

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

FILED 7/16/2019  
DOCUMENT NO. 05571-2019  
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20190079-EQ

PETITION FOR APPROVAL OF  
AMENDED STANDARD OFFER  
CONTRACT (SCHEDULE COG-2)  
AND AMENDED INTERCONNECTION  
AGREEMENT, BY DUKE ENERGY  
FLORIDA, LLC.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 7

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER JULIE I. BROWN  
COMMISSIONER DONALD J. POLMANN  
COMMISSIONER GARY F. CLARK  
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday , July 9, 2019

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. We are skipping over  
3 6 and we are going to jump down to Item No. 7.

4 MR. DOEHLING: Good morning, Commissioners.  
5 Jeff Doehling with Commission staff.

6 Item No. 7 is the petition for approval of the  
7 amended standard offer contract associated rate  
8 schedule and amended interconnection agreement by  
9 Duke Energy Florida.

10 The Commission requires that each  
11 investor-owned annually file a standard offer  
12 contract to purchase capacity and energy from  
13 renewable energy generators and small qualifying  
14 facilities based on the next avoidable fossil fuel  
15 generating unit identified in the utility's 10-year  
16 site plan.

17 Staff has reviewed the items and recommends  
18 that the revised standard offer contract and rate  
19 schedule be approved as revised on June 7th, 2019,  
20 and the amended interconnection agreement be  
21 approved as filed on April 1st, 2019.

22 No comments were filed in this docket. Staff  
23 is available for questions.

24 CHAIRMAN GRAHAM: Thank you, staff.

25 Commissioners, any questions of staff on Item

1 No. 7?

2 Commissioner Brown.

3 COMMISSIONER BROWN: Thank you.

4 Mr. Doehling or Ms. Tan, are you familiar with  
5 the revisions made in the standard offer contract?

6 MR. DOEHLING: I am.

7 COMMISSIONER BROWN: Will you please look at  
8 11.4 section? It's on page 37 of 93, Attachment A.  
9 It's regarding the committed capacity test. It is  
10 a new provision, the red line.

11 I just want some clarification on it, whether  
12 if the qualifying facility fails to demonstrate a  
13 capacity of at least a 100 percent of the committed  
14 capacity required, does that mean that the  
15 contract, the standard offer contract can be  
16 terminated because of the qualifying facility's  
17 failure to perform?

18 MR. DOEHLING: I am not sure on the -- if it  
19 can be terminated or not on that fact, but I can  
20 get back to you on that one.

21 COMMISSIONER BROWN: It appears to me that it  
22 looks like the -- Duke may retain 100 percent of  
23 the performance security if they fail to comply  
24 with this test before the first anniversary; is  
25 that correct?

1 MR. DOEHLING: That appears to be correct.

2 COMMISSIONER BROWN: Can -- does it also  
3 appear that Duke -- pardon me -- that the utility  
4 can also require an additional performance security  
5 after that failure to perform? So they retain the  
6 security, 100 percent of it, and then they can  
7 require a new performance security to move forward?

8 MR. DOEHLING: Yes, I believe that is correct.

9 COMMISSIONER BROWN: Okay. Could you  
10 elaborate if, anybody at the bench here in front of  
11 us, on the -- if that would be considered a breach  
12 under the agreement as well.

13 MR. ELLIS: This is -- sorry, Phillip Ellis  
14 with Commission staff.

15 If they are not meeting the terms under  
16 Section 11, it is my understanding that, under  
17 Section 14, that would be considered a default.

18 COMMISSIONER BROWN: It would be a default?

19 MR. ELLIS: That is my understanding.

20 COMMISSIONER BROWN: So then -- but then  
21 remedy would be they would get the performance  
22 security -- if they want to continue moving  
23 forward, they can require an additional security?

24 MR. ELLIS: If the company is able to provide  
25 an additional security and continue performance and

1           it does not have another default, it would be an  
2           option, from my understanding, under certain  
3           conditions depending upon the performance of the  
4           facility.

5           COMMISSIONER BROWN: Okay. That's all.

6           CHAIRMAN GRAHAM: Commissioner Polmann.

7           COMMISSIONER POLMANN: Thank you, Mr.  
8           Chairman.

9           With regard to a default, is there a time  
10          period prior to default in which the, under the  
11          contract, the provider would have an opportunity to  
12          cure? And is there a time limit for that?

13          I didn't -- I didn't read that in detail. Can  
14          you point me to a section where a cure opportunity  
15          exists?

16          MR. ELLIS: Section 14 would address default,  
17          as well as Section 15, under rights in the event of  
18          a default.

19          From my understanding, with regards to Section  
20          11, it's subpart (h), this is on page 49 of the  
21          recommendation, or 43 of 93 of Attachment A.

22          COMMISSIONER POLMANN: Okay. I am on page 43  
23          of 93. Was there a particular cure aspect of this  
24          you can point me to? I am sorry.

25          CHAIRMAN GRAHAM: Commissioner Polmann, maybe

1 the utility can help you.

2 COMMISSIONER POLMANN: Yes.

3 MS. TRIPLETT: Good morning. Dianne Triplett  
4 on behalf of Duke Energy. And I have David Gammon  
5 here. And if you could maybe repeat the question  
6 for us so we could try to clarify the rights of  
7 when we can default and the cure period that you  
8 are asking.

9 MR. DOEHLING: Yeah. I am just following up  
10 on -- I am trying to follow from Commissioner  
11 Brown's questioning from paragraph 11, and then  
12 going in subsequently -- staff mentioned that you  
13 go from there into default.

14 And so my question, is there an opportunity  
15 for a contractor to cure? I am interpreting  
16 default to be termination. So prior to the  
17 termination of the contract, is there an  
18 opportunity to cure of some type where the  
19 contractor would be able to remain inside the  
20 contract or the agreement and fix whatever the  
21 problem was, or are they terminated in an absolute  
22 sense? I understand you are retaining your  
23 dollars.

24 MR. GAMMON: We would retain the deposit.

25 They would only go into default under one of

1 the items in Section 14. So there is no specific  
2 default for not meeting 100 percent of their  
3 capacity factor. Instead, there is -- if they fail  
4 to maintain an annual capacity factor of 75 percent  
5 or more for 12 months, then we can put them in a  
6 default, and there is a cure period, I believe, as  
7 well.

8 COMMISSIONER POLMANN: That's what I am trying  
9 to find, the cure period. I am just wondering if  
10 that's identified here that we can just see that.  
11 I am not finding it. I am sorry.

12 MR. GAMMON: Okay. So -- I am sorry, so for  
13 the failing to meet 75 percent capacity factor for  
14 12 months. So that's an annual capacity factor, so  
15 that really means they haven't performed for two  
16 years. So, no, there is no cure period for that.

17 COMMISSIONER POLMANN: Okay. So the cure is  
18 within the period they have to reach it?

19 MR. GAMMON: Yeah.

20 COMMISSIONER POLMANN: And if they haven't  
21 performed during that period, then you can put them  
22 into default?

23 MR. GAMMON: Yes.

24 COMMISSIONER POLMANN: And that's the end of  
25 it?

1 MR. GAMMON: Yeah.

2 COMMISSIONER POLMANN: Thank you for the  
3 clarification.

4 CHAIRMAN GRAHAM: Commissioner Clark?

5 COMMISSIONER CLARK: No.

6 CHAIRMAN GRAHAM: Okay. I will entertain a  
7 motion for Item No. 7.

8 COMMISSIONER FAY: Mr. Chairman, I will move  
9 all issues on Item 7.

10 CHAIRMAN GRAHAM: It's been moved and seconded  
11 all issues on Item No. 7.

12 Any further discussion?

13 Seeing none. All in favor, say aye.

14 (Chorus of ayes.)

15 CHAIRMAN GRAHAM: Any opposed?

16 (No response.)

17 CHAIRMAN GRAHAM: By your action, you have  
18 approved staff recommendation on Item No. 7.

19 Thank you very much.

20 (Agenda item 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 16th day of July, 2019.




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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #GG015952  
EXPIRES JULY 27, 2020