152 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Carolinas, LLC
Florida Power Corporation

Docket No. ER13-1105-001

ORDER APPROVING CONTESTED SETTLEMENT

(Issued September 24, 2015)

1. On January 24, 2014, Duke Energy Florida, Inc. (Duke Energy Florida) filed an Offer of Settlement (Settlement), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,[1] among Duke Energy Florida, Seminole Electric Cooperative, Inc. (Seminole), and the Florida Municipal Power Agency (Florida Municipal) (collectively, Settling Parties). The Settlement addresses Duke Energy Florida's proposed revision to Schedule 10-A of its Joint Open Access Transmission Tariff (Joint OATT) to recover a return on 50 percent of costs associated with construction work in progress (CWIP) for 21 transmission expansion projects in the rate base of its formula transmission rate (Formula Rate).[2] At issue in this partially contested settlement[3] is whether a provision in the Joint Tariff (Attachment U) precludes the

[1] 18 C.F.R. § 385.602 (2015).

[2] The Commission conditionally accepted the Joint OATT in an order dated June 8, 2012. *Duke Energy Corp.*, 137 FERC ¶ 61,209 (2011); *Duke Energy Corp.*, 139 FERC ¶ 61,193 (2012). The Joint OATT is applicable to Duke Energy Carolinas, LLC (Duke Energy Carolinas) and Duke Energy Florida.

[3] *Duke Energy Carolinas, LLC*, Docket No. ER13-1105-001 (Mar. 6, 2014) (unpublished report finding that the Settlement was partially contested). On March 13, 2014, the Chief Judge terminated settlement judge procedures. *Duke Energy Carolinas, LLC*, Docket No. ER13-1105-001 (Mar. 13, 2014) (unpublished report).

inclusion in rate base of any costs associated with one of the 21 projects. As discussed below, we find that Attachment U to the Joint Tariff does not preclude the inclusion of 50 percent CWIP costs for this project because it is an upgrade to existing transmission facilities, rather than a new transmission facility that commenced service after June 1, 2010. We thus approve the Settlement.

I. Background

2. On March 15, 2013, Duke Energy Florida submitted under section 205 of the Federal Power Act (FPA),[4] proposed revisions to Schedule 10-A of the Joint OATT to recover a return on 50 percent of CWIP costs associated with 21 transmission expansion projects in the rate base of its Formula Rate. On May 24, 2013, the Commission accepted and suspended Duke Energy Florida's proposed tariff revisions to be effective July 2, 2013, subject to refund, and established hearing and settlement judge procedures.[5]

3. Subsequently, the Settling Parties and Commission Trial Staff (Trial Staff) engaged in settlement discussions resulting in the Settlement, which includes a Joint Stipulation of Facts executed and attested to by the Settling Parties. In the Joint Stipulation of Facts, the Settling Parties agree that the Joint OATT prescribes that:

> (i) the costs of radial transmission facilities that commenced service prior to June 1, 2010, including all upgrades thereto, are to be "rolled in" and recovered from all transmission customers under the formula transmission rate included in the [Joint] OATT, (ii) the costs of new radial transmission facilities (i.e., those facilities commencing service on and after June 1, 2010, and upgrades thereto) are not to be "rolled-in" and are to be excluded from the formula transmission rate, and (iii) whenever Duke Energy Florida constructs and owns a new radial transmission facility to serve a transmission customer's load, Duke Energy Florida is to directly assign the costs of such new radial transmission facility to such transmission customer.[6]

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[4] 16 U.S.C. § 824d (2012).

[5] *Duke Energy Carolinas, LLC*, 143 FERC ¶ 61,168, at PP 12-13 (2013).

[6] Joint Stipulation of Facts at ¶ 4.

4. At issue in this contested settlement is whether Project 2301T1[7] is a new transmission facility or an "upgrade" to "radial transmission facilities that commenced service prior to June 1, 2010." If the latter, the costs associated with that project will be recovered under the Formula Rate. Conversely, if Project 2301T1 constitutes "new radial transmission facilities" that commence service on or after June 1, 2010, the costs of Project 2301T1 will be excluded from the Formula Rate.

5. On February 12, 2014, Trial Staff filed initial comments on the Settlement. Duke Energy Florida and Seminole filed initial comments on February 14, 2014. On that same date, Florida Municipal filed initial comments contesting the Settlement with respect to Project 2301T1, which is one of 21 affected transmission expansion projects. On February 24, 2014, Trial Staff, Duke Energy Florida, Florida Municipal, and Seminole filed reply comments. On February 26, 2014, Duke Energy Florida filed a motion for leave to answer and answer to the reply comments of Florida Municipal.

II. <u>The Settlement</u>

6. In brief, Article III of the Settlement provides that Duke Energy Florida shall recover a return on 50 percent of CWIP costs included in rate base for the affected transmission expansion projects. Section 3.2 of Article II specifically addresses Project 2301T1 and provides that Florida Municipal reserves the right to contest this treatment of Project 2301T1.

7. In the Settlement, the Settling Parties agree that the Joint Stipulation of Facts constitutes the factual record about the rebuild of the DT-RS Segment, Project 2301T1.

8. The standard of review is addressed in Article V, section 5.2:

> [t]o the maximum extent permitted by law, the provisions of this [Settlement] shall not be subject to change under [s]ections 205 and 206 [of the FPA[8]] and the standard of review for changes unilaterally proposed by a party to this proceeding shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956), *Fed. Power Comm'n v. Sierra Pac.*

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[7] Project 2301T1 involves the rebuilding of the 5.67-mile Dunnellon Town – Rainbow Springs Tap Switch (DT-RS Segment) portion of the Dunnellon Town – Rainbow Lakes Estate 69 kV radial line (DR Transmission Line) on Duke Energy Florida's transmission system.

[8] 16 U.S.C. §§ 824d, 824e.

> *Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley Capital Grp., Inc. v. Pub. Utility Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527 (2008), and *NRG Power Marketing, LLC v. Maine Pub. Utilities Comm'n*, 130 S. Ct. 693 (2010). The standard of review for any modification to this [Settlement] requested by a non-party or the Commission will be the ordinary just and reasonable standard (not the "most stringent" or "public interest" standard).

9. Duke Energy Florida states that Florida Municipal's position during settlement discussions was that Attachment U of the Joint OATT precludes the inclusion in Duke Energy Florida's rate base of any costs (including CWIP) associated with Project 2301T1.[9] Thus, in Article III, section 3.2, Florida Municipal reserves its right to contest the Settlement's inclusion of the CWIP costs associated with Project 2301T1.[10]

III. Initial and Reply Comments

A. Initial Comments

1. Florida Municipal

10. As noted, Florida Municipal's position is that Attachment U of the Joint Tariff precludes the inclusion of any costs, including CWIP, in rate base for Project 2301T1. In its initial comments, Florida Municipal explains that Duke Energy Florida is improperly seeking to recover through the Formula Rate costs for Project 2301T1 because it is a "new transmission radial" as that term is used in Attachment U of the Joint OATT, and the purpose of Attachment U is to remove the costs of "new transmission radials" that commence service after May 31, 2010 from the Formula Rate.[11]

11. Florida Municipal states that it relies on the plain meaning of the words in Attachment U in concluding that Project 2301T1 is a complete replacement of old with new rather than an upgrade.[12] Florida Municipal states that there is no dispute that

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[9] Explanatory Statement at 3.

[10] *Id.* at 1, 3.

[11] The Commission accepted revisions to Florida Power Corp.'s (now Duke Energy Florida) Formula Rate via delegated letter order. *Florida Power Corp.*, Docket No. ER10-991-000 (May 26, 2010) (delegated letter order).

[12] Florida Municipal Initial Comments at 2.

Project 2301T1 is the rebuilding of the DT-RS Segment and that rebuilding is the "complete replacing of old with new" and includes "new design, new poles/foundations, insulators, hardware and conductor." Florida Municipal states that once Project 2301T1 is completed and energized, it will enter service after the May 31, 2010 brightline date established in Attachment U.[13] Thus, Florida Municipal contends that Project 2301T1 constitutes "transmission radial facilities" commencing service after May 31, 2010, the costs of which are excluded from the Formula Rate.[14]

12. Next, Florida Municipal argues that in 1996, the fundamental use of the DT-RS Segment changed and that, as result of those changes, the DR Transmission line has at least three segregable, defined segments: the DT-RS Segment (the replacement costs of which are at issue in this proceeding), facilities between the Structure DR 85 Switch and the Rainbow Springs Substation, and the facilities between Structure DR-85 and the Rainbow Lakes Estate Delivery Point.[15] Florida Municipal contends that it would be improper to label the replacement of the transmission radial facilities that comprise the DT-RS Segment as an upgrade to a larger set of facilities and that to do so would create an exception to the broad rule of Attachment U that transmission radial facilities commencing service after May 31, 2010 are to be "rolled-out" (i.e., directly assigned).[16]

13. Florida Municipal concludes that the Commission should find that Project 2301T1 constitutes a new "transmission radial facility" commencing service after May 31, 2010, and that the costs of Project 2301T1 should be directly assigned as provided in Attachment U, rather than being included in the Formula Rate.[17]

2. <u>Duke Energy Florida</u>

14. Duke Energy Florida asserts that the Joint OATT allows for the recovery of costs associated with Project 2301T1 in its Formula Rate because the facility is an upgrade, not a new transmission facility excluded by Attachment U.[18]

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[13] *Id.* at 8.

[14] *Id.*

[15] *Id.* at 11-12.

[16] *Id.* at 12.

[17] *Id*. at 18.

[18] Duke Energy Florida Reply Comments at 4-5.

15. Duke Energy Florida argues that Florida Municipal's contention that Attachment U precludes recovery of costs associated with Project 2301T1 is contrary to the facts of this case, inconsistent with Commission precedent, and should be dismissed.[19] First, Duke Energy Florida explains that in 2000 and 2010, it replaced poles and conductors on the DT-RS Segment and that work improved the quality of service to existing customers. Duke Energy Florida states that Project 2301T1 is not categorically different from any other upgrade project, which would typically involve replacement of various components of a transmission line and would improve the reliability, operational efficiency and useful life of the transmission line.[20]

16. Second, Duke Energy Florida argues it would be erroneous to assert that Project 2301T1 will result in a "new" transmission line because, after Project 2301T1 is complete, the DR Transmission Line will continue to exist and operate exactly as it did prior to the commencement-of-work, including serving the same loads and utilizing the existing right of way to the maximum feasible extent.[21] According to Duke Energy Florida, there are no fundamental changes to the operation of the line as a result of Project 2301T1 and thus is not a "new transmission facility" within the meaning of Attachment U.[22]

17. Third, Duke Energy Florida contends that it is well-established in Commission precedent that a replacement of a portion of an existing transmission facility constitutes an upgrade to the existing facility, not a new facility. Duke Energy Florida states that in Order No. 1000-A,[23] the Commission clarified that "the term upgrade means an improvement to, addition to, *or replacement* of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility."[24] Duke Energy Florida further argues that in Order No. 1000, the Commission specified that upgrades may include "tower change outs and reconductoring" like the work proposed in Project

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[19] *Id.* at 7.

[20] *Id.* at 8.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 8-9 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012)).

[24] *Id.* (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

2301T1.[25] Duke Energy Florida asserts that consistent with the Joint Stipulation of Facts, Project 2301T1 is a replacement of one segment of the DR Transmission Line and, per Order No. 1000's definition, such a partial replacement is an upgrade to a pre-existing transmission line and does not result in an entirely new transmission facility.[26]

3. Seminole

18. Seminole states that it agrees with Duke Energy Florida's proposed rate treatment for all 21 transmission projects and that Florida Municipal's objection to the inclusion of 50 percent of the CWIP costs of Project 2301T1 is without merit.[27] Seminole argues that Project 2301T1 will not change the character or function of the line segment, but instead, will enhance the reliability of transmission service already being provided by the DR Transmission Line.[28] Seminole concludes that the Commission should find that the costs of this upgrade must be treated under Duke Energy Florida's Joint OATT in the same manner as all other upgrades that commenced service prior to June 1, 2010.[29] Accordingly, Seminole requests that the Commission approve the Settlement without modification.

B. Reply Comments

1. Florida Municipal

19. Florida Municipal disputes Seminole's and Duke Energy Florida's contention that Project 2301T1 is an upgrade of the existing DR Transmission Line.[30] Florida Municipal argues that work done in 2000 and 2010 to the DT-RS Segment was of a fundamentally different scope than Project 2301T1 because "a few poles and a conductor were

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[25] According to Duke Energy Florida, reconductoring is typically limited to stringing new conductor on existing poles, but often will also require replacement of insulators and hardware due to condition and the need to accommodate engineering design. *Id.* at 9; Seminole Initial Comments at 5.

[26] Duke Energy Florida Initial Comments at 9.

[27] Seminole Initial Comments at 2.

[28] *Id.* at 7.

[29] *Id*. at 8.

[30] Florida Municipal Reply Comments at 1 (citing Settlement and Joint Stipulation of Facts at ¶ 4 n.3).

replaced," addressing immediate, localized issues and the existing facilities remained largely in place.[31] Florida Municipal contends that after 1996, when the DR-85 Switch and Rainbow Springs Tap were added to the DR Transmission Line to enable Duke Energy Florida to serve load from its Rainbow Springs substation, rather than a single radial line serving one wholesale customer's load, the DR Transmission Line then carried power for two transmission customers (Duke Energy Florida and Seminole) and had two additional radial lines that carry power to the respective customer's distribution facilities.[32]

20. Florida Municipal argues that Attachment U should not be read as requiring that all the facilities between the integrated grid and the distribution facilities connected to the radial line must be replaced in order to qualify as "new transmission facilities."[33] Florida Municipal explains that, because Duke Energy Florida controls the size and scope of its projects, such a requirement would give Duke Energy Florida the ability to ensure that costs of radial lines will permanently be included in the Formula Rate and thus a part of the Duke Energy Florida transmission system paid for by all transmission customers. Moreover, Florida Municipal asserts that, under the Duke Energy Florida and Seminole interpretation, Duke Energy Florida could avoid directly assigning the costs for new transmission by simply adding to existing radial facilities.[34]

2. <u>Duke Energy Florida</u>

21. Duke Energy Florida states that Project 2301T1 is not a new radial transmission facility; rather, it is an upgrade to a grandfathered radial line.[35] According to Duke Energy Florida, the DT-RS Segment is not a separate facility from the DR Transmission Line, and it has no discernable function other than to operate as a portion of the DR Transmission Line. Therefore, Duke Energy Florida states, it is inaccurate for Florida Municipal to claim that replacing one part of a line results in the creation of multiple new lines.[36] Duke Energy Florida reiterates that Project 2301T1 is simply an

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[31] *Id.* at 3.

[32] *Id.* at 5.

[33] *Id*. at 6.

[34] *Id.*

[35] Duke Energy Florida Reply Comments at 3.

[36] *Id.* at 5.

upgrade to that facility, concluding that tower change outs and reconductoring do not create a new facility.[37]

22. Duke Energy Florida also states that Florida Municipal's argument that the addition of a switch to the DR Transmission Line in 1996 transformed the line into three identifiable radial transmission lines is without merit. Duke Energy Florida points out that, even if the switch fundamentally changed the DR Transmission Line, the parties stipulated that all transmission radial facilities commencing service prior to June 1, 2010, and all upgrades thereto, are to be included in Duke Energy Florida's Formula Rate.[38] Regardless of whether any prior upgrades changed the DR Transmission Line in 1996, according to Duke Energy Florida, any current upgrades would still be included in the Formula Rate under the Joint OATT.[39]

3. Trial Staff

23. Trial Staff states that Florida Municipal obfuscates the primary issue by asserting that Attachment U of the Joint OATT excludes from recovery through the Formula Rate the costs for facilities that are "new transmission radials."[40] Trial Staff further emphasizes the following: (1) the project is intended to enhance reliability and *not* to serve any new Joint OATT customer; (2) no other power source serves or is connected to the DR Transmission Line; (3) the DT-RS Segment will continue to function as an integral portion of the radial transmission line; and (4) upgrading does not change the service other than enhancing reliability.[41] Trial Staff concludes that Duke Energy Florida's proposed Project 2301T1 is, implicitly and explicitly, an improvement to an existing facility. Further, Trial Staff states that upgrades, as here, are necessary and prudently further the public interest in enhancing reliability of electric transmission.[42]

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[37] *Id.*

[38] *Id.*

[39] *Id.* at 6.

[40] Trial Staff Reply Comments at 4.

[41] *Id.* at 4-5.

[42] *Id.* at 5.

4. Seminole

24. Seminole states that Florida Municipal's arguments about cost causation and other extraneous matters are attempts to distract the Commission from the plain language of the Joint OATT and its treatment of upgrades to pre-June 1, 2010, radial facilities.[43] According to Seminole, the Joint OATT contains only one criterion for determining the appropriate rate treatment – the date on which the radial line went into service. Seminole explains that the Commission's concept of an upgrade makes a commonsense distinction between work being done on an existing line (an upgrade) and work being done to create transmission facilities where none previously existed (the construction of a new facility).[44] Seminole submits that the DR Transmission Line cannot be split into three segregable, defined segments as Florida Municipal claims because the DT-RS Segment has no function except to serve as an integral part of the DR Transmission Line.[45] In addition, Seminole argues that contrary to Florida Municipal's claim, both pre-1996 and post-1996, the DT-RS Segment has served the same function, i.e., as one portion of the DR Transmission Line that has been in-service since 1977.[46]

25. Seminole adds that prior to Attachment U, all costs associated with all then-existing radial transmission lines, regardless of the type of work being performed, were included in the Formula Rate.[47] Seminole explains that in the absence of Attachment U, the costs of Project 2301T1 would be included in the Formula Rate, and Attachment U does not change that rate treatment.[48] Seminole contends that Florida Municipal's attempts to inject new and unsubstantiated interpretations of the Joint OATT are improper collateral attacks on the filed rate.[49] Seminole argues that Attachment U makes no mention of phasing out the rolled-in rate treatment of pre-June 1, 2010 radial transmission lines. Rather, Seminole argues that the rolled-in rate treatment of pre-June

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[43] Seminole Reply Comments at 3.

[44] *Id.* at 4.

[45] *Id.*

[46] *Id.*

[47] *Id*. at 8.

[48] *Id.* at 9.

[49] *Id*. at 10.

1, 2010 radial transmission radial lines *and their upgrades* was established well before, and was not changed by, the filing of Attachment U.[50]

26. Finally, Seminole argues that Florida Municipal's position would lead to costly and unnecessary litigation and such a result is entirely inconsistent with Attachment U. Seminole adds that the filing of Attachment U was the product of considerable consultation with Duke Energy Florida's customers and was intended to provide rate clarity and certainty for Duke Energy Florida's Joint OATT customers regarding the allocation of costs of Duke Energy Florida's radial transmission facilities.[51]

IV. Discussion

A. Procedural Matters

27. Rule 602(f)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f)(2) (2015), permits initial and reply comments, but does not contemplate subsequent comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Duke Energy Florida's answer, and will therefore reject it.

B. Substantive Matters

28. For the reasons discussed below, we approve the Settlement under the Commission's *Trailblazer* approach for reviewing contested settlements.[52] Under *Trailblazer*, the Commission may approve a contested settlement under one or more of the following four approaches: (1) the Commission may make a decision on the merits of each contested issue; (2) the Commission may determine that the settlement provides an overall just and reasonable result; (3) the Commission may determine that the benefits of the settlement outweigh the nature of the objections, and the contesting parties' interests are too attenuated; or (4) the Commission may determine that the contesting parties can be severed.[53] In addition, Rule 602 (h)(l)(i) of the Commission's Rules of Practice and

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[50] *Id*. at 13.

[51] *Id.* at 14-15.

[52] *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,082 (1998); 85 FERC ¶ 61,345 at 62,341, *order on reh'g*, 87 FERC ¶ 61,110 (1999), *reh'g denied*, 88 FERC ¶ 61,168 (1999) (*Trailblazer*).

[53] *Trailblazer*, 85 FERC ¶ 61,345, at 62,342-44.

Procedure provides that the Commission may decide the merits of contested settlement issues if the record contains substantial evidence upon which to base a reasoned decision or the Commission finds that there is no genuine issue of material fact.[54] We find analysis under the first *Trailblazer* approach to be applicable to the circumstances of this proceeding, and that substantial evidence exists upon which to base a reasoned decision.

29. The contested issue in this settlement is whether Attachment U of the Joint OATT precludes inclusion in Duke Energy Florida's rate base of the 50 percent CWIP costs associated with Project 2301T1 on the grounds that the project is a new transmission facility, rather than an upgrade to a pre-June 1, 2010 facility.[55] The Settling Parties have requested that the Commission utilize the record, including the Joint Stipulation of Facts attached to the Settlement, to determine Project 2301T1's eligibility for CWIP recovery. Based on our review of the Joint OATT, Joint Stipulation of Facts, and the parties' comments, we conclude that Project 2301T1 constitutes an upgrade to "radial transmission facilities that commenced service prior to June 1, 2010," and therefore, pursuant to Attachment U, should be included in the Formula Rate.[56]

30. Florida Municipal argues that Project 2301T1 is not an upgrade to existing radial transmission facilities, but rather is a rebuild of the DT-RS Segment that will be energized for the first time after the project is complete and after June 1, 2010. Florida Municipal contends that the rebuilt DT-RS Segment thus fits the description of "new radial transmission facilities" under Attachment U. We disagree.

31. As described in the Joint Stipulation of Facts, the DR Transmission Line has been in service since 1977.[57] In 1996, the DR Transmission Line was modified to add the Rainbow Springs Tap to provide transmission service to Duke Energy Florida's Rainbow Springs Substation, which serves Duke Energy Florida retail load.[58] All power on the DR Transmission Line flows on the line through the Dunnellon Town Substation, and no

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[54] 18 C.F.R. § 385.602(h)(l)(i) (2015).

[55] *See Duke Energy Carolinas, LLC*, Docket No. ER13-1105-001 at P 28 (Mar. 6, 2014) (unpublished report).

[56] While Duke Energy Florida and Florida Municipal refer to Order No. 1000's definition of "upgrade," the record and the relevant Joint OATT language suffice for us to reach a decision.

[57] Joint Stipulation of Facts at ¶ 5.

[58] *Id*. ¶ 6.

other source of power serves or is connected to the DR Transmission Line.[59] The costs of the DR Transmission Line are currently recovered through the Formula Rate under the Joint OATT.[60]

32. The Joint Stipulation of Facts indicates that the work comprising Project 2301T1 will involve only the rebuilding of the 5.67- mile DT-RS Segment of the DR Transmission Line and does not include changes to any other portion of the DR Transmission Line.[61] The rebuilt DT-RS Segment will serve the same loads as before the rebuilding and not any additional load.[62] The rebuild will parallel the existing path of the DT-RS Segment and, to the maximum extent feasible, utilize the existing right-of-way. Project 2301T1 is expected to be in service on, or about, December 1, 2015.[63]

33. In addition, the Joint Stipulation of Facts describes Duke Energy Florida's reasons for Project 2301T1 as follows: (1) a future Department of Transportation project will require moving many of the poles; (2) the existing poles have been found by Duke Energy Florida's Line Engineering group to be structurally inadequate to accommodate reconductoring; and (3) the project will provide a long-term reliability benefit since the DT-RS Segment in its existing state experiences extended outages and momentary service interruptions at a higher rate than the system average due to lightning activity.[64]

34. Based on the foregoing, we conclude that the "radial transmission facilities" at issue and for which cost treatment under Attachment U applies is the DR Transmission Line, not the DT-RS Segment. Duke Energy Florida and Seminole argue that the DT-RS Segment cannot operate independently from the other portions of the DR Transmission Line. Florida Municipal does not dispute that the DT-RS Segment is unable to function independently. Furthermore, the rebuilt DT-RS Segment will parallel the existing path and, to the maximum extent feasible, utilize the existing right-of-way. In addition, the DR Transmission Line will serve the same loads and the same customers that were served before Project 2301T1, it will not have any greater capacity, and Project 2301T1 is being undertaken to improve the reliability of the DT-RS Segment

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[59] *Id*. ¶ 5.

[60] *Id*.

[61] *Id*. ¶ 11.

[62] *Id*. ¶ 13.

[63] *Id*. ¶ 12.

[64] Joint Stipulation of Facts at ¶ 9 & n.3.

of the DR Transmission Line.[65] Based on these facts, we conclude that the DT-RS Segment is one part of existing radial transmission facilities (i.e., the DR Transmission Line), not a stand-alone radial transmission facility. The record is also clear that the DR Transmission Line was in existence prior to June 1, 2010, the bright line date set forth in Attachment U.

35. Accordingly, we find substantial evidence exists in the record upon which to find that Attachment U of the Joint OATT provides for inclusion in Duke Energy Florida's rate base of costs associated with Project 2301T1. As such, we approve the Settlement.

The Commission orders:

Duke Energy Florida's proposed Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[65] *Id*. ¶ 4.