

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** March 24, 2022

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Accounting and Finance (Cicchetti, Buys) *ALM*  
Division of Engineering (Ellis) *TB*  
Office of the General Counsel (DuVal) *JSC*

**RE:** Docket No. 20180047-EI – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Duke Energy Florida, LLC.

**AGENDA:** 04/5/22 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** Graham, Clark, Passidomo

**PREHEARING OFFICER:** Passidomo

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

This docket was opened to consider the impacts of the Tax Cuts and Jobs Act of 2017 on Duke Energy Florida, LLC (DEF). In Order No. PSC-2019-0053-FOF-EI, the Commission approved stipulated positions agreed upon by the Office of Public Counsel (OPC) and DEF that resolved all issues in the docket.<sup>1</sup> The Commission left the docket open to consider feedback from the Internal Revenue Service (IRS) regarding the treatment of excess accumulated deferred income taxes (EDIT) and the cost of removal (COR) and until all true-ups and offsets were fully implemented. The true-ups and offsets have been fully implemented and the only item left for the Commission to address is the feedback from the IRS.

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<sup>1</sup>Order No. PSC-2019-0053-FOF-EI, issued February 1, 2019, in Docket No. 20180047-EI, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Duke Energy Florida, LLC.*

Docket No. 20180047-EI

Date: March 24, 2022

On March 9, 2022, DEF and the OPC filed a joint motion requesting that the Commission approve DEF's proposed treatment of the EDIT associated with the COR, as per IRS guidance, and close this docket.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes.

## Discussion of Issues

**Issue 1:** Should the Commission approve DEF's proposed treatment of the excess accumulated deferred income taxes (EDIT) associated with the cost of removal (COR) as satisfying the requirements set forth in Order No. PSC-2019-0053-FOF-EI?

**Recommendation:** Yes. Staff recommends that the Commission approve DEF's proposed treatment of the EDIT associated with the COR as satisfying the requirements set forth in Order No. PSC-2019-0053-FOF-EI. (Cicchetti)

**Staff Analysis:** At the time the Commission issued Order No. PSC-2019-0053-FOF-EI, there was uncertainty concerning the IRS's position regarding the COR and the determination of protected and unprotected EDIT. The Commission ordered that the instant docket remain open to consider feedback from the IRS regarding the treatment of EDIT relating to the COR. In the joint motion, DEF and the OPC proposed a reasonable resolution of the COR EDIT issue based on information from the IRS as reflected in Private Letter Rulings (PLR) 202033002 and 202124003. The adjustment to accumulated deferred income taxes for COR results in an EDIT of approximately \$68 million to be recovered from customers. DEF's EDIT related to COR will be amortized at the same rate as the protected EDIT. DEF's amortization of EDIT related to COR at the same rate as the protected EDIT is not a normalization violation. Furthermore, as stated in the joint motion:

“The amortization of both protected and unprotected EDIT has already been incorporated in the 2022-2024 revenue requirement in the 2021 Settlement. Accordingly, DEF's proposed treatment of the EDIT related to COR has no immediate impact on customer rates.”<sup>2</sup>

Staff has reviewed the PLRs and agrees with DEF and OPC that DEF's proposed treatment of COR will not result in a normalization violation. Based on the foregoing, staff recommends that the Commission approve DEF's treatment of the EDIT associated with the COR as satisfying the requirements set forth in Order No. PSC-2019-0053-FOF-EI.

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<sup>2</sup>Joint Motion By Duke Energy Florida, LLC, and Citizens Of Florida Through Office Of Public Counsel To Approve Treatment Of Cost Of Removal And Close The Docket, Section 9, page 4.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (DuVal)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.