

Table of Contents
Commission Conference Agenda
December 11, 2018

| | | |
|---------|---|----|
| 1** | Consent Agenda | 1 |
| 2** | Docket No. 20180141-WS – Proposed adoption of Rule 25-30.4575, F.A.C., Operating Ratio Methodology. | 2 |
| 3 | Docket No. 20180125-EU – Complaint against Gulf Power Company for expedited enforcement of territorial order, by Gulf Coast Electric Cooperative, Inc. | 3 |
| 4**PAA | Docket No. 20180205-TX – Bankruptcy compliance cancellation by Florida Public Service Commission of CLEC Certificate No. 8244, issued to Trans National Communications International, Inc., effective December 31, 2018. Docket No. 20180206-TC – Bankruptcy compliance cancellation by Florida Public Service Commission of PATS Certificate No. 5995, issued to Florida Gaming Centers, Inc., effective December 31, 2018. Docket No. 20180207-TX – Bankruptcy compliance cancellation by Florida Public Service Commission of CLEC Certificate No. 4847, issued to OneStar Long Distance, Inc., effective December 31, 2018. Docket No. 20180208-TX – Bankruptcy compliance cancellation by Florida Public Service Commission of CLEC Certificate No. 8382, issued to Baldwin County Internet/DSSI Service, L.L.C., effective December 31, 2018. Docket No. 20180209-TX – Bankruptcy compliance cancellation by Florida Public Service Commission of CLEC Certificate No. 8748, issued to iNetworks Group, Inc., effective December 31, 2018..... | 4 |
| 5** | Docket No. 20180210-TP – Request for approval of amendment to interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast and EarthLink Business, LLC..... | 7 |
| 6 | Docket No. 20180001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor. | 8 |
| 7**PAA | Docket No. 20180155-EI – Petition for approval of regulatory assets related to the retirements of Lauderdale Units 4 and 5 and Martin Units 1 and 2, by Florida Power & Light Company. | 10 |
| 8** | Docket No. 20180005-WS – Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S. | 11 |
| 9 | Docket No. 20180007-EI – Environmental cost recovery clause. | 12 |
| 10**PAA | Docket No. 20180066-WU – Application for transfer of facilities of Kincaid Hills Water Company and Water Certificate No. 555-W to Gator Waterworks, Inc. Docket No. 20170200-WU – Initiation of show cause proceedings against | |

Table of Contents
Commission Conference Agenda
December 11, 2018

| | | |
|---------|--|----|
| | Kincaid Hills Water Company, in Alachua County, for noncompliance with Sections 350.113, 350.117, 367.121, and 367.145, Florida Statutes, and Rules 25-30.110, 25-30.120, 25-30.355, and 25-22.032, Florida Administrative Code..... | 14 |
| 11** | Docket No. 20160165-SU – Application for staff-assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc. | 16 |
| 12** | Docket No. 20180160-EI – Petition for 12-month extension of voluntary solar partnership rider and program, by Florida Power & Light Company..... | 17 |
| 13** | Docket No. 20180182-EI – Petition for approval of tariff modifications, by Tampa Electric Company. | 18 |
| 14** | Docket No. 20180183-GU – Petition for approval of tariff modifications, by Peoples Gas System. | 19 |
| 15**PAA | Docket No. 20180063-WS – Application for limited proceeding rate increase in Polk County by Orchid Springs Development Corporation. | 20 |
| 16** | Docket No. 20180219-SU – Request for approval of amendment to tariff to charge a standby charge to customers significantly impacted by Hurricane Michael in Gulf County, by ESAD Enterprises, Inc. d/b/a Beaches Sewer System. | 23 |
| 17** | Docket No. 20180048-EI – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Electric..... | 24 |
| 18** | Docket No. 20180154-GU – Petition for limited proceeding to consider the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida City Gas. | 25 |

Item 1



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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Hightower, D. Buys, Cicchetti) *DB*
Office of the General Counsel (Schrader) *MC* *ALM*

RE: 20180192-GU - Application for authorization to issue common stock, preferred stock and secured and/or unsecured debt, and to enter into agreements for interest rate swap products, equity products and other financial derivatives, and to exceed limitation placed on short-term borrowings in 2019, by Chesapeake Utilities Corporation. *Ky*

AGENDA: 12/11/2018 - Consent Agenda - Final Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following securities application on the consent agenda for approval.

Docket No. 20180192-GU – Application for authorization to issue common stock, preferred stock and secured and/or unsecured debt, and to enter into agreements for interest rate swap products, equity products and other financial derivatives.

Chesapeake Utilities Corporation (Chesapeake or Utility) seeks authority for the calendar year 2019 to issue up to 8,600,000 shares of Chesapeake common stock; issue up to 2,000,000 shares of Chesapeake preferred stock; up to \$650 million in secured and/or unsecured debt; enter into agreements up to \$200 million in interest rate swap products, equity products and other financial derivatives; and issue short-term obligations in an amount not to exceed \$350 million.

Chesapeake allocates funds to the Chesapeake Utilities Corporation - Florida Division, Florida Public Utilities Company (FPUC), FPUC - Indiantown Division, and FPUC - Fort Meade Division on an as-needed basis. Chesapeake acknowledges that in no event will such allocations to the Florida Divisions exceed 75 percent of the proposed equity securities (common stock and preferred stock), long-term debt, short-term debt, interest rate swap products, equity products, and financial derivatives issued by Chesapeake.

Pursuant to Section 366.04, Florida Statutes (F.S.), the Commission shall have jurisdiction to regulate and supervise each public utility in the issuance and sale of its securities, except a security which is a note or draft maturing not more than one year after the date of such issuance

and sale and aggregating not more than five percent of the par value of the other securities of the public utility then outstanding.

The amount requested by Chesapeake exceeds its expected capital expenditures of \$216.4 million for Chesapeake Utilities Corporation (\$33.0 million for Florida divisions). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility for the purposes enumerated in the Utility's petition, as well as, unexpected events such as hurricanes, financial market disruptions, and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends the Utility's petition to issue securities be approved.

For monitoring purposes, this docket should remain open until April 30, 2020, to allow the Utility time to file the required Consummation Report.

Item 2

Revised
11/29/18

FILED 11/29/2018
DOCUMENT NO. 07311-2018
FPSC - 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-

DATE: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Harper) *KAH SMC act*
Division of Accounting and Finance (Galloway, Wilson) *ALM*
Division of Economics (Guffey) *SKG P R 95H*

RE: Docket No. 20180141-WS – Proposed adoption of Rule 25-30.4575, F.A.C.,
Operating Ratio Methodology.

AGENDA: 12/11/18 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Introduction and Summary of Changes

At the October 30, 2018 Agenda Conference, the Office of Public Counsel (OPC) asked the Commission to defer the item so that OPC and staff could further discuss a potential compromise on the rule language. The Commission deferred the item. On November 8, 2018, staff held an informal meeting on the rule, which included representatives from OPC, U.S. Water, OCBOA Consulting, LLC, and Florida Utility Services 1, LLC. As a result of the informal meeting with OPC and the interested persons, staff made changes to subsection (1) of the proposed rule which are summarized as follows:

- Including a \$15,000 cap in subsection (1) of the rule (rather than no cap as staff initially proposed).

- In determining the revenue requirement, staff will apply a margin of 12 percent of the utility's operation and maintenance expenses (rather than 15 percent as initially proposed by staff).

Staff believes these changes will not affect the number of utilities who should qualify for the operating ratio methodology. As a result of these changes made to the rule arising out of staff's November 8, 2018 meeting, staff also made minor changes to this analysis, which are reflected below in type and strike.

Case Background

Pursuant to Section 367.0814(9), Florida Statutes (F.S.), the Commission may by rule establish standards and procedures whereby rates and charges of small utilities are set using criteria other than those set forth in Sections 367.081(1), (2)(a) and (3), F.S. Rule 25-30.4575, Operating Ratio Methodology, Florida Administrative Code (F.A.C.), will be a new rule that sets forth the Commission's policy on the use of the operating ratio methodology in staff-assisted rate cases (SARC). The proposed rule is included as Attachment A. The operating ratio methodology is used to determine the revenue requirement in certain staff-assisted water and wastewater rate cases and is an alternative to the traditional calculation of revenue requirement for smaller water and wastewater utilities. The operating ratio methodology substitutes the utility's operation and maintenance expenses for rate base in calculating the amount of return.

The operating ratio methodology was first introduced in Docket No. 950641-WU, an application for a SARC in Palm Beach County by Lake Osborne Utilities Company, Inc. (Lake Osborne).¹ In a SARC, the Commission is charged with approving a revenue requirement that will provide a utility with the opportunity not only to recover its operating expenses, but also to earn a fair return on its investment (or margin).

However, when a utility's rate base is small or negative, as was the case for Lake Osborne, the utility could be subject to an inadequate margin or no margin at all. As such, the utility is unable to effectively deal with extraordinary events, unexpected expenses and repairs, and has a reduced incentive for further investment. A utility that lacks the funds to make necessary repairs has a significantly reduced ability to provide safe and reliable service to its customers. To assist ~~these~~ water and wastewater utilities with these circumstances and protect the customers' ability to receive safe and reliable service, after approval of the Lake Osborne case, the Commission began utilizing the operating ratio methodology as an alternative to the traditional calculation of revenue requirement for smaller water and wastewater utilities that apply for a SARC.

Before considering applying the operating ratio methodology for subsequent SARCs, the Commission established the following threshold qualifying criteria in the Lake Osborne Order: (1) whether the utility's operation and maintenance (O&M) expense exceeds rate base, and (2) whether the utility is expected to become a Class B utility in the foreseeable future. The Commission noted that additional factors could be considered such as: (1) quality of service and

¹Order No. PSC-96-0357-FOF-WU, issued March 13, 1996, in Docket No. 950641-WU, *In re: Application for staff assisted rate case in Palm Beach County by Lake Osborne Utilities Company, Inc.* (Lake Osborne Order).

condition of plant, (2) whether the utility is developer-owned, and (3) whether the utility operates treatment facilities or is simply a distribution and/or collection system. Collectively, these criteria have been used in subsequent SARCs in order to determine whether or not the operating ratio methodology was appropriate.

In the Lake Osborne Order, the Commission recognized that by implementing Section 367.0814, F.S. (the SARC statute), the Legislature recognized that the segment of the water and wastewater industry comprised of Class C utilities is significantly different from the remainder of regulated water and wastewater utilities. That Order also established that an alternative to the traditional calculation of revenue requirement was within the Commission's jurisdiction.²

Since the Lake Osborne Order, approximately 167 SARCs have been filed with the Commission. Staff recommended applying the operating ratio methodology in 23 dockets, and the Commission has approved the methodology in 21 of those dockets. A summary of these dockets is included as Attachment B. Staff initiated this rulemaking to codify the Commission's long-standing practice regarding the operating ratio methodology and to evaluate the necessary components needed in the rule to reflect the conditions currently faced by small water and wastewater utilities.

The Commission's Notice of Development of Rulemaking for Rule 25-30.4575, F.A.C., Operating Ratio Methodology, was published in Volume 43, No. 229, of the Florida Administrative Register on November 29, 2017. On December 14, 2017, staff held a Rule Development Workshop. Representatives from ~~the Office of Public Counsel (OPC)~~ and U.S. Water Services Corporation (U.S. Water) participated at the workshop and submitted post-workshop comments. Additionally, representatives from Utilities Inc. of Florida attended the workshop but did not submit post-workshop comments.

This recommendation addresses whether the Commission should propose the adoption of Rule 25-30.4575, F.A.C. The Commission has jurisdiction pursuant to Section 120.54, F.S., and Section 367.0814, F.S.

²Lake Osborne Order, pg. 3.

Discussion of Issues

Issue 1: Should the Commission propose the adoption of Rule 25-30.4575, F.A.C., Operating Ratio Methodology?

Recommendation: Yes, the Commission should propose the adoption of Rule 25-30.4575, F.A.C., as set forth in Attachment A. The Commission should certify Rule 25-30.4575, F.A.C., as a minor violation rule. (Harper, Galloway)

Staff Analysis: In a staff-assisted rate case (SARC), a calculation is made to determine the utility's revenue requirement. The revenue requirement reflects the monies a utility needs to recover its operating expenses and provide it with an opportunity to earn a fair rate of return on its investment.

The traditional calculation of revenue requirement for smaller water and wastewater utilities is achieved by adding the operation and maintenance (O&M) expenses to the net depreciation expense, amortization expense, taxes other than income taxes, income taxes, and a return on investment. The "return on investment" for SARCs is the overall rate of return multiplied by the amount of rate base. All of these components added together make up the revenue requirement in a SARC through traditional ratemaking. However, in some SARCs, traditional ratemaking, also referred to as the rate of return methodology, does not always provide sufficient revenue to protect against potential variances in revenue and expenses. In these cases, the utility may qualify for the operating ratio methodology.

When the operating ratio methodology is applied, instead of calculating the revenue requirement by including the return on investment (rate of return x rate base), the "return on investment" has been replaced by an operating margin. The operating margin is calculated by multiplying a defined percentage by the amount of O&M expenses. As stated in the Lake Osborne Order, the operating ratio methodology substitutes O&M expenses for rate base in calculating the amount of return (or margin).

The table below shows the difference between the two methodologies, the use of a rate of return times rate base (traditional rate base methodology), as compared to the margin percentage times operation and maintenance expenses (operating ratio methodology).

Table 1-1
Comparison of Traditional and Operating Ratio Methodologies*

| Traditional Revenue Requirement Calculation | Operating Ratio Methodology |
|---|-----------------------------------|
| Operation and Maintenance Expense | Same |
| Net Depreciation Expense | Same |
| Amortization | Same |
| Taxes Other than Income Taxes (less RAFs) | Same |
| Income Taxes | Same |
| Rate of Return percent x Rate Base | Margin percent x O&M expense |
| = Revenue Requirement before RAFs | = Revenue Requirement before RAFs |

*This table applies to non-reseller utilities

Many utilities that apply for a SARC are financially troubled systems. Many times, these are not utilities that are simply earning below the bottom of their authorized rate of return range; these are utilities that are losing money. Often, these are utilities that have been losing money on a consistent basis over a prolonged period of time. The operating ratio methodology is intended to act as a bridge for these troubled systems to become financially viable and return to the traditional revenue requirement calculation. The operating ratio methodology also provides a lifeline for them to stay in business and remain viable entities that can provide safe and reliable water and wastewater services to their customers.

At the staff workshop and in its post-workshop comments, OPC indicated its preference for the proposed Commission rule to codify the operating ratio methodology set forth in the Lake Osborne Order. OPC stated that because the proposed rule does not incorporate the exact same criteria set forth in the Lake Osborne Order, it defies the purpose of rulemaking and allows for the development of new policy based on non-existent difficulties. OPC further stated that the Commission's policy on the operating ratio methodology had been clearly and consistently applied over 21 years.

The Lake Osborne Order recognized that determining whether to utilize the operating ratio methodology required a great deal of judgement. In keeping with the spirit of the Lake Osborne Order, staff considered whether to include each of the five criteria from the Lake Osborne Order in the proposed rule. However, because the Lake Osborne Order states that the Commission "may" consider the factors listed in the order, this would give the Commission too much discretion in the context of rulemaking under Section 120.545(1), F.S. Therefore, staff began the process of scrutinizing each criteria in hope of finding a way to enable the same understanding that judgement is critical in determining which SARCs should qualify for the operating ratio methodology.

For smaller water and wastewater utilities whose resources are very limited, a SARC is a daunting process, even though staff provides the expertise. Staff notes that some utilities that apply for a SARC have never been before the Commission for a rate case or applied for a rate increase, despite having been in existence for decades. Because many small water and wastewater utilities that are eligible for SARCs are financially troubled systems, staff believes the suggestion that there is are non-existent difficulties is misplaced. Staff believes there is no evidence of a need to make the proposed adjustments contained in the proposed rule is misplaced.

Staff believes the attached proposed rule is an opportunity to be proactive rather than reactive. Staff disagrees with OPC's assertion that provisions of the proposed rule address "non-existent difficulties." Instead, staff believes if the Commission codifies the practice in a rule, the proposed rule should reflect the Commission practice that has applied for over 20 years, the Commission's experience gained from implementing the operating ratio methodology, and the current economic and operational conditions that small water and wastewater utilities face. Staff's analysis below discusses in more detail the areas where the Commission's policy on the operating ratio methodology should be refined from the Commission's policy set forth in the Lake Osborne Order.

Subsection (1) of the Rule – How the Operating Ratio Methodology Should be Calculated

Subsection (1) of Rule 25-30.4575, F.A.C., provides that the operating ratio methodology will calculate the water or wastewater utility's revenue requirement based on the utility's operating expenses plus a margin of 12 ~~45~~ percent of the utility's operation and maintenance expenses.

12 ~~45~~ Percent Margin and ~~No \$10,000~~ \$15,000 Cap

OPC's initial comments ~~commented~~ were that the margin percentage should be 10 percent with a \$10,000 cap, consistent with the Lake Osborne Order. It should be noted that this cap, which originated in the Lake Osborne Order, has been applied at the Commission's discretion in other cases since 1996. The Commission has always had the discretion to alter or remove the cap in any particular docket in the use and application of the operating ratio methodology.

In its comments, OPC alleged there is no evidence that the Commission's current practice is ineffective or causing harm. Contrary to OPC's view, staff believes that there is ~~Again, staff disagrees with OPC's suggestion that there is no~~ evidence to support an increase in the margin percentage and the removal of \$10,000 cap. While the Commission has never applied a margin greater than 10 percent in any of the cases where operating ratio has been approved, staff believes the rule should promote a policy that allows utilities to provide the safest and most reliable service to customers. Staff believes that changes in circumstances have occurred since the Lake Osborne Order and the changes must be considered and evaluated. U.S. Water Services stated in its comments that:

Many of the utilities that I manage have little to no rate base through no fault of the acquiring utility and are faced with financial difficulties meeting day-to-day operations. Just as many of these utilities were financially non-viable, distressed utilities that were acquired in order to turn them around and provide safe and reliable service to customers. Without the operating margin, several of these utilities would either not have been acquired and/or would remain financially non-viable.

U.S. Water also stated that the 10 percent margin that was established more than 20 years ago in the Lake Osborne Order should be further evaluated. Staff agrees, and believes that the proposed rule's 12 ~~45~~-percent margin represents a natural evolution of the practice addressed in the Lake Osborne Order.

Other states' policies regarding use of an operating ratio and the associated percentage applied to achieve a margin were analyzed in the Lake Osborne Order. As part of this rule docket, staff sent out a request through the National Association of Regulatory Utility Commissioners (NARUC) to learn what other states have been doing since the Commission's initial decision in 1996. The specific states referenced in the Lake Osborne Order included Kentucky, North Carolina, South Carolina, California, and Michigan. With the exception of Michigan, which no longer regulates water and wastewater utilities, and California, which did not respond to the request, the states referenced in the Lake Osborne Order have not changed from their 1995-1996 alternative rate setting policies. These states are very interested in what the Florida Commission will decide. Below is a synopsis of current policies for these states:

- Kentucky has been using a 12 percent margin since 1995-1996 and also allows a dollar-for-dollar coverage for short-term interest expense.
- North Carolina continues to use a margin based on the yield on the 5 year U.S. Treasury Bond plus 3 percent for risk.
- South Carolina sets operating margins for each water and wastewater utility regardless of size and recent rulings have been above the 15 percent margin level. However, the typical range is 10 – 15 percent. Two cases in 2018 were settled with one margin of 12.32 percent and the other margin was 14.99 percent.

While it is important to be informed about what other states are doing with regard to alternative rate making, staff believes that Florida is in a unique situation with respect to regulation of water and wastewater utilities. For example, water and wastewater utilities operating in Florida must contend with a seasonal customer base, saltwater intrusion, sinkholes, and hurricanes. Therefore, while consideration of other states' policies is informative, it is not necessarily conclusive for the Commission's determination of what is appropriate for this proposed rule.

OPC initially argued ~~commented~~ that the 10 percent margin is not a fixed dollar amount, and that it increases as expenses increase. OPC also asserted that ~~asserts~~ the proposed rule should include the same \$10,000 cap that was in the Lake Osborne Order. Staff disagrees. Docket No. 160176-WS, *Application for staff assisted rate case in Polk County by Four Lakes Golf Club, Ltd.*, is a recent example of a utility being negatively impacted by the limitation of the \$10,000 cap.³ Due to the cap, the utility's allowed margin was reduced from 10 percent to 5.41 percent. Had the 10 percent margin been used, an operating margin of \$18,476 would have been included in the revenue requirement rather than only \$10,000. In this case, even if the full 10 percent margin had been used when the operating ratio methodology was applied, the utility's ability to provide safe and reliable service was still compromised as evidenced by the \$64,000 operating loss it reported for the year.⁴ Thus, contrary to OPC's argument, to include a \$10,000 cap and 10 percent margin in the proposed rule would be harmful to the utilities and their ability to provide safe and reliable service.

Docket No. 160165-WS, *In re: Application for staff assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc.*, is another recent example of a utility being negatively impacted by the limitation of the \$10,000 cap. Due to the cap, the utility's allowed margin was reduced from 10 percent to 7.25 percent.⁵ Had the 10 percent margin been used, an operating margin of \$13,801 would have been included in the revenue requirement rather than only \$10,000.

³Order No. PSC-2017-0459-PAA-WS, issued November 30, 2017, in Docket No. 20160176-WS, *In re: Application for staff-assisted rate case in Polk County by Four Lakes Golf Club, Ltd.*

⁴See Attachment B.

⁵Order No. PSC-2017-0383-PAA-SU, issued October 4, 2017, in Docket No. 20160165-SU, *In re: Application for staff-assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc.*

While staff believes that these two examples were pertinent to the argument for removing the cap, OPC believes that these two examples were anomalies. As discussed in the case background, at the October 30, 2018 Agenda Conference, OPC expressed a desire to meet with staff and interested parties and perhaps come to a compromise regarding the differences existing between their position and staff's initial proposed rule. Staff met with OPC and interested persons on November 8, 2018, and reached a compromise regarding the issue of a cap. Initially, staff was proposing that no explicit cap be included in the rule. Staff believes that the rule contains an implicit cap because it requires that a utility qualify for a SARC in order for the operating ratio methodology to be applied.⁶ However, OPC expressed concerns about the removal of the \$10,000 cap that originated in the Lake Osborne Order. OPC reiterated this concern at the informal meeting, commenting that there could be unintended consequences associated with removal of an explicit cap and that possibility was of great concern for their office. Staff believes that the utilities with revenues below \$300,000 may occasionally exceed a \$10,000 cap, so a \$10,000 cap may be too disqualifying. On the other hand, staff believes that the utilities would rarely exceed a \$15,000 cap. It is staff's view that the \$15,000 proposed cap is not materially different from staff's initial proposed "no cap" because most small utilities that are eligible for the use of the operating ratio methodology will have margin amounts that fall below the \$15,000 cap. In addition, an increase in the cap to \$15,000 (from the Lake Osborne cap of \$10,000) is a significant improvement which both updates and better reflects current and future needs of the small water and wastewater utilities. Thus, after discussions with OPC and in the spirit of compromise, staff is proposing a \$15,000 cap.

The Lake Osborne Order stated that it may be appropriate to apply a margin greater than 10 percent in the case of a fully depreciated system where there would be an expectation of greater than average volatility in operation and maintenance costs. However, of the 23 cases where the operating ratio methodology was recommended, staff did not pursue a margin greater than 10 percent in any of them. The caveat contained in the Lake Osborne Order served to discourage application of a higher margin by the instruction to prove "an expectation of greater than average volatility in operation and maintenance costs." Staff has found that it has been a difficult task to prove "greater than average volatility" prior to the volatility occurring.

Recently, in Order No. PSC-2018-0327-PAA-WS, the Commission recognized that smaller water and wastewater utilities are more risky than other utilities. In the order, the Commission listed a variety of reasons that make smaller water and wastewater utilities more risky in nature:

- (1) WAW utilities are more capital intensive than electric or natural gas utilities;
- (2) WAW utilities experience lower relative depreciation rates than other utilities, thereby providing less cash flow;
- (3) WAW utilities experience consistently negative free cash flow, thereby increasing their financing requirements;
- (4) WAW utilities' credit metrics are inferior to those of electric and natural gas utilities;
- (5) Florida WAW utilities are substantially smaller than electric and natural gas utilities by virtually any measure including total revenues, total assets, and market capitalization;
- (6) WAW utilities' earnings are much more volatile

⁶Section 367.0814, F.S., provides a revenue threshold of \$300,000 or less per system before a utility may qualify for a SARC.

(uncertain) than electric and natural gas utilities' earnings; and (7) WAW utilities experience many more business failures than electric and natural gas utilities.⁷

Staff disagrees with OPC's initial opinion that the margin should remain unaffected by the Consumer Price Index (CPI) or other inflationary factors. Staff believes that the percentage should increase from 10 percent to ~~15 percent~~ reflect ~~reflects~~ not only inflationary factors, but also to compensate ~~compensates~~ for the riskier nature and true plight of smaller water and wastewater utilities that qualify and apply for a SARC. Initially, staff proposed an increase in the margin from 10 percent to 15 percent. At the November 8, 2018 meeting with OPC and interested parties, a compromise was reached resulting in an increase in the margin from 10 percent to 12 percent. Staff believes that a 12 percent vs. 15 percent margin will not affect the number of utilities who should qualify for the operating ratio methodology. Regarding any underlying argument of potential overearnings, staff believes the Commission's annual in-house review of Annual Reports, which are required to be filed by all regulated water and wastewater utilities, will alert the Commission of any potential overearnings.

As discussed below, Subsection (2) of the proposed rule includes limiting criteria. Subsection (2) would limit the use of the operating ratio methodology to only those utilities that are eligible for a SARC, and those utilities must continue to be eligible for a SARC when the methodology is applied.

Water and Wastewater Utilities that are Resellers

Subsection (1) of proposed Rule 25-30.4575, F.A.C., further provides that for water and wastewater utilities that are resellers, purchased water and purchased wastewater expenses will be removed from operation and maintenance expense before the 12 ~~15~~ percent margin is applied. As stated in the Lake Osborne Order, if a utility is a reseller, the issue is whether or not purchased water and/or wastewater costs should be excluded in the computation of the operating margin.⁸ Staff believes that this qualification continues to remain valid, and thus, it is reflected in Subsection (1) of proposed Rule 25-30.4575, F.A.C.

Subsection (2) of the Rule – Criteria for Use of Operating Ratio Methodology

Subsection (2) of the proposed rule addresses the criteria the Commission would use to determine whether to use the operating ratio methodology.

125 Percent of O&M Expenses

Subsection (2)(a) of proposed Rule 25-30.4575, F.A.C., provides that the operating ratio methodology may only be used for those utilities whose rate base is no greater than 125 percent of operation and maintenance expenses. In its post-workshop comments, OPC initially took issue with this language in the proposed rule. While the Lake Osborne Order limits eligibility to utilities with O&M expenses equal to or greater than rate base, the Commission also stated in the

⁷Order No. PSC-2018-0327-PAA-WS, issued June 26, 2018, in Docket No. 20180006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

⁸While these costs are removed specifically for the calculation of the operating margin, these costs are still included in the O&M expenses for the calculation of the revenue requirement.

Order that the initial eligibility criteria for the operating ratio methodology was purposely limited until more experience was gained.

While this rule is designed for small water and wastewater utilities, particularly those utilities where investment in rate base is limited relative to the level of O&M expenses, it is informative to compare what the typical relationship between rate base and the level of O&M expenses is for larger, more financially viable systems. For Class A water utilities in Florida, average rate base is three times greater than the average level of O&M expenses. For Class A wastewater systems, average rate base is five times greater than the average level of O&M expenses. Staff believes that requiring the investment in rate base to be less than the level of O&M expenses for purposes of this rule appears overly restrictive when compared to the typical relationship between rate base and the level of O&M expenses in this industry. Because the exigent conditions that exist for water and wastewater utilities whose rate base equals O&M expenses also exist for utilities with rate base marginally greater than O&M expenses, staff recommends that the proposed rule should modestly increase the threshold that was set forth in the Lake Osborne Order.

Based on information from the 2017 Annual Reports, under the current practice, the operating ratio methodology is available to 30 water and 29 wastewater systems. If the threshold for rate base is increased to 125 percent of O&M expenses, an additional 6 water and 8 wastewater systems will be eligible for the operating ratio methodology. While this change represents a modest increase in the number of eligible utilities, staff believes it is a reasonable evolution of the eligibility criteria for use of the operating ratio methodology. At the November 8, 2018 meeting, OPC agreed to this provision remaining in the rule.

Limit on the Application of the Operating Ratio Methodology to Only the Utilities that Qualify for a SARC

Subsection (2) of the proposed rule provides that the operating ratio methodology may only be used for utilities that qualify for a SARC under Rule 25-30.455, F.A.C. The current threshold for SARC eligibility under Rule 25-30.455(1), F.A.C., applies to water and wastewater utilities whose total gross annual operating revenues are \$300,000 or less per system, and \$600,000 or less on a combined basis. At the time of the Lake Osborne Order, the SARC threshold was for utilities with revenue of \$150,000 or less per system, which precluded any Class B utilities from qualifying for a SARC.

OPC commented that the proposed rule should remain consistent with the Lake Osborne Order and that only Class C utilities should be eligible for the operating ratio methodology. However, since the Lake Osborne Order, the Florida Legislature has amended Section 367.0814, F.S., to increase the SARC threshold and to add language providing that the threshold for SARC eligibility must be adjusted on July 1, 2013, and every five years thereafter. As a result, the SARC threshold increased to \$275,000 in July 2013 and then to \$300,000 in July 2018. This means Section 367.0814, F.S., allows SARCs for utilities with revenue of \$300,000 or less per system, which may include some Class B utilities. Accordingly, staff believes OPC's position to exclude all Class B utilities for eligibility for the operating ratio methodology is contrary to Section 367.0814, F.S. To be consistent with the statute and because exigent conditions that exist for many Class C utilities may also exist for smaller Class B utilities, staff believes utilities with

Date: November 29, 2018

revenue of \$300,000 or less per system that qualify for a SARC should be eligible for the use of the operating ratio methodology.

Limit on the Use of the Operating Ratio Methodology to Only Utilities that Continue to Qualify for a SARC

Subsection (2)(b) of the proposed rule provides that if the application of the operating ratio methodology changes the utilities' qualification for a SARC, the operating ratio methodology may not be applied. Thus, this provision ensures that only utilities that qualify for a SARC will benefit from the rule.

Quality of Service and Condition of Plant

OPC also takes issue with the fact that the proposed rule does not include the Lake Osborne Order's considerations of the quality of service and condition of the plant. OPC seems to suggest these considerations should be included in the rule as a means to disqualify certain utilities from the use of the operating ratio methodology. Staff disagrees. Staff believes that the Lake Osborne Order recognized that quality of service or condition of the plant are always considerations in a SARC and that, in fact, poor quality of service or condition of the plant may be indicative of a utility that would benefit from the use of the operating ratio methodology. As stated in the Lake Osborne Order, "poor condition of plant and/or unsatisfactory quality may be due to a variety of factors such as age of the system, poor maintenance" and these factors may "highlight the need for an adequate revenue stream to properly test and treat the water and maintain/renovate the system."⁹

Because evaluation of the quality of service and condition of the plant are standard considerations in every SARC,¹⁰ staff believes it is unnecessary to include this criteria in the proposed rule. Moreover, it stands to reason that unsatisfactory quality of service and condition of the plant may be a result of insufficient revenues. To identify poor quality of service or condition of the plant in the proposed rule may cause a utility to be denied the opportunity to use the operating ratio methodology, which would not be in the long-term interest of the utility or its customers. If poor conditions are a direct result of the owner directly contributing to the system's decline, the Commission can pursue revocation of the certificate and/or an escrow of operating ratio methodology funds when improvements are needed to restore the utility system. Therefore, staff believes that because quality of service and condition of the plant are considered in every SARC, these factors do not need to be included and used as disqualifying criteria in proposed Rule 25-30.4575, F.A.C.

Developer-Owned Utilities

OPC also took issue with the proposed rule because it did not include the criteria from the Lake Osborne Order regarding developer-owned water and wastewater utilities. In the Lake Osborne Order, the Commission stated that being developer-owned should not disqualify a utility from the operating ratio method. The Commission also acknowledged in the Order that it may not be appropriate to use the operating ratio if the development is in the early stages of growth. The Commission stated:

⁹Lake Osborne Order, pg. 6-7.

¹⁰Section 367.081(2)(a), F.S.

Other factors that may be considered when determining eligibility for the operating ratio method are customer growth, the developer's financial condition, the utility's financial and operational condition, government mandated improvements and/or other unanticipated expenses. The level of CIAC collected by the utility may also be considered.¹¹

The points contemplated in this criteria are standard considerations in every SARC. Therefore, staff believes it is duplicative and unnecessary to include these criteria in the rule.

Summary

The proposed rule codifies the Commission's practice of applying the operating ratio methodology. As discussed above, OPC expressed concerns about not seeing the long-standing Commission practice of using the five criteria set forth in the Lake Osborne Order in the attached proposed rule. However, staff believes the proposed rule sufficiently and clearly addresses the necessary qualifications for implementing the operating ratio methodology on a going forward basis. Simply restating the same criteria and considerations of the Lake Osborne Order in the proposed rule as OPC initially suggested ~~suggests~~ ignores the discretionary nature of the Lake Osborne Order criteria as well as the current requirements for rulemaking under Section 120.545(1), F.S., and the 20 years of Commission experience and practice in implementing the operating ratio methodology. Simply put, shoehorning the same discretionary criteria and considerations from the Lake Osborne Order into a rule would be contrary to the rulemaking requirements. Moreover, the proposed rule is not only well within the Commission's delegated grant of legislative authority but is also necessary to avoid violating the prohibition against unadopted rules.

Even with the adoption of the rule, staff will continue to present to the Commission both the option of the traditional and the operating ratio methodologies and the potential effect on the revenue requirement. The ultimate decision to use the operating ratio methodology will remain with the Commission. Staff believes the proposed rule captures the purpose and criteria necessary for the use of the operating ratio methodology for determining the revenue requirement and recommends that the proposed rule as set forth in Attachment A should be approved.

Minor Violation Rules Certification

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. Rule 25-30.4575, F.A.C., is a rule for which a violation would be minor because 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. Thus, staff recommends that the Commission certify Rule 25-30.4575, F.A.C., as a minor violation rule.

¹¹Lake Osborne Order, pg. 7.

Date: November 29, 2018

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 C to this recommendation. The SERC analysis also includes whether the rule 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 of implementation.¹²

The SERC concludes that the rule 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 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 does not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule will not have an adverse impact on small business and will have no impact on small cities or 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 revision.

Conclusion

Based on the foregoing, staff recommends the Commission propose the adoption of Rule 25-30.4575, F.A.C., as set forth in Attachment A. In addition, staff recommends the Commission certify Rule 25-30.4575, F.A.C., as a minor violation rule.

¹²Section 120.541(2), F.S.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and this docket should be closed. (Harper)

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

Docket No. 20180141-WS
Date: November 29, 2018

25-30.4575 Operating Ratio Methodology.

(1) Under the operating ratio methodology, instead of calculating the utility's revenue requirement based on a rate of return on the utility's rate base, the revenue requirement includes the utility's operating expenses plus a margin of 12 percent of the utility's operation and maintenance expenses. For utilities that are resellers, purchased water and purchased wastewater expenses will be removed from operation and maintenance expense before the 12 percent margin is applied. The operating ratio adjustment shall be no more than \$15,000.

(2) In rate cases processed under Rule 25-30.455, F.A.C, the Commission will use the operating ratio methodology to establish the utility's revenue requirement when:

(a) The utility's rate base is no greater than 125% of operation and maintenance expenses; and

(b) The use of the operating ratio methodology does not change the utility's qualification for a staff assisted rate case under subsection 25-30.455(1), F.A.C.

Rulemaking Authority 367.0814(9) FS. Law Implemented 367.0814(9) FS. History-
New_____.

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

Comparison of 2017 Net Income/Loss to Approved Margin from Last Rate Case

| Docket No. | Utility Name | County | Commission Action | 2017 ANNUAL REPORT | | | | | | Margin from Last Rate Case | |
|------------|----------------------------|------------|-------------------------------------|--------------------------------------|----------------|---------------------|---|----------------|---------------------|----------------------------|----------|
| | | | | Staff-Assisted Rate Case Information | | | Water | | | Water | Sewer |
| | | | | Total Revenues | Total Expenses | Net Income/Net Loss | Total Revenues | Total Expenses | Net Income/Net Loss | | |
| 19950641 | WU Lake Osborne | Palm Beach | Approved | | | No longer regulated | | | | \$3,692 | |
| 19960561 | SU Indian Springs | Citrus | Approved | | | No longer regulated | | | | | \$5,829 |
| 19961434 | WS Port Water and Sewer | Clay | Recommended, but denied | | | No longer regulated | | | | \$1,659 | \$2,440 |
| 19991290 | WU Brendenwood | Lake | Approved | \$33,113 | \$28,301 | \$4,812 | | | | \$2,565 | |
| 20090170 | WU Mobile Manor | Lee | Approved | \$61,511 | \$67,509 | (\$5,998) | | | | \$3,380 | |
| 20090346 | WU Brendenwood | Lake | Approved | \$33,113 | \$28,301 | \$4,812 | | | | \$3,187 | |
| 20100471 | SU S&L | Marion | Approved | | | | \$55,401 | \$29,295 | \$26,106* | | \$4,977 |
| 20100472 | WS Heather Hills | Manatee | Approved, WW Only | | | | \$96,801 | \$99,309 | (\$2,508) | | \$1,738 |
| 20110165 | SU Utility Corp of Florida | Highlands | Approved | | | No longer regulated | | | | | \$10,000 |
| 20110238 | WU Sunrise Utilities, LLC | Polk | Approved | \$70,120 | \$90,009 | (\$19,889) | | | | \$6,166 | |
| 20110282 | WS Regency Utilities, Inc. | Duval | Approved, WW Only | | | | \$86,717 | \$120,880 | (\$34,163) | | \$5,530 |
| 20120270 | SU West Lakeland | Polk | Approved | | | | \$130,333 | \$137,046 | (\$6,713) | | \$9,451 |
| 20120078 | SU TKCB | Brevard | Approved | | | | \$82,793 | \$75,366 | \$7,427 | | \$6,214 |
| 20120082 | WU Joyland | Gadsden | Approved | \$26,657 | \$25,532 | \$1,125 | | | | \$1,860 | |
| 20130194 | WS Lakeside | Lake | Approved** | \$67,285 | \$64,292 | \$2,993 | \$57,159 | \$62,999 | (\$5,840) | \$5,000 | \$5,195 |
| 20140147 | WS Juniper Creek | Suwannee | Recommended WW only, settled w/ OPC | | | | \$33,096 | \$37,542 | (\$4,446) | | \$2,438 |
| 20140217 | WU Cedar Acres | Suwannee | Approved | \$73,260 | \$80,376 | (\$7,116) | | | | \$9,420 | |
| 20140220 | WU Sunrise | Polk | Approved | \$70,120 | \$90,009 | (\$19,889) | | | | \$6,670 | |
| 20140239 | WS Orchid Springs | Polk | Approved, Water Only | \$101,959 | \$104,567 | (\$2,608) | | | | \$7,374 | |
| 20160143 | WU Charlie Creek | Hardee | Approved | \$59,983 | \$67,939 | (\$7,956) | | | | \$6,256 | |
| 20160165 | SU Beaches | Gulf | Approved | | | | \$142,954 | \$131,139 | \$11,815 | | \$10,000 |
| 20160176 | WS Four Lakes | Polk | Approved, WW Only | | | | \$142,725 | \$206,995 | (\$64,270) | | \$10,000 |
| 20170147 | WS FIMC Hideaway | Levy | Approved, WW Only | | | | Approved at July 2018 Agenda Conference | | | | \$4,569 |

* Utility is being reviewed for potential overearnings. There have been substantial changes to the utility's operational structure since the rate case.

** Joint motion approved by the Commission provided that the utility would forego operating margin for first year.

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: November 15, 2018

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

FROM: Sevini K. Guffey, Public Utility Analyst II, Division of Economics *S.K.G.*

RE: Statement of Estimated Regulatory Costs for Proposed Adoption of Rule 25-30.4575, Florida Administrative Code (F.A.C.), Operating Ratio Methodology

The operating ratio methodology is an alternative to the traditional calculation of revenue requirement for smaller water and wastewater utilities and was first implemented by the Commission in 1996. The purpose of the proposed new Rule 25-30.4575, F.A.C., is to codify the Commission practice of using the operating ratio methodology when determining the revenue requirement in staff assisted rate cases for water and wastewater utilities.

Subsection (1) of Rule 25-30.4575, F.A.C., provides that the operating ratio methodology calculates the water and wastewater utility's revenue requirement based on the utilities' operating expenses plus a margin of 12 percent of the utilities' operation and maintenance expenses and the operating ratio adjustment shall be capped at \$15,000. For utilities that are resellers, their purchased water and wastewater expenses will be removed from the operation and maintenance expense before the 12 percent margin is applied.

Subsection (2) of Rule 25-30.4575, F.A.C., provides that the operating ratio methodology may only be used for utilities whose rate base is no greater than 125 percent of operation and maintenance expenses and when the use of the operating ratio methodology would not change the utility's eligibility for a staff assisted rate case under Rule 25-30.455(1), F.A.C.

Although the new rule applies to 132 investor-owned water and wastewater utilities, not all will qualify for the operating ratio methodology due to the rate base criteria contained in the proposed rule. A workshop to solicit input on the recommended rule was conducted by Commission staff on December 14, 2017. Several comments were received during the workshop from the Office of the Public Counsel (OPC) and a representative of U.S. Water Services Corporation (U.S. Water). Post-workshop written comments were received from OPC and U.S. Water.

At the October 30, 2018 Agenda Conference, OPC asked the Commission to defer the item so that OPC and staff could further discuss a potential compromise on rule language. The Commission deferred the item. On November 8, 2018, staff held an informal meeting on the rule, which included OPC, U.S. Water, Jeff Small with OCBOA Consulting, LLC, and Mike Smallridge.

The attached Statement of Estimated Regulatory Costs (SERC) addresses the considerations required pursuant to Section 120.541, Florida Statutes (F.S.). No regulatory alternatives were submitted pursuant to Paragraph 120.541(1)(a), F.S. None of the impacts/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
Chapter 25-30.4575, 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 new rule is included in the attached memorandum to Counsel. Staff believes that none of the impacts/cost criteria established in Paragraph 120.541(2)(a), F.S. will be exceeded as a result of the proposed new rule. The proposed new rule is not imposing any new regulatory requirements, only codifying existing Commission practice of using a variation of the rate of return methodology in determining that revenue requirement for staff assisted rate cases.

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 177,256 customers in Florida. Water and wastewater utilities which come under the jurisdiction of the Commission in the future also may be affected by the new rule.

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

The 132 investor-owned water and wastewater utilities and customers of those utilities are likely to be affected by this rule.

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 3

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Schrader, Crawford)
Division of Economics (Merryday)
Division of Engineering (Ballinger, Graves)

RE: Docket No. 20180125-EU – Complaint against Gulf Power Company for expedited enforcement of territorial order, by Gulf Coast Electric Cooperative, Inc.

AGENDA: 12/11/18 – Regular Agenda – Oral Argument Requested – Participation is at the Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Recommendation to be filed Friday, November 30, 2018.

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COMMISSION
CLERK

Item 4

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Industry Development and Market Analysis (Wooten) EW CH
Division of Economics (McCoy) JM WBN JDN
Office of the General Counsel (Dziechciarz) RD Can for TLT

RE: Docket No. 20180205-TX – Bankruptcy compliance cancellation by Florida Public Service Commission of CLEC Certificate No. 8244 issued to Trans National Communications International, Inc., effective December 31, 2018.

Docket No. 20180206-TC – Bankruptcy compliance cancellation by Florida Public Service Commission of PATS Certificate No. 5995 issued to Florida Gaming Centers, Inc., effective December 31, 2018.

Docket No. 20180207-TX – Bankruptcy compliance cancellation by Florida Public Service Commission of CLEC Certificate No. 4847 issued to OneStar Long Distance, Inc., effective December 31, 2018.

Docket No. 20180208-TX – Bankruptcy compliance cancellation by Florida Public Service Commission of CLEC Certificate No. 8382, issued to Baldwin County Internet/DSSI Service, L.L.C., effective December 31, 2018.

Docket No. 20180209-TX – Bankruptcy compliance cancellation by Florida Public Service Commission of CLEC Certificate No. 8748, issued to iNetworks Group, Inc., effective December 31, 2018.

AGENDA: 12/11/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Pursuant to Section 364.336, Florida Statutes (F.S.), telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) if the company's certificate was active during any portion of the calendar year. Section 350.113, F.S. provides for penalties and interest on any delinquent amounts. This recommendation addresses telecommunications companies that currently have active certificates, but have entered either Chapter 11 bankruptcy proceedings (addressed in Issue 1) or Chapter 7 bankruptcy proceedings (addressed in Issue 2). In a Chapter 11 bankruptcy proceeding, the daily operations of the company continue while the company works to reorganize its business to become profitable again.¹ In a Chapter 7 bankruptcy proceeding, the company stops all operations and goes completely out of business.²

Trans National Communications International, Inc. (Trans National) currently holds competitive local exchange telecommunications company (CLEC) Certificate No. 8244, issued by the Commission on December 4, 2002. Trans National filed for Chapter 11 bankruptcy on October 9, 2011, and the case was terminated on January 26, 2016. Trans National has not paid its RAFs or the penalties and interest assessed for the years 2014, 2015, 2016, 2017, and 2018.

Florida Gaming Centers, Inc. (Florida Gaming) currently holds pay telephone service (PATs) Certificate No. 5995, issued by the Commission on February 16, 1999. Florida Gaming filed for Chapter 11 bankruptcy on August 19, 2013, and the case was terminated on August 22, 2017. Florida Gaming has not paid its RAFs or the penalties and interest assessed for the years 2014, 2015, 2016, 2017, and 2018.

OneStar Long Distance, Inc. (OneStar) currently holds CLEC Certificate No. 4847, issued by the Commission on May 9, 2003. OneStar filed for Chapter 11 bankruptcy on December 31, 2003, but RAFs have not been assessed for OneStar since January 13, 2005, when the company converted to Chapter 7 bankruptcy.

Baldwin County Internet/DSSI Service, L.L.C. (Baldwin County) currently holds CLEC Certificate No. 8382, issued by the Commission on September 17, 2003. Baldwin County filed for Chapter 11 bankruptcy on April 26, 2012. RAFs have not been assessed for Baldwin County since October 15, 2012, when the company converted to Chapter 7 bankruptcy.

iNetworks Group, Inc. (iNetworks) currently holds CLEC Certificate No. 8748, issued by the Commission on March 6, 2009. RAFs have not been assessed on iNetworks since August 11, 2017, when the company filed for Chapter 7 bankruptcy.

The Commission has jurisdiction over these matters pursuant to Section 364.336, F.S.

¹ See *"Bankruptcy: What Happens When Public Companies Go Bankrupt,"* U.S. Securities and Exchange Commission, published February 3, 2009, <https://www.sec.gov/reportspubs/investor-publications/investorpubsbankrupthtm.html>.

² Id.

Discussion of Issues

Issue 1: Should the Commission, on its own motion, cancel Trans National Communications International, Inc.'s CLEC certificate and Florida Gaming Centers, Inc.'s PATS certificate and service schedules (if any) for failure to pay Regulatory Assessment Fees following discharge from Chapter 11 bankruptcy; change the companies' status to "cancelled" in the Master Commission Directory effective December 31, 2018; direct the Division of Administrative and Information Technology Services (AIT) to write off any statutory late payment charges, penalties and interest instead of requesting collection services; and require the companies to immediately cease and desist providing telecommunications services in Florida?

Recommendation: Yes, the Commission, on its own motion, should cancel Trans National Communications International, Inc.'s CLEC certificate and Florida Gaming Centers, Inc.'s PATS certificate and service schedules (if any) for failure to pay Regulatory Assessment Fees following discharge from Chapter 11 bankruptcy. The Commission should change the companies' status to "cancelled" in the Master Commission Directory, effective December 31, 2018; direct AIT to write off any statutory late payment charges, penalties and interest instead of requesting collection services; and require the companies to immediately cease and desist providing telecommunications services in Florida. (Wooten, McCoy)

Staff Analysis:

Staff searches of the Public Access to Court Electronic Records (PACER) system show that on October 9, 2011, Trans National filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the District of Massachusetts. The bankruptcy case was closed on January, 26, 2016. Trans National has not paid the RAFs, or the late penalties and interest assessed for the years 2014, 2015, 2016, 2017, and 2018.

Trans National has not responded to staff's requests to update contact information or data requests. Staff reviewed Trans National's records on the Florida Department of State, Division of Corporations website, which show that the company's last annual report was filed on April 12, 2013, and that its corporate status was listed as "inactive" as of February 6, 2014. The Federal Communications Commission (FCC) Form 499 Filer Database lists Trans National as no longer active as of April 30, 2013.^{3,4}

Staff searches of the PACER system show that on August 19, 2013, Florida Gaming filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Southern District of Florida, and that the bankruptcy case was closed on August 22, 2017. Florida Gaming has not paid the RAFs or the late penalties and interest assessed for the years 2014, 2015, 2016, 2017, and 2018.

³ See <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=817852>

⁴ FCC Form 499 is used to facilitate the quarterly and annual revenue reporting requirements for telecommunications companies. The FCC Form 499 Filer Database is a compilation of all telecommunications companies that are required to file either Form 499-Q or Form 499-A. It contains company information such as the company's name, address, designated agent, and jurisdictions in which it provides service.

Florida Gaming has not responded to staff's requests to update contact information or data requests. All mail sent by staff has been returned by the U.S. Postal Service marked "not deliverable as addressed," and the telephone numbers on file for the company are out of service. Staff reviewed Florida Gaming's records on the Florida Department of State, Division of Corporations website, which show that the company's last annual report was filed on April 16, 2014, and its corporate status was listed as "inactive." On September 25, 2015, the company's status was listed as "administrative dissolution for annual report." The FCC Form 499 Filer Database has no listing for Florida Gaming.

Pursuant to Chapter 11 U.S. Code §362(a), the filing of a petition for Chapter 11 bankruptcy relief acts as an automatic stay that enjoins a governmental entity from exercising its regulatory authority to collect a pre-petition debt. Additionally, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. RAFs, late payment charges, and penalties owed by a company to the Commission, as well as monetary settlements of cases resolving issues of failure to pay such fees, are not secured debts and, as a practical matter, are uncollectible. Therefore, this Commission would be prevented from collecting pre-bankruptcy RAFs owed by these companies, and from assessing and collecting a penalty for failure to pay the fees.

While the Commission is enjoined from collecting pre-petition debts, companies in Chapter 11 bankruptcy are required to pay post-petition expenses as incurred.⁵ Trans National and Florida Gaming have both exited bankruptcy, but neither has paid any RAFs for any years after declaring and after exiting bankruptcy. Furthermore, as indicated above, it appears that the companies are no longer providing service in Florida.

Pursuant to Section 364.336, F.S., certificate holders must pay a minimum annual RAF if the certificate was active during any portion of the calendar year. Section 350.113, F.S. provides for penalties and interest on for any delinquent amounts.

AIT advised that it appears Trans National and Florida Gaming have failed to comply with Section 364.336, F.S., following their discharge from Chapter 11 bankruptcy. The companies have not paid RAFs or statutory late payment charges as detailed in Attachment A. Therefore, staff recommends that the Commission, on its own motion, cancel Trans National's CLEC certificate and Florida Gaming's PATS certificate and service schedules (if any) for failure to pay RAFs following the companies' discharge from Chapter 11 bankruptcy. Staff recommends that the companies' status be changed to "cancelled" in the Master Commission Directory, effective December 31, 2018, and that AIT be directed to write off any statutory late payment charges, penalties, and interest instead of requesting collection services. Staff further recommends that the Commission should require the companies to immediately cease and desist providing telecommunications services in Florida.

⁵ See 11 U.S. Code §§503 and 721, 28 U.S. Code §959.

Issue 2: Should the Commission, on its own motion, cancel OneStar Long Distance, Inc., Baldwin County Internet/DSSI Service, L.L.C., and iNetworks Group, Inc.'s CLEC certificates and service schedules (if any) because of the companies' status as Chapter 7 bankruptcy liquidations; change the companies' status to "cancelled" in the Master Commission Directory effective December 31, 2018; and require the companies to immediately cease and desist providing telecommunications services in Florida?

Recommendation: Yes, the Commission, on its own motion, should cancel OneStar Long Distance, Inc., Baldwin County Internet/DSSI Service, L.L.C., and iNetworks Group, Inc.'s CLEC certificates and service schedules (if any) because of the companies' status as Chapter 7 bankruptcy liquidations; change the companies' status to "cancelled" in the Master Commission Directory effective December 31, 2018; and require the companies to immediately cease and desist providing telecommunications services in Florida. (Wooten, McCoy)

Staff Analysis:

Staff searches of the PACER system show that OneStar Long Distance, Inc., Baldwin County Internet/DSSI Service, L.L.C., and iNetworks are currently in Chapter 7 bankruptcy. According to the U.S. Securities and Exchange Commission, "(U)nder Chapter 7, the company stops all operations and goes completely out of business. A trustee is appointed to "liquidate" (sell) the company's assets and the money is used to pay off the debt, which may include debts to creditors and investors."^{6,7}

A company undergoing Chapter 7 bankruptcy proceedings will no longer be able to serve its customers or to meet its obligations as the holder of a certificate of authority. Upon notification that a company has initiated a Chapter 7 bankruptcy case, the Commission ceases to bill for RAFs, and does not assess any penalties or interest, because RAFs owed are not secured debts and, as a practical matter, are uncollectible.⁸ Therefore, staff recommends that the Commission, on its own motion, should cancel OneStar Long Distance, Inc., Baldwin County Internet/DSSI Service, L.L.C., and iNetworks Group, Inc.'s CLEC certificates and service schedules (if any) because of the companies' status as Chapter 7 bankruptcy liquidations; change the companies' status to "cancelled" in the Master Commission Directory effective December 31, 2018; and require the companies to immediately cease and desist providing telecommunications services in Florida.

⁶See "Bankruptcy: What Happens When Public Companies Go Bankrupt," U.S. Securities and Exchange Commission, published February 3, 2009, <https://www.sec.gov/reportspubs/investor-publications/investorpubsbankrupthtm.html>.

⁷See 11 U.S. Code §721.

⁸See Attachment A.

Docket Nos. 20180205-TX, 20180206-TC, 20180207-TX, 20180208-TX, 20180209-TX
Date: November 29, 2018

Issue 3: Should these dockets be closed?

Recommendation: Yes, 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, these dockets should be closed upon the issuance of a consummating order. If a protest is filed in one docket, the protest should not prevent the action in a separate docket from becoming final. These dockets should then be closed upon issuance of a consummating order. (Dziechciarz)

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, these dockets should be closed upon the issuance of a consummating order. If a protest is filed in one docket, the protest should not prevent the action in a separate docket from becoming final. These dockets should then be closed upon issuance of a consummating order.

Docket Nos. 20180205-TX, 20180206-TC, 20180207-TX,
 20180208-TX, 20180209-TX
 Date: November 29, 2018

Attachment A

| COMPANY CODE | COMPANY NAME | BANKRUPTCY DATES | RAF YEARS | RAF DUE | LATE FEE PENALTY DUE | INTEREST DUE | TOTAL DUE AS OF 12/31/2018 |
|-----------------|--|--|---------------|------------|----------------------------|-----------------|-------------------------------------|
| TG466 | Florida Gaming Centers, Inc. | CHAPTER 11 | 2018 | \$100.00 | \$0.00 | \$0.00 | \$100.00 |
| | | Begin 8/19/2013 | 2017 | \$100.00 | \$25.00 | \$12.00 | \$137.00 |
| | | End 8/22/2017 | 2016 | \$100.00 | \$25.00 | \$24.00 | \$149.00 |
| | | No Conversion to | 2015 | \$100.00 | \$25.00 | \$36.00 | \$161.00 |
| | | CHAPTER 7 | 2014 | \$100.00 | \$25.00 | \$48.00 | \$173.00 |
| | | | | | | | <u>\$720.00</u> |
| TX693 | Trans National Communications International, Inc. | CHAPTER 11 | 2018 | \$600.00 | \$0.00 | \$0.00 | \$600.00 |
| | | Begin 10/09/2011 | 2017 | \$600.00 | \$150.00 | \$ 72.00 | \$822.00 |
| | | End 1/26/2016 | 2016 | \$600.00 | \$150.00 | \$144.00 | \$894.00 |
| | | No Conversion to | 2015 | \$600.00 | \$150.00 | \$216.00 | \$966.00 |
| | | CHAPTER 7 | 2014 | \$600.00 | \$150.00 | \$288.00 | \$1,038.00 |
| | | | | | | | <u>\$4,320.00</u> |
| TX714 | OneStar Long Distance, Inc. | CHAPTER 11 Begin 12/31/2003 Converted to CHAPTER 7 1/13/2005 RAF Ends | 2017- 2005 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| TX725 | Baldwin County Internet/DSSI Service, L.L.C. | CHAPTER 11 Begin 4/26/2012 Converted to CHAPTER 7 10/15/2012 RAF Ends | 2017- 2012 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| TX983 | iNetworks Group, Inc. | 8/11/2017 Filed CHAPTER 7 RAF Ends | 2017 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |

Item 5

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Industry Development and Market Analysis (Eastmond, Bates) *DE*
Office of the General Counsel (Weisenfeld) *AW TH* *of CH*

RE: Docket No. 20180210-TP – Request for approval of amendment to interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast and EarthLink Business, LLC.

AGENDA: 12/11/18 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: *Administrative* *11-29-18*

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On November 7, 2018, BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T) filed an emergency amendment to its existing Interconnection Agreement (ICA) with EarthLink Business, LLC (EarthLink).

AT&T stated in its filing that the amendment was “a result of a Force Majeure event due to the fact that the provisions being amended to the underlying ICA(s) are pre-requisites for the network restoration activities CLEC is undertaking in northwestern Florida to restore service to customers impacted by Hurricane Michael.” This amendment revises the underlying ICA that was filed on March 12, 2010, in Docket Number 20100122-TP, by adding a Microwave Entrance Facilities – Collocation Attachment.

Docket No. 20180210-TP

Date: November 29, 2018

The Commission has jurisdiction pursuant to 47 U.S.C. Section 252(e)(4) and Sections 120.80(13)(d), and 364.16, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the November 7, 2018 amendment to the Interconnection Agreement between AT&T and EarthLink?

Recommendation: Yes. The Commission should approve the November 7, 2018 amendment between AT&T and EarthLink. (Bates, Eastmond, Weisenfeld)

Staff Analysis: 47 U.S.C. Section 252(e) provides in relevant part that 1) negotiated ICAs must be submitted to the appropriate state commission for review; 2) a state commission may only reject such agreements for reasons specified in the law; and 3) if a state commission does not act to approve or reject the agreement within 90 days after submission, the agreement is deemed approved.

The Commission's current practice of processing an ICA or amendment to an ICA utilizes an administrative process that entails staff reviewing the filing to ensure there is no basis for rejection under 47 U.S.C. Section 252(e)(2). If no basis for rejection exists, the ICA or amendment is permitted to go into effect, by operation of federal law, 90 days after it was filed with the Commission.¹ However, because this amendment is related to Hurricane Michael restoration efforts, AT&T requested that the amendment be approved as soon as practicable. Staff is therefore forgoing the administrative procedure in order to expedite the approval process and is bringing this amendment to the Commission for approval. This will provide the companies Commission approval earlier than the 90 days from the date of filing as contemplated in the Administrative Procedure Manual.²

Staff has reviewed the amendment to the ICA between AT&T and EarthLink filed on November 7, 2018. Staff has found no basis for rejection under 47 U.S.C. Section 252(e)(2), and recommends the Commission approve the amendment.

¹ Section 2.07.C.5.c., FPSC Administrative Procedures Manual.

² The amendment explicitly states that the parties agree it will become effective upon signature by both parties.

Docket No. 20180210-TP

Date: November 29, 2018

Issue 2: 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, this docket should be closed upon the issuance of a consummating order. (Weisenfeld)

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

Item 6

State of Florida



FILED 11/29/2018
DOCUMENT NO. 07300-2018
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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Barrett)
Division of Economics (Draper, Guffey)
Division of Engineering (Wooten)
Office of the General Counsel (Brownless, Nieves)

Handwritten notes and signatures:
MCB 11/29
S.K.G.
E+D
P.D. JSH
JN TB
JSC
ALM

RE: Docket No. 20180001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

AGENDA: 12/11/18 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: Decision must be rendered by 12/11/18 in order to implement new fuel factors with the first billing cycle in 2019.

SPECIAL INSTRUCTIONS: None

Table of Contents

| Issue | Description | Page |
|--------------|---|-------------|
| | Case Background | 3 |
| 2M | 2017 SoBRA Factor | 4 |
| 2N | 2018 SoBRA Factor | 7 |
| 2P | 2019 SoBRA Cost Effective Issue | 8 |
| 2Q | 2019 SoBRA Revenue Requirement | 15 |
| 2R | 2019 SoBRA Base Rate Percentage Increase..... | 17 |
| 2S | Tariff Approvals for 2019 SoBRA Factors | 18 |
| 36 | Close Docket | 20 |

Case Background

As part of the continuing fuel and purchased power adjustment and generating performance incentive factor clause proceedings, an administrative hearing was held on November 5-6, 2018. At the hearing, all stipulated issues for Duke Energy Florida, LLC. (DEF), Florida Public Utilities Company (FPUC), Gulf Power Company (Gulf), and Tampa Electric Company (TECO) were approved by bench decisions. Although the Commission approved many stipulated issues for Florida Power & Light Company (FPL or Company) at the hearing, Florida Industrial Power Users Group (FIPUG) requested the opportunity to file briefs on Issues 2M, 2N, 2P, 2Q, 2R, and 2S, which are company-specific issues pertaining to solar generation base rate adjustment (SoBRA) considerations.

Issues 2M and 2N address the recovery of construction costs for solar generation facilities that were recently constructed, and are currently operating. Issues 2P, 2Q, 2R, and 2S pertain to FPL's Miami-Dade, Interstate, Pioneer Trail, and Sunshine Gateway solar generation facilities which are currently being constructed and scheduled to be operating on March 1, 2019 (2019 SoBRA projects). Collectively, all of the SoBRA-related issues resulting from FPL's 2016 rate case Stipulation and Settlement Agreement approved by Order No. PSC-2016-0560-AS-EI (the 2016 Agreement).¹ This post-hearing memorandum addresses those identified issues.

On November 16, 2018, FIPUG and FPL filed post-hearing statements and briefs for Issues 2M, 2N, 2P, 2Q, 2R, and 2S. On November 19, 2018, FIPUG filed a Notice Of Correction of Post-Hearing Position for two issues.

The Commission has jurisdiction over this subject matter pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, and 366.06, F.S.

¹Order No. PSC-2016-0560-AS-EI, issued on December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

Issue 2M: What is the appropriate revised SoBRA factor for the 2017 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

Recommendation: This issue is not ripe for consideration during the hearing cycle for 2018, and should be addressed in Docket No. 20190001-EI. (Barrett, Brownless)

Position of the Parties

FPL: The total costs of the 2017 SoBRA Project are not yet final. FPL anticipates that final costs will be known by the third quarter of 2019, and that the issue will be ripe for consideration during the 2019 Fuel Docket cycle.

FIPUG: As the SoBRA projects are neither cost effective nor needed, no new rates should be recovered.

Staff Analysis: This issue addresses calculating the appropriate revised SoBRA factor based upon actual construction costs.

Parties' Arguments

FPL

As the result of discussions among and between the parties in advance of the hearing, an agreement was reached to excuse all of the FPL witnesses that addressed this issue. In its brief,² the Company asserted that final construction costs for the 2017 SoBRA Project are not yet known, and thus, cannot be resolved in this hearing cycle. The calculation and resulting factor, however, could be addressed in 2019. In its brief, FPL stated that although not final, the preliminary information indicates that final costs will be lower than the cost estimates that were used to develop the revenue requirements and cost recovery factors for these projects. (FPL BR 20) Citing paragraph 10(g) of the 2016 Agreement, FPL asserted that if *actual* capital expenditures are less than the projected costs used to develop the initial SoBRA factor, the lower figure will be the basis for the full revenue requirements, and a one-time credit will be made through the Capacity Cost Clause. (FPL BR 20, emphasis in original)

FIPUG

FIPUG did not sponsor a witness to address this issue nor specifically address this issue in its post-hearing brief. FIPUG's post-hearing brief, as modified by its Notice of Correction of Post-Hearing Position, addresses Issues 2M-2S, 24D and 24E. Issue 2O³ was approved as a Type 2 stipulation at final hearing when FIPUG failed to timely provide a final position.⁴ Although briefed, Issues 24D and 24E were also approved by bench vote at final hearing as Type 2 stipulations since FIPUG took no position on those issues.⁵

²See page 20, FPSC Document No. 07154-2018, filed on November 16, 2018, in Docket No. 2018-0001-EI.

³"Should the Commission approve revised tariffs for FPL reflecting the revised SoBRA factors for the 2017 and 2018 projects determined to be appropriate in this proceeding, effective January 1, 2019?"

⁴All parties were given until noon on October 24, 2018, to file final positions on each issue or have "No position at this time" be changed to "No position." [Prehearing TR 9-10; TR 9-11]

⁵*Id.*

Staff Analysis

With regard to the remaining issues addressed in FIPUG's brief, Issues 2M, 2N, 2Q, 2R and 2S, FIPUG has made several arguments. First, that the Commission is specifically required by statute to make findings that the 2018 and 2019 solar projects for which cost recovery is sought are both prudent and needed. (FIPUG BR 4-5) Second, that Commission approval of a negotiated settlement agreement executed by a limited number of parties cannot substitute for the required findings of prudence and need. (FIPUG BR 5-6) Third, that the use of projected carbon dioxide (CO₂) tax costs in FPL's cost effectiveness analysis is improper for two reasons: no carbon dioxide tax is currently imposed, nor likely to be imposed in the future, and the carbon dioxide tax amount is based on uncorroborated hearsay. (FIPUG BR 6) Fourth, that recovery of capital costs through the fuel cost recovery docket is improper. (FIPUG BR 6-7)

FIPUG's first and second arguments are essentially attempts to revive two issues previously raised by FIPUG and excluded by the Prehearing Officer at the Prehearing Conference.⁶ Nothing has changed since the Prehearing Conference and the determination that the terms of FPL's 2016 Agreement, approved by Order No. PSC-2016-0560-AS-EI,⁷ control and limit the issues regarding FPL's solar generation projects to the cost-effectiveness issues stated in Issues 2P, 2Q, 2R and 2S continues to be valid.⁸ One could also conclude that FIPUG's arguments are an attempt to collaterally attack Order No. PSC-2016-0560-AS-EI's approval of the SoBRA process outlined therein. (FPL BR 11-13) FIPUG, as a party to the 2016 rate case, had an opportunity to appeal Order No. PSC-2016-0560-AS-EI and failed to do so. FIPUG's right to contest the 2016 Agreement, and any of its terms and conditions, has passed. FIPUG's third argument will be addressed in Issue 2P.

FIPUG's fourth argument appears to be that use of the fuel cost recovery clause factors to recover FPL's proposed solar generation capital costs is improper. However, FPL is not seeking to recover its proposed solar generation capital costs through fuel charge factors. As the 2016 Agreement clearly states, the capital costs associated with the proposed solar generation projects are rate base adjustments which are made to FPL's books at the time the solar projects are placed into service.⁹ Staff agrees with FPL that the fuel cost recovery docket was simply used for administrative and procedural efficiency since it is an annual proceeding with a relatively fixed filing schedule. (FPL BR 15-16) Further, if the filing schedule for the fuel cost recovery docket is used, increases in base rates as a result of the approval of SoBRA projects can be coordinated with projected fuel costs which include those units.

This issue involves a mathematical calculation that depends on information that is not yet available. For that reason, staff believes this issue cannot be resolved in the current hearing cycle.

⁶Issue A: "Are FPL's proposed solar projects prudent?" and Issue B: "Are FPL's proposed solar projects needed?"

⁷Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021, *In re: Petition for rate increase by Florida Power & Light Company*.

⁸Order No. PSC-2018-0520-PHO-EI, issued November 1, 2018, in Docket No. 20180001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, at 65-66.

⁹2016 Agreement at ¶¶ 10(c), 10(e), 10(i).

Conclusion

Staff recommends that this issue is not ripe for consideration during the hearing cycle for 2018, and should be addressed in Docket No. 20190001-EI.

Issue 2N: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

Recommendation: This issue is not ripe for consideration during the hearing cycle for 2018, and should be addressed in Docket No. 20190001-EI. (Barrett, Brownless)

Position of the Parties

FPL: The total costs of the 2018 SoBRA Project are not yet final. FPL anticipates that final costs will be known by the third quarter of 2019, and that the issue will be ripe for consideration during the 2019 Fuel Docket cycle.

FIPUG: As the SoBRA projects are neither cost effective nor needed, no new rates should be recovered.

Staff Analysis: This issue is substantially similar to Issue 2M, as it addresses calculating a revised SoBRA factor based upon actual construction costs. Issue 2M addresses the 2017 projects and Issue 2N addresses the 2018 projects.

Parties' Arguments

As the result of discussions among and between the parties in advance of the hearing, an agreement was reached to excuse all of the FPL witnesses that addressed this issue. In its brief,¹⁰ the Company asserted that final construction costs for the 2018 SoBRA Project are not yet known, and thus, cannot be resolved in this hearing cycle. The calculation and resulting factor, however, could be addressed in 2019. In its brief, FPL stated that although not final, the preliminary information indicates that final costs will be lower than the cost estimates that were used to develop the revenue requirements and cost recovery factors for these projects. (FPL BR 20) Citing paragraph 10(g) of the 2016 Agreement, FPL asserted that if *actual* capital expenditures are less than the projected costs used to develop the initial SoBRA factor, the lower figure will be the basis for the full revenue requirements, and a one-time credit will be made through the Capacity Cost Recovery Clause. (FPL BR 20, emphasis in original)

FIPUG did not sponsor a witness to address this issue nor specifically address this issue in its post-hearing brief. The legal arguments raised by FIPUG relative to this issue are discussed in Issue 2M above.

Analysis

This issue involves a mathematical calculation that depends on information that is not yet available. For that reason, staff believes this issue cannot be resolved in the current hearing cycle.

Conclusion

Staff recommends that this issue is not ripe for consideration during the hearing cycle for 2018, and should be addressed in Docket No. 20190001-EI.

¹⁰See page 20, FPSC Document No. 07154-2018, filed on November 16, 2018, in Docket No. 20180001-EI.

Issue 2P: Are the 2019 SoBRA projects (Miami-Dade, Interstate, Pioneer Trail, and Sunshine Gateway) proposed by FPL cost effective?

Recommendation: Yes. Based on the evidence contained in the record, FPL's proposed 2019 solar generation projects are projected to produce savings under multiple scenarios and therefore are cost effective. The 2019 solar generation projects have also met the terms of the 2016 Agreement in regards to keeping construction cost under the \$1,750 per kilowatt alternating current (kW_{ac}) cost cap. (Wooten, Brownless)

Position of the Parties

FPL: Yes. FPL undertook a comprehensive solicitation process to ensure that the cost of the 2019 Project is reasonable and well below \$1,750 per kW. In addition, the 2019 Project is cost-effective and is estimated to result in \$40 million (CPVRR) of customer savings.

FIPUG: No.

Staff Analysis:

Parties' Arguments

FPL

Pursuant to the 2016 Agreement, FPL proposed to construct and operate 298 MW of solar generation by 2019. FPL stated that an economic analysis was performed to determine the technology with the greatest value for customers. (FPL BR 4) FPL asserted that the 2019 SoBRA projects are projected to result in \$40 million Cumulative Present Value Revenue Requirement (CPVRR) of customer savings and that the costs for the 2019 projects are reasonable and fall below the \$1,750 per kW_{ac} cost cap. (FPL BR 2) FPL asserted that the 2016 Agreement provides that the 2019 projects are cost effective if they lower the system CPVRR without them, which FPL claims the 2019 projects do. (FPL BR 8)

FPL stated that the Commission is not required to determine need or separately evaluate prudence, which would cast aside the terms of 2016 Agreement. (FPL BR 12) FPL claimed that, similar to the previous SoBRA proceedings, the Commission is not basing its decision on carbon cost forecasting, but the expert testimony of witness Enjamio. (FPL BR 13)

FIPUG

FIPUG did not sponsor a witness to address this issue. The FIPUG brief presented broad arguments about its objections to FPL's SoBRA projects, which staff addressed in Issue 2M above. (FIPUG BR 1-2) Additionally, FIPUG raised the argument that the carbon dioxide tax projections prepared by ICF and used by FPL in its CPVRR analysis are based on uncorroborated hearsay.

Analysis

2016 Settlement Agreement

The 2019 solar generation projects for which FPL is seeking approval for cost recovery are specifically provided for in the 2016 Agreement approved by Order No. PSC-16-0560-AS-EI.¹¹ The 2016 Agreement allows FPL to construct up to 300 MW per calendar year of solar capacity during the period 2017-2021 and to recover through base rates the incremental annualized base revenue requirement for those facilities for the first 12 months of operation commencing when the facilities are placed into service.¹² There are several conditions that must be met for recovery in this case. First, FPL must request recovery for these projects during the term of the 2016 Agreement, or prior to December 31, 2020. Second, the cost of the components, engineering, and construction for any solar project is capped at \$1,750 kW_{ac}. Third, for projects less than 75 MW (as are all of the projects proposed in this case): 1) the request for base rate recovery must be filed in the Fuel Clause docket as part of its final true-up filing; and 2) the issues are “limited to the cost effectiveness of each such project (i.e., will the project lower the projected system CPVRR as compared to each CPVRR without the solar project) and the amount of revenue requirements and appropriate percentage in base rates needed to collect the estimated revenue requirements.”¹³ If the project meets these requirements, the terms of the 2016 Agreement have been met.

Project Descriptions

FPL witnesses Brannen and Enjamio provided testimony and exhibits concerning FPL’s proposed 2019 SoBRA projects, including cost effectiveness and the ability to meet the \$1,750 per kW_{ac} cost cap. As described in the testimony of witness Enjamio, FPL is proposing to construct and operate four solar generation centers with a total nameplate capacity of 298 MW_{ac} (each project is 74.5 MW_{ac}) with an in-service date of March 1, 2019. (TR 175) Construction of the 2019 SoBRA projects began on September 29, 2017. (EXH 32) The proposed 2019 SoBRA projects are fixed-tilt systems with an average projected first year net capacity factor of 26.5 percent. (EXH 30, TR 177) There are no upgrades to existing transmission infrastructure required as part of the construction of the 2019 SoBRA projects. (TR 167)

The four proposed construction sites for the 2019 SoBRA projects are Miami-Dade in Miami-Dade County, Interstate in St. Lucie County, Pioneer Trail in Volusia County and Sunshine Gateway in Columbia County. (TR 164) All parcels are new purchases, and the land costs are included in the cost of the 2019 SoBRA projects. (TR 167, EXH 76) Staff recognized that not all land for the four newly purchased sites was being used for the 2019 solar generation projects. In response to a staff interrogatory, it was disclosed that unused areas could include both usable and unusable areas for future solar development. (EXH 76) To develop a better understanding of the ratio of land that could be used for future development, staff requested a more detailed breakdown of each site. This breakdown included four categories: total acreage, acreage used by the projects (Site Acreage), non-usable land, and usable land. Usable land consists of property that could possibly be used for future solar developments on the site, and for sites with adequate

¹¹Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

¹²2016 Agreement at ¶ 10(a).

¹³2016 Agreement at ¶ 10(c).

amounts of usable land, FPL will consider leasing land to third parties. Any revenue from the usable land leased to third parties will be credited to FPL ratepayers via an offset to the revenue requirement associated with the 2019 solar generation projects. (EXH 76) The land usage of each site is illustrated in Table 2P-1:

**Table 2P-1
Land Usage**

| Site Name | Total Acreage (acres) | Site Acreage (acres) | Non-Usable Land (acres) | Usable Land (acres) |
|------------------|----------------------------------|---------------------------------|------------------------------------|--------------------------------|
| Miami-Dade | 465.1 | 425.1 | 0 | 40.0 |
| Interstate | 539.0 | 522.8 | 16.2 | 0 |
| Pioneer Trail | 1,189.6 | 438.6 | 398.0 | 353.0 |
| Sunshine | 954.4 | 547.2 | 407.2 | 0 |

Source: EXH 76, 77

2019 Solar Generation Projects Evaluation ***Economic Assumptions***

The resource planning document filed with FPL's petition included FPL's three reliability criteria: 20 percent total reserve margin, 10 percent generation-only reserve margin (GRM) and loss of load probability. (EXH 77) Because FPL's GRM criterion has not been relied upon by the Commission in previous proceedings, staff requested a revised resource planning document that did not incorporate the GRM criterion in the 2019 SoBRA project resource planning. (EXH 77) FPL's revised resource planning document includes two resource plans that form the basis of the cost effectiveness analysis that the Company performed. These two resource plans are called the No Solar Plan and 2019 Solar Plan. The No Solar Plan includes the 2017 and 2018 SoBRA projects and assumes that further resource needs will be met by combined cycle (CC) units and short term purchase power agreements (PPAs) through the year 2031. The 2019 Solar Plan includes the 2017 and 2018 SoBRA projects and takes into account the four 2019 SoBRA projects, which initially defer the 2028 CC unit and reduces the size of the CC unit projected for 2031. (TR 177) This resource plan is shown in Table 2P-2:

**Table 2P-2
Resource Plan (w/o GRM)**

| Year | No Solar Resource Plan | 2019 Solar Resource Plan |
|-------------|--|---|
| 2018 | 2017/2018 596 MW SoBRA | 2017/2018 596 MW SoBRA |
| 2019 | Okeechobee Energy Center; 1-year 476 MW PPA | 2019 298 MW SoBRA; Okeechobee Energy Center; 1- year 311 MW PPA |
| 2020 | 1- year 470 MW PPA | 1- year 305 MW PPA |
| 2021 | 1- year 717 MW PPA | 1- year 553 MW PPA |
| 2022 | Dania Beach Energy Center | Dania Beach Energy Center |
| 2023 | 1- year 215 MW PPA | 1- year 52 MW PPA |
| 2024 | 1 Greenfield 3x1 CC Unit | 1 Greenfield 3x1 CC Unit |
| 2025 | | |
| 2026 | | |
| 2027 | 1- year 75 MW PPA | |
| 2028 | 1 Greenfield 3x1 CC Unit | 1- year 337 MW PPA |
| 2029 | | 1 Greenfield 3x1 CC Unit |
| 2030 | | |
| 2031 | Equalizing 578 MW CC Unit | Equalizing 419 MW CC Unit |

Source: EXH 77

In completing the analysis, FPL considered multiple components to determine cost effectiveness: solar revenue requirements, avoided generation costs, and avoided system costs. For the proposed solar facilities, the revenue requirements included fixed operation and maintenance (O&M), equipment, installation, land cost, and transmission interconnection cost. The avoided generation cost component considered avoided generation capital, avoided fixed O&M, avoided transmission interconnection, avoided capital replacement, incremental gas transport, and short-term purchases. The avoided system cost component considers the factors of fuel savings, avoided variable O&M, and emission cost savings. (EXH 77)

FPL witness Enjamio stated that the emission cost savings consideration did not incorporate CO₂ pricing until 2028. (TR 176) FPL witness Enjamio identified ICF International's (ICF) CO₂ emissions cost forecast as a major assumption in FPL's economic analysis of its proposed 2019 solar generation projects. (TR 176) The CO₂ cost projections used in FPL's cost-effectiveness analyses are based on ICF's CO₂ emission cost forecast dated January 31, 2018. (TR 176) ICF is a consulting firm with extensive experience in forecasting the cost of air emissions and is recognized as one of the industry leaders in this field. (TR 176) No intervenor offered testimony rebutting FPL's CO₂ emission cost forecast or provided any alternative emission cost forecast. Staff believes that the CO₂ cost projections FPL used in this docket are appropriate.

Hearsay

Staff does not find FIPUG's argument, that carbon dioxide tax projections prepared by ICF and used by FPL in its CPVRR analysis is based on uncorroborated hearsay, to be persuasive. (FIPUG BR 6) Section 120.57(1)(c), F.S., states that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." Section 90.704,

F.S., allows the use by an expert of “facts or data [that] are of a type reasonably relied upon by experts in the subject to support the opinion expressed” even if the facts or data are not admissible in evidence. Smith v. State, 7 So. 3d 473, 501 (Fla. 2009); Geralds v. State, 674 So. 2d 96, 100 (Fla. 1996)(expert allowed to base opinion on cause of death on materials prepared by another doctor).

FPL identified witness Enjamio as an expert in the field of resource planning and the cost-effectiveness of FPL’s 2019 Solar Project.¹⁴ FIPUG objected to any witness being considered an expert witness unless the witness states the subject matter areas in which he or she claims expertise, and voir dire, if requested, is permitted. However, FIPUG failed to comply with the requirements of Section VI.A(8) of Order No. PSC-2018-0079-PCO-EI, that a party identify each witness the party wishes to voir dire and specify the portions of the witness’ testimony to which it objects. For that reason, FIPUG was prevented from challenging the expertise of any witness at the final hearing.¹⁵

Witness Enjamio’s testimony is that ICF is recognized as an industry leader in the field of forecasting the cost of air emissions and that its cost projections have been used for many years in FPL’s resource plans and economic analyses, i.e., FPL’s 2018 Ten Year Site Plan. (TR 176) It is important to note that it is witness Enjamio’s expert opinion that ICF’s projection of carbon dioxide costs should be included in FPL’s cost effectiveness analysis for the 2019 SoBRA projects. FIPUG did not present any evidence to support the exclusion of these costs or to refute ICF’s expertise in projecting air emission costs. Based on this record, ICF’s carbon dioxide tax costs do not constitute uncorroborated hearsay and can be used in FPL’s cost effectiveness calculation.

CPVRR Analysis

FPL’s CPVRR analysis assumed that each project had an actual life of 33 years, with the analysis ending in 2050. (EXH 77) Staff reviewed FPL’s CPVRR for the 2019 SoBRA projects that produced a savings of \$40 million for the base fuel and environmental forecasts. (EXH 36) This calculation included the previously mentioned CO₂ pricing in 2028. FPL’s CPVRR analysis in support of its 2019 Solar Plan included assumptions related to future fuel prices. The Company employed its standard fuel forecasting methodology to produce its long-term fuel price forecast. (TR 176, EXH 34) Staff believes the forecasted fuel prices used in the Company’s CPVRR analysis associated with its current proposal are reasonable. (EXH 36)

FPL’s provided CPVRR for the 2019 SoBRA projects includes the FPL GRM criteria, which has not been relied upon by the Commission in previous proceedings. In response to a staff interrogatory, FPL provided a CPVRR analysis that excludes this GRM criterion and economically evaluates the solar projects based upon FPL’s remaining reliability criteria. (EXH 77) The resulting CPVRR produced a savings of \$39.9 million for the base fuel and environmental forecasts, a slight decrease from the \$40 million savings that included the GRM criterion. (EXH 77) As noted above, FPL’s GRM criterion was not relied upon by the

¹⁴DN 06651-2018.

¹⁵Order No. PSC-2018-0520-PHO-EI, issued November 1, 2018, in Docket No. 20180001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

Commission in previous proceedings; therefore, staff believes that this criterion is not a critical component to the overall cost-effectiveness of the 2019 SoBRA projects.

In response to a staff interrogatory, FPL provided a CPVRR analysis with both fuel and environmental compliance sensitivities. (EXH 77) In FPL's analysis, a Low, Medium, and High Fuel Forecast and ENV I, ENV II, and ENV III compliance costs were considered. ENV I assumes an annual \$0/ton cost for CO₂ pricing and low environmental compliance costs, ENV II assumes a most likely cost, and ENV III assumes high environmental compliance costs. (EXH 77) While this analysis includes FPL's GRM criterion, it is assumed there would be a similar negligible effect on the other sensitivities as it did on FPL's base case forecast. The range of savings is illustrated in Table 2P-3:

Table 2P-3
CPVRR Analysis including GRM

| Fuel Cost Forecast | Environmental Compliance Cost Forecast | | | |
|--------------------|--|--------|--------|---------|
| | | ENV I | ENV II | ENV III |
| | High | (\$62) | (\$81) | (\$130) |
| | Medium | (\$19) | (\$40) | (\$89) |
| | Low | \$24 | \$4 | (\$46) |

Source: EXH 77

Table 2P-3 shows that in seven of the nine scenarios, the 2019 SoBRA projects are cost effective. Notably the base fuel case (medium), ENV I scenario contains no cost for CO₂, but is also cost effective. While examining the forecasted scenarios, staff observed that in all scenarios avoided fuel costs was the major driving force in producing overall savings for the projects. This fact manifested in even the "worst" case scenario of Low Fuel Cost, ENV I, where there are projected fuel savings in every forecasted year. These cost forecast scenarios are identical to the ones present in the 2017 and 2018 solar generation projects in previous proceedings. When investigating the overall cost effectiveness of the projects, staff observed that the first cumulative benefit occurred in 2028 in all scenarios. This benefit seems to be driven by the avoided capital that would be required for the Greenfield 3x1 CC Unit. Staff has reviewed the CPVRR assumptions discussed and believes them to be reasonable.

2016 Agreement Threshold

As stated previously, the 2016 Agreement requires the FPL 2019 SoBRA projects to meet a \$1,750 per kW_{ac} cost cap. The estimated total cost to build all of the 2019 solar generation projects is \$1,386 per kW_{ac}, falling below the cost cap. (TR 161) Each of the 2019 solar generation projects also fall under this threshold when considered individually. The cost per kW_{ac} for the 2019 solar generation projects is illustrated in Table 2P-4:

Table 2P-4
\$/kW_{ac} Cost Cap

| 2019 Solar Generation Projects Cost per \$/kW _{ac} | | | | |
|---|------------|------------|---------------|------------------|
| Site Name | Miami Dade | Interstate | Pioneer Trail | Sunshine Gateway |
| Cost (\$/kW _{ac}) | \$1,460 | \$1,289 | \$1,422 | \$1,374 |

Source: EXH 76

Conclusion

Based on the evidence contained in the record, FPL's proposed 2019 SoBRA projects are projected to produce savings under multiple scenarios and therefore are cost effective. The 2019 SoBRA projects have also met the terms of 2016 Agreement in regards to keeping construction cost under the \$1,750 per kW_{ac} cost cap.

Issue 2Q: What are the revenue requirements associated with the 2019 SoBRA projects?

Recommendation: The jurisdictional annualized revenue requirements associated with the 2019 SoBRA projects are \$51,685,454. (Barrett)

Position of the Parties

FPL: The revenue requirement for the 2019 Project is \$51,685,454.

FIPUG: As the SoBRA projects are neither cost effective nor needed, no new rates should be recovered.

Staff Analysis:

Parties' Arguments

FPL

According to FPL witness Castaneda, FPL is authorized to seek recovery of the 2019 SoBRA projects pursuant to the order in FPL's most recent rate case proceeding. (TR 154) In its brief, FPL asserted the 2016 Agreement authorized the construction of up to 300 MWs of new solar generation each year between 2017 and 2020, if three requirements are satisfied:

1. The total costs of the solar projects do not exceed \$1,750/kW_{ac};
2. The construction, engineering, and component costs are reasonable; and
3. The solar projects are cost-effective additions to FPL's system.

(FPL BR 2, citing the 2016 Agreement approved in Order No. PSC-2016-0560-AS-EI)¹⁶

The witness testified that the annualized jurisdictional revenue requirements for the first 12 months of operations related to the 2019 SoBRA projects are \$51,685,454. (TR 154-155; EXH 39, p. 1; FPL BR 17, 21) Witness Castaneda further stated that the revenue requirement value was calculated by following the methodologies approved by the Commission for FPL's 2017 and 2018 solar base rate projects, which is the same methodology used for the generation base rate adjustments (GBRA) for Turkey Point Unit 5 and West County Energy Center Units 1 and 2 in Order No. PSC-2005-0902-S-EI,¹⁷ West County Energy Center Unit 3 in Order No. PSC-2011-0089-S-EI,¹⁸ and the modernization projects at Canaveral, Riviera Beach, and Port Everglades in Order No. PSC-2013-0023-S-EI.¹⁹ (TR 155)

¹⁶Order No. PSC-2016-0560-AS-EI, issued on December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

¹⁷Order No. PSC-2005-0902-S-EI, issued September 14, 2005, in Docket No. 20050045-EI, *In re: Petition for rate increase by Florida Power & Light Company*, and in Docket No. 20050188-EI, *In re: 2005 comprehensive depreciation study by Florida Power & Light Company*.

¹⁸Order No. PSC-2011-0089-S-EI, issued February 1, 2011, in Docket No. 20080677-EI, *In re: Petition for increase in rates by Florida Power & Light Company*, and in Docket No. 20090130-EI, *In re: 2009 depreciation and dismantlement study by Florida Power & Light Company*.

¹⁹Order No. PSC-2013-0023-S-EI, issued January 14, 2013, in Docket No. 20120015-EI, *In re: Petition for increase in rates by Florida Power & Light Company*.

The jurisdictional annualized revenue requirement calculation for the 2019 SoBRA projects used several inputs, including the most current estimated capital expenditures presented by FPL witness Brannen. (Castaneda, TR 154-157; EXH 39, pp.1-5; Brannen, TR 168-171)

FIPUG

FIPUG did not sponsor a witness to address this issue or specifically address this issue in its post-hearing brief. The FIPUG brief presented broad arguments about its objections to FPL's SoBRA projects, which staff summarized in Issue 2M. (FIPUG BR 1-2)

Analysis

This issue addresses the revenue requirements associated with the 2019 SoBRA projects. Staff believes FPL is authorized to seek recovery of the 2019 SoBRA projects pursuant to the 2016 Agreement.

Staff reviewed the testimony, exhibits, and calculations used by FPL witness Castaneda for determining the amount of revenue requirements associated with the 2019 SoBRA projects and found them to be reasonable. Staff believes the jurisdictional annualized revenue requirements associated with the 2019 SoBRA projects are \$51,685,454.

Conclusion

Staff recommends that the jurisdictional annualized revenue requirements associated with the 2019 SoBRA projects are \$51,685,454.

Issue 2R: What is the appropriate base rate percentage increase for the 2019 SoBRA projects to be effective when all 2019 projects are in service, currently projected to be March 1, 2019?

Recommendation: The appropriate base rate percentage increase (SoBRA Factor) for the 2019 SoBRA projects is 0.795 percent. (Barrett)

Position of the Parties

FPL: The appropriate base rate percentage increase for the 2019 SoBRA Project is 0.795%. The increase is to be effective when the 2019 Project is in service, currently projected to be March 1, 2019.

FIPUG: As the SoBRA projects are neither cost effective nor needed, no new rates should be recovered.

Staff Analysis:

Parties' Arguments

FPL

According to FPL witness Cohen, the SoBRA factors are incremental cost recovery factors that will be applied to base rate charges in order for the Company to collect the revenue necessary to recover the costs associated with building and operating the 2019 SoBRA projects. (TR 182) Witness Cohen testified that the SoBRA factor is equal to the ratio of (1) the Company's jurisdictional revenue requirements for the Project and (2) the forecasted retail base revenue from electricity sales for the first twelve months of operations, expected to begin March 1, 2019. (Cohen, TR 182; FPL BR 18-19) Witness Cohen also presented an exhibit to demonstrate the inputs and calculations performed to determine the resulting incremental cost recovery factor of 0.795 percent for the 2019 SoBRA projects. (EXH 40)

FIPUG

FIPUG did not sponsor a witness to address this issue or specifically address this issue in its post-hearing brief. The FIPUG brief presented broad arguments about its objections to FPL's SoBRA projects, which staff summarized in Issue 2M. (FIPUG BR 1-2)

Analysis

This issue addresses the proposed base rate percentage increase associated with the 2019 SoBRA projects. Staff believes that FPL is authorized to seek recovery of the 2019 SoBRA projects pursuant to the 2016 Agreement, and apply the appropriate base rate percentage increase (SoBRA Factor) when the plants enter commercial service.

Conclusion

Staff reviewed the testimony, exhibits, and calculations used by FPL witness Cohen for determining the appropriate incremental cost recovery factor associated with the 2019 SoBRA projects. Based on this review, staff recommends that the appropriate base rate percentage increase (SoBRA Factor) for the 2019 SoBRA projects is 0.795 percent.

Issue 2S: Should the Commission approve revised tariffs for FPL reflecting the base rate percentage increase for the 2019 SoBRA projects determined to be appropriate in this proceeding?

Recommendation: Yes. The Commission should give staff administrative authority to approve the revised tariff sheets for FPL reflecting the base rate percentage increases for the 2019 SoBRA projects determined to be appropriate in this proceeding. (Guffey, Barrett)

Position of the Parties

FPL: Yes.

FIPUG: No.

Staff Analysis:

Parties' Arguments

FPL

FPL witness Cohen sponsored exhibits that summarize the tariff changes for the 2019 SoBRA projects, which are scheduled to enter into commercial service on March 1, 2019. (TR 181; EXH 42) Witness Cohen testified that the Company will formally notify the Commission by letter of the specific in-service dates for each set of projects, and the base rate changes will become effective on or after that date. (TR 183)

Bill Impact

Based on the approval of stipulations in other issues in this proceeding, new cost recovery factors will be implemented in the first billing cycle of January 2019. Witness Deaton provided testimony and schedules that reflect the three billing changes that customers can anticipate in 2019. Billing changes summarized below are for a residential customer using 1,000 kWh of electricity per month:

1. For the January and February 2019 billing cycles, changes to various cost recovery factors will increase customer bills by a total of \$1.81 per month. (TR 91; EXH 17 (f/k/a, Exhibit RBD-5 (Appendix II – 2019 FCR Projection for January-February), Page 87 of 91).
2. The changes attributable to the 2019 SoBRA projects begin in the March 2019 billing cycle will increase customer bills by a total of \$0.31 per month. (TR 92; EXH 18 (f/k/a, Exhibit RBD-6 (Appendix III – 2019 FCR Projection for March-May), Page 7 of 7).
3. A third change is anticipated for bills in the June 2019 billing cycle, when the proposed Okeechobee Clean Energy Center enters into commercial service.²⁰ This change will increase customer bills by a total of \$0.44 per month. (TR 92; EXH 19 (f/k/a, Exhibit RBD-7 (Appendix IV – 2019 FCR Projection for June-December), Page 7 of 7).

²⁰Paragraph 9 of the 2016 Agreement describes the Okeechobee Unit and the Limited Scope Adjustment for FPL's generating station now known as the Okeechobee Clean Energy Center.

All of these billing change impacts are shown in Table 2S-1 below:

Table 2S-1
FPL's Residential Bill Impact for the period January-December, 2019

| Bill Components | Present (2018) | Proposed in Projection filing (Jan and Feb, 2018) | Change from 2018 | Proposed in Projection filing (March-May, 2019), incl. 2019 SoBRAs | Proposed in Projection filing (June-Dec, 2019), incl. SoBRAs and new power plant |
|------------------------|-----------------------|---|------------------|--|--|
| Base Rate Charges | \$66.88 | \$66.88 | \$0.00 | \$67.41 | \$69.46 |
| Fuel Cost Recovery | \$22.93 | \$24.12 | \$1.19 | \$23.89 | \$22.27 |
| Capacity Cost recovery | \$2.34 | \$2.58 | \$0.24 | \$2.58 | \$2.58 |
| Energy Conservation | \$1.53 | \$1.50 | -\$0.03 | \$1.50 | \$1.50 |
| Environmental | \$1.22 | \$1.59 | \$0.37 | \$1.59 | \$1.59 |
| Storm Restoration | <u>\$1.24</u> | <u>\$1.24</u> | <u>\$0.00</u> | <u>\$1.24</u> | <u>\$1.24</u> |
| Sub-Total | \$96.14 | \$97.91 | \$1.77 | \$98.21 | \$98.64 |
| Gross Receipts Tax | \$2.47 | \$2.51 | \$0.04 | \$2.52 | \$2.53 |
| TOTAL | <u>\$98.61</u> | <u>\$100.42</u> | \$1.81 | <u>\$100.73</u> | <u>\$101.17</u> |

Source: EXH 19 (f/k/a, Exhibit RBD-7 (Appendix IV – 2019 FCR Projections), Page 7 of 7)

FIPUG

FIPUG did not sponsor a witness to address this issue or specifically address this issue in its post-hearing brief. The FIPUG brief presented broad arguments about its objections to FPL's SoBRA projects, which staff summarized in Issue 2M. (FIPUG BR 1-2)

Analysis

This issue addresses approving the tariff filings for the 2019 SoBRA projects. As set forth in the preceding issues, staff observes that FPL's 2016 Agreement states that the issues for determination are limited to three principle considerations:

1. The cost effectiveness of the 2019 Projects, as discussed in Issues 2P.
2. The amount of revenue requirements for the 2019 Projects, as discussed in Issues 2Q.
3. The appropriate percentage increase in base rates needed to recover the revenue requirement amounts identified above. These percentage increases are reflected as recovery factors, as discussed in Issues 2R.

Conclusion

Based on the staff's recommendations in Issues 2P, 2Q, and 2R, staff believes the Commission should give staff administrative authority to approve the revised tariff sheets for FPL reflecting the base rate percentage increases for the 2019 SoBRA projects determined to be appropriate in this proceeding.

Issue 36: Should this docket be closed?

Recommendation: No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and should remain open. (Brownless)

Staff Analysis: While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and should remain open.

Item 7

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (M. Andrews, Perez, Mouring) *M*
Division of Economics (Higgins, McNulty) *ma*
Division of Engineering (Thompson, Ellis) *TW*
Office of the General Counsel (Schrader, J. Crawford) *JS*

RE: Docket No. 20180155-EI – Petition for approval of regulatory assets related to the retirements of Lauderdale Units 4 and 5 and Martin Units 1 and 2, by Florida Power & Light Company. *BSJ ALM*

AGENDA: 12/11/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 1, 2018, the Commission approved Florida Power & Light Company's (FPL or Company) petition for determination of need for the Dania Beach Clean Energy Center (DBEC) Unit 7. The DBEC petition proposed to modernize Lauderdale Plants, by retiring Units 4 and 5 in the fourth quarter of 2018 and replace them in mid-2022 with DBEC Unit 7.¹ In April 2018, FPL included in its annual Ten-Year Site Plan its plan to retire Martin Units 1 and 2 in the fourth quarter of 2018.

¹ Order No. PSC-2018-0150-FOF-EI, issued March 19, 2018, in Docket No. 20170225-EI, *In re: Petition for Determination of Need for Dania Beach Clean Energy Center Unit 7, by Florida Power & Light Company.*

On August 17, 2018, FPL filed the instant Petition seeking approval to create regulatory assets and defer recovery of the amounts related to the retirement of Lauderdale Units 4 and 5 (Lauderdale) and Martin Units 1 and 2 (Martin). At the time of their expected retirements, FPL states that the total unrecovered costs for the Lauderdale and Martin Units are estimated to be \$287 million and \$372 million, respectively.² As proposed, the recovery of the regulatory assets would be deferred until base rates are next reset in a general base rate proceeding.

The Sierra Club is listed as an interested party in this docket. Although it has not officially intervened in this proceeding, the Office of Public Council (OPC) filed a letter dated November 8, 2018, in this docket identifying certain concerns it has with the Petition filed by FPL.

This recommendation addresses FPL's request for authority to create regulatory assets representing the remaining net book value of the Lauderdale and Martin Units at retirement and the Company's request for authority to defer recovery of the regulatory assets until FPL's base rates are next reset in a general base rate proceeding. The Commission has jurisdiction over this matter pursuant to Sections 366.04 and 366.06, Florida Statutes (F.S.).

² Document No. 07145-2018, Staff's Fourth Data Request

Discussion of Issues

Issue 1: Should the Commission approve FPL's request to create regulatory assets related to the retirement of Lauderdale Units 4 and 5 and Martin Units 1 and 2?

Recommendation: Yes, the Commission should approve FPL's request to create regulatory assets related to the retirement of Lauderdale Units 4 and 5 and Martin Units 1 and 2. The approval to record the regulatory assets for accounting purposes does not limit the Commission's ability to review the amounts and recovery period for reasonableness in future proceedings in which the regulatory assets are included for recovery. (M. Andrews, Thompson, Higgins)

Staff Analysis: On August 17, 2018, FPL filed the instant Petition seeking approval to create regulatory assets for the amounts representing the remaining net book value, at retirement, of Lauderdale Units 4 and 5 and Martin Units 1 and 2.

FPL has an ongoing program to modernize its fossil fuel generating units based on cost-effectiveness. By Order No. PSC-2018-0150-FOF-EI, the Commission approved the need for the Dania Beach Clean Energy Center (DBEC).³ The DBEC is essentially a modernization/repowering of FPL's existing Lauderdale Plant. Specifically, the Company is planning to retire Units 4 and 5 at the end of the fourth quarter of 2018 and bring into service Unit 7 in mid-2022. The DBEC Unit 7 modernization project, which includes the retirement of Lauderdale Units 4 and 5, is projected to save FPL customers an estimated \$300 million in cumulative present value of revenue requirements (CPVRR). The CPVRR savings are expected to begin accumulating in 2021.

The retirement of Martin Units 1 and 2 in the fourth quarter of 2018 was included in FPL's 2018 Ten-Year Site Plan provided to the Commission in April 2018. Both units have been in operation for approximately 38 years and are inefficient as compared to the rest of FPL's generating fleet. For example, Martin Units 1 and 2 have average net heat rates of 11,943 and 11,488 British thermal units/kilowatt-hour (BTU/kWh), respectively; whereas, FPL's newest combined cycle (CC) unit has an average net heat rate of 6,699 BTU/kWh. FPL considered whether retiring the units early versus continuing to operate the units through their originally planned retirement date was more economic. The alternatives considered to replace Martin Units 1 and 2 were upgrading the combustion turbine (CT) components of some of FPL's existing CC units, or repowering Martin Units 1 and 2. FPL ultimately determined that upgrading the CT components of some of its existing CC units was the most cost-effective option.

The combined capacity of Martin Units 1 and 2 is 1,626 MW, and FPL expects 1,526 MW of additional capacity from the upgrades to other units. FPL's current resource plan, including the early retirement of Martin Units 1 and 2, upgrades to the CT components of existing CC units, and a short-term purchased power agreement in 2028 is expected to allow FPL to continue to maintain its twenty percent planning reserve margin criteria. FPL would still be capable of maintaining its reserve margin if it were to continue to operate Martin Units 1 and 2; however, FPL states its customers would not benefit from the economic savings associated with retiring the units. The retirement of Martin Units 1 and 2 is expected to result in approximately \$491

³ Id.

million in CPVRR savings to FPL's customers as compared to continuing to operate the units and the savings are expected to begin accumulating in 2019.

In its Petition, FPL estimated a retirement date for Lauderdale Units 4 and 5 of October 1, 2018, and a retirement date for Martin Units 1 and 2 of December 1, 2018. In response to staff's third data request, FPL now estimates that the Lauderdale and Martin Units will be retired on or about December 31, 2018.⁴ According to Revised Attachment KF-1, in its response to staff's fourth data request, FPL states that the unrecovered net book values for the Lauderdale and Martin Units at the time of retirement are estimated to be approximately \$287 million and \$372 million, respectively.⁵ Staff notes that per the Company's most-recent depreciation study filed in 2016, in Docket No. 160062-EI (later consolidated with Docket No. 160021-EI), the expected retirement year for Lauderdale Units 4 and 5 is 2033 and the expected retirement year for Martin Units 1 and 2 is 2031.⁶

Table 1-1 below reflects the estimated plant in service, reserve, and remaining net book value amounts associated with the relevant Lauderdale and Martin Units at the specified dates.

Table 1-1
Net Book Values Associated with Lauderdale Units 4 and 5
and Martin Units 1 and 2

| Plant | Plant in Service | Reserve | Net Book Value |
|--|-------------------------|----------------|-----------------------|
| Plant Lauderdale (as of 12/31/2018) | \$479,165,675 | \$192,128,935 | \$287,036,741 |
| Plant Martin (as of 12/31/2018) | \$778,405,489 | \$406,856,880 | \$371,548,609 |
| Total* | \$1,257,571,164 | \$598,985,815 | \$658,585,350 |

Source: In Response to Staff's Fourth Data Request.
FPL's Revised Attachment KF-1.

* Differences due to rounding

Due to the early retirement of the Lauderdale and Martin Units, certain entries must be made to FPL's books and records. Rule 25-6.0436(6), Florida Administrative Code (F.A.C.), requires the compilation of an annual depreciation status report showing changes to categories of depreciation that will require revision. In addition, Rule 25-6.0436(7)(a), F.A.C., provides that:

⁴ Document No. 07095-2018, Staff's Third Data Request

⁵ Document No. 07145-2018, Staff's Fourth Data Request

⁶ Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*; Docket No. 160061-EI, *In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company*; Docket No. 160062-EI, *In re: 2016 depreciation and dismantlement study by Florida Power & Light Company*; and Docket No. 160088-EI, *In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company*.

Prior to the retirement of major installations, the Commission shall approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

FPL's current depreciation rates authorized in Order No. PSC-2016-0560-AS-EI (2016 Settlement Agreement) are based on retirement years of 2033 for Lauderdale and 2031 for Martin. Therefore, the investment in the Lauderdale and Martin Units will not be fully recovered through the existing depreciation process due to the early retirement of the Units. Thus, staff recommends it is appropriate to create regulatory assets for the amounts representing the remaining net book value of Lauderdale Units 4 and 5 and Martin Units 1 and 2 at retirement. In addition, staff notes that the approval to record the regulatory assets for accounting purposes does not limit the Commission's ability to review the amounts and recovery period for reasonableness in future proceedings in which the regulatory assets are included for recovery.

Issue 2: Should the Commission allow FPL to defer recovery of the Lauderdale and Martin regulatory assets until FPL's base rates are next reset in a future rate proceeding?

Recommendation: No, the Commission should not approve FPL's request to defer recovery of the Lauderdale and Martin regulatory assets to a future general base rate proceeding. FPL should be required to begin amortizing the regulatory assets associated with Lauderdale Units 4 and 5 and Martin Units 1 and 2 upon retirement. The annual amortization amounts should be \$21.5 million for the Lauderdale Units and \$31.9 million for the Martin Units, for both base rate and clause recovery combined. (M. Andrews, Mouring)

Staff Analysis: According to Revised Attachment KF-1, the estimated unrecovered net book value associated with the retirement of Lauderdale Units 4 and 5 is approximately \$287 million. For Martin, in addition to the retirement of Units 1 and 2, the Company is also proposing to retire certain associated transmission facilities. The estimated unrecovered net book value related to the Martin retirement is approximately \$372 million.

In its Petition, FPL states that pursuant to Paragraph 14⁷ of the 2016 Settlement Agreement, the Company is prohibited from requesting an amortization rate during the term of the Agreement, thus the early retirement of these units will require that future revisions be made to the depreciation rates, amortization, and capital recovery schedules. Moreover, because of the specific terms of 2016 Settlement Agreement related to continuing depreciation and amortization rates until base rates are next reset in a general base rate proceeding, FPL argues the creation of a regulatory asset in this instance does not involve deferral of costs that would otherwise be recovered, in part, during the term of the Agreement. Therefore, FPL concludes that creation of regulatory assets and deferral of cost recovery are appropriate in this instance.

FPL cites to Order No. PSC-2016-0361-PAA-EI⁸ which approved Gulf Power Company's (Gulf) request to create a regulatory asset associated with the early retirement of Smith Units 1 and 2 (Smith) and to defer costs and seek recovery through rates at a later time as support for its request. Gulf's request to defer amortization of the Smith regulatory asset related to the early retirement of the Smith Units was approved to begin on January 1, 2018, as part of a settlement agreement approved by Order No. PSC-17-0178-S-EI.⁹

On November 8, 2018, OPC filed a letter in this docket in which it identifies certain issues it has with the proposed treatment of the early retirement of Lauderdale Units 4 and 5 and Martin Units 1 and 2 as proposed by FPL in its Petition. OPC states that it does not object to the early

⁷ Paragraph 14 of FPL's 2016 Settlement Agreement states:

The Parties agree that the provisions of Rules 25-6.0436 and 25-6.04364, F.A.C., pursuant to which depreciation and dismantlement studies are generally filed at least every four years will not apply to FPL and until FPL files its next petition to change base rates. The depreciation rates and dismantlement accrual rates in effect as of the Implementation Date shall remain in effect until FPL's base rates are next reset in a general base rate proceeding.

⁸ Order No. PSC-16-0361-PAA-EI, issued August 29, 2016, in Docket No. 160039-EI, *In re: Petition for approval of regulatory asset related to the retirement of Plant Smith Units 1 and 2, by Gulf Power Company.*

⁹ Order No. PSC-17-0178-S-EI, issued May 16, 2017, in Docket No. 160186-EI, *In re: Petition for rate increase by Gulf Power Company*, and Docket No. 160170-EI, *In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company.*

retirement of the facilities nor the creation of the regulatory assets. However, OPC asserts that FPL's proposed treatment violates the terms and conditions of the 2016 Settlement Agreement.

OPC states that it recognizes that the early retirement of the Lauderdale and Martin Units will trigger the need to establish capital recovery schedules to correct for the associated deficiencies. However, OPC disagrees with FPL that a conflict is created between Paragraph 14 of the 2016 Settlement Agreement and Rule 25-6.0436(7)(a), F.A.C., such that it would require that the recovery of the regulatory assets and determination of amortization be deferred.

OPC argues that FPL should be required to establish capital recovery schedules and begin amortization upon the early retirement dates of Lauderdale Units 4 and 5 and Martin Units 1 and 2. To avoid a violation of the 2016 Settlement Agreement, OPC further asserts that FPL should be required to amortize the regulatory assets associated with Lauderdale Units 4 and 5 and Martin Units 1 and 2 in an amount no less than the amount of depreciation collected annually for these units used to set rates for the 2016 Settlement Agreement.

In this matter, the Commission has the discretion to defer recovery of the regulatory assets as requested by FPL or to order the amortization of the regulatory assets to begin following retirement as proposed by OPC. Rule 25-6.0436(7)(a), F.A.C.,¹⁰ specifies that prior to the retirement of major installations, such as power plants, the Commission shall approve capital recovery schedules to correct associated deficiencies if the retirement of the unit is prudent and the investment will not be recovered through the normal depreciation process. Both FPL and OPC are in agreement that the decision to retire the Lauderdale and Martin Units is prudent and that the investment will not be recovered through the normal depreciation process. Their point of disagreement is when the recovery of the unrecovered net investment should begin.

The language in Paragraph 14 of the FPL 2016 Settlement Agreement and Paragraph 7¹¹ of the Gulf 2013 Settlement Agreement are almost identical with respect to the discussion of depreciation and amortization accrual rates.¹² However, while the language in the settlement agreements is very similar, there are certain nuances that OPC argues distinguish Gulf's request

¹⁰ Rule 25-6.0436(7)(a), F.A.C., states:

Prior to the retirement of major installations, the Commission shall approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

¹¹ Paragraph 7 of Gulf's 2013 Settlement Agreement states:

The depreciation and amortization accrual rates in effect as of the effective date of this Agreement shall remain in effect throughout the Term. The Parties agree that the provisions of Rules 25-6.0436 and 25-6.04364, F.A.C., pursuant to which depreciation and dismantlement studies are filed at least every four years will not apply to the Company during the Term and that the Commission's approval of this Agreement shall excuse the Company from compliance with the filing requirement of these rules during the Term.

¹² Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*; Docket No. 160061-EI, *In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company*; Docket No. 160062-EI, *In re: 2016 depreciation and dismantlement study by Florida Power & Light Company*; and Docket No. 160088-EI, *In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company*, p. 20, and Order No. PSC-13-0670-S-EI, issued December 19, 2013, in Docket No. 130140-EI, *In re: Petition for rate increase by Gulf Power Company*, p. 12.

for deferral of recovery associated with the regulatory asset created for the early retirement of the Smith Units from FPL's request for deferral of recovery associated with the regulatory assets created for the early retirement of the Lauderdale and Martin Units.

While FPL asserts that the decision in the Gulf case supports its request in the instant docket, the Gulf Order states there were extenuating circumstances in the Gulf case that makes its reliance as precedent in the instant case problematic.¹³ For example, representatives of both Gulf and OPC spoke in agreement during the discussion of the Plant Smith item during the Commission Conference held on August 9, 2016. Specifically, both parties agreed that the relief sought by Gulf was unique to the specific circumstances regarding Plant Smith as it relates to obligations under Gulf's 2013 Settlement Agreement. Most notably, the parties shared an understanding that "the early retirement of Plant Smith was contemplated as a possibility during the discussions around the stipulation and is consistent with and contemplated by the stipulation."¹⁴ In effect, the parties came to an understanding on the terms of their shared settlement agreement. Staff is not aware of any such understanding between FPL and OPC that the early retirements of the Lauderdale and Martin Units in the fourth quarter of 2018 were contemplated as possibilities during the discussions that preceded FPL's 2016 Settlement Agreement.

Another concern regarding FPL's assertion that it cannot begin the amortization of the Lauderdale and Martin regulatory assets until base rates are reset in the Company's next base rate proceeding is the fact that FPL is currently amortizing a regulatory asset associated with the early retirement of another power plant that was newly created during the term of this same 2016 Settlement Agreement. The Commission approved a separate settlement agreement between FPL and OPC which allowed FPL to establish a regulatory asset for the remaining net book value of FPL's share of the St. Johns River Power Park (SJRPP) and to commence amortization of the associated base rate portion of the regulatory asset at a date earlier than the next base rate adjustment.¹⁵ Instead of commencing amortization of the base rate portion of the SJRPP regulatory asset at the time FPL's base rates are next reset in a general rate case and continuing thereafter for ten years as proposed by FPL, the parties agreed, and the Commission approved, amortization to begin six months after retirement of the SJRPP facility and continue over a 15-year period.¹⁶ The important point is the amortization of a newly created regulatory asset is not only permitted during the term of the 2016 Settlement Agreement, it is currently occurring for a separate regulatory asset associated with the early retirement of another power plant.

The final point to address concerns the recovery of costs. As both FPL and OPC assert, the goal of Paragraph 14 of the 2016 Settlement Agreement was to hold depreciation and amortization expenses level except for growth during the term of the Agreement. Once the Lauderdale and Martin Units are retired, FPL must cease recording depreciation expense for these assets. The

¹³ Order No. PSC-16-0361-PAA-EI, issued August 29, 2016, in Docket No. 160039-EI, *In re: Petition for approval of regulatory asset related to the retirement of Smith Units 1 and 2, by Gulf Power Company*, p. 3.

¹⁴ Document No. 06708-2016 (Transcript from August 9, 2016, Commission Conference for Docket No. 160039-EI), p.p. 3, 5-6.

¹⁵ Order No. PSC-2017-0415-AS-EI, issued October 24, 2017, in Docket No. 20170123-EI, *In re: Petition for approval of arrangement to mitigate unfavorable impact of St. Johns River Power Park, by Florida Power & Light Company*.

¹⁶ Order No. PSC-2017-0415-AS-EI, p. 6.

2017 depreciation expense associated with these assets is approximately \$53.4 million.¹⁷ OPC asserts that if expenses are reduced as proposed by FPL, the amount of the expense reduction will inure to the benefit of FPL.¹⁸ As such, deferring the recovery of the Lauderdale and Martin regulatory assets in this instance would allow the Company to effectively recover some of the plant costs twice, first through base rates during the period of deferral and again through the amortization of the regulatory assets when the base rates are next reset. In addition, if the regulatory assets are established, FPL will also earn a return on the balances recorded in the regulatory assets. Because there is no requirement to file a general base rate proceeding at the expiration of the minimum term, or December 31, 2020, in the 2016 Settlement Agreement, this extra recovery would go on indefinitely if FPL's Petition is approved as proposed.

Both FPL and OPC are signatories to the 2016 Settlement Agreement. Having had no role in the negotiation of this Agreement, staff is unable to discern the intent of the parties beyond what was memorialized in the Agreement. There is nothing in the 2016 Settlement Agreement that specifically states FPL must defer the amortization of the newly created regulatory assets until the next time base rates are reset. There is also nothing in the Agreement that specifically states that FPL must begin the amortization immediately following the retirement of the units that gave rise to the newly created regulatory assets.

Prior to retirement, the net book value of the Lauderdale and Martin Units of approximately \$659 million is recorded in rate base in the form of net plant and the associated annual depreciation expense of approximately \$53.4 million (based on the 2017 annual amount of depreciation) is recorded on the income statement. Under FPL's proposal, following the retirement of the Units, the net book value of the Lauderdale and Martin Units of approximately \$659 million will continue to be recorded in rate base in the form of regulatory assets but the annual depreciation expense associated with these assets will cease to be recorded on the income statement. Under OPC's proposal, following retirement of the Units, the net book value of the Lauderdale and Martin Units of approximately \$659 million will be recorded in rate base in the form of regulatory assets and approximately \$53.4 million will continue to be recorded on the income statement as annual amortization expense. Under all three scenarios, approximately \$659 million will be recorded in rate base but in only two of the scenarios will the net expense level be left unaffected.

Based on the above, staff recommends that FPL be required to begin amortization of the regulatory assets upon the early retirement dates of Lauderdale Units 4 and 5 and Martin Units 1 and 2. In addition, the annual amortization amounts should be \$21.5 million for the Lauderdale Units and \$31.9 million for the Martin Units, for both base rate and clause recovery combined. These amounts are based on the 2017 actual level of depreciation expense associated with these assets in base rates and clause recovery combined.¹⁹ The 2016 Settlement Agreement requires that, "at such time as FPL shall next file a general base rate proceeding, it shall simultaneously file new depreciation and dismantlement studies and propose to reset depreciation rates and

¹⁷ Document No. 07145-2018, Staff's Fourth Data Request.

¹⁸ FPL is currently earning a return on equity (ROE) of 11.60 percent. This level of earnings is at the top of FPL's authorized ROE range. (FPL September 2018 Earnings Surveillance Report.)

¹⁹ Document No. 07145-2018, Staff's Fourth Data Request

dismantlement accrual rates in accordance with the results of those studies.”²⁰ Thus, at the time FPL files its next depreciation study, in conjunction with its next rate proceeding, this matter can be brought before the Commission to determine if the amortization of these regulatory assets should be adjusted going forward.

²⁰ Order No. PSC-16-0560-AS-EI, p. 26.

Issue 3: 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, this docket should be closed upon the issuance of a consummating order. (Schrader)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.

Item 8

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Bennett, Norris)
Office of the General Counsel (Crawford, Davis) *Boj ALM*

RE: Docket No. 20180005-WS – Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

AGENDA: 12/11/18 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 3/31/19 (Statutory Reestablishment Deadline)

SPECIAL INSTRUCTIONS: None

Case Background

Since March 31, 1981, pursuant to the guidelines established by Section 367.081(4)(a), Florida Statutes (F.S.), and Rule 25-30.420, Florida Administrative Code (F.A.C.), the Commission has established a price index increase or decrease for major categories of operating costs on or before March 31 of each year. This process allows water and wastewater utilities to adjust rates based on current specific expenses without applying for a rate case.

Staff has calculated its proposed 2019 price index by comparing the Gross Domestic Product Implicit Price Deflator Index for the fiscal year ended September 30, 2018. This same procedure has been used each year since 1995 to calculate the price index. The U.S. Department of Commerce, Bureau of Economic Analysis, released its most recent third quarter figures on October 26, 2018.

Docket No. 20180005-WS

Date: November 29, 2018

Since March 31, 1981, the Commission has received and processed approximately 3,663 index applications. The Commission has jurisdiction over this matter pursuant to Section 367.081, F.S.

Discussion of Issues

Issue 1: Which index should be used to determine price level adjustments?

Recommendation: The Gross Domestic Product Implicit Price Deflator Index is recommended for use in calculating price level adjustments. Staff recommends calculating the 2019 price index by using a fiscal year, four quarter comparison of the Implicit Price Deflator Index ending with the third quarter of 2018. (Bennett)

Staff Analysis: In 1993, the Gross Domestic Product Implicit Deflator (GDP) was established as the appropriate measure for determining the water and wastewater price index. At the same time, the convention of using a four quarter fiscal year comparison was also established and this practice has been used every year since then.¹ The GDP is prepared by the U.S. Department of Commerce. Prior to that time, the Gross National Product Implicit Price Deflator Index (GNP) was used as the indexing factor for water and wastewater utilities. The Department of Commerce switched its emphasis from the GNP to the GDP as the primary measure of U.S. production.

Pursuant to Section 367.081(4)(a), F.S., the Commission, by order, shall establish a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available. Since 1995, the price index was determined by using a four quarter comparison, ending September 30, of the Implicit Price Deflator Index in order to meet the statutory deadline. The updated price index was determined by comparing the change in the GDP using the four quarter fiscal year comparison ending September 30, 2018. This method has been used consistently since 1995 to determine the price index.²

In Order No. PSC-2017-0480-PAA-WS, issued December 21, 2017, in Docket No. 20170005-WS, the Commission, in keeping with the practice started in 1993, reiterated the alternatives which could be used to calculate the indexing the utility revenues. Past concerns expressed by utilities, as summarized from utility input in previous hearings, are:

- 1) Inflation should be a major factor in determining the index;
- 2) Nationally published indices should be vital to this determination;
- 3) Major categories of expenses are labor, chemicals, sludge-hauling, materials and supplies, maintenance, transportation, and treatment expense;
- 4) An area wage survey, Dodge Building Cost Index, Consumer Price Index, and the GDP should be considered;

¹Order No. PSC-1993-0195-FOF-WS, issued February 9, 1993, in Docket No. 19930005-WS, *In re: Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.*

²Order No. PSC-1995-0202-FOF-WS, issued February 10, 1995, in Docket No. 19950005-WS, *In re: Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.*

- 5) A broad measure index should be used; and
- 6) The index procedure should be easy to administer.

Based upon these concerns, the Commission has previously explored the following alternatives:

- 1) Survey of Regulated Water and Wastewater Utilities;
- 2) Consumer Price Index;
- 3) Florida Price Level Index;
- 4) Producer Price Index – previously the Wholesale Price Index; and
- 5) GDP (replacing the GNP).

Over the years, the Commission found that the Survey of Regulated Water and Wastewater Utilities should be rejected because using the results of a survey would allow utilities to pass on to customers all cost increases, thereby reducing the incentives of promoting efficiency and productivity. The Commission has also found that the Consumer Price Index and the Florida Price Level Index should be rejected because of their limited degree of applicability to the water and wastewater industry. Both of these price indices are based upon comparing the advance in prices of a limited number of general goods and, therefore, appear to have limited application to water and wastewater utilities.

The Commission further found that the Producer Price Index (PPI) is a family of indices that measure the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller, not the purchaser, and therefore should be rejected. The bases for these indices have not changed, and staff believes that the conclusions reached in Order No. PSC-2017-0480-PAA-WS should continue to apply in this case. Since 1993, the Commission has found that the GDP has a greater degree of applicability to the water and wastewater industry. Therefore, staff recommends that the Commission continue to use the GDP to calculate water and wastewater price level adjustments.

The following information provides a historical perspective of the annual price index:

Table 1-1
Historical Analysis of the Annual Price Index for Water and Wastewater Utilities

| Year | Commission Approved Index | Year | Commission Approved Index |
|-------------|--------------------------------------|-------------|--------------------------------------|
| 2007 | 3.09% | 2013 | 1.63% |
| 2008 | 2.39% | 2014 | 1.41% |
| 2009 | 2.55% | 2015 | 1.57% |
| 2010 | 0.56% | 2016 | 1.29% |
| 2011 | 1.18% | 2017 | 1.51% |
| 2012 | 2.41% | 2018 | 1.76% |

The table below shows the historical participation in the Index and/or Pass-Through programs:

Table 1-2
Percentage of Jurisdictional Water and Wastewater Utilities Filing for Indexes and Pass-Throughs

| Year | Percentage | Year | Percentage |
|-------------|-------------------|-------------|-------------------|
| 2007 | 47% | 2013 | 41% |
| 2008 | 42% | 2014 | 39% |
| 2009 | 53% | 2015 | 49% |
| 2010 | 29% | 2016 | 38% |
| 2011 | 43% | 2017 | 37% |
| 2012 | 30% | 2018 | 42% |

Issue 2: What rates should be used by water and wastewater utilities for the 2019 Price Index?

Recommendation: The 2019 Price Index for water and wastewater utilities should be 2.36 percent. (Bennett)

Staff Analysis: The U.S. Department of Commerce, Bureau of Economic Analysis, released the most recent third quarter 2018 figures on October 26, 2018. Consistent with the Commission's establishment of the 2018 Price Index last year, staff is using the third quarter 2018 amounts to calculate staff's recommended 2019 Price Index. Using the third quarter amounts allows time for a hearing if there is a protest, in order for the Commission to establish the 2019 Price Index by March 31, 2019, in accordance with Section 367.081(4)(a), F.S. The percentage change in the GDP using the fiscal year comparison ending with the third quarter is 2.36 percent. This number was calculated as follows.

| | |
|---|---------------------|
| GDP Index for the fiscal year ended 9/30/18 | 110.645 |
| GDP Index for the fiscal year ended 9/30/17 | <u>108.097</u> |
| Difference | 2.55 |
| Divided by 9/30/17 GDP Index | <u>108.097</u> |
| 2019 Price Index | <u><u>2.36%</u></u> |

Date: November 29, 2018

Issue 3: How should the utilities be informed of the indexing requirements?

Recommendation: Pursuant to Rule 25-30.420(1), F.A.C., the Office of Commission Clerk, after the expiration of the Proposed Agency Action (PAA) protest period, should mail each regulated water and wastewater utility a copy of the PAA order establishing the index containing the information presented in Attachment 1. A cover letter from the Director of the Division of Accounting and Finance should be included with the mailing of the order (Attachment 2). The entire package should also be made available on the Commission's website. (Bennett)

Staff Analysis: Staff recommends that the package presented in Attachment 1 should be mailed to every regulated water and wastewater utility after the expiration of the PAA protest period, along with a copy of the PAA order once final. The entire package should also be made available on the Commission's website.³

In an effort to increase the number of water and wastewater utilities taking advantage of the annual price index and pass-through programs, staff is recommending that the attached cover letter (Attachment 2) from the Director of the Division of Accounting and Finance be included with the mailing of the PAA Order in order to explain the purpose of the index and pass-through applications and to communicate that Commission staff is available to assist them.

³Rule 25-30.420(1), F.A.C. references Form PSC/AFD 15 (4/99). Staff notes that rulemaking is currently in progress to update this form.

Date: November 29, 2018

Issue 4: Should this docket be closed?

Recommendation: No. Upon expiration of the 14-day protest period, if a timely protest is not received, the decision should become final and effective upon the issuance of a Consummating Order. Any party filing a protest should be required to prefile testimony with the protest. However, this docket should remain open through the end of the year and be closed upon the establishment of the new docket on January 7, 2019. (Bennett)

Staff Analysis: Uniform Rule 25-22.029(1), F.A.C., contains an exception to the procedural requirements set forth in Uniform Rule 28-106.111, F.A.C., providing that “[t]he time for requesting a Section 120.569 or 120.57 hearing shall be 14 days from issuance of the notice for PAA orders establishing a price index pursuant to Section 367.081(4)(a), F.S.” Staff, therefore recommends that the Commission require any protest to the PAA Order in this docket be filed within 14 days of the issuance of the PAA Order, and that any party filing the protest should be required to prefile testimony with the protest. Upon expiration of the protest period, if a timely protest is not received, the decision should become final and effective upon the issuance of a Consummating Order. However, this docket should remain open through the end of the year and be closed upon the establishment of the new docket on January 7, 2019.

FLORIDA PUBLIC SERVICE COMMISSION
PRICE INDEX APPLICATION
APPLICABLE TEST YEAR _____

Department of Environmental Protection Public Water System ID NO. _____
Department of Environmental Protection Wastewater Treatment Plant ID NO. _____

| | WATER | WASTEWATER |
|---|---------------|---------------|
| Operation & Maintenance Expenses ¹ | \$_____ | \$_____ |
| LESS: | | |
| (a) Pass-through Items: | | |
| (1) Purchased Power | _____ | _____ |
| (2) Purchased Water | _____ | _____ |
| (3) Purchased Wastewater Treatment | _____ | _____ |
| (4) Sludge Removal | _____ | _____ |
| (5) Other ² | _____ | _____ |
| (b) Rate Case Expense Included in Expenses | _____ | _____ |
| (c) Adjustments to Operation & Maintenance Expenses from last rate case, if applicable: ³ | | |
| (1) _____ | _____ | _____ |
| (2) _____ | _____ | _____ |
| Costs to be Indexed | \$_____ | \$_____ |
| Multiply by Annual Commission-Approved Price Index | <u>2.36</u> % | <u>2.36</u> % |
| Total Indexed Costs | \$_____ | \$_____ |
| Add Change in Pass-Through Items: ⁴ | | |
| (1) _____ | _____ | _____ |
| (2) _____ | _____ | _____ |
| Divide Index and Pass-Through Sum by Expansion Factor for Regulatory Assessment Fees | <u>.955</u> | <u>.955</u> |
| Increase in Revenue | _____ | _____ |
| Divide by Applicable Test Year Revenue ⁵ | \$_____ | \$_____ |
| Percentage Increase in Rates | _____ % | _____ % |
| | ===== | ===== |

FOOTNOTES APPEAR ON THE FOLLOWING PAGE

PAGE 1 FOOTNOTES

¹This amount must match last year's annual report.

²Other expense items may include increases in required Department of Environmental Protection testing, ad valorem taxes, permit fees charged by the Department of Environmental Protection or a local government authority, National Pollutant Discharge Elimination System fees, and regulatory assessment fees. These items should not be currently embedded in the utility's rates.

³This may include adjustments that follow a methodology referenced in the Order from a utility's last rate case (i.e. averaged bad debt expense or excessive unaccounted for water percentage applied to chemicals expense).

⁴This may include an increase in purchased power, purchased water, purchased wastewater treatment, sludge hauling, required Department of Environmental Protection testing, ad valorem taxes, and permit fees charged by the Department of Environmental Protection or a local government authority providing that those increases have been incurred within the 12-month period prior to the submission of the pass-through application. Pass-through National Pollutant Discharge Elimination System fees and increases in regulatory assessment fees are eligible as pass-through costs but not subject to the twelve month rule. All pass-through items require invoices. See Rule 25-30.425, F.A.C. for more information.

⁵If rates changed after January 1 of the applicable test year, the book revenues must be adjusted to show the changes and an explanation of the calculation should be attached to this form. See Annualized Revenue Worksheet for instructions and a sample format.

ANNUALIZED REVENUE WORKSHEET

Have the rates charged for customer services changed since January 1, of the applicable test year?

- () If no, the utility should use actual revenues. This form may be disregarded.
- () If yes, the utility must annualize its revenues. Read the remainder of this form.

Annualizing calculates the revenues the utility would have earned based upon the previous year's customer consumption at the most current rates in effect. To complete this calculation, the utility will need consumption data for the previous year to apply to the existing rate schedule. Below is a sample format which may be used.

CALCULATION OF ANNUALIZED REVENUES* Consumption Data for Applicable Test Year

| | Number of Bill/Gal. Sold | X | Current Rates | Annualized Revenues |
|----------------------|-----------------------------|---|------------------|------------------------|
| Residential Service: | | | | |
| Bills: | | | | |
| 5/8"x3/4" meters | _____ | | _____ | _____ |
| 1" meters | _____ | | _____ | _____ |
| 1 2" meters | _____ | | _____ | _____ |
| 2" meters | _____ | | _____ | _____ |
| Gallons Sold | _____ | | _____ | _____ |

General Service:

| | | | | |
|------------------|-------|--|-------|-------|
| Bills: | | | | |
| 5/8"x3/4" meters | _____ | | _____ | _____ |
| 1" meters | _____ | | _____ | _____ |
| 1 2" meters | _____ | | _____ | _____ |
| 2" meters | _____ | | _____ | _____ |
| 3" meters | _____ | | _____ | _____ |
| 4" meters | _____ | | _____ | _____ |
| 6" meters | _____ | | _____ | _____ |
| Gallons Sold | _____ | | _____ | _____ |

Total Annualized Revenues for the Applicable Test Year \$ _____

*Annualized revenues must be calculated separately if the utility consists of both a water system and a wastewater system. This form is designed specifically for utilities using a base facility charge rate structure. If annualized revenues must be calculated and further assistance is needed, contact the Commission Staff at (850) 413-6900.

AFFIRMATION

I, _____, hereby affirm that the figures and calculations upon which the change in rates is based are accurate and that the change will not cause _____ to exceed the range of its last authorized rate of return on equity, which is _____.
(name of utility)

I, the undersigned/officer of the above-named utility, have read the foregoing and declare that, to the best of my knowledge and belief, the information contained in this application is true and correct.

This affirmation is made pursuant to my request for a price index and/or pass-through rate increase, in conformance with Section 367.081(4), Florida Statutes.

Further, I am aware that pursuant to Section 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 official duty shall be guilty of a misdemeanor of the second degree.

Signature: _____
Title: _____
Telephone Number: _____
Fax Number: _____

Sworn to and subscribed before me this _____ day of _____, 20__.

My Commission expires:

(SEAL)

Notary Public
State of Florida

STATEMENT OF QUALITY OF SERVICE

Pursuant to paragraphs 25-30.420(2)(h) and (i), Florida Administrative Code,

(name of utility)

[] does not have any active written complaints, corrective orders, consent orders, or outstanding citations with the Department of Environmental Protection (DEP) or the County Health Departments.

[] does have the attached active written complaint(s), corrective order(s), consent order(s), or outstanding citation(s) with the DEP or the County Health Department(s). The attachment(s) includes the specific system(s) involved with DEP permit number and the nature of the active complaint, corrective order, consent order, or outstanding citation.

This statement is intended such that the Florida Public Service Commission can make a determination of quality of service pursuant to Section 367.081(4)(a), Florida Statutes, and Rule 25-30.420(4)(a), Florida Administrative Code.

Name: _____

Title: _____

Telephone Number: _____

Fax Number: _____

Date: _____

Pursuant to Section 367.081(4)(a), Florida Statutes, water and wastewater utilities are permitted to adjust the rates and charges to its customers without those customers bearing the additional expense of a public hearing. These adjustments in rates would depend on increases or decreases in noncontrollable expenses subject to inflationary pressures such as chemicals, and other general operation and maintenance costs.

- 14 -

Exception

_____ hereby waives the right to implement
(name of utility)
a pass-through rate increase within 45 days of filing, as provided by Section 367.081(4)(b),
Florida Statutes, in order that the pass-through and index rate increase may both be implemented
together 60 days after the official filing date of this notice of intention.

Signature: _____

Title: _____

(To be used if an index and pass-through rate increase are requested jointly.)

NOTICE TO CUSTOMERS

Pursuant to Section 367.081(4)(b), Florida Statutes, water and wastewater utilities are permitted to pass through, without a public hearing, a change in rates resulting from: an increase or decrease in rates charged for utility services received from a governmental agency or another regulated utility and which services were redistributed by the utility to its customers; an increase or decrease in the rates that it is charged for electric power, the amount of ad valorem taxes assessed against its used and useful property, the fees charged by the Department of Environmental Protection in connection with the National Pollutant Discharge Elimination System Program, or the regulatory assessment fees imposed upon it by the Commission; costs incurred for water quality or wastewater quality testing required by the Department of Environmental Protection; the fees charged for wastewater bio solids disposal; costs incurred for any tank inspection required by the Department of Environmental Protection or a local governmental authority; treatment plant and water distribution system operator license fees required by the Department of Environmental Protection or a local governmental authority; water or wastewater operating permit fees charged by the Department of Environmental Protection or a local governmental authority; and consumptive or water use permit fees charged by a water management district.

On _____, _____ filed its notice of
(date) (name of utility)

intention with the Florida Public Service Commission to increase water and wastewater rates in _____ County pursuant to this Statute. The filing is subject to review by the Commission Staff for accuracy and completeness. Water rates will increase by approximately _____% and wastewater rates by _____. These rates should be reflected on your bill for service rendered on or after _____.

(date)

If you should have any questions, please contact your local utility office. Be sure to have account number handy for quick reference.

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
JULIE I. BROWN
DONALD J. POLMANN
GARY F. CLARK
ANDREW GILES FAY

STATE OF FLORIDA



DIVISION OF
ACCOUNTING AND FINANCE
ANDREW L. MAUREY
DIRECTOR
(850) 413-6900

Public Service Commission

Month Day, 2019

All Florida Public Service Commission
Regulated Water & Wastewater Utilities

Re: Docket No. 20180005-WS - 2019 Price Index

Dear Utility Owner:

Since March 31, 1981, pursuant to the guidelines established by Section 367.081(4)(a), Florida Statutes (F.S.), and Rule 25-30.420, Florida Administrative Code (F.A.C.), the Commission has established a price index increase or decrease for major categories of operating costs. This process allows water and wastewater utilities to adjust rates based on current specific expenses without applying for a rate case. The intent of this rule is to insure that inflationary pressures are not detrimental to utility owners, and that any possible deflationary pressures are not adverse to rate payers. By keeping up with index and pass-through adjustments, utility operations can be maintained at a level sufficient to insure quality of service for the rate payers.

Pursuant to Rule 25-30.420(1)(a), F.A.C., all operation and maintenance expenses shall be indexed with the exception of:

- a) Pass-through items pursuant to Section 367.081(4)(b), F.S.;
- b) Any amortization of rate case expense; and
- c) Disallowances or adjustments made in an applicant's most recent rate proceeding.

Please note that all sludge removal expense should now be removed from operation and maintenance expenses for the purpose of indexing. Incremental increases in this category of expense may now be recovered using a pass-through request.

Date: November 29, 2018

All Florida Public Service Commission
Regulated Water & Wastewater Utilities

Page 2

Month Day, 2019

Upon the filing of a request for an index and/or pass-through increase, staff will review the application and modify existing rates accordingly. If for no other reason than to keep up with escalating costs, utilities throughout Florida should file for this rate relief on an annual basis. Utilities may apply for a 2019 Price Index anytime between April 1, 2019, through March 31, 2020. The attached package will answer questions regarding what the index and pass-through rate adjustments are, how to apply for an adjustment, and what needs to be filed in order to meet the filing requirements. While this increase for any given year may be minor, (see chart below), the long-run effect of keeping current with rising costs can be substantial.

| Year | Annual Commission Approved Index | Year | Annual Commission Approved Index |
|-------------|---|-------------|---|
| 1994 | 2.56% | 2007 | 3.09% |
| 1995 | 1.95% | 2008 | 2.39% |
| 1996 | 2.49% | 2009 | 2.55% |
| 1997 | 2.13% | 2010 | 0.56% |
| 1998 | 2.10% | 2011 | 1.18% |
| 1999 | 1.21% | 2012 | 2.41% |
| 2000 | 1.36% | 2013 | 1.63% |
| 2001 | 2.50% | 2014 | 1.41% |
| 2002 | 2.33% | 2015 | 1.57% |
| 2003 | 1.31% | 2016 | 1.29% |
| 2004 | 1.60% | 2017 | 1.51% |
| 2005 | 2.17% | 2018 | 1.76% |
| 2006 | 2.74% | 2019 | 2.36% |

Please be aware that pursuant to Section 837.06, F.S., 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.

Our staff is available at (850) 413-6900 should you need assistance with your filing. If you have any questions, please do not hesitate to call.

Sincerely,

Andrew L. Maurey
Director

Enclosures

Item 9

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Ellis) *✓ TB*
Office of the General Counsel (Murphy, Weisenfeld) *cm cm for TLT ajw*

RE: Docket No. 20180007-EI – Environmental cost recovery clause.

AGENDA: 12/11/18 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: Decision must be rendered by 12/11/18 in order to implement new environmental factors with the first billing cycle in 2019.

SPECIAL INSTRUCTIONS: None

Case Background

As part of the Florida Public Service Commission's (Commission) continuing environmental cost recovery clause (ECRC) proceedings, the Commission conducted a hearing in this docket on November 5, 2018. The parties resolved all issues by stipulation, except for the Commission's review of Florida Power & Light Company's (FPL or Company) Issues 1 through 4, 7, 10A, and 10B detailed within this recommendation. Issues 1 through 4 and 7 relate to the Turkey Point Cooling Canal Monitoring Plan project (TPCCMP Project), Issue 10A to proposed modifications to the Manatee Temporary Heating System project (MTHS Project), and 10B to proposed modifications to the National Pollutant Discharge Elimination System Permit Renewal Requirements project (NPDES Project).

Docket No. 20180007-EI
Date: November 29, 2018

Testimony on these issues was heard at the November 5, 2018, hearing. On November 16, 2018, FPL, the Office of Public Counsel (OPC), and Southern Alliance for Clean Energy (SACE) filed post-hearing briefs.

The Commission has jurisdiction in this matter pursuant to Section 366.8255, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: What are the final environmental cost recovery true-up amounts for the period January 2017 through December 2017?

Recommendation: The final true-up amount for the period January 2017 through December 2017 for FPL is an over recovery of \$31,560,081. There should be no adjustment to this amount associated with the TPCCMP Project. (Ellis)

Position of the Parties

FPL: \$31,560,081 over-recovery.

OPC: No position.

SACE: The Commission should not approve FPL's request for cost recovery of TPCCMP remediation activities. FPL's negligence in the operation of the CCS led to violations of law and compliance requirements being placed on it. Additionally, FPL is not making timely progress in meeting its compliance requirements. See Issue 3.

Staff Analysis:

Parties' Arguments

FPL

FPL contends that the Company is eligible for cost recovery for the TPCCMP Project expenditures associated compliance activities for the 2015 Consent Agreement (CA) and 2016 Consent Agreement Addendum (CAA) with the Miami-Dade Department of Environmental Resource Management (DERM) and for the 2016 Consent Order (CO) with the Florida Department of Environmental Protection (FDEP), as they were approved in the Commission's Order No. PSC-2018-0014-FOF-EI during the 2017 ECRC proceeding.¹ (FPL BR 1-2, 5-6) FPL argues that the Commission is not the appropriate regulator to determine if remediation objectives are being met in a timely manner, but rather FDEP and DERM are. (FPL BR 6) FPL asserts that the activities for which it seeks recovery are pursuant to the requirements of the CA, CAA, and/or CO and are therefore prudent and reasonable. (FPL BR 7-9) FPL states it is in compliance with the DERM CAA. (FPL BR 9-10)

SACE

SACE contests FPL's recovery of TPCCMP Project expenditures as SACE claims that the Company knew or should have known prior to 1993 that its Turkey Point Plant was causing an underground hypersaline plume. (SACE BR 1, 3) SACE argues that FPL ratepayers should not be responsible for FPL's remediation costs due to the Company's imprudent operation of the Turkey Point Plant. (SACE BR 1, 3-4) SACE contends that FPL has not met its burden of proof

¹Order No. PSC-2018-0014-FOF-EI, issued January 5, 2018, in Docket No. 20180007-EI, *In re: Environmental cost recovery clause*.

to demonstrate projected costs are reasonable. (SACE BR 2, 4) Specifically, SACE argues that FPL is not timely complying with its requirements under the CAA and therefore these costs are not reasonable. (SACE BR 5-7)

Analysis

Final ECRC True-Up Amount

Based on the testimony and exhibits of FPL witness Deaton, FPL's environmental cost recovery true-up amount for 2017 for all programs is \$31,560,081. (TR 22; EXH 13, p. 1) FPL's final total for 2017 expenditures for the TPCCMP Project is approximately \$14.2 million.² (EXH 13, p. 4, 9)

TPCCMP Project Eligibility

The Commission initially approved recovery through the ECRC of FPL's TPCCMP Project in the 2009 ECRC Proceeding.³ Subsequently, the Commission approved recovery of additional costs associated with remediation and mitigation activities as required by various environmental regulators.⁴ As a result, SACE's argument that FPL's ratepayers should not be responsible for any past or projected expenses associated with these activities ignores the Commission's prior decision allowing recovery of reasonable costs for the TPCCMP Project. FPL's actual, estimated, and projected expenditures for the TPCCMP project are tied to remediation and mitigation activities required by its environmental regulators. (TR 285; EXH 14, p. 112; EXH 38, p. 37; EXH 52) While SACE also argues that TPCCMP Project costs are unreasonable based upon the allegation that FPL is not timely complying with its environmental requirements, staff observes that it is not within the Commission's jurisdiction to determine whether or not FPL is in compliance meeting its environmental requirements, but rather that is the role of the environmental regulators. Moreover, staff notes that FPL witness Sole testified that FPL is currently in compliance with the CA, CAA, and CO. (TR 366) Therefore, staff recommends that FPL has demonstrated its actual, estimated, and projected costs, including TPCCMP Project costs, are reasonable and should be allowed for cost recovery.

Conclusion

The final true-up amount for the period January 2017 through December 2017 for FPL is an over-recovery of \$31,560,081. There should be no adjustment to this amount associated with the TPCCMP Project.

²TPCCMP Project costs include \$11,150,044 for operations and maintenance (O&M) and \$3,042,331 in recoverable costs for capital investment, for a total of \$14,192,375.

³Order No. PSC-09-0759-FOF-EI, issued November 18, 2009, in Docket No. 20090007-EI, *In re: Environmental cost recovery clause*.

⁴Order No. PSC-2018-0014-FOF-EI, issued January 5, 2018, in Docket No. 20180007-EI, *In re: Environmental cost recovery clause*.

Issue 2: What are the estimated/actual environmental cost recovery true-up amounts for the period January 2018 through December 2018?

Recommendation: The actual/estimated true-up amount for the period January 2018 through December 2018 for FPL is an under-recovery of \$5,614,420. There should be no adjustment to this amount associated with the TPCCMP Project. (Ellis)

Position of the Parties

FPL: \$5,614,420 under-recovery.

OPC: No position.

SACE: The Commission should not approve FPL's request for cost recovery of TPCCMP remediation activities. FPL's negligence in the operation of the CCS led to violations of law and compliance requirements being placed on it. Additionally, FPL is not making timely progress in meeting its compliance requirements. See Issue 3.

Staff Analysis:

Parties' Arguments

FPL

As discussed in Issue 1, FPL argues it is eligible for cost recovery for costs associated with the TPCCMP Project.

SACE

As discussed in Issue 1, SACE argues that FPL should not be allowed to recover costs for the TPCCMP Project as it engaged in imprudent activity and its projected costs are unreasonable due to the Company being out of compliance with the CAA.

Analysis

Estimated/Actual ECRC True-Up Amount

Based on the testimony and exhibits of FPL witness Deaton, FPL's environmental cost recovery true-up amount for 2018 for all programs is \$5,614,420. (TR 23; EXH 12, p. 1) FPL's actual/estimated total for 2018 expenditures for the TPCCMP Project is approximately \$32.8 million.⁵ (EXH 12, p. 4, 9)

TPCCMP Project Eligibility

As discussed in Issue 1, the Commission has previously approved the inclusion of costs for the TPCCMP Project. Staff recommends that FPL has reasonably demonstrated its activities are associated with the TPCCMP Project and should be allowed for cost recovery.

⁵TPCCMP Project costs include \$28,268,375 for O&M and \$4,504,185 in recoverable costs for capital investment, for a total of \$32,772,560.

Conclusion

The actual/estimated true-up amount for the period January 2018 through December 2018 for FPL is an under-recovery of \$5,614,420. There should be no adjustment to this amount associated with the TPCCMP Project.

Issue 3: What are the projected environmental cost recovery amounts for the period January 2019 through December 2019?

Recommendation: The projected amount for the period January 2019 through December 2019 for FPL is a total of \$187,365,910, which includes projected expenditures associated with the TPCCMP Project. (Ellis)

Position of the Parties

FPL: \$187,365,910.

OPC: No position.

SACE: The Commission should not approve FPL's request for cost recovery of TPCCMP remediation activities. FPL's negligence in the operation of the CCS led to violations of law and compliance requirements being placed on it. Additionally, FPL is not making timely progress in meeting its compliance requirements.

Staff Analysis:

Parties' Arguments

FPL

As discussed in Issue 1, FPL argues it is eligible for cost recovery for costs associated with the TPCCMP Project.

SACE

As discussed in Issue 1, SACE argues that FPL should not be allowed to recover costs for the TPCCMP Project as it engaged in imprudent activity and its projected costs are unreasonable due to the Company being out of compliance with the CAA.

Analysis

Projected ECRC Amount

Based on the testimony and exhibits of FPL witness Deaton, FPL's environmental cost recovery projected amount for 2019 for all programs is \$187,365,910. (TR 31; EXH 14, p. 1) FPL's projected total includes expenditures for the TPCCMP Project of approximately \$24.3 million.⁶ (EXH 14, p. 2, 52)

TPCCMP Project Eligibility

As discussed in Issue 1, the Commission has previously approved the inclusion of costs for the TPCCMP Project. Staff recommends that FPL has reasonably demonstrated its activities are associated with the TPCCMP Project and should be allowed for cost recovery.

⁶TPCCMP Project costs include \$17,735,378 for O&M and \$6,534,008 in recoverable costs for capital investment, for a total of \$24,269,386.

Conclusion

The projected amount for the period January 2019 through December 2019 for FPL is a total of \$187,365,910, which includes projected expenditures associated with the TPCCMP Project.

Issue 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2019 through December 2019?

Recommendation: The projected amount, including true-ups, for the period January 2019 through December 2019 for FPL is a total of \$161,536,472 to be recovered from ratepayers, which includes projected expenditures associated with the TPCCMP Project. (Ellis)

Position of the Parties

FPL: \$161,536,472, including prior period true-up amounts and revenue taxes.

OPC: No position.

SACE: The Commission should not approve FPL's request for cost recovery of TPCCMP remediation activities. FPL's negligence in the operation of the CCS led to violations of law and compliance requirements being placed on it. Additionally, FPL is not making timely progress in meeting its compliance requirements. See Issue 3.

Staff Analysis:

Parties' Arguments

FPL

As discussed in Issue 1, FPL argues it is eligible for cost recovery for costs associated with the TPCCMP Project.

SACE

As discussed in Issue 1, SACE argues that FPL should not be allowed to recover costs for the TPCCMP Project as it engaged in imprudent activity and its projected costs are unreasonable due to the Company being out of compliance with the CAA.

Analysis

Projected ECRC Amount

Based on the testimony and exhibits of FPL witness Deaton, FPL's environmental cost recovery amount, including true-up amounts, is \$161,536,472. (TR 31; EXH 14, p. 1) FPL's expenditures for the period 2017 through 2019 for the TPCCMP Project are approximately \$71.2 million.⁷ (EXH 12, p. 4, 9; EXH 13, p. 4, 9; EXH 14, p. 2, 52)

TPCCMP Project Eligibility

As discussed in Issue 1, the Commission has previously approved the inclusion of costs for the TPCCMP Project. Staff recommends that FPL has reasonably demonstrated its activities are associated with the TPCCMP Project and should be allowed for cost recovery.

⁷TPCCMP Project costs include \$57,153,797 for O&M and \$14,080,524 in recoverable costs for capital investment, for a total of \$71,234,321.

Conclusion

The projected amount, including true-ups, for the period January 2019 through December 2019 for FPL is a total of \$161,536,472 to be recovered from ratepayers, which includes projected expenditures associated with the TPCCMP Project.

Issue 7: What are the appropriate environmental cost recovery factors for the period January 2019 through December 2019 for each rate group?

Recommendation: If the Commission approves staff's recommendation in Issue 4, staff recommends approval of FPL's factors as shown in FPL witness Deaton's Exhibit RBD-4. If the Commission denies staff's recommendation in Issue 4, FPL should file revised factors and associated tariffs implementing the Commission vote for administrative approval by staff. (Ellis)

Position of the Parties

FPL:

| RATE CLASS | Environmental Cost Recovery Factor (cents/kWh) |
|-----------------------------|---|
| RS1/RTR1 | 0.159 |
| GS1/GST1 | 0.157 |
| GSD1/GSDT1/HLFT1 | 0.142 |
| OS2 | 0.086 |
| GSLD1/GSLDT1/CS1/CST1/HLFT2 | 0.139 |
| GSLD2/GSLDT2/CS2/CST2/HLFT3 | 0.121 |
| GSLD3/GSLDT3/CS3/CST3 | 0.121 |
| SST1T | 0.108 |
| SST1D1/SST1D2/SST1D3 | 0.138 |
| CILC D/CILC G | 0.121 |
| CILC T | 0.112 |
| MET | 0.130 |
| OL1/SL1/SL1M/PL1 | 0.035 |
| SL2/SL2M/GSCU1 | 0.113 |
| Total | 0.149 |

OPC: No position.

SACE: For FPL, the factor amount should not include any cost recovery for remediation activities related to the TPCCMP.

Staff Analysis:

Parties' Arguments

FPL

As discussed in Issue 1, FPL argues it is eligible for cost recovery for costs associated with the TPCCMP Project.

SACE

As discussed in Issue 1, SACE argues that FPL should not be allowed to recover costs for the TPCCMP Project as it engaged in imprudent activity and its projected costs are unreasonable due to the Company being out of compliance with the CAA.

Analysis

If the Commission approves staff's recommendation in Issue 4, staff recommends approval of FPL's factors as shown in FPL witness Deaton's Exhibit RBD-4 (EXH 14, p. 131). If the Commission denies staff recommendation in Issue 4, FPL should file revised factors and associated tariffs implementing the Commission vote for administrative approval by staff.

Issue 10A: Should the Commission approve FPL's Petition for Approval of Modification to Manatee Temporary Heating System Project and the recovery of the associated costs through the ECRC pursuant to Section 366.8255, F.S.?

Recommendation: Yes. The Commission should approve FPL's petition and be allowed to recover costs associated with its proposed modification to the MTHS Project as it addresses an environmental requirement triggered after the Company's last rate case. Reasonable costs associated with the project should be allowed to be recovered through the ECRC. (Ellis)

Position of the Parties

FPL: Yes. The PFM MTHS Project is being undertaken in order to comply with PFM's Manatee Protection Plan during periods when PFM is shut down for extended outages or because it is not being economically dispatched. Installation of the proposed MTHS is a cost-effective way to meet PFM's compliance requirement.

OPC: Maybe. The Commission must, nevertheless independently determine that each cost submitted for recovery meets each element of the statutory requirements for recovery through this clause as set out in Section 366.8255, Florida Statutes. FPL has not proven that these costs fully meet the statutory test to the extent it relies on prior approvals of similar types of projects for meeting the Company's burden of proof.

SACE: No position.

Staff Analysis:

Parties' Arguments

FPL

FPL argues that the proposed modifications to the MTHS Project to include an additional heating system at the Plant Fort Myers (Fort Myers). (FPL BR 2, 11-13) FPL asserts that it is required to install a new system as Fort Myers is no longer adequately dispatched during manatee season, risking putting it out of compliance with its environmental requirements. (FPL BR 12-14) FPL argues that the proposed Fort Myers system is eligible for recovery under the ECRC and represents the most cost-effective solution. (FPL BR 14-16)

OPC

OPC agrees that FPL has submitted adequate evidence to meet all the criteria necessary to qualify for recovery through the ECRC on a stand-alone basis. (OPC BR 2, 4) OPC expresses concerns that the Company's filing appears to rely upon the Commission's prior approval of similar projects, instead of independent approval, by including an additional project under the MTHS Project. (OPC BR 1-4)

Analysis

MTHS Project and Proposed Modifications

The Commission initially approved recovery through the ECRC of FPL's MTHS Project in the 2009 ECRC proceeding, addressing the Company's Riviera Beach and Cape Canaveral facilities.⁸ Subsequently, the Commission approved recovery of costs associated with the Port Everglades and Dania Beach facilities in the 2012 and 2017 ECRC proceedings, respectively.⁹

As described by FPL witness Sole, FPL is seeking to recover costs associated with a heating system for Fort Myers to keep water temperatures high enough to maintain a manatee refuge (TR 268-269). The proposed addition includes electric heating equipment and associated intake and pumping systems. (TR 274)

Eligibility Criteria

The ECRC, enacted into law in 1993, provides an investor-owned utility the opportunity to recover the costs associated with changes in environmental regulations between rate cases. The statute authorizes the Commission to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. When the Commission first implemented the provisions of Section 366.8255, F.S., it identified the criteria required to demonstrate eligibility for cost recovery under the ECRC clause:

1. Such costs were prudently incurred after April 13, 1993;
2. The activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year upon which rates are based; and,
3. Such costs are not recovered through some other cost recovery mechanism or through base rates.¹⁰

Pursuant to Section 366.8255, F.S., only the utility's prudently incurred environmental compliance costs are allowed to be recovered through the ECRC.¹¹ Staff notes that its review of the proposed modification to the MTHS Project is based upon the information in the hearing record regarding these specific modifications and whether these modifications independently meet the ECRC criteria and reasonableness tests.

⁸Order No. PSC-09-0759-FOF-EI, issued November 18, 2009, in Docket No. 20090007-EI, *In re: Environmental cost recovery clause*.

⁹Order No. PSC-12-0613-FOF-EI, issued November 16, 2012, in Docket No. 20120007-EI, *In re: Environmental cost recovery clause*. and Order No. PSC-2018-0014-FOF-EI, issued January 5, 2018, in Docket No. 20180007, *In re: Environmental cost recovery clause*.

¹⁰Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 19930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes, by Gulf Power Company*.

¹¹Order No. PSC-05-0164-PAA-EI, issued on February 10, 2005, in Docket No. 20041300-EI, *In re: Petition for Approval of New Environmental Program for Cost Recovery Through Environmental Cost Recovery Clause, by Tampa Electric Company*.

Eligibility Criteria Review

As the proposed modification to the MTHS Project was implemented beginning in 2018, it meets the first criterion. FPL witness Sole states that FPL is not recovering any MTHS Project costs through an alternate mechanism, which addresses the third criterion. (TR 278)

The second criterion is dependent upon timing of the Utility's last rate case and the environmental regulation. FPL's most recent rate case was resolved by a settlement between many parties, including FPL and OPC, and approved by the Commission in Order No. PSC-16-0560-AS-EI.¹² FPL witness Sole identifies the environmental regulation requiring the proposed modification of the MTHS Project as FDEP's Industrial Wastewater Facility Permit (Permit) for Fort Myers, issued January 20, 2016. (EXH 4) The Permit states, in relevant part, "The permittee shall continue compliance with the facility's Manatee Protection Plan approved by [FDEP] on August 18, 1999." (TR 269; EXH 4). This requires FPL to maintain a warm water manatee refuge during mid-November through the end of March annually, unless it endangers the safety or reliability of Fort Myers. (EXH 5) FPL witness Sole argues that operating circumstances have changed since FPL's most recent rate case, effectively triggering the effects of the Permit, due to a combination of scheduled maintenance outages and reductions in the projected economic dispatch of Fort Myers. (TR 270-273) The proposed MTHS Project therefore meets the second criterion.

Regarding the reasonableness of expenditures for the modification to the MTHS Project, FPL evaluated alternatives including operating Fort Myers out of economic dispatch or using a temporary diesel system. (TR 272-273; EXH 36, p. 6) No other available alternative was as cost-effective at meeting the environmental requirement as the proposed system at Fort Myers. Therefore, the costs associated with the modification of the MTHS Project appear reasonable at this time.

Conclusion

The Commission should approve FPL's petition and be allowed to recover costs associated with its proposed modification to the MTHS Project as it addresses an environmental requirement triggered after the Company's last rate case. Reasonable costs associated with the project should be allowed to be recovered through the ECRC.

¹²Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

Issue 10B: Should the Commission approve FPL's Petition for Approval of Modification to National Pollution Discharge Elimination System Permit Renewal Requirement Project and the recovery of the associated costs through the ECRC pursuant to Section 366.8255, F.S.?

Recommendation: No. The proposed modification to the NPDES Project does not meet the threshold requirement of being necessary to comply with environmental regulations as required by Section 366.8255, F.S. Therefore, the Commission should deny recovery of costs through the ECRC at this time. (Ellis)

Position of the Parties

FPL: Yes. It is anticipated that Plant Scherer's renewed NPDES permit will include a limit on copper discharges. Repacking Scherer Unit 4's cooling tower fill medium is a cost-effective way to reduce copper levels.

OPC: No. The Commission must, nevertheless independently determine that each cost submitted for recovery meets each element of the statutory requirements for recovery through this clause as set out in Section 366.8255, Florida Statutes. FPL has not proven that these costs fully meet the statutory test to the extent it relies on prior approvals of similar types of projects for meeting the Company's burden of proof. This project may not be ripe for approval.

SACE: No position.

Staff Analysis:

Parties' Arguments

FPL

FPL states that its proposed modification to the NPDES Project includes the replacement of cooling tower packing material at Plant Scherer Unit 4 (Scherer). (FPL BR 2, 16) FPL asserts that Scherer is likely to be required to limit copper discharge in future environmental permits, and the replacement addressed this concern. (FPL BR 17-19) FPL seeks ECRC recovery of the modifications to the NPDES Project contingent upon the issuance of a future environmental permit including the copper limitation requirement. (FPL BR 20) FPL argues that the modification to the NPDES Project satisfies the requirements of recovery for the ECRC as it is based on an anticipated environmental regulation. (FPL BR 20-21)

OPC

OPC expresses concern that the contingent nature of FPL's request for a modification to the NPDES Project is outside of the scope of Section 366.8255, F.S. (OPC BR 1, 5) OPC objects that the Company's filing appears to rely upon the Commission's prior approval of similarly named projects, instead of independent approval. (OPC BR 5-6, 7-8) OPC argues that the proposed project is significantly different from the prior projects approved under the NPDES Project. (OPC BR 6) OPC also asserts that as the project has already been completed, there is no urgency requiring a contingent approval. (OPC BR 7)

Analysis

NPDES Project and Proposed Modifications

The Commission initially approved recovery through the ECRC of FPL's NPDES Project in the 2011 ECRC proceeding.¹³ The project was focused on complying with then-new FDEP requirements to establish whole effluent toxicity limits and prepare storm water pollution prevention plans. Subsequently, the Commission approved recovery of costs associated with the St. Lucie facility's renewed permit, specifically a requirement to conduct a total residual oxidants plan of study, in the 2012 ECRC proceeding.¹⁴

As described by FPL witness Sole, FPL is seeking to recover costs associated with the replacement of cooling tower packing material at Scherer due to meet anticipated permit conditions. (TR 279) The replacement of cooling tower packing material began in March 2018 and was completed in May 2018. (EXH 14, p. 118) FPL is a joint owner of Scherer and its requested recovery is proportional to its ownership interest in Scherer. (EXH 36, p. 13) FPL initially estimated its portion of costs was \$9 million, but the actual cost was \$7.9 million. (EXH 14, p. 118) FPL witness Deaton notes FPL is not seeking recovery through the ECRC at this time, therefore the cost of the project does not affect FPL's proposed ECRC expenditures discussed above in Issues 3 and 4. (TR 18)

Eligibility Criteria

As discussed in Issue 10A, the criteria required to demonstrate eligibility for cost recovery under the ECRC include whether: (1) costs were prudently incurred after April 13, 1993; (2) the activity is legally required to comply with a governmentally imposed environmental regulation after the Company's last rate case test year; and (3) costs are not recovered through another mechanism or through base rates.¹⁵ Pursuant to Section 366.8255, F.S., only the utility's prudently incurred environmental compliance costs are allowed to be recovered through the ECRC.¹⁶ Staff notes that its review of the proposed modification to the NPDES Project is based upon the information in the hearing record regarding these specific modifications and whether these modifications independently meet the ECRC criteria and reasonableness tests.

Eligibility Criteria Review

As the proposed modification to the NPDES Project was implemented in 2018, it therefore meets the first criterion. FPL witness Deaton states that FPL is not currently seeking recovery of costs associated with the proposed modification to the NPDES Project, and that the Company plans to recover costs in base capital accounts prior to issuance of the revised permit. (TR 18) The

¹³Order No. PSC-11-0553-FOF-EI, issued December 7, 2011, in Docket No. 20110007-EI, *In re: Environmental cost recovery clause*.

¹⁴Order No. PSC-12-0613-FOF-EI, issued November 16, 2012, in Docket No. 20120007-EI, *In re: Environmental cost recovery clause*.

¹⁵Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 19930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes, by Gulf Power Company*.

¹⁶Order No. PSC-05-0164-PAA-EI, issued on February 10, 2005, in Docket No. 20041300-EI, *In re: Petition for Approval of New Environmental Program for Cost Recovery Through Environmental Cost Recovery Clause, by Tampa Electric Company*.

Company requests approval to transfer recovery to the ECRC if the anticipated environmental requirement occurs. (TR 18-19) As such, current base rates are supporting the expenditures associated with the proposed modification to the NPDES Project.

The second criterion is dependent upon timing of the Utility's last rate case and the environmental regulation. As discussed in Issue 10A, FPL's base rates were last established by a settlement by Order No. PSC-16-0560-AS-EI, issued December 15, 2016.¹⁷ The Company describes repacking activities in 2018 as the modification to the NPDES Project to address anticipated permit conditions. (TR 326; EXH 50, NPDES Project petition) FPL witness Deaton specifies that the Company's request is contingent upon a possible outcome of a future permit for Scherer. (TR 18) FPL witness Sole states that there are "indications that there is a probability that there is a concern" regarding copper at Scherer. (TR 338)

Based on the record in this docket, staff recommends that it is premature to approve recovery of the proposed modification to the NPDES Project, as the environmental regulation has not yet been enacted, become effective, or had its effects triggered. Therefore, the proposed modification to the NPDES Project fails the second criterion at this time.

Conclusion

The proposed modification to the NPDES Project does not meet the threshold requirement of being incurred to comply with environmental regulations as required by Section 366.8255, F.S. Therefore, the Commission should deny recovery of costs through the ECRC at this time.

¹⁷Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

Item 10

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: November 28, 2018

TO: Docket Nos. 20180066-WU and 20170200-WU

FROM:  Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 05371-2018 was filed on August 17, 2018, for the August 29, 2018 Commission Conference. As the vote sheet reflects, this item was deferred. This item has been placed on the December 11, 2018 Commission Conference Agenda.

/css

RECEIVED-FPSC
2018 NOV 29 AM 10:28
COMMISSION
CLERK

State of Florida



FILED 8/17/2018
DOCUMENT NO. 05371-2018
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: August 17, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (O. Wooten, Ellis) *OWE TB*
Division of Accounting and Finance (Andrews, Fletcher, Norris) *ALM*
Division of Economics (Bethea) *TB PD JSH BOG*
Office of the General Counsel (J. Crawford, Dziechciarz, DuVal) *TRAD TR JSC*

RE: Docket No. 20180066-WU – Application for transfer of facilities of Kincaid Hills Water Company and Water Certificate No. 555-W to Gator Waterworks, Inc.

Docket No. 20170200-WU – Initiation of show cause proceedings against Kincaid Hills Water Company, in Alachua County, for noncompliance with Sections 350.113, 350.117, 367.121, and 367.145, Florida Statutes, and Rules 25-30.110, 25-30.120, 25-30.355, and 25-22.032, Florida Administrative Code.

AGENDA: 08/29/18 – Regular Agenda – Proposed Agency Action for Issue 2 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 12, 2018, Gator Waterworks, Inc. (Gator Waterworks or Buyer) filed an application for a transfer of Certificate No. 555-W from Kincaid Hills Water Company (Kincaid, Utility, or Seller) in Alachua County. According to the Utility's 2016 Annual Report, Kincaid is a Class C utility serving approximately 324 water customers.

Docket No. 20180066-WU, 20170200-WU
Date: August 17, 2018

Kincaid has been providing service to customers since 1965. On June 30, 1992, the Board of County Commissioners of Alachua County adopted a resolution declaring water and wastewater utilities in that county shall become subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes (F.S). On July 13, 1993, the Florida Public Service Commission (Commission) granted the Utility its grandfather Certificate No. 555-W for water by Order No. PSC-93-1027-FOF-WU.¹

Docket No. 20170200-WU was established on September 7, 2017 to initiate a show cause proceeding against Kincaid for noncompliance with Sections 350.113, 350.117, 367.121, and 367.145, F.S., and Rules 25-30.110, 25-30.120, 25-30.355, and 25-22.032, Florida Administrative Code (F.A.C.). By Order No. PSC-2017-0470-PCO-WU, issued December 15, 2017, the Commission directed Commission staff to initiate certificate revocation proceedings against Kincaid, consistent with Chapter 120 and Section 367.161, F.S.² On February 27, 2018, Commission staff received notice, by email, from Gator Waterworks that it acquired Kincaid on February 23, 2018.³ Also, on February 27, 2018, the Commission received a payment of \$38,698.08 from Gator Waterworks which resolved Kincaid's outstanding Regulatory Assessment Fees (RAFs), the associated penalties, and the penalties associated with Kincaid's late-filed annual reports.⁴

Docket No. 20180066-WU was established on March 12, 2018, when Gator Waterworks filed an application with the Commission for transfer of facilities and Water Certificate No. 555-W from Kincaid to Gator Waterworks. On March 20, 2018, Gator Waterworks filed a request to hold the certificate revocation proceedings in abeyance until such time as the Commission makes its ruling on the transfer application.⁵ By Order No. PSC-2018-0166-PCO-WU, issued March 27, 2018, Gator Waterworks' request for abeyance was granted.⁶

This recommendation addresses the transfer of the water system, the net book value of the water system at the time of the transfer, the need for an acquisition adjustment and the resolution of the show cause proceedings. The Commission has jurisdiction pursuant to Sections 367.071, 367.091 and 367.161 F.S.

¹ Docket No. 19921195-WU, *In re: Application for certificate to provide water service in Alachua County under grandfather rights by Kincaid Hills Water Company.*

² Order No. PSC-2017-0470-PCO-WU, issued December 15, 2017, in Docket No. 20170200-WU, *In re: Initiation of show cause proceedings against Kincaid Hills Water Company, in Alachua County, for noncompliance with Sections 350.113, 350.117, 367.121, and 367.145, Florida Statutes, and Rules 25-30.110, 25-30.120, 25-30.355, and 25-22.032, Florida Administrative Code.*

³ See Document No. 02094-2018, filed in Docket No. 20170200-WU.

⁴ Id.

⁵ See Document No. 02417-2018, filed in Docket Nos. 20170200-WU and 20180066-WU.

⁶ Order No. PSC-2018-0166-PCO-WU, issued March 27, 2018, in Docket No. 20170200-WU, *In re: Initiation of show cause proceedings against Kincaid Hills Water Company, in Alachua County, for noncompliance with Sections 350.113, 350.117, 367.121, and 367.145, Florida Statutes, and Rules 25-30.110, 25-30.120, 25-30.355, and 25-22.032, Florida Administrative Code.*

Discussion of Issues

Issue 1: Should the transfer of Certificate No. 555-W in Alachua County from Kincaid Hills Water Company to Gator Waterworks, Inc. be approved?

Recommendation: Yes. The transfer of the water system and Certificate No. 555-W is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the Buyer's certificate and should be retained by the Buyer. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475, F.A.C. Gator Waterworks should be responsible for filing the 2018 Annual Report, all future annual reports, and RAFs subsequent to the date of closing. (O. Wooten, Andrews, Bethea)

Staff Analysis: On March 12, 2018, Gator Waterworks filed an application for the transfer of Certificate No. 555-W from Kincaid to Gator Waterworks pursuant to Rule 25-30.037, F.A.C. The application is in compliance with Section 367.071, F.S., and Commission rules concerning applications for transfer of certificates.

Noticing, Territory, and Land Ownership

Gator Waterworks provided notice of the application pursuant to Section 367.071, F.S., and Rule 25-30.030, F.A.C. No objections to the transfer were filed, and the time for doing so has expired. The application contains a description of the waster service territory which is appended to this recommendation as Attachment A. The application contains a copy of a warranty deed agreement that was executed on February 20, 2018, as evidence that Gator Waterworks owns or has rights to long-term use of the land upon which the water treatment facilities are located pursuant to Rule 25-30.037(2)(s), F.A.C.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(i), and (j), F.A.C., the application contains a statement regarding financing and a copy of the Purchase Agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. The Seller retained the customer deposits for appropriate disposition. There are no developer agreements or customer advances that must be disposed of with regard to the transfer. According to the purchase agreement, the total purchase price for the assets is \$82,500. An appropriate portion of this purchase price equal to unpaid past due RAFs, fines, and interest was paid to the Commission at the date of closing. An appropriate portion of this purchase price equal to the unpaid property taxes due to Alachua County was paid to Alachua County at the date of closing. Eighty percent of the remaining purchase price was paid to the Seller at the date of closing with 20 percent of the remaining purchase price to be paid to the Seller after Commission approval of the transfer. According to the Buyer, the sale took place on February 23, 2018, subject to Commission approval, pursuant to Section 367.071(1), F.S.

Facility Description and Compliance

The water treatment system consists of two wells, with a pair of hydropneumatic tanks rated at 3,100 and 5,000 gallons, a contact storage tank rated at 1,000 gallons and uses hypo-chlorination for disinfection. The distribution system consists of 17,000 feet of 2 inch Galvanized Iron Pipe (GIP), 3,800 feet of 3 inch GIP, 3,400 feet of 4 inch GIP and 5,200 feet of 6 inch asbestos-cement pipe. The last sanitary survey of the facility was conducted on April 29, 2016, by the Department of Environmental Protection (DEP). There was one deficiency noted, which has been corrected. On December 22, 2016, the DEP deemed the Utility was in compliance with applicable rules.

Technical and Financial Ability

Pursuant to Rule 25-30.037(2)(l), F.A.C., the application contains statements describing the technical and financial ability of Gator Waterworks to provide service to the proposed service area. The application states that the President, Gary Deremer, has over 29 years of Florida related water and wastewater industry experience with previous private utility ownership of five utility systems. Further, the application indicates that the President has secured the services of U.S. Water Services Corporation to provide contract operating service, as well as, billing and collection services. Pursuant to Rule 25-30.037(2)(l), F.A.C., the application contains statements describing the financial ability of Gator Waterworks to provide service to the proposed service area. According to the application, the Buyer has acquired the assets of the Utility. Staff also reviewed the personal financial statements of the primary shareholder, which is the President.⁷ Based on the above, staff believes the Buyer has demonstrated the financial ability to provide service to the existing service territory.

Rates and Charges

The Utility's rates, charges, and customer deposits were approved in the original grandfather certificate in 1993.⁸ The rates were subsequently amended through three price index increases. The Utility's existing rates are shown on Attachment B. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission. Therefore, staff recommends that the Utility's existing rates and charges remain in effect until a change is authorized by this Commission in a subsequent proceeding.

Regulatory Assessment Fees and Annual Reports

Staff has verified that the Utility is current on the filing of RAFs through February 23, 2018. The Seller is responsible for filing the 2017 Annual Report. However, the filing is currently delinquent, and the Seller has not responded to two certified letters regarding the delinquency. The Buyer has indicated that it does not possess the records required to prepare the 2017 Annual Report.

The purpose of the annual report filing requirement is to monitor earnings and gather information. The RAFs due for the year 2017 were based on estimated earnings and were paid in full by the Buyer. Staff believes that the absence of the 2017 Annual Report will not impair the

⁷ Document No. 05042-2018 (Confidential), in Docket No. 20180066-WU.

⁸ Order No. PSC-93-1027-FOF-WU, issued July 13, 1998, in Docket No. 19921195-WU, *In re: Application for certificate to provide water service in Alachua County under grandfather rights by Kincaid Hills Water Company.*

Commission from fulfilling its obligation to ensure safe and reliable utility service, and the 2017 RAFs have already been paid. Therefore, it is not crucial that the Commission obtain the 2017 Annual Report. The Commission has previously not enforced this requirement for a utility in a similar situation.⁹ Accordingly, staff recommends the Commission not seek enforcement of the annual report requirement for the year 2017. The Buyer will be responsible for filing Gator Waterworks' 2018 and subsequent annual reports and paying RAFs from February 23, 2018, and all future years.

Conclusion

Staff recommends the transfer of the water system and Certificate No. 555-W is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the Buyer's certificate and should be retained by the Buyer. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475, F.A.C. Gator Waterworks should be responsible for filing the 2018 Annual Report, all future annual reports, and RAFs subsequent to the date of closing.

⁹ Order No. 24157, issued February 25, 1991, in Docket No. 19900911-WU, *In re: Initiation of show proceeding against Sebring County Estates Water Company in Highlands County for failure to file 1988 annual report in compliance with Rule 25-30.110, F.A.C.*

Issue 2: What is the appropriate net book value for the Gator Waterworks water system for transfer purposes and should an acquisition adjustment be approved?

Recommendation: The net book value of the water system for transfer purposes is \$63,321 as of February 23, 2018. An acquisition adjustment should not be included in rate base. Within 90 days of the date of the final order, Gator Waterworks should be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in Gator Waterworks' 2018 Annual Report when filed. (D. Andrews)

Staff Analysis: Rate base has never been established for this Utility. Audit staff was able to obtain the Seller's 1993 1120S Federal Tax Return. Thus, staff used the December 31, 1992, amounts for utility plant in service and accumulated depreciation beginning balances. The purpose of establishing net book value (NBV) for transfers is to determine whether an acquisition adjustment should be approved. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of February 23, 2018. Staff's recommended NBV, as described below, is shown on Schedule No. 1.

Utility Plant in Service (UPIS)

The Buyer's plant value in its application for transfer reflected a water UPIS balance of \$454,492. Staff reviewed UPIS additions since the 1993 tax return and has decreased UPIS by \$73,593 to reflect unsupported plant additions. Therefore, staff recommends that the Utility's UPIS balance as of February 23, 2018, should be \$380,899.

Land

The Buyer's application for transfer reflected a land balance of \$14,000. In a warranty deed between Sheldon A. Brook, grantor, and Kincaid Hills Water Company, grantee, dated October 5, 1982, the documentary stamps supported \$8,000 for utility land. There have been no additions to land purchased since that deed was granted. Therefore, staff has decreased land by \$6,000. Staff recommends a land balance of \$8,000, as of February 23, 2018.

Accumulated Depreciation

The Buyer's application for transfer reflected an accumulated depreciation balance of \$342,780. Based on the UPIS adjustment discussed earlier, staff calculated the appropriate accumulated depreciation balance to be \$288,095. As a result, accumulated depreciation should be decreased by \$54,685 to reflect an accumulated depreciation balance of \$288,095 as of February 23, 2018.

Contributions-in-Aid-of-Construction (CIAC) and Accumulated Amortization of CIAC

As of February 23, 2018, the Buyer's application for transfer reflected a CIAC balance of \$0 and an accumulated amortization of CIAC balance of \$0. The CIAC balance should be increased by \$156,085, and the accumulated amortization of CIAC balance should be increased by \$125,376, per Rule 25-30.570, F.A.C. This rule states that if the amount of CIAC has not been recorded on the utility's books and the utility does not submit competent substantial evidence as to the

amount of CIAC, the amount of CIAC shall be imputed to be the proportion of the cost of the facilities and plant attributable to the water transmission and distribution system.

Additionally, the CIAC balance should be increased by \$9,600. Order No. PSC-1993-1027-FOF-WU approved service availability charges of \$75 for tap-in fees, \$75 for meter installations, and \$450 for plant capacity charges for a total of \$600. Audit staff scheduled customer activity as shown in the annual reports from 1992 through 2016, and noted that the customer count grew by 16 customers from December 31, 1992 to December 31, 2007. After 2007, the customer count diminished over time. Audit staff determined a balance of \$9,600 ($\600×16) for CIAC, and calculated a balance of \$2,826 for accumulated amortization of CIAC using a composite rate of 2.5 percent as of February 23, 2018. Rule 25-30.570, F.A.C. relates to the imputation of CIAC based on the premise that the developer donated the transmission and distribution system when it was transferred. Cash CIAC collected from service availability charges is unrelated to the cost of the transmission and distribution system. Thus, cash CIAC should also be recognized for the tap-in fees, meter installations, and plant capacity charges. As such, staff increased CIAC by \$165,685 ($\$156,085 + \$9,600$) and accumulated amortization of CIAC by \$128,202 ($\$125,376 + \$2,826$) to reflect the appropriate balances. Therefore, staff recommends a CIAC balance of \$165,685 and an accumulated amortization of CIAC balance of \$128,202 as of February 23, 2018.

Net Book Value

The Buyer's application for transfer reflected a NBV of \$125,712. Based on the adjustments described above, staff recommends that the NBV is \$63,321. Staff's recommended NBV and the National Association of Regulatory Utility Commissioners, Uniform System of Accounts (NARUC USOA) balance for UPIS and accumulated depreciation as of February 23, 2018, are shown on Schedule No. 1.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of the acquisition. The Utility and its assets were to be purchased for \$82,500. However, the contract for sale stated that the "final purchase price will be determined by any change in Rate Base as determined by the FPSC during the approval of transfer application. The final purchase price will be adjusted for any reductions to the approved Rate Base as determined by the FPSC." As stated above, staff has determined the appropriate NBV total to be \$63,321. Therefore, the Utility and its assets were purchased for \$63,321. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment may be appropriate when the purchase price is greater than the NBV, and a negative acquisition adjustment may be appropriate when the purchase price is less than NBV. However, pursuant to Rule 25-30.0371(2), F.A.C., a positive acquisition adjustment shall not be included in rate base unless there is proof of extraordinary circumstances. The Buyer did not request a positive acquisition adjustment. As such, staff recommends that no positive acquisition adjustment be approved.

Conclusion

Based on the above, staff recommends that the NBV of Kincaid Hills water system for transfer purposes is \$63,321 as of February 23, 2018. No acquisition adjustment should be included in rate base. Within 90 days of the date of the final order, the Buyer should be required to notify the

Docket No. 20180066-WU, 20170200-WU
Date: August 17, 2018

Issue 2

Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in Gator Waterworks' 2018 Annual Report when filed.

Issue 3: Should the show cause proceeding against Kincaid Hills Water Company be dismissed, and Docket No. 20170200-WU, be closed?

Recommendation: Yes. If the Commission approves Gator Waterworks, Inc.'s transfer application, then the show cause proceeding against Kincaid Hills Water Company should be dismissed and Docket No. 20170200-WU should be closed. (Dziechciarz, DuVal)

Staff Analysis: By Order No. PSC-2017-0470-PCO-WU, issued December 15, 2017, the Commission ordered Docket No. 20170200-WU to remain open until certificate revocation proceedings were initiated. Gator Waterworks' acquisition of Kincaid negates the need for a certificate revocation proceeding. Therefore, if the Commission approves staff's recommendation in Issues 1 and 2, then the show cause proceeding against Kincaid Hills Water Company should be dismissed and Docket No. 20170200-WU should be closed.

Conclusion

If the Commission approves Gator Waterworks, Inc.'s transfer application, then the show cause proceeding against Kincaid Hills Water Company should be dismissed and Docket No. 20170200-WU should be closed.

Issue 4: Should these dockets be closed?

Recommendation: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and these dockets should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision, and proof that appropriate noticing has been done pursuant to Rule 25-30.4345, F.A.C. (J. Crawford)

Staff Analysis: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and these dockets should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision and proof that appropriate noticing has been done pursuant to Rule 25-30.4345, F.A.C.

Gator Waterworks, Inc.
Water Territory Description
Alachua County

Alachua County, Florida, Kincaid Hills

The following described lands located in portions of Sections 11 and 12, Township 10-South, Range 20-East, Alachua County, Florida:

Kincaid Road Subdivision - A subdivision lying within the southwest one-quarter of Section 11, Township 10 South, Range 20 East; encompassed within the boundary commencing 2,280 feet north of the southwest corner of Section 11, Township 10 South, Range 20 East and on the eastern side of Florida Highway S-329A; thence running 1,880 feet east (to Southeast 33rd St.); thence running 600 feet south (to Southeast 18th Ave.); thence running 570 feet east (to Southeast 35th Street); thence running 600 feet south (to Southeast 21st Ave.); thence running 2450 feet west to Florida Highway S-329A; thence running 600 feet north (to Southeast 18th Ave.).

Devonshire Hills Subdivision - A subdivision lying within the northeast one-quarter of Section 11, Township 10 South, Range 20 East; encompassed within the boundary commencing at the point that is 600 feet northwest of the point on the western boundary of Section 12, Township 10 South, Range 20 East where it intersects Florida Highway 20; thence running 1,310 feet south (to Southeast 18th Ave.); thence running 1,100 feet east; thence running 300 feet north (to Southeast 17th Ave.); thence running 550 feet west (to Southeast 37th St.); thence running 540 feet north (to Southeast 15th Ave.); thence running 200 feet west (to Southeast 36th St.); thence running 560 feet north to Florida Highway 20; thence running 200 feet northwest along, and south of, Florida Highway 20.

Kreftwood Estates Subdivision - A subdivision lying within the southwest one-quarter of Section 12, Township 10 South, Range 20 East; encompassed within the boundary commencing at the southwest corner of Section 12, Township 10 South, Range 20 East; thence running 1,800 feet north to Florida Highway 20; thence running 750 feet southeast along the southern side of Florida Highway 20 to the northwest corner of the Shady Lawn subdivision (described below); thence running 1,350 feet south to Section 13, Township 10 south, Range 20 East; thence running 575 feet west to the southwest corner of Section 12, Township 10 South, Range 20 East.

Shady Lawn Estates - A subdivision lying within the southwest one-quarter of Section 12, Township 10 South, Range 20 East; encompassed within the boundary commencing at the northeast corner of the Kreftwood Estates subdivision (described above); thence running 750 feet southeast along the southern side of Florida Highway 20; thence running 1,200 feet south to Section 13, Township 10 South, Range 20 East; thence running 575 feet west to the southeast corner of the Kreftwood Estate subdivision (described above).

FLORIDA PUBLIC SERVICE COMMISSION

**Authorizes
Gator Waterworks, Inc.
Pursuant to
Certificate Number 555-W**

To provide water service in Alachua County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

| <u>Order Number</u> | <u>Date Issued</u> | <u>Docket Number</u> | <u>Filing Type</u> |
|---------------------|--------------------|----------------------|-------------------------|
| PSC-93-1027-FOF-WU | 07/13/1993 | 921195 -WU | Grandfather Certificate |
| * | * | 20180066-WU | Transfer of Certificate |

*** Order Numbers and dates to be provided at time of issuance**

**Kincaid Hills Water Company
Monthly Water Rates**

Residential and General Service

| | |
|--|--------|
| Base Facility Charge - All Meter Sizes | \$6.94 |
| Charge per 1,000 Gallons - Residential and General Service | \$0.92 |

Initial Customer Deposits

| | |
|--|---------|
| Residential and General Service - All Meters | \$25.00 |
|--|---------|

Miscellaneous Service Charges

| | Business Hours | After Hours |
|--|----------------|-------------|
| Initial Connection Charge | \$20.00 | \$30.00 |
| Normal Reconnection Charge | \$20.00 | \$30.00 |
| Violation Reconnection Charge | \$40.00 | \$50.00 |
| Premises Visit Charge (in lieu of disconnection) | \$20.00 | \$30.00 |
| Late Payment Charge | | \$2.00 |

Service Availability Charges

| | |
|----------------------------|-------------|
| Customer Connection Charge | \$75.00 |
| Main Extension Charge | Actual Cost |
| Meter Installation Charge | \$75.00 |
| Plant Capacity Charge | \$450.00 |

**Kincaid Hills Water Company Water System Schedule
Water System
Schedule of Net Book Value as of February 23, 2018**

| Description | Balance Per | Adjustments | Staff |
|--------------------------|--------------------|--------------------|-----------------------|
| | Utility | | Recommendation |
| Utility Plant in Service | \$454,492 | (\$73,593) | \$380,899 |
| Land & Land Rights | 14,000 | (6,000) | 8,000 |
| Accumulated Depreciation | (342,780) | 54,685 | (288,095) |
| CIAC | 0 | (165,685) | (165,685) |
| Amortization of CIAC | <u>0</u> | <u>128,202</u> | <u>128,202</u> |
| Total | <u>\$125,712</u> | <u>(\$62,391)</u> | <u>\$63,321</u> |

**Explanation of Staff's Recommended
Adjustments to Net Book Value as of February 23, 2018
Water System**

| Explanation | Amount |
|--|--------------------|
| A. Utility Plant in Service | |
| To relect appropriate amount of utility plant in service. | <u>(\$73,593)</u> |
| B. Land & Land Rights | |
| To reflect appropriate amount of land & land rights. | <u>(\$6,000)</u> |
| C. Accumulated Depreciation | |
| To reflect appropriate amount of accumulated depreciation. | <u>\$54,685</u> |
| D. Contributions-in-Aid-of-Construction (CIAC) | |
| To reflect appropriate CIAC. | <u>(\$165,685)</u> |
| E. Accumulated Amortization of CIAC | |
| To reflect appropriate amount of accumulated amortization of CIAC. | <u>\$128,202</u> |
| Total Adjustments to Net Book Value as of February 23, 2018. | <u>(\$62,391)</u> |

**Kincaid Hills Water Company
Water System**

Schedule of Staff Recommended Account Balances as of February 23, 2018

| Account | | | Accumulated |
|----------------|-----------------------------------|-------------------------|---------------------------|
| No. | Description | UPIS | Depreciation |
| 304 | Structures & Improvements | \$6,000 | (\$6,000) |
| 307 | Wells & Springs | 3,800 | (3,800) |
| 309 | Supply Mains | 1,500 | (265) |
| 310 | Power Generation Equipment | 18,300 | (18,300) |
| 311 | Pumping Equipment | 84,254 | (35,149) |
| 320 | Water Treatment Equipment | 2,409 | (1,516) |
| 330 | Distribution Reservoirs | 24,905 | (20,155) |
| 331 | Transmission & Distribution Mains | 156,085 | (125,376) |
| 334 | Meters & Meter Installations | 71,168 | (65,545) |
| 339 | Other Plant And Misc. | 4,000 | (4,000) |
| 340 | Office Furniture & Equipment | 4,528 | (4,039) |
| 343 | Tools, Shop, and Garage Equipment | 1,200 | (1,200) |
| 344 | Lab Equipment | 200 | (200) |
| 345 | Power Operated Equipment | 2,200 | (2,200) |
| 346 | Communication Equipment | 350 | (350) |
| | Total | <u>\$380,899</u> | <u>(\$288,095)</u> |

Item 11

State of Florida



FILED 11/29/2018
DOCUMENT NO. 07292-2018
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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Wright, Ellis) *See [signature] TN*
Office of the General Counsel (Murphy) *See [signature] for Utility*

RE: Docket No. 20160165-SU – Application for staff-assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc.

AGENDA: 12/11/18 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: Per Order No. PSC-2017-0383-PAA-SU, Beaches is required to file copies of the final invoices and cancelled checks for all Phase II pro forma O&M and plant items by December 27, 2018.

SPECIAL INSTRUCTIONS: None

Case Background

ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc. (Beaches or Utility) is a Class C wastewater-only utility operating in Gulf County, Florida. Docket records indicate the Utility serves approximately 316 residential and 4 general service wastewater customers, in addition to 45 prepaid connections. However, Beaches has recently communicated that approximately 76 homes within the Utility's service territory are uninhabitable and are not receiving wastewater service due to storm damage from Hurricane Michael. Water service is provided by the City of Port St. Joe.

Beaches filed its application for a staff-assisted rate case on July 12, 2016. By Order No. PSC-2017-0383-PAA-SU (the PAA Order) issued October 4, 2017, in this docket, the Florida Public

Service Commission (Commission) approved a Phase I revenue requirement and rates.¹ The PAA Order further provided that consideration of Phase II rates is conditioned upon Beaches completing certain pro forma operation and maintenance (O&M) and plant items within 12 months of the issuance of a Consummating Order in this docket and submitting a copy of the final invoices and cancelled checks for all of these projects within 60 days after this period. The Consummating Order was issued on October 27, 2017.² Therefore, the pro forma O&M and plant items were to be completed by October 27, 2018, with their associated documentation to be submitted by December 27, 2018.

The pro forma O&M and plant items consisted of clearing vegetation from retention ponds, purchasing a portable generator and installing electrical hookups to supplement its operation, replacing two lift station pumps and a control panel, purchasing a blower, removing sand and grit from the wastewater treatment plant, and repairing the fencing surrounding the facility. The PAA Order provided that if Beaches encountered any unforeseen events that would impede the completion of the pro forma O&M and plant items, it should immediately notify the Commission in writing.

On October 31, 2018, Beaches notified staff that it would not be able to meet the deadline for completing the Phase II pro forma O&M and plant items. The Utility requested that it be granted an extension until December 26, 2018, to complete the projects, and that it be granted an extension until January 26, 2019, to submit the associated documentation. The Commission has jurisdiction pursuant to Sections 367.081, 367.0814, and 367.121, Florida Statutes.

¹Order No. PSC-2017-0383-PAA-SU, issued October 4, 2017, in Docket No. 20160165-SU, *In re: Application for staff-assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc.*

²Order No. PSC-2017-0417-CO-SU, issued October 27, 2017, in Docket No. 20160165-SU, *In re: Application for staff-assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve Beaches' request for deadline extensions for both completion of its required Phase II pro forma O&M and plant items and for submission of copies of the final invoices and cancelled checks for all of these projects pursuant to Order No. PSC-2017-0383-PAA-SU?

Recommendation: Yes. The Commission should approve Beaches' request for deadline extension to December 26, 2018, for completion of its required Phase II pro forma O&M and plant items. The Commission should also approve Beaches' request for deadline extension to January 26, 2019, for submission of copies of the final invoices and cancelled checks for all of these projects.

Staff Analysis: As discussed in the case background, Beaches' was given until October 27, 2018, to complete Phase II pro forma O&M and plant items and until December 27, 2018, to submit copies of the final invoices and cancelled checks for all of these projects. On October 31, 2018, Beaches notified staff that it would not be able to meet these deadlines due to project completion delays caused by Hurricane Michael. Based on this information, staff recommends Beaches be granted the requested extension as the event resulting in the delay was outside of its control. Once the projects are completed and documentation is provided, staff will verify that the pro forma improvements have been made and will recommend to the Commission the appropriate Phase II revenue requirement and rates.

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: The docket should remain open for a decision by the Commission on the appropriate Phase II revenue requirement and rates.

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Doherty) *RD EDD PD QSH*
Office of the General Counsel (Nieves) *JN JSC*

RE: Docket No. 20180160-EI – Petition for 12-month extension of voluntary solar partnership rider and program, by Florida Power & Light Company.

AGENDA: 12/11/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 60-Day Suspension Date Waived until 12/11/2018

SPECIAL INSTRUCTIONS: None

2018 NOV 29 AM 9:43
COMMISSION CLERK
RECEIVED-FPSC

Case Background

On August 31, 2018, Florida Power & Light Company (FPL) filed a petition for a one-year extension of its Voluntary Solar Partnership (VSP) program and associated tariff. The VSP program was first approved in Order No. PSC-14-0468-TRF-EI (initial VSP order) as a pilot program that would terminate on December 31, 2017.¹ Due to the time needed for FPL to complete billing system modifications, the billing of VSP program participants for the monthly \$9 charge did not start until May 2015. In Order No. PSC-2017-0499-TRF-EI, the Commission approved a one-year extension (from December 31, 2017 to December 31, 2018) to allow FPL to

¹ Order No. PSC-14-0468-TRF-EI, issued August 29, 2014, in Docket No. 140070-EI, *In re: Petition for approval of voluntary solar partnership pilot program and tariff, by Florida Power & Light Company.*

gather additional data regarding the durability of customer interest over a more substantial period of time.²

The VSP program offers all FPL customers an opportunity, for \$9 per month, to participate voluntarily in a program designed to contribute to the construction and operation of solar photovoltaic generation facilities located in communities throughout FPL's service territory. FPL markets the VSP program to its customers as FPL SolarNow. Customers may enroll or cancel their enrollment at any time. FPL's proposed tariff revision, as shown in Attachment A to the recommendation, changes the termination date for service under the VSP program from December 31, 2018 to December 31, 2019. The Commission has approved similar community solar tariffs for Gulf Power Company³ and Duke Energy Florida.⁴

FPL waived the 60-day file and suspend provision of Section 366.06(3), Florida Statutes (F.S.), until the December 11, 2018 Agenda Conference. During the evaluation of the petition, staff issued two data requests to FPL for which responses were received on October 15, 2018 and November 14, 2018. The Commission has jurisdiction in the matter pursuant to Sections 366.05, 366.06, and 366.075, F.S.

² Order No. PSC-2017-0499-TRF-EI, issued December 29, 2017, in Docket No. 20170212-EI, *In re: Petition for one-year extension of voluntary solar partnership rider and program, by Florida Power & Light Company.*

³ Order No. PSC-16-0119-TRF-EG, issued March 21, 2016, in Docket No. 150248-EG, *In re: Petition for approval of community solar pilot program, by Gulf Power Company.*

⁴ Order No. PSC-2017-0451-AS-EU, issued November 20, 2017, in Docket No. 20170183-EI, *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.*

Discussion of Issues

Issue 1: Should the Commission approve the one-year extension of the VSP program?

Recommendation: Yes. The Commission should approve the one-year extension of the VSP program to allow FPL to complete and evaluate its research regarding how the VSP program and the planned new shared solar program would impact one another. The revised tariff, as shown in Attachment A, should be effective January 1 to December 31, 2019. Prior to the expiration of the VSP program (December 31, 2019), FPL should petition the Commission regarding the future of the VSP program. (Doherty)

Staff Analysis: The VSP program was designed for FPL to use the voluntary customer contributions to support the revenue requirement associated with constructing and operating the solar facilities supported under the program so that non-participants are not required to subsidize these solar facilities. The revenue requirement includes a return, depreciation, operations and maintenance (O&M) expenses, and other costs such as property taxes and insurance. As required by the initial VSP order, marketing and administrative expenses are capped at 20 percent of participant contributions.

The voluntary contributions did not cover the revenue requirement in 2015; however, for 2016 through 2018, FPL showed that the revenues received under the VSP program are greater than the revenue requirement of the solar facilities. Thus, the net impact to all customers has been positive since 2016. FPL projects that the voluntary customer contributions will total \$6,717,000 by December 2018, while the total revenue requirement for the VSP program will total \$5,100,000.⁵ The electricity generated by the solar facilities displaces fuel that otherwise would have been used for generation, resulting in avoided fuel costs. FPL calculated the fuel savings to be \$43,000, resulting in a positive net impact to all customers of \$1,660,000⁶, which will be used to support additional solar facilities under the program.

As discussed in the initial VSP order, FPL is sizing the solar projects supported by the program based on the level of participation. FPL currently has 84 solar structures at 39 locations completed for a total of 1,395 direct current kilowatts (kW) of solar capacity. An additional 53 solar structures are under construction at 22 locations.⁷ FPL stated that the completed and planned solar projects comprise a diverse set of assets, including ground-mount structures, rooftop installations, covered walkways, parking canopies, and tree-like structures. The installation size of the projects ranges from three kW to 200 kW.

The O&M expenses for the VSP program include the land lease payments made to host locations. In response to staff's data request, FPL explained that the solar facilities incurred minimal damage as a result of storms or hurricanes. FPL stated that the solar facilities are being built to comply with the local building and wind codes and there are no specific pre-storm

⁵ Amounts reflect actuals through June 2018 and forecasted data for July 2018 – December 2018. See FPL's response to staff's first set of data request No. 1.

⁶ \$6,717,000 – \$5,100,000 + \$43,000 = \$1,660,000

⁷ FPL provided a complete listing of all completed and planned solar projects in response to staff's first data request, No. 4.

preparations required. FPL ensures the facilities are operational and safe through regular maintenance and inspections.

Table 1-1 below shows the total number of customers participating in the VSP program for the period May 2015 through December 2018. As of August 2018, there are 36,024 participants and FPL projects 40,550 participants by year end. FPL stated that, on average, the monthly new enrollments have more than offset the number of participants who have elected to unsubscribe.

**Table 1-1
VSP Participants**

| | Total Participants (Residential and Commercial) |
|----------------|--|
| May 2015 | 156 |
| May 2016 | 3,070 |
| May 2017 | 19,309 |
| May 2018 | 34,646 |
| August 2018 | 36,024 |
| December 2018* | 40,550 |

Source: FPL response to staff's first and second data requests

*forecasted number

Marketing and Participant Preference

FPL stated that it markets the VSP program through monthly email campaigns, eNewsletters, bill inserts, social media, and flyers. Monthly blogs are used to keep an ongoing dialogue with program participants and the eNewsletters provide project updates to the participants. FPL explained that it has learned the importance of creating ties with the communities and host locations to keep participants' interested and aware of ongoing projects in the area.

Based on feedback from participants, FPL stated that the solar canopies and trees are the participants' preferred solar projects. The solar canopy generates more power and offers the additional function of providing shaded seating and shaded parking lots. The solar trees were well received for their artistic appearance and provision of shade, as well as seating, and serving as a convenient charging station.

FPL's Planned New Shared Solar Program

In last year's petition for a one-year extension of the VSP program (Docket No. 20170212-EI), FPL stated that it is developing, for Commission approval within the next year (2018), a new large scale solar program (shared solar program). The shared solar program would provide participants with direct credits on their electric bill associated with energy generated by the blocks of solar capacity. FPL stated in the instant petition that the reason for the delayed filing for its shared solar program is that FPL needs more time to better assess market support for the new program. In addition, FPL expects to collect additional data on how the new program would impact the existing VSP program and to finalize the design and implementation plans for the shared solar program in 2019.

Specifically, FPL stated that it will be examining three areas: (1) the market potential for each program, (2) which aspects of each program appeal to various customer groups, and (3) whether introducing the shared solar program could cause customers to migrate out of the VSP program and, if so, at what rates. This research will assist FPL in making an informed recommendation regarding the future of the VSP program.

Conclusion

Staff agrees with FPL that a one-year extension of the tariff will allow FPL to complete and evaluate its research regarding how the VSP program and the planned shared solar program would impact one another. Staff, therefore recommends approval of the one-year extension of the VSP program and tariff. The revised tariff, as shown in Attachment A, should be effective January 1 to December 31, 2019. Prior to the expiration of the VSP program (December 31, 2019), FPL should petition the Commission regarding the future of the VSP program.

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved and a protest is filed within 21 days of the issuance or the order, the tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Nieves)

Staff Analysis: If Issue 1 is approved and a protest is filed within 21 days of the issuance or the order, the tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

~~First~~**Second** Revised Sheet No. 8.930

FLORIDA POWER & LIGHT COMPANY

Cancels ~~Original~~**First** Sheet 8.930

VOLUNTARY SOLAR PARTNERSHIP RIDER
(OPTIONAL PILOT PROGRAM)

RATE SCHEDULE: VSP

AVAILABLE:

In all territory served by FPL ("the Company") to customers receiving service under any FPL metered rate schedule. This voluntary solar partnership pilot program ("VSP Program", "the Pilot") provides customers an opportunity to participate in a program designed to construct and operate commercial-scale, distributed solar photovoltaic facilities located in communities throughout FPL's service territory. Service under this rider shall terminate December 31, ~~2018~~**2019**, unless extended by order of the Florida Public Service Commission ("FPSC"), or terminated earlier by the Company upon notice to the FPSC.

APPLICATION:

Available upon request to all customers in conjunction with the otherwise applicable metered rate schedule.

LIMITATION OF SERVICE:

Any customer under a metered rate schedule who has no delinquent balances with the Company is eligible to elect the VSP Program. A customer may terminate participation in the VSP Program at any time and may be terminated from the Pilot by the Company if the customer becomes subject to collection action on the customer's service account.

CHARGES:

Each voluntary participant shall agree to make a monthly contribution of \$9.00, in addition to charges applied under the otherwise applicable metered rate schedule. Customer billing will start on the next scheduled billing date upon notification of service request. The VSP Program contribution will not be prorated if the billing period is for less than a full month.

Upon participant's notice of termination, no VSP Program contribution will be assessed in the billing period in which participation is terminated.

TERM OF SERVICE:

Not less than one (1) billing period.

SPECIAL PROVISIONS:

Upon customer request, program participation may continue at a new service address if the customer moves within FPL's service territory.

RULES AND REGULATIONS:

Service under this rider is subject to orders of governmental bodies having jurisdiction and to the currently effective "General Rules and Regulations for Electric Service" on file with the Florida Public Service Commission. In case of conflict between any provisions of this schedule and said "General Rules and Regulations for Electric Service" the provisions of this rider shall apply.

Issued by: ~~S. E. Romig~~**Tiffany Cohen**, Director, Rates and Tariffs
Effective: ~~January 1, 2018~~

Item 13

State of Florida



FILED 11/29/2018
DOCUMENT NO. 07290-2018
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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Merryday) *HM*
Office of the General Counsel (Brownless) *MB JSC*

RE: Docket No. 20180182-EI – Petition for approval of tariff modification, by Tampa Electric Company.

AGENDA: 12/11/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 60-day suspension date waived by the utility until 12/11/2018

SPECIAL INSTRUCTIONS: Place before 20180183-GU on the Agenda

RECEIVED-FPSC
2018 NOV 29 AM 9:43
COMMISSION
CLERK

Case Background

On October 2, 2018, Tampa Electric Company (TECO or utility) filed a petition for approval of a tariff modification relating to refusal or discontinuation of service. The proposed tariff modification is designed to protect TECO's field employees from dangerous situations resulting from customer threats, as numerous incidents have occurred recently. The Commission approved a similar tariff for Florida Power & Light Company (FPL) in 1996.¹ Peoples Gas System, a division of TECO, filed a similar petition in Docket No. 20180183-GU. The utility's proposed tariff modification is shown in Attachment A to the recommendation. On October 3, 2018, TECO provided a letter waiving the 60-day file and suspend provision of Section 366.06(3), Florida Statutes (F.S.), until the December 11, 2018 Agenda Conference. TECO responded to

¹ Order No. PSC-96-0585-FOF-EI issued May 6, 1996, in Docket No. 960307-EI, *In re: Proposed revision of rules and regulations, pertaining to access portion of tariff, by Florida Power & Light Company.*

Docket No. 20180182-EI
Date: November 29, 2018

staff's data requests on October 26, 2018, and November 6, 2018. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission approve TECO's proposed tariff modification as shown in Attachment A to the recommendation?

Recommendation: Yes, the Commission should approve TECO's proposed tariff modification as shown in Attachment A to the recommendation. The proposed tariff modification is consistent with the tariff provision the Commission approved for FPL and is consistent with Rule 25-6.105, Florida Administrative Code (F.A.C.). The proposed tariff modification should become effective on December 11, 2018. (Merryday)

Staff Analysis: The utility states that its field employees have experienced a number of threats, assaults, and harassments made by customers. In response to staff's first data request, the utility detailed some of these threats, which ranged from threats against utility property to physical harm of employees.

Utilities currently have the ability to disconnect or refuse service for conditions specified in Rule 25-6.105, F.A.C. Specifically, Rule 25-6.105(5)(f), F.A.C., allows electric utilities to refuse or discontinue service for neglect or refusal to provide safe and reasonable access to the utility provided that written notice be given to the customer. Rule 25-6.105(5)(h), F.A.C., allows the utility to disconnect service without notice in the event of a condition known to the utility to be hazardous.

TECO's current tariff provides the conditions under which TECO may refuse or discontinue service. As shown in Attachment A to the recommendation, the proposed tariff modification adds subsection (12) to tariff sheet No. 5.150. Subsection (12) states that the utility may refuse or discontinue service:

[f]or actions or threats made by a customer, or anyone on the customer's premises, which are reasonably perceived by a Company employee as violent or unsafe, after affording the customer reasonable opportunity to cease from any further act of violence or unsafe condition.

As stated in the case background, the Commission approved a similar tariff for FPL in 1996. Like TECO's proposed tariff, FPL's approved tariff allows FPL to discontinue service as a result of threats made against employees.²

To assure that unwarranted disconnections do not occur, the utility explained that the Corporate Security Department will investigate threat incidents and verify whether the actions or threats made by the customer have created a dangerous condition warranting disconnection. TECO's head of corporate security will notify the utility's Customer Service Department of valid incidents and will decide whether or not a disconnection notice will be issued to the customer.

In the instances where a customer's service is being refused pursuant to the proposed tariff modification, the utility stated it will notify the customer as soon as practicable of the reason for

² See FPL tariff sheet No. 6.010, section 1.6 - Discontinuance of Service.

refusal of service. The utility states that in most cases, a disconnection will have already taken place, and the restoration of service is what is being denied. TECO notes that it does not take disconnection of its customers or refusal of service lightly and that disconnecting or refusing service will be considered an extreme event that will follow other efforts to remedy the situation, up to and including law enforcement or security escorts. Once the threatening condition is resolved to the utility's satisfaction, the utility will reconnect the customer.

Staff has reviewed TECO's petition and responses to data requests and believes TECO's proposed tariff modification is warranted. Additionally, the proposed tariff modification is consistent with the tariff provision the Commission approved for FPL and is consistent with Rule 25-6.105, F.A.C. Therefore, staff recommends approval of TECO's proposed tariff modification. The proposed tariff modification should become effective on December 11, 2018.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should be suspended pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Brownless)

Staff Analysis: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should be suspended pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.



FOURTH-FIFTH REVISED SHEET NO. 5.150
CANCELS ~~THIRD-FOURTH~~ REVISED SHEET NO.
5.150

Continued from Sheet No. 5.140

- (1) For non-compliance with and/or violation of any State or municipal law or regulation governing electric service.
- (2) For failure or refusal of the customer to correct any deficiencies or defects in his wiring and/or equipment which are reported to him by the Company.
- (3) For the use of energy for any other property or purpose than that described in the application.
- (4) For failure or refusal to provide adequate space for the meter and service equipment of the Company.
- (5) For the failure or refusal to provide the Company with a deposit to insure payment of bills in accordance with the Company's regulation, provided that written notice, separate and apart from any bill for service, be given the customer.
- (6) For neglect or refusal to provide reasonable access to the Company for the purpose of reading meters or inspection and maintenance of equipment owned by the Company.
- (7) For non-payment of bills or non-compliance with the Company's rules and regulations, and only after there has been a diligent attempt to have the customer comply, including at least five (5) days written notice to the customer, such notice being separate and apart from any bill service.
- (8) For failure to settle, in full, all prior indebtedness incurred by any Customer or Customers of record for the same class of service at any one or more locations of such Customer or Customers of record.
- (9) Without notice in the event of a condition known to the Company to be hazardous.
- (10) Without notice in the event of tampering with meters or other facilities furnished and owned by the company.
- (11) Without notice in the event of unauthorized or fraudulent use of service. Whenever service is discontinued for fraudulent use of service, the company may, before restoring service, require the Customer to make at his own expense all changes in facilities or equipment necessary to eliminate illegal use and to pay an amount reasonably estimated as the loss in revenue resulting from such fraudulent use.
- (12) For actions or threats made by a customer, or anyone on the customer's premises, which are reasonably perceived by a Company employee as violent or unsafe, after

ISSUED BY: J. B. Ramil N. G. Tower,
President

DATE EFFECTIVE: March 29, 2004



FOURTH-FIFTH REVISED SHEET NO. 5.150
CANCELS ~~THIRD-FOURTH~~ REVISED SHEET NO.
5.150

affording the customer reasonable opportunity to cease from any further act of violence or unsafe condition.

Continued to Sheet No. 5.160

ISSUED BY: J. B. Ramil N. G. Tower,
President

DATE EFFECTIVE: March 29, 2004

Item 14

State of Florida



FILED 11/29/2018
DOCUMENT NO. 07289-2018
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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Merryday) *HM*
Office of the General Counsel (Brownless) *mm JSC*

RE: Docket No. 20180183-GU – Petition for approval of tariff modifications, by Peoples Gas System.

AGENDA: 12/11/18 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 60-day suspension date waived by the utility until 12/11/2018

SPECIAL INSTRUCTIONS: Place after 20180182-EI on the Agenda

RECEIVED-FPSC
2018 NOV 29 AM 9:43
COMMISSION
CLERK

Case Background

On October 2, 2018, Peoples Gas System (Peoples or utility) filed a petition for approval of a tariff modification relating to refusal or discontinuation of service. The proposed tariff modification is designed to protect Peoples' field employees from dangerous situations resulting from customer threats, as numerous incidents have occurred recently. The Commission approved a similar tariff for Florida Power & Light Company (FPL) in 1996.¹ Peoples is a division of Tampa Electric Company, which filed a similar petition in Docket No. 20180182-EI. The utility's proposed tariff modification is shown in Attachment A to the recommendation. On October 3, 2018, Peoples provided a letter waiving the 60-day file and suspend provision of Section 366.06(3), Florida Statutes (F.S.), until the December 11, 2018 Agenda Conference.

¹ Order No. PSC-96-0585-FOF-EI issued May 6, 1996, in Docket No. 19960307-EI, *In re: Proposed revision of rules and regulations, pertaining to access portion of tariff, by Florida Power & Light Company.*

Docket No. 20180183-GU

Date: November 29, 2018

Peoples responded to staff's data requests on October 26, 2018, and November 6, 2018. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission approve Peoples' proposed tariff modification as shown in Attachment A to the recommendation?

Recommendation: Yes, the Commission should approve Peoples' proposed tariff modification as shown in Attachment A to the recommendation. The proposed tariff modification is consistent with the tariff provision the Commission approved for FPL and is consistent with Rule 25-7.089, Florida Administrative Code (F.A.C.). (Merryday)

Staff Analysis: The utility states that its field employees have experienced a number of threats, assaults, and harassments made by customers. In response to staff's first data request, the utility detailed some of these threats, which include verbal abuse and threats of physical harm.

Utilities currently have the ability to disconnect or refuse service for conditions specified in Rule 25-7.089, F.A.C. Specifically, Rule 25-7.089(2)(f), F.A.C., allows gas utilities to refuse or discontinue service for neglect or refusal to provide safe and reasonable access to the utility provided that written notice be given to the customer. Rule 25-7.089(2)(h), F.A.C., allows the utility to disconnect service without notice in the event of a condition known to the utility to be hazardous.

Peoples' current tariff provides the conditions under which Peoples may refuse or discontinue service. As shown in Attachment A to the recommendation, the proposed tariff modification to tariff sheet No. 5.101-2 states that the utility may discontinue or refuse service:

[f]or actions or threats made by a customer, or anyone on the customer's premises, which are reasonably perceived by a Company employee as violent or unsafe, after affording the customer reasonable opportunity to cease from any further act of violence or unsafe condition.

As stated in the case background, the Commission approved a similar tariff for FPL in 1996. Like Peoples' proposed tariff modification, FPL's approved tariff allows FPL to discontinue service as a result of threats made against employees.²

To assure that unwarranted disconnections do not occur, the utility explained that the Corporate Security Department will investigate threat incidents and verify whether the actions or threats made by the customer have created a dangerous condition warranting disconnection. Peoples' head of corporate security will notify the utility's Customer Service Department of valid incidents and will decide whether or not a disconnection notice will be issued to the customer.

In the instances where a customer's service is being refused pursuant to the proposed tariff modification, the company stated it will notify the customer as soon as practicable of the reason for refusal of service. The utility states that in most cases, a disconnection will have already taken place, and the restoration of service is what is being denied. Peoples notes that it does not take disconnection of its customers or refusal of service lightly and that disconnecting or refusing

² See FPL tariff sheet No. 6.010, section 1.6 - Discontinuance of Service.

service will be considered an extreme event that will follow other efforts to remedy the situation, up to and including law enforcement or security escorts. Once the threatening condition is resolved to the utility's satisfaction, the utility will reconnect the customer.

Staff has reviewed Peoples' petition and responses to data requests and believes Peoples' proposed tariff modification is warranted. Additionally, the proposed tariff modification follows the Commission's previous actions for FPL and is consistent with Rule 25-7.089, F.A.C. Therefore, staff recommends approval of Peoples' proposed tariff modification. The proposed tariff modification should become effective on December 11, 2018.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should be suspended pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Brownless)

Staff Analysis: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should be suspended pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

Peoples Gas System
a Division of Tampa Electric Company
Original Volume No. 3

Second-Third Revised Sheet No. 5.101-2
Cancels First-Second Revised Sheet No. 5.101-2

RULES AND REGULATIONS (Continued)

E. WITHHOLDING OF GAS SERVICE

Company will refuse to establish Gas Service to any location where it finds that establishment of Gas Service will create an unsafe or hazardous condition on the Customer's premises.

Company may discontinue Gas Service to an existing Customer or refuse to serve a prospective Customer where such Customer's use of Gas is or will be detrimental or hazardous to the Gas Service supplied to other Customers.

Company may discontinue service to an existing Customer or refuse to establish Gas Service for actions or threats made by a customer, or anyone on the customer's premises, which are reasonably perceived by a Company employee as violent or unsafe, after affording the customer reasonable opportunity to cease from any further act of violence or unsafe condition.

Company will not establish Gas Service to any Customer where that Customer is in arrears for Gas Service at that location or another location in the Company's service area.

If a prospective Customer requests connection for Gas Service but denies the Company's employees and representatives access to the Customer's Installation for the purpose of inspecting the appliances prior to establishing Gas Service, the Company may refuse to provide Gas Service to the prospective Customer.

Fraudulent Use of Gas:

Company will discontinue Gas Service without notice:

- a. In the event of tampering with regulators, valves, Meters or other facilities furnished and owned by Company, or
- b. In the event of other fraudulent use of Gas Service.

Whenever Gas Service is discontinued for unauthorized or fraudulent use thereof, the Company, before restoring Gas Service, may require Customer to make, at Customer's expense, all changes in piping or equipment necessary to eliminate the fraudulent use and to pay an amount reasonably estimated as the deficiency (if any) in Company's revenue and all costs incurred by Company resulting from such unauthorized or fraudulent use.

As used herein, "costs incurred by Company" shall include the Company's cost to cut and cap the Customer's service line at the Main, together with the cost incurred by the Company to restore service to the Customer, in the event the Company, in order to discontinue service to the Customer pursuant to this section, has been required (after final notice to the Customer requesting payment, and the Customer's denial of access by Company to its meter for the purpose of discontinuing service) to cut and cap the Customer's service line at the Main. If a Customer whose service line has been cut and capped as aforesaid thereafter requests restoration of Gas Service, Company may require such Customer to pay (in addition to any other charges payable pursuant to these Rules and Regulations) all costs incurred by Company to effect the previous discontinuance of Gas Service to such Customer, as well as all costs incurred by Company to restore Gas Service to such Customer.

Issued By: G. L. Gillette, T. J. Szelistowski, President
Issued On: October 19, 2014

Effective: March 13, 2012

Item 15

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: November 29, 2018

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Bethea, Hudson)
Division of Accounting and Finance (Brown, Wilson)
Division of Engineering (Graves, Lewis)
Office of the General Counsel (Murphy, DuVal)

ST PD TO ME PSH
KW ALM
next for LT

RE: Docket No. 20180063-WS – Application for limited proceeding rate increase in Polk County by Orchid Springs Development Corporation.

AGENDA: 12/11/18 – Regular Agenda – Proposed Agency Action – Except Issue Nos. 3 and 4 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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COMMISSION CLERK

Case Background

Orchid Springs Development Corporation (Orchid Springs or utility) is a Class C utility providing service to approximately 336 water and wastewater customers in Polk County. Effective July 7, 1998, Orchid Springs was granted Certificate Nos. 600-W and 516-S.¹ The utility's rates and charges were last approved in a staff-assisted rate case (SARC) in 2015.² The utility has filed two index and pass-through applications since its last rate case. According to

¹Order No. PSC-98-0918-FOF-WS, issued July 7, 1998, in Docket No. 970158-WS, *In re: Application for grandfather certificate to operate a water and wastewater utility in Polk County, by Orchid Springs Development Corporation.*

²Order No. PSC-15-0569-PAA-WS, issued December 16, 2015, in Docket No. 140239-WS, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation.*

Orchid Springs' 2017 annual report, total gross revenues were \$101,959 for water and \$210,342 for wastewater. Total operating expenses were \$104,567 for water and \$238,576 for wastewater.

On May 11, 2018, Orchid Springs filed for a limited proceeding to avoid costs associated with a full rate proceeding. The utility is seeking to include additional plant investment and recover additional operation and maintenance costs that have occurred since its last rate case. A customer meeting was held June 19, 2018, in Winter Haven, Florida. Approximately 65 customers were in attendance, including Orchid Springs representatives. Nine customers spoke at the meeting and several customer comments were received after the meeting. On June 27, 2018, Orchid Springs filed a document that responded to all customer concerns from the meeting.

This recommendation addresses Orchid Springs' proposed rates. The Commission has jurisdiction pursuant to Sections 367.081 and 367.0822, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the utility's request for a limited proceeding?

Recommendation: The Commission should approve the utility's request for a limited proceeding rate increase as modified by staff. Orchid Springs should be allowed an annual increase of \$7,822 (8.35 percent) for water, resulting in an adjusted revenue requirement of \$101,489. For wastewater, the utility should be allowed an annual increase of \$23,837 (11.73 percent), resulting in an adjusted revenue requirement of \$227,066. The adjusted revenue requirements are reflected on Schedule Nos. 3-A and 3-B. (Brown, Lewis, Wilson)

Staff Analysis: Limited proceedings generally address specific or significant changes that would adversely affect the normal operating income of the utility and are usually narrow in scope. Staff believes that Orchid Springs' case as filed is sufficiently narrow in scope to qualify for a limited proceeding. Staff also believes that Orchid Springs has met all the minimum filing requirements as set forth in Rule 25-30.445, Florida Administrative Code (F.A.C.).

Secondary Water Quality Standards

Pursuant to Rule 25-30.445(4)(o), F.A.C., utilities are required to provide 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 as well as a copy of the utility's most recent secondary water quality standards test results. The utility did not receive any customer complaints regarding DEP secondary water quality standards during the past five years. Additionally, documentation provided by Orchid Springs indicates that the utility is currently passing secondary standards.

Staff also reviewed complaints received by the Commission for the period January 1, 2013 through November 28, 2018. For the stated period, the Commission received three customer complaints. None of the complaints received by the Commission addressed the quality of Orchid Springs' product.

A customer meeting was held June 19, 2018, in Winter Haven, Florida. At the customer meeting, a total of nine customers spoke. Three of the customers expressed displeasure with the taste or smell of the water. Other concerns raised at the meeting addressed the requested rate increase. As of November 28, 2018, four customers filed written comments in this docket. All four customers expressed concern with the rate increase. One of the four comments additionally addressed a billing concern as well as an odor, present during a time when the utility was working in the area, that lasted less than two hours.

As previously discussed, Orchid Springs has provided the necessary information to comply with Rule 25-30.445(4)(o), F.A.C. Based on review of the information provided by the utility, as well as additional information gathered throughout the course of this docket, staff does not believe any actions need to be taken with respect to secondary standards. Staff additionally notes, the overall quality of service for the Orchid Springs' water system was considered satisfactory in the utility's last rate case. Because this review is part of a limited proceeding, staff would likely recommend initiating a subsequent proceeding, i.e., a show cause proceeding, if further action was warranted.

Rate Base

Since its last SARC, the utility made several capital improvements to its water and wastewater systems and requested that they be included in rate base as part of this proceeding. The appropriate plant additions, as well as corresponding adjustments to accumulated depreciation, depreciation expense, and taxes other than income (TOTI) are reflected below. The staff-recommended additions to plant are supported by invoices for the completed work. In addition, as a result of recommended changes to operating expense, the utility's working capital allowance should also be updated.

Plant Additions

In its initial filing, Orchid Springs requested consideration of several capital additions to its water and wastewater systems. In response to a staff data request, the utility stated that both the water and wastewater systems are 49 years old and are in need of repairs and refurbishment. Concerns regarding the age of Orchid Springs' systems and the need for frequent repairs was recognized by the Commission in the 2014 SARC. Based on information provided by the utility, the items requested in this proceeding address equipment that either failed or was in need of replacement due to age.

In total, the utility is requesting an increase of \$32,531 for water system additions and \$16,723 for wastewater system additions. Staff reviewed Orchid Springs' filing, utility responses to data requests, and the 2014 SARC order and recommends that several adjustments to the utility's requested capital additions are necessary. Table 1-1 summarizes the plant additions requested by the utility and the amount staff recommends be allowed for cost recovery in this proceeding.

Table 1-1
Summary of Requested and Recommended Plant Additions

| Project Name | Amount Requested | Amount Recommended |
|-----------------------------------|------------------|--------------------|
| Water: | | |
| Water Meter Replacement | \$13,097 | \$8,209 |
| Flow Meter Replacement | 3,926 | 3,926 |
| Fire Hydrant Replacement | 4,975 | 4,975 |
| Well Pump Replacement | <u>10,533</u> | <u>10,533</u> |
| Total Water | <u>\$32,531</u> | <u>\$27,643</u> |
| Wastewater: | | |
| Lift Station Pump Repair | \$4,980 | \$4,980 |
| Manhole Renovation | 10,843 | 805 |
| Engineering for Collection System | <u>900</u> | <u>0</u> |
| Total Wastewater | <u>\$16,723</u> | <u>\$5,785</u> |
| Total Water and Wastewater | <u>\$49,254</u> | <u>\$33,428</u> |

Only the lift station pump repair contains a retirement. The adjustment for the retirement is reflected in Schedule No. 1-C. Based on the plant additions described above, staff believes the following corresponding adjustments should also be made.

Table 1-2
Corresponding Adjustments

| System | Accum. Dep. | Dep. Expense | TOTI |
|------------|-------------|--------------|-------|
| Water | (\$1,458) | \$1,458 | \$498 |
| Wastewater | \$3,620 | \$115 | \$37 |

Staff's adjustments to accumulated depreciation are shown in Schedule No. 1-C, while adjustments for depreciation expense and TOTI are reflected in Schedule No. 3-C.

As previously stated, staff's review considered the utility's 2014 SARC. In the 2014 SARC, the utility requested and was granted recovery of \$69,170 for wastewater pro forma plant. Of the \$69,170, approximately \$10,000 was for miscellaneous repairs that occurred in the first five months of 2015. With respect to the miscellaneous repairs, Commission Order No. PSC-15-0569-PAA-WS, specifically states:

All of the work included in this category was performed in the first five months of 2015, and included manhole repairs, parts for lift stations, stump removal and backfilling, and repairs to wastewater collection lines.

Thus, staff believes that wastewater costs that were incurred within the first five months of 2015 should not be recovered in this proceeding. Excluding recovery of these costs prevents the potential allowance of costs already being recovered by the utility. Disallowance of these costs is reflected in staff's recommended amount for the Engineering for Collection System and the Manhole Renovation projects. For the remaining items, staff's recommended amount is based on invoices provided by the utility. Staff notes that the summation of the actual invoice amounts for the meter replacements was less than the amount requested by the utility.

Working Capital Allowance

Working capital is defined as the short-term, investor-supplied funds that are necessary to meet operating expenses of the utility. Consistent with Rule 25-30.433(3), F.A.C., staff used the one-eighth of the operation and maintenance (O&M) expense formula approach for calculating the working capital allowance. Staff recommended several adjustments to O&M expense which result in increases to O&M expenses of \$5,235 for water and \$21,262 for wastewater. These adjustments are discussed in the "Operating Expense" section of this recommendation. Staff also removed the unamortized balance of rate case expense pursuant to Section 367.081(9), F.S.³ Applying the formula, staff recommends a working capital allowance of \$9,526 (\$76,211/8) for water, based on the adjusted O&M expense of \$76,211 (\$80,059 - \$3,848). Further, staff recommends a working capital allowance of \$23,132 (\$185,059/8) for wastewater, based on the adjusted O&M expense of \$185,059 (\$188,501 - \$3,442). These amounts represent incremental increases of \$173 for water and \$2,227 for wastewater.

³Section 367.081(9), F.S., which became effective July 1, 2016, states, "A utility may not earn a return on the unamortized balance of the rate case expense. Any unamortized balance of rate case expense shall be excluded in calculating the utility's rate base." Therefore, staff excluded rate case expense from the working capital calculations.

Rate Base Summary

Based on the foregoing, staff recommends that the appropriate rate base is \$61,055 for water and \$118,837 for wastewater. Rate base is shown on Schedule Nos. 1-A and 1-B. The related adjustments are shown on Schedule No. 1-C.

Rate of Return

The capital structure used to determine the cost of capital in this docket is consistent with the capital structure used in the utility's last rate case. Rule 25-30.445(4)(e), F.A.C., requires that the weighted average cost of capital be calculated based on the most recent 12-month period and include all of the appropriate capital structure components. Staff used the equity cost rate of 9.38 percent from the utility's last rate case as well as the minimum 2.00 percent cost rate for customer deposits pursuant to Rule 25-30.311(4)(a), F.A.C. Staff notes that the utility's 2017 Annual Report reflects negative retained earnings of \$492,629. Staff reviewed the conditions during the utility's last rate case and identified the existence of negative retained earnings in that docket. In that docket, staff removed negative retained earnings from its calculations. Consistent with the utility's last rate case, staff has removed that amount for purposes of calculating the utility's rate of return. Staff anticipates that in subsequent rate cases, the appropriateness of including any negative retained earnings and netting this amount against the utility's other equity components will be addressed.

The utility's capital structure has been reconciled with staff's recommended rate bases. Staff recommends a return on equity (ROE) of 9.38 percent, with a range of 8.38 percent to 10.38 percent, and an overall rate of return of 8.03 percent. The ROE and overall rate of return are shown on Schedule No. 2.

Operating Expense

Orchid Springs requested that the Commission approve increased operating expenses related to land maintenance, purchased wastewater treatment, purchased emergency water, and salaries. The utility also requested recovery of rate case expense. Staff has addressed each of the utility's requests below. Staff has also included corresponding adjustments to depreciation expense and TOTI based on the plant additions recommended in "Rate Base." The corresponding adjustments are reflected in Schedule No. 3-C.

Land Maintenance

In its application, Orchid Springs included a request for the recovery of \$6,000 per year (\$500 per month) associated with maintenance of land occupied by the utility's decommissioned wastewater plant. The utility currently pays \$6,000 per year for 12 months of land maintenance. The utility is required to maintain the land per county Ordinance No. 08-047 and Section 223 of the Polk County Land Development Code. The utility indicated that it is unable to sell the land in its current condition. In order to sell the land, rehabilitation costs would be incurred. The utility asserts that those rehabilitation costs would exceed the land's potential value.⁴

⁴Document No. 04990-2018, filed July 31, 2018.

Date: November 29, 2018

In response to a staff data request, the utility provided a bid from Prince & Sons, Inc. to illustrate the reasonableness of the \$6,000 being requested.⁵ The bid reflects yearly maintenance expense of \$15,000 (\$1,500/month x 10 months). While staff believes it is appropriate for the utility to recover the costs associated with maintaining this land with its current provider, it does not agree with the frequency of the maintenance. A review of the utility's test year ledger revealed that the utility paid for eleven months of land maintenance in 2017 and, during the first six months of 2018, paid for five months. In addition, the Prince & Sons, Inc. bid reflected that land maintenance would occur only ten times during the year. As such, staff believes that the land maintenance expense should occur ten times throughout the year. Accordingly, staff recommends land maintenance expense of \$5,000 (\$500/month x 10 months), which is reflected in wastewater Account No. 763 (Repairs and Maintenance).

Purchased Wastewater Treatment Service

The utility purchases wastewater treatment service from the City of Winter Haven. In the utility's prior SARC, \$117,987 was included for purchased wastewater expense during the test year. According to the utility, the City of Winter Haven's wastewater treatment rates are typically adjusted in October, but the Commission did not adjust test year expenses for the 2015 known change. Purchased wastewater treatment costs for 2015 were \$130,975, as reflected in the utility's annual report. While the utility has filed its index and pass-through rate adjustments in 2016 and 2017, the utility asserts the adjustment in bulk rates must be addressed here. Staff notes that the utility's annual reports reflect purchased wastewater treatment expense of \$142,226 in 2016 and \$141,989 in 2017. As such, the utility argued that it continues to experience a substantial shortfall on recovery of purchased wastewater treatment costs and requested additional wastewater treatment service expense of \$17,976. The utility's calculations are shown in Table 1-3.

Table 1-3
Requested Purchased Wastewater Treatment Adjustment

| | |
|--------------------------------|------------------|
| Approved in last rate case | \$117,987 |
| Add: 2016 Pass-Through | \$3,648 |
| 2017 Pass-Through | <u>\$2,378</u> |
| Total | <u>\$124,013</u> |
| Expense (2017 Annual Report) | <u>\$141,989</u> |
| Utility's requested adjustment | <u>\$17,976</u> |

While staff believes an adjustment to purchased wastewater treatment service should be made, staff disagrees with the utility's calculation. Staff reviewed the utility's SARC increases as well as City of Winter Haven billing for 2017. Staff calculated the utility's 2017 purchased wastewater treatment expense as \$137,778 using 2017 actual billing. As such, staff believes purchased wastewater treatment expense from the last rate case should be increased by \$13,765 as reflected in Table 1-4 below.

⁵Document No. 05051-2018, filed August 2, 2018.

Table 1-4
Recommended Purchased Wastewater Treatment Adjustment

| | |
|--------------------------------|------------------|
| Approved in last rate case | \$117,987 |
| Add: 2016 Pass-Through | \$3,648 |
| 2017 Pass-Through | <u>\$2,378</u> |
| Total | <u>\$124,013</u> |
| Expense (Actual 2017) | <u>\$137,778</u> |
| Staff's recommended adjustment | <u>\$13,765</u> |

Purchased Emergency Water

The utility operates a water plant with one well and has an interconnect with the City of Winter Haven to provide backup water supply as needed. The utility initially requested recovery of purchased water cost when it became necessary to operate the interconnection during the failure of the well pump in 2017. The City of Winter Haven, the contract operator of the water and wastewater systems, was able to order a new pump and ultimately replace it. According to the utility, the well was out of service during August and September 2017, during which time approximately 1,602,506 gallons of water was purchased at a cost of \$9,373.

In response to a staff data request, the utility noted two additional events during the first half of 2018 when the utility was required to purchase water from the City of Winter Haven through the emergency interconnect for a few days in January and in June. On January 20, 2018, the well was required to be taken offline to repair a damaged pressure switch. The switch was repaired and placed back in service on January 24, 2018. The utility was required to purchase 407,000 gallons of water, at a cost of \$2,463, during this period to allow for the repair. On June 2, 2018, there was an electrical issue which burned up a starter and required that the well be taken offline. This was repaired and placed back in service on June 5, 2018. The utility was required to purchase 321,000 gallons of water, at a cost of \$1,937, during this period to allow for the repair. As such, the utility has requested recovery of purchased water expense of \$13,773. The utility used a 5-year amortization period, resulting in purchased water expense of \$2,755 as shown in Table 1-5.

Table 1-5
Requested Purchased Emergency Water Adjustment

| Date | Cost |
|--------------------------------------|-----------------|
| 08/08/17 - 09/06/17 | \$9,373 |
| 01/20/18 - 01/24/18 | \$2,463 |
| 06/02/18 - 06/05/18 | <u>\$1,937</u> |
| Total | <u>\$13,773</u> |
| Amortized Expense (\$13,773/5 years) | <u>\$2,755</u> |

Source: Document Nos. 02162-2018 and 04990-2018.

As part of the utility's response to a staff data request in October, the utility altered its request to amortize purchased emergency water over five years and opted instead to request that the

average expense for the years 2010 through 2018 be utilized in this case.⁶ The resulting average purchased water expense is \$4,063. The utility claims that using the average “provides a more accurate picture of the expected average expense in the future for rate setting.”⁷ While staff sees the value of utilizing a multi-year average, the utility did not appear to make an argument to average purchased water expense in its last rate case. If it had done so at that time, the average expense for a five-year period from 2010 through 2014, or some portion of that period, could have been discussed. Instead, the Commission approved purchased water expense of \$1,082, which reflected recorded purchased water for 2014, less a 5.8 percent excessive unaccounted for water (EUW) adjustment. Staff believes that the appropriate period for review in the instant docket is 2015 through 2018.

Based on the discussion above, the utility’s emergency water purchases were each related to unique events associated with failed equipment which has since been replaced. Therefore, staff does not believe that the emergency water purchases during 2017 and 2018 are necessarily indicative of emergency water purchases going forward. Staff notes that since the last repair was made in June 2018, the utility has not had any additional purchased emergency water.⁸ As such, staff believes that emergency purchased water should be recovered and amortized over a five-year period. As stated previously, the Commission approved purchased water expense of \$1,082 per year in the utility’s last rate case. Any adjustment here would need to take into account what the Commission included for purchased water in the last rate case. In that docket, the Commission also applied an adjustment of 5.8 percent for excessive unaccounted for water which would also need to be applied to any additional purchased emergency water recommended here. According to the prior order, the utility purchases water from the City of Winter Haven for emergency purposes only. Using the billing data provided by the utility, staff notes that the purchased water associated with the 2017 outage was \$10,310, not the \$9,373 originally proposed by the utility. Staff also verified the purchased water associated with the 2018 outages and noted no changes. Actual billing data reflected total purchased water of \$10,536 for 2017 and \$4,639 for the first six months of 2018. These amounts include the emergency purchased water discussed above. Staff’s calculations appear in the table below.

Table 1-6
Recommended Purchased Emergency Water Adjustment

| Description | 2017 | 2018 (YTD) | Total |
|---|----------------|----------------|-----------------|
| Actual Purchased Water | \$10,536 | \$4,639 | |
| Less: Purchased Water from Last Rate Case | <u>(1,082)</u> | <u>(1,082)</u> | |
| Appropriate Add’l Purchased Water | <u>\$9,454</u> | <u>\$3,557</u> | |
| Less: EUW (5.8%) | <u>(548)</u> | <u>(206)</u> | |
| Recommended Add’l Purchased Water | <u>\$8,906</u> | <u>\$3,351</u> | <u>\$12,257</u> |
| Amortized (5 years) | <u>\$1,781</u> | <u>\$670</u> | <u>\$2,451</u> |

Source: Staff workpapers, Order No. PSC-15-0569-PAA-WS, and utility responses to data requests.

⁶Document No. 06966-2018, filed November 2, 2018.

⁷Document No. 06966-2018.

⁸Document No. 06966-2018.

Staff recommends purchased emergency water expense of \$12,257 which, amortized over five years, would be \$2,451 per year.

Salaries

In its filing, the utility requested a salary of \$40,000 for the manager and \$30,000 for the president of Orchid Springs Development Corporation. The utility argues that while salary was addressed in its last rate case, the salary approved by the Commission is insufficient to compensate for work performed managing the day to day operation of the utility, especially given the age and condition of the systems. Moreover, the utility alleges that Commission staff is inconsistent in the methodology it uses to establish salary levels for utility managers and presidents.

Staff notes that the requested salary increases represent an increase of 159 percent for the manager and 188 percent for the president from salaries approved in the last rate case. In the instant docket, the utility was asked by staff to address what job duties and requirements have changed for the positions since the last rate case. According to the utility, the following changes support the increases in salaries:

1. Because of the age of the system and as a result of work done in 2016, the manager and president have spent a great deal of time determining how to keep the system viable.
2. The sewer collection system is beyond the end of its useful life and will require a significant investment in capital. In its current condition and age, it already requires significantly higher maintenance cost incurred and overseen by these individuals daily to keep utility in compliance with DEP regulations.
3. The manager and president are working on putting together a phased capital improvement plan which will require close collaboration with a civil engineer to design each phase and provide specifications for each phase in order to put the jobs out to bid.
4. The manager and president also will be required to work with financial institutions to put financing in place as well as work with choosing a utility contractor in order to institute a long-term, phased rehabilitation plan.⁹

Staff reviewed the position descriptions provided by the utility in the last rate case and believes that many of the “new” duties were actually part of the position descriptions reviewed previously. In addition, staff believes the age and condition of the systems do not represent new information. In fact, an argument can be made that the age and condition referenced by the utility are what necessitated the interconnection for wastewater services with the City of Winter Haven as well as the \$69,170 in pro forma plant approved by the Commission in the last rate case. Similarly, staff believes that the job descriptions associated with previously approved salaries already encompass the additional job functions used to support the salary increase here. Staff notes that the job description for Officer (president) in the last rate case included the following: determine operating and capital expenditures, coordinate and implement long range strategic planning of both water and sewer capital improvements, and acquire funding for the utility as needed.¹⁰ The description associated with the Operations Manager in the last rate case included

⁹Document No. 04990-2018.

¹⁰Document No. 04731-2015, filed July 28, 2015.

those for a project manager of renovations (schedule, supervise, and perform testing of sewer lines; evaluate testing, and meet with civil engineer).¹¹ It is also important to note that the City of Winter Haven provides system maintenance and repairs for the water and wastewater systems, performs all wastewater treatment, and provides emergency purchased water.

In a letter summarizing the utility's response to customers, the utility stated,

The utility has not sought any increases in salaries. It has requested only that it be allowed to recover the existing costs for the reasonable salaries of necessary employees. The utility requests recognition of salaries for a small number of employees whose salaries are directly related to the work necessary to continue to operate the utility in an efficient manner in conformance with many state, county and federal standards. The Florida PSC must review these proposed costs based on customary salaries for similar positions at other companies in our area.¹²

In the same letter, Orchid Springs also stated, "the utility cannot reasonably be compared to other utilities as there are significant differences between utilities including, but not limited to, age of plant and equipment, the number of customers, and capacity." While the utility was addressing a comparison of its rates to those of the City of Winter Haven, staff believes the same argument can be made for the comparison of salaries across utilities. In fact, staff believes there is no one size fits all when it comes to establishing the appropriate level of water and wastewater salaries. There are numerous factors that need to be addressed, including what job duties and responsibilities are being fulfilled by utility employees as well as by others contracted by the utility. It is also important to look at the operations of each system to determine the level of contractual services used and whether the utility performs its own treatment services or if it is a reseller. In Orchid Springs' case, the utility has interconnected with the City of Winter Haven for emergency water service and all of its wastewater treatment. Under this contract, the City of Winter Haven functions as the contract operator for the water and wastewater systems and performs some system maintenance and repairs for both systems.

Staff does not follow the utility's claim that requested salary adjustment is not an increase. Staff notes that the Commission-authorized salaries were set in the last rate case only after careful review of the utility's operating conditions. In that docket, the Commission reviewed salaries in light of the duties and responsibilities at that time, as well as the utility's change in operations. These considerations were part of the very analysis performed by the Commission in the utility's SARC that led to the salaries currently in place. Staff believes that the conditions that existed then remain unchanged. Based on the discussion above, staff does not believe that the utility has provided sufficient justification for increasing salaries at this time.

Rate Case Expense

Orchid Springs initially submitted \$15,000 in rate case expense, with an annual amortization expense of \$3,750.¹³ In response to a staff data request, the utility provided updated rate case

¹¹Document No. 04731-2015.

¹²Document No. 06114-2018, filed September 18, 2018.

¹³Document No. 02162-2018, filed March 7, 2018.

expense showing actual rate case expense and an estimate of expenses through the completion of the docket.¹⁴ The update reflected actual expenses of \$9,695 for legal and \$2,050 for the utility's rate consultant through June 2018 with an additional \$10,495 in estimated rate case expense. The breakdown of fees is shown below.

Table 1-7
Actual and Estimated Rate Case Expense

| Expense | Utility Actual | Utility Estimated | Total Actual & Est. RCE |
|---|-----------------|-------------------|-------------------------|
| Legal Services & Fees (Sundstrom & Mindlin) | \$9,695 | \$6,675 | \$16,370 |
| Consulting Services | 2,050 | 3,500 | 5,550 |
| Travel | <u>0</u> | <u>320</u> | <u>320</u> |
| Total | <u>\$11,745</u> | <u>\$10,495</u> | <u>\$22,240</u> |

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 as listed above for the current case. Based on its review, staff believes some adjustments are necessary to the utility's proposed rate case expense.

Legal Services

The first adjustment relates to the utility's legal fees. Orchid Springs included \$16,370 in legal fees and costs to complete this limited proceeding. The utility provided invoices from Sundstrom & Mindlin, LLP (Sundstrom) through June 2018, showing actual expenses associated with the rate case totaling \$9,695, and estimated an additional \$6,675 to complete. These amounts included 27.7 hours of actual time and an estimate that an additional 17.5 hours would be required to complete the limited proceeding. Staff's adjustments to legal fees focus on Sundstrom's estimate to complete, which included 3.5 hours to "review the audit report and assist client and consultant in preparing response to issues raised" and \$550 for copying and miscellaneous costs and fees.¹⁵ Since no audit was conducted in this docket and no corresponding response would have been necessary, staff believes that 3.5 hours, or \$1,225 (3.5 hrs. x \$350/hr.) should be removed from the estimate to complete. Staff recommends 14 hours (17.5 hours – 3.5 hours) for the attorney's estimate to complete. No additional detail was provided to explain what miscellaneous costs and fees might be expected through completion of the docket. As such, staff believes \$550 in estimated costs and fees should also be removed for lack of support. Accordingly, staff believes that the appropriate amount of legal fees is \$14,595, a total reduction of \$1,775 (\$1,225 + \$550).

Consulting Services

The next adjustment relates to the utility's consulting fees. The utility requested actual consulting services expense of \$2,050 for services rendered by Gary Morse through June 2018, and requested an additional \$3,500 as part of the consultant's estimate to complete. In support of its

¹⁴Document No. 04990-2018, filed July 31, 2018, and support documentation included in Document No. 05051-2018, filed August 2, 2018.

¹⁵Document No. 05051-2018.

actual costs, the utility provided four invoices.¹⁶ Staff notes that the submitted invoices provided the actual hours worked, a brief description of the activities that took place, and reflected the resulting amount due. Based on the support provided, staff believes that the actual expense is reasonable. However, staff believes that adjustments to the estimate to complete are necessary. The consultant's estimate to complete includes 35 hours at \$100 per hour. Staff believes that the requested number of hours is excessive, especially since the attorney's estimate to complete included only 17.5 hours. In addition, the estimate to complete includes time "to review inquiries from auditors and staff" and for "review of the audit report and assist in responding to same and preparation of documents for such response." As noted above, no staff audit was conducted in this docket and no audit report was produced. As such, a response from the utility would not be necessary. While there was an outstanding data request when the estimate to complete was provided, staff anticipates that the utility and its attorney, not the consultant, would be responsible for the bulk of any required response. In the absence of a detailed breakdown by hour and task, staff believes the consultant's estimated hours should be limited to the same number of hours recommended for the attorney above. Staff reduced the utility's requested amount for consulting services by 21 hours, or \$2,100 (21 hours x \$100/hr.). Accordingly, staff believes that the appropriate amount of consulting fees is \$3,450, a reduction of \$2,100.

Travel

Staff made no adjustments to the requested travel expense of \$320 as it appears reasonable. The requested travel expense reflects hotel costs for two people for one night each and meals for each person to attend the Commission Conference. The utility has estimated hotel costs of \$125 per room per person and \$35 for meals per person. Staff believes the room rate is reasonable and notes that the amount requested for meals is in line with the allowance provided for State of Florida employees.

Noticing Costs & Filing Fee

Orchid Springs did not reflect the \$2,000 filing fee or the costs associated with copying and mailing the required notices. According to the docket file, the utility paid the \$2,000 filing fee (\$1,000 for water and \$1,000 for wastewater) on April 19, 2018.¹⁷ The utility is required by Rule 25-30.446, F.A.C., to provide notices of the customer meeting and notices of final rates in this case to its customers. Staff is also recommending that the utility be required to provide notice of the four-year rate reduction to its customers when the rates are reduced to remove the amortized rate case expense. For noticing, staff estimated \$465 for postage expense, \$248 for printing expense, and \$47 for envelopes. This results in \$760 (\$465 + \$248 + \$47) for the noticing requirement.

Rate Case Summary

In summary, staff believes that Orchid Springs' total rate case expense should be decreased by \$3,875 for unsupported and unreasonable rate case expense. Staff also believes that rate case expense should be increased by \$2,000 to reflect the filing fee paid by the utility and by \$760 to reflect the costs associated with noticing requirements. Given these adjustments, the appropriate total rate case expense should be \$21,125, which amortized over four years would be \$5,281 per

¹⁶Document No. 05051-2018.

¹⁷Document No. 03060-2018, filed April 19, 2018.

year. Staff has allocated the annual rate case expense to the water and wastewater systems based on the equivalent residential connections, resulting in annual rate case expense of \$2,784 for water and \$2,497 for wastewater. A breakdown of rate case expense is as follows:

Table 1-8
Appropriate Rate Case Expense

| Expense | Utility Act. & Est. | Staff Adjustment | Staff Rec. Total RCE |
|---|------------------------|---------------------|-------------------------|
| Legal Services & Fees (Sundstrom & Mindlin) | \$16,370 | (\$1,775) | \$14,595 |
| Consulting Services | 5,550 | (2,100) | 3,450 |
| Travel | 320 | 0 | 320 |
| Noticing Costs & Filing Fee | 0 | 2,760 | 2,760 |
| Total | <u>\$22,240</u> | <u>(\$1,115)</u> | <u>\$21,125</u> |

Operating Expenses Summary

Staff's recommended adjustments result in operating expenses of \$93,836 for water and \$217,523 for wastewater. Operating expenses are shown on Schedule Nos. 3-A and 3-B. The adjustments are shown on Schedule No. 3-C.

Operating Margin

In Docket No. 140239-WS, the Commission found that the application of the operating ratio methodology at a margin of 10.00 percent of O&M expense was appropriate for determining the water revenue requirement.¹⁸ Staff believes the same conditions continue to exist in the current docket. The utility has a water rate base of \$61,055 and net water O&M expenses of \$76,526,¹⁹ and therefore is a candidate for the operating ratio method of calculating revenue requirement for water. Orchid Springs is a Class C utility and the recommended water revenue requirement of \$101,489 is substantially below the threshold level for Class B status (\$200,000 per system). The utility is built out and there is no potential for future growth. Therefore, the utility will not become a Class B utility in the foreseeable future.

In addition, the overall quality of service for the Orchid Springs' water system was considered satisfactory in the utility's last rate case. Based on review of the information provided by the utility, as well as additional information gathered throughout the course of this docket, staff does not believe any actions need to be taken with respect to secondary standards. While the current utility owner is a developer, staff notes that being developer-owned does not, in itself, disqualify a utility from the operating ratio method. The system is built out and was originally placed into service in 1972. In the last rate case, the Commission determined that there is no potential for future growth. Finally, Orchid Springs owns its water treatment plant, but interconnects with the City of Winter Haven for emergency back-up service.

¹⁸Order No. PSC-15-0569-PAA-WS, pp. 17-20.

¹⁹Staff is recommending O&M expense of \$80,059, but that amount was reduced by \$3,533 related to purchased water expense because it is not eligible for the operating margin. The \$3,533 is comprised of the \$1,082 approved in the last rate case and staff's recommended adjustment of \$2,451.

Staff calculated the revenue requirement and believes that the operating ratio method of revenue requirement calculation for the water system and the return on rate base revenue requirement calculation for the wastewater system place the utility in the best posture to cover the expenses necessary to provide reliable, quality service going forward. This methodology is consistent with the utility's last rate case.

Revenue Requirement

Staff recommends that the operating ratio method should be used to calculate the water revenue requirement. Using this methodology, Orchid Springs will have an operating margin of 10.00 percent, resulting in an annual increase of \$7,822 for water. Staff's water revenue requirement calculation is shown in Table 1-9 below:

Table 1-9
Water Revenue Requirement

| | |
|----------------------------------|------------------------|
| Adjusted O&M Expense | \$76,526 ²⁰ |
| Operating Margin (%) | <u>x 10.00%</u> |
| Operating Margin | \$7,653 |
| O&M Expense | 80,059 |
| Depreciation Expense | 6,741 |
| Amortization | 0 |
| Taxes Other Than Income | <u>7,036</u> |
| Revenue Requirement | \$101,489 |
| Less Adjusted Test Year Revenues | <u>93,667</u> |
| Annual Increase | <u>\$7,822</u> |
| Percent Increase | 8.35% |

²⁰The adjusted O&M expense amount was reduced by \$3,533 related to purchased water expense because it is not eligible for the operating margin.

Using the return on rate base methodology, staff believes an annual increase of \$23,837 (11.73 percent) for wastewater is appropriate. This will allow the utility the opportunity to recover its expenses and earn an 8.03 percent return on its wastewater investment. Staff's wastewater revenue requirement calculation is shown in Table 1-10 below:

Table 1-10
Wastewater Revenue Requirement

| | |
|----------------------------------|-----------------|
| Adjusted Rate Base | \$118,837 |
| Rate of Return | <u>x 8.03%</u> |
| Return on Rate Base | \$9,543 |
| Adjusted O&M Expense | 188,501 |
| Depreciation Expense | 3,650 |
| Amortization | 12,225 |
| Taxes Other Than Income | <u>13,146</u> |
| Revenue Requirement | \$227,066 |
| Less Adjusted Test Year Revenues | <u>203,229</u> |
| Annual Increase | <u>\$23,837</u> |
| Percent Increase | 11.73% |

Issue 2: What are the appropriate water and wastewater rates for Orchid Springs?

Recommendation: Staff recommends that the rate increase of 8.35 percent for water and 11.73 percent for wastewater should be applied as an across-the-board increase monthly to service rates. The rates, as shown on Schedule Nos. 4-A and 4-B, 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. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. 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 that notice was given within 10 days of the date of the notice. (Bethea)

Staff Analysis: In the utility's last rate case, the revenue requirement increase was so minimal (.23 percent), the Commission found it appropriate from a rate stability perspective to maintain the existing water rate structure and rates until a future proceeding.²¹ The existing water rate structure consists of a base facility charge (BFC) and a uniform gallonage charge. The water BFC generates approximately 56 percent of the utility's existing water revenues. It has been Commission practice to set the BFC allocation no greater than 40 percent for water, unless there is seasonality and a concern for revenue stability. In addition, BFC allocations are lowered in order to design gallonage charges that send pricing signals to target discretionary usage. In order to assess the seasonality and usage patterns of a utility's customer base, staff relies on a billing analysis, which is a compilation of the utility's test year bills at each consumption level. In a limited proceeding docket, a billing analysis is not a filing requirement and was not provided.

In the utility's 1998 SARC, the approved BFC generated approximately 50 percent of the revenue requirement.²² In the 2014 SARC, the rate structure was not changed; however, the resulting BFC generated approximately 52 percent of the utility's revenues. In that case, the billing analysis reflected a seasonal customer base. In this proceeding, the BFC generates approximately 56 percent of the revenues. There appears to be an upward trend in the amount of revenues generated from the BFC, which further indicates a seasonal customer base. As a result, staff believes the existing BFC allocation is reasonable for water. In addition, the wastewater BFC generates approximately 49 percent of the revenues and is consistent with Commission practice. Therefore, in order to maintain revenue stability, staff recommends, remaining consistent with prior limited proceedings, an across-the-board increase should be applied to water and wastewater rates to produce additional service revenues of \$7,822 or a 8.35 percent increase for water and \$23,837 or a 11.73 percent increase for wastewater.

Based on the above, staff recommends that the rate increase of 8.35 percent for water and 11.73 percent for wastewater should be applied as an across-the-board increase monthly to service rates. The rates, as shown on Schedule Nos. 4-A and 4-B, 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. The utility should file revised tariff sheets and a proposed customer notice to reflect the

²¹Order No. PSC-15-0569-PAA-WS, issued December 16, 2016, in Docket No. 140239-WS, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation.*

²²Order PSC-98-1579-FOF-WS, issued November 25, 1998, in Docket No. 980441-WS, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation.*

Commission-approved rates. 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 that notice was given within 10 days of the date of the notice.

Issue 3: What is the appropriate amount by which rates should be reduced four years after the published effective date to reflect the removal of the amortized rate case expense?

Recommendation: The water and wastewater rates should be reduced as shown on Schedule Nos. 4-A and 4-B, to remove rate case expense grossed-up for regulatory assessment fees (RAFs) and amortized over a four-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. The utility 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 Orchid Springs 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. (Bethea, Brown, Wilson)

Staff Analysis: Orchid Springs' water and wastewater rates should be reduced immediately following the expiration of the four-year rate case expense recovery period by the amount of the rate case expense previously included in the rates, pursuant to Section 367.081(8), F.S. The reduction will reflect the removal of revenues associated with the amortization of rate case expense and the gross-up for RAFs, which is \$2,915 for water and \$2,615 for wastewater. Using the utility's current revenues, expenses, and customer base, the reduction in revenues will result in the rate decrease shown on Schedule Nos. 4-A and 4-B. It should be noted that, in the utility's 2014 SARC, the Commission approved rate case expense grossed up for RAFS of \$1,125 for water and \$999 for wastewater. These amounts are still included in the balance of unamortized rate case expense in the current docket and are scheduled to be removed in January 2020.

Orchid Springs should be required to file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. The utility also should be required to file a proposed customer notice setting forth the lower rates and the reason for the reduction. If Orchid Springs 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 4: Should the recommended rates be approved for Orchid Springs on a temporary basis, subject to refund, in the event of a protest filed by a substantially affected person or party?

Recommendation: Yes. The recommended rates should be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a substantially affected person or party. 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 sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the utility should be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the utility should file reports with the Commission Clerk's office no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (Brown, Wilson)

Staff Analysis: This recommendation proposes an increase in rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility. Therefore, pursuant to Section 367.081(2), F.S., which requires the Commission to “fix rates which are just, reasonable, compensatory, and not unfairly discriminatory,” and consistent with prior Commission orders,²³ in the event of a protest filed by a party other than the utility, staff recommends that the recommended rates be approved as temporary 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 sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. The recommended rates collected by the utility should be subject to the refund provisions discussed below.

The utility should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of \$21,421. Alternatively, the utility could establish an escrow agreement with an independent financial institution.

If the utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

²³Order No. PSC-2016-0505-PAA-WS, issued October 31, 2016, in Docket No. 150269-WS, *In re: Application for a limited proceeding water rate increase in Marion, Pasco, and Seminole Counties, by Utilities, Inc. of Florida*; Order No. PSC-09-0651-PAA-SU, issued September 28, 2009, in Docket No. 090121-SU, *In re: Application for limited proceeding rate increase in Seminole County by Alafaya Utilities, Inc.*; and Order No. PSC-10-0682-PAA-WS, issued November 15, 2010, in Docket No. 090349-WS, *In re: Application for limited proceeding rate increase in Polk County by Cypress Lakes Utilities, Inc.*

1. The Commission approves the rate increase; or,
2. If the Commission denies the increase, the utility shall refund the amount collected that is attributable to the increase.

If the utility chooses a letter of credit as a security, it should contain the following conditions:

1. The letter of credit is irrevocable for the period it is in effect.
2. The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

1. The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement.
2. No monies in the escrow account may be withdrawn by the utility without the prior written authorization of the Commission Clerk, or his or her designee.
3. The escrow account shall be an interest bearing account.
4. If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
5. If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
6. All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
7. The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
8. This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to *Cosentino v. Elson*, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
9. The account must specify by whom and on whose behalf such monies were paid.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received as a result of the rate increase should be maintained by the utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

The utility should maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the utility should file reports with the Office of Commission Clerk no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

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. (Murphy, 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, 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.

| ORCHID SPRINGS DEVELOPMENT CORPORATION | | SCHEDULE NO. 1-A | |
|--|-----------------------------|---------------------------------------|-------------------------|
| TEST YEAR ENDED 12/31/17 | | DOCKET NO. 20180063-WS | |
| SCHEDULE OF WATER RATE BASE | | | |
| DESCRIPTION | BALANCE PER 2014 SARC | STAFF ADJUSTMENTS TO UTIL. BAL. | BALANCE PER STAFF |
| UTILITY PLANT IN SERVICE | \$282,444 | \$27,643 | \$310,087 |
| LAND & LAND RIGHTS | 1,682 | 0 | 1,682 |
| ACCUMULATED DEPRECIATION | (258,783) | (1,458) | (260,241) |
| CIAC | (171,516) | 0 | (171,516) |
| AMORTIZATION OF CIAC | 171,516 | 0 | 171,516 |
| WORKING CAPITAL ALLOWANCE | <u>9,353</u> | <u>173</u> | <u>9,526</u> |
| WATER RATE BASE | <u>\$34,696</u> | <u>\$26,359</u> | <u>\$61,055</u> |

| ORCHID SPRINGS DEVELOPMENT CORPORATION | | SCHEDULE NO. 1-B | |
|--|-----------------------------|---------------------------------------|-------------------------|
| TEST YEAR ENDED 12/31/17 | | DOCKET NO. 20180063-WS | |
| SCHEDULE OF WASTEWATER RATE BASE | | | |
| DESCRIPTION | BALANCE PER 2014 SARC | STAFF ADJUSTMENTS TO UTIL. BAL. | BALANCE PER STAFF |
| UTILITY PLANT IN SERVICE | \$560,385 | \$2,050 | \$562,435 |
| LAND & LAND RIGHTS | 0 | 0 | 0 |
| ACCUMULATED DEPRECIATION | (470,351) | 3,620 | (466,731) |
| CIAC | (302,109) | 0 | (302,109) |
| AMORTIZATION OF CIAC | 302,109 | 0 | 302,109 |
| WORKING CAPITAL ALLOWANCE | <u>20,905</u> | <u>2,227</u> | <u>23,132</u> |
| WASTEWATER RATE BASE | <u>\$110,940</u> | <u>\$7,897</u> | <u>\$118,837</u> |

| ORCHID SPRINGS DEVELOPMENT CORPORATION | | SCHEDULE NO. 1-C | |
|---|--|------------------------|-------------------|
| TEST YEAR ENDED 12/31/17 | | DOCKET NO. 20180063-WS | |
| ADJUSTMENTS TO RATE BASE | | | |
| | | <u>WATER</u> | <u>WASTEWATER</u> |
| <u>UTILITY PLANT IN SERVICE</u> | | | |
| 1. To reflect appropriate plant additions. | | \$27,643 | \$5,785 |
| 2. To reflect retirement associated with plant additions. | | <u>0</u> | <u>(3,735)</u> |
| Total | | <u>\$27,643</u> | <u>\$2,050</u> |
| <u>ACCUMULATED DEPRECIATION</u> | | | |
| To reflect acc. dep. associated with plant additions. | | <u>(\$1,458)</u> | <u>\$3,620</u> |
| <u>WORKING CAPITAL ALLOWANCE</u> | | | |
| To reflect 1/8 of test year O & M expenses. | | <u>\$173</u> | <u>\$2,227</u> |

| ORCHID SPRINGS DEVELOPMENT CORPORATION TEST YEAR ENDED 12/31/17 SCHEDULE OF CAPITAL STRUCTURE | | | | | | SCHEDULE NO. 2 DOCKET NO. 20180063-WS | | |
|--|--------------------|---------------------------|------------------------------------|--|---|--|--------------------|----------------------|
| CAPITAL COMPONENT | PER UTILITY | STAFF ADJUST-MENTS | TEST YEAR BALANCE PER STAFF | ADJUSTMENTS TO RECONCILE TO RATE BASE | RECONCILED CAPITAL STRUCTURE PER STAFF | PERCENT OF TOTAL | COST | WEIGHTED COST |
| 1. COMMON EQUITY | \$521,049 | \$0 | \$521,049 | (\$384,393) | \$136,656 | 75.97% | 9.38% | 7.13% |
| 2. LONG-TERM DEBT | \$116,799 | \$0 | \$116,799 | (\$86,166) | 30,633 | 17.03% | 4.50% | 0.77% |
| 3. SHORT-TERM DEBT | 0 | 0 | 0 | 0 | 0 | 0.00% | 0.00% | 0.00% |
| 4. PREFERRED STOCK | 0 | 0 | 0 | 0 | 0 | 0.00% | 0.00% | 0.00% |
| 5. CUSTOMER DEPOSITS | 12,603 | 0 | 12,603 | 0 | 12,603 | 7.01% | 2.00% | 0.14% |
| 6. DEFERRED INCOME TAXES | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> |
| 7. TOTAL | <u>\$650,451</u> | <u>\$0</u> | <u>\$650,451</u> | <u>(\$470,559)</u> | <u>\$179,892</u> | <u>100.00%</u> | | <u>8.03%</u> |
| RANGE OF REASONABLENESS | | | | | | <u>LOW</u> | <u>HIGH</u> | |
| RETURN ON EQUITY | | | | | | <u>8.38%</u> | <u>10.38%</u> | |
| OVERALL RATE OF RETURN | | | | | | <u>7.27%</u> | <u>8.79%</u> | |

| ORCHID SPRINGS DEVELOPMENT CORPORATION | | | | SCHEDULE NO. 3-A | |
|--|-----------------------------|----------------------|--------------------------------|----------------------------|------------------------|
| TEST YEAR ENDED 12/31/17 | | | | DOCKET NO. 20180063-WS | |
| SCHEDULE OF WATER OPERATING INCOME | | | | | |
| | APPROVED IN 2014 SARC | STAFF ADJUSTMENTS | STAFF ADJUSTED TEST YEAR | ADJUST. FOR INCREASE | REVENUE REQUIREMENT |
| 1. OPERATING REVENUES | <u>\$93,667</u> | <u>\$0</u> | <u>\$93,667</u> | <u>\$7,822</u> 8.35% | <u>\$101,489</u> |
| OPERATING EXPENSES: | | | | | |
| 2. OPERATION & MAINTENANCE | \$74,824 | \$5,235 | \$80,059 | \$0 | \$80,059 |
| 3. DEPRECIATION | 5,283 | 1,458 | 6,741 | 0 | 6,741 |
| 4. AMORTIZATION | 0 | 0 | 0 | 0 | 0 |
| 5. TAXES OTHER THAN INCOME | 6,186 | 498 | 6,684 | 352 | 7,036 |
| 6. INCOME TAXES | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> |
| 7. TOTAL OPERATING EXPENSES | <u>\$86,293</u> | <u>\$7,191</u> | <u>\$93,484</u> | <u>\$352</u> | <u>\$93,836</u> |
| 8. OPERATING INCOME/(LOSS) | <u>\$7,374</u> | | <u>\$183</u> | | <u>\$7,652</u> |
| 9. WATER RATE BASE | <u>\$34,696</u> | | <u>\$61,055</u> | | <u>\$61,055</u> |
| 10. OPERATING MARGIN | <u>10.00%</u> | | | | <u>10.00%</u> |

| ORCHID SPRINGS DEVELOPMENT CORPORATION | | | | SCHEDULE NO. 3-B | |
|---|-----------------------------|----------------------|--------------------------------|----------------------------|------------------------|
| TEST YEAR ENDED 12/31/17 | | | | DOCKET NO. 20180063-WS | |
| SCHEDULE OF WASTEWATER OPERATING INCOME | | | | | |
| | APPROVED IN 2014 SARC | STAFF ADJUSTMENTS | STAFF ADJUSTED TEST YEAR | ADJUST. FOR INCREASE | REVENUE REQUIREMENT |
| 1. OPERATING REVENUES | <u>\$203,229</u> | <u>\$0</u> | <u>\$203,229</u> | <u>\$23,837</u> 11.73% | <u>\$227,066</u> |
| OPERATING EXPENSES: | | | | | |
| 2. OPERATION & MAINTENANCE | \$167,239 | \$21,262 | \$188,501 | \$0 | \$188,501 |
| 3. DEPRECIATION (NET) | 3,535 | 115 | 3,650 | 0 | 3,650 |
| 4. AMORTIZATION | 12,225 | 0 | 12,225 | 0 | 12,225 |
| 5. TAXES OTHER THAN INCOME | 12,037 | 37 | 12,074 | 1,073 | 13,146 |
| 6. INCOME TAXES | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> |
| 7. TOTAL OPERATING EXPENSES | <u>\$195,036</u> | <u>\$21,414</u> | <u>\$216,450</u> | <u>\$1,073</u> | <u>\$217,523</u> |
| 8. OPERATING INCOME/(LOSS) | <u>\$8,193</u> | | <u>(\$13,211)</u> | | <u>\$9,543</u> |
| 9. WASTEWATER RATE BASE | <u>\$110,940</u> | | <u>\$118,837</u> | | <u>\$118,837</u> |
| 10. RATE OF RETURN | <u>7.39%</u> | | <u>(11.13%)</u> | | <u>8.03%</u> |

| ORCHID SPRINGS DEVELOPMENT CORPORATION TEST YEAR ENDED 12/31/17 ADJUSTMENTS TO OPERATING INCOME | | SCHEDULE NO. 3-C DOCKET NO. 20180063-WS | |
|--|-----------------------|--|--|
| | <u>WATER</u> | <u>WASTEWATER</u> | |
| OPERATION AND MAINTENANCE EXPENSES | | | |
| 1. Purchased Water (610) | | | |
| a. To reflect appropriate amount of amort. emerg. purchased water. | <u>\$2,451</u> | <u>\$0</u> | |
| 2. Purchased Wastewater Treatment (710) | | | |
| a. To reflect appropriate purchased wastewater expense. | <u>\$0</u> | <u>\$13,765</u> | |
| 3. Repairs and Maintenance (663/763) | | | |
| a. To reflect appropriate mowing expense for WWTP. | <u>\$0</u> | <u>\$5,000</u> | |
| 4. Regulatory Commission Expense (665/765) | | | |
| To reflect appropriate amortized rate case expense. | <u>\$2,784</u> | <u>\$2,497</u> | |
| TOTAL OPERATION & MAINTENANCE ADJUSTMENTS | <u>\$5,235</u> | <u>\$21,262</u> | |
| DEPRECIATION EXPENSE | | | |
| To reflect net depreciation expense associated with plant additions. | <u>\$1,458</u> | <u>\$115</u> | |
| TAXES OTHER THAN INCOME | | | |
| To reflect appropriate taxes associated with plant additions. | <u>\$498</u> | <u>\$37</u> | |

| ORCHID SPRINGS DEVELOPMENT CORPORATION | | SCHEDULE NO. 4-A | |
|---|-------------------------------|-------------------------------|-----------------------------|
| TEST YEAR ENDED 12/31/17 | | DOCKET NO. 20180063-WS | |
| MONTHLY WATER RATES | | | |
| | RATES AT TIME OF FILING | STAFF RECOMMENDED RATES | 4 YEAR RATE REDUCTION |
| <u>Residential and General Service</u> | | | |
| Base Facility Charge by Meter Size | | | |
| 5/8" x 3/4" | \$9.96 | \$10.79 | \$0.31 |
| 3/4" | \$14.94 | \$16.19 | \$0.47 |
| 1" | \$24.90 | \$26.98 | \$0.78 |
| 1-1/2" | \$49.80 | \$53.95 | \$1.55 |
| 2" | \$79.68 | \$86.32 | \$2.48 |
| 3" | \$159.36 | \$172.64 | \$4.96 |
| 4" | \$249.00 | \$269.75 | \$7.75 |
| 6" | \$498.00 | \$539.50 | \$15.50 |
| Charge per 1,000 gallons - Residential and General Service | \$1.81 | \$1.96 | \$0.06 |
| <u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u> | | | |
| 4,000 Gallons | \$17.20 | \$18.63 | |
| 6,000 Gallons | \$20.82 | \$22.55 | |
| 8,000 Gallons | \$24.44 | \$26.47 | |

| ORCHID SPRINGS DVELEOPMENT CORPORATION | | SCHEDULE NO. 4-B | |
|--|-------------------------------|-------------------------------|-----------------------------|
| TEST YEAR ENDED 12/31/17 | | DOCKET NO. 20180063-WS | |
| MONTHLY WASTEWATER RATES | | | |
| | RATES AT TIME OF FILING | STAFF RECOMMENDED RATES | 4 YEAR RATE REDUCTION |
| <u>Residential</u> | | | |
| Base Facility Charge - All Meter Sizes | \$24.64 | \$27.53 | \$0.32 |
| Charge Per 1,000 gallons 6,000 gallon cap | \$5.88 | \$6.57 | \$0.08 |
| <u>General Service</u> | | | |
| Base Facility Charge by Meter Size | | | |
| 5/8" x 3/4" | \$24.64 | \$27.53 | \$0.32 |
| 3/4" | \$36.96 | \$41.30 | \$0.48 |
| 1" | \$61.60 | \$68.83 | \$0.79 |
| 1-1/2" | \$123.20 | \$137.65 | \$1.59 |
| 2" | \$197.12 | \$220.24 | \$2.54 |
| 3" | \$394.24 | \$440.48 | \$5.07 |
| 4" | \$616.00 | \$688.25 | \$7.93 |
| 6" | \$1,232.00 | \$1,376.50 | \$15.85 |
| Charge per 1,000 gallons | \$7.00 | \$7.82 | \$0.09 |
| <u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u> | | | |
| 4,000 Gallons | \$48.16 | \$53.81 | |
| 6,000 Gallons | \$59.92 | \$66.95 | |
| 8,000 Gallons | \$59.92 | \$66.95 | |

Item 16

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Friedrich) *MF PD 84 JSH*
Office of the General Counsel (Murphy, Crawford) *SC*

RE: Docket No. 20180219-SU – Request for approval of amendment to tariff to charge a standby charge to customers significantly impacted by Hurricane Michael in Gulf County, by ESAD Enterprises, Inc. d/b/a Beaches Sewer System.

AGENDA: 12/11/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 1/20/19 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: Place after 20160165-SU on the Agenda.

RECEIVED-FPSC
2018 NOV 30 PM 12:19
COMMISSION
CLERK

Case Background

ESAD Enterprises, Inc. d/b/a Beaches Sewer System, Inc. (Beaches or utility) is a Class C wastewater-only utility operating in Gulf County, Florida. The utility serves approximately 316 residential and four general service customers. In addition, the utility collects a guaranteed revenue charge for 45 properties that have paid service availability charges but have not yet connected to the system. Water service is provided by the City of Port St. Joe.

On October 10, 2018, Hurricane Michael hit the utility's service territory, significantly damaging the area and the utility's plant and lift stations. While the utility's ability to serve has been restored, the homes of numerous customers have not. The utility indicated that approximately 76 customers or 23 percent of the customer base is unable to receive wastewater service due to extensive storm damage incurred due to Hurricane Michael.

As a result, the utility filed a letter dated November 20, 2018, describing a new charge it has implemented for those affected customers not receiving service. Beaches is currently authorized to bill a monthly flat rate for wastewater service of \$43.03.¹ In its letter, the utility stated it has noticed the 76 affected customers and has billed them in the amount of \$11.79, the amount of the utility's approved guaranteed revenue charge, instead of \$43.03 for the November 2018 billing period. Further, the utility indicated that numerous customers contacted the utility to express that they understood the purpose of the change in billing and would remit payment for the \$11.79. The utility has also received a request to discontinue service from one customer who does not intend to rebuild. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

¹The utility's current rates and charges were approved in Docket No. 20160165-SU by Order No. PSC-2017-0383-PAA-SU, issued October 4, 2017.

Discussion of Issues

Issue 1: Should the Commission approve Beaches' request to offer a standby charge of \$11.79 to customers whose homes incurred extensive damage due to Hurricane Michael and, therefore, cannot utilize wastewater service?

Recommendation: Yes. The utility's request to offer a standby charge of \$11.79 to customers whose homes incurred extensive damage due to Hurricane Michael and, therefore, cannot utilize wastewater service should be approved. The utility should file a tariff sheet and a proposed customer notice which encompasses the amount and purpose of the standby charge, the customer's right to discontinue service by providing written notice to the utility, and that the continuance of the standby charge will be reviewed by the Commission staff in January 2020 subsequent to the utility filing a report by January 1, 2019 detailing the number of customers still being billed the standby charge. Beaches should be required to provide notice to all customers. The approved charge should apply to affected customers on a temporary basis until all affected customers have either resumed wastewater service or disconnected from the system. The utility should provide proof of noticing within 10 days of rendering its approved notice. (Friedrich)

Staff Analysis: Beaches provides wastewater service to approximately 320 customers on the Florida Panhandle in Port St. Joe. The utility bills each customer its approved flat rate of \$43.03 per month for wastewater service. This area was impacted considerably by Hurricane Michael in October of 2018. The utility indicated that the homes of approximately 76 customers incurred extensive storm damage and are uninhabitable and, therefore, those customers cannot utilize wastewater service. The utility has demonstrated concern regarding its revenue stability, considering that approximately 23 percent of its customer base cannot utilize wastewater service in the immediate future. In order to maintain a stable revenue stream, Beaches requested approval to bill the affected customers a temporary monthly charge in the amount of its approved guaranteed revenues charge (\$11.79), instead of its flat rate.

By letter dated November 20, 2018, the utility advised the Commission of its intended billing changes to those affected customers. As mentioned previously, the utility indicated that it would bill those customers with homes that cannot utilize wastewater service a charge of \$11.79 instead of its approved \$43.03 flat rate. The utility additionally indicated that while many customers impacted by the hurricane may not currently be sending wastewater back to the Beaches' wastewater system, there are still many fixed costs attributable to the utility being able to provide wastewater service on demand to this group of customers in the near future. Staff is interpreting the utility's filed letter as a request to establish a new class of service pursuant to Section 367.091(5), F.S., since the affected customers would be billed a new standby charge which is a new customer class that did not exist previously under the utility's tariff.

In its letter, Beaches requested to bill its guaranteed revenue charge to affected customers. Pursuant to Rule 25-30.515(9), Florida Administrative Code (F.A.C.), and the utility's service availability policy in its tariff, a guaranteed revenue charge is designed to help the utility recover a portion of its fixed costs from the time capacity is reserved until a customer begins to pay monthly service charges. Based on the aforementioned, it is not appropriate to bill this customer group a guaranteed revenue charge because they have previously connected to the utility's

wastewater system. In this context, the utility's efforts to recover the fixed portion of the cost of providing wastewater service from customers who will resume service in the short term is analogous to the purposes of the guaranteed revenue charge which has been approved for the utility by the Commission.² The distinction is that the guaranteed revenue charge is for customers who have not yet hooked up to the system while the standby charge is for customers who are temporarily not able to use the services because of a natural disaster.

Section 367.091(6), F.S., provides that an application to establish a rate or charge other than monthly rates for service pursuant to Section 367.081, F.S., must be accompanied by a cost justification. Historically, the Commission has based guaranteed revenue charges on the utility's approved base facility charge (BFC) to reflect the fixed costs associated with the reserved capacity.³ Beaches' approved rate for wastewater service is a flat rate of \$43.03. Typically, the Commission allocates approximately 50 percent of wastewater revenues to the BFC when designing wastewater rates to allow the utility to recover fixed costs associated with providing wastewater service.⁴ However, staff believes the proposed \$11.79 charge for standby service, which mirrors the approved guaranteed revenue charge and represents approximately 27 percent of the utility's current flat rate, is a reasonable proxy for estimating the fixed costs associated with providing wastewater service. The proposed charge appears to be just, reasonable, and compensatory consistent with Section 367.091(5), F.S.

Further, staff considered the importance of the utility's ability to maintain a stable revenue stream, as well as the impact Hurricane Michael had on customers. Staff agrees with the utility's concern to maintain a stable revenue stream and the importance in sustaining the utility's wastewater system at a safe and reliable level. If no revenues are collected from the affected customers, the remaining customer base could be adversely affected in the utility's next rate case.

For the November 2018 billing period, Beaches sent a notice outlining its intended change in billing and a revised bill of \$11.79 to the 76 affected customers. While staff is not opposed to the utility's requested billing method, staff believes that those affected customers without homes suitable for service should be made aware that they may discontinue service with the utility and would, therefore, no longer be billed. The disconnected customer would then be responsible for remitting the utility's approved initial connection charge at the time of reconnection, in the event the customer is ready to resume service in the future. Currently, the utility's approved initial connection charge is \$25.70.

Based on the foregoing, staff believes the utility's request is reasonable and should be approved. The proposed standby charge is intended to be utilized by customers rebuilding their homes and resuming service in the future. Therefore, staff recommends the utility file a report with the

²Staff notes that financial information to evaluate the utility's rates and charges is available within Docket No. 20160165-SU, the utility's open rate case.

³Order Nos. PSC-99-0513-FOF-WS, issued March 12, 1999, in Docket No. 980214-WS, *In re: Application for rate increase in Duval, St. Johns, and Nassau Counties by United Water Florida Inc.*; PSC-2017-0383-PAA-SU, issued October 4, 2017, in Docket No. 20160165-SU, *In re: Application for staff-assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc.*

⁴Order No. PSC-2018-0389-PAA-WS, issued August 2, 2018, in Docket No. 20170147-WS, *In re: Application for staff-assisted rate case in Levy County by FIMC Hideaway, Inc.*

Commission by January 1, 2020, detailing the number of customers still being billed the standby charge in order for staff to evaluate the number of remaining affected customers and whether the standby charge should be continued. Staff understands that there may be customers whose homes were completely destroyed and who may not have intentions to rebuild and resume service in the near future. Staff believes those customers that do not intend to rebuild and resume service in the near future should be advised that they may file a written request to discontinue service with the utility.

Although the utility provided notice to the affected customers of its intended change in billing, the notice was not reviewed by staff and incorrectly characterized the utility's proposed charge as a guaranteed revenue charge. Therefore, the utility should re-notice all customers. The notice should accurately describe the purpose and amount of the standby charge and clearly explain to customers that they have the option to disconnect from the utility's wastewater system. Additionally, the notice should describe the process for a customer to disconnect from the system and the applicable miscellaneous service charges the customer would be subject to in order to resume service after disconnecting. Since Beaches is a wastewater only utility, the notice should additionally state that it is the customer's responsibility to notify Beaches when the customer has resumed water service with the City in order for Beaches to transition to billing the customer the flat rate for wastewater service instead of the standby charge. While the utility believes it has identified the affected customers, there may be additional customers that cannot receive wastewater service; therefore, staff believes all customers of the utility should be noticed. If additional customers contact the utility requesting the standby charge, then the additional customers must provide the utility proof that they are not receiving water service in order to be billed the standby charge for wastewater service.

Based on the above, the utility's request to offer a standby charge of \$11.79 to customers whose homes incurred extensive damage due to Hurricane Michael and, therefore, cannot utilize wastewater service should be approved. The utility should file a tariff sheet and a proposed customer notice which encompasses the amount and purpose of the standby charge, the customer's right to discontinue service by providing written notice to the utility, and that the continuance of the standby charge will be reviewed by the Commission staff in January 2020 subsequent to the utility filing a report by January 1, 2019 detailing the number of customers still being billed the standby charge. Beaches should be required to provide notice to all customers. The approved charge should apply to affected customers on a temporary basis until all affected customers have either resumed wastewater service or disconnected from the system. The utility should provide proof of noticing within 10 days of rendering its approved notice.

Issue 2: Should this docket be closed?

Recommendation: No. If a protest is filed within 21 days of issuance of the Order, the standby charge approved herein should remain in effect with any charges held subject to refund pending resolution of the protest. If no timely protest is filed, a consummating order should be issued. This docket should remain open for the Commission to reevaluate the continuance of the standby charge in 2020. (Murphy, Crawford)

Staff Analysis: No. If a protest is filed within 21 days of issuance of the Order, the standby charge approved herein should remain in effect with any charges held subject to refund pending resolution of the protest. If no timely protest is filed, a consummating order should be issued. This docket should remain open for the Commission to reevaluate the continuance of the standby charge in 2020.

Item 17

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Cicchetti, Barrett, D. Buys, Fletcher, Hightower, Mouring) *MC MCB*
Division of Economics (Merryday) *BM*
Division of Engineering (Ellis) *JN KS*
Office of the General Counsel (Nieves, Schrader) *JSC*

RE: Docket No. 20180048-EI – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Electric. *ALM*

AGENDA: 12/11/18 – Regular Agenda – Parties May Participate

COMMISSIONERS ASSIGNED: Graham, Brown, Clark

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

The Florida Public Service Commission (Commission) opened Docket No. 20180048-EI on February 21, 2018 to consider the tax impacts affecting Florida Public Utilities Company (FPUC) as a result of the passage of the Tax Cuts and Jobs Act of 2017 (TCJA). The Order Establishing Procedure, Order No. PSC-2018-0211-PCO-EI, was issued on April 25, 2018, in which controlling dates were set for filing testimony, exhibits, and discovery. The First Order Revising Order Establishing Procedure, Order No. PSC-2018-0280-PCO-EI, was issued on June 1, 2018, in which the discovery procedures and controlling dates were modified. A Second Order Revising Order Establishing Procedure, Order No. PSC-2018-0471-PCO-EI, was issued on September 21, 2018, to allow FPUC to file revised and supplemental testimony and also to extend the controlling dates for Intervenor Testimony.

On October 17, 2018, FPUC and OPC (collectively, Parties) filed a Joint Motion with the Commission to suspend the procedural schedule in this Docket (Joint Motion). The Order Granting Joint Motion to Suspend Procedural Schedule, Order No. PSC-2018-0504-PCO-EI, was issued on October 19, 2018.

On October 18, 2018, the parties filed the Joint Motion of Florida Public Utilities Company and Office of Public Counsel for approval of 2018 Tax Settlement. In their Joint Motion, the Parties asserted that the Commission's approval of the 2018 Tax Settlement would resolve all issues in this docket and that such approval would obviate the need for further testimony and a full hearing in this docket.

The TCJA results in an annual savings of \$638,158 to FPUC's net operating income (NOI). For calendar year 2018, the annual NOI tax savings will be flowed through to recover incremental storm costs. Effective January 1, 2019, FPUC will apply the annual NOI tax savings of \$638,158 as a permanent base rate reduction. The parties agreed that the grossed-up, "protected" Excess Accumulated Deferred Income tax ("EADIT") balance is a deferred regulatory tax liability in the amount of \$7,155,154. The "protected" EADIT for 2018, in the estimated annual amount of \$288,230, will be applied to the Company's existing fuel and purchased power cost recovery balance. As of January 1, 2019, the "protected" EADIT will be applied to the storm reserve along with any additional accrual. Effective January 1, 2021, FPUC will apply the "protected" EADIT annual amount of \$288,230 as a permanent base rate reduction. The grossed-up "unprotected" EADIT amount of \$538,064 will be applied to reduce FPUC's existing fuel and purchased power cost recovery balance and further reduces FPUC's fuel cost recovery factors in 2019.

The Parties also requested that the Commission consider the 2018 Tax Settlement at its December 2018 Agenda Conference. The Parties asserted that consideration of the 2018 Tax Settlement on this date would enable this matter to proceed, in the event the Commission does not approve the Settlement, to the current February 2019 hearing dates already established in this docket.

At this time, it is appropriate for the Commission to discuss and vote on whether to approve the 2018 Tax Settlement as requested in the Joint Motion for Approval of the 2018 Tax Settlement. The Joint Motion of Florida Public Utilities Company and Office of Public Counsel for approval of the 2018 Tax Settlement is attached.



GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

FILED 10/18/2018
DOCUMENT NO. 06638-2018
FPSC - COMMISSION CLERK

Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

October 18, 2018

E-PORTAL FILING

Ms. Carlotta Stauffer, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20180048 – EI - In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company –Electric.

Attached for filing in the above-referenced docket, please find the Joint Motion of Florida Public Utilities Company and the Office of Public Counsel for Approval of 2018 Tax Settlement submitted in this docket on behalf of Florida Public Utilities Company and the Office of Public Counsel.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

Kind regards,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

MEK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Electric. | DOCKET NO. 20180048-EI
Dated: October 18, 2018

JOINT MOTION OF FLORIDA PUBLIC UTILITIES COMPANY AND THE OFFICE OF PUBLIC COUNSEL FOR APPROVAL OF 2018 TAX SETTLEMENT

Florida Public Utilities Company ("FPUC" or "Company") and the Office of Public Counsel ("OPC"), (together, "Joint Movants") by and through their undersigned attorneys, respectfully move the Florida Public Service Commission ("Commission" or "FPSC") to approve a 2018 Tax Settlement addressing the issues associated with disposition of the tax savings to the Company arising from the Tax Cuts and Jobs Act of 2017 ("TCJA") ("2018 Tax Settlement"), which is attached hereto as Attachment A. The Joint Movants have entered this 2018 Tax Settlement in order to resolve matters at issue in this docket. In support hereof, the Joint Movants state as follows:

1. On December 26, 2017, the Commission approved a Stipulation and Settlement ("2017 Settlement") in Docket No. 20170150-EI, *Petition for limited proceeding to include reliability and modernization projects in rate base, by Florida Public Utilities Company*, between OPC and FPUC.¹ The 2017 Settlement outlined, among other things, the Joint Movants' agreement that any projected tax savings to the Company arising as a result of federal tax reform would be flowed through to customers by way of a base rate decrease and that excess accumulated deferred income taxes ("EADIT") would be flowed back to customers consistent with federal requirements.

¹ Commission Order No. PSC-2017-0488-PAA-EI.

2. On February 21, 2018, the Commission opened the instant docket to address the impact of the TCJA on FPUC. Thereafter, on April 25, 2018, the Order Establishing Procedure, Order No. PSC-2018-0211-PCO-EI, was issued establishing the schedule for this proceeding. In accordance with that Order, FPUC filed its Petition for Approval of Tax Benefits Adjustment Amounts and Flow-Through Mechanism on May 31, 2018, along with the testimony and exhibits of witnesses Cassel, Dewey and Reno.

3. The Joint Movants continued to negotiate in good faith to resolve the issues in this docket and thereby avoid the need for any further expensive and time-consuming litigation before the Commission. These efforts have been successful and the result is the 2018 Tax Settlement attached hereto as Attachment A.

4. The 2018 Tax Settlement is the result of good faith efforts to address the issues in this proceeding in a manner that will provide regulatory certainty with regard to FPUC's rates and avoid the unnecessary expense and uncertainty associated with further litigation. The 2018 Tax Settlement is a compromise based on the highly specific circumstances of this case and utility that results in a fair, just, and reasonable disposition of the tax benefits arising from the TCJA to the benefit of FPUC's customers. Therefore, the Joint Movants submit the 2018 Tax Settlement is in the public interest and respectfully request its approval as further described below.

5. In furtherance of this Joint Motion and approval of the 2018 Tax Settlement, the Joint Movants waive any right to seek reconsideration of, or otherwise appeal, any decision of the Commission approving, in its entirety, this 2018 Tax Settlement.

6. As set forth in the attached 2018 Tax Settlement, the Joint Movants have reached agreement, as follows:

- (a) The Joint Movants agree that the impact of the TCJA on FPUC's Net Operating Incoming ("NOI") is a savings of \$638,158 annually;
- (b) In lieu of applying these savings to base rates, the Joint Movants agree that, given FPUC's existing fuel under-recovery and its separate petition in Docket No. 20180061-EI to recover incremental storm costs, these tax savings should be flowed-through to FPUC's customers as follows:
 - i. For calendar year 2018, the NOI annual tax savings impact of \$638,158 will be applied to the Company's existing fuel and purchased power cost recovery balance, which will serve to reduce FPUC's Fuel Cost Recovery factors for 2019. The 2018 Tax Settlement contemplates that FPUC will submit conforming, revised schedules in Docket No. 20180001-EI as soon as practicable following the submission of this 2018 Tax Settlement to the Commission.
 - ii. Effective January 1, 2019, FPUC will apply the NOI annual tax savings of \$638,158 as a permanent base rate reduction.
- (c) Protected - The Joint Movants agree that the grossed-up, "protected" Excess Accumulated Deferred Income Tax ("EADIT") balance is a deferred regulatory tax liability in the amount of \$7,155,154, which must be flowed-through to FPUC's customers consistent with the appropriate IRS methodology. The estimated annual benefit is \$288,230. Rather than apply these savings to base rates, as contemplated by the 2017 Settlement, the Parties hereby agree that, consistent with the underlying intent of the 2017 Settlement, and as a compromise based on the highly specific circumstances of this case and FPUC, these savings shall instead be flowed-through to FPUC's customers as follows:
 - i. For calendar year 2018, the "protected" EADIT amount of \$288,230 will be applied to the Company's existing fuel and purchased power cost recovery balance, which will serve to reduce FPUC's Fuel Cost Recovery factors in

2019. The 2018 Tax Settlement contemplates that FPUC will submit conforming, revised schedules in Docket No. 20180001-EI as soon as practicable following the submission of this 2018 Tax Settlement to the Commission.

- ii. Beginning January 1, 2019, the “protected” EADIT amount of \$288,230 will, along with the existing \$121,620 accrual, be applied to the storm reserve beginning January 1, 2019 and ending December 31, 2020.
 - iii. Effective January 1, 2021, FPUC will apply the “protected” EADIT amount of \$288,230 will be applied as a permanent base rate reduction.
- (d) Unprotected - The Parties agree that the grossed-up, “unprotected” EADIT balance for the Company is approximately \$538,064 and that, as a compromise based on the highly specific circumstances of this case and FPUC, this amount shall be applied to reduce the Company’s existing fuel and purchased power cost recovery balance, which will serve to further reduce FPUC’s Fuel Cost Recovery factors in 2019. The 2018 Tax Settlement contemplates that FPUC will submit conforming, revised schedules in Docket No. 20180001-EI as soon as practicable following the submission of this 2018 Tax Settlement to the Commission.

7. The Joint Movants also agree that the tax savings identified in the 2018 Tax Settlement are based upon FPUC’s best estimates at the time of this filing. FPUC shall calculate the actual amount of the tax benefit to be flowed-through to customers based on its 2017 tax return and submit this amount to the Commission for review and approval. The 2018 Tax Settlement contemplates that, if approved by the Commission, any prior period true-up will be made through the Fuel Clause, and base rates further adjusted for any ongoing impact.

8. In addition, the Joint Movants agree that, if the IRS issues guidance that cost of removal should be a protected asset, the Company’s balances associated with the cost of removal

shall be accounted for using the IRS prescribed methodology for protected assets. If it becomes necessary to seek clarification from the IRS by way of a Private Letter Ruling, then the Joint Movants agree that FPUC shall be allowed to defer the costs associated with the procedural activity to be amortized over five years, or until the Company's next base rate proceeding.

9. The Joint Movants represent that the 2018 Tax Settlement provides an equitable and just balance of the positions of the Joint Movants on the issues in this proceeding. The Joint Movants submit approval of the 2018 Tax Settlement is in the best interests of both the Company and its customers, and therefore, respectfully request approval of same.

10. For the sake of efficiency and to allow the terms of the 2018 Tax Settlement to become fully effective on January 1, 2019, as contemplated, the Joint Movants request the Commission rule on this Joint Motion For Approval of 2018 Tax Settlement at or before the Commission's December 2018 Agenda Conference.

11. Commission approval of this Joint Motion is consistent with the Commission's long-standing policy to encourage settlements that provide benefits to the customers and avoid unnecessary additional litigation expense.

WHEREFORE, the Joint Movants respectfully request that the Commission approve the 2018 Tax Settlement attached hereto as Attachment A.

Respectfully submitted this 18th day of October 2018 by:

/s/ Virginia Ponder

Virginia Ponder
Bar No. 99947
Office of Public Counsel
c/o The Florida Legislature
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Tallahassee, FL 32399-1400
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Attorneys for the Citizens of the
State of Florida

/s/ Beth Keating

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Tallahassee, FL 32301
(850) 521-1706
bkeating@gunster.com
Attorneys for Florida Public Utilities Company


CERTIFICATE OF SERVICE

Docket No. 20180048-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 18th day of October 2018 to the following:

| | |
|---|--|
| Johana Nieves Kurt Schrader Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 jnieves@psc.state.fl.us kschrade@psc.state.fl.us | J.R. Kelly/Virginia Ponder Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us Ponder.Virginia@leg.state.fl.us |
|---|--|

By: _____


Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

Attachment A
2018 Tax Settlement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
|--|---|
| In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Electric. | DOCKET NO. 20180048-EI Dated: October <u>16</u> , 2018 |
|--|---|

2018 TAX SETTLEMENT

WHEREAS, Florida Public Utilities Company ("FPUC" or "Company") and the Office of Public Counsel ("OPC") have signed this Settlement regarding the disposition of the Company's Excess Accumulated Deferred Income Taxes ("2018 Tax Settlement"); and

WHEREAS, unless the context clearly intends otherwise, the term "Party" or "Parties" shall mean a signatory or signatories to this 2018 Tax Settlement; and

WHEREAS, on July 3, 2017, FPUC petitioned the Florida Public Service Commission ("the Commission") for a limited proceeding to include \$15,241,515 in capital projects in rate base and increase its rates and charges by the amount necessary to recover the revenue requirement of \$1,823,869 on those projects with the effective day of such rate increase to be January 1, 2018 ("Limited Proceeding"); and

WHEREAS, the Parties entered into a Stipulation and Settlement to resolve the Limited Proceeding ("Limited Proceeding Settlement"), which was filed November 28, 2017, and approved by Commission Order No. PSC-2017-0488-PAA-EI, issued December 26, 2017; and

WHEREAS, the Limited Proceeding Settlement provided for an increase to FPUC's base rates sufficient to generate an additional \$1,558,050 of annual revenues in revenues to be implemented January 1, 2018, for purposes of recovering the revenue requirement on certain specified projects;

WHEREAS, Article VII of the Limited Proceeding Settlement recognized that federal Tax Reform could impact the effective tax rate recognized by the Company in FPSC-adjusted reported net operating income and the measurement of existing and prospective deferred federal income tax assets and liabilities reflected in the FPSC adjusted capital structure; and

WHEREAS, the Tax Cuts and Jobs Act of 2017 (Pub. Law 115-97) ("TCJA") has since been enacted; and

WHEREAS, the Commission opened this proceeding to address the impact of the TCJA on the Company and OPC has intervened and is a party to this proceeding; and

WHEREAS, the Parties and Commission Staff have conducted extensive discovery in this proceeding and this proceeding is scheduled for a full, evidentiary hearing in February 2019; and

WHEREAS, FPUC has also filed a request to recover certain incremental storm costs, which is assigned Docket No. 20180061-EI; and

WHEREAS, the Parties have endeavored in good faith to resolve the issues in this docket in order to provide regulatory certainty with regard to FPUC's rates and to avoid the uncertainty associated with further litigation; and

WHEREAS, the legal system, as well as the Commission, favors settlement of disputes, for a variety of reasons, including that they are in the public interest; and

WHEREAS, the Parties to this 2018 Tax Settlement, individually and collectively, agree that this 2018 Tax Settlement, taken as a whole, is in the public interest; and

WHEREAS, the Parties have entered into this 2018 Tax Settlement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120, Florida Statutes, as applicable, and as part of a negotiated exchange of consideration among the Parties to this 2018 Tax Settlement, each Party has agreed to concessions to the others with the expectation, intent, and understanding such that all provisions of this 2018 Tax Settlement, upon approval by the Commission, will be enforced by the Commission as to all matters addressed herein with respect to all Parties; and

WHEREAS, by entering into this 2018 Tax Settlement, the Parties waive all rights to protest the tariff filing(s) made in compliance with the terms and conditions of this 2018 Tax Settlement, and agree that tariffs reflecting rates consistent with this 2018 Tax Settlement shall

be filed promptly following the Commission's vote on this 2018 Tax Settlement, but no later than one (1) day following such Commission vote; and

WHEREAS, the Parties agree that this 2018 Tax Settlement is intended to supplement, rather than supersede, the Limited Proceeding Settlement and shall not be construed as such unless expressly set forth herein;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, which the Parties agree constitute good and valuable consideration, the Parties hereby stipulate and agree as follows:

I. Term

a. This 2018 Tax Settlement will take effect upon Commission approval ("Effective Date") and shall be implemented on the date of the meter reading for the first billing cycle of January 2019 ("Implementation Date"). The additional changes to base rates, charges and related tariff term sheet terms and conditions established as a result of this 2018 Tax Settlement will continue in effect consistent with the Limited Proceeding Settlement, except as otherwise contemplated herein, unless and until changed by Commission Order.

b. The parties reserve all rights, unless such rights are expressly waived or released, under the terms of this 2018 Tax Settlement.

II. Federal Income Tax Reform

a. The Parties agree that the impact of the TCJA on FPUC's Net Operating Incoming ("NOI") is a savings of \$638,158 annually. Rather than apply these savings to base rates, as contemplated by the Limited Proceeding Settlement, the Parties hereby agree that, for purposes of clarity and consistent with the underlying intent of the Limited Proceeding Settlement, these savings shall be flowed-through to FPUC's customers as follows:

- i. For calendar year 2018, the NOI annual tax savings impact of \$638,158 will be applied to the Company's existing fuel and purchased power cost recovery balance, which will serve to reduce FPUC's Fuel Cost Recovery factors for 2019. FPUC shall submit conforming, revised schedules in Docket No.

20180001-EI as soon as practicable following the submission of this 2018 Tax Settlement to the Commission.

- ii. Effective January 1, 2019, the NOI annual tax savings of \$638,158 will be applied as a permanent base rate reduction.

b. Protected - The Parties agree that the grossed-up, "protected" Excess Accumulated Deferred Income Tax ("EADIT") balance is a deferred regulatory tax liability in the amount of \$7,155,154, which must be flowed-through to FPUC's customers consistent with the appropriate IRS methodology. The estimated annual benefit is \$288,230. Rather than apply these savings to base rates, as contemplated by the Limited Proceeding Settlement, the Parties hereby agree that, for purposes of clarity and consistent with the underlying intent of the Limited Proceeding Settlement, these savings shall be flowed-through to FPUC's customers as follows:

- i. For calendar year 2018, the "protected" EADIT amount of \$288,230 will be applied to the Company's existing fuel and purchased power cost recovery balance, which will serve to reduce FPUC's Fuel Cost Recovery factors in 2019. FPUC shall submit conforming, revised schedules in Docket No. 20180001-EI as soon as practicable following the submission of this 2018 Tax Settlement to the Commission.
- ii. Beginning January 1, 2019, the "protected" EADIT amount of \$288,230 will, along with the existing \$121,620 accrual, be applied to the storm reserve beginning January 1, 2019 and ending December 31, 2020.
- iii. Effective January 1, 2021, the "protected" EADIT amount of \$288,230 will be applied as a base rate reduction.

c. Unprotected - The Parties agree that the grossed-up, "unprotected" EADIT balance for the Company is approximately \$538,064 and that this amount shall be applied to reduce the Company's existing fuel and purchased power cost recovery balance, which will serve

to reduce FPUC's Fuel Cost Recovery factors in 2019. FPUC shall submit conforming, revised schedules in Docket No. 20180001-EI as soon as practicable following the submission of this 2018 Tax Settlement to the Commission.

d. Estimates – the Parties agree that the tax savings identified herein are based upon FPUC's best estimates at the time of the filing of this 2018 Tax Settlement. FPUC shall calculate the actual amount of the tax benefit to be flowed-through to customers based on its 2017 tax return and submit this amount for Commission approval. Any prior period true-up shall be made through the Fuel Clause, and base rates shall be adjusted for any ongoing impact.

e. IRS Clarification - The Parties agree that Guidance provided in the 2017 Tax Cuts and Jobs Act and in previous IRS rulings presents some uncertainty as to the classification of the EADIT related to the cost of removal. The Parties acknowledge that FPUC initially classified these balances as a protected asset, but through work with its outside tax experts has subsequently moved these related EADIT balances to an unprotected classification. If the IRS issues guidance that cost of removal should be a protected asset, the Parties agree that the balances associated with the cost of removal shall be accounted for using the IRS prescribed methodology for protected assets. If it becomes necessary to seek clarification from the IRS by way of a Private Letter Ruling, then the Parties agree that the costs associated with the procedural activity may be deferred and amortized over five years, or until the next base rate proceeding.

III. Commission Approval

a. The provisions of this 2018 Tax Settlement are contingent upon Commission approval of this 2018 Tax Settlement in its entirety without modification. The Parties further agree that this 2018 Tax Settlement is in the public interest, that they will support this 2018 Tax Settlement and will not request or support any order, relief, outcome, or result in conflict with the terms of this 2018 Tax Settlement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this 2018 Tax Settlement or the subject matter hereof.

b. No Party will assert in any proceeding before the Commission that this 2018 Tax Settlement or any of the terms in this 2018 Tax Settlement shall have any precedential value. The Parties' agreement to the terms in this 2018 Tax Settlement shall be without prejudice to any Party's ability to advocate a different position in future proceedings not involving this 2018 Tax Settlement. The Parties further expressly agree that no individual provision, by itself, necessarily represents a position of any Party in any future proceeding, and the Parties further agree that no Party shall assert or represent in any future proceeding in any forum that another Party endorses any specific provision of this 2018 Tax Settlement by virtue of that Party's signature on, or participation in, this 2018 Tax Settlement. It is the intent of the Parties to this 2018 Tax Settlement that the Commission's approval of all the terms and provisions of this 2018 Tax Settlement is an express recognition that no individual term or provision, by itself, necessarily represents a position, in isolation, of any Party or that a Party to this 2018 Tax Settlement endorses a specific provision, in isolation, of this 2018 Tax Settlement by virtue of that Party's signature on, or participation in, this 2018 Tax Settlement.

IV. Resolution of Issues

a. Approval of this 2018 Tax Settlement resolves all issues in this proceeding. The Parties agree that approval of the 2018 Tax Settlement will avoid additional litigation costs for all Parties. The Parties agree to waive:

- i. All notice requirements for a hearing as set forth in Section 120.569(2)(b), Florida Statutes, or other applicable law;
- ii. Their right to require a hearing on the merits;
- iii. Their respective rights to seek reconsideration of any Final Order that approves this Agreement in its entirety without change; and
- iv. Their respective right to judicial review of any such final agency action approving this Agreement afforded by Section 120.68, Florida Statutes.

b. The Parties further agree they will support this 2018 Tax Settlement and affirmatively assert that this 2018 Tax Settlement is in the public interest and should be

Docket No. 20180048-EI
2018 Tax Settlement

approved. The Parties likewise agree and acknowledge that the Commission's approval of this 2018 Tax Settlement promotes planning and regulatory certainty for both FPUC and its customers.

XIII. Execution

This 2018 Tax Settlement is dated as of October 16, 2018. It may be executed in one (1) or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

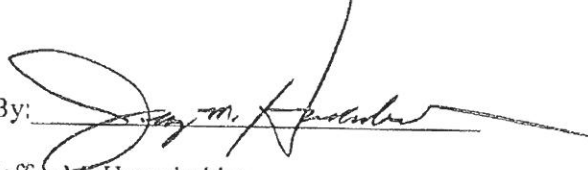
[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this 2018 Tax Settlement by their signature(s).

Dated this 16 day of October 2018.

Florida Public Utilities Company

By: _____

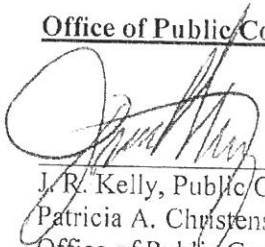

Jeffrey M. Householder
President, Florida Public Utilities Company

Signature Page to Stipulation and Settlement Agreement in Docket No. 20180048-EI

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this 2018 Tax Settlement by their signature(s).

Dated this 16 day of October 2018.

Office of Public Counsel



J. R. Kelly, Public Counsel
Patricia A. Christensen
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Item 18

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Cicchetti, D. Buys, Fletcher, Hightower, Mouring) *MC*
Division of Economics (Guffey) *SKY*
Division of Engineering (Ellis) *ED*
Office of the General Counsel (Davis, Nieves) *JD* *7/23*

RE: Docket No. 20180154-GU – Petition for limited proceeding to consider the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida City Gas. *ALM*

AGENDA: 12/11/18 – Regular Agenda – Parties May Participate

COMMISSIONERS ASSIGNED: Graham, Brown, Clark

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 12, 2018, the Office of Public Counsel (OPC), the Federal Executive Agencies (FEA), and Florida City Gas (FCG) filed a joint motion in support of their Stipulation and Settlement Agreement (SSA) to resolve all matters in Docket No. 20170179-GU, FCG's petition for a rate increase and approval of FCG's depreciation study. The Commission approved the SSA in Order No. PSC-2018-0190-FOF-GU.¹ The SSA, among other things, reflected the Parties' agreement that the issue of the finalized amount of "protected" and unprotected" excess deferred taxes and the flow back period of the excess "protected" deferred taxes, would be determined and tried-up either by submission of a later agreement or the initiation of a limited scope proceeding.

¹Order No. PSC-2018-0190-FOF-GU, issued April 20, 2018, in Docket No. 20170179-GU, *In re: Petition for rate increase by Florida City Gas*.

The Florida Public Service Commission (Commission) opened Docket No. 20180154-GU on August 13, 2018 to consider the tax impacts affecting FCG as a result of the passage of the Tax Cuts and Jobs Act of 2017. The Order Establishing Procedure, Order No. PSC-2018-0472-PCO-GU, was issued on September 24, 2018, in which controlling dates were set for filing testimony, exhibits, and discovery.

On October 8, 2018, FCG, OPC, and FEA (collectively, Parties) filed a Joint Motion for Approval of Stipulation and Settlement Regarding Remaining Excess Accumulated Deferred Income Tax Issues (2018 EADIT Agreement). On October 15, 2018, the Parties filed another Joint Motion with the Commission to temporarily suspend the procedural schedule in this Docket (Joint Motion). Order No. PSC-2018-0509-PCO-GU approved the parties Joint Motion and the procedural schedule in this docket was suspended.

The 2018 EADIT Agreement reclassified \$1.6 million of excess accumulated deferred income taxes from “protected” to “unprotected” with an amortization period of five (5) years resulting in an annual amortization of \$304,943. For 2018, FCG agreed to request authority to apply a levelized Purchased Gas Adjustment credit each month during 2019 to reflect the 2018 amortization of \$304,943. FCG agreed to implement a base rate reduction of \$304,943, beginning January 1, 2019. FCG classified the deficient deferred taxes relating to cost of removal/negative net salvage as protected. FCG agreed that if the IRS issues guidance that cost of removal/negative net salvage is to be treated as “unprotected,” it is agreed that the cost of removal/ net salvage shall be accounted for using the Average Rate Assumption Method and the deficient deferred taxes will be recovered over the remaining life of the asset.

The Parties seek the Commission’s approval of the 2018 EADIT Agreement which resolves all issues in this docket. Such approval would obviate the need for further testimony and a full hearing in this docket.

At this time, it is appropriate for the Commission to discuss and vote on whether to approve the Stipulation and Settlement Agreement as requested in the Joint Motion for Approval of Settlement Agreement. The Joint Motion of Florida City Gas, The Office of Public Counsel, and Federal Executive Agencies for approval of the Stipulation and Settlement regarding remaining excess accumulated deferred income tax issues is attached.



GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

FILED 10/8/2018
DOCUMENT NO. 06507-2018
FPSC - COMMISSION CLERK

Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

October 8, 2018

Electronic Filing

Ms. Carlotta Stauffer, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: DOCKET NO. 20180154-GU - Petition for limited proceeding to consider the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida City Gas.

Dear Ms. Stauffer:

Attached for filing in the above-referenced docket, please find the Joint Motion of Florida City Gas, the Office of Public Counsel, and the Federal Executive Agencies for Approval of Stipulation and Settlement Regarding Remaining Excess Accumulated Deferred Income Tax Issues. The Stipulation and Settlement for which the Joint Movants request approval is included as Attachment A to the Joint Motion.

As always, please don't hesitate to let me know if you have any questions. Thank you for your assistance with this filing.

Kind regards,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

cc:// (Service List)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition for limited proceeding to consider
the tax impacts associated with the Tax
Cuts and Jobs Act of 2017 for Florida City
Gas.

DOCKET NO. 20180154-GU

FILED: October 8, 2018

**JOINT MOTION OF FLORIDA CITY GAS, THE OFFICE
OF PUBLIC COUNSEL, AND FEDERAL EXECUTIVE AGENCIES
FOR APPROVAL OF STIPULATION AND SETTLEMENT REGARDING
REMAINING EXCESS ACCUMULATED DEFERRED INCOME TAX ISSUES**

Florida City Gas ("FCG" or "Company"), the Office of Public Counsel ("OPC"), and Federal Executive Agencies ("FEA"), (collectively, "Joint Movants") by and through their undersigned attorneys, respectfully move the Florida Public Service Commission ("Commission" or "FPSC") to approve a Stipulation and Settlement addressing the remaining issues associated with disposition of excess accumulated deferred income taxes ("2018 EADIT Agreement"), attached hereto as Attachment A, which the Joint Movants have entered into in order to resolve issues in this limited proceeding. In support hereof, the Joint Movants state as follows:

1. On April 20, 2018, the Commission approved a Settlement in Docket No. 20170179-GU, *Petition for rate increase by Florida City Gas*, among OPC, FEA, and FCG. The Settlement outlined, among other things, the Joint Movants' agreement that the Company's projected tax savings from the Tax Cuts and Jobs Act of 2017 ("TCJA") is \$4,584,338 and this amount was included as a reduction to the test year subject to certain specified conditions set forth in the Settlement.

2. The Settlement further reflected the Joint Movants' agreement that the issue of the finalized amount of the "protected" and "unprotected" excess deferred taxes and the flow back period of the "protected" and "unprotected" excess deferred taxes, would be determined and

trued-up either by submission of a later agreement or the initiation of a limited scope proceeding no later than July 1, 2018.

3. On August 10, 2018, FCG filed its Petition for Limited Scope Proceeding, consistent with Article II, paragraph c. of the Settlement, asking the Commission to address the quantification of FCG's excess accumulated "protected" and "unprotected" deferred income taxes created by the TCJA, as well as the appropriate disposition of the excess deferred income taxes. The Limited Scope Proceeding was assigned Docket No. 20180154-GU. On September 24, 2018, the Order Establishing Procedure for this proceeding, Order No. PSC-2018-0472-PCO-GU, was issued.

4. The Joint Movants continued to negotiate in good faith with regard to the disposition of "protected" and "unprotected" excess deferred taxes to resolve the issues in this docket and thereby avoid the need for any further expensive and time-consuming litigation before the Commission. These efforts have been successful and the result is the 2018 EADIT Agreement attached hereto as Attachment A.

5. The 2018 EADIT Agreement is the result of good faith efforts to address the issues in this proceeding in a manner that will provide regulatory certainty with regard to FCG's rates and avoid the unnecessary expense and uncertainty associated with further litigation. The 2018 EADIT Agreement results in a fair, just, and reasonable disposition of the tax benefits arising from the TCJA to the benefit of FCG's customers. Therefore, the Joint Movants submit the 2018 EADIT Agreement is in the public interest and respectfully request its approval as further described below.

6. In furtherance of this Joint Motion and approval of the 2018 EADIT Agreement, the Joint Movants waive any right to seek reconsideration of, or otherwise appeal, any decision of the Commission approving, in its entirety, this 2018 EADIT Agreement.

7. As set forth in the attached 2018 EADIT Agreement, the Joint Movants have reached agreement, as follows:

- (a) \$1.6 million of basis adjustments were incorrectly classified as “protected” and shall be reclassified as “unprotected” with an amortization period of five (5) years, resulting in a difference of \$304,943 that would have otherwise been flowed-through to customers. FCG agrees to file on or before October 12, 2018 a supplemental exhibit in Docket No. 20180003-EI, which will request authority to apply a levelized Purchased Gas Adjustment credit each month during 2019 to reflect the 2018 amortization of \$304,943 if this 2018 EADIT Agreement is approved. FCG agrees to implement a base rate reduction on January 1, 2019, in the amount of \$304,943;
- (b) The Joint Movants have further agreed that, aside from the \$1.6 million EADIT adjustment above, FCG appropriately calculated the amount of protected EADIT and correctly applied the Average Rate Assumption Method (“ARAM”) to the protected EADIT balance associated with the June 1, 2018 rate increase authorized in the Rate Case Settlement. Accordingly, no additional adjustments are needed to address protected EADIT; and

- (c) FCG classifies the deficient deferred taxes relating to cost of removal/negative net salvage as protected. If the IRS issues guidance that cost of removal/negative net salvage is to be treated as “unprotected,” the Joint Movants agree that the cost of removal/negative net salvage shall be accounted for using the ARAM and the deficient deferred taxes will be recovered over the remaining life of the asset.

8. The Joint Movants represent that the 2018 EADIT Agreement provides an equitable and just balance of the positions of the Joint Movants on the issues in this proceeding. The Joint Movants submit approval of the 2018 EADIT Agreement as is in the best interests of both the Company and its customers, and therefore, respectfully request approval of same.

9. For the sake of efficiency and to allow the terms of the 2018 EADIT Agreement to become fully effective on January 1, 2019, as contemplated, the Joint Movants request the Commission rule on this Joint Motion For Approval of Stipulation and Settlement at or before the Commission’s December 2018 Agenda Conference.

10. Commission approval of this Joint Motion is consistent with the Commission’s long-standing policy to encourage settlements that provide benefits to the customers and avoid unnecessary additional litigation expense.

WHEREFORE, the Joint Movants respectfully request that the Commission approve the 2018 EADIT Agreement attached hereto as Attachment A.

Respectfully submitted this 8th day of October 2018 by:

/s/Patricia Christensen

Virginia Ponder
Bar No. 99947
Patricia A. Christensen, Esquire
Bar No. 989789
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(850) 488-9330
ponder.virginia@leg.state.fl.us
Attorneys for the Citizens of the
State of Florida

/s/Beth Keating

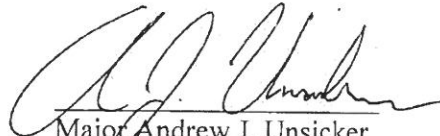
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Respectfully submitted this 8th day of October 2018 by:

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Tyndall AFB, FL 32403
Andrew.unsicker@us.af.mil

CERTIFICATE OF SERVICE
Docket No. 20180154-GU


I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 8th day of October 2018 to the following:

Lauren Davis, Esq.
Johana Nieves, Esq.
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2540 Shumard Oak Blvd.
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Federal Executive Agencies
A.J. Unsicker/L.L. Zieman/N.A.
Cepak/R.K. Moore
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ATTACHMENT A

**STIPULATION AND SETTLEMENT REGARDING
REMAINING EXCESS ACCUMULATED DEFERRED INCOME TAX ISSUES**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding to consider the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida City Gas.

Docket No. 20180154-GU

Dated: October 8, 2018

**STIPULATION AND SETTLEMENT REGARDING
REMAINING EXCESS ACCUMULATED DEFERRED INCOME TAX ISSUES**

WHEREAS, Florida City Gas ("FCG" or "Company"), the Office of Public Counsel ("OPC") and the Federal Executive Agencies ("FEA") have signed this Stipulation and Settlement Regarding Remaining Excess Accumulated Deferred Income Tax Issues ("2018 EADIT Agreement"); and

WHEREAS, unless the context clearly intends otherwise, the term "Party" or "Parties" shall mean a signatory or signatories to this 2018 EADIT Agreement; and

WHEREAS, on October 23, 2017, FCG petitioned the Florida Public Service Commission ("the Commission") for a rate increase to generate additional gross annual revenues in the amount of \$19.3 million, with the effective date of such rate increase to be August 1, 2018 ("the Rate Case"); and

WHEREAS, the Parties entered into a Stipulation and Settlement to resolve the Rate Case ("Rate Case Settlement"), which was filed March 12, 2018, and approved by Commission Order No. PSC-2018-0190-FOF-GU, issued April 20, 2018; and

WHEREAS, the Rate Case Settlement provided for an increase to FCG's base rates sufficient to generate an additional \$11.5 million in revenues to be implemented June 1, 2018, and an additional \$3.8 million in revenues to be implemented in two steps: (i) \$2.5 million on June 1, 2019 or on the in-service date of FCG's Liquefied Natural Gas ("LNG") facility, whichever is later; and (ii) \$1.3 million on December 1, 2019. If the in-service date of the LNG facility is after December 1, 2019, the Rate Case Settlement allows FCG to implement an increase in rates and charges sufficient to recover the remaining \$3.8 million upon the in-service date of the LNG facility;

WHEREAS, the revenue increase included in the Rate Case Settlement incorporated a \$4,584,338 reduction to the Company's 2018 projected test year to reflect the Company's projected tax savings from the Tax Cuts and Jobs Act of 2017 (Pub. Law 115-97) ("TCJA"); and

WHEREAS, Article II, Paragraph c. of the Rate Case Settlement further acknowledged that the finalized amount of FCG's "protected" and "unprotected" excess deferred taxes and the flow back period of the excess "protected" deferred taxes, arising from the TCJA, would be determined and traced-up either by submission of a later agreement or the initiation of a limited scope proceeding no later than July 1, 2018; and

WHEREAS, on June 29, 2018, and again on July 12, 2018, the Parties submitted letters in Docket No. 20170179-GU representing that discussions regarding the calculation and appropriate treatment of the "protected" and "unprotected" excess deferred taxes were ongoing, but had not yet produced a resolution, thereby necessitating extensions of time; and

WHEREAS, FCG filed its Petition for Limited Scope proceeding on August 10, 2018, before expiration of the second extension period, which initiated this Docket No. 20180154-GU; and

WHEREAS, the Parties have nonetheless continued, in good faith, to work to resolve the issues in this docket in order to minimize the rate impact to FCG customers while providing regulatory certainty to FCG and avoiding the uncertainty associated with further litigation; and

WHEREAS, the legal system, including the Commission, favors settlement agreements that further and are in the public interest; and

WHEREAS, the Parties intend that this 2018 EADIT Agreement supplement the Rate Case Settlement, but not revise or amend any terms or conditions of the Rate Case Settlement; and

WHEREAS, the Parties to this 2018 EADIT Agreement, individually and collectively, agree that this 2018 EADIT Agreement, taken as a whole, is in the public interest; and

WHEREAS, the Parties have entered into this 2018 EADIT Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120,

Florida Statutes, as applicable, and as part of a negotiated exchange of consideration among the Parties to this 2018 EADIT Agreement, each Party has agreed to concessions to the others with the expectation, intent, and understanding that all provisions of this 2018 EADIT Agreement, upon approval by the Commission, will be enforced by the Commission as to all matters addressed herein with respect to all Parties;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, which the Parties agree constitute good and valuable consideration, the Parties hereby stipulate and agree as follows:

I. Effective Date

a. This 2018 EADIT Agreement will take effect upon Commission approval and shall be implemented on the date of the meter reading for the first billing cycle of January 2019.

b. The parties reserve all rights, unless such rights are expressly waived or released, under the terms of this 2018 EADIT Agreement.

II. Federal Income Tax Reform

a. The parties agree that \$1.6 million of basis adjustments were incorrectly classified as “protected” and shall be reclassified as “unprotected” with an amortization period of five (5) years. The difference between (a) FCG’s revenue requirement based on the current amortization in base rates, and (b) the revenue requirement amount that would have been flowed through using a five-year amortization is \$304,943. FCG agrees to file on or before October 12, 2018 a supplemental exhibit in Docket No. 20180003-EI, which will request authority to apply a levelized Purchased Gas Adjustment credit each month during 2019 to reflect the amortization of \$304,943 if this 2018 EADIT Agreement is approved. FCG agrees to implement a base rate reduction on January 1, 2019, in the amount of \$304,943.

b. The Parties have reached agreement regarding the flow back of the “protected” EADIT. Consistent with normalization principles under the Internal Revenue Code, protected EADIT are subject to the Average Rate Assumption Method (“ARAM”), which flows back the protected EADIT over the remaining book depreciable life of the underlying assets. The parties

agree that, aside from the \$1.6 million EADIT identified in paragraph II(a) above, FCG appropriately calculated the amount of protected EADIT and correctly applied ARAM to the protected EADIT balance associated with the June 1, 2018 rate increase authorized in the Rate Case Settlement. Accordingly, no additional adjustments are needed to address protected EADIT.

c. The Parties acknowledge that FCG classifies the deficient deferred taxes relating to cost of removal/negative net salvage as protected. If the IRS issues guidance that cost of removal/negative net salvage is to be treated as “unprotected,” the Parties agree that the cost of removal/negative net salvage shall be accounted for using the ARAM and the deficient deferred taxes will be recovered over the remaining life of the asset.

III. Commission Approval

a. The provisions of this 2018 EADIT Agreement are contingent upon Commission approval of this 2018 EADIT Agreement in its entirety without modification. The Parties further agree that they believe the 2018 EADIT Agreement is in the public interest, that they will support this 2018 EADIT Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this 2018 EADIT Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this 2018 EADIT Agreement or the subject matter hereof.

b. No Party will assert in any proceeding before the Commission that this 2018 EADIT Agreement or any of the terms in this 2018 EADIT Agreement shall have any precedential value. The Parties' agreement to the terms in this 2018 EADIT Agreement shall be without prejudice to any Party's ability to advocate a different position in future proceedings not involving this 2018 EADIT Agreement. The Parties further expressly agree that no individual provision, by itself, necessarily represents a position of any Party in any future proceeding, and the Parties further agree that no Party shall assert or represent in any future proceeding in any forum that another Party endorses any specific provision of this 2018 EADIT Agreement by virtue of that Party's signature on, or participation in, this 2018 EADIT Agreement. It is the intent of the Parties to this 2018 EADIT Agreement that the Commission's approval of all the terms and provisions of this 2018 EADIT Agreement is an express recognition that no individual

term or provision, by itself, necessarily represents a position, in isolation, of any Party or that a Party to this 2018 EADIT Agreement endorses a specific provision, in isolation, of this 2018 EADIT Agreement by virtue of that Party's signature on, or participation in, this 2018 EADIT Agreement.

c. The Parties agree that approval of the 2018 EADIT Agreement will avoid additional litigation costs for all Parties. The Parties agree to waive:

- i. All notice requirements for a hearing as set forth in Section 120.569(2)(b), Florida Statutes, or other applicable law;
- ii. Their right to require a hearing on the merits;
- iii. Their respective rights to seek reconsideration of any Final Order that approves this Agreement in its entirety without change; and
- iv. Their respective right to judicial review of any such final agency action approving this Agreement afforded by Section 120.68, Florida Statutes.

d. The Parties further agree they will support this 2018 EADIT Agreement and affirmatively assert that this 2018 EADIT Agreement is in the public interest and should be approved. The Parties likewise agree and acknowledge that Commission approval of this 2018 EADIT Agreement promotes planning and regulatory certainty for both FCG and its customers.

IV. Execution

This 2018 EADIT Agreement is dated as of October 8, 2018. It may be executed in one (1) or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this 2018 Agreement by their signature(s).

Dated this 8 day of October 2018.

Florida City Gas

By:  _____

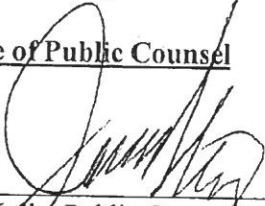
Sam Forrest
President, Florida City Gas

Signature Page to Stipulation and Settlement Agreement in Docket No. 20180154-GU

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this 2018 Agreement by their signature(s).

Dated this 4th day of October 2018.

Office of Public Counsel

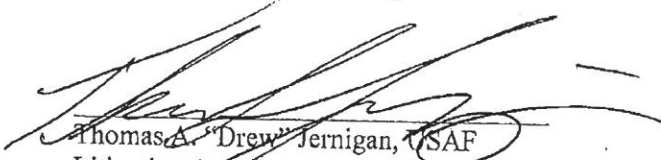


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IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this 2018 Agreement by their signature(s).

Dated this 5 day of October 2018.

Federal Executive Agencies


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Litigation Attorney, GS-14, AFCEC/JA -
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Signature Page to Stipulation and Settlement Agreement in Docket No. 20180154-GU