

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Ellis) *BE*
Division of Accounting and Finance (Barrett, Lester) *MCB PL*
Office of the General Counsel (Janjic) *CR3* *ALM*

RE: Docket No. 160151-EI – Petition for approval of stipulation to amend revised and restated stipulation and settlement agreement by Duke Energy Florida, LLC.

AGENDA: 09/13/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

In 2013, Duke Energy Florida, LLC (DEF) announced its decision to retire its nuclear plant, Crystal River Unit 3 (CR3), in Citrus County, Florida. The retirement of CR3 was the subject of two settlement agreements. The first settlement agreement, reached in 2012, was a global settlement that addressed several issues, including issues related to a potential CR3 retirement.¹ The second settlement agreement, the Revised and Restated Stipulation and Settlement Agreement (RRSSA), reached in 2013, replaced and supplanted the 2012 settlement agreement.²

¹Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI, *In re: Petition for limited proceeding to approve stipulation and settlement agreement by Progress Energy Florida, Inc.*

²Order No. PSC-13-0598-FOF-EI, issued November 12, 2013, in Docket No. 130208-EI, *In re: Petition for limited proceeding to approve revised and restated stipulation and settlement agreement by Duke Energy Florida, Inc. d/b/a Duke Energy.*

Docket No. 160151-EI

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The parties to the RRSSA were DEF, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate (PCS Phosphate).

The RRSSA contemplated that DEF would recover through increased base rate charges the combined costs of two items associated with the retirement of CR3, the projected Dry Cask Storage (DCS) facility costs and the CR3 Regulatory Asset. Subsequent to approval of the RRSSA, the Commission approved two amendments.³ Collectively, these amendments allowed for securitization of the CR3 Regulatory Asset, leaving only the DCS facility costs to be recovered through base rates.

On June 15, 2016, DEF filed a petition for approval of a Third Stipulation to Amend the RRSSA (Third RRSSA Amendment). All parties to the RRSSA, including DEF, OPC, FIPUG, FRF, and PCS Phosphate, are signatories to the Third RRSSA Amendment.

The Commission has jurisdiction pursuant to Sections 366.04 and 366.05, Florida Statutes (F.S.).

³Order No. PSC-15-0465-S-EI, issued October 14, 2015, in Docket Nos. 150148-EI, *In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.* and 150171-EI, *In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy*, and

Order No. PSC-16-0138-FOF-EI, issued April 5, 2016, in Docket Nos. 150148-EI, *In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.* and 150171-EI, *In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy*.

Discussion of Issues

Issue 1: Should DEF's petition to approve the Third Stipulation to Amend the RRSSA (Third RRSSA Amendment) be approved?

Recommendation: Yes. The Third RRSSA Amendment contained in Attachment A of this recommendation is in the public interest and should be approved. Recovery of the Dry Cask Storage (DCS) facility costs through the Capacity Cost Recovery Clause (CCR Clause) would allow annual review and adjustment, including potential credits from Department of Energy (DOE) awards. (Ellis)

Staff Analysis: In its petition for approval of the Third RRSSA Amendment, attached to this recommendation as Attachment A, DEF states that the parties requested changes would shift recovery of the DCS facility costs from increases in base rates to the CCR Clause. Prior to the modifications, DCS facility costs would have been recovered through uniform percentage increases in demand and energy rates, updated at least once every 4 years for a period up to 20 years, and with true-up through the CCR Clause.

Recognizing a previous Commission decision, the deferral of amortization for some costs associated with the DCS facility is included in the Third RRSSA Amendment.⁴ The time period for amortization of capital costs associated with the DCS could also be modified through agreement of all parties and approval of the Commission. Cost allocation would remain based upon the methodology outlined in the RRSSA.

The Third RRSSA Amendment alters two paragraphs within the RRSSA to reflect the shift from base rates to the CCR Clause. Paragraph 5(e)(1) is amended to reflect the DCS facility costs are not to be combined with the CR3 Regulatory Asset, but rather are to be recovered through the CCR Clause. DEF states the parties determined that to preserve the intended cost recovery allocation of DCS facility costs, the Third RRSSA Amendment is necessary given the change in circumstances of the CR3 Regulatory Asset. As noted by DEF in response to staff's data request, the CR3 Regulatory Asset was securitized in June 2016 and is now held in a bankruptcy-remote facility and for all intents and purposes is isolated from further regulatory action. DEF notes it did not seek to add the DCS facility costs to this balance for securitization due to outstanding legal actions with the DOE stemming from its failure to remove spent nuclear fuel from the CR3 facility. If approved, DEF would also be required to credit the CCR Clause for any applicable award from the DOE. The Commission would have an opportunity to review DCS facility costs on an annual basis in the CCR Clause proceedings, including DOE awards.

Paragraph 21, which addresses those portions of the RRSSA that extend beyond December 2018, is amended to reflect that recovery of DCS facility costs through the CCR Clause may continue past 2018. Prior to the modifications, the recovery of DCS facility costs would have ended with the CR3 Regulatory Asset or approximately 20 years.

⁴Order No. PSC-15-0027-PAA-EI, issued January 7, 2015, in Docket No. 140113-EI, *In re: Petition for approval to construct an independent spent fuel storage installation and an accounting order to defer amortization pending recovery from the Department of Energy, by Duke Energy Florida, Inc.*

Conclusion

Staff agrees that the Third RRSSA Amendment contained in Attachment A of this recommendation is in the public interest and should be approved. Recovery of the DCS facility costs through the CCR Clause would allow annual review and adjustment, including potential credits from DOE awards.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. (Janjic)

Staff Analysis: This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order.

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Exhibit A to Petition – Stipulation to Amend RRSSA

1. The signatories to the RRSSA agree to and approve the Third RRSSA Amendment, attached to this Stipulation as Exhibit 1. The signatories agree that the Third RRSSA Amendment contains changes to allow the recovery of the approved, prudent Dry Cask Storage costs through the Capacity Cost Recovery Clause. The signatories, by executing this Stipulation, agree that paragraph 22 of the RRSSA, which requires that “no provision may be changed or altered without the consent of each signatory Party in a written document duly executed by all Parties to this Revised and Restated Settlement Agreement” is fully satisfied.
2. Except as set forth in the Third RRSSA Amendment attached as Exhibit 1 to this Stipulation, the Parties do not intend to affect the intent, or the provisions, of the RRSSA.
3. This Stipulation may be executed in counterpart originals, and a facsimile or PDF email of any original signature shall be deemed an original.

In Witness Whereof, the signatories to the RRSSA evidence their acceptance and agreement with the provisions of this Stipulation and the Third RRSSA Amendment by their signatures below.

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Duke Energy Florida, LLC

By: Dianne M. Triplett

Dianne M. Triplett
P.O. Box 14042
St. Petersburg, FL 33733

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition


Office of Public Counsel

By:  _____

J. R. Kelly, Esq.
Charles Rehwinkel, Esq.
111 W. Madison St., Room 812
Tallahassee, FL 32399

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Florida Industrial Power Users Group

By: 
6/13/16

Jon C. Moyle, Esq.
Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

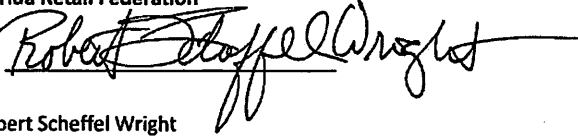
White Springs Agricultural Chemicals, Inc.

By: 

James W. Brew, Esquire
Stone Mattheis Xenopoulos & Brew, PC
1025 Thomas Jefferson St., NW
Eighth Floor, West Tower
Washington, DC 20007

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Florida Retail Federation

By: 

Robert Scheffel Wright
John T. LaVia III
Garder, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Exhibit 1 to Stipulation

Third RRSSA Amendment

Paragraph 5(e)(1) is revised to read:

"Prior to the date set out in paragraph 5e of this Revised and Restated Settlement Agreement, DEF shall be entitled to petition the Commission for approval of the reasonable and prudent projected DCS facility capital costs. The Intervenor Parties shall be entitled to fully participate in such a proceeding and do not waive any rights related to such participation or determination. ~~After a final decision by the Commission,~~ DEF shall be entitled to petition for add inclusion of the Commission-determined projected total (retail jurisdictional) value of the reasonable and prudent DCS facility capital costs in the Capacity Cost Recovery Clause to the CR3 Regulatory Asset for recovery consistent with the revenue requirement calculation template in Exhibit 10 to the Revised and Restated Settlement Agreement subject to the amortization deferral approved in Order No. PSC-15-0027-PAA-EI, and shall be allocated to rate classes annually at the percentages that would have been calculated under the methodology described in the first sentence of Paragraph 5g, and the base rate increase methodology in paragraphs 5g and 5h. The DCS facility capital costs shall not be recovered before the start of the recovery of the CR3 Regulatory Asset. The actual amounts recovered through the Capacity Cost Recovery Clause shall be subject to the clause true-up, review, audit, and approval processes, and, ~~When the DCS facility capital costs become final, DEF shall be entitled to petition the Commission for approval of the final DCS facility capital costs.~~ ~~The Intervenor Parties shall be entitled to fully participate in such a proceedings,~~ for example and without limitation, to challenge the reasonableness and prudence of DEF's claimed DCS facility capital costs, and do not waive any rights related to such participation or determination. The Parties expressly agree that any proceeding to recover such costs associated with this paragraph of the Revised and Restated Settlement Agreement shall not be a vehicle for a "rate case" type inquiry concerning the expenses, investment, or financial results of operations of the Company and shall not apply any form of earnings test or measure or consider previous or current base rate earnings or level of cost of removal reserve. DEF shall credit the Capacity Cost Recovery Clause with the retail portion of all applicable DOE awards when they are received. ~~After a final decision by the Commission, DEF shall adjust the CR3 Regulatory Asset to true-up for the final Commission-determined total (retail jurisdictional) value of the DCS facility capital costs, and shall amortize the adjusted final DCS facility capital cost balance -CR3 Regulatory Asset over the recovery period set forth in paragraph 5g, unless another recovery period is agreed to by all Parties. These base rates shall be subject to a true-up as provided in paragraph 5g; and"~~

The second sentence of Paragraph 21 is revised to read:

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

"In addition, the Parties agree that the base rate increases or charges that, pursuant to the terms of this Revised and Restated Settlement Agreement, extend beyond the last billing cycle for December 2018 and survive the expiration of the term or termination of this Revised and Restated Settlement Agreement, specifically include, without limitation, (A) the recovery of the CR3 Regulatory Asset through either (1) the last billing cycle for the 240th month from inception of the recovery of the CR3 Regulatory Asset or (2) in the event that the nuclear asset-recovery costs are to be recovered through the issuance of nuclear asset-recovery bonds, until the nuclear asset-recovery bonds have been paid in full and the Commission-approved financing costs have been recovered in full, and for such a period consistent with the proviso in paragraph 5g of this Revised and Restated Settlement Agreement (as amended); (B) the potential recovery of additional funds to fund the CR3 Nuclear Decommissioning Trust pursuant to paragraph 7b of this Revised and Restated Settlement Agreement; (C) the potential recovery of the CRS net book value pursuant to paragraph 8 of this Revised and Restated Settlement Agreement; and (D) the recovery of the LNP and EPU costs through the time periods established by this Revised and Restated Settlement Agreement and Section 366.93(6), F.S., and Commission Rule 25-6.0423(6), F.A.C.; and (E) the recovery of the DCS facility capital costs through the Capacity Cost Recovery Clause, as reflected in the amended paragraph 5(e)(1) of this Revised and Restated Settlement Agreement."