

147 FERC ¶ 61,263  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Florida, Inc.

Docket No. ER14-1832-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED RATES

(Issued June 30, 2014)

1. On April 30, 2014, Duke Energy Florida, Inc. (Duke Energy Florida), a subsidiary of Duke Energy Corporation, submitted its annual updates of the capacity charges, reservation fees and energy adder for interchange services provided by Duke Energy Florida to its interchange customers. In this order, the Commission conditionally accepts the proposed updates for filing and suspends them for a nominal period, to become effective May 1, 2014, 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.<sup>1</sup>

**I. Description of the Filing**

2. Duke Energy Florida is proposing changes in certain cost components for interchange services. These updates include changes to the capacity charges, reservation fees and energy adder for interchange services. The rates also include an existing return on equity (ROE) of 10.8 percent.<sup>2</sup> Duke Energy Florida is proposing changes to the following Service Schedules and contracts: (1) Service Schedule A – Emergency Services; (2) Service Schedule B – 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;

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<sup>1</sup> On June 19, 2014, the Commission consolidated these two complaint proceedings and established hearing and settlement judge procedures to resolve them. *Seminole Elec. Coop., Inc. and Florida Municipal Power Agency v. Duke Energy Florida, Inc.*, 147 FERC ¶ 61,237 (2014).

<sup>2</sup> Transmittal Letter, Exh. G at 2, line 38.

Docket No. ER14-1832-000

(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.<sup>3</sup>

3. Duke Energy Florida explains that these updates are based on calendar year 2013 data and reflect the same general methodology that was used in its 2013 update filing, which the Commission accepted.<sup>4</sup>

4. 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, 2014, in accordance with the terms of those schedules. Duke Energy Florida states that waiver is necessary because the actual data required to calculate the charges could not be compiled and reviewed 60 days prior to May 1, 2014. Duke Energy Florida asserts that waiver is consistent with the Commission's waiver of notice guidelines because the rate schedules impacted by the filing provide for charges to be updated effective annually on May 1.<sup>5</sup>

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

5. Notice of the April 30, 2014 filing was published in the *Federal Register*,<sup>6</sup> with interventions or protests due on or before May 22, 2014.

6. A timely motion to intervene and protest was filed by the Florida Municipal Power Agency (FMPA) and Seminole Electric Cooperative, Inc. (Seminole) (FMPA/Seminole). On June 6, 2014, Duke Energy Florida filed a motion for leave to answer and answer to the FMPA/Seminole protest. The Reedy Creek Improvement District filed an out-of-time motion to intervene on June 26, 2014.

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<sup>3</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>4</sup> Transmittal Letter at 2. Duke Energy Florida refers to *Duke Energy Florida, Inc.*, 144 FERC ¶ 61,101, at P 14 (2013).

<sup>5</sup> Transmittal Letter at 5.

<sup>6</sup> 79 Fed. Reg. 26,422-23 (2014).

Docket No. ER14-1832-000

7. In their May 22, 2014 protest, FMPA/Seminole argue that Duke Energy Florida failed to meet its burden of proof under section 205 of the Federal Power Act (FPA)<sup>7</sup> to demonstrate that its proposed change in a stated rate is just and reasonable and not unduly discriminatory or preferential. FMPA/Seminole state that the filing does not include any testimony to support the change in the rate used in Duke Energy Florida's various interchange agreements. FMPA/Seminole highlight Duke Energy Florida's statement that the "cost support sheets reflect the same general methodology used in the 2012 cost support exhibits that were accepted for filing in 2013 ...."<sup>8</sup> FMPA/Seminole point out that this methodology includes an ROE that is alleged to be unjust and unreasonable in two complaints that are currently pending before the Commission in Docket Nos. EL12-39-000 and EL13-63-000, respectively.<sup>9</sup> FMPA/Seminole emphasize that Duke Energy Florida's proposed ROE is not supported with any current analysis. FMPA/Seminole state that, while Duke Energy Florida refers to using "the same general methodology" it had used as to the 2013 update filing, Duke Energy Florida does not indicate "what it did differently, what it did the same, why changes were made, or what the effect was."<sup>10</sup> Thus, FMPA/Seminole contend that, while the proposed rate is a rate decrease, the proposed rate may still be too high, and Duke Energy Florida has not shown that the proposed rate is just and reasonable.

8. FMPA/Seminole propose two solutions. First, FMPA/Seminole propose that the Commission suspend the filing, establish a refund effective date, and establish hearing and settlement proceedings. Alternatively, should the Commission choose not to set the matter for hearing, FMPA/Seminole urge the Commission to conditionally accept the filing and nominally suspend it subject to refund and the outcome of the complaints in Docket Nos. EL12-39-000 and EL13-63-000. FMPA/Seminole state that the latter approach would be consistent with the Commission's order on Duke Energy Florida's 2013 update.<sup>11</sup>

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<sup>7</sup> 16 U.S.C. § 824d (2012).

<sup>8</sup> FMPA/Seminole Protest at 5 & n.11 (quoting Transmittal Letter at 2).

<sup>9</sup> *Id.* at 2, 6-7. *See supra* note 1.

<sup>10</sup> FMPA/Seminole Protest at 6-7.

<sup>11</sup> *Id.* at 2, 7.

Docket No. ER14-1832-000

9. In its answer, Duke Energy Florida states that for purposes of this filing, it used its existing ROE, that is, the same 10.8 percent system-wide ROE that was initially established by settlement and approved by the Commission on July 19, 1996 in Docket No. ER95-634-000.<sup>12</sup> Duke Energy Florida states that the interchange agreements filed in the instant proceeding did not include any changes to Duke Energy Florida's existing, system-wide ROE and any challenger to that ROE must therefore bear the burden of proof that the existing ROE is unjust and unreasonable.<sup>13</sup>

10. Duke Energy Florida avers that it applied the same methodology previously approved by the Commission.<sup>14</sup> Duke Energy Florida confirms that any differences between cost support sheets in this proceeding and those included in the prior interchange filing are not attributable to any change in formula or methodology. Duke Energy Florida states that this is evident from the fact that the two filings contain the same formulary calculations. Additionally, Duke Energy Florida states that it has provided all cost support required by Commission rules.<sup>15</sup> Duke Energy Florida asserts that it provided extensive cost data in support of its filing as well as a narrative explanation of its calculations. Duke Energy Florida states that its cost support contains the same level of detail that was included in prior filings updating interchange service charges, which the Commission has consistently accepted.<sup>16</sup>

11. Finally, Duke Energy Florida asks the Commission to either: (1) determine that Duke Energy Florida's existing ROE is not an issue in this proceeding and accept the filing effective May 1, 2014; or (2) accept the filing effective May 1, 2014, subject to the outcome of the ROE dispute at issue in the complaint proceedings in Docket Nos. EL12-39-000 and EL13-63-000.<sup>17</sup>

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<sup>12</sup> Duke Energy Florida Answer at 3 & n.4.

<sup>13</sup> *Id.* at 4 & n.5 (citations omitted).

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 5-6 & n.9 (citing 18 C.F.R. § 35.13(a)(ii)(2013)).

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.*

Docket No. ER14-1832-000

### **III. Discussion**

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

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>18</sup> the timely, unopposed motion to intervene of FMPA and Seminole serves to make them parties to this proceeding.

13. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,<sup>19</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.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>20</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Duke Energy Florida's answer because it has assisted us in our decision-making process.

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

15. At the outset, notwithstanding objection by FMPA/Seminole, we find that Duke Energy Florida's filing substantially complies with the threshold filing requirements of section 35.13 of the Commission's regulations.<sup>21</sup> Additionally, in response to protestors' concerns, Duke Energy Florida confirms that it has applied the same methodology and the same formulaic calculations that have been previously approved by the Commission.<sup>22</sup>

16. However, Duke Energy Florida's filing includes an ROE, which, as noted above, is the subject of two section 206 complaints currently pending before the Commission in consolidated Docket Nos. EL12-39-000 and EL13-63-000.<sup>23</sup> The Commission will address the merits of Duke Energy Florida's ROE in those consolidated proceedings. Consistent with the Commission's action as to Duke Energy Florida's 2013 update, we

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<sup>18</sup> 18 C.F.R. § 385.214 (2013).

<sup>19</sup> 18 C.F.R. § 385.14(d) (2013).

<sup>20</sup> 18 C.F.R. § 385.213(a)(2) (2013).

<sup>21</sup> *See* 18 C.F.R. § 35.13(a)(ii)(2013).

<sup>22</sup> Duke Energy Florida Answer at 5-6.

<sup>23</sup> *See supra* note 1.

Docket No. ER14-1832-000

will conditionally accept Duke Energy Florida's updates for filing and suspend them for a nominal period, to become effective May 1, 2014, subject to refund and subject to the outcome of the complaints in consolidated Docket Nos. EL12-39-000 and EL13-63-000.<sup>24</sup>

17. We will grant waiver of the prior notice requirement to make the update effective May 1, 2014, 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>25</sup>

The Commission orders:

The proposed cost factor updates are hereby conditionally accepted, suspended for a nominal period, to become effective May 1, 2014, subject to refund and subject to the outcome of the complaints in consolidated 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>24</sup> *Duke Energy Florida, Inc.*, 144 FERC ¶ 61,101 at P 14.

<sup>25</sup> *Central Hudson Gas and Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338 (stating that 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).