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Docket #: 20240025

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Duke Energy  
Florida, LLC.

DOCKET NO. 20240025-EI  
ORDER NO. PSC-2024-0198-PCO-EI  
ISSUED: June 19, 2024

ORDER DENYING OFFICE OF PUBLIC COUNSEL'S MOTION TO SEVER  
DUKE ENERGY FLORIDA, LLC'S PETITION FOR RATE INCREASE  
RELATING TO THE SECOND AND THIRD TEST YEARS

Duke Energy Florida, LLC (DEF or Utility) filed its Petition for Rate Increase, minimum filing requirements (MFRs), and testimony on April 2, 2024. Duke filed its MFRs based on projected test years from January 1 to December 31, 2025; January 1 to December 31, 2026; and January 1 to December 31, 2027. By Order No. PSC-2024-0092-PCO-EI, issued April 11, 2024, an administrative hearing has been scheduled for these matters for August 12 – 16, 2024. August 19 – 23, 2024, have also been reserved for the continuation and conclusion of this hearing, if necessary.

Motion to Sever and Request for Oral Argument

On May 20, 2024, the Office of Public Counsel (OPC) filed a Motion to Sever DEF's Petition for Rate Increase Relating to the Second and Third Test Years. OPC argues in its Motion that the last two of DEF's three proposed test years – January 1 to December 31, 2026, and January 1 to December 31, 2027 – should be severed from this proceeding, and that only projected test year January 1 to December 31, 2025 should be the subject of the August final hearing. OPC argues that it is prejudiced by the inclusion of three test years in this proceeding because it lacks adequate time to prepare “essentially three separate rate cases” while simultaneously litigating a separate docket involving Tampa Electric Company.<sup>1</sup> OPC contends that DEF would not be prejudiced by severing test years 2026 and 2027 because the Utility has multiple other options for rate relief should its earnings fall below the bottom of its approved range, and also because recovery through the clauses allows DEF avenues outside of base rates to ensure adequate revenue. OPC cites Rule 1.270(b), Florida Rules of Civil Procedure, as the authority for the requested relief.<sup>2</sup>

OPC filed a companion Request for Oral Argument on Motion for Severance contemporaneously with the Motion. The Request asserts that oral argument would aid the Commission in understanding and evaluating the Motion to Sever.

<sup>1</sup> Docket No. 20240026-EI, *In re: Petition for rate increase by Tampa Electric Company*.

<sup>2</sup> “The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.” Fla. R. Civ. P. 1.270(b).

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Duke Energy  
Florida, LLC.

DOCKET NO. 20240025-EI  
ORDER NO. PSC-2024-0199-PCO-EI  
ISSUED: June 19, 2024

ORDER GRANTING UNOPPOSED MOTION TO  
ACCEPT TESTIMONY OF DAVID FIALKOV

Background

Pursuant to the Order Establishing Procedure (OEP) in this docket,<sup>1</sup> Intervenor testimony was due to be filed June 11, 2024. Intervenor Americans for Affordable Clean Energy; Circle K Stores, Inc.; RaceTrac Inc.; and Wawa, Inc. (collectively “Fuel Retailers”) filed the testimony of David Fialkov on June 11, 2024, but did so after 5:00 p.m. Therefore, the filing was deemed received by the Public Service Commission Clerk’s Office on June 12, 2024,<sup>2</sup> one day beyond the deadline established in the OEP.

Unopposed Motion to Accept Testimony

Contemporaneously with filing the testimony, the Fuel Retailers filed an Unopposed Motion to Accept Testimony of David Fialkov. The Fuel Retailers represent in the Motion that they filed the testimony “at 7:02 p.m. due to unforeseen circumstances,” and request that the testimony be accepted as though timely filed. Duke Energy Florida, LLC, has no objection to the Motion. The Florida Retail Federation; White Springs Agricultural Chemicals, Inc.; the Southern Alliance for Clean Energy; and Nucor Steel Florida, Inc., also do not object to the Motion. The Office of Public Counsel; Sierra Club; Florida Rising, Inc.; and the League of United Latin American Citizens of Florida, Inc., take no position. EVgo Services, LLC, supports the Motion.

Decision

While the testimony was not deemed filed until June 12, 2024, the testimony was served on the parties contemporaneously with its after-hours filing on June 11, 2024.<sup>3</sup> No party claims to have been prejudiced by this brief delay in accessing the subject testimony. In light of the lack of any prejudice to the other parties to this docket, the Fuel Retailers’ summary assertion of “unforeseen circumstances” as the reason for the late filing is accepted as sufficient cause. For all of these reasons, the Motion shall be granted.

<sup>1</sup> Order No. PSC-2024-0092-PCO-EI, issued April 11, 2024.

<sup>2</sup> “Any document received by the office of the agency clerk before 5:00 p.m. shall be filed as of that day but any document received after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.” Rule 28-106.204(3), Fla. Admin. Code.

<sup>3</sup> Fla. R. Jud. Admin. 2.516(b)(1)D (“Service by e-mail is complete on the date it is sent.”).