

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Irma and Nate, by Duke Energy Florida, LLC.

DOCKET NO. 20170272-EI
ORDER NO. PSC-2019-0135-PCO-EI
ISSUED: April 16, 2019

FIFTH ORDER MODIFYING ORDER ESTABLISHING PROCEDURE

On December 28, 2017, pursuant to Rules 28-106.201 and 25-6.0143, Florida Administrative Code (F.A.C.), and Order No. PSC-2017-0451-AS-EU,¹ Duke Energy Florida, LLC, (DEF) filed its application for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Irma and Nate.

The Order Establishing Procedure, Order No. PSC-2018-0082-PCO-EI (Procedural Order), was issued on February 16, 2018, in which hearing procedures were established to govern this docket, including controlling dates and discovery response times. On March 7, 2018, Order No. PSC-2018-0127-PCO-EI was issued to modify the controlling dates in Section VIII of the Procedural Order. On August 17, 2018, DEF filed a Motion for Continuance in this docket to process, review, and organize a large amount of cost data and associated information pertaining to restoration costs. By Order No. PSC-2018-0410-PCO-EI, issued on August 20, 2018, DEF's Motion for Continuance was granted.

On September 27, 2018, Order No. PSC-2018-0487-PCO-EI (the Second Order Modifying Order Establishing Procedure) was issued to modify the controlling dates and discovery response times pursuant to the Order Granting DEF's Motion for Continuance. On March 15, 2019, Order No. PSC-2019-0103-PCO-EI (the Third Order Modifying Order Establishing Procedure) was issued to modify the Procedural Order to revise the Prehearing Conference date from May 6, 2019, to May 13, 2019.

On March 22, 2019, DEF and the Office of Public Counsel (OPC) filed a Joint Motion to Revise Procedural Order in order to facilitate ongoing discussion between the parties. On March 26, 2019, Order No. PSC-2019-0116-PCO-EI (the Fourth Order Modifying Order Establishing Procedure) was issued to modify the response time for discovery requests; extend the controlling dates for the intervenor, staff, and rebuttal testimonies and exhibits; and extend the dates for parties' prehearing statements and discovery deadline.

On March 29, 2019, DEF filed a Motion to Abate seeking to abate the remaining filing dates as modified by the Fourth Order Modifying Order Establishing Procedure, with the exception of the prehearing, hearing, and brief dates. In its Motion, DEF asserted that OPC, Florida Retail Federation (FRF), White Springs Agricultural Chemicals, Inc. d/b/a PCS

¹ Order No. PSC-2017-0451-AS-EU, issued on 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.

Phosphate-White Springs (PCS Phosphate), and the Florida Industrial Power Users Group (FIPUG) have reached an agreement in principle to resolve all issues in this docket. DEF further asserted that the parties were working to finalize the agreement into a Storm Cost Settlement Agreement, including Storm Process Improvements, for filing with the Commission for approval. On April 3, 2019, Order No. PSC-2019-0119-PCO-EI was issued granting the motion and abating the remaining controlling dates, except the dates for the prehearing conference, hearing, and the filing of briefs.

On April 9, 2019, DEF filed an Unopposed Motion to Approve Storm Cost Settlement Agreement (Motion). In the Motion, DEF requests that the Commission approve the Storm Cost Settlement Agreement, which is attached to the Motion as Exhibit A, and also contends that it is in the best interest of DEF's customers. DEF further asserts that OPC, FRF, PCS Phosphate, and FIPUG support the Storm Cost Settlement Agreement. Having reviewed the Storm Cost Settlement Agreement, and in light of the fact that there appears to be no disputed issues of material fact, it is appropriate at this time to clarify the expectations for any remaining discovery, the Prehearing Conference, the use of confidential information at the hearing, and the hearing.²

Discovery

Commission staff and the parties shall be permitted a limited time to send no more than 50 data requests. Parties are directed to respond to the data requests in writing so that the response is received within 5 days of receipt of the request. Affidavits must accompany all written data responses. All data responses must be received by Friday, May 3, 2019. Information obtained through data request responses may be used by the parties in their opening statements and post-hearing briefs (if applicable), by Commission staff in advising the Commission, and by the Commissioners in consideration of the Storm Cost Settlement Agreement.

Prehearing Conference

The Prehearing Conference will be held on May 13, 2019, immediately following the Prehearing Conference for Docket No. 20170271-EI. At the Prehearing Conference, parties should be prepared to identify any prefiled testimony, exhibits, and discovery responses that they wish to have included in the hearing record.

Use of Confidential Information at Hearing

While it is the Commission's policy to have all Commission hearings open to the public at all times, the Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use at the hearing any proprietary confidential business information, as that term is defined in Section 366.093, F.S., shall adhere to the following:

² The controlling dates set forth in Order No. PSC-2019-0116-PCO-EI (the Fourth Order Modifying Order Establishing Procedure), issued on March 26, 2019, remain the same.

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such information is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidentiality filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

Hearing Procedures

Section 120.57(4), F.S., permits the Commission to informally dispose of any proceeding by stipulation, agreed settlement, or consent order. Section 120.57(2), F.S., permits the Commission to proceed with hearings not involving disputed issues of material fact. Pursuant to Rule 28-106.302(2), F.A.C., the purpose of this hearing is for the Commission to take oral evidence or argument regarding DEF's request for approval of the Motion.

The hearing will be held on May 21, 2019, immediately following the hearing for Docket No. 20170271-EI, and shall include the following:

- Parties shall present opening statements of no more than 3 minutes per party.
- Parties shall request that any stipulated testimony, exhibits, and discovery responses be moved into the record.
- Parties shall respond to questions from Commissioners regarding the Storm Cost Settlement Agreement.

Upon completion of the Commission's questions, the hearing record will be closed and the Commission may render a bench decision, if parties are willing to waive post-hearing briefs. If a bench decision is not made, the Commission will render a decision at the July 2019 Agenda Conference, currently set for July 9, 2019. Post-hearing briefs, if any, will be due June 19, 2019.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission. It is further

ORDERED that all other provisions of Order No. PSC-2018-0082-PCO-EI and Order No. PSC-2019-0119-PCO-EI not inconsistent with this Order are hereby reaffirmed.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 16th day of April, 2019.



JULIE I. BROWN

Commissioner and Prehearing Officer

Florida Public Service Commission

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in

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of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.