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Public Service Commission

November 8, 2019

John MacIver, Director and Chief Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Re: Request for assignment of an Administrative Law Judge
FPSC Docket No. 20190001-EI – *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

Dear Chief Judge MacIver:

The Florida Public Service Commission (Commission) requests the assignment of an Administrative Law Judge to handle two issues in Docket No. 20190001-EI involving the recovery of the cost of replacement power for the April 2017 outage experienced by Duke Energy Florida, LLC's Bartow Unit 4 power plant and whether the Bartow Unit 4 power plant should be permanently de-rated as a result of the operation of the plant. The parties to this docket are: Duke Energy Florida, LLC (DEF), the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate). Commission staff, as discussed in more detail below, will also participate as a party.

FPSC Docket No. 20190001-EI is a revolving docket in which these two issues have been raised and which the Commission was unable to hear at its November 5-7, 2019 hearing due to the extensive confidential material contained in the pre-filed testimony and exhibits of DEF witness Swartz and OPC's witness Polich as well as in the proposed Commission staff trial exhibits. Due to the extensive and essential nature of the materials deemed confidential in this docket relevant to these issues, it is impossible to conduct direct or cross examination of these witnesses without reference to, and discussion of, confidential material. Pursuant to Section 366.093, F.S., the Commission has the statutory ability to declare documents confidential, but not the ability to close a public hearing for the purpose of conducting direct and cross examination of these witnesses in order to protect materials and topics previously determined to be confidential. The Division of Administrative Hearings (DOAH) does have the ability to close a hearing in order to preserve confidentiality. In recognition of these facts, Chairman Graham per the attached memorandum has requested that this matter be referred to DOAH.

The Commission opened this docket on January 2, 2019, and Order No. PSC-2019-0059-PCO-EI, was issued on February 13, 2019, establishing the procedures to be followed. Pursuant to Order No. PSC-2019-0059-PCO-EI, a prehearing conference was held on October 22, 2019,

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and the final hearing was held on November 5, 2019. At the final hearing all issues identified in the Prehearing Order, Order No. PSC-2019-0466-PHO-EI, issued on October 31, 2019, were either ruled upon or stipulated with the exception of Issues 1B and 1C. Issue 1B states: "Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant and, if not, what action should the Commission take with respect to replacement power costs?" Issue 1C states: "Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?"

The Commission anticipates that DOAH will hear these two issues utilizing the materials already filed in the Commission docket. Pre-filed direct and rebuttal written testimony and exhibits addressing Issues 1B and 1C have already been filed by witnesses Jeffrey Swartz on behalf of DEF on March 1, 2019 and September 26, 2019, and Richard A. Polich on behalf of OPC on September 13, 2019. Thus, there is no need for live direct or rebuttal testimony at this hearing. The hearing should focus on cross-examination and redirect by the parties. While extensive discovery has already been conducted on these issues, further limited additional discovery may be required which should be served and answered by all parties on an expedited basis.

A Comprehensive Exhibit List (CEL) has been developed for this docket which identifies all pre-filed exhibits, as well as Commission staff exhibits. All exhibits on the CEL, with the exception of those associated with witnesses Swartz and Polich, were stipulated to by the parties and admitted into the record at the November 5th Commission hearing. Witness Swartz's Exhibits 8, 80, 81, 82, and 100 and witness Polich's Exhibits 68-76 will be identified and admitted at the hearing before DOAH as appropriate. Finally, Commission staff should be allowed to participate as a party, conduct cross-examination, offer exhibits, file a proposed recommended order, and file exceptions, if necessary, to ensure that a complete record is built on which a fully informed decision in the public interest can be based.

Since the bulk of discovery has been conducted and pre-filed testimony addressing Issues 1B and 1C has been filed by all parties, these issues are now ready to be set for hearing. That being the case, the Commission would ask that an administrative law judge be appointed as soon as possible and that a status conference before the assigned administrative law judge be held shortly thereafter in which the procedural details of proceeding forward with the case can be established.

A copy of the docket file relevant to Issues B and C is being forwarded to your attention.

Orders and notices should be directed to FPSC staff counsel:

Suzanne Brownless
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
sbrownle@psc.state.fl.us

John MacIver, Director and Chief Judge

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Should you have any questions, please feel free to contact me at (850) 413-6770.

Sincerely,



Adam J. Teitzman
Commission Clerk

Enclosure

cc: Keith Hetrick

Suzanne Brownless

c: 20190001.DOAH.Letter-2.sbr

State of Florida




Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 28, 2019

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Art Graham, Chairman 

RE: Docket No. 20190001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

There are two particular issues in this docket, Issues 1B and 1C, that will require testimony and information to be presented which is wholly confidential in nature. Issue 1B is "Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant and, if not, what action should the Commission take with respect to replacement power costs?" Issue 1C is "Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the derating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?"

Because the Commission is unable to go into a closed door session in order to fairly adjudicate these issues and is otherwise unable to preserve the confidentiality of testimony in an open public meeting, by this memorandum and pursuant to my discussions with the General Counsel and Executive Director, I have determined that Issues 1B and 1C should be referred to the Division of Administrative Hearings for the assignment of an administrative law judge to recommend to the Commission a disposition of these issues.

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