

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO. 20200092-EI
ORDER NO. PSC-2020-0304-PCO-EI
ISSUED: September 4, 2020

SECOND ORDER MODIFYING ORDER ESTABLISHING PROCEDURE

Order Establishing Procedure No. PSC-2020-0170-PCO-EI (Procedural Order), issued on May 29, 2020, established hearing procedures to govern this docket, including controlling dates. Order No. PSC-2020-0242-PCO-EI (Modifying Order), issued on July 17, 2020, modified several controlling dates in the Procedural Order and affirmed it in all other respects. At this time and for the reasons set forth below, it is necessary to modify the Procedural Order and Modifying Order to suspend controlling dates and discovery response times and abate pretrial activities to allow for Commission consideration of two pending settlement agreements.

On August 10, 2020, Duke Energy Florida, LLC (Duke), the Office of Public Counsel (OPC), and White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate), filed a Joint Motion for Approval of Settlement Agreement (Duke Settlement). All parties either support or take no position with respect to the Duke Agreement except Walmart, Inc. (Walmart). If approved by the Commission, the Duke Settlement would resolve all issues in this docket relating to Duke.

Pursuant to notice, the Commission conducted a public hearing on the Duke Settlement on September 1, 2020. Walmart presented argument and evidence in opposition to the Duke Settlement at that hearing and requested the opportunity to submit a post-hearing brief.

On August 27, 2020, Florida Power & Light Company (FPL), Gulf Power Company (Gulf), OPC, and Walmart filed a Joint Motion for Expedited Approval of a Stipulation and Settlement Agreement (FPL/Gulf Agreement). No party opposes the FPL/Gulf Agreement which, if approved by the Commission, would resolve all issues in this Docket relating to FPL and Gulf.

This docket is currently scheduled for hearing to commence October 13, 2020, with discovery and numerous pretrial activities scheduled to occur by the controlling dates established in the Procedural and Modifying Orders. Commission approval of either of the pending Agreements would resolve the issues to be tried in this docket among the Agreement signatories and thereby limit the scope of the hearing. Commission approval of both Agreements would resolve all pending issues and eliminate the need for a hearing. Only in the case of the Commission not approving either Settlement – one of which is unopposed – would this docket go to an evidentiary hearing with the current assembly of parties and issues.

Under these circumstances, the resources and time of the parties and the Commission would be best served by suspending the currently-scheduled controlling dates and pretrial

activities pending Commission consideration and disposition of the Duke and FPL/Gulf Settlements. The following modifications to procedure will allow this orderly disposition:

- (1) All Controlling Dates established in Section VIII of the Order Establishing Procedure and the Modifying Order are suspended;
- (2) All pretrial activities in this docket shall be abated pending Commission consideration of the Duke Agreement and the FPL/Gulf Agreement on October 6, 2020; and
- (3) Any party desiring to file a post-hearing brief with respect to Commission approval of the Duke Settlement Agreement must do so no later than September 11, 2020.

Should either settlement not be approved, a subsequent order will issue establishing new controlling dates for this docket.

Based on the foregoing, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Order Nos. PSC-2020-0170-PCO-EI and PSC-2020-0242-PCO-EI are modified as set forth in the body of this order. It is further

ORDERED that Order Nos. PSC-2020-0170-PCO-EI and PSC-2020-0242-PCO-EI are affirmed in all other respects.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 4th day of September, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
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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.

SPS

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.