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April 20, 2018

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# Item 1

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02784-2018  
FPSC - COMMISSION CLERK

## 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:** April 6, 2018

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

**FROM:** Office of Industry Development and Market Analysis (C. Williams) *CH 17 GH*  
Office of the General Counsel (R. Dziechciarz) *RD*

**RE:** Application for Certificate of Authority to Provide Telecommunications Service

**AGENDA:** 4/20/2018 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

**SPECIAL INSTRUCTIONS:** None

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Please place the following Application for Certificate of Authority to Provide Telecommunications Service on the consent agenda for approval.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>CERT. NO.</u>
20180050-TX	Peak Tower, LLC	8919

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

# Item 2

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02792-2018  
FPSC - COMMISSION CLERK

## 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:** April 6, 2018

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

**FROM:** Office of the General Counsel (Cowdery) *R.M.C.*  
Office of Consumer Assistance and Outreach (Hicks) *RH*  
Division of Economics (Guffey) *SKG*  
Division of Engineering (Graves, King) *PD* *ED* *TJB*

**RE:** Docket No. 20170222-WS – Proposed amendment of Rules 25-30.130, Record of Complaints, and 25-30.355, Complaints, F.A.C.

**AGENDA:** 04/20/18 – Rule Proposal – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**RULE STATUS:** Proposal May Be Deferred

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Rule 25-30.130, Record of Complaints, Florida Administrative Code (F.A.C.), requires each water and wastewater utility to keep a record of each signed, written customer complaint and identifies the information that must be kept in the record. Rule 25-30.355, Complaints, F.A.C., requires a utility to make a full and prompt acknowledgement and investigation of all customer complaints, and defines the word “complaint.” Staff initiated this rulemaking to update language, delete obsolete requirements, edit to improve readability, and clarify the rules.

The Commission also has a rule addressing customer complaints that applies to all of the Commission’s regulated utilities, Rule 25-22.032, F.A.C., Customer Complaints. Under this rule, if a customer complaint is not resolved informally between a customer and the utility, the customer may file a complaint with the Commission. Staff is not recommending any

amendments to this rule because the process set out in the rule works well. However, staff examined Rules 25-30.130 and 25-30.355, F.A.C., in light of the process described in Rule 25-22.032, F.A.C., to determine whether there was any duplication between the rules and to maintain consistency between the rules concerning requirements imposed on utilities in acknowledging and responding to customer complaints.

The notice of rule development for Rules 25-30.130, Record of Complaints, and 25-30.355, Complaints, F.A.C., appeared in the February 8, 2017, edition of the Florida Administrative Register, volume 43, number 26. The Record of Complaints and Complaints rules were considered by the Commission at the December 12, 2017, Agenda Conference. The Commission deferred this docket to the February 6, 2018 Agenda Conference so that staff could make two changes to the draft Complaints rule, Rule 25-30.355, F.A.C. At the February 6, 2018, Agenda Conference, the Commission deferred this docket to the April 20, 2018, Agenda Conference so that additional suggested revisions to draft Rule 25-30.355, Complaints, could be discussed at a staff rule development workshop.

A staff rule development workshop was held on March 1, 2018. Previous staff rule development workshops were held on February 28, 2017, and June 27, 2017. Stakeholders participating at the workshops were Public Counsel J.R. Kelly, Utilities, Inc. of Florida, U.S. Water Services Corporation, and Black Bear Waterworks, Inc., Brendenwood Waterworks, Inc., Brevard Waterworks, Inc., Country Walk Utilities, Inc., Harbor Waterworks, Inc., HC Waterworks, Inc., Jumper Creek Utility Company, Lake Idlewild Utility Company, Lakeside Waterworks, Inc., LP Waterworks, Inc., Merritt Island Utility Company, North Charlotte Waterworks, Inc., Pine Harbour Waterworks, Inc., Raintree Waterworks, Inc., Seminole Waterworks, Inc., Sunny Hills Utility Company, and The Woods Utility Company (hereafter referred to as the “Collective Utilities”). The draft rule reflects the comments made at the workshops as well as the written comments submitted by the Office of Public Counsel, the Collective Utilities, and Mr. Mike Smallridge.

This recommendation addresses whether the Commission should propose the amendment of Rules 25-30.130 and 25-30.355, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), 367.0812, 367.111, and 367.121(1), Florida Statutes (F.S.).

## Discussion of Issues

**Issue 1:** Should the Commission propose the amendment of Rules 25-30.130, Record of Complaints, and 25-30.355, Complaints, F.A.C.?

**Recommendation:** Yes, the Commission should propose the amendments to Rules 25-30.130 and 25-30.355, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify proposed amended Rules 25-30.130 and 25-30.355, F.A.C., as minor violation rules. (Cowdery, King, Graves, Hicks, Guffey)

**Staff Analysis:** Staff recommends that the Commission propose the amendments to Rules 25-30.130 and 25-30.355, F.A.C., as set forth in Attachment A.

### **Rule 25-30.130, F.A.C., Record of Complaints**

Staff's suggested changes to Rule 25-30.130, F.A.C., are the same as were recommended in the previous staff recommendation heard by the Commission at the February 6, 2018, Agenda Conference. Staff's analysis of the recommended amendments is explained below.

#### ***Requirement to maintain a record of all complaints***

Under subsection (1) of Rule 25-30.130, F.A.C., water and wastewater utilities must maintain a record of all signed, written complaints. The requirement for a signed, written complaint pre-dates electronic communication and is technically obsolete. For this reason, staff recommends that the Commission propose an amendment to subsection (1) of Rule 25-30.130, F.A.C., to require water and wastewater utilities to maintain a record of all complaints received.

Staff is further recommending that Rule 25-30.130(1), F.A.C., be amended to state that the word "complaint" is defined in Rule 25-30.355(2), F.A.C., as discussed below. Staff believes that this will assure that water and wastewater utilities are made aware of what customer contacts constitute complaints that are subject to the record keeping requirements of Rule 25-30.130, F.A.C.

#### ***Requirement to maintain a record of each complaint for five years***

Staff is recommending that Rule 25-30.130, F.A.C., be amended to require water and wastewater utilities to keep a record of all customer complaints for five years from the date of receipt. Currently, water and wastewater utilities are required to keep records and reports of customers' service complaints for three years pursuant to Rule 25-30.110(1)(a), F.A.C., Records and Reports. However, staff believes that this three year retention period is obsolete because of recent changes to Section 367.0812(1)(c), F.S. These statutory changes require the Commission, in considering quality of service in rate cases, to consider complaints regarding applicable secondary water quality standards filed by customers with the Commission during the past five years.<sup>1</sup> Because the Commission in practice reviews five years of customer complaints

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<sup>1</sup> Because of these changes to Section 367.0812(1)(c), F.S., the Commission amended Rules 25-30.440 (11) and 25-30.037(1)(r)4, F.A.C., to require water and wastewater utilities' rate case applications and applications for authority to transfer an existing water utility to include a copy of all customer complaints that the utility has received regarding DEP secondary water quality standards during the past five years. Order No. PSC-15-0567-FOF-WS, issued December 16, 2015, in Docket No. 150198-WS, *In re: Proposed Adoption of Rules*; Order No. PSC-15-0055-FOF-WS, issued January 21, 2015, in Docket No. 140205-WS, *In re: Proposed Adoption of Rule*.

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concerning secondary water treatment standards in compliance with current law, staff believes it is reasonable to update the rule to require that water and wastewater utilities keep a record of all customer complaints for five years.

As mentioned in the Case Background, the Commission has a rule applicable to all industries that establish a procedure to resolve customer complaints that are filed with the Commission, Rule 25-22.032, F.A.C., Customer Complaints. This Customer Complaints rule requires a utility to keep copies of documentation relating to each Commission complaint for two years after the date the complaint was closed by the Commission. This is a different recordkeeping requirement than the requirement that water and wastewater utilities retain a record of each complaint received directly from a customer for five years under Rule 25-30.130, F.A.C., addressed in this docket. Staff recommends that for clarity, the Commission should add language to Rule 25-30.130, F.A.C., specifying that documentation relating to customer complaints filed with the Commission under the Commission's Customer Complaints rule, Rule 25-22.032, F.A.C., shall be retained as set forth in Rule 25-22.032(10)(a), F.A.C.

***Requirement for utilities to provide records of complaints to Commission staff upon request***

Staff is recommending that Rule 25-30.130, F.A.C., be amended to include a requirement in subsection (2) that utilities provide records of complaints to Commission staff upon request. Staff believes that this is the intent of Rule 25-30.130, F.A.C. Water and wastewater utilities are required by Rule 25-30.110(1)(b), F.A.C., to maintain their records at their offices in Florida, unless otherwise authorized by the Commission, and they must keep those records open for inspection by Commission staff during business hours. However, there is no specific Commission rule requiring utilities to provide records of complaints to the Commission upon Commission staff's request. Amending Rule 25-30.130, F.S., to specifically include this requirement will give clarity to assure that utilities keep their records of complaints in such a format or manner that the records are readily available to Commission staff when requested.<sup>2</sup>

**Rule 25-30.355, F.A.C., Complaints**

Staff's recommended amendments to this rule incorporate modifications resulting from the March 1, 2018 staff rule development workshop. Staff's analysis of the recommended amendments is explained below.

***Acknowledgment of and Response to Complaints***

Subsection (1) of Rule 25-30.355, F.A.C., requires water and wastewater utilities to make a full and prompt acknowledgement and investigation of all customer complaints. Staff believes that it is important for the utility to make clear when acknowledging customer complaints whether the customer should expect further action by the utility. For this reason, staff recommends that Section (1) be amended to require a utility to specify in its acknowledgement of a customer

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<sup>2</sup> The Commission has rules that specifically require utilities to provide other types of records upon staff's request. For example, Rule 25-30.245(2), F.A.C., requires each water and wastewater utility to furnish its accident reports to the Commission upon request of Commission staff. Rule 25-22.032(6)(e), F.A.C., addressing unresolved customer complaints filed with Commission, states that Commission staff may request and the utility is required to provide copies of information necessary to resolve a dispute between the utility and the customer.

Date: April 6, 2018

complaint whether any additional action would be taken on the issue(s) raised by the customer's complaint.

Further, staff believes that Section (1) should be amended to specify the number of days in which a utility must acknowledge and respond to customer complaints. The time frames recommended by staff are intended to codify the time frames the Commission would expect utilities to already be meeting when acknowledging and responding to customer complaints.

Staff considered whether the time for acknowledging a customer complaint should be 3 days or 3 business days. As explained in the Case Background, in response to staff's second data request to all regulated water and wastewater utilities, staff received one written response from Mr. Mike Smallridge. Mr. Smallridge stated that he would need to hire a full time staff person whose job it would be to respond to customer complaints within the 3 day time period and to investigate the complaint and give the customer a verbal or written response within 15 days. In addition, Mr. Smallridge asked the Commission to consider changing the 3 day acknowledgement requirement to 3 business days to compensate for holiday weekends.

At the March 1, 2018 staff rule development workshop, Utilities, Inc. of Florida, and Collective Utilities argued in favor of requiring a utility to acknowledge a complaint within 3 business days instead of 3 days after it receives the complaint. The utilities explained that requiring an acknowledgment in 3 days is a problem for small utilities. Call centers or personnel answering the telephone on weekends or holidays may not know if additional utility action is needed in response to a complaint. The Office of Public Counsel was satisfied that if a call was an emergency it would be addressed quickly as required by new Section (3) of the rule and that most customers would not expect a response to a non-emergency complaint on a weekend.

As previously stated, staff looked to the Commission's general customer complaint Rule 25-22.032, F.A.C., in order to maintain consistency between that rule and the water and wastewater Complaint rule, Rule 25-30.355, F.A.C., regarding requirements imposed on utilities when acknowledging and responding to customer complaints. Rule 25-22.032, F.A.C., essentially applies in situations where a customer and utility have been unable to resolve a complaint between themselves, and the Commission staff becomes involved. Under Section (5) of Rule 25-22.032, F.A.C., a complaint will not be reported in the total number of complaints shown for that company if it is satisfactorily resolved with the customer within 3 business days. Staff notes that the Uniform Rules of Procedure Rule 28-106.103, F.A.C., concerning computation of time in proceedings for decisions determining substantial interests, also excludes Saturdays, Sundays, and legal holidays when the period of time allowed for an action is less than 7 days.

Based on the comments received from the Office of Public Counsel, water and wastewater utilities, and use of business days in response times required by Rule 25-22.032, F.A.C., staff believes that it is reasonable to require a utility to acknowledge a customer's complaint within 3 business days of receipt of a customer complaint. There have been no comments submitted in this docket objecting to amending Rule 25-30.355, F.A.C., to require a utility to investigate the complaint and give the customer a verbal or written response within 15 days. Staff believes that 15 days is an appropriate and sufficient amount of time for a utility to investigate a complaint and give the customer a verbal or written response to the customer's complaint.



### ***Customer Service Requests***

Subsection (1) of Rule 25-30.355, F.A.C., also requires water and wastewater utilities to “respond fully and promptly to all customer requests.” Staff is recommending that this requirement be deleted from Rule 25-30.355, F.A.C., because it is duplicative of other rule requirements that better explain the utilities’ responsibilities to address customer service requests. In this regard, Rule 25-30.310(2), F.A.C., addresses initiation of service; Rule 25-30.250(1), F.A.C., requires water and wastewater utilities to re-establish service with the shortest possible delay consistent with the safety of its consumers and the general public; Rule 25-30.320, F.A.C., addressing refusal or discontinuance of service, contains customer notification requirements; and Rule 25-30.266, F.A.C., contains provisions that apply when a customer requests the utility to test for meter error. Further, customer service requests are appropriately addressed in the rules described above instead of in the customer complaint rule because customer service requests are not complaints.<sup>3</sup>

### ***Definition of Complaint***

Subsection (2) of Rule 25-30.355, F.A.C., defines a complaint, in part, as an objection made to the utility by the customer as to the utility’s charges, facilities, or service that requires action on the part of the utility. Staff believes that the rule should be amended to make clear that the customer may inform the utility of his or her complaint by telephone call, e-mail, letter, or utility’s web-site form. This specificity will mean that all such customer complaints will be recorded and retained as required in Rule 25-30.130, F.A.C., and will be responded to within the time frames specified in Rule 25-30.355, F.A.C.

### ***Commission Staff Inquiries***

Subsection (3) of Rule 25-30.355, F.A.C., requires water and wastewater utilities to reply in writing to Commission staff inquiries within 15 days from the date of the inquiry. Staff recommends that this requirement should be deleted because this same requirement is already properly included in Commission Rule 25-22.032, F.A.C., Customer Complaints, and does not belong in Rule 25-30.355, F.A.C. The focus of Rule 25-30.355, F.A.C., Complaints, is on the utility’s responsibility to acknowledge, investigate and respond to customer complaints and attempt to resolve those complaints without Commission staff’s involvement. If Commission staff has become involved and is requesting information from the utility, it means the complaint has not been resolved by the utility and customer, and the customer has filed a complaint with the Office of Consumer Assistance and Outreach for resolution under Rule 25-22.032, F.A.C.

### ***Emergency Calls***

Staff recommends that Section (3) of Rule 25-30.355, F.A.C., be amended to require each water and wastewater utility to have a procedure for receiving and responding to emergency calls 24 hours a day. Staff believes this amendment is necessary because although another Commission rule, Rule 25-30.330(1), F.A.C., Information to Customers, requires water and wastewater utilities to provide their customers, at least annually, their telephone numbers for regular and after hours, the rule does not address emergency calls. Staff believes it is appropriate for water and wastewater utilities to be required to have a procedure for receiving and responding to

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<sup>3</sup> If a customer believes that his or her service request has not been addressed promptly as required by the Commission rules discussed above for service requests, the customer may make a complaint to the utility.

Date: April 6, 2018

emergency calls 24 hours a day, as is currently required of regulated gas and electric utilities.<sup>4</sup> For clarity, staff recommends that Section (3) of the Complaints rule state that examples of emergencies shall include reports of water or wastewater main breaks or conditions caused by utility-owned facilities where property damage or personal injury is reasonably foreseeable.

### **Statement of Estimated Regulatory Costs**

Pursuant to Section 120.54(3)(b)1., F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the rule amendments are likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after implementation. Section 120.541(2)(a)1., F.S. None of the impact/cost criteria will be exceeded as a result of the recommended revisions.

The SERC concludes that the rule amendments are not likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within 1 year after implementation. Further, the SERC concludes that the rule amendments will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within 5 years of implementation. Thus, the rule amendments do not require legislative ratification, pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule amendments would have minimal impact on small businesses, would have no implementation or enforcement cost on the Commission or any other state and local government entity, and would have no impact on small cities or small counties. The SERC states that if transactional costs are to be incurred by individuals and entities required to comply with the requirements of the rule, they are expected to be minimal.

### **Minor Violation Rules Certification**

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the Commission is required to certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. A list of the Commission rules designated as minor violation rules is published on the Commission's website, as required by Section 120.695(2), F.S. Currently, Rules 25-30.130 and 25-30.355, F.A.C., are on the Commission's list of rules designated as minor violations. If the Commission proposes the amendment of Rules 25-30.130 and 25-30.355, F.A.C., the rules would continue to be considered minor violation rules. Therefore, for purposes of filing the amended rules for adoption with the Department of State, staff recommends that the Commission certify proposed amended Rules 25-30.130 and 25-30.355, F.A.C., as minor violation rules.

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<sup>4</sup> Rules 25-6.094, 25-7.080(2), 25-12.041 and 25-12.042, F.A.C.

Date: April 6, 2018

**Conclusion**

For the reasons described above, staff recommends that the Commission should propose the amendment of Rules 25-30.130 and 25-30.355, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify the proposed amended Rules 25-30.130 and 25-30.355, F.A.C., as minor violation rules.

Date: April 6, 2018

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

**Recommendation:** Yes. If no requests for hearing or comments are filed, the rules should be filed with the Department of State, and the docket should be closed. (Cowdery)

**Staff Analysis:** If no requests for hearing or comments are filed, the rules should be filed with the Department of State, and the docket should be closed.

**25-30.130 Record of Complaints.**

(1) Each utility shall maintain a record of all complaints ~~each signed, written complaint~~ received by the utility from any of that utility's customers.

~~(2) Each~~ The record shall show ~~include~~ the name and address of the complainant; the nature of the complaint; the date received; the result of any ~~the~~ investigation; the disposition of the complaint; and the date of ~~the disposition of the complaint~~. The word "complaint" as used in this rule is defined in subsection 25-30.355(2), F.A.C.

(2) Notwithstanding the requirements of paragraph 25-30.110(1)(a), F.A.C., utilities shall maintain a record of each complaint for a minimum of five years from the date of receipt and shall provide a copy of records of complaints to the Commission upon Commission staff's request. Documentation relating to customer complaints processed under Rule 25-22.032, F.A.C., shall be retained as set forth in paragraph 25-22.032(10)(a), F.A.C.

*Rulemaking Authority 350.127(2), 367.0812(5), 367.121(1) FS. Law Implemented 367.0812(1), 367.111, 367.121(1) FS. History—New 9-12-74, Formerly 25-10.30, 25-10.030, Amended 11-10-86, \_\_\_\_\_.*

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

**25-30.355 Complaints.**

(1) A utility shall give a customer verbal or written acknowledgement of the utility's receipt of the customer's complaint no later than three business days after it receives the complaint. The utility shall specify in its acknowledgement whether any additional action will be taken on the issue(s) raised by the customer. A utility shall investigate the complaint and give the customer a verbal or written response no later than 15 days after it receives the complaint. ~~make a full and prompt acknowledgement and investigation of all customer complaints and shall respond fully and promptly to all customer requests.~~

(2) ~~For the purpose of this rule~~ The word "complaint" as used in this rule means shall mean an objection made to the utility by a the customer by telephone call, by e-mail, by letter, or on the utility's website form as to the utility's charges, facilities or service; that where the disposal of the complaint requires action by on the part of the utility.

(3) Each utility shall have a procedure for receiving and responding to emergency calls 24 hours a day. Examples of emergencies shall include reports of water or wastewater main breaks or conditions caused by utility-owned facilities where property damage or personal injury is reasonably foreseeable. Replies to inquiries by the Commission's staff shall be furnished within fifteen (15) days from the date of the inquiry and shall be in writing, if requested.

*Rulemaking Authority 350.127(2), 367.0812(5), 367.121(1) FS. Law Implemented 367.0812(1), 367.111, 367.121(1) FS. History—New 9-12-74, Formerly 25-10.70, 25-10.070, Amended 11-10-86,\_\_\_\_\_.*

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 12, 2018

**TO:** Kathryn Gale Winter Cowdery, Senior Attorney, Office of the General Counsel

**FROM:** Sevini K. Guffey, Public Utility Analyst I, Division of Economics *SK.G.*

**RE:** Statement of Estimated Regulatory Costs (SERC) for proposed Revisions to Rules 25-30.130 and 25-30.355, Florida Administrative Code (F.A.C.)

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The purpose of this rulemaking initiative is to update, clarify, and streamline certain Commission rules pertaining to records of complaints and the definition of the term "complaints" related to water and wastewater utilities. Specifically, staff is proposing to amend Rule 25-30.130, F.A.C. to require water and wastewater utilities to maintain a record of all complaints as defined in Rule 25-30.355(2), F.A.C., for five years. The current requirement to maintain records of complaints is three years. Rule 25-30.130, F.A.C., is also amended to state that utilities must provide a copy of records of complaints upon request of Commission staff. Current Rule 25-30.355(1), F.A.C. requires a utility to make a full and prompt acknowledgement and investigate all customer complaints, and respond fully and promptly to all customer requests. Staff's proposed amendment to Rule 25-30.355, F.A.C., provides specific parameters to utilities how soon the utility should acknowledge, investigate and respond to customer complaints. Proposed rule revisions requires the utility to acknowledge receipt of a complaint no later than three business days after the receipt of the complaint, investigate the complaint and provide the customer a verbal or written response within 15 days of the utility's receipt of a complaint and revises the definition of complaint to mean an objection made by a customer to the utility by telephone call, e-mail, letter, or the utility's website form as to the utility's charges, facilities, or service that requires action by the utility.

The attached SERC addresses the considerations required pursuant to Section 120.541, Florida Statutes (F.S.). Workshops to solicit input on the proposed rule revisions were conducted by Commission staff on February 28, 2017, June 27, 2017, and on March 1, 2018. Comments that either were received during the workshops or were filed subsequently were incorporated into the draft rules to provide additional clarification. Staff issued three data requests to water and wastewater utilities on August 24, 2017, December 14, 2017, and on February 21, 2018. As of October 3, 2017, staff received responses from 33 water and wastewater utilities who stated that the proposed rule revisions will have minimal to no economic impact on the utilities as a result of proposed revisions. On December 23, 2017, staff received one response to the second data request stating that the annual cost to implement the proposed revised rule will cost the utility \$186,090 for five years (excludes performance based annual salary increases). On March 8, 2018, the same respondent stated that the costs indicated above will be applicable to comply with the currently proposed rule revisions. No regulatory alternatives were submitted pursuant to

Section 120.541(1) (a), F.S. None of the impact/cost criteria established in Section 120.541(2) (a), F.S. will be exceeded as a result of the proposed revisions.

Cc: Draper, Daniel, Shafer, King, SERC file



FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Rules 25-30.130 and 25.30.355, F.A.C.

1. Will the proposed rule have an adverse impact on small business?  
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes ☐

No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes ☐

No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

- (1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)1, F.S.]

Economic growth

Yes ☐ No ☒

Private-sector job creation or employment

Yes ☐ No ☒

Private-sector investment

Yes ☐ No ☒

- (2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)

Yes ☐ No ☒

Productivity

Yes ☐ No ☒

Innovation

Yes ☐ No ☒

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐

No ☒

Economic Analysis: A summary of the recommended rule revisions is included in the attached memorandum to Counsel. Specific elements of the associated economic analysis are discussed below in Sections B through F of this SERC. Staff believes that none of the impact/cost criteria established in Paragraph 120.541(2)(a), F.S., will be exceeded as a result of the proposed rule revisions.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Potentially affected entities include 132 investor-owned water and wastewater utilities that serve approximately 180,000 Florida customers. Water and wastewater utilities which come under the jurisdiction of the Commission in the future also would be required to comply.

(2) A general description of the types of individuals likely to be affected by the rule.

The 132 investor-owned water and wastewater utilities that are located in 38 counties.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

☒ None. To be done with the current workload and existing staff.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

☐ None. The rule will only affect the Commission.

☒ Minimal. Provide a brief explanation. The 33 water and wastewater utilities that responded to staff's first data request stated that the proposed rule changes will have no economic impact on how the utilities address customer complaints, how complaints are recorded and maintained and no additional costs to respond to emergency calls 24 hours per day; the utilities are currently implementing the proposed requirements. In response to staff's second data request, one utility representative stated that the utility will need to hire one full time staff person to comply with the proposed rule requirement to respond to customer complaints within 3 days or 3 business days and to investigate the complaint and give verbal or written response within 15 days. The cost estimate is indicated below:

Hourly rate = \$13.00 = \$27,040 Annual Salary

Annual payroll tax =\$ 2,080

Annual workers compensation=\$70

Annual Health Insurance =\$ 6,000 (estimated)

Annual Allowance for overtime=\$ 2,028

Annual Cost for new employee=\$ 37,218.

Annual Cost for new employee x 5 years= \$ 186,090( this figure excludes annual salary raises which is performance based)

☐ Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities:  
[120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

☐ No adverse impact on small business.

☒ Minimal. Provide a brief explanation. The current Rule 25-30.355(1), F.A.C. requires a utility to make a full and prompt acknowledgement and investigate all customer complaints, and respond fully and promptly to all customer requests. The proposed rule revision provide specific parameters and guidance to utilities how soon the utility should acknowledge, investigate and respond to customer complaints. While it is difficult to estimate the number of affected entities that would meet the definition of "Small Business" as defined in Section 288.703, F.S., it is reasonable to assume that many of the affected entities would meet the statutory definition. As stated in Section D above, one respondent to staff's second data request stated that they would incur an additional cost of \$37,218 for a new employee and for five years the cost would be \$186,090 (excluding performance based salary increases).

☐ Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful.  
[120.541(2)(f), F.S.]

☒ None.

Additional Information: Workshops to solicit input on the recommended rules was conducted by Commission staff on February 28, 2017, June 27, 2017, and on March 1, 2018. Comments that either were received during the workshop or were filed subsequently were incorporated into the draft rules to provide additional clarification.

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

# Item 3

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02796-2018  
FPSC - COMMISSION CLERK

## 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:** April 6, 2018

**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

**FROM:** Pamela H. Page, Senior Attorney, Office of the General Counsel **PHP**

**RE:** Docket No. 20170262-TP, Proposed Amendment of Rule 25-4.004, and repeal of Rule 25-4.005, F.A.C.,

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Attached for filing is the revised recommendation in the above-referenced docket. This recommendation was deferred from the February 6, 2018 agenda and is to be heard at the April 20, 2018 agenda. The revisions are contained in pages 6 and 13 of the recommendation in underline and strike format, and highlighted for ease of reference. The changes were made to clarify the rule and provide additional information on the application form.

EXE Approval

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned over a horizontal line.

PHP

Attachment

RECEIVED-FPSC  
2018 APR -6 AM 10: 24  
COMMISSION  
CLERK

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:** January 25, 2018

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

**FROM:** Office of the General Counsel (Page)  
Office of Industry Development and Market Analysis (Fogleman, Williams)  
Division of Economics (Draper)

**RE:** Docket No. 20170262-TP – Amendments to Rule 25-4.004, F.A.C., Certificates of Necessity or Authority; Application, and repeal of Rule 25-4.005, F.A.C., Transfer of Certificate of Necessity or Authority.

**AGENDA:** 04/20/18 – Rule Proposal – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**RULE STATUS:** Proposal May be Deferred

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Section 364.01, Florida Statutes (F.S.), grants the Commission jurisdiction to regulate telecommunications companies. In accordance with Section 364.33, F.S., a person may not provide telecommunications services without a certificate of necessity or a certificate of authority granted by the Commission. Section 364.335, F.S., prescribes the required elements of an application for a certificate of authority, including information demonstrating the applicant's managerial, technical, and financial ability to provide telecommunications service.

Rule 25-4.004, Florida Administrative Code (F.A.C.), Certificate of Necessity or Authority; Application, and Rule 25-4.005, F.A.C., Transfer of Certificate of Authority, describe the required elements of an application for an original certificate of necessity or authority and the transfer of the certificate of necessity or authority to provide telecommunication service. Staff



initiated rulemaking in this docket to modify, streamline, and clarify the application, assist in avoiding applicant confusion, and eliminate redundancy in the rules.

On October 10, 2017, a Notice of Development of Rulemaking was published in the Florida Administrative Register Vol. 43, No. 196, on the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C. The Commission Notice stated that written requests for a rule development workshop must be submitted by October 24, 2017. No requests for a workshop were received.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C. The Commission has jurisdiction pursuant to Section 120.54, F.S., and Chapter 364, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission propose the amendment of Rule 25-4.004, F.A.C., Certificates of Necessity or Authority; Application, and the repeal of Rule 25-4.005, F.A.C., Transfer of Certificate of Necessity or Authority?

**Recommendation:** Yes, the Commission should propose the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify amended Rule 25-4.004, F.A.C., as a minor violation rule. (Fogleman, Williams, Page, Draper)

**Staff Analysis:** Staff recommends the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C., as set forth in Attachment A. Rule 25-4.004, F.A.C., establishes the requirements and the necessary process to apply for a certificate to provide telecommunications service. Rule 25-4.005, F.A.C., sets forth the requirements for the transfer of a telecommunications service certificate.

The staff recommended amendments to Rule 25-4.004, F.A.C., incorporate the requirements of Rule 25-4.005, F.A.C., which would be repealed. Both rules require a nonrefundable application fee of \$500. The rule amendments update and streamline the procedures for obtaining an original telephone certificate or the transfer of the certificate. The recommended amendments to Rule 25-4.004, F.A.C., will prevent confusion regarding the documentation provided by the applicant, avoid redundancy, and clarify the application process. The amount of the application fee is unchanged in the proposed amendments.

There are sections of the application form for a certificate that applicants frequently do not answer completely, which leads to the necessity of follow-up questions and additional processing time. Staff has observed that the required financial information is frequently not provided by the applicants.

The recommended changes to the new application form specify that financial statements demonstrating financial ability must be included and that if the applicant does not have audited financial statements, it must be stated and signed by either the applicant's chief executive officer or chief financial officer affirming that the financial statements are true and correct. The new application form now requires that if a full three years of historical data is not available, the application must include "both historical financial data and pro forma data" to supplement the application. Staff believes that these recommended changes in the form may help limit the number of incomplete forms submitted to the Commission, thus, making the process more efficient.

## Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment B to this recommendation. The SERC analysis also includes whether the rule amendment is likely to have an adverse impact on growth, private sector job creation or

employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation.

The SERC concludes that applicants may see cost savings because the proposed amendments clarify and streamline the process, and eliminate redundancy. The SERC states that there is no change in the filing fee. Staff believes that the rule amendments will not likely directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation.

Further, the SERC concludes that the rule amendments will not likely have an adverse impact on economic growth, private-sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. Thus, the rule amendments do not require legislative ratification pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the rule amendments may bring cost savings to small businesses, small cities and small counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

### **Minor Violation Rules Certificate**

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the Commission is required to certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. A list of Commission rules designated as minor violation rules is published on the Commission's website, as required by Section 120.569(2), F.S. If the Commission proposes the amendment of Rule 25-4.004, F.A.C., the rule would continue to be considered a minor violation rule. Therefore, for purposes of filing an amended rule for adoption with the Department of State, staff recommends that the Commission certify proposed amended Rule 25-4.004, F.A.C., as a minor violation rule. If the Commission proposes the repeal of Rule 25-4.005, F.A.C., the rule will be deleted from the Commission's list of rules designated as minor violation rules.

### **Conclusion**

For the reasons described above, staff recommends that the Commission should propose the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify the proposed amended Rule 25-4.004, F.A.C., as a minor violation rule.



Date: January 25, 2018

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

**Recommendation:** Yes, if no requests for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

**Staff Analysis:** If no requests for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

**25-4.004 Application for Original Certificates ~~Necessity~~ or Transfer of Certificate of Authority; ~~Application~~.**

(1) ~~In order to~~ No person shall provide telecommunications service services to the public without either a certificate of necessity issued prior to July 1, 2011, or a certificate of authority issued after July 1, 2011, is required. Service Services may not be provided, nor may deposits or payment for service services be collected, until the effective date of a certificate or transfer of a certificate. However, marketing and development activities may begin prior to the effective date of the certificate at the applicant's risk that the certificate may not be granted. Prior to certification, the applicant must advise the public in any customer contacts or advertisements that certification has not and may not be granted.

(2) ~~Each~~ An applicant for a certificate of authority shall apply by using ~~submit an application on~~ Form PSC 1020 (4/18) ~~PSC/TEL 162 (12/12)~~, entitled "Application ~~Form~~ for Original Authority or Transfer of Authority to Provide Telecommunications Company Service In Within the State of Florida,;" The application ~~which~~ is incorporated into this rule by reference and ~~which~~ is available at [Dept. of State hyperlink], <http://www.flrules.org/Gateway/reference.asp?No=Ref-02034>, and from the Florida Public Service Commission's website at [www.floridapsc.com/utilities/TelecomCLECApplication/www.floridapsc.com/utilities/telecomm/](http://www.floridapsc.com/utilities/TelecomCLECApplication/www.floridapsc.com/utilities/telecomm/), or from ~~by contacting~~ the Florida Public Service Commission's Office of Industry Development and Market Analysis ~~Telecommunications~~. Except as provided in Section 364.33, F.S., a certificate holder and the person seeking to obtain the certificate by transfer from the holder shall submit a joint application using form PSC1020 (4/18). A non-refundable application or transfer fee of \$500.00 must accompany the filing of each application. The Commission's acceptance of the application fee does not imply that the application, or transfer, or sale of a certificate will be granted.

(3) The company transferring the certificate shall pay to the Florida Public Service

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

Commission all regulatory assessment fees owed pursuant to Section 364.336, F.S., and Rule 25-4.0161, F.A.C.

~~(4)(3) The An~~ application for certificate of authority or transfer shall be filed with the Office of Commission Clerk, ~~Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.~~

~~(4) Each holder of a certificate of necessity or authority shall file with the Commission's Office of Commission Clerk updated information for the following items within ten days after a change occurs:~~

~~(a) The street address of the certificate holder including number, street name, city, state and zip code, and the mailing address if it differs from the street address.~~

~~(b) Name, title, and phone number of the individual responsible for contact with the Commission.~~

*Rulemaking Authority 350.127(2) FS. Law Implemented 350.113 ~~350.127(1)~~, 364.32, 364.33, 364.335, FS. History—New 12-1-68, Formerly 25-4.04, Amended 12-16-12, \_\_\_\_\_.*

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

13        **25-4.005 Transfer of Certificate of Necessity or Authority.**

4        ~~(1) Except as provided in Section 364.33, F.S., a certificate holder and the person seeking~~  
5        ~~to obtain the certificate by transfer from the holder shall submit a joint application on~~  
6        ~~Commission Form PSC/TEL 162 (12/12), entitled "Application Form for Authority to Provide~~  
7        ~~Telecommunications Company Service Within the State of Florida," incorporated by reference~~  
8        ~~into Rule 25-4.004, F.A.C. The application shall be filed with the Office of Commission~~  
9        ~~Clerk. A nonrefundable application fee of \$500.00 must accompany the filing of each~~  
10       ~~application to cover processing costs. The Commission's acceptance of the application fee~~  
11       ~~does not imply that the application for transfer of a certificate will be granted.~~

12       ~~(2) The company transferring the certificate shall pay to the Commission all regulatory~~  
13       ~~assessment fees owed pursuant to Sections 350.113 and 364.336, F.S. and Rule 25-4.0161,~~  
14       ~~F.A.C.~~

15       *Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 364.335, 364.336 FS.*  
16       *History—New 12-1-68, Amended 5-4-81, Formerly 25-4.05, Amended 9-16-99, 12-16-12,*  
17       *Repealed*



## **FLORIDA PUBLIC SERVICE COMMISSION**

### **OFFICE OF INDUSTRY DEVELOPMENT AND MARKET ANALYSIS**

#### **APPLICATION FOR ORIGINAL AUTHORITY OR TRANSFER OF AUTHORITY TO PROVIDE TELECOMMUNICATIONS SERVICE IN THE STATE OF FLORIDA**

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### **INSTRUCTIONS**

This form should be used as the application for an original certificate and transfer of an existing certificate (from a Florida certificated company to a non-certificated company). In the case of a transfer, the information shall be provided by the transferee. If you have other questions about completing the form, call **(850) 413-6600**.

Print or type all responses to each item requested in the application. If an item is not applicable, please explain. All questions must be answered. If unable to answer the question in the allotted space, please continue on a separate sheet.

Once completed, submit the **original and one copy** of this form along with a **non-refundable** fee of **\$500.00** to:

**Florida Public Service Commission  
Office of Commission Clerk  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850  
(850) 413-6770**



## **APPLICATION**

This is an application for (check one):

☐ **Original certificate** (new company)

☐ **Approval of transfer of existing certificate:** Example, a non-certificated company purchases an existing company and desires to retain the original certificate rather than apply for a new certificate.

Please provide the following:

1. Full name of company, including fictitious name(s), that must match identically with name(s) on file with the Florida Department of State, Division of Corporations registration:

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2. The Florida Secretary of State corporate registration number:

---

3. F.E.I. Number: 

---

4. Structure of organization:

The company will be operating as a:  
(Check all that apply):

- |  |   |
|--|---|
| <input type="checkbox"/> Corporation               | <input type="checkbox"/> General Partnership          |
| <input type="checkbox"/> Foreign Corporation       | <input type="checkbox"/> Foreign Partnership          |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Partnership          |
| <input type="checkbox"/> Sole Proprietorship       | <input type="checkbox"/> Other, please specify below: |

---

**If a partnership**, provide a copy of the partnership agreement.

**If a foreign limited partnership**, proof of compliance with the foreign limited partnership statute (Chapter 620.169, FS). The Florida registration number is: 

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**5. Who will serve as point of contact to the Commission in regard to the following?**

**(a) This application:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Post Office Box: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

**(b) Ongoing operations of the company:**

(This company liaison will be the point of contact for FPSC correspondence. This point of contact can be updated if a change is necessary but this must be completed at the time the application is filed).

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Post Office Box: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Company Homepage: \_\_\_\_\_

**(c) Optional secondary point of contact or liaison:**

(This point of contact will not receive FPSC correspondence but will be on file with the FPSC).

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Post Office Box: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

6. Physical address for the applicant that will do business in Florida:

Street address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

7. List the state(s), and accompanying docket number(s), in which the applicant has:

(a) **operated** as a telecommunications company. \_\_\_\_\_  
\_\_\_\_\_

(b) **applications pending** to be certificated as a telecommunications company.  
\_\_\_\_\_  
\_\_\_\_\_

(c) **been certificated** to operate as a telecommunications company. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) **been denied authority** to operate as a telecommunications company and the  
circumstances involved. \_\_\_\_\_  
\_\_\_\_\_

(e) **had regulatory penalties imposed** for violations of telecommunications  
statutes and the circumstances involved. \_\_\_\_\_  
\_\_\_\_\_

(f) **been involved in civil court proceedings** with another telecommunications  
entity, and the circumstances involved. \_\_\_\_\_  
\_\_\_\_\_

8. The following questions pertain to the officers and directors. Have any been:

(a) adjudged bankrupt, mentally incompetent (and not had his or her competency  
restored), or found guilty of any felony or of any crime, or whether such actions may  
result from pending proceedings? ☐ Yes ☐ No

If yes, provide explanation.  
\_\_\_\_\_  
\_\_\_\_\_

(b) granted or denied a certificate in the State of Florida (this includes active and  
canceled certificates)? ☐ Granted ☐ Denied ☐ Neither



If granted provide explanation and list the certificate holder and certificate number.

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If denied provide explanation.

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(c) an officer, director, and partner in any other Florida certificated telecommunications company? ☐ Yes ☐ No

If yes, give name of company and relationship. If no longer associated with company, give reason why not.

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9. Florida Statute 364.335(1)(a) requires a company seeking a certificate of authority to demonstrate its managerial, technical, and financial ability to provide telecommunications service.

**Note:** *It is the applicant's burden to demonstrate that it possesses adequate managerial ability, technical ability, and financial ability. Additional supporting information may be supplied at the discretion of the applicant. For the purposes of this application, financial statements MUST contain the balance sheet, income statement, and statement of retained earnings.*

- (a) **Managerial ability:** An applicant must provide resumes of employees/officers of the company that would indicate sufficient managerial experiences of each. Please explain if a resume represents an individual that is not employed with the company and provide proof that the individual authorizes the use of the resume.
- (b) **Technical ability:** An applicant must provide resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance. Please explain if a resume represents an individual that is not employed with the company and provide proof that the individual authorizes the use of the resume.
- (c) **Financial ability:** An applicant must provide financial statements demonstrating financial ability by submitting a balance sheet, income statement, and retained earnings statement. An applicant that has audited financial statements for the most recent three years must provide those financial statements. If a full three years' historical data is not available, the application must include both historical financial data and pro forma data to supplement. An applicant of a newly established company must provide three years' pro forma data. If the applicant does not have audited financial statements, it must be so stated and signed by either the applicant's chief executive officer or chief financial officer affirming that the financial statements are true and correct.

10. Where will you officially designate as your place of publicly publishing your schedule a/k/a tariffs or price lists)? (Tariffs or price lists MUST be publicly published to comply with Florida Statute 364.04).

- ☐ Florida Public Service Commission
- ☐ Website – Please provide Website address: \_\_\_\_\_
- ☐ Other – Please provide address: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**THIS PAGE MUST BE COMPLETED AND SIGNED**

**REGULATORY ASSESSMENT FEE:** I understand that all telecommunications companies must pay a regulatory assessment fee. A minimum annual assessment fee, as defined by the Commission, is required.

**RECEIPT AND UNDERSTANDING OF RULES:** I understand the Florida Public Service Commission's rules, orders, and laws relating to the provisioning of telecommunications company service in Florida.

**APPLICANT ACKNOWLEDGEMENT:** By my signature below, I, the undersigned owner or officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical ability, managerial ability, and financial ability to provide telecommunications company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules, orders and laws.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "**Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083.**"

I understand that any false statements can result in being denied a certificate of authority in Florida.

**COMPANY OWNER OR OFFICER**

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CERTIFICATE TRANSFER**

As current holder of Florida Public Service Commission Certificate Number \_\_\_\_\_,  
I have reviewed this application and join in the petitioner's request for a transfer of the  
certificate.

**COMPANY OWNER OR OFFICER**

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Street/Post Office Box: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



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:** December 13, 2017

**TO:** Pamela H. Page, Senior Attorney, Office of the General Counsel

**FROM:** Suzanne M. Ollila, Economic Analyst, Division of Economics *A.M.O.*

**RE:** Statement of Estimated Regulatory Costs (SERC) for Proposed Amendments to Rule 25-4.004 (Certificates Necessity or Authority; Application) and for Proposed Repeal of Rule 25-4.005 (Transfer of Certificate of Necessity or Authority), Florida Administrative Code (F.A.C.)

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Both rules concern telecommunications service. The purpose of the rulemaking is to streamline, update, and clarify Rules 25-4.004 and 25-4.005, F.A.C., resulting in the repeal of Rule 25-4.005, F.A.C. Rule 25-4.004, F.A.C., establishes the requirements and processes necessary to apply for a certificate to provide telecommunications service. Rule 24-4.005, F.A.C., establishes the requirements for transfer of a telecommunications service certificate. Both rules contain links to their application forms and both rules require a nonrefundable application fee of \$500. The proposed amendments to Rule 25-4.004, F.A.C., incorporate the requirements of Rule 25-4.005, F.A.C., update and clarify language, and provide for the same application form for both the application for a certificate and transfer of a certificate (the link to the application would continue to be available in the amended rule). The nonrefundable application fee of \$500 is unchanged in the proposed amendments.

The attached SERC addresses the considerations required pursuant to Section 120.541, Florida Statutes (F.S.). No workshop was requested in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.



FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Rules 25-4.004 and 25-4.005, F.A.C.

1. Will the proposed rule have an adverse impact on small business?  
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes ☐

No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes ☐

No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

- (1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)1, F.S.]

Economic growth

Yes ☐ No ☒

Private-sector job creation or employment

Yes ☐ No ☒

Private-sector investment

Yes ☐ No ☒

- (2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)

Yes ☐ No ☒

Productivity

Yes ☐ No ☒

Innovation

Yes ☐ No ☒

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐

No ☒

Economic Analysis:

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

17 (number of applications for certificates in 2016).

(2) A general description of the types of individuals likely to be affected by the rule.

Companies or governmental entities who wish to provide telecommunications service.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

☒ None. To be done with the current workload and existing staff.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

☐ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☒ Other. Provide an explanation for estimate and methodology used.

Applicants may see cost savings because amendments clarify the process, eliminate redundancy, and streamline the process. There is no change in the filing fee.

(3) Any anticipated effect on state or local revenues.

- ☒ None.
- ☐ Minimal. Provide a brief explanation.
- ☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

- ☐ None. The rule will only affect the Commission.
- ☐ Minimal. Provide a brief explanation.
- ☒ Other. Provide an explanation for estimate and methodology used.

Applicants may see cost savings because amendments clarify the process, eliminate redundancy, and streamline the process. There is no change in the filing fee.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- ☐ No adverse impact on small business.
- ☐ Minimal. Provide a brief explanation.



☒ Other. Provide an explanation for estimate and methodology used.

Applicants may see cost savings because amendments clarify the process, eliminate redundancy, and streamline the process. There is no change in the filing fee.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

☐ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

☒ Other. Provide an explanation for estimate and methodology used.

Applicants may see cost savings because amendments clarify the process, eliminate redundancy, and streamline the process. There is no change in the filing fee.

F. Any additional information that the Commission determines may be useful.  
[120.541(2)(f), F.S.]

☒ None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

# Item 4

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02794-2018  
FPSC - COMMISSION CLERK

## 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-**

**DATE:** April 6, 2018

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

**FROM:** Office of the General Counsel (Harper) *CHS* *MC* *ALM*  
Division of Accounting and Finance (Brown)

**RE:** Docket No. 20180041-WU – Proposed Amendment of Rule 25-30.455, FAC, Staff Assistance in Rate Cases, Rule 25-30.456, FAC, Staff Assistance in Alternative Rate Setting, and Rule 25-30.457, FAC, Limited Alternative Rate Increase.

**AGENDA:** 04/20/18 – Rule Proposal – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** 07/01/18 (Final Rule must be effective by this date pursuant to Section 367.0814(1), Florida Statutes)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Rule 25-30.455, Florida Administrative Code (F.A.C), addresses the procedures for water and wastewater utilities to petition the Commission for staff assistance in rate cases. Rule 25-30.456, F.A.C, addresses the procedures for water and wastewater utilities to petition the Commission for staff assistance in alternative rate proceedings. Rule 25-30.457, F.A.C, addresses the procedures for water and wastewater utilities to petition the Commission for a limited alternative rate increase.

Pursuant to these rules, the upper gross annual revenue threshold that determines eligibility for water and wastewater utilities to receive staff assistance is \$275,000 per system or \$550,000 on a company-wide basis. Pursuant to Section 367.0814(1), Florida Statutes (F.S.), the Commission must adjust the gross annual revenue threshold effective on July 1, 2013, and every five years

thereafter, based on the most recent cumulative five years of the price index established by the Commission pursuant to Section 367.081(4), F.S.

Staff initiated this rulemaking to adjust the gross annual revenue thresholds for staff assisted rate cases, in accordance with Section 367.0814(1), F.S. The notice of rule development for Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., appeared in the February 1, 2018, edition of the Florida Administrative Register, Volume 44, Number 22. There were no requests for a rule development workshop, and no workshop was held.

This recommendation addresses whether the Commission should propose the amendment of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), 367.0814, and 367.121, F.S.

Date: April 6, 2018

## Discussion of Issues

**Issue 1:** Should the Commission propose amendments to Rule 25-30.455, Staff Assistance in Rate Cases, Rule 25-30.456, Staff Assistance in Alternative Rate Setting, and Rule 25-30.457, Limited Alternative Rate Increase, F.A.C.?

**Recommendation:** Yes, the Commission should propose amendments to Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify proposed amended Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as minor violation rules. (Harper, Brown)

**Staff Analysis:** Staff recommends that the Commission propose the amendments of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as set forth in Attachment A. Staff is recommending amendments to the rules to comply with Section 367.0814 (1), F.S.

Section 367.0814(1), F.S., provides:

The Commission may establish rules by which a water or wastewater utility whose gross annual revenues are \$250,000 or less may request and obtain staff assistance for the purpose of changing its rates and charges. A utility may request staff assistance by filing an application with the commission. *The gross annual revenue level shall be adjusted on July 1, 2013, and every 5 years thereafter, based on the most recent cumulative 5 years of the price index established by the commission pursuant to s. 367.081(4)(a).* (emphasis added)

Rule 25-30.455, F.A.C., allows certain water and wastewater utilities to petition the Commission for staff assistance in rate applications by submitting a completed staff assisted rate case application. Rule 25-30.456, F.A.C., allows water and wastewater utilities to petition the Commission for staff assistance in alternative rate setting. Rule 25-30.457, F.A.C., allows certain water and wastewater utilities to seek a limited rate increase. Each rule currently allows the water and wastewater utilities whose total gross annual operating revenues are \$275,000 or less for water service or \$275,000 or less for wastewater service to be eligible for staff assistance.

Section 367.0814(1), F.S., requires that the gross annual revenue threshold level be adjusted on July 1, 2013, and every five years thereafter, based on the most recent cumulative five years of the price index established by the Commission pursuant to Section 367.081(4), F.S. Therefore, in order to comply with the statute, staff recommends that the total gross annual operating revenue thresholds for eligibility set forth in each rule be increased to \$300,000 or less for water service, or \$300,000 or less for wastewater service, as set forth in Attachment A. Staff derived this adjusted amount based on the application of the five-year cumulative index (7.54 percent), established by the Commission pursuant to Section 367.081(4), F.S., which when applied increases the estimated gross annual revenue threshold level by \$25,000.

In addition, staff recommends that for Rules 25-30.455, and 25-30.456, F.A.C., the total gross annual operating revenues be increased from \$550,000 to \$600,000 or less on a combined basis, for staff assisted rate case applications and staff assistance in alternative rate settings as set forth in Attachment A. Staff derived this adjusted amount based on the application of the five-year



Date: April 6, 2018

cumulative index (7.54 percent), which when applied increases the estimated gross annual revenue threshold level by \$25,000.

### **Minor Violation Rules Certification**

Currently, Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., are on the Commission's list of minor violation rules. Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., are minor violation rules because the violation of the rule would not result in economic or physical harm to a person or an adverse effect on the public health, safety, or welfare or create a significant threat of such harm. Violations of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., would continue to be minor. Therefore, for the purposes of filing the amended rules for adoption with the Department of State, staff recommends that the Commission certify proposed amended Rule 25-30.455, Rule 25-30.456, and Rule 25-30.457, F.A.C., as minor violation rules.

### **Statement of Estimated Regulatory Costs**

Pursuant to Section 120.54(3)(b)1., F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the rule amendments are likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after implementation. None of the impact/cost criteria will be exceeded as a result of the recommended revisions.

The SERC concludes that the amendments to the rules will likely not directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within 1 year after implementation. Further, the SERC concludes that the amendments to the rules will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within 5 years of implementation. Thus, the amendments to the rules do not require legislative ratification, pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the amendments to the rules would have no impact on small businesses, would have no implementation or enforcement cost on the Commission or any other state and local government entity, and would have no impact on small cities or small counties. The SERC states that there will be no transactional costs likely to be incurred by individuals and entities required to comply with the requirements.

### **Conclusion**

The Commission should propose the amendment of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify proposed amended Rule 25-30.455, Rule 25-30.456, and Rule 25-30.457, F.A.C., as minor violation rules.

Date: April 6, 2018

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

**Recommendation:** Yes. If no requests for hearing or comments are filed, the rules should be filed with the Department of State, and the docket should be closed.

**Staff Analysis:** If no requests for hearing or comments are filed, the rule should be filed with the Department of State, and the docket should be closed.

**25-30.455 Staff Assistance in Rate Cases.**

(1) Water and wastewater utilities whose total gross annual operating revenues are ~~\$300,000~~ ~~\$275,000~~ or less for water service or ~~\$300,000~~ ~~\$275,000~~ or less for wastewater service, or ~~\$600,000~~ ~~\$550,000~~ or less on a combined basis, may petition the Commission for staff assistance in rate applications by submitting a completed staff assisted rate case application. Reasonable and prudent rate case expense shall be eligible for recovery through the rates developed by staff. Recovery of attorney fees and outside consultant fees related to the rate case shall be determined based on the requirements set forth in Section 367.0814(3), F.S. A utility that chooses not to exercise the option of staff assistance may file for a rate increase under the provisions of Rule 25-30.443, F.A.C.

(2) The appropriate application form, Commission Form PSC/AFD 2-W (11/86) (Rev. 06/14), entitled "Application for a Staff Assisted Rate Case," is incorporated into this rule by reference and is available at: <http://www.flrules.org/Gateway/reference.asp?No=Ref-04415>. The form may also be obtained from the Commission's Division of Accounting and Finance, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

(3) Upon completion of the form, the applicant shall file it with the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870.

(4) Within 30 days of receipt of the completed application, the Commission ~~Committee~~ will evaluate the application and determine the applicant's eligibility for staff assistance.

(a) If the Commission has received four or more applications in the previous 30 days; or, if the Commission has 20 or more docketed staff assisted rate cases in active status on the date the application is received, the Commission will deny initial evaluation of an application for staff assistance and close the docket. When an application is denied under the provisions of this paragraph, the Commission will notify the applicant of the date on which the application  
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1 may be resubmitted.

2 (b) Initially, determinations of eligibility will be conditional, pending an examination of  
3 the condition of the applicant's books and records.

4 (5) Upon making its final determination of eligibility, the Commission will notify the  
5 applicant in writing as to whether the application is officially accepted or denied. If the  
6 application is accepted, a staff assisted rate case will be initiated. If the application is denied,  
7 the notification of application denial will state the deficiencies in the application with  
8 reference to the criteria set out in subsection (7) of this rule.

9 (6) The official date of filing will be 30 days after the date of the written notification to the  
10 applicant of the Commission's official acceptance of the application.

11 (7) In determining whether to grant or deny the application, the Commission will consider  
12 the following criteria:

13 (a) Whether the applicant qualifies for staff assistance pursuant to subsection (1) of this  
14 rule;

15 (b) Whether the applicant's books and records are organized consistent with Rule 25-  
16 30.110, F.A.C., so as to allow Commission personnel to verify costs and other relevant factors  
17 within the 30-day time frame set out in this rule;

18 (c) Whether the applicant has filed annual reports;

19 (d) Whether the applicant has paid applicable regulatory assessment fees;

20 (e) Whether the applicant has at least one year of experience in utility operation;

21 (f) Whether the applicant has filed additional relevant information in support of eligibility,  
22 together with reasons why the information should be considered; and,

23 (g) Whether the utility was granted a rate case increase within the 2-year period prior to  
24 the receipt of the application under review.

25 (8) The Commission will deny the application if the utility does not remit the filing fee, as  
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existing law.

1 provided by paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

2 (9) An aggrieved applicant may request reconsideration of the application denial, which  
3 will be decided by the full Commission.

4 (10) A substantially affected person may file a petition to protest the Commission's  
5 proposed agency action in a staff assisted rate case within 21 days of issuance of the Notice of  
6 Proposed Agency Action Order, as set forth in Rule 28-106.111, F.A.C.

7 (11) A petition to protest the Commission's proposed agency action shall conform to Rule  
8 28-106.201, F.A.C.

9 (12) In the event of a protest of the Commission's Notice of Proposed Agency Action  
10 Order in a staff assisted rate case, the utility shall:

11 (a) Provide prefiled direct testimony in accordance with the Order Establishing Procedure  
12 issued in the case. At a minimum, that testimony shall adopt the Commission's Proposed  
13 Agency Action Order;

14 (b) Sponsor a witness to support source documentation provided to the Commission staff  
15 in its preparation of the staff audit, the staff engineering and accounting report and the staff  
16 proposed agency action recommendation in the case;

17 (c) Include in its testimony the necessary factual information to support its position on any  
18 issue that it chooses to take a position different than that contained in the Commission's  
19 Proposed Agency Action Order; and,

20 (d) Meet all other requirements of the Order Establishing Procedure.

21 (13) Failure to comply with the dates established in the Order Establishing Procedure, or to  
22 timely file a request for extension of time for good cause shown, may result in dismissal of the  
23 staff assisted rate case and closure of the docket.

24 (14) In the event of a protest of the Commission's Proposed Agency Action Order in a  
25 staff assisted rate case, the Commission staff shall:

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existing law.

1 (a) File prefiled direct testimony to explain its analysis in the staff proposed agency action  
2 recommendation. In the event the staff wishes to alter its position on any issue, it shall provide  
3 factual testimony to support its changed position;

4 (b) Meet all other requirements of the Order Establishing Procedure; and,

5 (c) Provide to the utility materials to assist the utility in the preparation of its testimony  
6 and exhibits. This material shall consist of an example of testimony filed by a utility in another  
7 case, an example of testimony that would support the Proposed Agency Action Order in this  
8 case, an example of an exhibit filed in another case, and examples of prehearing statements  
9 and briefs filed in other cases.

10 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*

11 *History—New 12-8-80, Formerly 25-10.180, Amended 11-10-86, 8-26-91, 11-30-93, 1-31-00,*

12 *12-16-08, 8-10-14, 2-19-17,\_\_\_\_\_.*

**25-30.456 Staff Assistance in Alternative Rate Setting.**

(1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., water and wastewater utilities whose total gross annual operating revenues are \$300,000 ~~\$275,000~~ or less for water service or \$300,000 ~~\$275,000~~ or less for wastewater service, or \$600,000 ~~\$550,000~~ or less on a combined basis, may petition the Commission for staff assistance in alternative rate setting by submitting a completed staff assisted application for alternative rate setting.

(2) The appropriate application form, Commission Form PSC/AFD 25 (11/93) (Rev. 06/14), entitled "Application for Staff Assistance for Alternative Rate Setting," is incorporated into this rule by reference and is available at:

<http://www.flrules.org/Gateway/reference.asp?No=Ref-04414>. The form may also be obtained from the Commission's Division of Accounting and Finance, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

(3) Upon completion of the form, the applicant shall file it with the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870.

(4) Within 30 days of receipt of the completed application, the Commission will evaluate the application and determine the applicant's eligibility for staff assistance.

(a) If the Commission has received four or more alternative rate setting applications in the previous 30 days; or, if the Commission has 20 or more docketed staff assisted rate cases in active status on the date the application is received, the Commission will deny initial evaluation of an application for staff assistance and close the docket. When an application is denied under the provisions of this paragraph, the Commission will notify the applicant of the date on which the application may be resubmitted.

(b) Determinations of eligibility will be conditional, pending an examination of the  
CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 condition of the applicant's books and records.

2 (5) Upon making its final determination of eligibility, the Commission will notify the  
3 applicant in writing as to whether the application is officially accepted or denied. If the  
4 application is accepted, staff assistance in alternative rate setting will be initiated. If the  
5 application is denied, the notification of application denial will state the deficiencies in the  
6 application with reference to the criteria set out in subsection (7) of this rule.

7 (6) The official date of filing will be 30 days after the date of the written notification to the  
8 applicant of the Commission's official acceptance of the application.

9 (7) In determining whether to grant or deny the application, the Commission will consider  
10 the following criteria:

11 (a) Whether the applicant qualifies for staff assistance pursuant to subsection (1) of this  
12 rule;

13 (b) Whether the applicant's books and records are organized consistent with Rule 25-  
14 30.110, F.A.C., so as to allow Commission personnel to verify costs and other relevant factors  
15 within the 30-day time frame set out in this rule;

16 (c) Whether the applicant has filed annual reports;

17 (d) Whether the applicant has paid applicable regulatory assessment fees;

18 (e) Whether the applicant has at least one year of experience in utility operation;

19 (f) Whether the applicant has filed additional relevant information in support of eligibility,  
20 together with reasons why the information should be considered; and

21 (g) Whether the utility was granted a rate case increase within the 2-year period prior to  
22 the receipt of the application under review.

23 (8) The Commission will deny the application if the utility does not remit the filing fee, as  
24 provided by paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

25 (9) An aggrieved applicant may request reconsideration of the application denial, which  
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existing law.



1 will be decided by the full Commission.

2 (10) The Commission will, for the purposes of determining the amount of rate increase, if  
3 any, compare the operation and maintenance expenses (O & M) of the utility to test year  
4 operating revenues. The Commission will consider an allowance for return on working capital  
5 using the one-eighth of O & M formula approach.

6 (11) The Commission will limit the maximum increase in operating revenues to 50 percent  
7 of test year operating revenues.

8 (12) The Commission will vote on a proposed agency action recommendation establishing  
9 rates no later than 90 days from the official filing date as established in subsection (6) of this  
10 rule.

11 (13) A substantially affected person may file a petition to protest the Commission's  
12 Proposed Agency Action Order regarding a staff assisted alternative rate setting application  
13 within 21 days of issuance of the Notice of Proposed Agency Action Order as set forth in Rule  
14 28-106.111, F.A.C.

15 (14) A petition to protest the Commission's proposed agency action shall conform to Rule  
16 28-106.201, F.A.C.

17 (15) In the event of protest of the Proposed Agency Action Order by a substantially  
18 affected person, the rates established in the Proposed Agency Action Order may be  
19 implemented on a temporary basis, subject to refund with interest in accordance with Rule 25-  
20 30.360, F.A.C. At that time, the utility may elect to pursue rates set pursuant to the rate base  
21 determination provisions of Rule 25-30.455, F.A.C.

22 (16) In the event of a protest, the maximum increase established in subsection (11) of this  
23 rule shall no longer apply.

24 (17) In the event of a protest of the Commission's Proposed Agency Action Order in a  
25 staff assisted alternative rate setting application, the utility shall:

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existing law.

- 1 (a) Provide prefiled direct testimony in accordance with the Order Establishing Procedure  
2 issued in the case. At a minimum, that testimony shall adopt the Commission's Proposed  
3 Agency Action Order;
- 4 (b) Sponsor a witness to support source documentation provided to the Commission staff  
5 in its preparation of the staff engineering and accounting analysis and the staff proposed  
6 agency action recommendation in the case;
- 7 (c) Include in its testimony the necessary factual information to support its position on any  
8 issue that it chooses to take a position different than that contained in the Commission's  
9 Proposed Agency Action Order; and
- 10 (d) Meet all other requirements of the Order Establishing Procedure.
- 11 (18) Failure to comply with the dates established in the Order Establishing Procedure, or to  
12 timely file a request for extension of time for good cause shown, may result in dismissal of the  
13 staff assisted alternative rate setting application and closure of the docket.
- 14 (19) In the event of protest of the Commission's Proposed Agency Action Order in a staff  
15 assisted alternative rate setting application, the Commission staff shall:
- 16 (a) File prefiled direct testimony to explain its analysis in the proposed agency action  
17 recommendation. In the event the staff wishes to alter its position on any issue, it shall provide  
18 factual testimony to support its changed position;
- 19 (b) Meet all other requirements of the Order Establishing Procedure; and
- 20 (c) Provide to the utility materials to assist the utility in the preparation of its testimony  
21 and exhibits. This material shall consist of an example of testimony filed by a utility in another  
22 case, a sample of testimony that would support the Proposed Agency Action Order in this  
23 case, an example of an exhibit filed in another case, and examples of prehearing statements  
24 and briefs filed in other cases.
- 25 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*  
CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from  
existing law.

1 *History—New 11-30-93, Amended 1-31-00, 12-16-08, 8-10-14,\_\_\_\_\_.*  
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**25-30.457 Limited Alternative Rate Increase.**

(1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., or to staff assistance in alternative rate setting as described in Rule 25-30.456, F.A.C., water utilities whose total gross annual operating revenues are \$300,000 ~~\$275,000~~ or less for water service and wastewater utilities whose total gross annual operating revenues are \$300,000 ~~\$275,000~~ or less for wastewater service may petition the Commission for a limited alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of service by filing with the Office of Commission Clerk the information required by subsections (7), (8) and (9) of this rule.

(2) Within 30 days of receipt of the completed petition, the Commission will evaluate the petition and determine the petitioner's eligibility for a limited alternative rate increase.

(3) The Commission will notify the petitioner in writing as to whether the petition is accepted or denied. If the petition is accepted, staff assistance in alternative rate setting will be initiated. If the petition is denied, the notification of petition denial will state the deficiencies in the petition with reference to the criteria set out in subsection (5) of this rule.

(4) The official date of filing will be 30 days after the date of the written notification to the petitioner of the Commission's acceptance of the petition.

(5) In determining whether to grant or deny the petition, the Commission will consider the following criteria:

(a) Whether the petitioner qualifies for staff assistance pursuant to subsection (1) of this rule;

(b) Whether the petitioners' books and records are organized consistent with Rule 25-30.110, F.A.C, so as to allow Commission personnel to verify costs and other relevant factors within the 30-day time frame set out in this rule;

(c) Whether the petitioner has filed annual reports;

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- 1 (d) Whether the petitioner has paid applicable regulatory assessment fees;
- 2 (e) Whether the petitioner has at least one year of experience in utility operation;
- 3 (f) Whether the petitioner has filed additional relevant information in support of eligibility
- 4 together with reasons why the information should be considered;
- 5 (g) Whether the utility was granted a rate case increase within the 2-year period prior to
- 6 the receipt of the petition under review;
- 7 (h) Whether a final order in a rate proceeding that established the utility's rate base, capital
- 8 structure, annual operating expenses and revenues has been issued for the utility within the 7-
- 9 year period prior to the receipt of the petition under review.
- 10 (6) The Commission will deny the petition if the petitioner does not remit the filing fee, as
- 11 provided by paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance of the
- 12 petition.
- 13 (7) Each petitioner for limited alternative rate increase shall provide the following general
- 14 information to the Commission:
- 15 (a) The name of the utility as it appears on the utility's certificate and the address of the
- 16 utility's principal place of business; and
- 17 (b) The type of business organization under which the utility's operations are conducted:
- 18 1. If the petitioner is a corporation, the date of incorporation and the names and addresses
- 19 of all persons who own five percent or more of the petitioner's stock; or
- 20 2. If the petitioner is not a corporation, the names and addresses of the owners of the
- 21 business.
- 22 (8) The petitioner shall provide a schedule showing:
- 23 (a) Annualized revenues by customer class and meter size for the most recent 12-month
- 24 period using the rates in effect at the time the utility files its petition; and
- 25 (b) Current and proposed rates for all classes of customers.

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1 (9) The petitioner shall provide a statement that the figures and calculations upon which  
2 the change in rates is based are accurate and that the change will not cause the utility to exceed  
3 its last authorized rate of return on equity.

4 (10) A financial or engineering audit of the utility's financial or engineering books and  
5 records shall not be required in conjunction with the petition under review.

6 (11) The petition will be approved, denied, or approved with modifications within 90 days  
7 from the official filing date as established in subsection (4) of this rule.

8 (12) Any revenue increase granted under the provisions of this rule shall be held subject to  
9 refund with interest in accordance with Rule 25-30.360, F.A.C., for a period of 15 months  
10 after the filing of the utility's annual report required by Rule 25-30.110, F.A.C., for the year  
11 the adjustment in rates was implemented.

12 (13) To insure overearnings will not occur due to the implementation of this rate increase,  
13 the Commission will conduct an earnings review of the utility's annual report to determine  
14 any potential overearnings for the year the adjustment in rates was implemented.

15 (14) If, within 15 months after the filing of a utility's annual report the Commission finds  
16 that the utility exceeded the range of its last authorized rate of return on equity after an  
17 adjustment in rates, as authorized by this rule, was implemented within the year for which the  
18 report was filed, such overearnings, up to the amount held subject to refund, with interest,  
19 shall be disposed of for the benefit of the customers.

20 (15) In the event of a protest of the Proposed Agency Action Order pursuant to Rule 28-  
21 106.111, F.A.C., by a substantially affected person other than the utility, unless the Proposed  
22 Agency Action Order proposes a rate reduction, the utility may implement the rates  
23 established in the Proposed Agency Action Order on a temporary basis subject to refund with  
24 interest in accordance with Rule 25-30.360, F.A.C., upon the utility filing a staff assisted rate  
25 case application pursuant to Rule 25-30.455, F.A.C., within 21 days of the date the protest is  
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existing law.

1 filed.

2 (16) In the event of a protest, the limit on the maximum increase provided in subsection  
3 (1) of this rule shall no longer apply.

4 (17) If the utility fails to file a staff assisted rate case application within 21 days in the  
5 event of a protest, the petition for a limited alternative rate increase will be deemed  
6 withdrawn.

7 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*  
8 *History—New 3-15-05, Amended 12-16-08, 8-10-14, \_\_\_\_\_.*

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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 20, 2018

**TO:** Adria E. Harper, Senior Attorney, Office of the General Counsel

**FROM:** Sevini K. Guffey, Public Utility Analyst I, Division of Economics *Sk.G.*

**RE:** Statement of Estimated Regulatory Costs for Proposed Amendments to Rules 25-30.455, 25-30.456, and 25-30.457, Florida Administrative Code (F.A.C.)

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The recommended rule revisions implement changes to the eligibility requirements for staff assistance in water and waste water rate cases. Section 367.0814, Florida Statutes (F.S.), requires that the gross annual revenue threshold level be adjusted on July 1, 2013, and every five years thereafter, based on the most recent cumulative five years of the price index established by the Commission pursuant to Section 367.081(4)(a), F.S. As noted in the attached Statement of Estimated Regulatory Costs (SERC), the amended rules would be applicable overall to 107 utilities. The specific proposed rule amendments are described below.

Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases, defines the eligibility requirements for a water or wastewater utility to qualify for a Staff Assisted Rate Case (SARC). The recommended rule revisions increase the upper threshold of total gross annual operating revenues from \$275,000 to \$300,000, or from \$550,000 to \$600,000, on a combined basis.

Rule 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting, defines the eligibility requirements for a water or wastewater utility to qualify for staff assistance in alternative rate setting. The alternative rate setting process is less detailed than that conducted for a SARC and limits the maximum increase in operating revenues to 50 percent of test year operating revenues. The recommended rule revisions increase the upper eligibility threshold amount of total gross annual operating revenues from \$275,000 to \$300,000, or from \$550,000 to \$600,000, on a combined basis.

Rule 25-30.457, Limited Alternative Rate Increase, allows for a limited alternative procedure to a SARC. This procedure is less detailed than that conducted for a SARC and may allow for a limited alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of service. The recommended rule revisions increase the upper eligibility threshold amount of total gross annual operating revenues from \$275,000 to \$300,000, or from \$550,000 to \$600,000, on a combined basis.

The utilities affected by the recommended rule revisions potentially may achieve cost savings as a result of lower rate case expenses. No workshop was requested in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to Paragraph



120.541(1)(a), F.S. None of the impact/cost criteria established in Paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Sections 25-30.455, 456, 457, F.A.C.

1. Will the proposed rule have an adverse impact on small business?  
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes ☐

No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes ☐

No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

- (1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)1, F.S.]

Economic growth Yes ☐ No ☒

Private-sector job creation or employment Yes ☐ No ☒

Private-sector investment Yes ☐ No ☒

- (2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes ☐ No ☒

Productivity Yes ☐ No ☒

Innovation Yes ☐ No ☒

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐

No ☒

Economic Analysis: The affected entities should benefit from the recommended rule changes. A summary of the recommended rule revisions is included in the attached memorandum to Counsel.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

107 water and wastewater systems that qualify for a staff assisted rate case.

(2) A general description of the types of individuals likely to be affected by the rule.

The affected entities are investor-owned water and wastewater utilities.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

☒ None. To be done with the current workload and existing staff.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

- ☒ None.
- ☐ Minimal. Provide a brief explanation.
- ☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

- ☒ None. The rule will only affect the Commission.
- ☐ Minimal. Provide a brief explanation.
- ☐ Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- ☒ No adverse impact on small business.
- ☐ Minimal. Provide a brief explanation.
- ☐ Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- ☒ No impact on small cities or small counties.
- ☐ Minimal. Provide a brief explanation.
- ☐ Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful.  
[120.541(2)(f), F.S.]

- ☒ None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- ☒ No regulatory alternatives were submitted.
- ☐ A regulatory alternative was received from
  - ☐ Adopted in its entirety.
  - ☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

# Item 5

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02807-2018  
FPSC - COMMISSION CLERK

## 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:** April 6, 2018

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

**FROM:** Office of the General Counsel (Harper) *AGH SMC*  
Office of Industry Development and Market Analysis (Crawford) *BC CH*

**RE:** Docket No. 20170273-EQ – Petition by Sunrun Inc. for declaratory statement concerning leasing of solar equipment.

**AGENDA:** 04/20/18 – Regular Agenda – Parties May Participate at the Commission's Discretion

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** Statutory Deadline Waived

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On December 29, 2017, Petitioner, Sunrun Inc. (Sunrun), filed a petition for a declaratory statement (Petition). Sunrun asks the Commission to declare that based on the facts presented by Sunrun:

- (1) Sunrun's residential solar equipment lease does not constitute a sale of electricity;
- (2) Offering its solar equipment lease to customers in Florida will not cause Sunrun to be deemed a public utility under Florida law; and
- (3) The residential solar equipment lease described in its petition will not subject Sunrun or Sunrun's customer-lessees to regulation by the Commission.

Pursuant to Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the January 4, 2018, edition of the Florida Administrative Register, informing interested persons of the Petition.

There were no requests to intervene filed. However, on February 5, 2018, Gulf Power Company (Gulf Power) and Florida Public Utilities Company (FPUC) filed a motion to participate as amici curiae along with a memorandum of law that set forth issues for the Commission's consideration. One issue that amici curiae raised was that Sunrun did not file a copy of the lease agreement with its Petition for Declaratory Statement. Gulf and FPUC's motion was granted by Order No. PSC-2018-0080-PCO-EQ. Sunrun filed a response to the memorandum of law, providing additional information about its Petition. On February 14, 2018, Florida Electric Cooperatives Association, Inc., (FECA) filed a letter in support of Gulf Power and FPUC's motion and memorandum of law.

The Commission considered the petition at the March 1, 2018 Agenda Conference. Pursuant to Section 120.565(3), Florida Statutes (F.S.), there is a 90-day deadline for an agency to issue a final order on a petition for declaration statement. Sunrun waived this deadline at the March 1, 2018, Agenda Conference. At the Agenda Conference, the Commission deferred its consideration of Sunrun's Petition so that Sunrun could develop a draft solar lease agreement to present to the Commission. This would be for the limited purpose of the Commission evaluating the relevant facts contained in the provisions of the lease that relate to the facts in its Petition. On March 20, 2018, Sunrun filed a draft solar lease agreement to support the facts in its Petition.

This recommendation addresses Sunrun's Petition for Declaratory Statement. The Commission has jurisdiction pursuant to Section 120.565, F.S., and Chapter 366, F.S.



## Discussion of Issues

**Issue 1:** Should the Commission grant Sunrun's Petition for Declaratory Statement?

**Recommendation:** Yes. Based on the facts presented by Sunrun, the Commission should grant Sunrun's Petition and declare: (1) Sunrun's residential solar equipment lease as described in Sunrun's Petition does not constitute a sale of electricity; (2) offering its solar equipment lease to customers in Florida as described in Sunrun's Petition will not cause Sunrun to be deemed a public utility under Florida law; and (3) the residential solar equipment lease as described in Sunrun's Petition will not subject Sunrun or Sunrun's customer-lessees to regulation by the Commission. The Commission should also state that its declaration is limited to the facts described in Sunrun's Petition and would not apply to different, alternative facts. (Harper, Crawford)

**Staff Analysis:** Sunrun's Petition asks the Commission to declare whether Sunrun's solar leasing program as described in Sunrun's Petition will make Sunrun or its lease customers a public utility subject to the Commission's jurisdiction under Section 366.02(1), F.S. Although Sunrun provided a copy of a draft solar equipment lease for the Commission's consideration when addressing Sunrun's question, the Commission would not have the authority to approve Sunrun's draft lease.

Sunrun's Petition and its draft solar equipment lease provide that the lease payments are fixed and are therefore independent of electric production. This is consistent with Rule 25-6.065, F.A.C., which allows customers to lease an on-site renewable generation system from a third-party without triggering the Commission's jurisdiction. Staff recommends the Commission grant Sunrun's Petition for Declaratory Statement. Below is a more detailed explanation of Staff's recommendation.

### Law Governing Petitions for Declaratory Statements

A declaratory statement procedure is intended to enable members of the public to definitively resolve ambiguities of law arising in the planning of their future affairs and to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. *Department of Business and Professional Regulation, Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374, 382 (Fla. 1999). Declaratory statements are governed by Section 120.565, F.S., and the Uniform Rules of Procedure in Chapter 28-105, F.A.C. Section 120.565, F.S., states, in pertinent part:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

If a petitioner requesting a declaratory statement meets the filing requirements provided by Rule 28-105.002, F.A.C., an agency must issue the declaratory statement.<sup>1</sup> Rule 28-105.002, F.A.C., requires a petition for declaratory statement to include the following information:

- (1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency).
- (2) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner.
- (3) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner's attorney or qualified representative if any.
- (4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.
- (5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.
- (6) The signature of the petitioner or of the petitioner's attorney or qualified representative.
- (7) The date.

Rule 28-105.003, F.A.C., provides the requirements for how agencies must dispose of declaratory statements. The rule states that an agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.

## **Sunrun's Petition for Declaratory Statement**

### ***Sunrun's particular circumstances and facts***

The Petition states that Sunrun has offices in Tampa, Florida, and is the nation's largest dedicated residential solar storage and energy services company with over 160,000 customers currently in 22 states and the District of Columbia. In Florida, Sunrun offers only its "cash solar product," which customers must purchase and pay for in full, upfront.<sup>2</sup>

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<sup>1</sup>An agency has an obligation to issue a declaratory statement explaining how a statute or rule applies in the petitioner's particular circumstances even if the explanation would have a broader application than to the petitioner. *Soc'y for Clinical & Med. Hair Removal, Inc. v. Dep't of Health*, 183 So. 3d 1138, 1144 (Fla. 1st DCA 2015).

<sup>2</sup>Based upon staff's review of information on Sunrun's website, it currently offers potential customers in Florida two options to purchase and own a solar energy system. Customers may either pay upfront the cost of the system, including installation, or customers may finance the cost of the system, including installation, and make monthly payments. See <https://www.sunrun.com/solar-by-state/fl>. Additionally, Sunrun states that the solar products it offers are different for each state and that it provides a website specifically for Florida. See <https://www.sunrun.com/solar-by-state/fl>.

Sunrun plans to offer leasing as an option in Florida for potential customer-lessees who prefer not to or cannot purchase and pay upfront for residential solar systems. Sunrun states that the Florida residential solar equipment lease will consist of a 20-year lease of solar panels with an option to include batteries. According to Sunrun, the proposed leasing program payment amounts will be based on a negotiated rate of return and will be independent of electric generation, production rates, or any other operational variable of the leased equipment.

Amici Curiae Gulf Power and FPUC raise issues in the memorandum of law that questioned the facts outlined in Sunrun's Petition. Specifically, they pointed out that Sunrun did not file a lease agreement with its Petition, so it is unclear whether the lease agreement would match the facts set forth in Sunrun's Petition. In response to the Commission's concerns expressed at the March 1, 2018 Agenda Conference, Sunrun filed a draft solar equipment lease. The draft lease includes the following provisions:

- Lease payments will be fixed for a 20-year lease term. The payment amounts will be based on a negotiated rate of return and will be independent of electric generation, production rates, or any other operational variable of the leased equipment.
- Sunrun will hold legal title to the leased equipment and receive the tax credits and depreciation benefits associated with the investment.
- Sunrun will have no control over the use of the equipment other than as the beneficiary of covenants requiring the customer-lessee to maintain the equipment in good repair.
- At the lease expiration, the customer-lessee will be able to purchase the solar equipment at fair market value, renew the lease on an annual basis, or require removal of the equipment.
- Sunrun will provide customary workmanship warranties to protect the customer-lessees' home from damage during the installation process. The customer-lessees will be responsible for the costs of ongoing system maintenance through their monthly lease payment. Equipment warranties and maintenance services will be triggered by damage to or malfunction of the system, or its components, and will not be dependent upon electrical generation or system production rates.
- The customer-lessee will be responsible for the cost of non-warranty maintenance, repair, and replacement.
- Once the system is installed and interconnected, the operational burden and risk of maintaining the equipment and assuring adequate solar exposure conditions will be borne by the customer-lessee.
- The customer-lessee will be responsible for the costs of applicable property taxes and insurance.
- Lease terms and conditions will be compliant with applicable IRS and accounting standards.

***Statutes, Rules, and Commission Orders Applicable to Sunrun's Facts***

The statute to be applied is Section 366.02(1), F.S., which states, in pertinent part, that the Commission's jurisdiction extends to public utilities defined as:

Every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas...to or for the public within the state.

The rule that applies is Rule 25-6.065, F.A.C., which provides, in pertinent part:

The term ‘customer-owned renewable generation’ does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.

Rule 25-6.065, F.A.C., allows customers to contract to lease an on-site renewable generation system with a third-party. The rule allows leases for solar equipment that include a maintenance agreement so long as the lease payments do not depend on electric generation.

The Commission order applicable to Sunrun’s Petition is Order 17009, issued December 22, 1986, in Docket No. 860725-EU, *In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility*. In *Monsanto*, the Commission declared that the Monsanto Company’s on-site lease financing of its cogeneration facility did not result in a retail sale of electricity, did not cause the lessor to be deemed a public utility, and did not subject either the company or its lessor to regulation by the Commission.

### **Staff’s Analysis of Sunrun’s Petition for Declaratory Statement**

Sunrun’s Petition asks the Commission whether Sunrun’s proposed solar leasing program triggers the Commission’s jurisdiction under Section 366.02(1), F.S. In its Petition, Sunrun states that the declaratory statement procedure can assist Sunrun with planning its future conduct and will help avoid costly administrative litigation by selecting the proper course of action in advance. Because Sunrun seeks to offer and market the residential solar equipment lease program in Florida only if the Commission grants, in the affirmative, its request for a declaratory statement, Sunrun is a substantially affected person and has standing to bring its Petition.

According to the declaratory statement rules, the Commission’s analysis of Sunrun’s Petition is limited to the facts presented in the Petition, and the Commission may answer the question without taking any position with regard to the validity of the facts.<sup>3</sup> Because the Commission’s analysis in this case is limited solely to the jurisdiction question raised by Sunrun’s Petition, staff has analyzed the facts presented under Section 366.02(1), F.S, prior Commission orders, and Rule 25-6.065, F.A.C., to determine if Sunrun’s proposed program constitutes a sale of electricity.

Staff reviewed the draft solar lease for the sole purpose of confirming that it reflected the facts stated in Sunrun’s Petition. Because the Commission’s analysis is limited solely to the jurisdiction question raised by the Petition, other provisions in the draft lease, such as those

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<sup>3</sup>See Rule 28-105.003, F.A.C.

provisions that relate to Sunrun's compliance with the Florida Consumer Protection Law, were not part of staff's analysis.<sup>4</sup>

Also, Gulf Power and FPUC provided marketing materials from Sunrun's activities in other jurisdictions in their memorandum of law. In response, Sunrun provided Florida-specific marketing materials while noting its activities in other jurisdictions are irrelevant to its Petition in Florida. Because staff's review of Sunrun's draft solar lease was limited to confirming that the draft solar lease supported the facts presented in the Petition, staff did not consider Sunrun's marketing materials for other states.

***Rule 25-6.065, F.A.C., Interconnection and Net Metering of Customer-Owned Renewable Generation***

Sunrun filed a draft solar equipment lease to illustrate how its leasing model would operate in Florida. Sunrun's draft solar lease shows that the lease customers must utilize their utility's service and interconnection and net metering provisions. This is consistent with Rule 25-6.065, F.A.C., which provides, in pertinent part:

The term 'customer-owned renewable generation' does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.

In 2002, the Commission adopted Rule 25-6.065, F.A.C., "to promote the development of small customer-owned renewable generation, particularly solar and wind energy systems."<sup>5</sup> Rule 25-6.065, F.A.C., allows customers to lease solar equipment from a third party. The rule allows for a maintenance agreement to be included in the lease so long as the lease payments do not depend on electric generation. According to Sunrun's facts, the customer will be the end-user, and the lease payments do not depend on electric generation. Therefore, staff believes the lease program model as described in Sunrun's Petition is consistent with Rule 25-6.065, F.A.C.

***Sunrun's Petition is Consistent with the Monsanto Order***

The Commission has issued previous orders on petitions for declaratory statement that have addressed the concept of what constitutes a public utility in terms of leasing cogenerators or the use of energy created by cogenerators. These orders stand for the general proposition that where a customer pays a flat fee to an energy generation equipment supplier for personal use and that fee is not based on electric production, there is no jurisdictional sale of electricity.<sup>6</sup>

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<sup>4</sup>In *Deltona Corp. v. Mayo*, 342 So. 2d 510 (Fla. 1977), the Florida Supreme Court held that consumer protection was outside the bounds of the Commission's jurisdiction: "If Deltona engaged in an unfair business practice or committed fraud, however, it may be a concern of other state agencies or the basis for private law suits (on which we express no opinion), but it is not a matter of statutory concern to the Public Service Commission."

<sup>5</sup>In 2005, the Florida legislature echoed the Commission's intent to promote customer-owned renewable generation when it enacted Section 366.91, F.S., to require public utilities to develop a standardized interconnection agreement and net metering programs for customer-owned renewable generation.

<sup>6</sup>For example, in Order No. 18302, issued in October 16, 1987, in Docket No. 8700446-EU, *In re: Petition by PW Ventures Inc., for a Declaratory Statement in Palm Beach County (PW Ventures)*, the facts presented in the petition constituted a retail sale of electricity to another independent private company. The Commission's holding

Although the *Monsanto* declaratory statement considered cogenerators rather than a solar customer-owned system, the order reflects the facts which are most similar to the facts presented in Sunrun's Petition because it involved leasing equipment for self-generation. In *Monsanto*, the company asked the Commission for a declaratory statement to recognize that the company's use of lease-financing for equipment to increase the company's own on-site generation would not render the company subject to the Commission's jurisdiction. In its petition, the company stated that it would pay a fixed amount for the lease, an amount that was not tied to energy production. The lease would run for a minimum of five years, after which the company could elect to renew it, purchase the equipment, or pay for the removal of the equipment. The Commission answered the declaratory statement in the affirmative and held that Monsanto's plan would not trigger the Commission's jurisdiction because the company was "leasing equipment which produces electricity rather than buying electricity that the equipment generates."<sup>7</sup> The Commission stated: "(M)ost importantly, just as in the lease of an automobile, the lease payments would be fixed through the term of the lease."<sup>8</sup>

In *Monsanto*, the company was responsible for maintenance of the cogenerators. Amici curiae state in their memorandum of law that "[i]f the proposed leasing arrangement places repair, replacement and/or maintenance obligations on the lessor rather than the lessee, such an agreement would appear to be odds with the Commission's holding in *Monsanto*." Amici curiae do not state how the assignment of maintenance obligations would conflict with *Monsanto* or how that would result in a sale of electricity and appears to be irrelevant. In *Monsanto*, the Commission considered maintenance because of the operational nature of cogenerators. Cogenerators can be turned off and on and ramped up and down, and, as a result, maintenance activities and costs can vary. Therefore, the lessee in *Monsanto* assumed the responsibility of maintaining the leased equipment to avoid having the lease payments go up and down due to maintenance activity. The holding in *Monsanto* is based on the fixed nature of the lease payments rather than who has the obligation for maintenance.

Like *Monsanto*, Sunrun's lease payments are fixed and, therefore, independent of electric production. Sunrun's proposed residential solar equipment lease program will allow individual customers to generate electricity for personal use. Unlike the fact in *Monsanto* that the lessee assumed responsibility for maintaining the leased equipment because maintenance activities could cause the lease payments to vary, Sunrun's maintenance arrangement allows the company to maintain the solar panels without affecting the lease payments. Sunrun will monitor the output of the solar panels for the purpose of maintenance, and if faulty panels are detected and repaired or replaced, the customer's monthly lease payment would remain fixed regardless of the output and maintenance activity. Therefore, the lease payments would not vary based on generation, and the lease arrangement would not be considered a sale of electricity.

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established that private companies cannot engage in unregulated retail sales to avoid Commission jurisdiction. The Florida Supreme Court affirmed the Commission's order and opined that while limiting the sale of electric service was in the public interest, there was no prohibition on self-generation. *PW Ventures, Inc. v. Nichols*, 533 So. 2d. 281, 284 (1988).

<sup>7</sup> *Monsanto* at 6.

<sup>8</sup> *Monsanto* at 7.

After the *Monsanto* order, the Commission promulgated Rule 25-6.065, F.A.C., “to promote the development of small customer-owned renewable generation, particularly solar and wind energy systems.” Rule 25-6.065, F.A.C., allows customers to lease solar equipment from a third party and allows for a maintenance agreement so long as the lease payments do not depend on electric generation. Thus, the Sunrun Petition is consistent with both *Monsanto* and the Commission’s current Rule 25-6.065, F.A.C.

***Sunrun’s Draft Solar Equipment Lease is Consistent with Sunrun’s Petition***

Staff believes that Sunrun’s Petition contains the necessary facts to support its request for a declaratory statement. The Petition describes the proposed model in a manner sufficient for the Commission to answer the question of jurisdiction.

Staff reviewed Sunrun’s draft solar lease for the limited purpose of further understanding the facts in the Sunrun Petition. Specifically, staff’s analysis was limited to the facts related solely to the Commission’s jurisdiction. Accordingly, staff reviewed the draft solar lease’s terms and obligations for the lessor and lessee with respect to lease payments and maintenance and warranties.

Staff believes that Sunrun’s draft solar lease payment structure is consistent with the facts in its Petition. Because the draft solar lease provides that the lease payments are fixed payments, it does not constitute a retail sale of electricity.

In addition, Sunrun’s draft solar lease is consistent with the maintenance and warranties structure outlined in its Petition. Sunrun’s draft solar lease offers customers a maintenance agreement that is independent of electric production. While Sunrun states it will give customers an estimate on the solar panels’ output for the purpose of sizing the system to fit the customers’ home, it makes no other representation, warranty or guarantee of any kind regarding the system’s output or performance.<sup>9</sup> Because the lease payments are fixed regardless of the repairs and maintenance that may be required with the panels, Sunrun’s draft solar lease terms appear to be independent of electric generation.<sup>10</sup>

Sunrun states that the proposed leasing program’s maintenance package allows Sunrun to monitor the system remotely to collect information on the panels to notify Sunrun of any defects with the panels, such as damage or malfunction of the panel due to moisture intrusion.<sup>11</sup> Sunrun states that it will monitor and collect data from the panels in order for Sunrun to proactively address any problems that may arise due to system defects, which is necessary for Sunrun to meet the consumer protection requirements in the law and Sunrun’s contractual obligations with its customers. Sunrun states while it will be remotely measuring the energy produced by the solar system, Sunrun will not operate the system or manipulate the systems’ output. Rather, the

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<sup>9</sup> See Draft solar lease page 6, Section D “System Performance.”

<sup>10</sup> See Draft solar lease page 4, Section C titled “Our Warranties” Also, the draft solar lease includes terms related to estimated electric generation for the sole purpose of sizing the solar system for the size of the home. Draft Solar Lease pages 5-6, Section D “System Performance.”

<sup>11</sup> See Sunrun’s Notice of Filing pages 5-6, paragraph 11, and Draft solar lease page 5, paragraph 3, in the section titled “Contacting Sunrun to Fix Solar System” and page 7, paragraph 2, in the section titled “Solar System Production and Energy Consumption Monitoring Data.”

Date: April 6, 2018

monitoring of the system is simply to collect information to ensure the equipment is operating properly and to provide Sunrun with information to enhance its service. Staff believes that the fact that Sunrun proposes to monitor and collect data while maintaining the solar system does not conflict with the facts outlined in Sunrun's Petition. Moreover, staff believes that the fact that Sunrun is offering customers a maintenance plan as part of its fixed lease payment plan is consistent with Rule 25-6.065, F.A.C., which does not preclude the customer "from contracting for the purchase, lease, operation, or *maintenance* of an on-site renewable generation system." (Emphasis added.)

Staff believes that Sunrun's Petition contains the necessary facts to support its request for a declaratory statement. Sunrun's proposed solar leasing program will not allow for customer payments or charges based on electric production because the monthly lease payments are fixed. Staff believes Sunrun's proposed solar leasing program as outlined in its Petition is consistent with Rule 25-6.065, F.A.C. If Sunrun goes outside the clear bounds of its Petition, then the Commission's declaratory statement would not apply to an alternate set of facts. It is well settled that declaratory statements are inherently limited to the facts upon which they are based.<sup>12</sup> The declaratory statement will be controlling only as to the facts in Sunrun's Petition and not as to other, different or additional facts.

### **Conclusion**

For the reasons set forth above, staff recommends that the Commission grant Sunrun's Petition for Declaratory Statement and declare: (1) Sunrun's residential solar equipment lease as described in Sunrun's Petition does not constitute a sale of electricity; (2) offering its solar equipment lease to customers in Florida as described in Sunrun's Petition will not cause Sunrun to be deemed a public utility under Florida law; and (3) the residential solar equipment lease as described in Sunrun's Petition will not subject Sunrun or Sunrun's customer-lessees to regulation by the Commission. The Commission should also state that its declaration is limited to the facts described in Sunrun's Petition and would not apply to different, alternative facts.

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<sup>12</sup>Rule 28-105.003, F.A.C. (agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts). See also Order No. 23729, issued November 7, 1990, in Docket No. 900699-EQ, *In re: Petition of Seminole Fertilizer Corporation for a declaratory statement concerning the financing of a cogeneration facility*. (The Commission stated its conclusion was limited to the facts presented by the Petitioner.)



Date: April 6, 2018

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

**Recommendation:** Yes, if the Commission votes to either grant or deny the Petition for Declaratory Statement, the docket should be closed.

**Staff Analysis:** Whether the Commission grants or denies Sunrun's Petition, a final order will be issued. Upon issuance of the final order, the docket should be closed.

# Item 6

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02793-2018  
FPSC - COMMISSION CLERK

## 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-**

**DATE:** April 6, 2018

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

**FROM:** Division of Accounting and Finance (Hightower, Buys)  
Office of the General Counsel (Janjic)

**RE:** Docket No. 20180038-EI – Request for approval of change in rate used to capitalize allowance for funds used during construction (AFUDC) from 6.16% to 5.97%, effective January 1, 2018, by Florida Power & Light Company.

**AGENDA:** 04/20/18 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

Florida Power & Light Company's (FPL or the Company) current Allowance for Funds Used During Construction (AFUDC) rate of 6.16 percent was approved on April 13, 2017, by Order No. PSC-2017-0135-PAA-EI.<sup>1</sup> On February 16, 2018, FPL filed a request to decrease its AFUDC rate from 6.16 percent to 5.97 percent, effective January 1, 2018. The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.), including Section 366.04, 366.05, and 366.06, F.S.

<sup>1</sup>Order No. PSC-2017-0135-PAA-EI, issued April 13, 2017, in Docket No. 20170037-EI, *In re: Request for approval of change in allowance for funds used during construction (AFUDC), effective January 1, 2017, by Florida Power & Light Company*, consummated by Order No. PSC-2017-0017-CO-EI, issued May 16, 2017.

Date: April 6, 2018

### Discussion of Issues

**Issue 1:** Should the Commission approve FPL's request to decrease its AFUDC rate from 6.16 percent to 5.97 percent?

**Recommendation:** Yes. The appropriate AFUDC rate for FPL is 5.97 percent based on a 13-month average capital structure for the period ended December 31, 2017. (Hightower)

**Staff Analysis:** FPL has requested a decrease in its AFUDC rate from 6.16 percent to 5.97 percent. Rule 25-6.0141(2), Florida Administrative Code (F.A.C.), Allowance for Funds Used During Construction, provides the following guidance:

(2) The applicable AFUDC rate shall be determined as follows:

(a) The most recent 13-month average embedded cost of capital, except as noted below, shall be derived using all sources of capital and adjusted using adjustments consistent with those used by Commission in the utility's last rate case.

(b) The cost rates for the components in the capital structure shall be the midpoint of the last allowed return on common equity, the most recent 13-month average cost of short term debt and customer deposits and a zero cost rate for deferred taxes and all investment tax credits. The cost of long term debt and preferred stock shall be based on end of period cost. The annual percentage rate shall be calculated to two decimal places.

In support of its requested AFUDC rate of 5.97 percent, FPL provided its calculations and capital structure as Schedules A and B attached to its request. Staff reviewed the schedules and determined that the proposed rate was calculated in accordance with Rule 25-6.0141(2), F.A.C. The requested decrease in the AFUDC rate is due principally to a slight decrease in the cost rates of long term debt and a slightly lower ratio of common equity in the capital structure. The cost of equity is 10.55 percent, which was approved by the Commission in Order No. PSC-2016-0560-AS-EI.<sup>2</sup>

Based on its review, staff believes that the requested decrease in the AFUDC rate from 6.16 percent to 5.97 percent is appropriate, consistent with Rule 25-6.0141, F.A.C., and recommends that it be approved.

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<sup>2</sup>Order No. PSC-2016-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

Date: April 6, 2018

**Issue 2:** What is the appropriate monthly compounding rate to achieve the requested 5.97 percent annual AFUDC rate?

**Recommendation:** The appropriate monthly compounding rate to maintain an annual rate of 5.97 percent is 0.484385 percent. (Hightower)

**Staff Analysis:** FPL requested a monthly compounding rate of 0.484385 percent to achieve an annual AFUDC rate of 5.97 percent. In support of the requested monthly compounding rate of 0.484385 percent, FPL provided its calculation as Schedule C attached to its request. Rule 25-6.0141(3), F.A.C., provides a formula for discounting the annual AFUDC rate to reflect monthly compounding. The rule also requires that the monthly compounding rate be calculated to six decimal places.

Staff reviewed the Company's calculations and determined that they comply with the requirements of Rule 25-6.0141(3), F.A.C. Therefore, staff recommends that a discounted monthly AFUDC rate of 0.484385 percent be approved.

Date: April 6, 2018

**Issue 3:** Should the Commission approve FPL's requested effective date of January 1, 2018, for implementing the revised AFUDC rate?

**Recommendation:** Yes. The revised AFUDC rate should be effective as of January 1, 2018, for all purposes. (Hightower)

**Staff Analysis:** FPL's proposed AFUDC rate was calculated using a 13-month average capital structure for the period ended December 31, 2017. Rule 25-6.0141(5), F.A.C., provides that:

The new AFUDC rate shall be effective the month following the end of the 12-month period used to establish that rate and may not be retroactively applied to a previous fiscal year unless authorized by the Commission.

The Company's requested effective date of January 1, 2018, complies with the requirement that the effective date does not precede the period used to calculate the rate, and therefore should be approved.

Date: April 6, 2018

**Issue 4:** Should this docket be closed?

**Recommendation:** If no person whose substantial interest 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. (Janjic)

**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.

# Item 7



State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02783-2018  
FPSC - COMMISSION CLERK

## 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-**

**DATE:** April 6, 2018

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

**FROM:** Division of Engineering (Wooten, Ellis)  
Division of Accounting and Finance (Vogel)  
Division of Economics (McNulty, Stratis)  
Office of the General Counsel (Murphy, Dziechciarz)

*Handwritten notes and signatures:*  
TB PoE  
M  
ALM BT  
RD cm

**RE:** Docket No. 20170274-EQ – Petition for approval to terminate qualifying facility power purchase agreement with Florida Power Development, LLC, by Duke Energy Florida, LLC.

**AGENDA:** 04/20/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** Termination Agreement has a requirement that the transaction be closed by June 1, 2018

**SPECIAL INSTRUCTIONS:** None

### Case Background

On December 29, 2017, Duke Energy Florida, LLC (DEF or Company) filed a petition requesting approval of a termination agreement (Termination Agreement) between DEF and Florida Power Development, LLC (FPD) to terminate a power purchase agreement (PPA) that is no longer cost-effective to DEF customers. The FPD facility is an approximately 60 megawatt (MW) biomass-fired qualifying facility, located in Brooksville, Florida, which came online in May 2014. DEF has been purchasing energy and capacity from the FPD facility since May 2014.

Docket No. 20170274-EQ

Date: April 6, 2018

pursuant to the PPA approved by the Florida Public Service Commission (Commission) in 2009.<sup>1</sup> The Office of Public Counsel intervened on January 3, 2018.

The Commission has jurisdiction over this matter pursuant to Sections 366.051, 366.81, and 366.91, Florida Statutes (F.S.).

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<sup>1</sup>Order No. PSC-09-0852-PAA-EQ, issued December 30, 2009, in Docket No. 090372-EQ, *In re: Petition for approval of negotiated purchase power contract with FB Energy, LLC, December 30, 2009*. Original PPA was between DEF and Florida Biomass Energy, LLC, but is now between DEF and Florida Power Development, LLC.

## Discussion of Issues

**Issue 1:** Should DEF's petition for approval to terminate its power purchase agreement with Florida Power Development, LLC and requested regulatory treatment be approved?

**Recommendation:** Yes. Staff has reviewed the Termination Agreement and recommends that terminating the existing PPA is estimated to save customers between \$38 million and \$59 million in net present value (NPV). Staff recommends the establishment of a regulatory asset to be amortized over the remaining contract term through May 2034. (Wooten, Stratis, Vogel)

**Staff Analysis:** At the time of the PPA approval, the PPA was cost-effective and did not exceed DEF's then current avoided costs.<sup>2</sup> Since that time, DEF's avoided costs have decreased, and now payments under the PPA exceed DEF's current avoided costs. As discussed later, the PPA is at a fixed contractual energy rate, therefore any changes in fuel prices are borne by customers. Staff evaluated the forecasting, costs assumptions, and effect on reliability of the proposed Termination Agreement in order to verify suitability of the proposed Termination Agreement. As discussed below, there are projected benefits of the Termination Agreement that would produce savings for DEF's customers, with benefits accruing immediately.

### DEF's Proposal

Under the proposed Termination Agreement, DEF would pay a total of \$105 million to FPD in exchange for FPD's agreement to terminate its qualifying facility status, permanently shut down the FPD facility and terminate any interconnection agreements for the FPD facility by December 31, 2018. DEF requests and requires as a term, the Commission's approval of the consummation of the Termination Agreement which would establish a regulatory asset for the FPD termination payment. The FPD termination payment would be recovered through the Fuel and Purchase Power Cost Recovery Clause (Fuel Clause) by amortizing the FPD regulatory asset at a rate of approximately \$7 million per year through May 2034, the original expiration date of the PPA.

The avoided PPA payment reflects the systems savings to customers by terminating the existing PPA and avoiding the energy and capacity payments. Unlike a traditional PPA, DEF's PPA with FPD was a combined contractual energy rate (\$/MWh) for both energy and capacity. These are calculated by multiplying the energy provided by FPD in megawatt-hours (MWh) times the contractual energy rate (\$/MWh). The energy and capacity payments would occur over the rest of the term of the existing PPA, for the period of May 2018 through May 2034. By terminating the PPA, customers would benefit through lower projected fuel prices. Terminating the PPA without acquiring the facility allows DEF to avoid additional risks associated with the cleanup and dismantlement of the FPD facility.

DEF calculated its Cumulative Present Value Revenue Requirement (CPVRR), including its base case and sensitivities, for DEF's proposed contract using base, high, and low fuel price forecasts as well as, "Base Case CO<sub>2</sub>" and "No CO<sub>2</sub>" carbon emission price forecasts for the period of May 2018 through May 2034. DEF performed its base case analyses and sensitivities under two generation assumptions: (1) 421 gigawatt-hours (GWhs) (Upper Band) and (2) 378 GWhs

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<sup>2</sup>Order No. PSC-09-0852-PAA-EQ, issued December 30, 2009, in Docket No. 090372-EQ, *In re: Petition for approval of negotiated purchase power contract with FB Energy, LLC, December 30, 2009.*

(Lower Band). In this way, 12 base case and sensitivities to the base case were derived. Staff also reviewed the Company's fuel price and CO<sub>2</sub> emissions price forecasts.

### ***Fuel Price Forecast***

DEF's base case fuel price forecast used in the CPVRR analysis was prepared in the Fall of 2016 and was previously provided by DEF for purposes of the Commission's consideration of the 2017 DEF Ten-Year Site Plan (TYSP), DEF's 2017 Standard Offer Contract (Docket No. 20170072-EQ), and DEF's QF Coal Proxy Substitution (Docket No. 20170248-EI). DEF's natural gas fuel price forecasts include both its short term fuel forecast, based on NYMEX futures price contracts, and its long term forecast, based on a collaborative approach between the Company and its industry consultant, Energy Ventures Analysis. The same short term and long term approach is used by the Company to forecast coal and oil prices.

DEF's fuel price forecast sensitivities are based on its recent past fuel forecasts which encompass differing assumptions about elements that affect the price of natural gas, and to a lesser extent coal. DEF relied upon its natural gas price forecast used to prepare its 2016 TYSP for its high fuel price forecast sensitivity. DEF relied upon its Spring 2017 fuel price forecast for its low fuel price case. The high and low fuel price forecasts vary from the base case forecast by approximately 20 percent.

As discussed above, DEF's base case natural gas fuel price forecast, prepared in the Fall of 2016, is higher than its most recent fuel price forecast prepared in the Spring of 2017. Therefore, staff believes DEF's use of its slightly older fuel price forecast (Fall 2016) as its base case forecast can be viewed as a conservative assumption for purposes of DEF's CPVRR analysis. Staff further notes that, while natural gas prices have been trending downward for several years, DEF's upward trending base case natural gas fuel price forecast appears to be contained within the range of similar vintage forecasts from industry recognized third parties. Staff has reviewed DEF's fuel price forecasts and believes they are reasonable.

### ***Emission Reductions and CO<sub>2</sub> Price Forecasts***

A portion of the expected net benefits of the Termination Agreement takes the form of savings attributable to reduced CO<sub>2</sub> emissions. DEF expects that the proposed retirement of the FPD facility will result in a reduction of 2.3 to 2.6 million tons of CO<sub>2</sub> emissions over the 16-year period.<sup>3</sup> DEF's estimates of the cost savings from the Termination Agreement are based on reductions of CO<sub>2</sub> emissions that would have been required by the EPA's 2015 Clean Power Plan.<sup>4</sup> DEF notes that the status of the EPA's Clean Power Plan and related litigation remain 'on hold,' with any change in regulation unlikely under the current administration.<sup>5</sup>

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<sup>3</sup>Witness Borsch testimony, p. 5, response to Staff's 1<sup>st</sup> Data Request, No. 3, Attachments 3-4.

<sup>4</sup>DEF's response to Staff's 1<sup>st</sup> Data Request, No. 14.

<sup>5</sup>DEF's response to Staff's 1<sup>st</sup> Data Request, No. 17.

DEF's analysis of cost savings under various fuel price and carbon cost scenarios considered 'base-case' (low-cost) scenarios, featuring cost-savings generated by reductions in carbon emissions from 2025 to the end of the term in 2034, as well as 'No CO<sub>2</sub>' (zero-cost) scenarios which extend from 2018 through 2034.<sup>6</sup> DEF considers 'No CO<sub>2</sub>' scenarios, which would produce no CO<sub>2</sub> cost savings for DEF customers, to be conservative.<sup>7</sup>

DEF's CO<sub>2</sub> price forecast for its base case scenario was prepared in 2016 for its 2017 TYSP.<sup>8</sup> The Company's base case analysis assumes an emission price equal to the per-ton cost of reduction, and DEF used that estimate of cost as a proxy for emission price.<sup>9</sup> DEF forecasts nominal savings from avoided CO<sub>2</sub> reductions to go from \$14.50 per ton in 2025 to \$14.10 per ton in 2034.

In its responses to staff's data request, DEF noted that no national CO<sub>2</sub> emissions market currently exists, and that DEF has never incurred direct costs related to CO<sub>2</sub> emissions.<sup>10</sup> DEF does not foresee significant federal or state legislation on CO<sub>2</sub> emissions under the current administration.<sup>11</sup> Given the current uncertainty of potential legislative changes, staff believes DEF's approach to providing base and an alternative view of CO<sub>2</sub> pricing is reasonable.

### ***Cost/Benefit Analysis***

The avoided PPA payment reflects the systems savings to customers by terminating the existing PPA and avoiding the energy and capacity payments. These are calculated by multiplying the energy provided by FPD in megawatt-hours (MWh) times the contractual energy rate (\$/MWh). The payments to FPD would occur over the rest of the term of the existing PPA (May 2018 through May 2034). By terminating the PPA, customers would benefit through lower projected fuel prices. Terminating the PPA without acquiring the facility allows DEF to avoid additional risks associated with the cleanup and dismantlement of the FPD facility. As previously discussed, DEF evaluated two scenarios of a Lower Band of 378 GWh of annual output and Upper Band of 421 GWh of annual output. Each scenario assumes a base case fuel scenario and a carbon emission cost which begins in 2025. Additionally DEF performed low and high fuel sensitivities, along with a no carbon cost sensitivity for each, for a total of 12 CPVRR analyses. The results of the 12 sensitivities can be seen below in Table 1-1.

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<sup>6</sup>Witness Borsch testimony, p. 7, DEF's response to Staff's 1<sup>st</sup> Data Request, No.3, Attachments 3-4.

<sup>7</sup>Witness Borsch testimony, p. 7, p. 9.

<sup>8</sup>DEF's response to Staff's 1<sup>st</sup> Data Request, No 2, DEF's 2017 TYSP, pp. 2-33.

<sup>9</sup>DEF's response to Staff's 1<sup>st</sup> Data Request, No. 14.

<sup>10</sup>DEF's response to Staff's 1<sup>st</sup> Data Request, Nos. 16 and 17.

<sup>11</sup>DEF's response to Staff's 1<sup>st</sup> Data Request, No. 17.

**Table 1-1**  
**CPVRR Net Cost / (Savings) of FPD Termination Agreement**  
**\$ Millions (2018)**

		Low Fuel	Base Case Fuel	High Fuel
<b>Upper Band</b> <b>(421 GWh)</b>	Base Case	(91)	(59)	(20)
	No CO <sub>2</sub>	(85)	(47)	(9)
<b>Lower Band</b> <b>(378 GWh)</b>	Base Case	(67)	(38)	(3)
	No CO <sub>2</sub>	(61)	(28)	7

When evaluating Table 1-1, 11 of the 12 sensitivities produce savings with the termination of the PPA, excluding the No CO<sub>2</sub>/High Fuel sensitivity. The presence of CO<sub>2</sub> pricing made a minor difference in the amount of projected savings that would be expected with the Termination Agreement. This minor difference applied to both the Upper Band and Lower Band for all considered fuel sensitivities. To further evaluate the Termination Agreement, staff inquired about a GWh amount that would provide a breakeven amount for customers. In response to a staff data request, DEF determined that the breakeven GWh amount for both a fuel base case with CO<sub>2</sub> and without CO<sub>2</sub>, the Annualized GWhs delivered would be approximately 300 GWhs. When comparing this amount to the historical performance of the FPD provided in the petition, this would be an unlikely amount as the GWh delivered has historically increased and according to DEF is likely to continue increasing. The continued increase in annualized GWh delivered by FPD was estimated to be as high as 540 GWh, which would cause customers to incur more costs if the PPA continued. Taking these facts into consideration, staff recommends that, on an economic basis, the Termination Agreement is beneficial for customers.

### **Non-Economic Evaluation**

DEF does not currently have a need for the firm capacity and energy associated with the PPA generated from the FPD facility. The loss of the 54 MW of peak firm capacity provided by FPD will affect DEF's reliability reserve margin, but does not cause it to fall below DEF's planning metrics. The impact of the loss of the PPA is approximately 0.7 percent of the Summer Reserve Margin in 2018. This would result in a 2018 Summer Reserve Margin of 22.7 percent, which would keep DEF above the 20 percent reserve margin approved by the Commission.<sup>12</sup> Upon further review of the DEF's 2017 TYSP, staff determined that this contract termination should not accelerate the need for any future units. Furthermore, of the 511 MW Firm Renewable and Cogeneration Contracts that DEF has the FPD only comprises 11.7 percent of the total amount of renewable generation.<sup>13</sup>

<sup>12</sup>DEF's 2017 Ten-Year Site Plan, pp. 3-6.

<sup>13</sup>DEF's 2017 Ten-Year Site Plan, pp. 3-5.

### ***Recovery of Regulatory Asset***

Consistent with the Stipulation and Settlement Agreement issued in August 2012,<sup>14</sup> DEF utilized the May 2017 Earnings Surveillance Report (ESR) capital structure and cost rates, as filed in DEF's Actual/Estimated filing in Docket No. 20170001-EI on July 27, 2017. The May 2017 ESR reported an overall rate of return of 6.71 percent.

As mentioned previously, the existing PPA was approved by the Commission and the recovery of the asset occurred through the Fuel Clause. DEF proposes to recover the regulatory asset to be established for the termination payment through the Fuel Clause as well, over the remaining PPA period which ends in May 2034. DEF requested a recovery of approximately \$7 million per year. DEF also proposes to amortize the regulatory asset over the remaining PPA period and to earn a return, at DEF's Retail Weighted Average Cost of Capital on the unrecovered FPD regulatory asset balance through the Fuel Clause. Staff recommends that the establishment of this regulatory asset, the recovery of this regulatory asset through the Fuel Clause, and the return terms are appropriate.

### **Conclusion**

Staff has reviewed the Termination Agreement and recommends that terminating the existing PPA is estimated to save customers between \$38 million and \$59 million in NPV. Staff recommends the establishment of a regulatory asset to be amortized over the remaining contract term through May 2034.

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<sup>14</sup>Order No. PSC-12-0425-PAA-EU, issued August 16, 2012, in Docket Nos. 120001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; 120002-EG, *In re: Energy conservation cost recovery clause*; and, 120007-EI, *In re: Environmental cost recovery clause*.

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

**Recommendation:** Yes. This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (Murphy, Dziechciarz)

**Staff Analysis:** This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action.



# Item 8

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02782-2018  
FPSC - COMMISSION CLERK

## 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:** April 6, 2018

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

**FROM:** Division of Engineering (Lewis, King)  
Division of Accounting and Finance (Mouring, Smith II)  
Office of the General Counsel (Murphy)

**RE:** Docket No. 20150010-WS – Application for staff-assisted rate case in Brevard County by Aquarina Utilities, Inc.

**AGENDA:** 04/20/18 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Aquarina Utilities, Inc., (Aquarina or Utility) is a Class B utility providing service to approximately 296 water and 311 wastewater customers in Brevard County. Aquarina also provides non-potable water for irrigation to approximately 107 customers.

The Utility filed its application for a staff-assisted rate case on January 2, 2015. By Order No. PSC-16-0583-PAA-WS issued December 29, 2016, in this docket, the Florida Public Service Commission (Commission) approved a Phase I revenue requirement and rates. The Order further stated that implementation of Phase II rates is conditioned upon Aquarina completing certain pro forma plant items within 12 months of the issuance of a consummating order in this docket. Consummating Order No. PSC-17-0031-CO-WS was issued on January 23, 2017. Therefore, the pro forma plant items were to be completed before January 23, 2018.

The pro forma plant items consisted of the replacement of the water treatment plant's reverse osmosis skid; the wastewater treatment plant's catwalks, blowers, and sand filters; and developing a geographical information system mapping of the distribution and collection systems. Order No. PSC-16-0583-PAA-WS provided that if Aquarina encounters any unforeseen events that will impede the completion of the pro forma plant items, it shall immediately notify the Commission in writing.

On November 9, 2017, the Utility notified staff that it would not be able to meet the deadline for completing the Phase II pro forma plant items. The Utility requested that it be granted an extension until March 1, 2018, to complete the Phase II pro forma plant items. By Order No. PSC-2017-0485-FOF-WS<sup>1</sup>, the Commission granted the Utility's request.

On February 5, 2018, the Utility informed staff that it could not meet the March 1, 2018, extended due date and requested that it be granted an extension until November 30, 2018, to complete the Phase II pro forma plant items. The Commission has jurisdiction pursuant to Sections 367.081, 367.0814, and 367.121, Florida Statutes.

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<sup>1</sup>This Order was amended to correct a scrivener's error by adding the names of the Commissioners who participated in the decision. The Order was reaffirmed in all other respects.

Date: April 6, 2018

### **Discussion of Issues**

**Issue 1:** Should the Commission approve Aquarina's request for extension of time to complete its required Phase II pro forma plant items pursuant to Order Nos. PSC-16-0583-PAA-WS and PSC-2017-0485-FOF-WS?

**Recommendation:** Yes. The Commission should approve Aquarina's request for an extension of time to complete its required Phase II pro forma plant items before November 30, 2018. (Lewis)

**Staff Analysis:** As discussed in the case background, Aquarina was given until March 1, 2018, to complete Phase II pro forma plant items. On February 5, 2018, Aquarina informed staff it would not be able to complete the replacement of the water treatment plant's reverse osmosis skid by March 1, 2018, because: (1) its assigned sales representative resigned, (2) there were discrepancies in the sales contract which necessitated a full review, and (3) the terms of the financing changed. Based on the above, the Utility requested that the due date be extended to November 30, 2018. The Utility is required to submit a copy of the final invoices and cancelled checks for the Phase II pro forma plant items. Staff recommends the Utility be granted the requested extension as the actions resulting in the delay were outside of its control. Once the projects are completed, and documentation is provided, staff will verify that the pro forma improvements have been made.

Date: April 6, 2018

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

**Recommendation:** No. The docket should remain open for a decision by the Commission on the appropriate Phase II revenue requirement and rates. (Murphy)

**Staff Analysis:** No. The docket should remain open for a decision by the Commission on the appropriate Phase II revenue requirement and rates.

# Item 9

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02797-2018  
FPSC - COMMISSION CLERK

## 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-

**DATE:** April 6, 2018

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

**FROM:** Division of Engineering (P. Buys, Graves, King) *PDB*  
Division of Accounting and Finance (D. Buys, Smith II) *AS*  
Division of Economics (Friedrich, Hudson) *MF*  
Office of the General Counsel (Janjic, Crawford) *ALM*

**RE:** Docket No. 20170166-WS-Application for limited proceeding rate increase in Orange County by Pluris Wedgefield, Inc.

**AGENDA:** 04/20/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

Pluris Wedgefield, Inc. (Pluris or Utility) is a Class B utility providing service to approximately 1,615 water and wastewater customers in Orange County. Pluris also provides service to approximately 33 irrigation customers. Water and wastewater rates were last established for this Utility in 2013.<sup>1</sup>

On July 28, 2017, Pluris filed a request for a limited proceeding increase in water and wastewater rates. In its application, Pluris requested recovery of costs associated with four projects. The

<sup>1</sup>Order No. PSC-13-0187-PAA-WS, issued May 2, 2013, in Docket No. 20120152-WS, *In re: Application for increase in water and wastewater rates in Orange County by Pluris Wedgefield, Inc.*

Utility requested final revenue increases of \$194,159 (13.8 percent) for water and \$57,545 (6.0 percent) for wastewater.<sup>2</sup>

Pursuant to Rule 25-30.445, Florida Administrative Code (F.A.C.), the Utility provided a copy of all customer complaints that it received regarding Florida Department of Environmental Protection (DEP) secondary water quality standards during the past five years and a copy of the Utility's most recent secondary water quality standards test results.<sup>3</sup> Pluris additionally provided its most recent chemical analysis in which it tested primary water standards.<sup>4</sup> The documentation provided by Pluris indicates that the Utility is currently passing primary and secondary standards. From 2013 to 2017, the Florida Public Service Commission (Commission) received eighteen customer inquiries concerning the Utility's water quality, which were sent to the DEP and the Utility.

A customer meeting was held November 2, 2017, in Orlando, Florida. Approximately 55 customers attended, including Orange County Commissioner Emily Bonilla and a legislative aide to State Senator Linda Stewart. Twenty-one customers spoke at the meeting. Approximately 12 customer comments received at the customer meeting concerned elevated Total Trihalomethanes (TTHM, a disinfection byproduct) levels.<sup>5</sup> The most recent DEP compliance test results, dated March 20, 2018, demonstrated that TTHM levels were in compliance with DEP standards.<sup>6</sup>

On March 6, 2018, the Office of Public Counsel (OPC) filed a letter in this docket expressing its concerns with the Utility's filing.<sup>7</sup> OPC's concerns are addressed in Issue 1.

As of April 2, 2018, 56 customers filed written comments in this docket. Forty-six of the comments were concerning the quality of water and 46 comments opposed the rate increase. Two comments were concerning the Utility's customer service.<sup>8</sup>

This recommendation addresses Pluris' requested final rates. The Commission has jurisdiction pursuant to Sections 367.081 and 367.0822, Florida Statutes (F.S.).

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<sup>2</sup>Document No. 06333-2017.

<sup>3</sup>Document No. 06333-2017.

<sup>4</sup>Document No. 00091-2018.

<sup>5</sup>The Utility has recently completed a pilot study and received a new DEP permit to address TTHM levels.

<sup>6</sup>Document Nos. 10796-2017, 00091-2018, and 02727-2018.

<sup>7</sup>Document No. 02135-2018.

<sup>8</sup>Several customer comments had more than one concern listed.



## Discussion of Issues

**Issue 1:** Should Pluris Wedgefield, Inc.'s requested increases be approved as filed?

**Recommendation:** No. Staff recommends incremental revenue requirement increases of \$170,861 for water and \$53,377 for wastewater as opposed to the Utility's requested incremental revenue requirement increases of \$194,159 for water and \$57,545 for wastewater. (L.Smith, P.Buys, D.Buys)

**Staff Analysis:** In its filing, Pluris requested recovery of costs associated with four projects: the installation of Advanced Metering Infrastructure (AMI) meters, the installation of water softening equipment, the construction of a maintenance building, and the replacement of a wastewater main. The Utility's initial filing provided a description of each project. Staff reviewed the Utility's filing and issued multiple data requests. Staff's analysis of each project is discussed in greater detail in the following section. All four of the projects have been completed.<sup>9</sup>

### Incremental Rate Base

The Utility requested rate base increases of \$1,042,165 for water and \$355,783 for wastewater. The rate base components are Utility Plant in Service (UPIS), Accumulated Depreciation, and Working Capital Allowance.

#### *Utility Plant in Service*

##### **AMI Meters**

Pluris requested \$594,648 to recover costs associated with installing approximately 1,641 AMI water meters. The old meters were installed between 1996 and 2015.<sup>10</sup> With the installation of the AMI meters, Pluris also implemented an internet portal that allows each customer the ability to observe their water usage. The AMI meter replacement program began in October 2015 and was completed in October 2016. Prior to the installation of the AMI meters, meters were read manually.<sup>11</sup>

In its petition, Pluris explained that meter reading related customer concerns have been an on-going issue. From January 1, 2013, to September 30, 2016, the Utility received 481 requests for meters to be re-read or tested. Many of the requests were generated due to customer usage concerns. Since the installation of the AMI meters, Pluris has received 68 requests for the meters to be re-read. Customers have indicated to the Utility that the new customer portal has assisted in identifying leaks and has alerted them to excessive usage.<sup>12</sup> Based on the reduction in requests for meters to be re-read, and the positive response about the customer portal, staff believes the proposed AMI project is reasonable.

The Utility obtained three bids for the major components of the AMI project (\$367,969, \$395,393, and \$509,913). The major components include meters, transmitters, a base station,

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<sup>9</sup>Document No. 06333-2017.

<sup>10</sup>Document No. 00907-2018.

<sup>11</sup>Document No. 06333-2017.

<sup>12</sup>Document Nos 06333-2017 and 00907-2018.

tower, and software.<sup>13</sup> Pluris chose the bid of \$395,393 provided by HD Supply Waterworks. The Utility indicated that the lowest bid (\$367,969) was not selected because it additionally required the acquisition of land and relied on cell and/or mobile phone signal technology. The Utility expressed concerns with the cell coverage in the community and potential issues with readings being missed.<sup>14</sup> The meters provided by HD Supply Waterworks use a single tower with one base station, which produces reliable and consistent data reads. In addition, the HD Supply Waterworks bid included the previously discussed customer portal and a discount on the installation of the new meters and removal of the old meters.<sup>15</sup>

Pluris provided 49 invoices associated with this project. The majority of the invoices were related to the HD Supply Waterworks bid. Additionally, the Utility provided invoices for the installation of the meters, capitalized labor for its employees that helped with the installation of the meters, installation of an AMI tower, and extra meters and parts for installation and repairs.<sup>16</sup> Two of the invoices were for geotechnical studies to determine a viable site for the tower. In response to a staff data request, the Utility explained that the studies were not duplicative as the first site studied was not suitable for reliable signaling to all meters; therefore, a second study was necessary. In addition, Pluris explained that state licensed professional engineers do not generally bid for work, due to ethical codes maintained as members in the American Society of Civil Engineers.<sup>17</sup> Based on review of the invoices provided by the Utility, staff recommends that \$594,648 be allowed for cost recovery. The recommended amount includes costs associated with the HD Supply Waterworks bid as well as costs for the AMI tower and labor.

The Utility suggested retiring \$224,489 for the meter project. When asked about the retirements, Pluris indicated \$224,489 was the balance of account 334 Meters/Meter Installations at the end of 2015. The Utility further explained that the AMI project began in October 2015 and all invoices related to this project were coded to Account 105, Construction in Process. Pluris suggested that since the AMI meters were replacing all current in-service meters, the total account balance of \$224,489 should be retired.<sup>18</sup> Staff's review of Pluris' 2015 Annual Report showed a balance of \$217,093 in Account 334. However, since the new meters were placed in service in September of 2016, staff agrees with the Utility that the balance of Account 334 would have been sufficient at that time to retire \$224,489 from that account. Therefore, staff recommends \$224,489 be the associated retirement for this project.

### **Water Softener**

The Utility requested recovery of \$364,128 for the installation of water softener equipment. Pluris explained that the previous water softeners, which were installed by the previous owner of the system, were not meeting treatment levels and were experiencing ongoing mechanical and Supervisory Control and Data Acquisition (SCADA) related problems.<sup>19</sup> Pluris also explained that the raw water pumped from the Floridan Aquifer is rated as very hard (13-15 grains) based

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<sup>13</sup>Document No. 02188-2018 and 0249-2018.

<sup>14</sup>Document No. 00907-2018.

<sup>15</sup>Document No. 10796-2017, 01203-2018, and 01974-2018.

<sup>16</sup>Document No. 00907-2018.

<sup>17</sup>Document No. 02498-2018.

<sup>18</sup>Document No. 00907-2018.

<sup>19</sup>Document No. 01839-2018.

on standards established by the American Society of Agricultural Engineers (ASAE).<sup>20</sup> Hard water can cause scaling and noticeable deposits in containers, which was an issue that Pluris' customers have complained about.<sup>21</sup> The Utility specified that the water currently delivered to customers is now between 3 to 4 grains of hardness.<sup>22</sup> Additionally, Pluris indicated that it has received recent calls from customers stating that the water was soft and there was no longer calcium on glassware and utensils.<sup>23</sup> Considering the operational issues of the previous water softener system, and the improvements discussed above, staff believes it was prudent for the Utility to install the new water softening equipment.

The Utility obtained three bids on water softener products: \$112,805, \$142,900, and \$315,000. Pluris explained that the two companies with the lowest bids could not provide products that addressed the flow requirements, level of hardness reduction, nor the ability to integrate piping and SCADA required for the plant. The highest bidder demonstrated a more thorough understanding of the scope and requirements of the project.<sup>24</sup>

Pluris provided eight invoices that included the water softener equipment and a shade structure to protect the equipment.<sup>25</sup> The Utility explained there was no previous structure in place for the old equipment.<sup>26</sup> Pluris provided bids for the shade structure.<sup>27</sup> The actual invoices for the shade structure were approximately \$2,600 cheaper than the bids. Staff reviewed the invoices and believes that all costs were prudently incurred. Therefore, staff recommends \$364,128 be allowed for recovery for the water softener project.

The Utility suggests the amount to be retired for this project should be \$248,850.<sup>28</sup> This amount is 75 percent of \$331,800, which is only the amount for the replacement of the water softener equipment. Because there was no previous structure for the old equipment, there is no retirement amount associated with the shade structure.<sup>29</sup> Staff recommends that the associated retirement for the water softener equipment is \$248,850.

### **Maintenance Building**

Pluris requested recovery of \$105,090 for a new maintenance building. The Utility explained that the water treatment plant did not have a dedicated office for its staff to conduct daily work. Pluris further explained that an existing electrical building was being used and was inadequate.<sup>30</sup> According to the Utility, the daily activities required to efficiently operate the water treatment facility include operation of SCADA, clerical duties, and laboratory work. The equipment required to complete this daily work includes computers, a printer, desks, chairs, tables, metering

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<sup>20</sup>Document Nos. 06333-2017 and 01839-2018. Less than 1.0 grains per gallon is considered soft and greater than 10.5 grains per gallon is considered very hard.

<sup>21</sup>Document No. 06333-2017 and 01839-2018.

<sup>22</sup>Document No. 06333-2017.

<sup>23</sup>Document No. 00907-2018.

<sup>24</sup>Document No. 00907-2018.

<sup>25</sup>Document No. 10796-2017.

<sup>26</sup>Document No. 00907-2018.

<sup>27</sup>Document No. 02498-2018.

<sup>28</sup>Document No. 06333-2017.

<sup>29</sup>Document No. 00907-2018.

<sup>30</sup>Document No. 06333-2017.

equipment for operation and process control, and lab equipment. The computers are used to monitor SCADA performance, which is additional equipment not previously used.<sup>31</sup> Pluris stated that the average number of employees using the building at one time would be two to three. In addition, there could be times when more employees would be using the building. The Utility further explained that in addition to the equipment listed above, this building would have bathroom facilities, as the electrical building did not.<sup>32</sup> Considering the old space in the electrical building used for the employees to conduct daily work and the new equipment needed, staff believes a dedicated office for Pluris' staff is appropriate.

The bids that Pluris acquired for only the maintenance building were \$34,540, \$25,000, and \$22,209. The Utility selected the lowest bid.<sup>33</sup> Pluris provided ten invoices for this project. In addition to invoices associated with the building, Pluris provided invoices for permitting, electrical work, a driveway and parking for the building.<sup>34</sup> The Utility also provided a bid for those services.<sup>35</sup> One invoice for \$3,282 included a line item labeled "Maxim Break and Site Permitting for Office." The Utility explained the "Maxim Break" was for an emergency repair. The company billing Pluris grouped these two separate projects together. That company estimated the "Maxim Break" was \$2,300 and the Site Permitting was \$982.<sup>36</sup> Staff believes that the "Maxim Break" should not be included in the maintenance building project. Therefore, staff recommends that \$102,790 (\$105,090 - \$2,300) should be recovered for this project. Since this is a new structure there are no retirements associated with this project.

### **Wastewater Main Replacement**

The Utility requested \$359,023 to replace a wastewater main. Pluris explained the sewer main collapsed during an attempt to clear debris from the pipeline. Approximately 300 feet of sewer line was excavated and replaced.<sup>37</sup> The Utility further explained that the pipeline material was asbestos concrete and was nearly 40 years old. Pluris indicated that the pipeline exceeded its design life and deteriorated causing the collapse.<sup>38</sup> Included in this project were repairing, resurfacing, line painting, and landscaping of the affected roadway.<sup>39</sup>

Pluris did not request bids for this project as it was an emergency repair.<sup>40</sup> The Utility provided one invoice from Tri-Sure Corporation for this project. Staff reviewed the invoice and all the line items appear to be related to this project.<sup>41</sup> Therefore, staff recommends \$359,023 be recovered for this project. The suggested amount for the retirement of this project is \$269,267.<sup>42</sup> This amount is 75 percent of the project amount of \$359,023. Staff believes this is appropriate and recommends the associated retirement for the wastewater main replacement should be \$269,267.

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<sup>31</sup>Document No. 00907-2018.

<sup>32</sup>Document No. 01667-2018.

<sup>33</sup>Document No. 00907-2018.

<sup>34</sup>Document No. 10796-2017.

<sup>35</sup>Document No. 02498-2018.

<sup>36</sup>Document No. 00907-2018.

<sup>37</sup>Document No. 06333-2017.

<sup>38</sup>Document No. 10796-2017.

<sup>39</sup>Document No. 06333-2017.

<sup>40</sup>Document No. 00907-2018.

<sup>41</sup>Document No. 10796-2017.

<sup>42</sup>Document No. 06333-2017.

***Accumulated Depreciation***

In its filing, the Utility calculated accumulated depreciation using a half-year convention. Because rates will be going into effect in 2018, staff believes it is more appropriate to include a full year's depreciation. This is consistent with Commission practice for the treatment of pro forma projects. As a result, accumulated depreciation should be increased for the AMI meters by \$29,732, which represents one year's depreciation on the new meters. As discussed earlier, staff recommends that accumulated depreciation for the AMI meters be reduced by \$224,489 to account for the retired meters. Therefore, staff recommends a net reduction to accumulated depreciation for Meters & Meter Installations of \$194,757 ( $\$224,489 - \$29,732$ ).

Also, as discussed earlier, staff recommends reducing accumulated depreciation by \$248,850 for the retirement of the water softener. Accumulated depreciation should be increased by \$15,082, which represents one year's depreciation on the new water softener. Therefore, staff recommends a net reduction to accumulated depreciation for the Water Treatment Equipment of \$232,880 ( $\$248,850 - \$15,082$ ).

Further, staff recommends increasing accumulated depreciation by \$2,705 to reflect one year's depreciation on the new maintenance building. Therefore, staff recommends a total decrease to water accumulated depreciation of \$424,932 ( $\$194,757 + \$232,880 - \$2,705$ ).

As stated earlier, staff recommends decreasing accumulated depreciation by \$269,267 to reflect the appropriate retirement associated with the wastewater main replacement. Accumulated depreciation should also be increased by \$7,978, which represents one year's depreciation on the new wastewater main. Staff therefore recommends a net reduction to wastewater accumulated depreciation of \$261,289 ( $\$269,267 - \$7,978$ ). The Utility's requested amounts and staff's recommended amounts are shown below in Table 1-1 for water and Table 1-2 for wastewater.

**Table 1-1**  
**Summary of Water Plant Projects**

	Utility's Request	Staff Recommended	Difference
AMI Meters	\$594,648	\$594,648	\$0
Retirement	(\$224,489)	(\$224,489)	\$0
Accumulated Depreciation	(\$209,623)	(\$194,757)	\$14,866
Water Softener	\$364,128	\$364,128	\$0
Retirement	(\$248,850)	(\$248,850)	\$0
Accumulated Depreciation	(\$240,865)	(\$232,880)	\$7,985
Maintenance Building	\$105,090	\$102,790	(\$2,300)
Retirement	\$0	\$0	0
Accumulated Depreciation	(\$1,555)	\$2,705	(\$1,150)

Source: Utility's Filing

**Table 1-2**  
**Summary of Wastewater Plant Projects**

	Utility's Request	Staff Recommended	Difference
Wastewater Main Break	\$359,023	\$359,023	\$0
Retirement	(\$269,267)	(\$269,267)	\$0
Accumulated Depreciation	(\$265,278)	(\$261,289)	\$3,989

Source: Utility's Filing

### ***Working Capital Allowance***

Working capital is defined as the short-term investor-supplied funds that are necessary to meet operating expenses. Consistent with Rule 25-30.433(2), F.A.C., staff used the one-eighth of the operation and maintenance expense formula approach for calculating the working capital allowance. Applying this formula, staff recommends an increase to the working capital allowance of \$576 for water and \$372 for wastewater.

### ***Rate Base Summary***

Based on the foregoing, staff recommends a rate base increase of \$1,013,734 for water and \$351,416 for wastewater. Staff's rate base calculations are shown on Schedule Nos. 1 and 2.

### **Rate of Return**

The Utility calculated the weighted average cost of capital correctly in accordance with Rule 25-30.455(4)(e), F.A.C., which states:

(e) A calculation of the weighted average cost of capital shall be provided for the most recent 12-month period, using the mid-point of the range of the last authorized rate of return on equity, the current embedded cost of fixed-rate capital, the actual cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last individual rate proceeding of the utility. If the utility does not have an authorized rate of return on equity, the utility shall use the current leverage formula pursuant to Section 367.081(4)(f), F.S.

In its filing, Pluris provided a weighted average cost of capital (rate of return) of 9.21 percent, based on a capital structure consisting of 67.79 percent equity and 31.75 percent debt using the most recent 12-month period ended December 31, 2016. Pluris used a return on equity (ROE) of 10.88 percent, which is the mid-point of the range of the last authorized rate of return on equity established in its last rate case by Order No. PSC-13-0187-PAA-WS, issued May 2, 2013, (2012 Rate Case).<sup>43</sup> Staff made one adjustment to the cost of capital as filed by the Utility. Consistent with Rule 25-30.311(4)(a), F.A.C., staff reduced the cost rate for customer deposits from the Utility's proposed 6.00 percent to 2.00 percent. Staff's adjustment reduced the Utility's requested rate of return from 9.21 percent to 9.20 percent.

In a letter dated March 6, 2018, OPC asserted that the Utility's requested ROE and resulting rate of return is overstated and unreasonable. OPC requested that the Commission, on its own motion, make a finding regarding the appropriate ROE and the appropriate overall rate of return in this Limited Proceeding. OPC pointed out that Pluris' overall rate of return was last established in the 2012 Rate Case, and in that docket, the Commission approved an equity ratio of 42.97 percent and used the leverage formula in effect at that time. The same leverage formula is still in effect currently. OPC stated that because of an increase in the Utility's equity ratio (42.97 percent to 67.19 percent), the ROE should be recalculated using the current equity ratio, resulting in a ROE of 9.49 percent.

Staff believes recalculating the ROE does not comply with the calculation of the weighted average cost of capital as prescribed in Rule 25-30.455(4)(e), F.A.C. Additionally, the recalculated ROE would apply only to the limited proceeding, resulting in Pluris operating under two different rates of return. Further, a reduction of the Utility's ROE from 10.88 to 9.49 percent would result in Pluris earning below its authorized range of ROE on the new plant investment. The authorized range of ROE established in the 2012 Rate Case was 9.88 percent to 11.88 percent.

OPC also pointed out that Rule 25-30.445(5)(e), F.A.C., requires the Utility to provide a description of any known items that will create a cost savings or revenue impacts from the implementation of the requested cost recovery items. OPC argues the increase in equity ratio

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<sup>43</sup>Order No. PSC-13-0187-PAA-WS, issued May 2, 2013, in Docket No. 20120152-WS, *In re: Application for increase in water and wastewater rates in Orange County by Pluris Wedgefield, Inc.*

results in a known cost savings for which Pluris was required to include in its original petition or revised schedules, but did not do so.

Staff reviewed Paragraph (5) of Rule 25-30.445, F.A.C., and notes that Paragraph (5) applies only to class C water or wastewater utilities. Since Pluris is a class B water and wastewater utility, Paragraph (5) does not apply to Pluris.

OPC opined that there is past precedent where the Commission reduced the rate of return on equity in a limited proceeding to a rate different than the rate approved in the last rate proceeding for a given utility. OPC cited to Order No. PSC-99-1917-PAA-WS, issued September 28, 1999, (Aloha Order), wherein the Commission found that based on the leverage formula in effect at the time of the limited proceeding, Aloha Utilities, Inc.'s last authorized ROE was excessive.<sup>44</sup>

Staff believes that deviating from the rule requirement is not appropriate. Other than the one exception noted by OPC, ROEs have not been addressed in water and wastewater limited proceedings. The limited proceeding rule specifically addresses increases in rate base, operating expenses, and changes in rate structure. The rule does not reference requested changes to ROE. ROE is appropriately addressed in a full rate case whereby all aspects of the capital structure are analyzed. In general, staff would not recommend reducing or increasing ROE in a limited proceeding. In addition, staff notes that the fact pattern in the Aloha Order is not analogous to the fact pattern in the instant case.

Staff believes there are three reasons why the instant case and the Aloha case are not analogous. First, in the Aloha case, the ROE that was changed by the Commission was set in 1977, which was twenty-two years before the Aloha Order was issued. During those 22 years, the leverage formula had changed many times. In the instant case, the Commission established Pluris' ROE of 10.88 percent six years ago in 2012 and the leverage formula that was used at that time is still in effect today. Second, Aloha Utilities, Inc. consisted of two systems in different service territories and with separate rates: Aloha Gardens and Seven Springs. In 1992, the Commission established an ROE of 12.69 percent for the Aloha Gardens wastewater system.<sup>45</sup> At the time of the 1999 Aloha limited proceeding, the ROE for the Aloha Gardens water system and both Seven Springs water and wastewater systems was 14.00 percent. The Commission determined that 14.00 percent was excessive for the three Aloha systems and reduced the ROE to 10.12 percent using the leverage formula in effect at the time. Third, Rule 25-30.445, F.A.C., became effective on March 1, 2004, and was not available when the Commission made its decision in the Aloha Order in 1999. Therefore, in the Aloha limited proceeding decision, the Commission did not deviate from an existing Commission Rule when it recalculated and changed the authorized ROE.

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<sup>44</sup>Order No. PSC-99-1917-PAA-WS, issued September 28, 1999, in Docket No. 19970536-WS, *In re: Application for limited proceeding in water and wastewater rates in Pasco County by Aloha Utilities, Inc.* and Docket No. 19980245-WS, *In re: Application for limited proceeding in water and wastewater rates in Pasco County by Aloha Utilities, Inc.*

<sup>45</sup>Order No. PSC-92-0578-FOF-SU, issued June 29, 1992, in Docket No. 19910540-SU, *In re: Application for Sewer service rate adjustment in Aloha Gardens service area by Aloha Utilities, Inc., in Pasco County.*



Based on the reasons explained above, staff does not recommend the Commission set a new ROE for the Utility in this limited proceeding. Therefore, staff recommends an overall rate of return of 9.20 percent. This results in a return on rate base of \$93,245 ( $\$1,013,737 \times 9.20$  percent) for water and \$32,324 ( $\$351,416 \times 9.20$  percent) for wastewater. The cost of capital calculation is shown below in Table 1-3.

**Table 1-3**  
**Capital Structure**

Description	Total Capital 12/31/2016	Ratio	Cost	Weighted Cost
Long-Term Debt	\$3,650,745	31.75%	5.73%	1.82%
Common Equity	7,795,507	67.79%	10.88%	7.38%
Customer Deposits	23,826	0.21%	2.00%	0.00%
Deferred Taxes	<u>29,076</u>	<u>0.25%</u>	0.00%	<u>0.00%</u>
Total Capitalization	<u>\$11,499,154</u>	<u>100.00%</u>		<u>9.20%</u>

Source: Utility's Filing

### **Operating Expenses**

In its petition, Pluris requested an increase to operating expenses of \$98,185 for water and \$24,780 for wastewater. The components for the operating expenses were Depreciation Expense, Regulatory Commission Expense, Rent Expense, Maintenance Expense, Meter Reading Expense, Taxes Other Than Income, Income Taxes, and Regulatory Assessment Fees (RAF).

#### ***Depreciation Expense***

In its filing, the Utility requested an increase in Depreciation Expense of \$26,273 for water and \$1,994 for wastewater. Staff calculated depreciation expense using the prescribed rates set forth in Rule 25-30.140, F.A.C. Based on staff's recommended increases in rate base, staff recommends a net increase in depreciation expense of \$25,871 for water and \$1,994 for wastewater. This equates to a reduction of \$402 for water.

#### ***Regulatory Commission Expense***

In its filing, the Utility requested \$47,960 in Rate Case Expense. This included \$39,960 for Legal Fees and \$1,500 for Costs Associated with Legal Services (Legal Costs). On February 2, 2017, staff received invoices from Friedman & Friedman for \$12,315 for billed and unbilled legal services with an additional \$4,625 as an estimate to complete the limited proceeding. Those invoices also included \$2,907 for legal costs with an additional \$20 to complete the limited proceeding. This amount included the \$2,000 filing fee.

Pursuant to Section 367.081(7), F.S., the Commission shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. Staff has examined the requested actual expenses, supporting documentation, and estimated expenses for the current rate case. Staff compared these costs with those approved in Docket No. 20090349-

WS.<sup>46</sup> The Utility in that docket was similarly-sized as was the requested revenue increase. Staff believes the documented legal fees and costs are reasonable and prudent, as are the estimated costs to complete. Therefore, staff recommends \$2,000 for the filing fee, \$16,940 (\$12,315 + \$4,625) for legal fees, and \$907 (\$2,887 - \$2,000 + \$20) for legal costs.

The Utility requested \$1,500 for postage and \$1,000 for customer notices. By Rule 25-30.446, F.A.C., Pluris is required to mail a notice of the customer meeting and notices of final rates in this case to its customers. Staff has estimated these costs to be \$1,632 for postage and \$1,154 for envelopes and printing the customer meeting and final rate notices. Therefore, staff recommends increasing the postage expense by \$132 (\$1,632 - \$1,500) and the customer notices by \$154 (\$1,154 - \$1,000).

The Utility also requested expenses related to Maurice Gallarda, the Utility's President, and Principal Engineer, to attend the Agenda Conference. These estimates were \$1,000 for airfare, \$400 for two nights in a hotel, \$300 for a rental car, and \$300 for meals.

In an email dated March 15, 2018, staff contacted Mr. Friedman requesting receipts for the above expenses. Mr. Friedman provided a receipt for \$927 for the airfare and \$164 for the hotel. Mr. Friedman also stated in the email that he would provide transportation for Mr. Gallarda, and he also changed the Meal Allowance request to \$60 total.<sup>47</sup> Staff compared the requested Meal Allowance to the amount approved in Docket No. 20070695-WS,<sup>48</sup> which was \$80. Staff believes these amounts are reasonable. Therefore, staff reduced the airfare by \$73 (\$1,000 - \$927), reduced the rental care expense by \$300 (\$0 - \$300), decreased the hotel expense by \$236 (\$400 - \$164), and decreased the meal allowance by \$240 (\$300 - \$60) to reflect the documented and requested costs of these expenses.

Based on the above, staff recommends that the total rate case expense is \$23,784, which amortized over four years results in a regulatory commission expense of \$5,946 (\$23,784 ÷ 4), or \$2,973 for water and wastewater. These costs and staff's adjustments are summarized below in Table 1-4.

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<sup>46</sup>Order No. PSC-10-0682-PAA-WS, issued November 15, 2010, in Docket No. 20090349-WS, *In re: Application for limited proceeding rate increase in Polk County by Cypress Lakes Utilities, Inc.*

<sup>47</sup>Document Nos. 02404-2018 and 02410-2018.

<sup>48</sup>Order No. PSC-08-0812-PAA-WS, issued December 16, 2008, in Docket No. 20070695-WS, *In re: Application for increase in water and wastewater rates in Martin County by Miles Grant Water and Sewer Company.*

**Table 1-4**  
**Regulatory Commission Expense**

	Per Utility	Adjs	Staff Recommended
Filing Fee	\$2,000	\$0	\$2,000
Legal Fees	39,960	(23,020)	16,940
Legal Fees	1,500	(593)	907
Postage	1,500	132	1,632
Customer Notices	1,000	154	1,154
Airfare	1,000	(73)	927
Hotel	400	(236)	164
Rental Car	300	(300)	0
Meals	<u>300</u>	<u>(240)</u>	<u>60</u>
	<u>\$47,960</u>	<u>(\$24,176)</u>	<u>\$23,784</u>

Source: Utility's Filing

### ***Rent Expense***

In its filing, the Utility requested \$9,000 for rental expense related to a tower that was to be used for the AMI meters. In response to Staff's Third Data Request, the Utility agreed this expense is no longer needed. Therefore, staff has removed \$9,000 for the tower rental expense.

### ***Maintenance Expense***

In its filing, the Utility requested an increase of \$17,739 for maintenance expense. This amount consists of the AMI software setup and yearly AMI software maintenance costs. Consistent with Commission practice, because the AMI software setup costs are a non-recurring expense, this amount was amortized over a five year period. This results in an amount of \$2,612 ( $\$13,063 \div 5$ ). Staff reviewed the invoices related to the AMI software maintenance costs. Those invoices reflect a yearly maintenance expense of \$10,124. Staff has reduced this expense by \$5,003 ( $\$15,127 - \$10,124$ ) to reflect the actual cost. Therefore, staff is recommending a total maintenance expense of \$12,736 ( $\$2,612 + \$10,124$ ).

### ***Meter Reading Expense***

In its filing, the Utility reflected a reduction in Salary Expense of \$11,100. This is a result of the elimination of the meter reader position previously used by the Utility. The calculation of this amount is shown below in Table 1-5.

**Table 1-5**  
**Reduction to Meter Reading Expense**

Annual Salary	\$27,726
Estimate of Benefits	5,545
Salary & Benefits	\$33,271
Truck & Fuel	3,852
Total Meter Reader Costs	\$37,123
Pluris Wedgefield Allocation Factor	29.90%
Meter Reader Allocation	<u>\$11,100</u>

Source: Utility's Filing

***Taxes Other Than Income***

Staff calculated the increase in property taxes based on the recommended increase in UPIS. Because the 2018 millage rates for Orange County are not known at this time, staff used the rate from the Utility's 2017 tax assessment. Consistent with Commission practice, staff used the four percent discount that is available to the Utility for early payment of its property taxes. Staff recommends an increase in property taxes of \$16,146 for water and \$5,594 for wastewater.

Based on staff's recommendations above, staff is recommending an increase to expenses before income taxes and RAFs of \$46,625 for water and \$10,561 for wastewater. These calculations are shown below in Table 1-6 and Table 1-7.

**Table 1-6**  
**Expenses Before Income Taxes and RAFs**

	Per Utility	Adjs	Staff Recommended
Depreciation Expense	\$26,273	(\$402)	\$25,871
Rate Case Expense	5,995	(3,022)	2,973
Rent Expense	9,000	(9,000)	0
Maintenance Expense	17,739	(5,003)	12,736
Meter Reading Expense	(11,100)	0	(11,100)
TOTI	<u>17,626</u>	<u>(1,480)</u>	<u>16,146</u>
Total Increase in Operating Exp	<u>\$65,533</u>	<u>(\$18,908)</u>	<u>\$46,625</u>

Source: Utility's Filing

**Table 1-7**  
**Expenses Before Income Taxes and RAFs**

	Per Utility	Adjs	Staff Recommended
Depreciation Expense	\$1,994	(\$0)	\$1,994
Rate Case Expense	5,995	(3,022)	2,973
TOTI	<u>6,020</u>	<u>(426)</u>	<u>5,594</u>
Total Increase in Operating Exp	<u>\$14,009</u>	<u>(\$3,448)</u>	<u>\$10,561</u>

Source: Utility's Filing

### ***Income Taxes***

Staff calculated state and federal income taxes based on the current rates of 5.5 percent for state and 21 percent for federal. Staff notes that the federal taxes in this case are adjusted to reflect the new rate set forth in the 2017 Tax Cut and Jobs Act and only affects the incremental increases in this case. Any potential refund related to the change in the federal tax rate currently embedded in the Utility's rates is outside of this proceeding and will be addressed in the generic Docket No. 20180013-PU.<sup>49</sup> Based on staff's recommended return on rate base, staff recommends an increase in state taxes of \$5,128 ( $\$93,245 \times .055$ ) for water and \$1,778 ( $\$32,324 \times .055$ ) for wastewater. Staff further recommends increases to federal income taxes of \$18,505 ( $(\$93,245 - \$5,129) \times .21$ ) for water and \$6,415 ( $(\$32,324 - \$1,778) \times .21$ ) for wastewater.

### ***Regulatory Assessment Fees (RAF)***

Based on the above, staff is recommending a revenue increase before RAFs of \$163,503 for water and \$51,078 for wastewater. Therefore, staff recommends RAFs should be increased by \$7,358 ( $\$163,503 \times 4.5$  percent) for water and \$2,299 ( $\$51,078 \times 4.5$  percent) for wastewater.

### ***Operating Expenses Summary***

Based on the above, staff is recommending an incremental increase to Operating Expenses of \$77,616 for water and \$21,053 for wastewater. Staff's calculations are shown on Schedule Nos. 1 and 2.

### ***Conclusion***

Based on the above, staff recommends an incremental revenue requirement increase of \$170,861 for water and \$53,377 for wastewater. This represents increases of 12.16 percent and 5.53 percent for water and wastewater, respectively. The Utility requested an incremental revenue requirement increase of \$194,159 for water and \$57,545 for wastewater. Staff's revenue requirement calculations are shown on Schedule Nos. 1 and 2.

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<sup>49</sup>Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.*

**Issue 2:** What are the appropriate water and wastewater rates for Pluris Wedgefield, Inc.?

**Recommendation:** The recommended monthly water rates are shown on Schedule No. 3 and the recommended monthly wastewater rates are shown on Schedule No. 4. The recommended rates should be designed to produce additional revenues of \$170,861 (12.16 percent increase) for water and \$53,377 (5.53 percent increase) for wastewater. The percent increases should be applied as an across-the-board increase to the existing rates. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Friedrich)

**Staff Analysis:** Staff recommends that service rates for Pluris Wedgefield be designed to allow the Utility the opportunity to generate annual service revenues of \$1,575,497 for water and \$1,018,335 for wastewater. The annualized service revenues before the rate increase are \$1,404,636 for water and \$964,958 for wastewater. This results in a 12.16 percent increase for water and a 5.53 percent increase for wastewater service revenues. The corresponding percentage increases should be applied as an across-the-board increase to the existing water and wastewater rates.

Based on the above, the recommended monthly water rates are shown on Schedule No. 3 and the recommended monthly wastewater rates are shown on Schedule No. 4. The recommended rates should be designed to produce additional revenues of \$170,861 (12.16 percent increase) for water and \$53,377 (5.53 percent increase) for wastewater. The percent increases should be applied as an across-the-board increase to the existing rates. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

**Issue 3:** Should the meter installation charge requested by Pluris Wedgefield, Inc. be approved?

**Recommendation:** Yes. The meter installation charge of \$268 for a 5/8" x 3/4" meter and actual cost for all other meter sizes should be approved. The Utility should file revised tariff sheets and a proposed customer notice. Pluris should provide notice to property owners who have requested service within the 12 calendar months prior to the month the application was filed to the present. The approved charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Friedrich)

**Staff Analysis:** The Utility currently has a meter installation charge of \$110 for a 5/8" x 3/4" meter and \$170 for a 1" meter which were approved in an application for original certificates in 1983.<sup>50</sup> A meter installation charge is designed to recover the cost of the meter and the installation. Pluris is requesting an increase in its meter installation charge to reflect the current costs of installing an AMI meter. The requested meter installation charge includes, \$115 for the meter, \$130 for the transmitter, and \$23 for the meter box. To additionally justify these cost components, the Utility provided a quote for the meter, transmitter, and the meter box. The Utility's requested meter installation charges are consistent with meter installation charges previously approved by the Commission for other utilities.

Staff believes the Utility's request is reasonable and should be approved. Based on the above, the meter installation charge of \$268 for a 5/8" x 3/4" meter and actual cost for all other meter sizes should be approved. The Utility should file revised tariff sheets and a proposed customer notice. Pluris should provide notice to provide property owners who have requested service within the 12 calendar months prior to the month the application was filed to the present. The approved charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

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<sup>50</sup>Order No. 12315, issued August 4, 1983, in Docket No. 820323-WS, *In re: Application of Econ Utilities Corporation for original water and sewer certificates in Orange Florida*.

**Issue 4:** What is the appropriate amount by which rates should be reduced in four years after the published effective date to reflect the removal of the amortized rate case expense as required by Section 367.081(8), F.S?

**Recommendation:** The water and wastewater rates should be reduced, as shown on Schedule Nos. 3 and 4, to remove rate case expense grossed-up for RAFs and amortized over a 4-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.081(8), F.S. Pluris should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (L. Smith, M. Friedrich)

**Staff Analysis:** Section 367.081(8), F.S., requires that the rates be reduced immediately following the expiration of the 4-year period by the amount of the rate case expense previously included in rates. The reduction will reflect the removal of revenue associated with the amortization of rate case expense, the associated return in working capital, and the gross-up for RAFs. This results in a reduction of \$3,152 for water and wastewater.

The water and wastewater rates should be reduced, as shown on Schedule Nos. 3 and 4, to remove rate case expense grossed-up for RAFs and amortized over a 4-year period. The decrease in rates should become effective immediately following the expiration of the 4-year rate case expense recovery period, pursuant to Section 367.081(8), F.S. Pluris should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.



**Issue 5:** Should this docket be closed?

**Recommendation:** 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, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once these actions are complete, this docket should be closed administratively. (D. Janjic)

**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, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once these actions are complete, this docket should be closed administratively.

<b>Water Revenue Requirement</b>			
	<u>Per Utility</u>	<u>Adjustment</u>	<u>Staff Recommended</u>
UPIS	\$1,063,865	(\$2,300)	\$1,061,565
Retirements	(473,339)	0	(473,339)
Less: Accumulated Depreciation	(448,935)	24,003	(424,932)
Working Capital	<u>2,704</u>	<u>(2,128)</u>	<u>576</u>
Total Increase in Rate Base	<u>\$1,042,165</u>	<u>(\$28,431)</u>	<u>\$1,013,734</u>
Weighted Cost of Capital	9.21%		9.20%
Return on Rate Base	\$95,860		\$93,245
Depreciation Expense	\$26,273	(\$402)	\$25,871
Rate Case Expense	5,995	(3,022)	2,973
Rent Expense	9,000	(9,000)	0
Maintenance Expense	17,739	(5,003)	12,736
Meter Reading Expense	(11,100)	0	(11,100)
TOTI	17,626	(1,480)	16,146
State Income Tax (5.5%)	5,277	(149)	5,128
Federal Income Tax (21%)	19,041	(536)	18,505
Regulatory Assessment Fees	<u>8,356</u>	<u>(998)</u>	<u>7,358</u>
Total Operating Expenses	\$98,207	(\$20,592)	\$77,616
Total Revenue Increase Requested/Recommended	<u>\$194,159</u>		<u>\$170,861</u>
Annualized Revenue	\$1,404,636		\$1,404,636
Percentage Increase	13.81%		12.16%

<b>Wastewater Revenue Requirement</b>			
	<u>Per Utility</u>	<u>Adjustment</u>	<u>Staff Recommended</u>
UPIS	\$359,023	\$0	\$359,023
Retirements	(269,267)	0	(269,267)
Less: Accumulated Depreciation	(265,278)	3,989	(261,289)
Working Capital	749	(377)	372
Total Increase in Rate Base	<u>\$355,783</u>	<u>(\$4,367)</u>	<u>\$351,416</u>
Weighted Cost of Capital	9.21%		9.20%
Return on Rate Base	\$32,755		\$32,324
Depreciation Expense	\$1,994	\$0	\$1,994
Rate Case Expense	5,995	(3,022)	2,973
TOTI	6,020	(426)	5,594
State Income Tax (5.5%)	1,802	(24)	1,778
Federal Income Tax (21%)	6,500	(85)	6,415
Regulatory Assessment Fees	<u>2,478</u>	<u>(179)</u>	<u>2,299</u>
Total Operating Expense	\$24,789	(\$3,736)	\$21,053
Total Revenue Increase Requested/Recommended	<u>\$57,545</u>		<u>\$53,377</u>
Annualized Revenue	\$964,958		\$964,958
Percentage Increase	5.96%		5.53%

<b>PLURIS WEDGEFIELD, INC.</b>		<b>SCHEDULE NO. 3</b>	
<b>MONTHLY WATER RATES</b>		<b>DOCKET NO. 20170166-WS</b>	
	<b>UTILITY CURRENT RATES</b>	<b>STAFF RECOMMENDED RATES</b>	<b>4 YEAR RATE REDUCTION</b>
<b><u>Residential, General, and Irrigation Service</u></b>			
Base Facility Charge by Meter Size			
5/8" X 3/4"	\$24.71	\$27.71	\$0.06
3/4"	\$37.08	\$41.57	\$0.08
1"	\$61.79	\$69.28	\$0.14
1-1/2"	\$123.58	\$138.55	\$0.28
2"	\$197.74	\$221.68	\$0.44
3"	\$395.48	\$443.36	\$0.89
4"	\$617.92	\$692.75	\$1.39
6"	\$1,235.86	\$1,385.50	\$2.77
Charge per 1,000 gallons- Residential and Residential Irrigation Service			
0-5,000 gallons	\$7.79	\$8.74	\$0.02
5,001-10,000 gallons	\$9.68	\$10.86	\$0.02
Over 10,000 gallons	\$14.52	\$16.29	\$0.03
Charge per 1,000 gallons- General and General Irrigation Service			
	\$8.79	\$9.86	\$0.02
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>			
3,000 Gallons	\$48.08	\$53.93	
5,000 Gallons	\$63.66	\$71.41	
8,000 Gallons	\$92.70	\$103.99	

PLURIS WEDGEFIELD, INC.		SCHEDULE NO. 4	
MONTHLY WASTEWATER RATES		DOCKET NO. 20170166-WS	
	UTILITY CURRENT RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
<b><u>Residential Service</u></b>			
Base Facility Charge- All Meter Sizes	\$29.01	\$30.61	\$0.09
Charge per 1,000 gallons- Residential 8,000 gallon cap	\$4.24	\$4.47	\$0.01
<b><u>General Service</u></b>			
Base Facility Charge by Meter Size			
5/8" X 3/4"	\$29.01	\$30.61	\$0.09
3/4"	\$43.52	\$45.92	\$0.14
1"	\$72.55	\$76.53	\$0.24
1-1/2"	\$145.07	\$153.05	\$0.47
2"	\$232.11	\$244.88	\$0.76
3"	\$464.22	\$489.76	\$1.52
4"	\$725.35	\$765.25	\$2.37
6"	\$1,450.71	\$1,530.50	\$4.74
Charge per 1,000 gallons - General Service	\$5.08	\$5.36	\$0.02
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>			
3,000 Gallons	\$41.73	\$44.02	
5,000 Gallons	\$50.21	\$52.96	
8,000 Gallons	\$62.93	\$66.37	

# Item 10

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02798-2018  
FPSC - COMMISSION CLERK

## 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-**

**DATE:** April 6, 2018

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

**FROM:** Office of the General Counsel (DuVal) *MD CM*  
Division of Economics (Coston) *JH*

**RE:** Docket No. 20180002-EG – Energy conservation cost recovery clause.

**AGENDA:** 04/20/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** 06/07/18 (Petition Deemed Approved if Not Granted or Denied within 90 Days of Receipt pursuant to Section 120.542(8), Florida Statutes)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Pursuant to Rule 25-17.015(1), Florida Administrative Code (F.A.C.), the Florida Public Service Commission (Commission) sets an annual evidentiary hearing in its continuing Energy Conservation Cost Recovery (ECCR) docket pursuant to Sections 366.80-366.83, Florida Statutes (F.S.), to allow public utilities to seek recovery of costs for energy conservation programs. The 2018 evidentiary hearing is set for November 6-8, 2018.

On March 9, 2018, Florida Power & Light Company (FPL), Duke Energy Florida, LLC, (DEF), Tampa Electric Company (TECO), and Gulf Power Company (Gulf) filed a Joint Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., (Joint Petition). On March 12, 2018, Florida Public Utilities Company (FPUC) filed a Notice of Joinder of the Joint Petition.

Pursuant to Section 120.542(6), F.S., notice of the Joint Petition was published in the Florida Administrative Register on March 14, 2018. No comments were received, and the time for filing comments expired on March 28, 2018. The Commission granted FPL, DEF, TECO, Gulf, and FPUC's prior request for a two-year waiver of Rule 25-17.015(1)(b), F.A.C., in the 2016 ECCR docket.<sup>1</sup>

This recommendation addresses the Joint Petition. The Commission has jurisdiction in this matter pursuant to Sections 120.542, 366.04, 366.05, and 366.06, F.S.

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<sup>1</sup> Order No. PSC-16-0493-PAA-EG, issued October 27, 2016, in Docket No. 20160002-EG, *In re: Energy conservation cost recovery clause*.



## Discussion of Issues

**Issue 1:** Should the Commission grant Florida Power & Light Company, Duke Energy Florida, LLC, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company's Joint Petition for waiver of Rule 25-17.015(1)(b), Florida Administrative Code?

**Recommendation:** Yes. Staff recommends that the Commission grant the Joint Petition for waiver of Rule 25-17.015(1)(b), F.A.C., requested by Florida Power & Light Company, Duke Energy Florida, LLC, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company to allow the IOUs to provide annual estimated/actual true-up filings showing six months of actual data and six months of projected data for a period of two years to cover the August 2018 filings and the August 2019 filings. (DuVal, Coston)

### **Staff Analysis:**

#### **Petition**

As stated, FPL, DEF, TECO, Gulf, and FPUC, all of the investor-owned electric utilities (IOUs) in Florida, requested a rule waiver of the requirements of Rule 25-17.015(1)(b), F.A.C. The rule requires the IOUs to make actual and estimated filings based upon eight months of actual and four months of projected common costs, individual program costs, and any collected revenues, beginning on January 1, 2018 and ending on December 31, 2018. The IOUs stated that the due date for the estimated/actual true-up filing of August 10, 2018, does not allow the companies to prepare their estimated/actual filings based on eight months of actual and four months of projected data because the filings are due before the expiration of the required eight month period. The IOUs indicated that they can prepare their filings on the basis of six months of actual and six months of projected data. The IOUs requested a waiver of Rule 25-17.015(1)(b), F.A.C., and permission to submit their filings based on six months of actual data and six months of projected data.

The IOUs asserted that filings based on six months of actual and six months of projected data are a reasonable means of achieving the purpose of the statutes implemented by Rule 25-17.015(1)(b), F.A.C. The IOUs contended that the impossibility of submitting their filings based on eight months of actual data and four months of projected data by the due date established in the Order Establishing Procedure, Order No. PSC-2018-0094-PCO-EG, issued February 20, 2018, creates a substantial hardship for each of them. The IOUs further requested that the waiver be granted for a period of two years to cover the August 2018 filings and the August 2019 filings.

#### **Facts**

Rule 25-17.015, F.A.C., requires the Commission to conduct annual ECCR proceedings in November of each year. Rule 25-17.015(1)(b), F.A.C., requires that the utilities submit actual and estimated filings, based upon eight months of actual data and four months of projected data, to be used in the annual ECCR proceedings.

The Rule requires that actual costs and revenues should be calculated beginning January 1st of the year of the annual ECCR proceeding in which the IOU is seeking cost recovery. As such, the

typical actual true-up filing should cover the period of January 1st – August 31st, and the estimated true-up filing should cover the period of September 1st – December 31st.

### **Requirements of Section 120.542, F.S.**

Section 120.542(2), F.S., authorizes the Commission to grant variances or waivers from agency rules when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and application of the rule would cause the person substantial hardship. As defined by Section 120.542(2), F.S., “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship.

### **Purpose of the Underlying Statutes**

Sections 366.80-366.83 and 403.519, F.S., are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). The purpose of FEECA is to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems. Furthermore, FEECA requires the Commission to determine whether utilities’ energy conservation programs shall be approved for cost recovery.

In the Joint Petition, the IOUs asked for a waiver of the rule’s requirement for submission of eight months of actual and four months of projected data. Instead, the IOUs offered to provide actual and estimated true-up filings that consist of six months of actual data, covering the period of January 1, 2018 – June 30, 2018, and six months of projected data, covering the period of July 1, 2018 – December 31, 2018, as well as the corresponding periods for the following year’s ECCR docket. Therefore, the IOUs’ ECCR filings will continue to provide actual and estimated true-up information. The IOUs assert that filings based on six months of actual data and six months of projected data are a reasonable means of achieving the purpose of Sections 366.80-366.83, F.S.

Staff believes that six months of actual data and six months of projected data will allow the Commission to determine the IOUs’ appropriate recovery of costs for energy conservation programs during the annual ECCR proceeding in compliance with the purpose of FEECA. Furthermore, pursuant to Rule 25-17.015(1)(a), F.A.C., the actual common costs, individual program costs, and revenues for the period of January 1st – December 31st, will be submitted in the IOUs’ annual true-up filing in the next year’s ECCR proceeding; this information provides the Commission with the ability to true-up the six months of actual and six months of projected data. Therefore, staff recommends that the IOUs have demonstrated that the purpose of the underlying statutes will be achieved by other means by the individual IOUs.

### **Substantial Hardship**

As stated, pursuant to Section 120.542(2), F.S., the petition must demonstrate that application of the rule would create a substantial hardship. Further, Section 120.542(2), F.S., defines substantial hardship as demonstrated economic, technological, legal, or other type of hardship to the person requesting the waiver.

In the Joint Petition, the IOUs assert that application of the rule would create a substantial hardship to them due to the impossibility of submitting their filings on the basis of eight months of actual data and four months of projected data as required by the rule and by the due date set by the Order Establishing Procedure.

Date: April 6, 2018

Staff believes that the application of Rule 25-17.015(1)(b), F.A.C., in the instant docket would create a substantial hardship for the IOUs based on the unavailability of the financial information for the typical coverage periods for actual data to be gathered between January 1st – August 31st and estimated data for September 1st – December 31st, by August 10, 2018. Therefore, staff recommends that the IOUs have demonstrated that application of the rule would create a substantial hardship under the current timeline as set forth in the current hearing schedule.

### **Conclusion**

Section 120.542, F.S., requires companies to demonstrate that the purpose of the underlying statute will be or has been achieved by other means by the companies and that application of the rule would create a substantial hardship. Staff recommends that the Commission find that the IOUs have demonstrated that the purpose of the underlying statutes will be achieved by filing six months of actual data and six months of projected data. Staff further recommends that the IOUs have demonstrated that application of Rule 25-17.015(1)(b), F.A.C., will create a substantial hardship to the IOUs. Therefore, staff recommends that the Commission grant the IOUs' Joint Petition for waiver of Rule 25-17.015(1)(b), F.A.C., to allow the IOUs to provide annual estimated/actual true-up filings showing six months of actual data and six months of projected data for a period of two years to cover the August 2018 filings and the August 2019 filings.

Staff has initiated rulemaking to amend Rule 25-17.015(1)(b), F.A.C. On March 20, 2018, a Notice of Development of Rulemaking to amend Rule 25-17.015, F.A.C., was published in the Florida Administrative Register. The stated purpose and effect of the rule development is to streamline the utilities' filing requirements in the rule.

Date: April 6, 2018

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

**Recommendation:** No. 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 not be closed upon the issuance of a consummating order. The Energy Conservation Cost Recovery docket is ongoing and this docket should remain open for further Commission action. (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 not be closed upon the issuance of a consummating order. The Energy Conservation Cost Recovery docket is ongoing and this docket should remain open for further Commission action.

# Item 11

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-**

**DATE:** April 6, 2018

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

**FROM:** Division of Economics (Doherty) *RD EDN*  
Office of the General Counsel (Brownless) *mm JSC*

**RE:** Docket No. 20180015-GU – Petition for approval of transportation service agreement with Florida Division of Chesapeake Utilities Corporation, by Peninsula Pipeline Company, Inc.

**AGENDA:** 04/20/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Place before Docket 20180016-GU.

### Case Background

On January 12, 2018, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition seeking approval of a firm transportation service agreement (Agreement) between Peninsula and the Florida Division of Chesapeake Corporation d/b/a Central Florida Gas (CFG), collectively the parties, for the construction of a gas pipeline and two custody transfer stations in Escambia County, Florida. Peninsula operates as a natural gas transmission company as defined by Section 368.103(4), Florida Statutes (F.S.).<sup>1</sup> CFG is a local distribution company (LDC) subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S.

<sup>1</sup> Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 050584-GP, *In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.*

By Order No. PSC-07-1012-TRF-GP<sup>2</sup>, Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers. Peninsula provides transportation service only and does not engage in the sale of natural gas. Pursuant to Order No. PSC-07-1012-TRF-GP, Peninsula is allowed to enter into certain gas transmission agreements without prior Commission approval. However, Peninsula is requesting Commission approval of this Agreement as it does not fit any of the criteria enumerated in the tariff for which Commission approval would not be required.<sup>3</sup> Both Peninsula and CFG are subsidiaries of Chesapeake Utility Corporation (Chesapeake), and agreements between affiliated companies must be approved by the Commission pursuant to Section 368.105, F.S., and Order No. PSC-07-1012-TRF-GP.

Pursuant to the proposed Agreement (Attachment B to the recommendation), Peninsula will construct and operate a natural gas pipeline and two custody transfer stations in Escambia County. During its evaluation of the petition, staff issued two data requests to both Peninsula and CFG for which responses were received on February 26, 2018 and March 5, 2018. On March 29, 2018, Chesapeake filed revised Tariff sheet Nos. 3 and 5 to reflect the addition of Escambia County to the description of territory served. The Commission has jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105. F.S.

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<sup>2</sup> Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.*

<sup>3</sup> Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Sheet No. 12, Section 4.



### Discussion of Issues

**Issue 1:** Should the Commission approve the proposed Agreement between Peninsula and CFG dated January 8, 2018?

**Recommendation:** Yes. The Commission should approve the proposed Agreement between Peninsula and CFG dated January 8, 2018. In addition, CFG filed revised Tariff Sheet Nos. 3 and 5 for administrative approval by staff to reflect the addition of Escambia County to the description of territory served. Commission staff should be given authority to administratively approve them consistent with the Commission's decision. (Doherty)

**Staff Analysis:** This petition is a jointly developed plan by the parties for the expansion of natural gas service in Escambia County. The parties stated in the petition that Escambia County has limited economic development and that the expansion of natural gas service will add growth and expansion in the Pensacola area market.

Pursuant to the proposed Agreement, Peninsula will construct an interconnection between Peninsula and Florida Gas Transmission's (FGT) interstate pipeline at the northernmost edge of Escambia County. From that interconnection, Peninsula will construct a 33-mile, 12 inch steel pipeline southward to Old Chemstrand Road. From there, Peninsula will extend a 10 inch pipeline east for five miles. The Peninsula pipeline will terminate at two custody transfer stations to interconnect with CFG's distribution system. Construction of the Peninsula pipeline and CFG's distribution system is expected to be complete by the third quarter of 2018. A map of the FGT interconnection, the Peninsula pipeline, and the two customer transfer stations is shown in Attachment A to the recommendation. Once the Peninsula pipeline is in operation, Peninsula will provide transportation service to CFG.

No LDC currently provides natural gas service in Escambia County. Pensacola Energy, a municipal natural gas utility, provides natural gas service to the City of Pensacola and in certain other discrete areas in Escambia County. Pensacola Energy currently transports natural gas to serve its customers over the Gulf South interstate pipeline. CFG stated in the petition that its newly constructed distribution system will provide transportation service to an industrial customer and Pensacola Energy. CFG further explained that the expansion plans in Escambia County will provide CFG the opportunity to serve additional customers. Interconnecting with the Peninsula pipeline via CFG will provide Pensacola Energy with an additional supply source.

CFG is proposing to recover the payments to Peninsula under the proposed Agreement from its customers through its Purchased Gas Adjustment (PGA) and Swing Service Rider<sup>4</sup> mechanisms consistent with other gas transmission pipeline costs incurred by CFG. CFG provided information showing that the impact on the PGA will be minor (\$0.04693 per therm for 2019). While CFG will incur costs associated with this service expansion, any new load will help spread the costs over a larger customer base.

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<sup>4</sup> Order No. PSC-2017-0467-CO-GU, issued December 12, 2017, in Docket No. 170191-GU, *In re: Joint petition for approval of revised swing service rider rates for the period January through December 2018*, by Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade and Florida Division of Chesapeake Utilities Corporation.



The parties assert that the negotiated monthly reservation charge contained in the Agreement is consistent with a market rate since they are within the ranges of rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. CFG did not obtain a Request for Proposals (RFP) from other entities to construct the pipeline. Peninsula, however, engaged in a conversation with FGT about building the pipeline. FGT declined to bid the construction of the project because owning and operating laterals such as the one proposed in this petition are not a focus of their expansion activities.

The proposed Agreement between CFG and Peninsula will be in effect for an initial period of 30 years and will be extended for additional 10-year increments, unless either party gives written notice of termination. The benefit of Peninsula, as opposed to CFG, constructing the new pipeline, is primarily that Peninsula's construction and ownership of the pipeline will avoid CFG undertaking the costs and risks for this project, which in turn protects CFG ratepayers.

### **Conclusion**

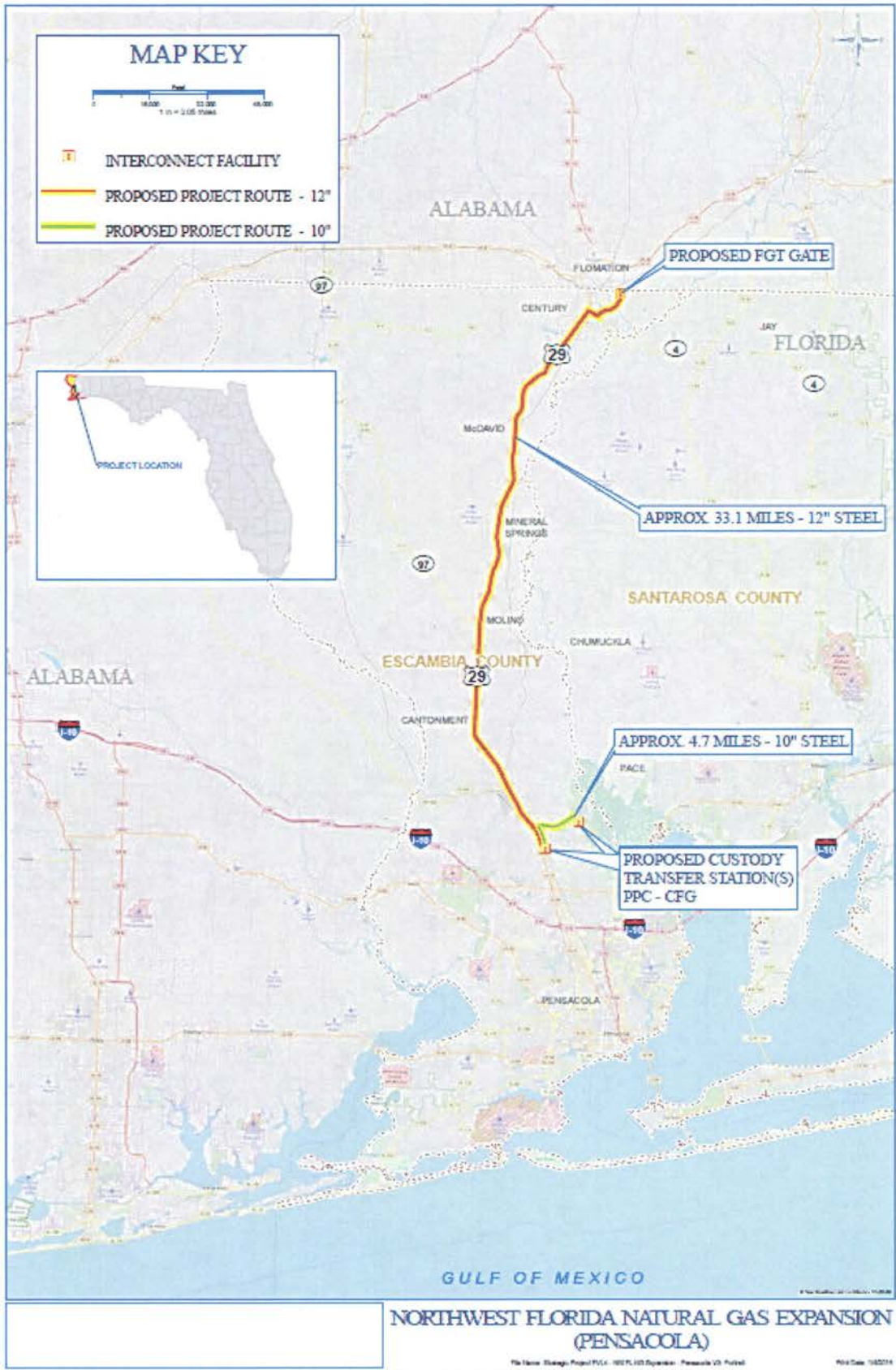
CFG currently does not provide natural gas service in Escambia County. Therefore, CFG filed on March 29, 2018, revised Tariff Sheet Nos. 3 and 5 for administrative approval by staff to reflect the addition of Escambia County to the description of territory served section of its tariff. Commission staff should be given authority to administratively approve them consistent with the Commission's decision.

Based on the petition and responses to staff's data requests, staff believes the proposed Agreement is cost effective, reasonable, meets the requirements of Section 368.105, F.S., and benefits CFG customers. Staff therefore recommends approval of the proposed Agreement between Peninsula and CFG dated January 8, 2018.

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

**Recommendation:** Yes. If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Brownless)

**Staff Analysis:** If no protest is filled by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.





PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

**THIS AGREEMENT** entered into this 8<sup>th</sup> day of January, 2018, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company"), and the Florida Division of Chesapeake Utilities Corporation, a corporation of the State of Florida (herein called "Shipper")(jointly herein "Parties").

**WITNESSETH**

**WHEREAS**, Shipper desires to obtain Firm Transportation Service ("FTS") from Company; and

**WHEREAS**, Company desires to provide Firm Transportation Service to Shipper in accordance with the terms hereof.

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, Company and Shipper do covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Unless otherwise defined in this Agreement, all definitions for terms used herein have the same meaning as provided in Company's tariff.

**ARTICLE II**  
**QUANTITY & UNAUTHORIZED USE**

2.1 The Maximum Daily Transportation Quantity ("MDTQ") and the Maximum Hourly Transportation Percentage ("MHTP") shall be set forth on Exhibit A attached hereto. The applicable MDTQ shall be the largest daily quantity of Gas, expressed in Dekatherms, which Company is obligated to transport on a firm basis and make available for delivery for the account of Shipper under this FTS Agreement on any one Gas Day.

2.2 If, on any Day, Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, the applicable rate for such unauthorized use of transportation quantities shall be as set forth on Exhibit A of this Agreement ("Unauthorized Use Rate").

**ARTICLE III**  
**FIRM TRANSPORTATION SERVICE RESERVATION CHARGE**

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be charged to Shipper beginning with the month in which Company issues notice of the in-service date of the Pipeline to Shipper and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

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PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

3.2 The parties agree to execute and file with the Commission a petition for approval of this Agreement within thirty (30) days of execution by both parties.

3.3 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase or decrease any present tax or levy any additional or eliminate any existing tax impacting amounts billed and paid for service provided by Company under this Agreement, such change take effect for purposes of billing and payment under this Agreement effective as of the effective date of such modification to tax or levy.

**ARTICLE IV**  
**TERM AND TERMINATION**

4.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution ("Execution Date") by both parties and shall continue in full force and effect for an initial period of thirty (30) years from the in-service date ("Initial Term"). Thereafter, the Agreement shall be extended for additional 10-year increments ("Renewed Term"), unless either party gives written notice of termination to the other party, not less than, one hundred eighty (180) days prior to the expiration of the Initial Period or any Renewed Term (jointly "Current Term"). This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the parties' respective rights under applicable law.

4.2 No less than 60-days before expiration of the Current Term, either party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewal Term. Neither Party is obligated to, but may, agree to any mutually-acceptable modification to the Agreement for the subsequent Renewal Term. In the event the parties reach agreement for a modification to the Agreement for the subsequent Renewal Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing prior to the expiration of the then-current term.

4.3 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, pursuant to the Rules and Regulations of Company's tariff, shall survive the other parts of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness, otherwise violates the Rules and Regulations of Company's tariff, or defaults on this Agreement, Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's tariff.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

ARTICLE V  
COMPANY'S TARIFF PROVISIONS

5.1 Company's tariff approved by the Commission, including any amendments thereto approved by the Commission during the term of this Agreement, is hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between Company's tariff and the specific provisions of this Agreement, the latter shall prevail, in the absence of a Commission Order to the contrary.

ARTICLE VI  
REGULATORY AUTHORIZATIONS AND APPROVALS

6.1 Company's obligation to provide service is conditioned upon receipt and acceptance of any necessary regulatory authorization to provide Firm Transportation Service for Shipper in accordance with the Rules and Regulations of Company's tariff.

ARTICLE VII  
DELIVERY POINT(S) AND POINT(S) OF DELIVERY

7.1 The Delivery Point(s) for all Gas delivered for the account of Shipper into Company's pipeline system under this Agreement, shall be as set forth on Exhibit A attached hereto.

7.2 The Point(s) of Delivery shall be as set forth on Exhibit A attached hereto.

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter's system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper's Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper's account to Company's Point(s) of Delivery identified on Exhibit A.

ARTICLE VIII  
SCHEDULING AND BALANCING

8.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by the Transporter to the Delivery Point(s) and delivered by Company to the Point(s) of Delivery. Shipper shall promptly provide notice to Company of all such nominations. Imbalances between quantities (i) scheduled at the Delivery Point(s) and the Point(s) of Delivery, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company's tariff, as such provisions, and any amendments to such provisions, are approved by the Commission.

PENINSULA PIPELINE COMPANY, INC.  
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8.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month. Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline system at a daily rate of flow not to exceed the applicable MDTQ for the Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's tariff provisions.

ARTICLE IX  
MISCELLANEOUS PROVISIONS

9.1 Notices and Other Communications. Any notice, request, demand, statement or payment provided for in this Agreement, unless otherwise specified, shall be sent to the parties hereto at the following addresses:

Company:	Peninsula Pipeline Company, Inc. 1750 South 14th Street, Suite 200 Fernandina Beach, Florida 32034 Attention: Senior Manager, Energy Logistics and Business Process Development
Shipper:	The Florida Division of Chesapeake Utilities Corporation 1750 South 14th Street, Suite 200 Fernandina Beach, Florida 32034 Attention: Director, Regulatory Affairs

9.2 Headings. All article headings, section headings and subheadings in this Agreement are inserted only for the convenience of the parties in identification of the provisions hereof and shall not affect any construction or interpretation of this Agreement.

9.3 Entire Agreement. This Agreement, including the Exhibits attached hereto, sets forth the full and complete understanding of the parties as of the date of its execution by both parties, and it supersedes any and all prior negotiations, agreements and understandings with respect to the subject matter hereof. No party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

9.4 Amendments. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 9.1 shall not be deemed nor require an amendment of



PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments that are or may be necessary to comply with the requirements of, or are otherwise approved by, the Commission or its successor agency or authority.

9.5 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate in good faith an equitable adjustment in the provisions of this Agreement.

9.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver, unless otherwise specifically identified as such in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

9.7 Attorneys' Fees and Costs. In the event of any litigation between the parties arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all costs incurred and reasonable attorneys' fees, including attorneys' fees in all investigations, trials, bankruptcies and appeals.

9.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties. Neither Company nor Shipper is in any way or for any purpose, by virtue of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

9.9 Assignment and Transfer. No assignment of this Agreement by either party may be made without the prior written approval of the other party (which approval shall not be unreasonably withheld) and unless the assigning or transferring party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Agreement of the assigning or transferring party. Upon such assignment or transfer, as well as assumption of the duties and obligations, the assigning or transferring party shall furnish or cause to be furnished to the other party a true and correct copy of such assignment or transfer and the assumption of duties and obligations.

9.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws,



PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each party shall proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any applicable law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the Commission, over this Agreement or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 9.10, Company shall continue to transport and Shipper shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance under the Agreement is precluded. If, however, any Governmental Authority's modification to this Agreement or any other order issued, action taken, interpretation rendered, or rule implemented, will have a material adverse effect on the rights and obligations of the parties, including, but not limited to, the relative economic position of, and risks to, the parties as reflected in this Agreement, then the parties shall use reasonable efforts to agree upon replacement terms that are consistent with the relevant order or directive, and that maintain the relative economic position of, and risks to, the parties as reflected in this Agreement as of the date first set forth above. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

(i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this agreement, issues an order, ruling, decision or regulation (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either Party's rights and benefits under this Agreement, each Party shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of transportation service under this Agreement shall continue; provided that neither Party shall be required to take any action pursuant to this Section which is reasonably

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

likely to have a materially adverse effect on such Party's rights and benefits under this Agreement.

(ii) In the event of the issuance of any enforceable and unappealable compliance obligations related to operation, maintenance, or safety and integrity compliance of the pipeline facility, which are not reasonably foreseeable as of the Execution Date, has a substantial and materially adverse impact on the Company, and such economic impact cannot be substantially mitigated by the Company, Company and Shipper shall meet and negotiate in good faith to determine if appropriate alterations to this Agreement or other arrangements can be agreed to that will address the operational or economic issues caused by such limits or obligations.

(iii) If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120) days prior written notice to Shipper.


9.11 Applicable Law and Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

9.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY  
Peninsula Pipeline Company, Inc.

By:   
Kevin Webber  
Title: Vice President

SHIPPER  
The Florida Division of Chesapeake  
Utilities Corporation

By:   
Jeffry Householder  
Title: President

(To be attested by the corporate secretary if not signed by an officer of the company)

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

EXHIBIT A

TO

FIRM TRANSPORTATION SERVICE AGREEMENT

BETWEEN




PENINSULA PIPELINE COMPANY, INC.

AND

THE FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION

DATED

January 8<sup>th</sup>, 2018

<u>Description of Transporter Delivery Point(s)</u>	<u>Description of Point(s) of Delivery</u>	<u>MDTQ, in Dekatherms, excluding Fuel Retention</u>
Interconnection with FGT Gate Station at mile post 238.6 in Escambia County, FL	See below	
Total MDTQ (Dekatherms):		
MHTP: 6%		
Monthly Reservation Charge:		

The Company shall provide written notification to Shipper that the Northwest Florida Pipeline has been completed and establish an in-service date. The Parties recognize that the Northwest Florida Pipeline may be completed in segments with each segment placed into service as completed. In such event, the Company may provide written notification of the in-service date of each segment, whereupon the Company may begin to charge Shipper a pro rata portion of the Monthly Reservation Charge associated with the in-service segment.

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PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

Description of Point(s) of Delivery:

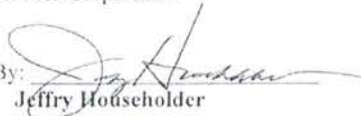
- 1) Delivery Point – located on the Eastern side of Ascend Performance Materials property, near the intersection of Chemstrand Road and Old Chemstrand Road.
- 2) Delivery Point – located on County Road 95A, South of Old Chemstrand Road.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY  
Peninsula Pipeline Company, Inc.

By:   
Kevin Webber  
Title: Vice President

SHIPPER  
The Florida Division of Chesapeake  
Utilities Corporation

By:   
Jeffrey Householder  
Title: President

(To be attested by the corporate secretary if not signed by an officer of the company)

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

# Item 12



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-**

**DATE:** April 6, 2018

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

**FROM:** Division of Economics (Doherty) *PD ESD PA B*  
Office of the General Counsel (Brownless) *mm jsc*

**RE:** Docket No. 20180016-GU – Petition for approval of transportation service agreement with Florida Public Utilities Company, by Peninsula Pipeline Company, Inc.

**AGENDA:** 04/20/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Place after Docket 20180015-GU.

RECEIVED-FPSC  
2018 APR -6 AM 9:54  
COMMISSION CLERK

### Case Background

On January 12, 2018, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition seeking approval of a firm transportation service agreement (Agreement) between Peninsula and Florida Public Utilities Company (FPUC), collectively the parties. Peninsula operates as a natural gas transmission company as defined by Section 368.103(4), Florida Statutes (F.S.).<sup>1</sup> FPUC is a local distribution company (LDC) subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S.

<sup>1</sup> Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 050584-GP, *In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.*

By Order No. PSC-07-1012-TRF-GP<sup>2</sup>, Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers. Peninsula provides transportation service only; it does not engage in the sale of natural gas. Pursuant to Order No. PSC-07-1012-TRF-GP Peninsula is allowed to enter into certain gas transmission agreements without prior Commission approval. However, Peninsula is requesting Commission approval of this Agreement as it does not fit any of the criteria enumerated in the tariff for which Commission approval would not be required.<sup>3</sup> Both Peninsula and FPUC are subsidiaries of Chesapeake Utility Corporation (Chesapeake), and agreements between affiliated companies must be approved by the Commission pursuant to Section 368.105, F.S., and Order No. PSC-07-1012-TRF-GP.

Pursuant to the proposed Agreement (Attachment B to the recommendation), Peninsula will construct and operate a natural gas pipeline in the West Palm Beach area. During its evaluation of the petition, staff issued a data request to both Peninsula and FPUC for which responses were received on February 27, 2018. The Commission has jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105, F.S.

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<sup>2</sup> Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.*

<sup>3</sup> Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Sheet No. 12, Section 4.



### Discussion of Issues

**Issue 1:** Should the Commission approve the proposed Agreement between Peninsula and FPUC dated January 12, 2018?

**Recommendation:** Yes. The Commission should approve the proposed Agreement between Peninsula and FPUC dated January 12, 2018. (Doherty)

**Staff Analysis:** FPUC provides natural gas service to residential and commercial/industrial customers in the West Palm Beach area. Currently, FPUC receives deliveries of natural gas to serve its customers in the area over a transmission pipeline owned by Florida City Gas. This arrangement is referred to as an LDC to LDC interconnection. City Gas' pipeline is directly interconnected with the interstate Florida Gas Transmission (FGT) line. FPUC's distribution system interconnects to City Gas' transmission line at the Benoit Farm gate station. However, FPUC is restricted to 300 dekatherms (dts) per day at this delivery point and FPUC stated that the amount of capacity at the Benoit Farm gate station cannot be increased.

FPUC explained that, in the past, the 300 dts per day capacity amount was adequate to serve FPUC's customers; however, in recent years FPUC has experienced growth in West Palm Beach which has caused FPUC to exceed the allowed capacity. If an LDC exceeds its allowable capacity from the interstate pipeline, FGT assesses the LDC penalties. To address the capacity issues and avoid imbalance penalties, FPUC and Peninsula have entered into the proposed Agreement.

Pursuant to the proposed Agreement, Peninsula will construct and own a new pipeline referred to in the Agreement as the Belvedere Pipeline. The Belvedere Pipeline will interconnect with FGT at the compressor station located at the Florida Turnpike near Belvedere Road. From this interconnection, Peninsula will construct two miles of eight inch steel pipeline going west where it will interconnect with FPUC's existing distribution system at Belvedere Road and Sonsbury Way. The Belvedere Pipeline is shown on the map in Attachment A to this recommendation as the solid red line. This Agreement will be in effect for an initial period of 20 years and shall be extended for additional 10-year increments, unless either party gives written notice of termination.

The parties assert that the negotiated monthly reservation charge contained in the Agreement is consistent with a market rate since they are within the ranges of rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. FPUC did not obtain a Request for Proposals (RFP) from other entities to construct the pipeline. Peninsula, however, engaged in discussions with FGT about possibly building the pipeline. FGT declined to bid on the construction of the project stating that owning and operating laterals such as the one proposed in this petition are not a focus of their expansion activities.

FPUC is proposing to recover the payments to Peninsula under the proposed Agreement from its customers through its Purchased Gas Adjustment (PGA) and Swing Service Rider<sup>4</sup> mechanisms

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<sup>4</sup> Order No. PSC-2017-0467-CO-GU, issued December 12, 2017, in Docket No. 170191-GU, *In re: Joint petition for approval of revised swing service rider rates for the period January through December 2018*, by Florida Public

Date: April 6, 2018

consistent with other gas transmission pipeline costs incurred by FPUC. FPUC provided information showing that the impact on the PGA will be minor (\$0.00579 per therm for 2019). While FPUC will incur costs associated with this service expansion, any new load will help spread the costs over a larger customer base.

The benefit of Peninsula, as opposed to FPUC, constructing the new pipeline, is primarily that Peninsula's construction and ownership of the pipeline will avoid FPUC undertaking the costs and risks for this project, which in turn protects FPUC's ratepayers.

### **Conclusion**

Based on the petition and responses from Peninsula and FPUC, staff believes that the proposed Agreement is cost effective, reasonable, meets the requirements of Section 368.105, F.S., and benefits FPUC's customers. Staff therefore recommends approval of the proposed Agreement between Peninsula and FPUC dated January 12, 2018.

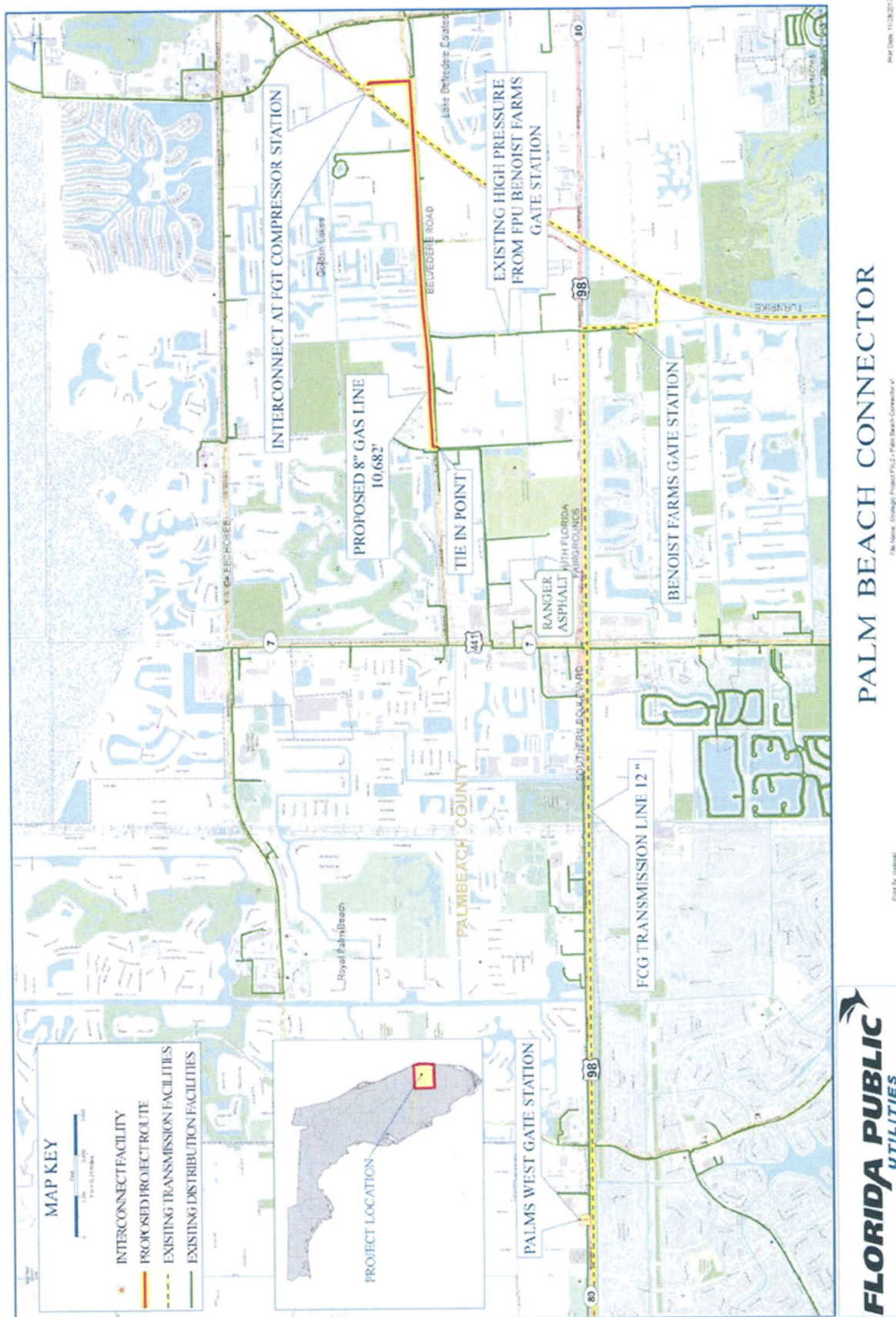
Date: April 6, 2018

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

**Recommendation:** Yes. If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Brownless)

**Staff Analysis:** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.





PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

**THIS AGREEMENT** entered into this 12<sup>th</sup> day of January, 2018, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company"), and Florida Public Utilities Company, a corporation of the State of Florida (herein called "Shipper")(jointly herein "Parties").

**WITNESSETH**

**WHEREAS**, Shipper desires to obtain Firm Transportation Service ("FTS") from Company; and

**WHEREAS**, Company desires to provide Firm Transportation Service to Shipper in accordance with the terms hereof.

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, Company and Shipper do covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Unless otherwise defined in this Agreement, all definitions for terms used herein have the same meaning as provided in Company's tariff.

**ARTICLE II**  
**QUANTITY & UNAUTHORIZED USE**

2.1 The Maximum Daily Transportation Quantity ("MDTQ") and the Maximum Hourly Transportation Percentage ("MHTP") shall be set forth on Exhibit A attached hereto. The applicable MDTQ shall be the largest daily quantity of Gas, expressed in Dekatherms, which Company is obligated to transport on a firm basis and make available for delivery for the account of Shipper under this FTS Agreement on any one Gas Day.

2.2 If, on any Day, Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, the applicable rate for such unauthorized use of transportation quantities shall be as set forth on Exhibit A of this Agreement ("Unauthorized Use Rate").

**ARTICLE III**  
**FIRM TRANSPORTATION SERVICE RESERVATION CHARGE**

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be charged to Shipper beginning with the month in which Company issues notice of the in-service date of the Pipeline to Shipper and shall thereafter be assessed in accordance with the terms and conditions set forth herein.



PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

3.2 The parties agree to execute and file with the Commission a petition for approval of this Agreement within thirty (30) days of execution by both parties.

3.3 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase or decrease any present tax or levy any additional or eliminate any existing tax impacting amounts billed and paid for service provided by Company under this Agreement, such change take effect for purposes of billing and payment under this Agreement effective as of the effective date of such modification to tax or levy.

**ARTICLE IV**  
**TERM AND TERMINATION**

4.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution ("Execution Date") by both parties and shall continue in full force and effect for an initial period of twenty (20) years from the in-service date ("Initial Term"). Thereafter, the Agreement shall be extended for additional 10-year increments ("Renewed Term"), unless either party gives written notice of termination to the other party, not less than, one hundred eighty (180) days prior to the expiration of the Initial Period or any Renewed Term (jointly "Current Term"). This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the parties' respective rights under applicable law.

4.2 No less than 60-days before expiration of the Current Term, either party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewal Term. Neither Party is obligated to, but may, agree to any mutually-acceptable modification to the Agreement for the subsequent Renewal Term. In the event the parties reach agreement for a modification to the Agreement for the subsequent Renewal Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing prior to the expiration of the then-current term.

4.3 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, pursuant to the Rules and Regulations of Company's tariff, shall survive the other parts of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness, otherwise violates the Rules and Regulations of Company's tariff, or defaults on this Agreement, Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's tariff.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

**ARTICLE V**  
**COMPANY'S TARIFF PROVISIONS**

5.1 Company's tariff approved by the Commission, including any amendments thereto approved by the Commission during the term of this Agreement, is hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between Company's tariff and the specific provisions of this Agreement, the latter shall prevail, in the absence of a Commission Order to the contrary.

**ARTICLE VI**  
**REGULATORY AUTHORIZATIONS AND APPROVALS**

6.1 Company's obligation to provide service is conditioned upon receipt and acceptance of any necessary regulatory authorization to provide Firm Transportation Service for Shipper in accordance with the Rules and Regulations of Company's tariff.

**ARTICLE VII**  
**DELIVERY POINT(S) AND POINT(S) OF DELIVERY**

7.1 The Delivery Point(s) for all Gas delivered for the account of Shipper into Company's pipeline system under this Agreement, shall be as set forth on Exhibit A attached hereto.

7.2 The Point(s) of Delivery shall be as set forth on Exhibit A attached hereto.

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter's system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper's Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper's account to Company's Point(s) of Delivery identified on Exhibit A.

**ARTICLE VIII**  
**SCHEDULING AND BALANCING**

8.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by the Transporter to the Delivery Point(s) and delivered by Company to the Point(s) of Delivery. Shipper shall promptly provide notice to Company of all such nominations. Imbalances between quantities (i) scheduled at the Delivery Point(s) and the Point(s) of Delivery, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company's tariff, as such provisions, and any amendments to such provisions, are approved by the Commission.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

8.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month. Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline system at a daily rate of flow not to exceed the applicable MDTQ for the Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's tariff provisions.

ARTICLE IX  
MISCELLANEOUS PROVISIONS

9.1 Notices and Other Communications. Any notice, request, demand, statement or payment provided for in this Agreement, unless otherwise specified, shall be sent to the parties hereto at the following addresses:

Company: Peninsula Pipeline Company, Inc.  
1750 South 14th Street, Suite 200  
Fernandina Beach, Florida 32034  
Attention: Senior Manager, Energy Logistics and Business  
Process Development

Shipper: Florida Public Utilities Company  
1750 South 14th Street, Suite 200  
Fernandina Beach, Florida 32034  
Attention: Director, Regulatory Affairs

9.2 Headings. All article headings, section headings and subheadings in this Agreement are inserted only for the convenience of the parties in identification of the provisions hereof and shall not affect any construction or interpretation of this Agreement.

9.3 Entire Agreement. This Agreement, including the Exhibits attached hereto, sets forth the full and complete understanding of the parties as of the date of its execution by both parties, and it supersedes any and all prior negotiations, agreements and understandings with respect to the subject matter hereof. No party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

9.4 Amendments. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 9.1 shall not be deemed nor require an amendment of



PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments that are or may be necessary to comply with the requirements of, or are otherwise approved by, the Commission or its successor agency or authority.

9.5 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate in good faith an equitable adjustment in the provisions of this Agreement.

9.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver, unless otherwise specifically identified as such in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

9.7 Attorneys' Fees and Costs. In the event of any litigation between the parties arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all costs incurred and reasonable attorneys' fees, including attorneys' fees in all investigations, trials, bankruptcies and appeals.

9.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties. Neither Company nor Shipper is in any way or for any purpose, by virtue of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

9.9 Assignment and Transfer. No assignment of this Agreement by either party may be made without the prior written approval of the other party (which approval shall not be unreasonably withheld) and unless the assigning or transferring party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Agreement of the assigning or transferring party. Upon such assignment or transfer, as well as assumption of the duties and obligations, the assigning or transferring party shall furnish or cause to be furnished to the other party a true and correct copy of such assignment or transfer and the assumption of duties and obligations.

9.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws,

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each party shall proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any applicable law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the Commission, over this Agreement or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 9.10, Company shall continue to transport and Shipper shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance under the Agreement is precluded. If, however, any Governmental Authority's modification to this Agreement or any other order issued, action taken, interpretation rendered, or rule implemented, will have a material adverse effect on the rights and obligations of the parties, including, but not limited to, the relative economic position of, and risks to, the parties as reflected in this Agreement, then the parties shall use reasonable efforts to agree upon replacement terms that are consistent with the relevant order or directive, and that maintain the relative economic position of, and risks to, the parties as reflected in this Agreement as of the date first set forth above. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

(i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this agreement, issues an order, ruling, decision or regulation (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either Party's rights and benefits under this Agreement, each Party shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of transportation service under this Agreement shall continue; provided that neither Party shall be required to take any action pursuant to this Section which is reasonably

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

likely to have a materially adverse effect on such Party's rights and benefits under this Agreement.

(ii) In the event of the issuance of any enforceable and unappealable compliance obligations related to operation, maintenance, or safety and integrity compliance of the pipeline facility, which are not reasonably foreseeable as of the Execution Date, has a substantial and materially adverse impact on the Company, and such economic impact cannot be substantially mitigated by the Company, Company and Shipper shall meet and negotiate in good faith to determine if appropriate alterations to this Agreement or other arrangements can be agreed to that will address the operational or economic issues caused by such limits or obligations.

(iii) If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120) days prior written notice to Shipper.

9.11 Applicable Law and Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

9.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.




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PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY  
Peninsula Pipeline Company, Inc.

SHIPPER  
The Florida Division of Chesapeake  
Utilities Corporation

By:   
Kevin Webber  
Title: Vice President

By:   
Jeffry Householder  
Title: President

(To be attested by the corporate secretary if not signed by an officer of the company)

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

EXHIBIT A

TO

FIRM TRANSPORTATION SERVICE AGREEMENT

BETWEEN

PENINSULA PIPELINE COMPANY, INC.

AND

FLORIDA PUBLIC UTILITIES COMPANY

DATED

January 12<sup>th</sup>, 2018

<u>Description of Delivery Point(s)</u>	<u>Description of Point(s) of Delivery</u>	<u>MDTQ, in Dekatherms, excluding Fuel Retention</u>
Interconnection with FGT Compressor station 21 at the north bound Florida turnpike Jog Road exit in Palm Beach County, FL	In the vicinity of the Belvedere Road and Sansburys Way intersection in Palm Beach County, FL	[REDACTED]

Total MDTQ (Dekatherms): [REDACTED]

MHTP: 6%

Monthly Reservation Charge: [REDACTED]


The Company shall provide written notification to Shipper that the Belvedere Pipeline has been completed and establish an in-service date. The Parties recognize that the Belvedere Pipeline may be completed in segments with each segment placed into service as completed. In such event, the Company may provide written notification of the in-service date of each segment, whereupon the Company may begin to charge Shipper a pro rata portion of the Monthly Reservation Charge associated with the in-service segment.

Unauthorized Use Rate (In addition to Monthly Reservation Charge): [REDACTED] / Each Day of Unauthorized Use

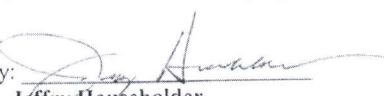
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By:   
Jeffrey Houscholder  
Title: President

(To be attested by the corporate secretary if not signed by an officer of the company)

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

# Item 13



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-**

**DATE:** April 6, 2018

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

**FROM:** Division of Economics (Bruce) *[Signature]*  
Office of the General Counsel (Mapp) *[Signature]*

**RE:** Docket No. 20180014-WS – Investigation of allowance for funds prudently invested (AFPI) in Lake County, by Utilities, Inc. of Florida.

**AGENDA:** 04/20/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

RECEIVED-FPSC  
2018 APR -6 AM 10:17  
COMMISSION  
CLERK

### Case Background

Utilities, Inc. of Florida (UIF or utility) is a Class A water and wastewater utility providing service in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties. The utility reported operating revenues of \$2,498,891 for water and \$1,440,710 for wastewater in its 2016 annual report.

Pursuant to Order No. PSC-2017-0361-FOF-WS,<sup>1</sup> the Commission found the utility serving in excess of the number of equivalent residential connections (ERCs) upon which the allowance for funds prudently invested (AFPI) charges were designed for UIF's Lake Groves water and wastewater systems and UIF's Lake Utility Services (LUSI) water system. As a result, the

<sup>1</sup> Order No. PSC-2017-0361-FOF-WS, in Docket No. 20160101-WS, issued September 25, 2017, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

Docket No. 20180014-WS

Date: April 6, 2018

Commission discontinued the AFPI charges for those systems and ordered an investigation to determine the amount of overcollection of AFPI charges and the appropriate disposition of the overcollection.

This recommendation addresses the results of the investigation into potential overcollections of AFPI charges and the disposition of the overcollection for UIF's Lake Groves and LUSI systems. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

## Discussion of Issues

**Issue 1:** Should UIF be required to refund overcollections of AFPI charges and, if so, what is the appropriate amount to be refunded?

**Recommendation:** Yes. UIF should be required to refund overcollected AFPI charges of \$165,739 with interest in accordance with Rule 25-30.360, F.A.C. to the two developers that paid AFPI charges for a total of 292 connections. The refund should be completed within 90 days of the Commission's vote and documentation supporting the final refund should be provided within 10 days of the completed refund. (Bruce)

### Staff Analysis:

#### Background

Pursuant to Rule 25-30.434, Florida Administrative Code (F.A.C.), an AFPI charge is a mechanism designed to allow a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the customers that will be served by that plant. This one-time charge is assessed based on the date the future customer connects to the utility's system. The charge is calculated for one equivalent residential connection (ERC) on a monthly basis up to the time the utility reaches the designed capacity of the plant for which the charge applies. The calculation includes the costs associated with the non-used and useful facilities and the number of future ERCs from which the utility may collect the AFPI charges.

#### Lake Groves

Lake Groves's initial rates and charges became effective in an original certificate case in 1991.<sup>2</sup> The water and wastewater AFPI charges that were approved in that docket were designed to be collected from 545 ERCs. The projected capacity of the water system at the time the charges were approved was 600,000 gallons per day (gpd) and the projected capacity of the wastewater system was 160,000 gpd.

Over the years, Lake Groves's certificates were amended on several occasions to include additional territory and the Commission approved the utility's existing rates and charges, including AFPI for each new territory.<sup>3</sup> In 1999, the Commission approved the transfer of majority organizational control of Lake Groves to Utilities, Inc. and the rates and charges of Lake Groves were continued.<sup>4</sup> According to the order approving the transfer, the utility was

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<sup>2</sup> Order No. 24283, issued March 25, 1991, in Docket No. 19900957-WS, *In re: Application of Lake Groves Utilities, Inc. for water and sewer certificates in Lake County*.

<sup>3</sup> Order No. PSC-92-1328-FOF-WS, issued November 16, 1992, in Docket No. 19920900-WS, *In re: Application of Lake Groves Utilities, Inc. for amendment of Certificates Nos. 534-W and 465-S in Lake County, FL*; Order No. PSC-94-0116-FOF-WS, issued January 31, 1994, in Docket No. 19931000-WS, *In re: Application for amendment of Certificate Nos. 534-W and 465-S in Lake County by Lake Groves Utilities, Inc.*; Order No. PSC-99-0884-FOF-WS, issued May 3, 1999, in Docket No. 19990195-WS, *In re: Application for amendment of Certificates Nos. 434-W and 465-S to add additional territory in Lake County by Lake Groves Utilities, Inc.* and Order No. PSC-00-1657-PAA-WS, issued September 18, 2000, in Docket No. 20000430-WS, *In re: Application for amendment of Certificates Nos. 534-W and 465-S to add territory in Lake County by Lake Groves Utilities, Inc.*

<sup>4</sup> Order No. PSC-99-0164-FOF-WS, issued January 26, 1999, in Docket No. 19980958-WS, *In re: Application for transfer of majority organizational control of Lake Groves Utilities, Inc. in Lake County to Utilities, Inc.*



serving approximately 600 water and wastewater customers at that time, which exceeded the number of ERCs upon which the AFPI charges were based.

In Docket No. 20070693-WS,<sup>5</sup> the Commission found that the Lake Groves wastewater system was 52.42 percent used and useful based on 1,000,000 gpd of capacity; the utility was serving approximately 2,860 ERCs during the test year. According to the utility's annual reports, no AFPI charges were collected from 1991 through 2016. However, in response to a data request, the utility indicated that during early 2017 it had collected \$165,739 in AFPI charges for future Lake Groves wastewater connections.

## LUSI

The Commission approved AFPI charges for the LUSI water system in the utility's original certificate application in 1988.<sup>6</sup> The charges were designed to be recovered from 106 future ERCs based on projected capacity of 37,100 gpd. Several amendments were approved for the LUSI system and by 1992 the utility was serving over 300 customers.<sup>7</sup> Subsequently, in a rate case in 1997,<sup>8</sup> the Commission found that LUSI may have incorrectly collected the AFPI charges approved in 1988 and opened an investigation. During the 1997 rate case, the Commission also approved new AFPI charges for the LUSI water system as a result of increases in the capacity of the water treatment plant (WTP) and the distribution system. Separate charges were designed for the WTP and the distribution system based on the increased capacity of those systems and the used and useful adjustments that were made during the rate case. The new WTP AFPI charge was designed to be collected from 1,080 future ERCs and the distribution system AFPI charge was designed to be collected from 977 future ERCs. At that time, the LUSI water system served 937 ERCs.

As a result of the investigation into the potential overcollection of LUSI's 1998 AFPI charges, the Commission found that LUSI had overcollected those AFPI charges and required LUSI to record the overcollection as contributions-in-aid-of-construction (CIAC).<sup>9</sup> Following a protest and settlement agreement, two customers who protested were given a refund in the amount of the AFPI charges they paid.<sup>10</sup> According to the utility's annual reports, AFPI charges in the amount

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<sup>5</sup> Order No. PSC-09-0101-PAA, issued February 16, 2009, in Docket No. 20070693-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

<sup>6</sup> Order No. 19962, issued September 8, 1988, in Docket No. 19871080-WU, *In re: Application of Lake Utility Services, Inc. for an original water certificate in Lake County, Florida.*

<sup>7</sup> Order No. 24957, issued August 21, 1991, in Docket No. 19900989-WU, *In re: Application of Lake Utility Services, Inc. for amendment of Certificate No. 496-W in Lake County, Florida*; Order No. PSC-92-1369-FOF-WU, issued November 24, 1992, in Docket No. 19920174-WU, *In re: Application for Amendment of Certificate No. 496-W in Lake County by Lake Utility Services, Inc.*; Order No. PSC-93-1092-FOF-WU, issued July 27, 1993, in Docket No. 19910760-WU, *In re: Application for transfer of assets from Lake Saunders Acres Subdivision to Lake Utility Services, Inc., Amendment of Certificate No. 496-W and a Limited Proceeding to establish rates and charges.*

<sup>8</sup> Order No. PSC-97-0531-FOF-WU, issued May 9, 1997, in Docket No. 19960444-WU, *In re: Application for rate increase and for increase in service availability charges in Lake County by Lake Utility Services, Inc.*

<sup>9</sup> Order No. PSC-98-0796-FOF-WU, issued June 8, 1998, in Docket No. 19980483-WU, *In re: Investigation into possible over collection of allowance for funds prudently invested (AFPI) in Lake County, by Lake Utility Services, Inc.*

<sup>10</sup> Order No. PSC-99-0644-AS-WU, issued April 6, 1999, in Docket No. 19980483-WU, *In re: Investigation into possible over collection of allowance for funds prudently invested (AFPI) in Lake County, by Lake Utility Services, Inc.*



of \$421,472 were collected for LUSI from 1999 through 2001 based on the new charges approved in the 1997 rate case.

### **Merger of Lake Groves and LUSI**

In 2002, as a result of a corporate merger and name change, Lake Groves was merged with LUSI.<sup>11</sup> At that time, the LUSI system had approximately 3,000 water customers and the Lake Groves system had approximately 2,200 water and wastewater customers.

Following the merger, the utility had rate cases in 2008<sup>12</sup> and 2010<sup>13</sup>; however, the final orders in those dockets did not address AFPI charges and collections. The utility was serving approximately 8,746 water and 2,827 wastewater customers in 2010. The Commission found that the Lake Groves wastewater treatment plant (WWTP) was 53 percent used and useful (the capacity had been expanded from 500,000 gpd to 1,000,000 gpd), and the WTP as well as the water distribution and wastewater collection lines were 100 percent used and useful.

### **Staff Investigation**

In Docket No. 20160101-WS, the Commission discontinued the AFPI charges for UIF's Lake Groves and LUSI systems and ordered an investigation to determine the amount of over collection and the disposition of the overcollection of AFPI charges.<sup>14</sup> As noted above, the Lake Groves AFPI charges were approved in 1991 based on 545 ERCs. Based on staff's review of annual reports and prior rate case dockets, the number of ERCs upon which the Lake Groves water and wastewater AFPI charges were based was exceeded around 1999 when the utility was serving approximately 600 ERCs. After several expansions to the capacity of the WWTP, it was found to be 52.42 percent used and useful in Docket No. 20070693-WS; the utility was serving approximately 2,860 ERCs during the test year.<sup>15</sup>

In response to staff's data request, the utility argued that the AFPI charges for its Lake Groves wastewater system should not have been discontinued in the 2016 rate case because it had been found to be less than 100 percent used and useful. As a result, the utility believed it was entitled to collect AFPI charges pursuant to its tariff. The utility indicated that its tariffs did not specify a cap on the ERCs for which AFPI could have been collected. The utility stated that had it known there was a cap on the number of ERCs, it would have filed the appropriate tariff amendment at the time. Further, due to the fact that the wastewater plant had undergone a substantial increase in capacity, the utility stated that the AFPI tariff was actually obsolete and the Commission should have updated the AFPI charges in prior rate proceedings to recognize the substantial

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<sup>11</sup> Order No. PSC-02-1658-FOF-WS, issued November 26, 2002, in Docket No. 20020695-WS, *In re: Application for name change on Certificate No. 465-S in Lake County from Lake Groves Utilities, Inc. to Lake Utility Services, Inc., holder of Certificate No. 496-W, pursuant to merger of Lake Groves with Lake Utility, and request for cancellation of Certificate No. 534-W held by Lake Groves.*

<sup>12</sup> Order No. PSC-09-0101-PAA-WS, issued February 16, 2009, in Docket No. 20070693-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

<sup>13</sup> Order No. PSC-11-0514-PAA-WS, issued November 3, 2011, in Docket No. 100426-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

<sup>14</sup> Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

<sup>15</sup> Order No. PSC-09-0101-PAA-WS, issued February 16, 2009, in Docket No. 20070693-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*



increase in the capacity of the WWTP plant. According to the utility, the only AFPI charges collected for Lake Groves was \$165,739, which was collected during early 2017 for 292 connections.

Rule 25-30.434(6), F.A.C., provides that the utility can collect AFPI charges until all projected ERCs included in the calculation of the charge have been added. While staff agrees that the original tariff for the Lake Groves AFPI charges did not reflect the 545 ERCs upon which the charges were based, the requirement was included in the Order No. 24283 when the AFPI charges were approved in 1991. Staff agrees with the utility that the AFPI charges could have been revised to reflect that circumstances had changed in regards to the capacity of system. However, pursuant to Section 367.091(4), F.S., a utility may only charge the rates and charges in its approved tariff. Rates and charges may only be changed as a result of a Commission decision and it is incumbent upon the utility to request a revaluation of its rates and charges. Therefore, the utility should have discontinued collection of AFPI charges for the Lake Groves water and wastewater systems when the 545 ERCs were connected. Therefore, UIF should be required to refund overcollected AFPI charges for the Lake Groves system of \$165,739 with interest in accordance with Rule 25-30.360, F.A.C.

Further, as previously discussed, the Commission investigated the overcollection of AFPI charges for LUSI, a sister cooperation, in 1998.<sup>16</sup> The Commission required LUSI to record the overcollection as CIAC and required refunds to the two customers that had protested an earlier decision. Following approval of new AFPI charges in 1997, that were based on increased capacity in the water system, the LUSI customer growth exceeded the number of ERCs upon which those charges were based around 2001. According to the utility's annual reports, the LUSI AFPI charges were only collected from 1999 through 2001; it does not appear that the AFPI collection exceeded the number of ERCs upon which the charges were based. Therefore, it appears there was no overcollection of AFPI for the LUSI water system.

UIF currently has approved AFPI charges for seven of its wastewater systems, including Longwood<sup>17</sup> and Sandalhaven<sup>18</sup> as well as the five systems for which charges were recently approved in Docket No. 20170223-SU. None of the UIF water systems have approved AFPI charges.

## CONCLUSION

Based on the above, it appears there was no overcollection of AFPI for the LUSI water system. However, UIF should be required to refund overcollected AFPI charges for the Lake Groves system of \$165,739 with interest in accordance with Rule 25-30.360, F.A.C. to the two developers that paid AFPI charges for a total of 292 connections. The refund should be completed within 90 days of the Commission's vote and documentation supporting the final refund should be provided within 10 days of the completed refund.

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<sup>16</sup> Order No. PSC-99-0644-AS-WU, issued April 6, 1999, in Docket No. 19980483-WU, *In re: Investigation into possible overcollection of allowance for funds prudently invested in Lake County, by Lake Utility Services, Inc.*

<sup>17</sup> Order No. 20779, issued February 20, 1989, in Docket No. 19871059-SU, *In re: Application by Longwood Utilities, Inc. for rate increase in Seminole County.*

<sup>18</sup> Order No. PSC-16-0151-FOF-SU, issued April 18, 2016, in Docket No. 20150102-SU, *In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven.*

Date: April 6, 2018

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

**Recommendation:** If no person whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open for staff's verification that the utility has completed the refund pursuant to Rule 25-30.360, F.A.C. Once staff has verified that refunds are complete, this docket should be closed administratively. (Mapp)

**Staff Analysis:** If no person whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open for staff's verification that the utility has completed the refund pursuant to Rule 25-30.360, F.A.C. Once staff has verified that refunds are complete, this docket should be closed administratively.



# Item 14

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-

**DATE:** April 6, 2018

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

**FROM:** Division of Economics (Hudson) *SHIR*  
Division of Accounting and Finance (Cicchetti, Maurey) *CM*  
Office of the General Counsel (Crawford) *MC*

**RE:** Docket No. 20180025-WS – Application for approval of tariff for the gross-up of CIAC in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida. *ALM*

**AGENDA:** 04/20/18 – Regular Agenda – Proposed Agency Action (Issue 1) and Tariff Filing (Issue 2) – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 06/01/18 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** Place before Docket Nos. 20180042-WS and 20180059-WU

2018 APR -6 AM 11:32  
RECEIVED-FPSC  
COMMISSION CLERK

### Case Background

Utilities, Inc. of Florida (UIF or utility) is a Class A utility providing water and wastewater services to 27 systems in the following counties: Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole. The utility reported in its 2016 annual report, water operating revenues in the amount of \$2,498,891 and \$1,440,710 for wastewater.

Pursuant to Order No. PSC-2018-0162-TRF-WS, issued March 26, 2018, in the instant docket, the Commission approved UIF's tariff for the gross-up of contributions in aid of construction (CIAC). The gross-up amounts to be collected were subject to refund pending resolution of Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust*

*rates for 2018 tax savings by Office of Public Counsel* and guaranteed by a corporate undertaking. UIF was ordered to file with its Annual Report a calculation detailing: (1) the amounts of cash and property contributions received during the reporting year; (2) the calculation of the utility's tax liability for the reporting year; and (3) the amount of taxes actually collected on CIAC for the reporting year. The reporting requirement was to begin with the 2018 Annual Report and continue each year thereafter.

On April 2, 2018, UIF filed a request for termination of its CIAC gross-up tariffs. Upon further reflection, UIF is concerned that requiring the gross-up of CIAC will eliminate its opportunity to obtain government grants, since it would require the amount of the grant to be increased to cover the income tax liability. In addition, UIF believes the CIAC gross-up may put the utility at a competitive disadvantage because developers may choose other alternatives in lieu of the utility's services to avoid paying the higher grossed-up CIAC. As an alternative, the utility stated that a developer could construct its own facilities and create a non-regulated homeowner's association to own and operate the facilities. Also, the utility indicated that an adjacent government-owned utility could create an incentive for the developer to find a way to circumvent UIF's exclusive service territory. As a condition of the requested termination of its CIAC gross-up tariffs, UIF asked for acknowledgement of its preferred treatment of the taxes it pays on CIAC.

This recommendation addresses the utility's request for termination of its CIAC gross-up tariffs and the acknowledgement of its preferred treatment of the taxes it pays on CIAC. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes.

## Discussion of Issues

**Issue 1:** Should the Commission acknowledge, in the positive, UIF's requested treatment of the taxes it pays on CIAC?

**Recommendation:** Yes. Netting debit deferred taxes against credit deferred taxes in the capital structure, as requested by UIF, is standard Commission practice. It is also standard Commission practice to include debit deferred taxes in rate base if the net of the credit and debit deferred taxes is a debit. (Cicchetti)

**Staff Analysis:** Netting debit deferred taxes against credit deferred taxes is standard Commission practice.<sup>1</sup> Debit deferred taxes arise when a utility pays taxes that have not yet been collected from customers. Credit deferred taxes arise when customers have paid taxes through rates but the taxes have not yet been paid by the Company to the IRS. Net credit deferred taxes are included as zero-cost capital in the capital structure and net debit deferred taxes are included in rate base. It is uncommon for a utility to have a net debit deferred tax balance.

If CIAC is not grossed-up for taxes, the utility will pay the tax itself and will remain whole by netting debit deferred taxes against credit deferred taxes or including the debit deferred taxes in rate base. Such treatment is beneficial because it will allow UIF to obtain government grants without having to charge the governmental entity an additional amount for taxes and will keep from putting UIF at a competitive disadvantage regarding growth by avoiding a gross-up charge for taxes associated with CIAC.

Therefore, staff recommends that the Commission acknowledge that UIF's requested treatment of the taxes it pays on CIAC appears reasonable and is consistent with the Commission's regulatory practices.

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<sup>1</sup> Order Nos. PSC-00-2054-PAA-WS, pp. 25-27, issued October 27, 2000, in Docket No. 990939-WS, *In re: Application for rate increase in Martin County by Indiantown Company, Inc.* and PSC-01-0326-FOF-SU, p. 38, issued February 6, 2001, in Docket No. 991643-SU, *In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.*



**Issue 2:** Should the Commission approve UIF's request to terminate its CIAC gross-up tariffs?

**Recommendation:** Yes. If the Commission approves UIF's requested tax treatment of CIAC in Issue 1, it should also approve the utility's request to terminate its CIAC gross-up tariffs. The tariff should be terminated upon the vote of the Commission. UIF should provide notice to property owners who have requested service during the 12 months prior to the request to terminate the CIAC gross-tariffs. The utility should provide proof of noticing within 10 days of rendering its approved notice. The termination of the CIAC gross-up tariffs should relieve the utility of the reporting requirements that were outlined in Order No. PSC-2018-0162-TRF-WS. (Hudson)

**Staff Analysis:** As stated in the case background, UIF requested acknowledgement of its preferred method of treatment of taxes to be paid on CIAC, which is to offset deferred taxes against credit deferred taxes in the capital structure. If the net of the credit and debit deferred taxes is a debit, the amount is included in rate base. As discussed in Issue 1, staff recommends that the utility's requested treatment is standard Commission practice. As a result, staff believes it is appropriate to grant the utility's request to terminate its CIAC gross-tariffs.

The utility's CIAC gross-up tariffs became effective March 15, 2018. Pursuant to Order No. PSC-2018-0162-TRF-WS, the utility was required to file with its Annual Report a calculation detailing: (1) the amounts of cash and property contributions received during the reporting year; (2) the calculation of the utility's tax liability for the reporting year; and (3) the amount of taxes actually collected on CIAC for the reporting year. Since the implementation of the tariffs, the utility did not collect any CIAC. Further, the termination of the CIAC gross-up tariffs should relieve the utility of the reporting requirements.

Based on the above, the Commission should approve UIF's request to terminate its CIAC gross-up tariffs. The tariff should be terminated upon the vote of the Commission. UIF should provide notice to property owners who have requested service during the 12 months prior to the request to terminate the CIAC gross-tariffs. The utility should provide proof of noticing within 10 days of rendering its approved notice. The termination of the CIAC gross-up tariffs relieve the utility of the reporting requirements that were outlined in Order No. PSC-2018-0162-TRF-WS.

**Issue 3:** Should this docket be closed?

**Recommendation:** With respect to Issue 1, 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, a consummating order should be issued. With respect to Issue 2, the order should become final upon the issuance of the consummating order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the order. If a timely protest is filed, the tariff should remain in effect, pending resolution of the protest. If no protest is timely filed as to Issues 1 or 2, the docket should close upon the issuance of the consummating order. In the event of a protest, the docket should remain open to address the protest. (Crawford)

**Staff Analysis:** With respect to Issue 1, 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, a consummating order should be issued. With respect to Issue 2, the order should become final upon the issuance of the consummating order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the order. If a timely protest is filed, the tariff should remain in effect, pending resolution of the protest. If no protest is timely filed as to Issues 1 or 2, the docket should close upon the issuance of the consummating order. In the event of a protest, the docket should remain open to address the protest.

# Item 15



State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02799-2018  
FPSC - COMMISSION CLERK

## 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:** April 6, 2018

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

**FROM:** Division of Economics (Sibley, Hudson) *ms*  
Division of Accounting and Finance (Cicchetti) *MC*  
Office of the General Counsel (Crawford) *ALM*

**RE:** Docket No. 20180042-WS – Application for approval of tariff for the gross-up of CIAC in Martin County, by Indiantown Company, Inc.

**AGENDA:** 04/20/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 4/21/18 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** Place next to Docket No. 20180059-WS.

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### Case Background

Indiantown Company, Inc. (Indiantown or utility) is a Class A utility providing water and wastewater services in Martin County to approximately 2,181 customers. The utility reported in its 2016 annual report operating revenues in the amount of \$758,519 for water and \$1,241,519 for wastewater. The utility did not collect any contributions in aid of construction (CIAC) for 2016.

On February 20, 2018, the utility filed an application for approval of a tariff to allow for gross-up of CIAC. As discussed in Issue 1 below, the utility indicated that the change in tax law may cause it to risk the loss of its opportunity to earn a reasonable return on its used and useful property if it is not allowed to collect the tax impact on receipt of CIAC. On March 29, 2018, the utility filed revised tariff sheets that incorporate depreciation expense into the gross-up calculations. This recommendation addresses the utility's request for approval of a gross-up

tariff. This recommendation only addresses changes in the tax code related to CIAC. Any potential refund related to the change in the federal tax rate currently embedded in the Utility's rates is outside of this recommendation and will be addressed in the generic Docket No. 20180013-PU.<sup>1</sup> The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

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<sup>1</sup> Docket No. 20180013-PU, *In re: Petition to establish generic docket to investigate and adjust rates for 2018 tax savings*, by Office of Public Counsel.

## Discussion of Issues

**Issue 1:** Should Indiantown's request for approval of tariffs to allow the gross-up of CIAC be approved?

**Recommendation:** Yes, the revised tariff filed on March 29, 2018 should be approved. The utility should provide notice to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application was filed. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The utility should provide proof of noticing within 10 days of rendering its approved notice. (Sibley, Hudson, Cicchetti)

**Staff Analysis:** Effective January 1, 2018, the Federal Tax Cuts and Jobs Act amended Section 118 of the Internal Revenue Code. Prior to the amendments, CIAC was exempt from taxable gross income for water and wastewater utilities. As a result of the amendments, both cash and property CIAC are now taxable gross income for water and wastewater utilities. In recognition of this change in the tax law, the Commission has opened Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings by Office of Public Counsel* to address the potential rate impacts on regulated electric, gas, water, and wastewater utilities.

A similar law, the Tax Reform Act of 1986, became effective in 1987.<sup>2</sup> In Docket No. 19860184-PU, the Commission found that it was appropriate to allow water and wastewater utilities to recover the tax on CIAC from the contributor, including the tax associated with the additional tax that would also become taxable income. For those utilities that were approved to collect the gross-up on CIAC, the gross-up amounts collected were held subject to refund and were evaluated on a case-by-case basis as to whether any refunds were subsequently required.

On March 29, the utility filed revised tariffs (Attachment A) to gross-up cash service availability charges and property contributions to recover the federal and state corporate income taxes associated with those contributions. According to the utility, Indiantown could risk loss of its opportunity to earn a reasonable return on its property used and useful in the public service if it is not allowed to collect the tax impact on receipt of CIAC.

The revised tariffs recognize that, for depreciable property, depreciation expense is tax deductible and the Utility's tax liability will be reduced by the amount of depreciation claimed for tax purposes. The revised tariff is mathematically the same, regarding the gross-up for taxes, as the tariff approved by the Commission following the hearing in Docket No. 860184-PU.<sup>3</sup> Because the revised tariffs accurately depict the Utility's expected tax expense associated with CIAC, staff believes no further Commission action would be required once the gross-up formula

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<sup>2</sup> The amendment was repealed in 1996.

<sup>3</sup> Order No. 23541, issued October 1, 1990, in Docket No. 860184-PU, *In re: Request by Florida Waterworks Association for investigation of proposed repeal of Section 118(b), Internal Revenue Code [Contributions-in-aid-of-construction]*.



Date: April 6, 2018

has been approved. Staff notes that in Order No. 23541 in Docket No. 860184-PU, the Commission required a reconciliation of CIAC tax collected to taxes paid. Staff does not believe a reconciliation of tax collected on CIAC to taxes paid should be required for two reasons. First, the proposed formula more appropriately tracks the potential tax liability associated with the collection of CIAC. Second, expenses approved in base rates are not typically subject to reconciliation. For example, the utility's revenue requirement is grossed-up for expected taxes and expected tax expense is included in rates but there is no after-the-fact proceeding to reconcile taxes actually paid with tax expense allowed in case the Utility experienced a loss and paid no taxes. Consequently, staff believes no after-the-fact proceeding is warranted to compare allowed tax expense for CIAC to actual tax expense and, therefore, no corporate undertaking is necessary.

Based on the above, staff recommends that the revised tariff should be approved. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The utility should provide notice to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application was filed. The utility should provide proof of noticing within 10 days of rendering its approved notice.

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

**Recommendation:** If a protest is filed by a substantially affected person within 21 days of issuance of the order, the revised tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the order should become final upon the issuance of a consummating order. However, the docket should remain open to allow staff to verify that the appropriate notice has been filed by the Utility and approved by staff. Once the utility has provided proof of noticing, the docket should be closed administratively. (Crawford)

**Staff Analysis:** If a protest is filed by a substantially affected person within 21 days of issuance of the order, the revised tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the order should become final upon the issuance of a consummating order. However, the docket should remain open to allow staff to verify that the appropriate notice has been filed by the Utility and approved by staff. Once the utility has provided proof of noticing, the docket should be closed administratively.

INDIANTOWN COMPANY, INC.  
WATER TARIFF

ORIGINAL SHEET NO. 19.1

**Income Taxes Related to Cash and Property Contributions In Aid of Construction**

The utility may gross-up cash service availability charges and property contributions in aid of construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT= Full Gross Up:

Depreciable Plant:

For utilities using straight-line depreciation for tax purposes, the gross-up formula shall be:  $(CP - (CP * (1/TL) * .5)) * (CTR / (1-CTR))$

For utilities using an accelerated rate of depreciation for tax purposes, the gross-up formula shall be:  $(CP - ((CP * AR) * .5)) * (CTR / (1-CTR))$

Land (and Cash):  $(CL * CTR) * (CTR / (1-CTR))$

Where:

CP = Contributed Plant

TL = Tax Life of Contributed Plant

AR = First Year Accelerated Depreciation Rate for Tax Purposes

CTR = Combined Federal (FT) and State (ST) Income Tax Rate.  $ST+FT (1-ST)$

CL = Contributed Land (and Contributed Cash)

EFFECTIVE DATE:

Jeffrey S. Leslie  
ISSUING OFFICER

TYPE OF FILING: Tariff Filing

President  
TITLE



INDIANTOWN COMPANY, INC.  
WASTEWATER TARIFF

ORIGINAL SHEET NO. 18.1

**Income Taxes Related to Cash and Property Contributions In Aid of Construction**

The utility may gross-up cash service availability charges and property contributions in aid of construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT= Full Gross Up:

Depreciable Plant:

For utilities using straight-line depreciation for tax purposes, the gross-up formula shall be:  $(CP - (CP * (1/TL) * .5)) * (CTR / (1-CTR))$

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Land (and Cash):  $(CL * CTR) * (CTR / (1-CTR))$

Where:

CP = Contributed Plant

TL = Tax Life of Contributed Plant

AR = First Year Accelerated Depreciation Rate for Tax Purposes

CTR = Combined Federal (FT) and State (ST) Income Tax Rate.  $ST+FT (1-ST)$

CL = Contributed Land (and Contributed Cash)

EFFECTIVE DATE:

Jeffrey S. Leslie  
ISSUING OFFICER

TYPE OF FILING: Tariff Filing

President  
TITLE

# Item 16

State of Florida



FILED 4/6/2018  
DOCUMENT NO. 02801-2018  
FPSC - COMMISSION CLERK

## 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-**

**DATE:** April 6, 2018

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

**FROM:** Division of Economics (Friedrich, Hudson) MF PD  
Division of Accounting and Finance (Cicchetti) MZ  
Office of the General Counsel (Crawford) ALM

**RE:** Docket No. 20180059-WS – Application for approval of tariff for the gross-up of CIAC in Escambia County, by Peoples Water Service Company of Florida, Inc.

**AGENDA:** 04/20/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 04/30/18 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** Place next to Docket No. 20180042-WS.

### Case Background

Peoples Water Service Company of Florida, Inc. (Peoples or utility) is a Class A utility providing water service to approximately 12,200 customers in Escambia County. The utility reported in its 2016 annual report water operating revenues in the amount of \$3,614,440 and contributions in aid of construction (CIAC) in the amount of \$106,227.

On February 28, 2018, the utility filed an application for approval of a tariff to allow for gross-up of CIAC. As discussed in Issue 1 below, the utility indicated that the change in tax law may cause it to risk the loss of its opportunity to earn a reasonable return on its used and useful property if it is not allowed to collect the tax impact on receipt of CIAC. On March 29, 2018, the utility filed a revised tariff sheet that incorporates depreciation expense into the gross-up calculations. This recommendation addresses the utility's request for approval of a gross-up tariff. This recommendation only addresses changes in the tax code related to CIAC. Any

potential refund related to the change in the federal tax rate currently embedded in the Utility's rates is outside of this recommendation and will be addressed in the generic Docket No. 20180013-PU.<sup>1</sup> The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

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<sup>1</sup> Docket No. 20180013-PU, *In re: Petition to establish generic docket to investigate and adjust rates for 2018 tax savings*, by Office of Public Counsel.



## Discussion of Issues

**Issue 1:** Should People's request for approval of a tariff to allow the gross-up of CIAC be approved?

**Recommendation:** Yes, the revised tariff filed on March 29, 2018 should be approved. The utility should provide notice to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application was filed. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The utility should provide proof of noticing within 10 days of rendering its approved notice. (Friedrich, Hudson, Cicchetti)

**Staff Analysis:** Effective January 1, 2018, the Federal Tax Cuts and Jobs Act amended Section 118 of the Internal Revenue Code. Prior to the amendments, CIAC was exempt from taxable gross income for water and wastewater utilities. As a result of the amendments, both cash and property CIAC are now taxable gross income for water and wastewater utilities. In recognition of this change in the tax law, the Commission has opened Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings by Office of Public Counsel* to address the potential rate impacts on regulated electric, gas, water, and wastewater utilities.

A similar law, the Tax Reform Act of 1986, became effective in 1987.<sup>2</sup> In Docket No. 19860184-PU, the Commission found that it was appropriate to allow water and wastewater utilities to recover the tax on CIAC from the contributor, including the tax associated with the additional tax that would also become taxable income. For those utilities that were approved to collect the gross-up on CIAC, the gross-up amounts collected were held subject to refund and were evaluated on a case-by-case basis as to whether any refunds were subsequently required.

On March 29, the utility filed a revised tariff (Attachment A) to gross-up cash service availability charges and property contributions to recover the federal and state corporate income taxes associated with those contributions. According to the utility, Peoples could risk loss of its opportunity to earn a reasonable return on its property used and useful in the public service if it is not allowed to collect the tax impact on receipt of CIAC.<sup>3</sup>

The revised tariff recognizes that, for depreciable property, depreciation expense is tax deductible and the Utility's tax liability will be reduced by depreciation claimed for tax purposes. The revised proposed tariff is mathematically the same, regarding the gross-up for taxes, as the tariff approved by the Commission following the hearing in Docket No. 19860184-PU.<sup>4</sup> Because the revised proposed tariff accurately depicts the Utility's expected tax expense associated with CIAC, staff believes no further Commission action would be required once the

<sup>2</sup> The amendment was repealed in 1996.

<sup>3</sup> According to the 2016 Annual Report, Peoples collected approximately \$106,227 in cash and property CIAC.

<sup>4</sup> Order No. 23541, issued October 1, 1990, in Docket No. 860184-PU, *In re: Request by Florida Waterworks Association for investigation of proposed repeal of Section 118(b), Internal Revenue Code [Contributions-in-aid-of-construction]*.

Date: April 6, 2018

gross-up formula has been approved. Staff notes that in Order No. 23541 in Docket No. 19860184-PU, the Commission required a reconciliation of CIAC tax collected to taxes paid. Staff does not believe a reconciliation of tax collected on CIAC to taxes paid should be required for two reasons. First, the proposed formula more appropriately tracks the potential tax liability associated with the collection of CIAC. Second, expenses approved in base rates are not typically subject to reconciliation. For example, the utility's revenue requirement is grossed-up for expected taxes and expected tax expense is included in rates but there is no after-the-fact proceeding to reconcile taxes actually paid with tax expense allowed in case the Utility experienced a loss and paid no taxes. Consequently, staff believes no after-the-fact proceeding is warranted to compare allowed tax expense for CIAC to actual tax expense and, therefore, no corporate undertaking is necessary.

Based on the above, staff recommends that the revised tariff should be approved. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The utility should provide notice to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application was filed. The utility should provide proof of noticing within 10 days of rendering its approved notice.



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

**Recommendation:** If a protest is filed by a substantially affected person within 21 days of issuance of the order, the revised tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the order should become final upon the issuance of a consummating order. However, the docket should remain open to allow staff to verify that the appropriate notice has been filed by the Utility and approved by staff. Once the utility has provided proof of noticing, the docket should be closed administratively. (Crawford)

**Staff Analysis:** If a protest is filed by a substantially affected person within 21 days of issuance of the order, the revised tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the order should become final upon the issuance of a consummating order. However, the docket should remain open to allow staff to verify that the appropriate notice has been filed by the Utility and approved by staff. Once the utility has provided proof of noticing, the docket should be closed administratively.

PEOPLES WATER SERVICE COMPANY OF FLORIDA, INC.  
WATER TARIFF

ORIGINAL SHEET NO. 19.2

**Income Taxes Related to Cash and Property Contributions In Aid of Construction**

The utility may gross-up cash service availability charges and property contributions in aid of construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT= Full Gross Up:

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AR = First Year Accelerated Depreciation Rate for Tax Purposes

CTR = Combined Federal (FT) and State (ST) Income Tax Rate.  $ST+FT (1-ST)$

CL = Contributed Land (and Contributed Cash)

EFFECTIVE DATE:

Sherlock S. Gillet, Jr.  
ISSUING OFFICER

TYPE OF FILING:      Tariff Filing

President  
TITLE