if you are leaving after this, please travel safe.

20 We are going to be adjourned and we come back  
21 here for the FPL hearing at 1:30?

22 MS. BROWNLESS: Yes, sir.

23 COMMISSIONER GRAHAM: 130. Thank you very  
24 much.

25 (Proceedings concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 19th day of October, 2022.



DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #HH31926  
EXPIRES AUGUST 13, 2024