

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Review of 2020-2029 Storm Protection)
Plan pursuant to Rule 25-6.030, F.A.C.,) Docket No. 20200069-EI
Duke Energy Florida, LLC.)
)
In re: Storm Protection Plan Cost Recovery Clause) Docket No. 20200092-EI
)
_____)

**POST-HEARING STATEMENT IN SUPPORT OF STIPULATIONS OF WHITE
SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A PCS PHOSPHATE**

INTRODUCTION

On September 1, 2020, the Florida Public Service Commission (“Commission”) conducted a special hearing to consider: 1) *Duke Energy Florida, LLC’s Motion to Approve 2020 SPP/SPPCRC Agreement*, filed July 17, 2020, in Docket No. 20200069-EI (the “July 17 Stipulation”), and 2) a *Joint Motion for Approval of Settlement Agreement*, filed August 10, 2020, in Docket No. 20200092-EI (the “August 10 Stipulation”).¹ The two stipulations, along with another stipulation dated July 31, 2020, filed in Docket No. 20200069-EI that the Commission approved in an order dated August 28, 2020,² look to resolve all issues concerning the initial Storm Protection Plan (“SPP”) and Storm Protection Plan Cost Recovery Clause (“SPPCRC”) filed by Duke Energy Florida, LLC (“DEF” or “Duke”) pursuant to § 366.96, F.S., and obviate the need for further hearing in the matters. White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS”), which is a signatory to all three stipulations concerning the Duke SPP and SPPCRC submissions, urges the Commission to approve the August 10 Stipulation as filed.

¹ Docket Nos. 20200069-EI & 20200092-EI, Notice of Hearing (Aug. 21, 2020).

² Docket Nos. 20200067-EI, *et al.*, Order No. PSC-2020-0293-AS-EI (Aug. 28, 2020) (*see* Attachment B).

I. Issue Status

At the conclusion of the September 4 hearing, the Commission voted to approve the July 17 Stipulation as filed, which was not contested by any Party.

The only disputed issue concerning the August 10 Stipulation involves a proposal by Walmart, in testimony filed in Docket No. 20200092-EI on August 28, 2020 (two business days before the hearing) to change the design of the proposed SPPCRC rate factor to recover the factor on a demand basis for demand metered customers.³ Duke's testimony filed on July 24, 2020, in Docket No. 20200092-EI proposed to recover the SPPCRC factor on an energy (per kWh) basis for all customer classes for the reasons stated in its testimony as well as in the rebuttal testimony filed in Docket No. 20200069-EI on July 1, 2020. The August 10 Stipulation proposes to implement the factor as proposed in Duke's testimony and exhibits for the year 2021, but states that such rates are not deemed to be precedential.⁴

Because there was one matter in dispute, the Commission deferred a decision regarding the August 10 Stipulation, invited parties to submit Post-Hearing briefs, and suspended the remaining litigation schedule in the 20200092-EI docket pending a decision on the motions.⁵ As is explained below, the SPP clause recovery method proposed by DEF and incorporated in the August 10 Stipulation is reasonable, the rate impacts to all DEF customers of the proposed factor for 2021

³ Walmart filed testimony on May 26, 2020, in Docket No. 20200069-EI in which it did not challenge the SPP cost allocation proposed by DEF or any other Florida utility but advocated for recovery of SPP costs from demand metered customers on a \$/kW basis. Docket Nos. 20200067-EI, *et al.*, Direct Testimony and Exhibit of Steve W Chriss at 4 (May 26, 2020) ("Chriss Testimony"). Walmart subsequently agreed that its rate design issues were properly addressed in the SPPCRC Docket No. 20200092-EI. *See* Docket No. 20200069-EI, Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC, *Updated Stipulation and Settlement Agreement* (Aug. 3, 2020).

⁴ *See* Docket 20200092-EI, Storm Protection Plan Cost Recovery Clause, *Joint Motion for Approval of Settlement Agreement*, Att. A at ¶ 3 (Aug. 10, 2020) ("August 10 Stipulation").

⁵ Order No. PSC-2020-0304-PCO-EI, dated September 4, 2020, *Second Order Modifying Order Establishing Procedure*.

are quite low, and there are a host of broader cost categorization, allocation, and estimation issues that are best addressed comprehensively in the context of the Duke general base rate case the utility expects to file in 2021 for rates to become effective in 2022, which is precisely what the August 10 Stipulation intends.

II. Background

In 2019, Florida enacted § 366.96, F.S., which requires the state’s electric utilities to develop and submit ten-year Storm Protection Plans for Commission approval. The statute further required the establishment of an annual SPP cost recovery clause to recover eligible costs from consumers subject, among other conditions, to a prohibition against duplicative recovery of such costs through utility base rates and the new cost recovery clause.⁶ The Commission subsequently adopted Rules 25-6.030 and 25-6.031, F.A.C., concerning implementation of the statute’s requirements.

On April 10, 2020, DEF filed its initial SPP plan for the years 2020-2029 in Docket No. 20200069-EI. Substantial discovery was undertaken regarding the scope and contents of the proposed plan, and questions were raised as well regarding programs whose capital or operating costs are currently recovered in DEF base rates. Those rates were last set through Commission Order No. PSC-2017-0451-AS-EU, dated November 20, 2017, which approved the 2017 Second Revised and Restated Stipulation and Settlement Agreement (“2017 RRSSA”).⁷ The 2017 RRSSA pre-dated the enactment of § 366.96, F.S., and did not in any sense contemplate the enactment of the provisions contained in the 2019 legislation.

⁶ See Section 366.96(7) and (8), F.S.

⁷ The 2017 RRSSA was a comprehensive rate agreement that included Duke, the Office of Public Counsel (“OPC”), PCS, the Florida Industrial Power Users Group (“FIPUG”), the Florida Retail Federation (“FRF”), and the Southern Alliance for Clean Energy (“SACE”).

The July 17 Stipulation, which included DEF, OPC, and PCS as signatories, looked to establish the reasonable SPP costs that Duke could recover in its SPPCRC for the year 2021 based on findings proposed in that stipulation concerning certain program capital and operating costs that, for the 2021 clause recovery purposes, would be deemed both eligible for clause recovery and incremental to costs included in Duke's base rates. The signatory parties expressly assumed that Duke would seek changes in its base rates effective January 2022 that would formally distinguish base rate and SPP clause-eligible costs⁸ and recognized that the DEF-proposed revenue requirement for the SPPCRC in 2021 was a comparatively modest \$9.9 million.⁹

Because the 2017 RRSSA rate settlement did not include specific findings concerning the rate treatment of costs that the 2019 statute subsequently defined as clause eligible, the program cost treatments proposed in the August 10 Stipulation provide a practicable pathway for setting the SPPCRC in 2021. In the judgment of PCS, the signatory parties reasonably considered the concessions proposed in the August 10 Stipulation to be far preferable to potentially contentious litigation of eligible and incremental program costs that should be largely or completely eclipsed in next year's comprehensive base rate proceeding. By its vote on September 1, the Commission plainly agreed with that assessment.

Similarly, the SPP statute directs utilities to allocate costs among customer classes for SPPCRC purposes according to the approach most recently approved by the Commission, which in Duke's case is the 2017 RRSSA.¹⁰ In the now-approved July 17 Stipulation, again to mitigate the potential for contentious litigation of issues that would likely be rendered moot the following

⁸ See July 17 Stipulation at ¶ 9.

⁹ The rate impact assessment that Duke included in its SPP filing expressly noted that expected SPP clause recoveries beginning in 2022 would be offset by existing storm protection program dollars that would be shifted from base rates to SPPCRC recovery. See Exh. JWO-2 at 40.

¹⁰ § 366.96(8), F.S.

year, DEF and PCS agreed that potential cost allocation questions could effectively be deferred to the broader rate debate in 2021, during which Duke is expected to categorically distinguish base rate and SPPCRC eligible costs.¹¹

On July 24, 2020, Duke filed its initial proposed SPPCRC recovery factors taking into account the provisions of the then-pending July 17 stipulation. The testimony of DEF witness Foster proposed SPPCRC cost recovery factors for each customer service class for calendar year 2021.¹² Mr. Foster explained how he developed the demand and energy allocators used in his analysis.¹³ That included heavy reliance on a 2018 DEF load research study, which was submitted to the Commission but which has not been subject to rate case level scrutiny, and a DEF forecast of projected energy sales for calendar 2021 that has not been vetted at all.¹⁴

Mr. Foster further explained that Duke proposed to recover SPP costs through an energy-based factor for all customer classes because Duke had consistently presented expected customer rate impacts in such terms during the workshops leading to the establishment of the Commission's SPP rules, and such rate treatment was consistent with the recovery method that the Commission had approved for Duke, FPL, and Gulf Power hurricane storm restoration costs.¹⁵ Also, since Walmart had previously offered its rate design proposal in the SPP docket, Mr. Foster's rebuttal testimony in that docket disagreed with Walmart's proposal.¹⁶ Mr. Foster explained that Duke had allocated SPP costs to rate classes on a demand basis, consistent with cost causation principles,

¹¹ July 17 Stipulation at ¶ 7(b).

¹² Direct Testimony of Thomas G. Foster, Exh. No. 8 (TGF-1) at 14-15 (July 24, 2020) ("Foster Testimony").

¹³ Exh. No. 8 (TGF-1) at 13-14 (Forms 5P and 6P).

¹⁴ *Id.* at 13 (Form 5P).

¹⁵ Foster Testimony at 8-9.

¹⁶ Docket No. 20200069-EI, Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC, *Rebuttal Testimony of Thomas G. Foster* at 7-10 (July 1, 2020).

that the Commission has considerable latitude in designing rates, and that recovering SPP costs on an energy basis was reasonable and consistent with prior related Commission actions.¹⁷

III. Argument

The Commission Should Approve the August 10 Stipulation As Filed.

The August 10 Stipulation provides a reasonable basis for resolving all remaining DEF matters in the SPPCRC docket. As with all settlements, it is presented as an integrated package representing a series of concessions among the signatory parties that produces a result overall that is just, reasonable, and in the public interest. The Commission should approve the stipulation without any modification. In particular, the Commission should not deny the pending motion and upend the settlement that was reached simply to substitute Walmart's preferred rate design for the SPPCRC factor.

The fundamental premise of Walmart's position in opposition to the proposed August 10 Stipulation (*i.e.*, that Walmart's, rather than Duke's, proposed rate design is necessary to comply with cost causation principles) is false. As noted above, Duke witness Foster agreed with Walmart that SPP capital costs are largely fixed and should be allocated on a demand basis, and that is how Duke's analysis allocated the SPP costs. PCS agrees with this basic premise for allocating SPP costs among customer classes as well, but also agrees with DEF that this does not dictate a particular rate design as necessary for recovering the revenue requirement assigned to a customer class. Mr. Foster is correct that the Commission has wide discretion in rate design matters.¹⁸ Mr. Foster points specifically to Commission-approved energy-based charges for hurricane restoration

¹⁷ *Id.* at 8-10.

¹⁸ *Id.* at 10.

costs for various utilities, but there are ample other examples of the Commission adopting pragmatic rate designs.

Notably, in the 2017 RRSSA, the Commission approved a Generation Base Rate Adjustment (“GBRA”) associated with the construction of the Citrus combined cycle units and a Solar Base Rate Adjustment (“SoBRA”) for new large-scale DEF solar projects. Citrus (baseload and intermediate capacity) and the resulting solar projects (primarily energy producing) have very different production, capability, and availability profiles, but the rate increases for both are accomplished pursuant to the RRSSA by an equal percentage increase to energy and demand charges.¹⁹ Those rate designs are not directly or indirectly tied to the production cost allocation method adopted in that agreement (*i.e.*, 12 CP and 1/13th AD).²⁰ Also, virtually every base rate case involves an extensive discussion of multiple factors that influence the level of utility fixed costs that should be recovered in residential customer charges.

Duke’s calculation of SPP recovery factors for each customer class on an energy basis effectively assumes an average customer load factor for the class.²¹ Individual customer loads in each class will fall on a wide spectrum above and below that average value and may vary from month to month. As Mr. Foster correctly explained, this does not mean that the rate design is inappropriate or inconsistent with cost causation principles.²² The illustration offered by Walmart witness Chriss of two customers exhibiting varying load factors is correct mathematically, but it does not describe all of the factors that go into rate design.²³

¹⁹ See 2017 RRSSA ¶¶ 14(b) & 15(e).

²⁰ *Id.*, Exh. 1, p. 2 of 2, ¶ 4.

²¹ Exh. No. 8 (TGF-1) at 13 (Form 5P), n.1.

²² Foster Testimony at 8-9.

²³ Chriss Testimony at 9-10.

Here, establishing initial storm protection plans and cost recovery factors for all major electric utilities at once presents an enormous challenge for the Commission and all stakeholders, particularly since we currently lack a foundational base rate filing to create a firm starting point for identifying eligible and incremental costs that are reasonable. Duke's proposed SPP allocation method has a cost causation basis but is premised upon data and forecasts that have not been properly vetted. Each of these critical concerns should be resolved as part of the DEF base rate filing next year (which should be accompanied by SPP project level detail updates from Duke under the proposed Stipulation).

The suite of proposed stipulations involving Duke, OPC, and PCS collectively provide a rational path forward, and this applies to the rate design for the 2021 SPPCRC recovery factors proposed in Duke's testimony and the proposed Stipulation. Rate design is the last ratemaking step after determining what costs to recover in the clause, whether they are reasonable, and how they should be allocated among customer classes. As described above, considerable progress has been made, but there are substantial factual questions still to be addressed and additional factors that must be assessed in a broader context next year in the base rate case. Recovering the SPP costs in 2021 on an energy basis may not be necessary, but it is reasonable as part of the overall stipulations addressing the issues facing stakeholders in the SPP and SPPCRC dockets, and it is also consistent with related Commission actions.

CONCLUSION

For the reasons set forth above, PCS urges the Commission to approve the August 10 Stipulation as filed and without any modifications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Statement has been furnished by electronic mail and/or U.S. Mail this 11th day of September, 2020, to the following:

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