

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC

DOCKET NO. 20200069-EI

In re: Storm protection plan cost recovery clause.

DOCKET NO. 20200092-EI
ORDER NO. PSC-2020-0273-PCO-EI
ISSUED: July 31, 2020

PROCEDURAL ORDER

Background

On July 17, 2020, Duke Energy Florida, LLC (Duke) filed a Motion to Approve the 2020 Storm Protection Plan and Storm Protection Plan Cost Recovery Clause (SPP/SPPCRC) Agreement and attached the 2020 Agreement. The 2020 Agreement is signed and executed by Duke, the Office of Public Counsel (OPC), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (PCS) (collectively, the Signatories). The 2020 Agreement was filed in Docket Nos. 20200069-EI¹ and 20200092-EI² because it impacts, in part, both dockets. The 2020 Agreement and all filed materials related thereto will be maintained in both Docket Nos. 20200069-EI and 20200092-EI. The Signatories are deemed parties for purposes of the proceeding described below in which the Florida Public Service Commission (Commission or FPSC) will consider the 2020 Agreement.

Duke contends that Commission approval of the 2020 Agreement would establish a series of stipulations in Docket Nos. 20200069-EI and 20200092-EI, thereby reducing the issues to be litigated, promoting regulatory economy and administrative efficiency, and conserving the time and expense that would otherwise be consumed litigating these issues. Duke, with the support of the Signatories, requests that the Commission schedule the 2020 Agreement for the Commission's consideration as soon as possible. Duke states that all Signatories agree that the 2020 Agreement is in the public interest.

Based on Duke's Motion and its representation that the Signatories support the requested proceedings, an administrative hearing is hereby scheduled to consider the 2020 Agreement on September 1, 2020.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

¹ *In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC.*

² *In re: Storm protection plan cost recovery clause.*

Intervention

Pursuant to Rule 28-106.205, F.A.C., persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good cause shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law.

Discovery

Commission staff and the parties shall be permitted a limited time to send no more than 150 data requests. Parties are directed to respond to the data requests in writing so the response is received within five days of receipt of the request. Affidavits must accompany all written data responses. All data responses must be received by August 21, 2020. Information obtained through data request responses may be used by the parties in their oral arguments, by staff in advising the Commission, and by the Commissioners in consideration of the proposed 2020 Agreement.

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, Florida Statutes (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:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, 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.

All copies of confidential exhibits that are not admitted into evidence 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 Exhibits

All exhibits to be sponsored by the parties or staff, or utilized for the purposes of cross-examination or impeachment at the hearing, must be filed electronically in these dockets, with an electronic copy of all such documents also provided to all parties and Commission staff, no later than August 25, 2020. Any confidential exhibits shall be identified in such a way as to not disclose information for which confidential treatment is requested, with the exhibits filed consistent with the requirements of Section 366.093, F.S., and Rule 25-22.006, F.A.C., with copies provided to those parties who have executed appropriate nondisclosure agreements.

Special Considerations Due to the COVID-19 Pandemic

State buildings are currently closed to the public and other restrictions on gatherings remain in place due to COVID-19. Accordingly, the hearing will be conducted remotely, and all parties and witnesses shall be prepared to present argument and testimony by communications media technology.

Members of the public who are not parties to the settlement agreement shall have an opportunity to present sworn testimony at the hearing regarding the 2020 Agreement. Because the Commission is operating under a state of emergency due to COVID-19, any member of the public who wishes to offer testimony must do so remotely by telephone or by written comment. Any written comments must be filed in the docket file no later than 12:00 p.m. on August 27, 2020. To participate telephonically, members of the public must contact the Office of General Counsel at (850) 413-6199 by noon on August 27, 2020. By providing public testimony, a person does not become a party to the proceeding. To become an official party of record, you must file a Petition for Intervention at least 20 days before the final hearing, pursuant to the requirements contained in Rule 28-106.205, (F.A.C.). All witnesses shall be subject to cross-examination at the conclusion of their testimony. The hearing will be governed by the provisions of Chapter 120, Florida Statutes (F.S.), Chapter 366, F.S., and Chapters 25-22 and 28-106, F.A.C.

Any member of the public who wants to observe or listen to the proceedings may do so by accessing the live video broadcast the day of the hearing, which is available from the FPSC website. Upon completion of the hearing, the archived video will also be available.

Hearing Procedures

Section 120.57(4), F.S., permits the Commission to informally dispose of any proceeding by stipulation, agreed settlement, or consent order. Pursuant to Rule 28-106.302(2), F.A.C., the purpose of this hearing is for the Commission to take oral and written evidence or argument regarding Duke's Motion for approval of the 2020 Agreement as being in the public interest.

The hearing agenda for September 1, 2020, will include the following:

- Parties present Opening Statements of no more than five minutes per party;
- Public Testimony, if any;
- Parties present evidence and respond to questions from Commissioners regarding the 2020 Agreement.

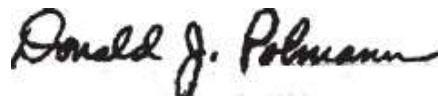
Upon the admission of all testimony and evidence, and completion of the Commission's questions at hearing, the hearing record will be closed. At that time, the Commission may render a bench decision, provided all parties are willing to waive filing of post-hearing briefs. If a bench decision is not made, the Commission will render a decision during an Agenda Conference; date and time to be determined. Briefs, if any, will be due September 15, 2020.

The Commission has jurisdiction in this matter pursuant to Chapters 120, and 366, F.S., and is proceeding under its authority under Sections 366.04, 366.05, 366.06, 366.96, and 120.57, F.S.

Based on the foregoing, it is

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 31st day of July, 2020.



DONALD J. POLMANN, Ph.D., P.E.
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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.

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 the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case 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.