

150 FERC ¶ 61,118
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Duke Energy Carolinas, LLC

Docket Nos. ER15-234-000
ER15-689-000
(Consolidated)

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS,
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES AND
CONSOLIDATING PROCEEDINGS

(Issued February 20, 2015)

1. In this order, we accept for filing Duke Energy Florida, Inc.'s (Duke Energy Florida)¹ proposed revisions to Schedule 10-A of its Open Access Transmission Tariff (OATT),² suspend them for a nominal period, to become effective December 29, 2014, as requested, subject to refund. We also establish hearing and settlement judge procedures. In addition, we consolidate Docket Nos. ER15-234-000 and ER15-689-000 for purposes of settlement, hearing and decision.

¹ Duke Energy Carolinas, LLC filed on behalf of its affiliate Duke Energy Florida. Duke Energy Florida is the successor in interest to Florida Power Corporation. As a result of a merger, Duke Energy Florida has a joint OATT with Duke Energy Carolinas, LLC and Duke Energy Progress, Inc. that the Commission conditionally accepted in an order dated June 8, 2012. *See Duke Energy Corp.*, 139 FERC ¶ 61,193 (2012).

² Duke Energy Florida filed proposed revisions to Schedule 10-A of its OATT, including new Exhibit DEF-9, in Docket No. ER15-689-000. *See* proposed revised Schedule 10-A, Network Integration Transmission Service - FPC Zone under Tariff Volume No. 4, Duke Energy Carolinas, LLC Joint Open Access Transmission Tariff.

I. Background

2. When Duke Energy Florida first implemented its formula rate on January 1, 2008,³ it included a provision that allowed for a return on 50 percent of Construction Work In Progress (CWIP) for 112 transmission projects that were designed to ensure and enhance reliability and mitigate congestion on its transmission system.⁴ Subsequently, in Docket No. ER13-1105-000, the Commission accepted and suspended, subject to hearing and settlement procedures, Duke Energy Florida's proposed addition of 21 new projects.⁵ Duke Energy Florida and its customers reached a partially contested settlement in that proceeding, which is currently pending before the Commission.

3. On October 29, 2014, Duke Energy Florida filed in Docket No. ER15-234-000 to recover a return on 50 percent of CWIP on 23 additional projects. On November 20, 2014, Duke Energy Florida filed errata to correct errors made in its October 29, 2014 filing, including reducing the estimated costs for the 23 additional projects from \$190,485,789 to \$175,362,521 to reflect the revised scope of several projects.⁶ According to Duke Energy Florida, the 23 transmission projects at issue in this proceeding are the product of the comprehensive Florida Reliability Coordinating Council regional planning process and are necessary to ensure and enhance reliability and meet customer growth.⁷ Duke Energy Florida requests a December 29, 2014 effective date.

4. On December 9, 2014, Commission Staff issued a deficiency letter in Docket No. ER15-234-000 requesting additional information. In response, on December 22, 2014, Duke Energy Florida filed an eTariff record (docketed in Docket No. ER15-689-000) to add an Exhibit DEF-9 (Projects Approved for CWIP Recovery) to

³ The formula rate was accepted via delegated letter order on December 17, 2007. *See Fla. Power Corp.*, Docket No. ER08-105-000 (Dec. 17, 2007) (delegated letter order).

⁴ Duke Energy Florida October 29, 2014 Transmittal, Docket No. ER15-234-000 at 2.

⁵ *Duke Energy Carolinas, LLC*, 143 FERC ¶ 61,168 (2013).

⁶ Duke Energy Florida November 20, 2014 Transmittal, Docket No. ER15-234-000 at 1-2.

⁷ Duke Energy Florida October 29, 2014 Transmittal, Docket No. ER15-234-000 at 2.

Schedule 10-A. Exhibit DEF-9 includes not only the 23 new projects at issue in this proceeding, but all projects for which Duke Energy Florida previously obtained authority to include in rate base. Duke Energy Florida requests a December 29, 2014 effective date for Exhibit DEF-9. Duke Energy Florida states that it will update this exhibit each time it proposes new projects for CWIP recovery.

II. Notice of Filing and Responsive Pleadings

5. Notice of Duke Energy Florida's October 29, 2014 filing in Docket No. ER15-234-000 was published in the *Federal Register*, 79 Fed. Reg. 66,718 (2014), with interventions and protests due on or before November 19, 2014. Reedy Creek Improvement District filed a timely motion to intervene. Seminole Electric Cooperative, Inc. (Seminole) filed a timely motion to intervene and conditional protest and Florida Municipal Power Agency (Florida Municipal) filed a timely motion to intervene and limited protest.

6. Notice of Duke Energy Florida's December 22, 2014 filing in Docket No. ER15-689-000 was published in the *Federal Register*, 79 Fed. Reg. 78,849 (2014), with interventions and protests due on or before January 12, 2015. Seminole filed a timely motion to intervene, conditional protest and motion to consolidate. Florida Municipal filed a timely motion to intervene and limited protest. On January 13, 2015, Reedy Creek Improvement District filed a motion to intervene out-of-time.

7. Florida Municipal and Seminole are not opposed to Duke Energy Florida's proposed addition of 23 new projects to those allowed to be included in rate base. However, Florida Municipal asserts that the determination of eligibility for CWIP treatment is a fact-specific inquiry that the Commission and Duke Energy Florida customers must have the opportunity to verify.⁸ Florida Municipal states that, among other things, facilities must be network facilities and may not include facilities that are, or should be, directly assigned to specific customers. Additionally, Florida Municipal asserts that projects that have been cancelled in whole or in part, and projects that are not yet required, should not be included. Florida Municipal argues that a list of facilities, without more information about those facilities, as Duke Energy Florida filed in this proceeding, lacks sufficient information to determine CWIP eligibility.⁹ Similarly, Seminole seeks to determine via discovery to what extent the 23 projects are appropriate candidates for CWIP recovery.¹⁰ Seminole states that it has conferred with Duke Energy

⁸ Florida Municipal Limited Protest, Docket No. ER15-234-000 at 4.

⁹ *Id.*

¹⁰ Seminole Conditional Protest, Docket No. ER15-234-000 at 3.

Florida and forwarded data requests regarding the 23 new transmission projects for which Duke Energy Florida seeks CWIP recovery.¹¹ According to Seminole, Duke Energy Florida is cooperating in that effort, including facilitating access to Critical Energy Infrastructure Information material.

8. Seminole states that it does not oppose the requested December 29, 2014 effective date, but requests that the filing be suspended for a nominal period, subject to refund, pending the outcome of discovery and of settlement procedures, to discuss issues that may arise as to any of the remaining projects under consideration, with a hearing only to be held if the settlement procedures are not successful.

9. Seminole also requests that the Commission consolidate Docket No. ER15-689-000 with Docket No. ER15-234-000.¹² It explains that while Docket No. ER15-689-000 contains Duke Energy Florida's corrected CWIP filing, the evidence in support of the CWIP filing is submitted only in Docket No. ER15-234-000. Therefore, it suggests that the proceedings be consolidated for resolution of both proceedings.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), the Commission will grant 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.

B. Hearing and Settlement Judge Procedures

12. Duke Energy Florida's filings raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

¹¹ *Id.* at 3-4.

¹² Seminole Conditional Protest, Docket No. ER15-689-000 at 5.

13. Our preliminary analysis indicates that Duke Energy Florida's proposed tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Duke Energy Florida's proposed tariff revisions for filing, suspend them for a nominal period, make them effective December 29, 2014, subject to refund, and set them for hearing and settlement judge procedures. Given the common issues of fact and law, we will consolidate Docket Nos. ER15-234-000 and ER15-689-000 for purposes of settlement, hearing, and decision.

14. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Duke Energy Florida's proposed tariff revisions are hereby accepted for filing and suspended for a nominal period, to become effective December 29, 2014, as requested, subject to refund, as discussed in the body of this order.

(B) Docket No. ER15-234-000 and Docket No. ER15-689-000 are hereby consolidated for purposes of settlement, hearing, and decision, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the

¹³ 18 C.F.R. § 385.603 (2014).

¹⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Duke Energy Florida's revised Schedule 10-A to its OATT and Duke Energy Florida's new Exhibit DEF-9 to include an additional 21 transmission expansion projects for CWIP recovery in its OATT formula rate. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.