

144 FERC ¶ 61,101  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Duke Energy Florida, Inc.

Docket Nos. ER13-1356-001

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED RATES

(Issued August 5, 2013)

1. On April 26, 2013, as amended June 6, 2013, Florida Power Corporation, a subsidiary of Duke Energy Corporation, submitted its annual cost factor updates that implement changes in certain cost components for interchange services in Service Schedules A, B, F, G, H, I, J, OS, and RE<sup>1</sup> and its Contract for Assured Capacity and Energy with Florida Power & Light Company. On April 29, 2013, in Docket No. ER13-1358-000, Florida Power Corporation filed a notice of succession indicating that it had changed its name to Duke Energy Florida, Inc. (Duke Energy Florida) effective April 29, 2013.<sup>2</sup> In this order, the Commission conditionally accepts the proposed cost factor updates for filing and suspends them for a nominal period, to become effective May 1, 2013, as requested, subject to refund and subject to the outcome of complaints filed in Docket Nos. EL12-39-000 and EL13-63-000, as discussed below.

**I. Background and Description of the Filings**

2. Duke Energy Florida submits its annual cost factor updates that implement contractually authorized changes in certain cost components for interchange services. These updates include changes to capacity charges, reservation fees and energy adder for interchange services. The rates also include an existing return on equity (ROE) of 10.8 percent. Duke Energy Florida makes changes to the following Service Schedules and contracts: (1) Service Schedule A – Emergency Services; (2) Service Schedule B –

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<sup>1</sup> These Service Schedules are referenced in FERC Rate Schedule Nos. 80, 81, 82, 86, 88, 91, 92, 94, 95, 101, 102, 103, 104, 105, 108, 119, 122, 128, 139, 141, 148, 171, 175, and 177.

<sup>2</sup> On June 25, 2013, the Commission accepted Duke Energy Florida's notice of succession, effective April 29, 2013. See *Duke Energy Progress, Inc. and Duke Energy Florida, Inc.*, 143 FERC ¶ 61,270 (2013).

Short Term Firm Service; (3) Service Schedule F – Assured Capacity and Energy Service; (4) Service Schedule G – Backup Service; (5) Service Schedule H – Reserve Service; (6) Service Schedule I – Regulation Service; (7) Service Schedule J – Negotiated Interchange Service to Tampa Electric Company; (8) Service Schedule OS – Opportunity Sales; (9) Service Schedule RE – Replacement Energy Service; and (10) Contract for Assured Capacity and Energy with Florida Power & Light Company.

3. Duke Energy Florida explains that these updates are based on calendar year 2012 data and reflect the same methodology that was used in its 2012 filing, which the Commission accepted.<sup>3</sup> Duke Energy Florida states that the updates reflect an increase in Administrative & General Expenses allocated to production, representing costs associated with the merger between Duke Energy Corporation and Progress Energy, Inc. and resulting accounting changes.<sup>4</sup>

4. On June 6, 2013, Duke Energy Florida filed an amendment to the April 26, 2013 filing removing \$52.4 million in merger-related costs that it inadvertently included in the annual cost factor update filing. It states that the revised rates entirely remove and replace those charges.

5. Finally, Duke Energy Florida requests a waiver of the Commission's 60-day prior notice requirement, so that the updated charges, fees and energy adder for interchange services may become effective May 1, 2013, in accordance with the terms of those schedules. It states that waiver is necessary because the actual data required to calculate the changes could not be compiled and reviewed 60 days prior to May 1, 2013.

## **II. Notice of Filings and Responsive Pleadings**

6. Notice of the April 26, 2013 filing was published in the *Federal Register*,<sup>5</sup> with interventions or protests due on or before May 20, 2013.

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<sup>3</sup> See *Progress Energy Service Co.*, Docket No. ER12-1646-000 (June 28, 2012) (unpublished letter order).

<sup>4</sup> See *Duke Energy Corp. and Progress Energy, Inc.*, 136 FERC ¶ 61,245, *order on compliance*, 137 FERC ¶ 61,210 (2011), *order on further compliance*, 139 FERC ¶ 61,194 (2012).

<sup>5</sup> 78 Fed. Reg. 26,348 (2013).

7. Notice of the June 6, 2013 amended filing was published in the *Federal Register*,<sup>6</sup> with interventions or protests due on or before June 27, 2013.

8. A timely motion to intervene and limited protest was filed by the Florida Municipal Power Agency (FMPA). On June 27, 2013, FMPA filed an additional protest. The Reedy Creek Improvement District filed an out-of-time motion to intervene on June 28, 2013. On July 11, 2013, Duke Energy Florida filed an answer to FMPA's June 27, 2013 protest.

9. In its May 20, 2013 protest, FMPA objected to the inclusion of merger-related costs in Duke Energy Florida's cost factor updates as a violation of the conditions placed on the merger of Duke Energy Corporation and Progress Energy, Inc.<sup>7</sup> In its amended filing, Duke Energy Florida acknowledged that these merger-related costs had been inadvertently included in the original annual cost updates and submitted a revised annual cost update to remove \$52.4 million of merger and integration costs from the FERC Form 1-reported Administrative and General Expenses. FMPA states that the revisions adequately address its concern regarding the inclusion of merger-related costs.<sup>8</sup>

10. In its protest, FMPA also states that Duke Energy Florida's requested rates are overstated because Duke Energy Florida uses a 10.8 percent ROE to calculate its rates, which FMPA claims is overstated and unsupported. FMPA asserts that the proper ROE is much lower, as demonstrated by the evidence and arguments presented in its complaints under section 206 of the Federal Power Act<sup>9</sup> against Duke Energy Florida.<sup>10</sup> Therefore, FMPA requests that the Commission: (1) accept any ROE subject to the outcome of the section 206 proceedings; and (2) suspend the rate, establish a refund effective date, and establish hearing and settlement proceedings.<sup>11</sup> In the June 6, 2013 amended filing, Duke Energy Florida states that the justness and reasonableness of its current ROE is not an issue in this proceeding and need not be addressed by the Commission.

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<sup>6</sup> 78 Fed. Reg. 36,764 (2013).

<sup>7</sup> FMPA May 20, 2013 Protest at 1 (citing *Duke Energy Corp. and Progress Energy, Inc.*, 136 FERC ¶ 61,245 at PP 169-170).

<sup>8</sup> FMPA June 27, 2013 Protest at 1.

<sup>9</sup> 16 U.S.C. § 824e (2006).

<sup>10</sup> See Docket Nos. EL12-39-000 and EL13-63-000.

<sup>11</sup> FMPA May 20, 2013 Protest at 5-6; FMPA June 27, 2013 Protest at 2-3.

### **III. Discussion**

#### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure<sup>12</sup> the timely, unopposed motion to intervene of FMPA serves to make it a party to this proceeding.

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure<sup>13</sup> the Commission will grant the Reedy Creek Improvement District's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>14</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Duke Energy Florida's answer and will, therefore, reject it.

#### **B. Commission Determination**

14. In the instant proceeding, Duke Energy Florida's cost factor updates include a challenged ROE, which is the subject of two section 206 complaints currently pending before the Commission in Docket Nos. EL12-39-000 and EL13-63-000. The Commission will address the merits of Duke Energy Florida's ROE in those proceedings. Accordingly, the Commission will conditionally accept the cost factor updates for filing and suspend them for a nominal period, to become effective May 1, 2013, subject to refund and subject to the outcome of the complaints in Docket Nos. EL12-39-000 and EL13-63-000.

15. We also find that Duke Energy Florida's removal of merger-related costs from its annual cost factor update in its June 6, 2013 amendment adequately addresses FMPA's concerns regarding those costs.

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<sup>12</sup> 18 C.F.R. § 385.214 (2012).

<sup>13</sup> 18 C.F.R. § 385.214(d) (2012).

<sup>14</sup> 18 C.F.R. § 385.213(a)(2) (2012).

16. We will grant waiver of the prior notice requirement to make the update effective May 1, 2013, as requested. We find good cause exists because the rate schedules covered by this filing provide for updates to be effective on May 1 of each year.<sup>15</sup>

The Commission orders:

The proposed cost factor updates are hereby conditionally accepted, suspended for a nominal period, to become effective May 1, 2013, subject to refund and subject to the outcome of the complaints in Docket Nos. EL12-39-000 and EL13-63-000.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>15</sup> *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, at 61,338 (stating the Commission will grant waiver of notice when the effective date is prescribed by an agreement on file with the Commission), *order on reh'g*, 61 FERC ¶ 61,089 (1992).