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Commission Conference Agenda
March 5, 2019

Item 1

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: February 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Wendel) BMW AT CH
Office of the General Counsel (Dziechciarz) RD TT

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 3/5/2019 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

DOCKET NO.	COMPANY NAME	CERT. NO.
20190032-TX	Hargray of Georgia, Inc.	8927

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

Item 2

State of Florida

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: February 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Schrader, Crawford, Nieves) JSC KS

RE: Docket No. 20170086-SU – Investigation into the billing practices of K W Resort Utilities Corp. in Monroe County.

AGENDA: 3/5/2019 – Regular Agenda – Oral Argument Requested – Participation at Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

K W Resort Utilities Corporation (KWRU or Utility) is a Class A utility providing wastewater service to approximately 1,865 customers in Monroe County. Water service is provided by the Florida Keys Aqueduct Authority (FKAA). During KWRU's 2015 rate case, the Commission found that KWRU had engaged in billing practices that appeared to be inconsistent with its tariff.[1] Subsequently, in that rate case docket, the Commission ordered this docket opened and ordered Commission staff to conduct a full audit of KWRU's billing practices to determine if KWRU had violated any of the Commission's orders, rules, or statutes.[2] Staff subsequently conducted an audit and investigation of KWRU's billing practices for the period of April 2013

[1] Order No. PSC-16-0123-PAA-SU, issued March 23, 2016, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*
[2] Order No. PSC-17-0091-FOF-SU, issued March 13, 2017, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*

through March 2017.[3] This audit found several instances where KWRU charged rates inconsistent with its tariff.

On May 17, 2017, Commission staff sent KWRU a Notice of Apparent Violation (NOAV). The NOAV identified several instances where KWRU was in apparent non-compliance with regard to Commission statutes, rules, and orders. Specifically, the Commission staff identified instances where it appeared KWRU charged an unauthorized flat rate, charged unauthorized pool charges, and violated base facility charge (BFC) billing practices. In KWRU's response to the NOAV, filed July 17, 2018,[4] KWRU stated that it mistakenly believed that its revision to a bulk wastewater rate had been accepted by the Commission, similar to a developer's agreement for service. Additionally, in its response, KWRU pointed out that at the end of 2009, management was moved in-house and has since routinely brought all matters before the Commission. Further, KWRU indicated it believed the pool charges were implemented reasonably under the tariff and were only implemented after consulting with Commission staff. KWRU responded to the apparent violation of BFC billing practices by admitting it had billed several general service customers incorrect BFCs and stated it was an error that occurred in switching KWRU's billing system after the 2009 rate case. KWRU also asserted that "KWRU did not over earn based on this error." KWRU also addressed the billing discrepancy with Roy's Trailer Park in its response, and explained that KWRU had engaged in numerous discussions to mitigate the customer's outstanding balance owed to the Utility consistent with KWRU's approved tariffs.

Proposed Agency Action Order and Order to Show Cause

On August 31, 2018, the Commission issued its Proposed Agency Action Order and Order to Show Cause No. PSC-2018-0444-PAA-SU. The Order had two portions, the first was a Show Cause Order directing KWRU to show cause why it should not be fined a penalty in the amount of $10,000.00 for its apparent violation of Sections 367.081(1) and 367.091(3), Florida Statutes (F.S.). The PAA portion of the Order (PAA Order) found that (1) the April 2013 through March 2017 audit period utilized by Commission staff was reasonable; (2) the appropriate time period for the refunds was April 2013 through March 2016; (3) KWRU should refund Safe Harbor $26,408 with interest in accordance with Rule 25-30.360, Florida Administrative Code (F.A.C.); (4) KWRU should refund Sunset $41,034 with interest in accordance with Rule 25-30.360, F.A.C.; (5) KWRU was not required to refund rates charged for pools because KWRU believed that an approved tariff for pools the Utility had for Key West Golf Club–HOA "was applicable to any additional customers with pools;" (6) KWRU did not have to refund general service customers that were billed BFCs based on units instead of Florida Keys Aqueduct Authority (FKAA) metered rates because KWRU had corrected its billing practices following the implementation of Order No. PSC-16-0123-PAA-SU issued March 23, 2016, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*; and (7) that KWRU's settlement with Roy's Trailer Park was a

[3] Order No. PSC-17-0091-FOF-SU, pg. 82, directed "a new docket be opened, and a full audit and investigation conducted in regard to KWRU's billing practices in order to determine if any orders, rules, or statutes were violated by the Utility." The Commission did not fix a particular time period for the full audit. The 2013-2017 audit dates were selected by Commission staff.
[4] DN 04700-2018.

reasonable solution to address that customer's corrected outstanding balance from being billed by KWRU based on units instead of FKAA meters.

In the PAA Order, the Commission also discussed a letter, sent by the Office of Public Counsel (OPC) on June 12, 2018, which argued that the audit of KWRU did "not go back to the final order issued in the 2009 rate case when KWRU started incorrectly billing" customers.[5] In its order, the Commission disagreed and stated that it found the "time period covered by the audit is a reasonable remedy to mitigate the Utility's incorrect billing practices" and that KWRU had already corrected its billing practices.[6]

Motions Subsequent to Proposed Agency Action Order and Order to Show Cause

On September 21, 2018, OPC filed a petition requesting an evidentiary hearing protesting portions of the PAA Order (OPC Petition). Specifically, OPC protested the portions of the order limiting the time period for the audit of KWRU and the time period for which KWRU would be responsible for issuing refunds. OPC argues that KWRU should have been required "to issue refunds for the entire time period that KWRU incorrectly billed customers" and that Rule 25-30.350, F.A.C., "requires that customers shall be refunded the full amount of unauthorized billing."[7]

In response, on October 1, 2018, KWRU filed a Motion to Dismiss, or in the Alternative to Strike, OPC's Petition (Motion to Dismiss or Strike) arguing, in part, that OPC lacks standing in this case and is not entitled to a hearing. Also, on October 1, 2018, KWRU filed a cross-petition seeking a formal administrative hearing protesting the PAA Order (KWRU Cross-Petition). KWRU's Cross-Petition argues that (1) while the PAA Order required refunds to certain customers, it failed to require other customers to pay back over-refunds previously made by KWRU, thus such customers erroneously benefitted from the PAA Order, (2) the Commission failed to consider mitigating circumstances in imposing on KWRU an unreasonably high penalty, and (3) the rate KWRU charged to Safe Harbor was in compliance with the intent of KWRU's approved tariff and the negotiated amount between the KWRU and Safe Harbor (of which the Commission was aware in 2009) evidenced that intent.[8] KWRU's argument disputing the amount of the penalty addresses the show cause portion of this docket, which will be addressed at a later date and is not part of this recommendation.

On November 19, 2018, OPC filed a Motion for Partial Summary Final Order to the Protested Portions of the PAA Order and a Memorandum in Support of the Motion (OPC Motion for Partial Summary Final Order). In its Motion, OPC asserts that because its protest of the PAA Order hinges on a straightforward legal issue, the resolution of that issue may be dispositive of OPC's Petition of the PAA Order.

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[5] Order No. PSC-2018-0444-PAA-SU, issued August 31, 2018, in Docket No. 20170086-SU, *In re: Investigation into the billing practices of K W Resort Utilities Corp. in Monroe County*, pg. 6.
[6] *Id.*
[7] OPC Pet. for Hr'g, pg. 1.
[8] KWRU Cross-Pet. for Hr'g, pg. 2.

On November 29, 2018, KWRU filed its response in opposition to the OPC Motion for Partial Summary Final Order, included its own Cross-Motion for Summary Final Order, and separately filed a request for oral argument on the OPC Motion for Partial Summary Final Order, KWRU's own Cross-Motion for Summary Final Order, and KWRU's Motion to Dismiss or Strike.

Issue 1 addresses KWRU's request for oral argument. Issue 2 addresses KWRU's Motion to Dismiss or Strike. Issue 3 addresses OPC's Motion for Partial Summary Final Order, and KWRU's Cross-Motion for Summary Final Order. The Commission has jurisdiction over these matters pursuant to Sections 367.081, 367.091, and 367.161, F.S.

Discussion of Issues

Issue 1: Should KWRU's request for oral argument be granted?

Recommendation: Yes. KWRU's Request for Oral Argument should be granted. The parties should be allowed 5 minutes, total, per side, to argue all of the motions at issue in Issues 2 and 3. (Schrader)

Staff Analysis: Rule 25-22.0021(3), F.A.C., specifies that informal participation is not permitted on dispositive motions and participation on such is governed by Rule 25-22.0022, F.A.C. Rule 25-22.0022(7), F.A.C., states that oral argument at Agenda Conference will only be entertained for dispositive motions, such as a motion for summary final order.

Rule 25-22.0022(1), F.A.C., provides that a request for oral argument should be timely filed and must state with particularity why oral argument would aid the Commission in understanding and evaluating the issues to be decided. The request must also state the amount of time requested for oral argument. Failure to file a timely request for oral argument constitutes waiver of that request. Rule 25-22.0022(3), F.A.C., provides that granting or denying a request for oral argument is within the sole discretion of the Commission.

KWRU's Request for Oral Argument on OPC's Motion for Partial Summary Disposition and KWRU's Cross-Motion for Summary Disposition (Request for Oral Argument) was timely filed and did state why oral argument would aid the Commission in understanding the issues to be decided in this case. However, the request does not specify the amount of time requested for oral argument. KWRU also acknowledges that neither party timely requested oral argument regarding KWRU's Motion to Dismiss or Strike, but KWRU "believes the Commission can benefit for oral argument on that Motion as well."

Staff recommends that, due to the complexity of this case, oral argument would be helpful for the Commission to better understand the entirety of the series of events and legal issues. Thus, staff recommends that the Commission allow 5 minutes per side for oral argument on all outstanding motions in this case (OPC's Motion for Partial Summary Final Order, KWRU's Cross-Motion for Summary Final Order, and KWRU's Motion to Dismiss or Strike).

Issue 2: Should the Commission grant KWRU's Motion to Dismiss or Strike?

Recommendation: No. The Commission should deny KWRU's Motion to Dismiss or Strike. (Schrader)

Staff Analysis:

Motion to Dismiss

From KWRU's Motion to Dismiss or Strike it is unclear what type of dismissal KWRU seeks. KWRU argues that OPC's Petition "fail[s] to state claims upon which relief may be granted as OPC lacks standing and should not be provided an evidentiary hearing, and should be dismissed."[9] KWRU's Motion also cites *Huet v. Mike Shad Ford, Inc.*, 915 So. 2d 723, 725 (Fla. 5th DCA 2005). *Huet* involves the dismissal of a claim that fails to sufficiently state a cause of action. KWRU also cites *Ginsberg v. Lennar Fla. Holdings Inc.*, 645 So. 2d 490, 501 (Fla. 3d DCA 1994), to support the idea that "a party does not state a cause of action by asserting bare legal conclusions without supporting factual allegations."[10] Despite its citations to *Huet* and *Ginsberg*, KWRU's main arguments are based upon OPC allegedly lacking standing, and KWRU seeks the dismissal of OPC on those grounds. Given these circumstances, staff is unclear whether KWRU asserts a Motion to Dismiss for Failure to State a Cause of Action or if KWRU asserts a Motion to Dismiss for Lack of Jurisdiction. Therefore, staff analyzed KWRU's Motion on both bases below.

Motion to Dismiss for Failure to State a Cause of Action

In making a Motion to Dismiss for Failure to State a Cause of Action, the burden is on the moving party to show that even if the facts in a complaint (in this case, OPC's Petition) are true, the complainant would not be entitled to the relief requested.[11] In ruling on such a motion, the well-pled allegations of the complaint (or the petition in this case) must be taken as true, and any allegations must be construed in the light most favorable to the non-moving party.[12] A motion to dismiss is not a substitute for a motion for summary judgment and a ruling on a motion to dismiss should be based solely upon the "four corners" of the complaint.[13] Such a ruling may not be based upon any speculation of what is true or may be ultimately proven.[14]

KWRU, by citing to *Ginsberg* and *Huet*, appears to argue that OPC's Petition failed to properly allege facts to support its legal conclusions; thus KWRU is arguing that OPC's allegations are not "well-pled." However, KWRU does not specify which legal conclusions of OPC are not supported by alleged facts. OPC responded to KWRU by stating that all of the requisite facts at issue are clearly outlined in OPC's Petition.[15] OPC alleges the Commission arbitrarily cut off the

[9] KWRU Mot. to Dismiss or in Alt. to Strike, pg. 2-3.
[10] KWRU Mot. to Dismiss or in Alt. to Strike, pg. 3.
[11] *Cintron v. Osmose Wood Preserving, Inc.*, 681 So. 2d 859, 861 (Fla. 5th DCA 1996).
[12] *Huet v. Mike Shad Ford, Inc.*, 915 So. 2d 723, 725 (Fla. 5th DCA 2005), and *Haskel Realty Group, Inc. v. KB Tyrone, LLC*, 253 So. 3d 84, 85 (Fla. 2d DCA 2018).
[13] *Consuegra v. Lloyd's Underwriters at London*, 801 So. 2d 111, 112 (Fla. 2d DCA 2001).
[14] *Cintron* at 861.
[15] OPC Resp. to KWRU Mot. to Dismiss or in Alt. to Strike, pg. 5.

time frame covered by its audit, rather than including the full time frame of the incorrect billing, arguing that Rule 25-30.350, F.A.C., requires that the entirety of any incorrect charges must be refunded.[16]

In reviewing OPC's petition, OPC's primary legal conclusion is that the Commission should have conducted an audit of KWRU that covered a longer period and that Rule 25-30.350, F.A.C., required additional refunds from KWRU. OPC supports this conclusion by alleging that KWRU's irregular billing practices were for a longer period than what was covered in the audit and refunds. Therefore, staff recommends that the Commission find that OPC has alleged sufficient facts to support its legal conclusions.

Given that OPC has alleged sufficient facts to support its legal conclusions, the next question is whether, if OPC's allegations are true, it would be entitled to the relief it requests. In this case, if, as OPC asserts, the time frame of the audit of KWRU should have been longer, and if OPC's application of Rule 25-30.350, F.A.C., is correct, then it is possible that KWRU could owe additional refunds to customers. Therefore, staff recommends that KWRU's Motion to Dismiss should not be granted on the basis of OPC failing to state a cause of action.

Motion to Dismiss for Lack of Standing

As with motions to dismiss for failure to state a cause of action, review of motions to dismiss for lack of standing must be confined to the four corners of the complaint, all inferences must be drawn in favor of the party pleading the complaint, and all well-pled allegations in the complaint must be accepted as true.[17]

Florida's Administrative Procedure Act, in Section 120.52(13), F.S., defines "party," in part, as:

> (a) Specifically named persons whose substantial interests are being determined in the proceeding.
> (b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

KWRU argues that OPC lacks standing in this case because it does not meet the two-part "substantial interest" test as established in *Agrico Chem. Co. v. Dep't of Envtl. Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981).[18] However, as Section 120.52(13)(b), F.S., indicates, one may be a party to an administrative proceeding simply by provision of statute.[19]

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[16] *Id.*
[17] *Wheeler v. Powers*, 972 So. 2d 285, 288 (Fla. 5th DCA 2008), citing *Payne v. City of Miami*, 927 So. 2d 904, 906 (Fla. 3d DCA 2005).
[18] KWRU Mot. to Dismiss or in Alt. to Strike, pg. 4.
[19] *Agrico Chem. Co. v. Dep't of Envtl. Regulation*, 406 So. 2d 478, 481–82 (Fla. 2d DCA 1981). *See also* Order No. PSC-12-0620-PCO-WU, issued November 19, 2012, in Docket No. 20110200-WU, *In re: Application for the increase in water rates in Franklin County by Water Management Services, Inc.*, pg. 2, which addressed a Motion to

OPC is entitled to party status in Commission proceedings by statute. Section 350.0611(1), F.S., states that OPC has the power "to appear, in the name of the state or its citizens, in any proceeding or action before the commission...and urge therein any position which he or she deems to be in the public interest." Therefore, staff recommends that KWRU's Motion to Dismiss should not be granted on the basis of lack of standing.

Conclusion

KWRU's Motion to Dismiss OPC from this case should be denied because OPC has not failed to state a cause of action and because OPC has statutory authority under Section 350.0611(1), F.S., to appear in any proceeding or action before the Commission.

Motion to Strike

In the alternative to its Motion to Dismiss, KWRU asserts that OPC's Petition should be stricken as immaterial.[20] KWRU also alleges that OPC (1) has no right to an evidentiary hearing, (2) does not require an evidentiary hearing, (3) has petitioned for one without consulting the relevant ratepayers, and (4) is requesting this evidentiary hearing without the approval of the affected ratepayers.[21]

In its Motion to Strike, KWRU alleges that "there is neither a need nor a requirement for an evidentiary hearing, and OPC's demand for an evidentiary hearing should be stricken as it does not comport with basic elements of due process and the Florida Supreme Court has stated that there is no need for an evidentiary hearing."[22] In support of this allegation, KWRU relies on *S. Fla. Hosp. & Healthcare Ass'n v. Jaber*, 887 So. 2d 1210, 1212 (Fla. 2004), for the proposition that the Commission "is not required to hold an evidentiary hearing for a negotiated settlement," and *Citizens of State v. Fla. Public Srvc. Com'n.*, 146 So. 3d 1143, 1150 (2014), for the proposition that the Commission "can approve settlement without evidentiary hearings, and non-unanimous settlements."[23]

Staff believes KWRU's reliance on these cases is not relevant to the matter at hand. Both *S. Fla. Hosp. & Healthcare Ass'n v. Jaber* and *Citizens of State v. Fla. Public Srvc. Com'n.* involve settlement agreements presented to, and approved by, the Commission. KWRU's argument on dismissing OPC from this case is primarily based upon the allegation that KWRU has privately settled with the "only two affected ratepayers" in this case—Sunset and Safe Harbor.[24] In support of this, on October 26, 2018, KWRU filed a copy of settlement agreements it had reached with Sunset and Safe Harbor.[25] These settlements purport to resolve any disputes regarding service availability fees and charges, and prior invoices for wastewater service with Sunset and Safe Harbor. Unlike in *S. Fla. Hosp. & Healthcare Ass'n v. Jaber* and *Citizens of*

Dismiss an OPC PAA protest on the basis that OPC did not represent customers of the utility. The Commission denied this Motion on the basis that OPC is authorized by statute to appear as a party.

[20] KWRU Mot. to Dismiss or in Alt. to Strike, pg. 5.

[21] *Id.*

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

[23] *Id.*

[24] *Id.* at 4.

[25] Doc. No. 06800-2018.

State v. Fla. Public Srvc. Com'n., the settlements with Sunset and Safe Harbor have not been presented for approval by the Commission. Furthermore, OPC alleges in its Petition that more ratepayers than Sunset and Safe Harbor are due refunds in this case. Thus, even if the KWRU "settlements" with Sunset and Safe Harbor were approved by the Commission, OPC's Petition raises the argument that additional ratepayers may be affected.

As to KWRU's allegation that OPC does not require an evidentiary hearing, while OPC does ask for a ruling on a preliminary legal issue, OPC also states in its petition that it protests the determination of the refund amounts ordered in the PAA Order and the appropriate amounts to be refunded to all affected customers. OPC also argues that refunds may also be due to customers other than Sunset and Safe Harbor.[26]

Finally, KWRU's assertion that OPC has petitioned for an evidentiary hearing without consulting with, or being approved by, the relevant ratepayers is irrelevant. Under Section 350.0611, F.S., the Legislature has vested the Public Counsel with broad powers "to carry out the duties of his or her office." None of this authority is predicated upon seeking prior approval of the state or its citizens in carrying out those duties. For all the reasons stated above, Commission staff recommends that KWRU's Motion to Strike OPC's Petition should be denied.

[26] OPC Pet. for Hr'g, pg. 4.

Issue 3: Should the Commission grant the Office of Public Counsel's Motion for Partial Summary Final Order or KWRU's Cross-Motion for Summary Final Order?

Recommendation: No, OPC's Motion for Partial Summary Final Order and KWRU's Motion for Summary Final Order should be denied. (Schrader)

Staff Analysis:

Standard for Motion for Summary Final Order

Section 120.57(1)(h), F.S., requires that, in order to grant a motion for summary final order, it must be determined from "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order." The Commission has previously stated that "the standard for granting a summary final order is very high."[27]

In general, "a summary judgment should not be granted unless the facts are so crystalized that nothing remains but questions of law," and "must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought." *Moore v. Morris,* 475 So. 2d 666, 668 (Fla. 1985); *see also City of Clermont, Fla. v. Lake City Util. Servs. , Inc.,* 760 So. 2d 1123, 1124 (Fla. 5th DCA 2000), and *Wills v. Sears, Roebuck & Co.*, 351 So. 2d 29 (Fla. 1977). If the record "raises even the slightest doubt" that an issue of material fact may exist, a summary final order would not be appropriate.[28] Even if the parties agree as to the facts, "the remedy of summary judgment is not available if different inferences can be reasonably drawn from the uncontroverted facts."[29] The Commission has also previously found that "it is premature to decide whether a genuine issue of material fact exists when [a party] has not had the opportunity to complete discovery and file testimony."[30]

Issues of Law in Dispute

The disputed issues of law raised in the parties' Motions relate to the application of Rule 25-30.350(2), F.A.C., to the Commission ordered refunds under Rule 25-30.360, F.A.C. OPC argues that Rule 25-30.350, F.A.C., Underbillings and Overbillings for Water and Wastewater Service, is controlling in this case. Rule 25-30.350(2), F.A.C., states that "in the event of an overbilling, the utility shall refund the overcharge to the customer based on available records. If the commencement date of the overbilling cannot be determined, then an estimate of the overbilling shall be made based on the customer's past consumption."

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[27] Order No. PSC-11-0244-FOF-GU, issued June 2, 2011, in Docket No. 090539-GU, *In re*: *Petition for approval of Special Gas Transportation Service agreement with Florida City Gas by Miami-Dade County through Miami-Dade Water and Sewer Department*, pg. 4.
[28] *Albelo v. S. Bell*, 682 So. 2d 1126, 1129 (Fla. 4th DCA 1996).
[29] *Id.*
[30] Order No. PSC-01-1554-FOF-WU, issued July 27, 2001, in Docket No. 991437-WU, *In re Wedgefield Utilities, Inc.*, citing *Brandauer v. Publix Super Markets, Inc.*, 657 So. 2d 932, 933–34 (Fla. 2d DCA 1995).

KWRU argues that Rule 25-30.360, F.A.C., Refunds, is controlling in this case. Rule 25-30.360, F.A.C., states, in part, that:

> With the exception of deposit refunds, all refunds ordered by the Commission shall be made in accordance with the provisions of this Rule, unless otherwise ordered by the Commission....Where the refund is the result of a specific rate change, including interim rate increases, and the refund can be computed on a per customer basis, that will be the basis of the refund. Where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. In such case, refunds shall be made on the basis of usage. Per customer refund refers to a refund to every customer receiving service during the refund period. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission.

OPC asserts that by electing not to audit the full time period for which the Commission determined unauthorized billing occurred, and instead choosing to audit a shorter time period of April 2013 through March 2016, the Commission failed to comply with its own Rule 25-30.350(2), F.A.C. Instead, the Commission should have made an effort to determine what, if any, overbilling was committed by KWRU from 2009 through March 2013.

OPC also asks whether it was correct for the Commission to "interpret [Rule 25-30.350, F.A.C.] in a way that allows KWRU to refund its customers an amount which is less than the full amount KWRU overcharged said customers."[31] OPC argues that the plain language of the rule does not afford the Commission with discretion to "arbitrarily" order refunds for a shorter period and contends that Rule 25-30.350, F.A.C., requires the Commission to order KWRU to refund all overcharges to its customers from the date overbilling began to the date overbilling ended.

KWRU argues that the Commission has the discretion to determine the proper time frame for an audit and the amount of refunds.[32] KWRU further argues that Rule 25-30.350, F.A.C., would not apply to this case since it is a rule that applies to overbilling in regards to individual complaints and customer service, and not Commission ordered refunds issued pursuant to Rule 25-30.360, F.A.C.[33] KWRU states that the 2013 revisions to Rule 25-30.350, F.A.C., that added the new provisions for overbilling, were part of a number of rule amendments related to individual customer service[34] and that Rule 25-30.360, F.A.C., states that "all refunds ordered by the Commission shall be made in accordance with the provisions of this Rule."[35] Finally, KWRU argues that Florida Supreme Court found in *Citizens of State v. Fla. Public Srvc. Com'n.*, 146 So. 3d 1143 (Fla. 2014), that the Commission "acts in the public interest, and is accorded deference."

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[31] OPC Mot. for Partial Summ. Final Order pg. 2.
[32] KWRU's Resp. to OPC Mot. for Partial Summ. Final Order, pg. 8
[33] *Id.*
[34] KWRU cites to *In re: Revision to Rule 25-30.335 et al.*, 2013 WL 1628235 (P.S.C. 2013).
[35] KWRU's Resp. to OPC Mot. for Partial Summ. Final Order, pg. 9.

Thus, KWRU argues, based on this deference, the Commission is allowed to determine the relevant time period for an audit.[36]

Facts in Dispute or in Need of Further Development

In its Motion for Partial Summary Final Order, OPC asserts that there are no material facts in dispute as whether KWRU overbilled customers.[37] OPC further states that the utility admitted in its response to Commission staff's NOAV that KWRU began its unauthorized billing in 2009.[38] OPC also disputes the appropriate amount to be refunded to KWRU customers and that the Commission "may have deprived numerous customers of the opportunity for refunds of the entire amounts overbilled" by limiting the audit and refund period.[39] OPC states that the Commission acknowledged that the available information during the Commission's investigation showed KWRU engaged in unauthorized billing from 2009 through March 2016.[40]

In its Cross-Motion for Summary Final Order, KWRU asserts that "there are no issues of material fact now that OPC has identified [its] legal theory" in regards to the application of 25-30.350, F.A.C., and that this case does not involve "a claim by customers seeking a refund of alleged [overbillings]."[41] In its Cross-Petition for hearing, KWRU states that while the PAA Order required refunds to certain customers, it failed to require other customers to pay back over-refunds previously made by the Utility. Further, KWRU asserts that the rate charged to Safe Harbor Marina was in compliance with the intent of the approved Tariff, and the negotiated amount between the Utility and Safe Harbor Marina (of which the Commission staff was aware back in 2009) evidenced that intent.[42] KWRU also states that one of the purposes of its Cross-Petition is for the Commission to acknowledge by order that no refund is owed to Safe Harbor Marina. Finally, KWRU asserts that there are only two parties, Sunset and Safe Harbor, which should be due refunds in this case (and KWRU asserts that it has already resolved these refunds).

As shown above, both KWRU and OPC argue that no issues of material fact exist in regards to the issues identified in OPC's Motion for Partial Summary Final Order.[43] However, staff cannot concur with this opinion. Staff agrees that KWRU has admitted to improper billing in KWRU's billing of Safe Harbor and some of KWRU's general service customers in KWRU's response to Commission staff's NOAV.[44] However, there does appear to be some dispute between the parties over whether *overbilling*, as opposed to improper billing, occurred, and when and how much overbilling may have occurred. KWRU does not appear to have clearly admitted that it overbilled customers during the time period of 2009-2013 (the time period in question prior to the audit conducted by Commission staff). KWRU and OPC also appear to disagree as to the

[36] KWRU's Resp. to OPC Mot. for Partial Summ. Final Order, pg. 9. KWRU also argues that *Citizens of State v. Fla. Public Srvc. Com'n.* allows for the Commission to accept non-unanimous settlements over OPC's objections.
[37] OPC Mot. for Partial Summ. Final Order pg. 2.
[38] *Id.* at 3.
[39] *Id.* at 2 and 6.
[40] *Id.* at 3.
[41] KWRU Cross-Pet. for Hr'g, pg. 1.
[42] *Id.* 2.
[43] *See* KWRU's Resp. to OPC Mot. for Partial Summ. Final Order, pg. 6 *and* OPC Mot. for Partial Summ. Final Order pg. 2.
[44] KWRU Response to Notice of Apparent Violation (DN 04700-2018).

effect of KWRU's private settlements reached with Sunset and Safe Harbor, and whether additional refunds are due to those customers. Arguably, the purported settlements entered into by KWRU with Sunset and Safe Harbor may have some impact on amounts that may or may not be due to KWRU customers—the parties appear to have disagreement as to, at the very least, what inferences may be drawn from these settlements. KWRU's belief that it should not have to pay any additional amounts to Sunset and Safe Harbor is based, at least in part, on the settlements KWRU reached with these customers.

Finally, there appears to be disagreement between OPC and KWRU as to whether there are any additional customers who may be owed refunds, and what the amount of those refunds should be.

In the current docket, parties have not yet conducted, let alone completed, discovery in regards to the PAA Order. Furthermore, staff believes, despite the parties' assertions, that neither party has carried its burden to demonstrate, conclusively, the absence of any genuine issue of material fact in regards to whether Rule 25-30.350, F.A.C. would require additional audits or refunds in this case. Staff also believes that additional facts may be developed at hearing that would help the Commission determine if KWRU "overbilled" pursuant to Rule 25-30.350, F.A.C.

In regards to whether any issues have been stipulated to in this case from the PAA Order, Section 120.80(13)(b), F.S., states that "notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated." Further, Rule 25-22.029, F.A.C., provides that issues in a proposed action that are not identified in the petition or cross-petition protesting the proposed action are deemed stipulated. In this case, OPC states that it protests (1) whether the Commission properly followed its rules in setting the time period for refunds, and (2) the amount for refunds due to KWRU customers. As such, staff interprets OPC's protest of the PAA Order to be every issue in the PAA Order. The issues in the PAA Order set out the appropriate time period for refunds and identify any refunds that may be due to KWRU customers.[45] Thus, pursuant to 120.80(13)(b), F.S., and Rule 25-22.029, F.A.C., the Commission should find that the entirety of the PAA Order has been protested, and none of the issues in the PAA Order have been stipulated.

OPC Lack of Standing and Right to a Hearing

KWRU reiterates in its Cross-Motion for Summary Final Order the argument raised in its Motion to Dismiss or Strike that OPC lacks standing in this case and is not entitled to a hearing.[46] For the reasons set forth in Issue 2, staff recommends that OPC does have standing in this matter and is entitled to request a hearing. Therefore, staff recommends that the Commission deny this part of KWRU's Cross-Motion.

[45] *See* No. PSC-2018-0444-PAA-SU, pg. 6-9.
[46] KWRU's Resp. to OPC Mot. for Partial Summ. Final Order, pg. 9-10.

Conclusion

For the reasons stated above, staff does not believe that the facts of this case are "so crystalized" that it is clear that no genuine issue as to any material fact exists in regards to potential overbilling by KWRU. A review of KWRU's and OPC's pleadings indicates that neither party has conclusively demonstrated, at this point, that no issues of genuine fact remain in regards to overbilling in this case. Furthermore, staff believes that additional facts may be developed at hearing that would help the Commission decide the matter of whether KWRU overbilled pursuant to Rule 25-30.250, F.A.C. Therefore, staff recommends that the granting of a partial summary final order is premature at this time, and OPC's and KWRU's motions should be denied.

Issue 4: Should this docket be closed?

Recommendation: If the Commission denies KWRU's Motion to Dismiss or Strike, and denies both parties' Motions for Summary Final Order, this docket should remain open to address OPC's and KWRU's respective requests for hearing on their protests of the PAA Order. (Schrader)

Staff Analysis: If the Commission denies KWRU's Motion to Dismiss or Strike, and denies both parties' Motions for Summary Final Order, this docket should remain open to address OPC's and KWRU's respective requests for hearing on their protests of the PAA Order.

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: February 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Schrader, Crawford, A. King) ak jsc KS S.M.C.
Division of Economics (Merryday) HM EJD PD JGH
Division of Engineering (Ballinger, Graves) RG

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

AGENDA: 03/05/19 – Regular Agenda – Participation is at the Commission's discretion.

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On May 23, 2018, Gulf Coast Electric Cooperative (GCEC) filed a complaint against Gulf Power Company (Gulf Power) seeking expedited enforcement of their Territorial Agreement.[1] GCEC claims that Gulf Power violated the Territorial Agreement by failing to properly notify GCEC of a customer's request for service as required by the agreement. Gulf Power countered that it did notify GCEC pursuant to the Territorial Agreement, and, consequently, GCEC "is foreclosed from objecting to Gulf Power honoring its customer's request for service, and there is no requirement or need to compare costs or take any additional actions under the remaining terms of the Territorial Agreement."

[1] Order Nos. PSC-01-0891-PAA-EU and PSC-01-0891A-PAA-EU, issued April 9, 2001, and March 26, 2002, in Docket No. 930885-EU, *In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Co.*

Shortly after filing its answer to the complaint, Gulf Power filed a Motion for Summary Final Order arguing that the matter could be decided on the pleadings alone. Gulf Power contends that, at its core, the territorial dispute presented the Commission with a simple issue of contractual interpretation, and because the terms of the Territorial Agreement were plain and unambiguous, construing the agreement was a pure question of law that could be decided on a motion for summary final order. Specifically, Gulf Power claimed the parties agreed that GCEC received notice from Gulf Power on October 20, 2017, and the only remaining issue is whether Gulf Power's notice was sufficient under the terms of the Territorial Agreement.

GCEC responded in opposition to this Motion for Summary Final Order on June 13, 2018, arguing that a summary final order was premature and should be denied because numerous genuine issues of fact remained and there was pending discovery regarding whether "GCEC waived the right to contest Gulf Power providing service." GCEC argued that the parties disputed whether Gulf Power could notify GCEC by email; whether Gulf Power could notify GCEC through Peyton Gleaton, GCEC's Vice President for Engineering; and whether the email contained "all relevant information about the request" as required by the Territorial Agreement. Lastly, GCEC argued that it did not knowingly and intentionally waive its right to serve the customer because Gulf Power's email did not contain enough information to alert GCEC that it had a right to serve the customer. Put simply, GCEC could not waive a right it did not know it had. According to GCEC, these disputes raised issues of material fact that precluded entry of a summary final order.

On July 23, 2018, the Prehearing Officer issued an Order Setting Procedure, which stated that "the threshold question for this dispute is whether the October 20, 2017, email was sufficient notice under the terms of the Territorial Agreement."[2] The Procedural Order allowed for limited discovery and the filing of briefs regarding this issue and whether the Commission should grant Gulf Power's Motion for Summary Final Order.

Both parties filed briefs on September 11, 2018, in which they restated many of the arguments they raised in their previous filings. GCEC also included in its brief its own Motion for Summary Final Order and a separate request for oral argument. In its Motion for Summary Final Order, GCEC argued that it is entitled to a summary final order on the issue of waiver. Specifically, GCEC argued that although waiver is not typically decided on summary final order, the undisputed facts show that Gulf Power's notice was insufficient; thus, GCEC did not know enough about the customer request to knowingly and intentionally waive its right to serve that customer.

On September 18, 2018, Gulf Power responded in opposition to GCEC's Motion for Summary Final Order. Gulf Power argued that GCEC's position in its Motion for Summary Final Order was inconsistent with its previous position that waiver was a factual issue that could not be decided in a summary final order. Gulf Power also argued that waiver is not an issue in this case. Lastly, Gulf Power restated its argument that the notice was sufficient.

[2] Order No. PSC-2018-0357-PCO-EU, issued July 23, 2018, in Docket No. 20180125-EU, *In re: Complaint against Gulf Power Co. for expedited enforcement of territorial order, by Gulf Coast Electric Cooperative, Inc.*

On November 29, 2018, staff filed a recommendation on the parties' motions for summary final order. Staff recommended that the Commission grant Gulf Power's motion, deny GCEC's motion, and close the docket.

On December 10, 2018, the day before the issue was to be heard at the Agenda Conference, GCEC filed a Notice of Supplemental Authority citing a recent decision from the First District Court of Appeal, *Holmes v. Florida A&M University*, 260 So. 3d 400 (Fla. 1st DCA 2018).

At the December 11, 2018 Agenda Conference, the Commission heard oral argument from Gulf Power and GCEC on staff's recommendation. When asked about the applicability of *Holmes* at the Agenda Conference, staff stated that it was inapplicable to this case because *Holmes* dealt with the interpretation of a contract; the Commission, however, was dealing with the interpretation of one of its own orders. The Commission granted Gulf Power's Motion for Summary Final Order and denied GCEC's Motion for Summary Final Order as moot. The Commission has yet to issue a Final Order.

Upon further review, staff believes it incorrectly advised the Commission on Gulf Power's Motion for Summary Final Order. This recommendation addresses whether the Commission should vacate its December 11, 2018, votes to grant Gulf Power's Motion for Summary Final Order, deny GCEC's Motion for Summary Final Order, and close the docket. The Commission previously voted to allow oral argument, and staff is not recommending that the Commission vacate that vote. Participation is still at the Commission's discretion.

The Commission has jurisdiction pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission vacate three previous votes in this docket by which it granted Gulf Power's Motion for Summary Final Order, denied GCEC's Motion for Summary Final Order, and closed the docket?

Recommendation: Yes. The Commission should vacate its previous votes. (A. King)

Staff Analysis: Staff is recommending that the Commission vacate its votes made at the December 11, 2018 Agenda Conference that granted Gulf Power's Motion for Summary Final Order, denied GCEC's Motion for Summary Final Order, and closed the docket. Below is staff's explanation as to why the votes should be vacated.

Staff's Recommendation Caused the Commission to Make a Mistake of Law

General Description of the Motion Originally Before the Commission

Gulf Power filed its Motion for Summary Final Order just days after answering GCEC's complaint, which alleged that Gulf Power had violated the parties' Territorial Agreement. Gulf Power claimed the dispute boiled down to "a single issue involving a simple matter of contract interpretation" that could be decided on the pleadings alone. It argued that the terms of the Territorial Agreement were plain and unambiguous, Gulf Power's email to GCEC was sufficient notice under those plain terms, and GCEC was foreclosed from challenging Gulf Power's decision to fulfill the customer's request for service because GCEC failed to timely respond to Gulf Power's notice as required by the Territorial Agreement.

GCEC responded to Gulf Power's motion, arguing, among other things, that a summary final order was inappropriate because there were several genuine issues of material fact. Chief among those issues was whether Gulf Power's notice included "all relevant information about the request" as required by the terms of the Territorial Agreement.

Staff Incorrectly Applied the Standard for Summary Final Order

In its November 29, 2018, recommendation, staff correctly recited the standard for granting a motion for summary final order contained in Section 120.57(1)(h), F.S. That standard mirrors the standard used in civil cases for motions for summary judgment. Essentially, the Commission can grant a motion for summary final order *only* if there are no genuine issues of material fact and the moving party is entitled to the entry of a final order as a matter of law. Staff noted that the Commission has previously observed that the standard for granting a summary final order is very high. The motion cannot be granted unless the moving party has conclusively demonstrated that there is no material issue of fact, and in granting the order, the Commission must draw every possible inference in favor of the nonmoving party. Staff still believes this is the correct standard applicable to the parties' motions for summary final order.

Staff also relied upon *Jaar v. University of Miami*, 474 So. 2d 239, 242 (Fla. 3d DCA 1985), for the proposition that the "interpretation of a written document, such as the Territorial Agreement here, presents a question of law." However, this proposition was an incomplete statement of the rule in that case. As the court correctly and completely stated in *Jaar*, "the construction of a written document, such as the contract before us, presents a question of law *if its language is clear and unambiguous*." *Id.* (emphasis added) (citations omitted). Staff's incomplete analysis

and misapprehension of the law in *Jaar* was a foundational flaw in staff's previous recommendation, the result of which will be discussed in more depth in Issue 2.

Applicability of Contract Law

The day before the Agenda Conference, GCEC filed a notice of supplemental authority that cited *Holmes v. Florida A&M University*, 260 So. 3d 400 (Fla. 1st DCA 2018). *Holmes* dealt with a contractual dispute between the University and two members of its coaching staff.[3] *Id.* at 402. At the Agenda Conference, staff was asked about the effect of *Holmes* on the case. Staff advised the Commission that the case was inapplicable because contract law did not apply to this case. Further research by staff after the Agenda Conference has led staff to conclude that it incorrectly analyzed the applicability of contract law to the matter at hand.

Staff originally believed contract principles did not apply based on *Public Service Commission v. Fuller*, 551 So. 2d 1210, 1212 (Fla. 1989). In *Fuller*, the Florida Supreme Court held that a territorial "agreement has no existence apart from the PSC order approving it." *Id.* In other words, the territorial agreement merges with and becomes part of the order approving it. *Id.* A Court of Appeals of Indiana made a similar finding: "a settlement agreement that must be filed with and approved by a regulatory agency 'loses its status as a strictly private contract and takes on a public interest gloss.'" *Ind. Bell Tel. Co. v. Office of Util. Consumer Counselor*, 725 N.E.2d 432,435 (Ind. Ct. App. 2000) (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). "[S]uch an agreement is 'more closely akin to an order of the Commission . . . .'" *Id.* (quoting *Cajun Elec. Power Coop., Inc. v. F.E.R.C.*, 924 F.2d 1132, 1135 (D.C. Cir. 1991)). Staff originally believed that because the Territorial Agreement was subsumed into the Commission order that approved it, it was no longer a contract and contract law was therefore not applicable.

Upon further review and research, it appears that staff incorrectly concluded that contract law did not apply after the Territorial Agreement became part of the order that approved it. When a territorial agreement is approved by the Commission, it takes on two natures. It has characteristics of both a contract and a Commission order. Because a territorial agreement takes on both of these natures, it is subject to both contract law and the law surrounding Commission orders. *City of Homestead v. Beard*, 600 So. 2d 450, 453 (Fla. 1992); *see City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000). The *Beard* Court specifically held that though the law of contracts applies to the interpretation of territorial agreements, the law surrounding Commission orders applies to the modification or termination of those agreements. *Beard*, 600 So. 2d at 453.

In *Johnson*, 760 So. 2d at 84, the Court acknowledged and impliedly approved of the Commission's use of "well-settled principles of contractual construction" to resolve an ambiguity in a territorial agreement between the city of Homestead and Florida Power & Light Company. Thus, even though territorial agreements become part of the order that approved them, the Commission still applies contract law if it is asked to interpret those agreements.

[3] GCEC did not cite a particular proposition the case stood for relative to any issue in the current matter.

The Commission Should Vacate its Previous Votes and Reconsider the Parties' Motions

The Commission is permitted to reconsider an action that was based upon a mistake of law.[4] Staff believes that under its guidance, the Commission's previous votes in this docket were based on a mistake of law. Therefore, staff recommends that the Commission vacate[5] its votes to grant Gulf Power's Motion for Summary Final Order, deny GCEC's Motion for Summary Final Order, and close the docket so that it might reconsider those motions under the proper legal standard.

The Doctrine of Administrative Finality is not yet Applicable

The doctrine of administrative finality attaches to agency orders that by the passing of time have become final and are no longer within the Commission's control.[6] *See Peoples Gas Sys., Inc. v. Mason*, 187 So. 2d 335, 337–39 (Fla. 1966). Because the Commission has yet to issue a final order memorializing its previous votes, the issue is still within the Commission's control and the doctrine of administrative finality is not yet applicable.

Conclusion

Because the Commission's previous votes in this docket are based on a mistake of law, staff recommends that the Commission vacate these votes in order to reassess them under the correct legal standard.

[4] Order No. PSC-12-0400-FOF-EI, issued on August 3, 2012, in Docket No. 110138-EI, *In re: Petition for Increase in Rates by Gulf Power Co.*

[5] *E.g.*, Order No. PSC-07-0570-FOF-TP, issued on July 9, 2007, in Docket No. 070118-TP, *In re: Phone 1 Smart LLC*; Order No. 17640, issued on June 2, 1987, in Docket No. 860413-WU, *In re: Application of Wildwood Water Co., Inc. for a Certificate Authorizing Water Service to Customers in St. Johns County under Grandfather Rights.*

[6] *See* Order No. PSC-98-1621-FOF-EQ, issued on December 4, 1998, in Docket No. 980509-EQ, *In re: Florida Power Corp.* (stating that administrative finality did not attach to a PAA for which a final order was never issued).

Issue 2: Should the Commission deny Gulf Power's Motion for Summary Final Order?

Recommendation: Yes. The Commission should deny Gulf Power's Motion for Summary Final Order. (A. King)

Staff Analysis: Staff is recommending that the Commission deny Gulf Power's Motion for Summary Final Order because the parties' dispute about the meaning of the Territorial Agreement raises an issue of material fact.

The Procedural Order specified three issues for consideration on whether to grant Gulf Power's Motion for Summary Final Order:

> (1) Whether Section 2.3 of the Territorial Agreement is the proper procedure, pursuant to the Territorial Order, to determine which utility should provide electric service to the lift facility.
>
> (2) If Section 2.3 is the proper procedure, whether the October 20, 2017, email notice provided by Gulf Power to GCEC under Section 2.3 of the Territorial Agreement concerning electric service to the lift facility was sufficient for Gulf Power to provide service.
>
> (3) Should Gulf Power's Motion for Summary Final Order be granted?

Standard for Summary Final Order Where Contracts are Involved

A summary final order may be granted *only* where there are no genuine issues of material fact and the moving party is entitled to the entry of a final order as a matter of law.[7] Section 120.57(1)(h), F.S.; *see Thomas v. Eckerd Drugs*, 987 So. 2d 1262, 1263 (Fla. 1st DCA 2008) (applying the same standard that is used for summary judgment in civil cases to motions for summary final order). "A material fact is a fact that is essential to the resolution of the legal questions raised in the case." *State of Fla. Dep't of Envtl. Reg. v. C.P. Developers, Inc.*, 512 So. 2d 258, 261 (Fla. 1st DCA 1987). The Commission has previously recognized that "the standard for granting a summary final order is very high."[8] "[E]ven if the facts are not in dispute, 'issues as to the interpretation of such facts may be such as to preclude the award of summary judgment.'"[9]

When a dispute is based on a contractual agreement, what the parties intended the agreement to mean becomes a material fact. *E.g.*, *Holmes*, 260 So. 3d at 407; *Fecteau v. Se. Bank, NA*, 585 So. 2d 1005, 1009 (Fla. 4th DCA 1991). The best evidence of their intentions is the plain meaning of the contractual terms. *Fecteau*, 585 So. 2d at 1007. As long as the terms of the contract are

[7] Order No. PSC-12-0652-PCO-EI, issued on December 12, 2012, in Docket No. 120015-EI, *In re: Petition for Increase in Rates by Florida Power & Light Co.*
[8] Order No. PSC-11-0244-FOF-GU, issued on June 2, 2011, in Docket No. 090539-GU, *In re*: *Petition for approval of Special Gas Transportation Service agreement with Florida City Gas by Miami-Dade County through Miami-Dade Water and Sewer Department*.
[9] *Id.* (quoting *Franklin Cty. v. Leisure Props., Ltd.*, 430 So. 2d 475, 479 (Fla. 1st DCA 1983)).

unambiguous, the court's interpretation of those terms is a pure question of law.[10] *Jaar v. Univ. of Miami*, 474 So. 2d 239, 242 (Fla. 3d DCA 1985). "However, '[w]here the terms of the written instrument are disputed and reasonably susceptible to more than one construction, an issue of fact is presented as to the parties' intent [that] cannot properly be resolved by summary judgment.'" *Strama v. Union Fid. Life Ins. Co.*, 793 So. 2d 1129, 1132 (Fla. 1st DCA 2001) (quoting *Universal Underwriters Ins. Co. v. Steve Hull Chevrolet, Inc.*, 513 So. 2d 218, 219 (Fla. 1st DCA 1987)), *cited in Holmes*, 260 So. 3d at 404.

A contract term is ambiguous when it "may be fairly understood in more ways than one." *Friedman v. Va. Metal Prods. Corp.*, 56 So. 2d 515, 517 (Fla. 1952). When determining whether contractual language is ambiguous, the language at issue should be read in the context of the document as a whole. *Discover Prop. & Cas. Ins. Co. v. Beach Cars of W. Palm, Inc.*, 929 So. 2d 729, 732 (Fla. 4th DCA 2006). The plain meaning of a term may also be ascertained by referencing a dictionary. *Debaun v. State*, 213 So. 3d 747, 751 (Fla. 2017).

The Parties' Arguments

Gulf Power's Motion for Summary Final Order

Gulf Power argues that the terms of the Territorial Agreement are plain and unambiguous, and there are no issues of material fact. It asserts that Gulf Power's email to GCEC satisfied its duty to "notify" GCEC of the customer's request and provide "all relevant information about the request." It further argues that GCEC failed to timely respond to Gulf Power's request, so Gulf Power could fulfill the customer's request. Thus, based on the plain meaning of the Territorial Agreement and the undisputed facts, Gulf Power concludes that it is entitled to a judgment as a matter of law.

GCEC's Response

GCEC responded to Gulf Power's motion by arguing that a summary final order was inappropriate for several reasons. It claims there were several issues of material fact, and discovery had not yet been completed. GCEC's main argument was that the email notice did not contain all the information required by the Territorial Agreement. GCEC also disputed whether the terms of the Territorial Agreement permitted Gulf Power to notify GCEC by emailing Peyton Gleaton. GCEC also argued that it did not waive its right to serve the Lift Facility, and waiver "involves factual issues that are *not* appropriate for decision by summary final order."

Interpreting the Territorial Agreement

Summary of the Territorial Agreement

To properly determine whether the term "all relevant information" is ambiguous, the Commission should first consider the context of the entire document. The Territorial Agreement was designed to prevent the "uneconomic duplication of [one utility's] facilities" by the other. According to the Territorial Agreement, uneconomic duplication of the other utility's facilities is primarily dependent upon whether there is a significant difference in the cost of service for each of the utilities. In turn, "The likelihood of there being a significant difference in the Cost of Service is primarily a function of the size of the Load and the difference in distances between the Point of Delivery and the Existing Facilities of each Utility." In sum, there are two driving

[10] "The initial determination of whether the contract term is ambiguous is a question of law for the court." *Strama v. Union Fid. Life Ins. Co.*, 793 So. 2d 1129, 1132 (Fla. 1st DCA 2001).

factors that will determine which utility can serve: (1) the difference in the distances between each utility's existing facilities and the customer and (2) the requested load size.

Section 2.1 of the Territorial Agreement provides that, "upon receiving a bona-fide request for service from a Customer, a Utility may agree to provide the requested service if the conditions of either Section 2.2 or Section 2.3 below are met. Otherwise, the Utility should direct the Customer to request service from the other utility." Section 2.2 lays out different load size and distance thresholds within which the requested utility can provide service without consulting or notifying the other utility. Section 2.3 states:

> In any instance where the Load and distance criteria of Section 2.2 are not met but the requested Utility believes that its Cost of Service would not be significantly more than that of the other Utility, the following procedure shall be used to determine if the requested Utility may agree to provide service:
>
> (a) The requested Utility is to notify the other Utility of the Customer's request, providing *all relevant information* about the request.
>
> (b) If the other Utility believes that its facilities would be uneconomically duplicated if the request is honored, it has five (5) working days from receipt of notice to request a meeting or other method to be conducted within ten (10) working days for the purpose of comparing each Utility's Cost of Service. Absent such a request or upon notification from the other Utility of no objection to the requested Utility's providing the service, the requested Utility may agree to provide service.

(Emphasis added). Section 2.4 provides that the "requested Utility bears the primary responsibility in determining whether or not the provisions of Sections 2.2 or Section 2.3 above have been met or if it otherwise believes that service can be provided to a Customer without uneconomic duplication of the other utility's facilities."

Interpreting "All Relevant Information"

The parties agree that Gulf Power had to comply with Section 2.3 in order to serve the Lift Facility. They also agree that Joshua Rogers at Gulf Power sent Peyton Gleaton at GCEC an email notifying him that Gulf Power had received a request for service. They also agree to the substance of the email. However, they dispute, among other things, whether Gulf Power's email to GCEC contained "all relevant information" about the request for service. The parties' arguments are based on different interpretations of that term, and as previously discussed, if the Commission determines that "all relevant information" is ambiguous, an issue of material fact exists, and a summary final order is inappropriate.

On its face, the phrase "all relevant information" is vague, because the reader has no indication of what information is relevant. However, the phrase must be considered in context of the Territorial Agreement. First, the phrase "about the request" immediately follows "all relevant information." Since the Territorial Agreement is about customer requests for electrical service, the information will be relevant to a customer request for electrical service. The Territorial Agreement also contains other language that can help determine what information is relevant to

the customer's request. But even with the help of those other provisions, the term is susceptible to at least three different meanings and is therefore ambiguous.

GCEC argues that "all relevant information" includes three pieces of information: (1) the precise location for the point of delivery, (2) the load size requested, and (3) the precise location of the requested utility's existing facilities. GCEC claims this information is vitally important for determining whether its facilities would be uneconomically duplicated if the requested utility were to fulfill the customer's request.

On the other hand, Gulf Power argues that "all relevant information" only includes that information necessary to alert GCEC to the existence of a request that triggers the provisions of Section 2.3 of the Territorial Agreement. Gulf Power argues that it gave GCEC enough information to know it had a duty under Section 2.3 to request a meeting within five days if it objected to Gulf Power fulfilling the request.

Additionally, one might also argue that "all relevant information" simply means any and all information the requested utility has that pertains to the request for service.

All of these interpretations are reasonable, and there may be other reasonable interpretations as well. Because this term may be fairly understood in more than one way, it is ambiguous.

Conclusion

The ambiguity in the terms of the Territorial Agreement raises an issue of fact, and that fact is material because Gulf Power relies on its own interpretation of "all relevant information" in its argument that it is entitled to a final order as a matter of law. Because both parties dispute the meaning of "all relevant information," they have raised a genuine issue of material fact, and Gulf Power's Motion for Summary Final Order cannot be granted. Staff recommends the Commission vote to deny Gulf Power's Motion for Summary Final Order.

Issue 3: Should GCEC's Motion for Summary Final Order be denied?

Recommendation: Yes. The Commission should deny GCEC's Motion for Summary Final Order. (A. King)

Staff Analysis: Staff is recommending that the Commission deny GCEC's Motion for Summary Final Order because the parties' dispute about the meaning of the Territorial Agreement raises an issue of material fact.

GCEC's Motion and Gulf Power's Response

GCEC filed its own Motion for Summary Final Order in its September 11, 2018, brief on Gulf Power's Motion for Summary Final Order. In this motion, GCEC argued that the undisputed facts demonstrate that it did not waive its right to serve the Lift Facility under the Territorial Agreement and GCEC is therefore entitled to a summary final order on that threshold issue. GCEC admitted that issues of waiver are typically not resolved on a motion for summary final order, but it claimed the undisputed facts in this case demonstrate that Gulf Power's notice was insufficient under the terms of the Territorial Agreement. It asserts that because Gulf Power's notice was insufficient, GCEC never knew it had the right to serve the Lift Facility. Because GCEC did not know it had the right to serve the Lift Facility, it could not have knowingly and intentionally waived that right.

Gulf Power responded to this Motion by pointing out that "[o]n one hand, GCEC claims in its Brief in Opposition that the 'waiver' issue is not susceptible to summary adjudication. On the other hand, GCEC's Motion asserts that the 'waiver' issue is susceptible to summary adjudication." Gulf Power also argues that waiver is not at issue in this case as it "has not raised a defense of 'waiver' in this proceeding." It also argues that waiver is an affirmative defense that must be pleaded and established by a defendant. Finally, Gulf Power re-states its arguments that the "plain language" of the Territorial Agreement must control, that the "Territorial Agreement does not specify that any of the elements identified by GCEC are essential for inclusion in notices issued under the Agreement," and that GCEC was sufficiently placed on notice of Gulf Power's intent to invoke the notice provisions of Section 2.3 of the Territorial Agreement.

Legal Standard for Waiver

"'Waiver' is the 'intentional relinquishment or abandonment of a known right or privilege, or conduct that warrants an inference of the intentional relinquishment of a known right.' . . . Waiver does not arise merely from forbearance for a reasonable time." *Hale v. Dep't of Rev.*, 973 So. 2d 518, 522 (Fla. 1st DCA 2007) (citations omitted). Waiver is an affirmative defense raised by a defendant at the pleading stage of proceedings. *Derouin v. Universal Am. Mortg. Co., LLC*, 254 So. 3d 595, 600 (Fla. 2d DCA 2018). "An 'affirmative defense' is any defense that *assumes the complaint or charges to be correct* but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question." *State v. Cohen*, 568 So. 2d 49, 51 (Fla. 1990) (emphasis added). Issues of waiver typically involve issues of fact that are inappropriate for summary final order. *Scheibe v. Bank of Am., N.A.*, 822 So. 2d 575, 575 (Fla. 5th DCA 2002).

GCEC's Motion is Dependent on a Disputed Material Fact

GCEC's entitlement to a summary final order rests on the finding that Gulf Power's notice was insufficient under the terms of the Territorial Agreement. That finding is dependent on the interpretation of the term "all relevant information," which, as previously discussed, is ambiguous and raises an issue of material fact. Because GCEC's entitlement to a summary final order is dependent on the resolution of an issue of material fact, it should be denied.

Conclusion

GCEC's Motion for Summary Final Order should be denied because it is dependent on at least one material fact that is in dispute. The existence of an issue of material fact precludes the issuance of a summary final order. Thus, staff recommends the Commission deny GCEC's Motion for Summary Final Order.

Issue 4: Should this docket be closed?

Recommendation: No. The docket should remain open. (A. King)

Staff Analysis: Should the Commission vote to deny both parties' Motions for Summary Final Order, the docket should remain open so this matter may proceed to hearing.

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: February 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Williams) CW AZ CH
Office of the General Counsel (Cowdery) MC S.M.C.

RE: Docket No. 20190039-TP – Appointment of Margaret Lynn Duggar and Debbe Hagner to the Telecommunications Access System Act of 1991 (TASA) Advisory Committee.

AGENDA: 03/05/19 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

The Telecommunications Access System Act of 1991 (TASA) established a statewide telecommunications relay system effective May 24, 1991. Section 427.704, Florida Statutes (F.S.), provides that the Florida Public Service Commission (Commission) shall establish, implement, promote, and oversee the administration of a statewide telecommunications access system to provide access to telecommunications relay services by persons who are deaf, hard of hearing or speech impaired, and those who communicate with them. This system provides telecommunications service for deaf or hard of hearing persons that is functionally equivalent to the service provided to hearing persons.

The Florida Relay System provides deaf or hard of hearing persons access to basic telecommunications services by using a specialized Communication Assistant that relays information between the deaf or hard of hearing person and the other party to the call. The deaf

or hard of hearing person utilizes a telecommunications device for the deaf (TDD) to type a message to the Communication Assistant, who in turn voices the message to the other party or types the message to a Captioned Telephone (CapTel) which displays real-time captions of the conversation.

Pursuant to Section 427.706, F.S., the Commission shall appoint an advisory committee of no more than 10 members to assist the Commission with Florida's relay system. There are currently seven representatives serving on the advisory committee.

By statute, the advisory committee provides the expertise, experience, and perspective of persons who are deaf, hard of hearing, or speech impaired to the Commission and to the administrator, Florida Telecommunications Relay, Inc. (FTRI), during all phases of the development and operation of the telecommunications access system. The advisory committee advises the Commission and FTRI on the quality and cost-effectiveness of the telecommunications relay service and the specialized telecommunications devices distribution system. Members of the advisory committee are not compensated for their services but are entitled to per diem and travel expenses provided through the Florida Public Service Commission's Regulatory Trust Fund.

Discussion of Issues

Issue 1: Should the Commission approve the appointment of Margaret Lynn Duggar to the TASA advisory committee effective immediately?

Recommendation: Yes. Staff recommends that the Commission approve the appointment of Margaret Lynn Duggar to the TASA advisory committee effective immediately. (Williams, Cowdery)

Staff Analysis: Ms. Duggar was recommended by FTRI for appointment to the TASA advisory committee. Ms. Duggar has extensive experience and expertise addressing issues facing senior citizens, and her appointment will fill a current void on the committee representing the perspective of seniors. Section 427.706, F.S., mandates that, to the extent practicable, the TASA advisory committee have representation from the senior community, as well as other impacted groups.

In 1989, Ms. Duggar established Margaret Lynn Duggar & Associates, an independent consulting firm specializing in developing products and services for seniors. The firm also offers strategic planning, association management, and organizational leadership services.

Ms. Duggar will represent the interest of the Florida Council on Aging (FCOA)[1] and the Florida Association of Aging Services Providers (FASP).[2] FCOA is a statewide membership organization providing a host of services to Florida seniors. FASP members are also FCOA members, and focus more on community-based and in-home direct services to Florida's elderly. FCOA members include local councils on aging, senior centers, insurance companies, senior housing communities, and health care providers, among others.

Ms. Duggar has served as the Executive Director of the Senior Society Planning Council for the United Way, Executive Director of the Area Agency on Aging for North Florida, Inc., and State Director on Aging and Adult Services for the State of Florida. Ms. Duggar was inducted into the Florida Council on Aging Hall of Fame in 1989, and was recognized as the Gerontologist of the Year for 1989-1990, by the Gerontological Society of Florida. Ms. Duggar received undergraduate and graduate degrees from Florida State University.

As mentioned earlier, Ms. Duggar was recommended by FTRI and has the background and expertise to advise the Commission and FTRI on issues involving relay service and its impact on the senior community. Staff recommends that the Commission approve the appointment of Margaret Lynn Duggar to the TASA Advisory Committee effective immediately.

[1] https://fcoa.org/index.php
[2] http://fasp.net/

Issue 2: Should the Commission approve the appointment of Debbe Hagner to the TASA advisory committee effective immediately?

Recommendation: Yes. Staff recommends that the Commission approve the appointment of Debbe Hagner to the TASA advisory committee effective immediately. (Williams, Cowdery)

Staff Analysis: Ms. Hagner was recommended by the Florida Coordinating Council for the Deaf and Hard of Hearing (FCCDHH or Coordinating Council) for appointment to the TASA advisory committee.[3] Ms. Hagner was born hard of hearing and has been an advocate for persons who are deaf or hard of hearing for many years.

Ms. Hagner is President of the Hearing Loss Association of America-Gulf Coast Chapter.[4] Ms. Hagner has also previously served as Vice-Chair of FCCDHH.

FCCDHH is mandated by Section 413.271, F.S., to serve as an advisory and coordinating body which recommends policies that address the needs of Florida's deaf, hard of hearing, late-deafened and deaf-blind community. The Coordinating Council is composed of 17 members.[5] The appointment of individual members not representing state agencies is made by the Governor. The appointment of members representing organizations is made by the Governor in consultation with the respective organization.

The Hearing Loss Association of America-Gulf Coast Chapter serves the needs of people with hearing loss by providing information and educational support, public awareness and both legislative and public policy advocacy. It is a local chapter of the Hearing Loss Association of America.

As mentioned earlier, Ms. Hagner was recommended by the FCCDHH and has the background and expertise to advise the Commission and FTRI on relay service. Staff recommends that the Commission approve the appointment of Debbe Hagner to the TASA advisory committee effective immediately.

[3] http://www.floridahealth.gov/provider-and-partner-resources/fccdhh/index.html
[4] https://www.hlagulfcoast.com/
[5] http://www.floridahealth.gov/provider-and-partner-resources/fccdhh/membership.html

Issue 3: Should this docket be closed?

Recommendation: Yes. The docket should be closed. (Cowdery)

Staff Analysis: The docket should be closed.

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: February 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (M.Andrews, Mouring)
Division of Economics (Guffey)
Division of Engineering (P. Buys, Graves)
Office of the General Counsel (Dziechciarz, Weisenfeld)

RE: Docket No. 20180061-EI – Petition for limited proceeding to recover incremental storm restoration costs, by Florida Public Utilities Company.

AGENDA: 03/05/19 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 3/5/2019 – Commission vote. Petitioner extended its waiver of the "file and suspend" provisions of Chapter 366, Florida Statutes, through March 5, 2019.

SPECIAL INSTRUCTIONS: None

Table of Contents

Case Background

On February 28, 2018, Florida Public Utilities Company (FPUC or Company) filed its petition for Limited Proceeding to Recover Incremental Storm Restoration Costs. FPUC requested to recover approximately $2 million for the incremental restoration costs related to several hurricanes and tropical storms named by the National Hurricane Center during the 2016 and 2017 hurricane seasons and to replenish its storm reserve subject to true-up. As a result of the hurricanes, tropical storms, and minor storms, FPUC incurred costs of approximately $2.8 million, less its storm reserve balance of approximately $2.3 million, resulting in net recoverable costs of approximately $500,000. Because the storms fully depleted its storm reserve, FPUC proposed to restore its storm reserve to $1.5 million pursuant to the provisions of the 2017 Limited Proceeding to Include Reliability and Modernization Projects in Rate Base Settlement Agreement (2017 Settlement) approved by Commission Order No. PSC-2017-0488-PAA-EI.[1] In order to recover the approximately $2 million in storm damage over a 12-month period, FPUC would need to implement a surcharge of $3.18 per 1,000 kWh on customer bills. To lessen the impact to its customers, FPUC requested to recover this amount over a 24-month period with a $1.59 per 1,000 kWh surcharge on customer bills.

The Office of Public Counsel intervened in this docket on March 22, 2018.[2]

On August 14, 2018, Order No. PSC-2018-0404-PCO-EI was issued establishing hearing dates and procedures to be followed in this docket. Order No. PSC-2018-0567-PHO-EI, issued on December 4, 2018, outlined the procedures to be used at the December 11, 2018 hearing.

A formal hearing was held on December 11, 2018, in which FPUC witnesses Michael Cassel and P. Mark Cutshaw, and OPC witness Helmuth Shultz testified. Commission staff witness Debra M. Dobiac's testimony was stipulated.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.041, 366.05, 366.06, and 366.076, Florida Statutes (F.S.), and Rules 25-6.0143, 25-6.0431, and 25-6.044, Florida Administrative Code (F.A.C.).

[1]Order No. PSC-2017-0488-PAA-EI, issued December 26, 2017, in Docket No. 20170150-EI, *In re: Petition for limited proceeding to include reliability and modernization projects in rate base, by Florida Public Utilities Company.*
[2]Document No. 02484-2018, in Docket No. 20180061-EI, *In re: Petition for limited proceeding to include reliability and modernization projects in rate base, by Florida Public Utilities Company.*

Discussion of Issues

Issue 1: What is the appropriate baseline from which incremental costs are derived?

Recommendation: This issue has been rendered moot for this particular case by the stipulation of Issues 2, 5, and 6.

Staff Analysis: Stipulated

Issue 2: In undertaking storm-recovery activities, was the payroll expense Florida Public Utilities Company ("FPUC") has requested to include for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Stipulated Position: OPC does not object to FPUC's request to recover $122,857 in incremental payroll costs. The amount identified by FPUC as "extra compensation" in the amount of $69,632 remains in dispute and is the subject of Issue 3.

Staff Analysis: Stipulated

Issue 3: Is the "extra compensation" included as part of the Inclement Weather Exempt Employee Compensation submitted for recovery by FPUC an allowable cost under Rule 25-6.0143, Florida Administrative Code?

Recommendation: Yes, the "extra compensation" of $69,632 submitted for recovery by FPUC is an allowable cost under Rule 25-6.0143, F.A.C. (M. Andrews)

Position of the Parties

FPUC: Yes. The additional compensation in the amount of $69,632 is compensation that is anticipated, regular pay for salaried employees engaged in storm restoration work as contemplated by the Company's payroll policy. Such pay does not constitute a bonus or special compensation, which are prohibited under Rule 25-6.0143, F.A.C., as these amounts are specifically contemplated by the Company's payroll policy and are not otherwise subject to discretion or being withheld based upon performance.

OPC: No, the "extra compensation" is not allowable compensation under Rule 25-6.0143, Florida Administrative Code.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC witness Cassel testified that during periods of inclement weather, FPUC recognized that additional hours and duties can be required of employees. (TR 160, 214) He contended that the practice is documented in FPUC's Inclement Weather Exempt Employee Compensation Policy. (TR 160) Witness Cassel stated that the extra compensation is part of FPUC's employees standard pay and benefit package. (TR 160) He asserted that every eligible employee receives this supplement to base salary. (TR 214) He added that there was nothing "special" about the compensation, nor was it a "bonus" payment. (TR 160) Witness Cassel contended that it is used as a tool in recruiting new employees, who at times are asked to leave their families to perform restoration work. (TR 178, 214)

Witness Cassel argued that opposing the payments misinterprets Rule 25-6.0143, F.A.C. (TR 186) He stated that the rule disallows special compensation, but not any additional, supplemental compensation. (TR 186) FPUC asserted that instead of treating the payments as "special," it should be treated as standard components of FPUC's pay and benefits package, and considered non-special compensation because it is not discretionary. (FPUC BR 8) FPUC stated that a one-time bonus payment could be made without any objective standard and subject to abuse; however, FPUC's approach is consistent with sound policy by being predictable and objective. (FPUC BR 9)

OPC

OPC stated that Rule 25-6.0143(1)(f)2, F.A.C., excludes bonuses or any other special compensation for utility personnel not eligible for overtime. (TR 177) OPC witness Shultz asserted that based on FPUC's response to Citizens' First Interrogatory No. 19, payments to employees not eligible for overtime constitute an added form of employee compensation for

salaried utility personnel that is prohibited from recovery under the Rule. (TR 72) Witness Shultz contends that FPUC is trying to circumvent the prohibition found in Rule 25-6.0143, F.A.C., by paying bonuses. (TR 72; OPC BR 3)

ANALYSIS

Rule 25-6.0143(1)(f)2, F.A.C., states "Bonuses or any other special compensation for utility personnel not eligible for overtime pay" are prohibited from being charged to the reserve under the Incremental Cost and Capitalization Approach (ICCA) methodology. Staff believes that the "extra compensation" of $69,632 contemplated by the Company's payroll policy is not a "bonus" or "other special compensation" and is allowable under Rule 25-6.0143, F.A.C.

FPUC asserted that they had many salaried employees perform beyond their regular duties and work in excess of 16 hour days for an extended period of time. The duties far exceeded their normal hours and normal job functions. (EXH 7, BSP 00015) According to FPUC's Inclement Weather Exempt Employee Compensation Policy, every eligible employee, without discretion, is compensated after every storm. (TR 160; TR 214) The "extra compensation" is part of FPUC's standard pay and benefit package. (TR 160) Because the "extra compensation" is paid to every eligible employee regardless of the nature of the storm, number of hours worked, or duties, it is not discretionary. Staff interprets the prohibition on recovery for bonuses or any other special compensation under Rule 25-6.0143, F.A.C., as prohibition on giving bonuses or other incentives on a discretionary basis, with no guidelines regarding the distribution or amount of the additional compensation received. In contrast, FPUC has a clear, non-discretionary policy for providing supplemental compensation to account for the additional hours its employees are required to work during an emergency. Staff agrees with FPUC witness Cassel, that the "extra compensation" is not a "special" compensation or a bonus, but rather an additional supplemental compensation for eligible employees, who have performed beyond their regular duties. (FPUC BR 8) Thus, staff believes that the "extra compensation" is not a prohibited cost, but an incremental cost. Rule 25-6.0143(1)(d), F.A.C., allows utilities to charge for "costs that are incremental to costs normally charged to non-cost recovery clause operating expenses in the absence of a storm."

CONCLUSION

FPUC asserted that their salaried employees worked beyond their regular duties and in excess of 16 hour days for an extended period of time. (EXH 7, BSP 00015) Staff recommends that the additional compensation of $69,632 contemplated by the Company's payroll policy is not a bonus or special compensation, but rather an additional supplemental compensation, and is allowable under Rule 25-6.0143, F.A.C., therefore, staff recommends approval of these costs.

Issue 4: **Stricken by Order No. PSC-2018-0404-PCO-EI.**

Issue 5: In undertaking storm-recovery activities, were the benefit costs requested by FPUC for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Stipulated Position: OPC does not object to FPUC's request to recover benefit costs in the amount of $38,424.

Staff Analysis: Stipulated

Issue 6: In undertaking storm-recovery activities, were the overhead costs requested by FPUC for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Stipulated Position: OPC does not object to FPUC's request to recover overhead costs in the amount of $22,856.

Staff Analysis: Stipulated

Issue 7: In connection with the restoration service associated with electric power outages affecting customers as a result of Hurricanes Matthew and Irma, were the contractor rates that FPUC paid for storm-recovery activities reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Recommendation: The contractor rates are reasonable and were prudently incurred. Therefore, no adjustment should be made for the contractor rates. (P. Buys, Graves, M. Andrews)

Position of Parties

FPUC: Yes, the contractor rates paid by FPUC for storm-recovery activities were reasonably and prudently incurred by FPUC for storm-recovery activities. Rates and total costs should be considered on a case-by-case basis and considered within the context of the utility and the storm-recovery efforts encountered. Given the contextual circumstances of FPUC's storm recovery efforts, the rates FPUC paid were appropriate and should be allowed for recovery in full.

OPC: No. A reduction of contractor costs of at least $185,039 for a grossly excessive hourly rate charged by Par Electrical Contractors should be made.

Staff Analysis:

This Issue discusses the contractors' rates, Issue 8 addresses the contractors' time, and the final amount of the contractor costs are discussed in Issue 9. The principle dispute in this Issue revolves around the mobilization and standby rates one contractor from Iowa, PAR Electrical Contractors (PAR), charged during Hurricane Irma.

PARTIES' ARGUMENTS

FPUC

FPUC argued that its reliance on contractors with higher than normal hourly rates, under the unique circumstances associated with Hurricane Irma, were reasonable and prudent. (FPUC BR 9)

FPUC asserted:

- It did not have contractors on-site during the approach of Hurricane Irma.
- The magnitude of Hurricane Irma led to many other utilities retaining their on-site contractor resources, and not releasing them for use by FPUC.
- There was a shortage of contractors caused by Hurricane Harvey.

(FPUC BR 10)

The Company discussed two ways contractors may be acquired for restoration work. First, negotiate a right to retain contractors working on-site and negotiate those hourly rates. These contractors, if on-site, form part of a utility's storm response team. Second, acquire contractors through the Southeastern Electric Exchange (SEE). When a storm approaches, the SEE convenes mutual assistance calls to determine the resources needed and the resources available. The resources are released through a SEE-moderated process. (FPUC BR 9-10)

Because FPUC did not have contractors on-site, it worked with the SEE. Due to the shortage of contractors caused by Hurricane Harvey, the SEE reached out to other similar exchanges located in the Northeast and upper Midwest to ascertain the availability of the contractors. FPUC stated that during three mutual assistance calls, utilities were made aware of shortfalls in resources. The shortfalls of resources were 8,400 resources during the first call, 5,900 resources during the second call, and 4,000 resources during the last call. (FPUC BR 10)

FPUC stated that, during Hurricane Irma, Florida Power & Light Company (FPL) released a 40-person crew from PAR while the contractor was enroute to Florida, and it was obvious that PAR would likely be the only contractor available to assist the Company. Such assistance was the only way it could achieve its Estimated Time of Restoration (ETR) goal of one week. FPUC ultimately restored service within 5 days. FPUC argued that if it had not hired PAR, power might not have been restored until two weeks after Hurricane Irma. (TR 267-268) Under the SEE guidelines, the hourly rates PAR charged to FPUC would be no different than those charged to FPL. The Company asserted that it made the responsible decision to put its customers' safety first and retain PAR, who proved to be an excellent contractor. (FPUC BR 11)

The Company argued that OPC misunderstands the SEE's role and process. FPUC explained that:

- The SEE is essentially a moderator to help utilities appropriately allocate contractor resources.
- The SEE does not set rates.
- The members of the SEE agree to abide by the guidelines, including those governing payment for resources utilized by a utility.
  (FPUC BR 11-12)

The rates are set between the releasing utility and the contractor. Following the SEE guidelines, the requesting utility pays those rates. FPUC stated the releasing utility has the same oversight and incentives to minimize contractor costs, so it was reasonable to assume that the contractors' rates negotiated by FPL were prudent, reasonable, and market-based rates. (FPUC BR 11-12)

FPUC further argued that OPC's comparison of PAR's rates, in this situation to others, is not an accurate apples-to-apples comparison. Specifically, OPC compared PAR's rates to: 1) other contractors used during Hurricane Irma, 2) contractors used during previous storms, and 3) contractors used in other states. (FPUC BR 12)

The Company stated that PAR was its only option, and that rejecting PAR's assistance would have led to longer restoration times for its customers. OPC conceded that cost is not the sole basis upon which a contractor should be retained. (FPUC BR 12)

In addition, even if under a contract with FPUC, a contractor would not be expected to leave an active response situation, such as Hurricane Harvey, which made landfall about two weeks prior to Hurricane Irma. Nor would a Contractor be expected. To ignore calls from other Florida utilities needing help with Hurricane Irma simply because the possibility exist that FPUC might be impacted by the storm. A utility can only "lock down" a contractor if they are already working on that utility's system at the time a storm approaches. FPUC argued that OPC's

proposal of "locking down" contractors would gut the SEE process and a small utility, like FPUC, would be left out in the cold because it would not be able to afford retaining several contractors just in case a hurricane comes. (FPUC BR 13)

The Company argued that OPC's suggestion that it reach outside the SEE region would also fail. FPUC noted that the SEE in fact did reach out to sister exchanges in other parts of the United States to seek resources. FPUC asserted that obtaining contractors further away would not save any more costs when compared to PAR's rates if travel time costs are taken into consideration. (FPUC BR 14)

OPC

OPC stated that FPUC requested a total of $1,978,291 for outside contractor costs and that PAR's portion was $1,682,556 just for Hurricane Irma. (OPC BR 5) OPC takes issue with the following:

- PAR charged $905,074, which is over 54 percent of PAR's total amount, for mobilization and standby charges. (OPC BR 5)
- PAR's hourly rates for mobilization and standby periods were significantly higher than the hourly rate it charged for actually performing restoration work. (OPC BR 5-6)
- PAR charged over $2,000 per hour for a four-man crew to travel. (OPC BR 6)
- FPUC's statement that PAR's higher rates for mobilization/demobilization when compared to its standard rates were "due to some extreme costs… incurred while responding to other storm areas and that all the utilities they [PAR] assisted after Hurricane Irma were charged these same rates" does not meet any test for reasonableness or prudence. (OPC BR 7; TR 81-82)
- Through the SEE process, the contractor may begin charging when it is assigned to a utility. (OPC BR 7)
- The rates were all agreed to in anticipation of emergency circumstances. (OPC BR 7)
- PAR's rates were substantially higher than the average $141 per hour, including equipment, charged to FPUC by another contractor during Hurricane Matthew. (OPC BR 8)

OPC questioned if FPUC had properly planned for its restoration efforts, in light of PAR's high mobilization rates, and given that the trip was approximately 20 hours travel time and PAR arrived two days before the storm hit FPUC's territory. (OPC BR 7) OPC argued that prudent utilities generally have a contract in place prior to a storm hitting its service territory and utilities do not typically negotiate rates with contractors after the damage is known. OPC noted that subsequent to filing its petition for recovery in this docket, FPUC instituted a new internal policy that governs the emergency storm-work process and requires that contractor rates appearing excessive should be negotiated with the contractors as soon as possible. (OPC BR 7)

OPC argued that PAR's rates are clearly egregious, and that it is unjust and unfair to expect FPUC's customers to reimburse the Company for such excessive rates. OPC urged the Commission to consider whether FPUC has carried its burden to demonstrate that such costs were reasonable and prudent in the way they were incurred and in amount. OPC is

recommending a reduction of the contractor costs by at least $185,093 for the grossly excessive rate. (OPC BR 8)

ANALYSIS

FPUC's request for recovery of storm related restoration costs included $1,978,291 associated with contractor costs. OPC witness Schultz expressed concern with the amount of contractor costs incurred as a result of Hurricane Irma. (TR 80) Neither OPC witness Schultz nor Commission staff witness Dobiac recommended an adjustment to contractor rates incurred as a result of Hurricane Matthew. (EXH 4, SCH E, 1 of 3; EXH 6)

Witness Schultz's testimony specifically addressed hourly rates (Issue 7), mobilization/standby time (Issue 8), and capitalization of restoration costs (Issue 9) (TR 80). The subject of this Issue is the hourly rate.

Accordingly, OPC witness Schultz expressed multiple concerns with the contractor costs incurred by FPUC during Hurricane Irma, all of which were charged by PAR. Witness Schultz specifically argued that the rates were not reasonable and FPUC's practice of consenting to SEE rates was not appropriate. (TR 80-83) Staff's analysis of PAR rates and the associated SEE process are discussed below.

PAR's Hourly Rates

OPC witness Schultz testified that the hourly rates charged by PAR are grossly excessive even under the circumstances of storm restoration. For context, the hourly rates charged by PAR in response to Hurricane Irma were: $509 for mobilization time, $377 for standby time, and $216 to $291 for work and standby time.[3] PAR was reassigned to FPUC utilizing the same rates that were negotiated by FPL. Witness Schultz asserted that these rates are especially concerning when compared to rates charged by another contractor in response to Hurricane Matthew. Witness Schultz specifically cited to the average hourly rate ($141 including equipment charges) charged by Davis H Elliot Construction during Hurricane Matthew for responding in a storm situation. (TR 81-83, 109-110, 145-146, 239)

Given his concerns, witness Schultz recommended an adjustment to the contractor costs of $185,093 for what he believes is a grossly excessive rate. This adjustment was calculated by multiplying 1,216 hours, identified as mobilization time, by PAR's working rate of $290.95 per hour (1,216 x $290.95 = $353,795). Witness Schultz then subtracted this amount from the mobilization cost of $538,889, resulting in his recommended adjustment of at least $185,093 for contractor hourly rates. (TR 85, EXH 4, SCH E, 1 of 3) Witness Schultz testified that he did not concede that the hourly rate of $291 was reasonable, but asserted that he did not have an opportunity to develop a reasonable rate. (TR 85-86)

[3] Witness Schultz's testimony had the mobilization rate at $307 and the standby rate at $509. (TR 82) This was corrected at the hearing in which witness Schultz agreed mobilization rate was $509, the standby rate was $377, and PAR's actual work rate ranged from $216 - $291 per hour. (TR 109)

FPUC witness Cutshaw testified that Hurricane Irma caused an overwhelming need for resources in Florida. He elaborated that the resource market was already constrained as a result of Hurricane Harvey which impacted Texas and Louisiana. Given these conditions, witness Cutshaw explained that the hourly rate charged by PAR and accepted by FPUC was the rate available to suitably meet FPUC's needs. (TR 223)

Witness Cutshaw explained that if a storm is not extensive, and sufficient resources are available in the market, FPUC could reasonably bargain for a better price. (TR 223) He elaborated that FPUC has turned PAR away in the past because of its rates; however, given the situation described above, PAR was the only option available. (TR 227) Witness Cutshaw additionally testified that rejecting PAR could have resulted in insufficient resources to address the damage caused to FPUC facilities by Hurricane Irma, which would have led to much longer restoration times and impacted public safety. (TR 228) At the hearing, witness Cutshaw testified that restoration was completed in four to five days. (TR 267) Absent assistance from PAR, witness Cutshaw reasoned that restoration could have taken up to two weeks. (TR 268)

Rule 25-6.044(3), F.A.C., states that when interruptions occur, each utility "shall attempt to restore service within the shortest time practicable consistent with safety." Staff believes FPUC has demonstrated that the hourly rates paid to PAR were prudent and reasonable when considering the Company's obligation to restore service to its customers within the shortest time practicable. As previously discussed, if FPUC rejected PAR, total restoration time could have doubled. Furthermore, staff believes the record demonstrates that the conditions caused by Hurricane Irma (limited resource availability) did not allow FPUC the flexibility to pursue other contractors while safely and expeditiously restoring electric service. To these two points, OPC witness Schultz acknowledged that cost is not the sole factor during an emergency. (TR 141-142)

As previously discussed, OPC witness Schultz argued that PAR's rates were particularly concerning when compared to rates charged during previous storms. (TR 25) With respect to this argument, staff has concerns with comparing costs incurred during different storms. As testified by witness Cutshaw, the market for resources during Hurricane Irma was constrained because of the extensiveness of the storm, and storm restoration efforts in other states as a result of Hurricane Harvey. Additionally, witness Cutshaw testified that storm related rates can change from year to year. (TR 231, 259) Therefore, staff does not believe that witness Schultz' recommended adjustment is appropriate.

SEE Process

In addition to arguing the level of hourly rate, witness Schultz also expressed concern with FPUC's use of the SEE which he asserted dictates the contractor rates to be charged to a utility. (TR 81) Moreover, based on an interrogatory response, witness Schultz stated that while the SEE is a trade association that is intended to represent the interests of its members, it is the contractor's best interest and not that of the utility that is the SEE's concern. (TR 82)

FPUC witness Cutshaw argued that witness Schultz misunderstands what the SEE is and its purpose. (TR 224) He explained that the SEE provides a collaborative mechanism to share utility and contractor resources where needed following a storm. (TR 226) Witness Cutshaw testified that the SEE mutual assistance process is strictly focused on obtaining and allocating available resources in a fair and equitable manner, and does not consider or dictate rates of participating

resources. (TR 224, 237) Further, witness Cutshaw stated that the utility to which the resources are allocated is the entity responsible for accepting or rejecting the resources, and reimbursing their associated costs. (TR 224-225)

It was explained that under the SEE process, when an actual event occurs, resource assignments are made based on the initial projections for the storm. (TR 224, 231) If the storm projections change, resources can be reassigned to another utility based on the new projection. (TR 225, 231) The utility that receives assistance from the released contractor must pay for services based on the contract that resource had with the utility that originally engaged the contractor. (TR 230)

Witness Cutshaw testified that during a storm event, FPUC would typically need smaller crews due to the Company's size. (TR 231) He elaborated that contractors are less inclined to contract with FPUC as opposed to utilities seeking larger crew sizes. (TR 231) Witness Cutshaw also explained that in the past, utilities would get as many contractors as possible leaving some utilities "out in the cold." (TR 260) Witness Cutshaw explained that the SEE process, which is a process FPUC has followed consistently for several storms over several years, has enabled FPUC to obtain the resources needed despite its size. (TR 231, 259-260)

Staff believes that the record sufficiently demonstrates that the SEE process provides a reasonable mechanism for utilities to obtain resources in response to a storm. Staff also believes that the Company has demonstrated that participating in the SEE process is critical for FPUC to ensure that it has adequate resources to restore service to its customers.

CONCLUSION

Based on the evidence in the record and the discussion above, staff recommends the contractor rates are reasonable and were prudently incurred. Therefore, no adjustment should be made for the contractor rates.

Issue 8: In connection with the restoration of service associated with electric power outages affecting customers as a result of Hurricanes Matthew and Irma, were the contractor costs associated with standby time, mobilization time, and demobilization time paid by FPUC for storm-recovery activities reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Recommendation: The contractor costs associated with standby time, mobilization time, and demobilization time are reasonable and were prudently incurred. Therefore, no adjustment should be made to contractor time. (P. Buys, Graves, M. Andrews)

Position of Parties

FPUC: Yes, the contractor costs associated with standby time, mobilization time, and demobilization time were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts resulting from Hurricanes Matthew and Irma. There is no basis for any adjustment to these costs.

OPC: No. A reduction to contractor costs of at least $353,795 for an excessive amount of standby time should be made.

Staff Analysis:

This Issue discusses the contractors' time. The final amount of contractor costs is discussed in Issue 9. The principle dispute in this issue revolves around the mobilization and standby time for one contractor, PAR, assessed during Hurricane Irma.

PARTIES' ARGUMENTS

FPUC

FPUC stated that the mobilization of PAR occurred on September 7 and 8, 2017, and PAR crews were on standby during September 9 and 10. FPUC argued:

- The length of PAR's mobilization and standby time was dictated by the timing of its release by FPL.
- PAR crews were originally mobilized by FPL on September 7, 2018, from Des Moines, Iowa.
- FPL subsequently released PAR and FPUC retained them through the SEE process.
- The timing of FPL's original request on September 7 drove PAR's standby time.
- FPUC explains that PAR was re-routed to its service territory and was on standby in Jacksonville on September 9.
- Hurricane Irma struck Florida on September 10 and entered FPUC territory on September 11.
- On September 10, while waiting for Hurricane Irma to approach North Florida, FPUC conducted training to ensure that PAR could work safely and efficiently with FPUC's other resources.
- If training had not occurred on September 10, it would have had to take place after Hurricane Irma passed through FPUC's territory on September 11, which would have delayed the restoration response.

- PAR's stop in Jacksonville on September 9 was a reasonable measure given the other alternatives, such as returning to Des Moines, which would have required additional pointless driving by PAR.
  (FPUC BR 14-15)

FPUC argued that paying for the two days of mobilization time and two days of standby time is reasonable and prudent because predicting the path and timing of hurricanes is notoriously difficult. The Company stated that OPC witness Schultz's strategy of waiting until the last possible day to mobilize contractors could end in disaster for customers, especially when those contractors hit unexpected delays due to evacuations, gas shortages, and bad weather from the leading edge of the hurricane. (FPUC BR 15)

FPUC argued that the amount of mobilization and standby time was fully justified under the unique circumstances caused by Hurricane Irma. The hourly rates for mobilization and standby were paid to the only available contractor consistent with SEE guidelines. (FPUC BR 16)

OPC

OPC argued that FPUC's request for recovery of outside contractor costs in the amount of $1,978,291 was excessive. In response to discovery, FPUC stated it did not incur any costs for standby time for its contractors; however, OPC witness Schultz testified that the contractor invoices clearly indicate a charge for standby time. (TR 83-84) OPC argued that this raised a concern with FPUC's review process for paying outside vendors. (OPC BR 8-9)

OPC further argued that:

- Payment of standby time can be used to determine how prepared a utility is for storm restoration activities and whether it is monitoring this significant cost element in an efficient manner.
- Ratepayers suffer if contractor crews are standing by for an excessive amount of time, because the ratepayers are experiencing the power outages, and they will ultimately have to pay the storm restoration expenses.
- A prudent utility should require contractors to note on their time sheets as to whether standby time has occurred, and use this information to evaluate its own performance to help develop a process to minimize standby time.
  (OPC BR 9)

ANALYSIS

As discussed in Issue 7, OPC witness Schultz expressed concern with FPUC's request for recovery of storm related restoration costs that included a total of $1,978,291 associated with contractor costs. (TR 80) OPC witness Schultz further had concerns with the amount of contractor costs incurred as a result of Hurricane Irma. (TR 80) This issue addresses the standby time, mobilization time, and demobilization time.

The record indicates that PAR began charging mobilization time when it was first reassigned to FPUC on September 7, 2017, which is four days before Hurricane Irma hit FPUC's service area on September 11. (EXH 14, BSP 00077; EXH 20, BSP 00126) Witness Cassel testified that PAR

crews were traveling from Des Moines, Iowa to Florida, on September 7 and 8 and were on standby September 9 and 10. (EXH 20, BSP 00126) Witness Cutshaw explained that safety training, system configurations, reporting requirements, and logistics information were presented to contractor crews while waiting for the storm to clear. (EXH 20, BSP 00127)

OPC witness Schultz testified that the trip from Des Moines, Iowa to Florida is approximately 20 hours and PAR was in Jacksonville, Florida on September 8. (TR 82) He argued that this raises a major concern as to proper planning by FPUC. (TR 82) Witness Schultz asserted that standby time can be used to determine how prepared a utility is for storm restoration activities and whether it is monitoring this cost element of restoration in an efficient manner. (TR 84) He stated if contractor crews are standing by and waiting for assignments for an excessive amount of time, then this is an indication the Company is not properly monitoring crew activities and resources efficiently. (TR 84) Witness Schultz also argued that it is not reasonable to expect ratepayers to have to pay for contractors to just sit around. (TR 84)

Given his concerns, witness Schultz recommended an adjustment of $353,795 to the contractor costs. (TR 85) He explained that he determined that two days (1,216 hours), instead of four days (2,432 hours), was a reasonable amount of time for PAR to travel to Florida and be available to perform restoration work. (TR 86) Witness Schultz testified that because he considers half of the time billed to be excessive, he multiplied $707,591 (the amount of mobilization/standby labor costs adjusted due to OPC's recommendation to contractor rates as discussed in Issue 7) by 50 percent, which resulted in an adjustment of $353,795 for excessive standby time. (TR 86, EXH 4, SCH E, 1 of 3)

At the hearing, witness Schultz was asked how one could evaluate effectively what an adequate and fair amount of standby time is, giving consideration to the uncertainties associated with hurricanes such as how they can slow down or stay over time. (TR 120) Witness Schultz responded that he worked from his experience in reviewing storm costs. (TR 120) Witness Schultz acknowledged that he has never done damage assessment following a storm; however, he spoke of his familiarity with how long such an assessment may take. (TR 122) As an example, he discussed a snowstorm that he was involved in, and he stated that he interacted with crews doing storm restoration and they knew right away where damage occurred. (TR 122) He explained that a crew may come in early and standby and that it is a judgment call on whether those costs are appropriate. (TR 121)

FPUC witness Cutshaw testified that witness Schultz's recommended adjustment reflects an inadequate understanding of necessary hurricane preparation. (TR 223) He explained that a critical factor in hurricane restoration and response is having sufficient restoration resources appropriately staged in order to respond promptly without being impacted by travel restrictions. (TR 223) He further explained that mobilization and staging of resources must occur in conjunction with the path and impact of the impending storm. (TR 223) Witness Cutshaw elaborated that it is necessary that contractors arrive in advance of the storm so that overall restoration time is reduced. (TR 165) In the same vein, FPUC witness Cassel stated that a delay in obtaining restoration resources directly impacts the Company's ability to restore power to its customers in a timely manner. (TR 166) He further explained that if a contractor were to delay

travel to the area until after the storm has hit, it is quite possible that the contractor's arrival to assist the Company may be significantly delayed or prevented entirely. (TR 165)

Witness Cutshaw also testified that in the case of Hurricane Irma, paying for standby time was necessary to ensure that the contractor would be appropriately staged near, but not too close, to the path of the hurricane. (TR 223) He additionally explained that during Hurricane Irma, FPUC was assigned a small crew based on the initial forecast of the intensity and path. (TR 227) Witness Cutshaw continued, stating that as the forecast of the hurricane changed, FPUC became aware that the initial resources requested would be insufficient to address the anticipated damage and meet the estimated times of restoration targets. (TR 227) FPUC then requested additional resources; however, all resources were previously assigned to other utilities. (TR 227) Witness Cutshaw testified that PAR was released by another utility and at that time FPUC had no other option but to utilize PAR. (TR 227)

As previously stated in Issue 7, Rule 25-6.044(3), F.A.C., states that when interruptions occur each utility "shall attempt to restore service within the shortest time practicable consistent with safety." Based on the testimony of witnesses Cassel and Cutshaw, staff believes that obtaining service from PAR, starting on September 7, was prudent and reasonable when considering FPUC's obligation to restore power expeditiously. Staff further believes that if the Company did not obtain PAR's service, this action would have adversely impacted FPUC's ability to restore power expeditiously. Furthermore, staff does not believe that OPC witness Schultz provided persuasive testimony that cutting the standby and mobilization time in half is reasonable. As discussed, witness Schultz's adjustment was based on his experience in reviewing storm costs not specific to hurricane restoration or the circumstances associated with Hurricane Irma. Therefore, staff recommends no adjustment is necessary.

CONCLUSION

Based on the evidence in the record and the discussion above, staff recommends the contractor costs associated with standby time, mobilization time, and demobilization time are reasonable and were prudently incurred. Therefore, no adjustment should be made for contractor time.

Issue 9: In undertaking storm-recovery activities associated with Hurricanes Matthew and Irma, were the contractor costs FPUC has included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Recommendation: The original contractor costs of $2,148,743 should be reduced by $170,452. The remaining contractor costs of $1,978,291 are reasonable and were prudently incurred by FPUC and these costs should be approved for recovery. (P. Buys, Graves, M. Andrews)

Position of Parties

FPUC: Yes, the total amount of contractor costs associated with Hurricanes Matthew and Irma for which FPUC seeks recovery were reasonably and prudently incurred and should be approved. There is no basis for adjustments to these costs for recapitalization and reclassifications.

OPC: No. FPUC's request for contractor costs related to recapitalization for contractor costs should be reduced by at least $300,891. Additionally, FPUC's request for contractor costs should be reduced by $170,019 for reclassified costs from payroll benefits and overheads.

Staff Analysis:

This issue discusses the final amount of the contractor costs. The principle dispute in this issue revolves around the capitalizable costs for Hurricane Irma.

PARTIES' ARGUMENTS

FPUC

In its Post Hearing Brief, FPUC argued:

- That its capitalization of costs is consistent with Rule 25-6.0143(1)(d), F.A.C., which requires capital expenditures for the removal, retirement, and replacement of damaged facilities charged to cover storm-related damages shall exclude the normal cost for the removal, retirement, and replacement of those facilities. (FPUC BR 16) FPUC stated that its methodology did precisely what the rule requires. (FPUC BR 17)
- That it calculated the normal cost using in-house rates for each type of asset being installed or removed and then subtracted the total costs resulting from the hourly rate of $37.34 from the costs incurred for the same work during the storm. (FPUC BR 17; TR 167, 208, 209)
- That the $37.34 rate is FPUC's average time for installation and removal in pre-storm conditions. (FPUC BR 17)

FPUC argued that OPC witness Schultz's objections are not entirely clear. (BR 17) Witness Shultz asserted:

> The method used by FPUC ignores the fact that, if the capital work was performed by FPUC employees incurring incremental time, then that work would be at an overtime rate and not at the $37.34 an hour applied by FPUC. Moreover, the capitalized costs are

> further understated once you factor in the contractor's hourly rate, which is even higher than FPUC's overtime rates. (TR 87)

FPUC asserted that overtime rates and storm contractors' rates "performed during restoration," which witness Schultz argued are the appropriate rates for hourly work, are not "normal" by definition. (FPUC BR 17) The Company states that Rule 25-6.0143(1)(d), F.A.C., requires excluding "the normal cost." (FPUC BR 17)

FPUC disagreed with witness Schultz's criticisms of the costs the Company seeks to recover as not being incremental costs, and that "If FPUC labor is not incremental, then it cannot be capitalized which means the amount capitalized should be adjusted based on what capital labor dollars are incremental. The only such labor dollars available for capitalization are the contractor dollars." (TR 88) FPUC backed out the normal costs from the storm costs so that it is seeking to only capitalize the normal costs and recover the remainder. (TR 167, 208-209) The Company argued that witness Schultz's statement ignores the reasonable and valid methodology used to separate "normal costs" which cannot and were not charged to the reserve. (FPUC BR 17-18)

FPUC stated that OPC witness Schultz urges rejection of FPUC's capitalized amounts using the normal cost rate that exists under normal conditions as being inconsistent with Generally Accepted Accounting Principles (GAAP), and that restoration takes place under abnormal conditions. (BR 18; TR 90) FPUC asserted that this argument is at odds with the Rule language, which does not mention GAAP, and specifically address what to do with normal and abnormal costs. (FPUC BR 18)

OPC

OPC argued:

- That it does not appear FPUC has a set policy for capitalization of storm costs or a standard methodology in place.
- A prudent utility should have a capitalization policy in place and develop a method for appropriately capitalizing storm restoration costs.
- The methodology should factor in contractor rates and crew sizes because contractors perform a significant portion of capital restoration work and contractor rates are significantly higher than either regular or overtime rates of FPUC employees. (OPC BR 11)

OPC stated that the capitalization rate FPUC proposed to use for storm restoration is the same it uses in the normal course of its business operations under normal conditions. (OPC BR 5) OPC asserted that after a storm, circumstances dictate a different response and level of cost incurred; a difference that cannot and should not be ignored. (OPC BR 11) Because contractors perform a large portion of capital restoration work and at a much higher cost, it is unreasonable to apply a capitalization rate that is based on FPUC's normal business operations. (OPC BR 11) As stated earlier, FPUC used both internal and external crews; as such, FPUC's request for contractor costs related to recapitalization should be reduced by at least $300,891 for the difference between the Company's capitalization rate and the adjusted average hourly capitalization rate of $221 for its contractors. (OPC BR 11) OPC asserted that this adjustment does not preclude the Company

from recovering these costs, but rather spreads the cost over the life of the assets that were replaced. (OPC BR 11-12)

OPC asserted that as a result of the revision of payroll as discussed earlier, the reclassification of $170,019 of capitalized payroll, benefits, and overhead costs to reduce the recoverable amount of contractor costs is no longer required. (OPC BR 12)

ANALYSIS

As discussed in Issue 7, FPUC's request for recovery of storm related restoration costs included a total of $1,978,291 associated with contractor costs. In his testimony, OPC witness Schultz expressed concern with the amount of contractor costs incurred as a result of Hurricane Irma. Witness Schultz's testimony specifically addressed hourly rates (Issue 7), mobilization/standby time (Issue 8), and capitalization of restoration costs, which are addressed here. (TR 80, EXH 13, BSP 00066, Supporting Document for Question 6)

Staff witness Dobiac testified that the staff audit identified a finding concerning the capitalizable costs for Hurricane Irma. (TR 14-15) She explained that audit staff listed items in the amount of $137,573 that had been incorrectly expensed to the storm reserve. (TR 15) Witness Dobiac asserted that these items are not eligible for recovery under Rule 25-6.0143(1)(d), F.A.C, because they should have been capitalized. (TR 15)

FPUC witness Cassel agreed with staff's audit report finding. (TR 38-39) FPUC identified additional adjustments in responses to interrogatories. (EXH 13, BSP 00066, Supporting Document for Question 6) The adjustments were for certain contractor costs that were determined to be related to capital additions. These adjustments totaled $22,742 for Hurricane Irma contractor costs. (EXH 13, BSP 00066, Supporting Document for Question 6) The total contractor costs for Hurricane Irma with the additional adjustments and staff's audit adjustments totaled $1,661,100 ($1,821,416 - $22,742 - $137,573). (EXH 13, BSP 00066, Supporting Document for Question 6) FPUC also made adjustments for the contractor costs for Hurricane Matthew; the adjusted total equals $312,718 ($322,854 - $10,137). (EXH 13, BSP 00066, Supporting Document for Question 6) These adjustments bring the total for contractor costs to $1,978,291 from $2,148,743. (TR 38-39, EXH 13, BSP 00066, Supporting Document for Question 6; EXH 7, BSP 00021)

OPC witness Schultz did not take issue with the adjustments discussed above. However, he testified that there are multiple concerns with the contractor costs requested by FPUC. (TR 80) He argued that the proper capitalization of this component of restoration costs is an issue. (TR 80) He explained the initial capitalized contractor dollars were primarily for materials; therefore, the labor costs must be capitalized otherwise storm recovery costs will be overstated and capital costs will be understated. (TR 86)

Witness Schultz further testified that because FPUC used $37.34 an hour for capital work performed by FPUC employees instead of an overtime rate, the capital costs are further understated. (TR 87) Witness Schultz argued if FPUC is allowed to understate the capital amount, current ratepayers would pay for capital costs that will benefit future ratepayers. (TR 87)

He does not believe that FPUC is complying with GAAP requirements for capitalization of plant based on actual costs. (TR 87-88)

Based on his concerns, witness Schultz recommended an adjustment to the contractor costs of $300,891. (TR 89) He explained the adjustment of $300,891 is the difference between FPUC's capitalization rate of $37.34 an hour and his adjusted average hourly capitalization rate of $221 for contractors. (TR 89) Witness Schultz calculated an average contractor hourly rate of $221 after adjusting for what he considered to be excessive rates charged by PAR (which is the subject of Issue 7). The capitalization costs are based on the estimated capital restoration hours multiplied by the average contractor rate of $221. (TR 89, EXH 4, SCH E, 2 of 3)

In total, witness Schultz recommended FPUC's contractor costs charged against the storm reserve be reduced by $839,780; from $1,978,291 to $1,138,511. (TR 101) He explained the adjustment includes $185,093 of excessive rates charged for Hurricane Irma (Issue 7), $353,795 of excessive standby time charges also for Hurricane Irma (Issue 8), and $300,891 understatement of capitalization costs for contractor labor rates for Hurricane Irma. (TR 90; TR 103-104)

FPUC witness Cassel disagreed with witness Schultz's recommended adjustment of $300,891. (TR 157) He explained since Rule 25-6.0143(1)(d), F.A.C., requires that the normal cost of capital expenditures for removal, retirement, and replacement of damaged facilities be included as capital expenditures, the excess is allowed to be included in recoverable storm costs. (TR 167) He testified that the Rule does not preclude the Company from charging all costs of removal, retirement, and replacement to capital instead of recording them in the storm reserve. (TR 167-168) He explained that FPUC normally uses its own crews to remove and replace assets and therefore the normal cost to install or remove was determined based upon the type of asset being installed or removed using in-house personnel rates. (TR 167) Witness Cassel explained that FPUC arrived at a labor rate of $37.34 per hour by comparing the actual average labor and overhead rates prior to the storm, which he believes is reasonable since it is the rate for work done in normal circumstances. (TR 208-209)

Staff believes that FPUC has capitalized the contractor costs consistent with Rule 25-6.0143(1)(d), F.A.C. The Rule requires FPUC to exclude the costs that would normally be charged to the non-cost recovery clause operating expenses in the absence of the storm. Rule 25-6.0143(1)(d), F.A.C., states that, "Capital expenditures for the removal, retirement and replacement of damaged facilities charged to cover storm-related damages shall exclude the normal cost for the removal, retirement, and replacement of those facilities in the absence of a storm." FPUC calculated the normal cost to be excluded from the storm reserve by using in-house rates under normal conditions for the same work. FPUC stated that its average in-house labor rate is $37.34 per hour. (TR 168, 208-209) Consistent with the Rule, any incremental costs may be charged to the storm reserve. OPC witness Shultz's method of using an adjusted average hourly capitalization rate of $221 per hour is inconsistent with the Rule because it does not reflect normal conditions in the absence of a storm.

CONCLUSION

Based on the evidence in the record and the discussion above, staff recommends the original contractor costs of $2,148,743 should be reduced by $170,452. The remaining contractor costs of $1,978,291 are reasonable and were prudently incurred by FPUC, and these costs should be approved for recovery.

Issue 10: **Stricken by Order No. PSC-2018-0404-PCO-EI.**

Issue 11: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the line clearing costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Recommendation: The original line clearing costs of $261,431 should be reduced by $163,707. The remaining line clearing costs of $97,724 are reasonable and were prudently incurred by FPUC and should be approved for recovery. (P. Buys, Graves, M. Andrews)

Position of Parties

FPUC: FPUC agrees that its initial request for recovery of line clearing costs in the amount of line clearing costs in the amount of $261,431 should be adjusted downward by $163,707. The remaining $97,731 in line clearing costs were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved.

OPC: No. A reduction of at least $163,700 to FPUC's request for line clearing cost recovery should be made.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC agreed with OPC's adjustment of $163,707 for recovery of line clearing costs. (FPUC BR 18) FPUC argued the remaining $97,731 in line clearing costs were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers. (TR 28, 31) FPUC asserted these costs should be approved. [4] (FPUC BR 18)

OPC

OPC explained that FPUC has agreed to OPC's recommendation of a reduction of $163,707 to FPUC's request for line clearing costs. (OPC BR 12; TR 156)

ANALYSIS

Table 11-1 reflects FPUC'S initially requested recovery of line clearing costs related to Hurricanes Hermine, Matthew, and Irma, and other minor storms.

[4]The amount of $97,731 is incorrect. Line clearing costs of $261,431 reduced by $163,707 is $97,724, not $97,731.

Table 11-1

Line Clearing Costs

Storms	Costs
Hurricane Hermine	$1,641
Hurricane Matthew	37,698
Hurricane Irma	219,276
Other Minor Storms	2,816
Total	$261,431

(EXH 13, BSP 00066, Supporting Document for Question 6)

Table 11-2 FPUC reflects when costs were first incurred for the storms as listed below:

Table 11-2

Costs First Incurred for Storms

Storms	Costs First Incurred
Hurricane Hermine	9/8/2016
Hurricane Matthew	10/6/2016
Hurricane Irma	9/19/2017
Other Minor Storms	2/9/2016

(EXH 7, BSP 00003-00005)

FPUC provided a summary list of its line clearing invoices for Hurricanes Matthew and Irma. (EXH 7, BSP 00019) It appears that no invoices listed for Hurricanes Matthew and Irma had dates before the first costs were incurred. In staff's audit report, no exceptions were noted for FPUC's line clearing category. (EXH 6, DMD-1, 5 of 10)

OPC witness Schultz testified that he is recommending an adjustment of $21,720 for Hurricane Matthew and $141,987 for Hurricane Irma. (TR 91) He testified that, based on the guideline set forth in Rule 25-6.0143(1)(f)8, F.A.C., "an adjustment is required when tree trimming expenses incurred in any month in which storm damage restoration activities are conducted are less than the actual monthly average of tree trimming costs charged to O&M expense for the same month in the three previous calendar years." He explained that FPUC's three year average for normal tree trimming exceeded the actual costs for storm restoration. (TR 91-92)

FPUC witness Cassel agreed with witness Schultz's recommendation to reduce line clearing costs by $21,720 for Hurricane Matthew and $141,987 for Hurricane Irma. (TR 156) Based on the Rule above, staff agrees with OPC and FPUC that an adjustment of $163,707 should be made to the line clearing costs.

CONCLUSION

Based on the evidence in the record and the discussion above, staff recommends the original line clearing costs of $261,431 should be reduced by $163,707. The remaining line clearing costs of $97,724 are reasonable and were prudently incurred by FPUC, and these costs should be approved for recovery.

Issue 12: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the vehicle and fuel costs FPUC included for storm reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Recommendation: The vehicle and fuel costs of $34,231 are reasonable and were prudently incurred by FPUC and should be approved for recovery. (P. Buys, Graves, M. Andrews)

Position of Parties

FPUC: Yes, the vehicle and fuel costs in the amount of $34,231 were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved for recovery without adjustment.

OPC: The Citizens have not identified any issues related to vehicle and fuel costs, but the Commission should satisfy itself that FPUC has carried its burden to demonstrate that such costs were reasonable and prudent in the way they were incurred and in amount.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC argued that the vehicle and fuel costs in the amount of $34,231 were reasonably and prudently incurred. (FPUC BR 19) These services were paid by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers. (FPUC BR 19) FPUC asserted these costs should be approved for recovery without adjustment and that OPC does not disagree. (FPUC BR 19)

OPC

OPC asserted that FPUC identified the amount of vehicle and fuel costs being charged to the reserve to be $34,231. (OPC BR 13) OPC's witness Schultz testified that, following his review of the costs and the supporting detail provided, he has not identified any issues that would require an adjustment to FPUC's requested vehicle and fuel costs. (OPC BR 13; TR 92) OPC argued; however, the Commission must still satisfy itself that FPUC has carried its burden to demonstrate that such costs were reasonable and prudent in the way they were incurred and in the amount. (OPC BR 13)

ANALYSIS

FPUC has requested recovery for vehicle and fuel costs related to the storms listed in its petition. Table 12-1 reflects the requested amounts for vehicle and fuel costs per storm.

Table 12-1

Storm-related Vehicle and Fuel Costs

Storms	Vehicle and Fuel Costs
Hurricane Hermine	$4,989
Hurricane Matthew	2,425
Hurricane Irma	2,711
Tropical Storm Cindy	812
Tropical Storm Julia	2,345
Other Minor Storms	20,949
Total	$34,231

(EXH 4; EX 13, BSP 00066, Supporting Document for Question 6)

The record indicates that FPUC's vehicle costs are allocated based on the employee's payroll. (EXH 7, BSP 00008-00009) FPUC initially listed the vehicle and fuel costs as part of the department expenses for payroll and overhead. (EXH 7, BSP 00014, Supporting Document for Question 17) FPUC later broke out the vehicle and fuel costs out of the department expenses for payroll and overhead. (EXH 13, BSP 00066, Supporting Document for Question 6) The objectives of the staff audit report were to determine whether vehicle and fuel costs were properly stated, storm related, and recoverable under this docket. Audit staff selected a judgmental sample of the costs and traced the amounts to the payroll allocation schedules. In staff's audit report, no exceptions were noted for FPUC's vehicle and fuel category. (EXH 6, DMD-1, 5 of 10) OPC's witness Schultz did not recommend any adjustments to the vehicle and fuel costs. (TR 92) He testified that he did not have any concerns with this level being requested by FPUC. (TR 92) Based on the staff audit and staff's review of the record, staff recommends no adjustment is necessary.

CONCLUSION

Based on the evidence in the record and the discussion above, staff recommends the vehicle and fuel costs of $34,231 are reasonable and were prudently incurred by FPUC and these costs should be approved for recovery.

Issue 13: In connection with restoration of service associated with storm-related electric power outages affecting customers, were the material and supply costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Recommendation: The original material and supply costs of $56,495 should be increased by $32,800. The total amount of $89,295 for material and supply costs are reasonable and were prudently incurred by FPUC and should be approved for recovery. (P. Buys, Graves, M. Andrews)

Position of Parties

FPUC: Yes, the material and supply costs in the amount of $89,295 were reasonably and prudently incurred, and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers. These costs are not associated with replenishment of the Company's supplies or inventories or related to capital additions, and should therefore be approved for recovery without adjustment.

OPC: No. A reduction of at least $32,800 to FPUC's request for materials and supplies cost recovery should be made.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC argued that material and supply costs in the amount of $89,295 were reasonably and prudently incurred and that the costs are not associated with replenishment of FPUC's supplies or inventories or related to capital additions. (BR 19) FPUC explained that it included $32,800 to rectify an accounting error that began when FPUC removed this amount from its recovery request. (BR 19; TR 168-169) FPUC believed that it had originally included this amount in error in its recovery request. (TR 168) However, this amount had not in fact been included in the recovery request and therefore, was made for costs that were never categorized as recoverable costs. (TR 168) FPUC asserted that it now is seeking to add this amount back into its recovery request to rectify this accounting error. (FPUC BR 19)

FPUC argued that OPC apparently believed that FPUC is seeking to recover $32,800 to replenish its transformer supplies and misunderstands the adjustment as described above. FPUC explained the original transformer costs of $32,800 were capitalized, consistent with what OPC stated would be appropriate. (TR 168) FPUC argued that OPC did not apparently realize that FPUC never sought to recover the amount before it was mistakenly removed. (TR 169) FPUC further argued that it should not be penalized for this short-term accounting mistake and should be allowed to recover the $32,800 because it is not in fact associated with replenishment of the transformer supplies. (FPUC BR 20)

OPC

OPC explained that based upon evidence presented at the hearing, it is no longer recommending an adjustment to materials and supply costs. (OPC BR 13)

ANALYSIS

FPUC has requested recovery for material and supply costs related to Tropical Storm Julia, Hurricanes Hermine, Matthew and Irma, and other minor storms. FPUC originally requested recovery for the following amounts as shown in Table 13-1:

Table 13-1

Material and Supply Costs

Storms	Material and Supply Costs
Tropical Storm Julia	$991
Hurricane Hermine	645
Hurricane Matthew	17,153
Hurricane Irma	21,652
Other Minor Storms	16,053
Total	$56,495

(EXH 13, BSP 00066, Supporting Document for Question 6)

Staff witness Dobiac testified that the staff audit identified a finding concerning the capitalizable costs for Hurricane Irma, which affected FPUC's original request amount of $56,495. She explained that a journal entry in the amount of $226,161 was recorded to remove Hurricane Irma's capitalizable costs from the storm reserve account and recorded to the appropriate plant and cost of removal accounts. (TR 15) However, this journal entry included $32,800 for 24 transformers that FPUC placed in service during the hurricane, which were capitalized, and were never recorded to the storm reserve. (TR 15) The staff audit indicates that this journal entry removed costs from the storm reserve, which should not have been removed and suggests the storm costs be increased by $32,800 to correct this error. (TR 15; EXH 6) Therefore, with the adjustment, the material and supply costs for Hurricane Irma increases to $54,452 ($21,652 + $32,800) and increases the total material and supply costs amount to $89,295. (TR 92) FPUC witness Cassel agreed with staff's audit report findings. (TR 38-39)

OPC witness Schultz testified that he is recommending an adjustment of $32,800. (TR 93) He testified that the transformers are to be capitalized and therefore, including this cost in the amount to be recovered is not appropriate. (TR 93) Witness Schultz further testified that Rule 25-6.0143(1)(f)10, F.A.C., prohibits charging the cost for replenishment of materials and supplies inventory to the storm reserve. (TR 93)

Witness Cassel disagreed with witness Schultz's analysis of the material and supplies costs. He testified that FPUC removed $32,800 for transformers from recoverable costs and capitalized them. (TR 168) It was later determined that the $32,800 for the transformers erroneously had

never been included in the storm costs. (TR 168) Witness Cassel testified the transformers were capitalized at the time of purchase, which was before the storm; therefore, this reduction was made for costs that were never in the recoverable costs to begin with. (TR 168-169)

In its brief, OPC stated that based on the evidence at the hearing, it is no longer recommending an adjustment to this account. (OPC BR 13) Based on the staff audit and staff's review of the record, staff recommends that $32,800 be added to FPUC's material and supply account for storm recovery.

CONCLUSION

Based on the evidence in the record and the discussion above, staff recommends the original material and supply costs of $56,495 be increased by $32,800. The total amount of $89,295 for material and supply costs is reasonable and was prudently incurred by FPUC, and these costs should be approved for recovery.

Issue 14: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the logistic costs FPUC included for storm recovery reasonable and prudent, in incurrence and amount? If not, what amount should be approved?

Recommendation: The original requested logistic costs of $245,705 should be reduced by $4,155 due to the lack of evidence in the record. The remaining logistic costs of $241,550 are reasonable and were prudently incurred by FPUC, and should be approved for recovery. (P. Buys, Graves, M. Andrews)

Position of Parties

FPUC: Yes, the logistics costs in the amount of $245,705 were reasonably and prudently incurred in accordance with Rule 25-6.0143(1)(e), and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers, and should therefore be approved for recovery without adjustment.

OPC: No. More information is required from FPUC to determine what adjustments, if any, should be made. The Commission should satisfy itself that FPUC has carried its burden to demonstrate that such costs were reasonable and prudent in the way they were incurred and in amount.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC argued that the logistics costs in the amount of $245,705 were reasonably and prudently incurred. (FPUC BR 20) FPUC explained that OPC is not recommending an adjustment to these costs, but questions why FPUC is only seeking to recover $40,000 out of $82,390 for one invoice. (FPUC BR 20; TR 94) FPUC explained that OPC did not explore this matter in discovery and the record reflects that there is no dispute about the amount. (FPUC BR 20-21) FPUC argued that its decision to ask for recovery of only $40,000 of the subject contractor's invoice does not indicate that this amount was not prudently incurred, nor does it provide a basis to reject FPUC's request. (FPUC BR 20-21)

OPC

In its brief, OPC explained the logistics costs are costs related to the establishment and operation of storm restoration sites, and to support employees and contractors who are working on storm restoration. (OPC BR 14) OPC identified an invoice for Hurricane Matthew totaling $82,390; however, FPUC requested recovery of only $40,000. (TR 94) OPC explained that its witness Schultz identified the $40,000 as a down payment. (TR 94) OPC argued that "FPUC should have explained how this invoice was accounted for, as it was not clear why only the down payment was reflected and whether any subsequent payments were made." (OPC BR 14) OPC further argued that "FPUC failed to provide any additional explanatory information in rebuttal or at hearing as to why only the down payment was made." (OPC BR 14) OPC recommended the Commission should disallow the $40,000, as FPUC did not meet its burden of proof to justify this cost for recovery. (OPC BR 14)

ANALYSIS

FPUC has requested recovery for logistic costs related to Hurricane Matthew and Hurricane Irma. For Hurricane Matthew, FPUC is requesting recovery of $73,455 and for Hurricane Irma, FPUC is requesting recovery of $172,250. (EXH 13, BSP 00066, Supporting Document for Question 6) FPUC indicated that it first incurred costs for Hurricane Matthew on October 6, 2016. (EXH 7, BSP 00004) For Hurricane Irma, FPUC indicated its first costs were incurred on September 19, 2017. (EXH 7, BSP 00004) FPUC also provided a summary list of its logistic invoices for both Hurricanes Matthew and Irma. (EXH 14, BSP 00079) It appears that the invoices mostly involve meals and lodging. In addition, there were no invoices listed for both hurricanes before the first costs were incurred. In staff's audit report, no exceptions were noted for FPUC's logistic category. (EXH 6, DMD-1, 6 of 10)

OPC's witness Schultz testified that he was not recommending an adjustment to the logistic costs. However, he had concerns with FPUC paying a $40,000 down payment for a catering service during Hurricane Matthew but not paying the full invoice amount of $82,390. (TR 94)

Witness Schultz testified that the full bill for this caterer was included in the request for recovery for Hurricane Irma, and he questioned if this service was provided by this contractor. (TR 93-94) The amount paid to this contractor during Hurricane Irma was $59,786. (EXH 4, SCH I, 2 of 2; EXH 14, BSP 00079)

The invoice that OPC had concerns with was identified as a P-Card purchase. Listed on the invoice was a note saying that $40,000 was paid as a down payment with a transaction number. (EXH 9, BSP 00030, Supporting Document for POD 6 and 9) However, after reviewing the invoice, it appears to list breakfast, lunch and dinners for October 7 through 10, 2016. (EXH 9, BSP 00030, Supporting Document for POD 6 and 9) This is during the time when FPUC mobilized and demobilized for Hurricane Matthew. (EXH 7, BSP 00004) The invoice showed the following as demonstrated in Table 14-1:

Table 14-1

Logistic Costs

Item Description	Cost
Meals	$21,750
Refrigeration Truck	750
Mobilization and Demobilization	11,000
Minimum Contract Amount	65,250
7 Percent Tax	5,390
Total	$82,390

(EXH 9, BSP 00030, Supporting Document for POD 6 and 9)

FPUC did not offer any rebuttal testimony to witness Schultz's concerns about this invoice. As discussed in FPUC's brief, FPUC believed that the decision to ask for only part of an invoice and not the full amount does not indicate that the amount was not prudently incurred. (FPUC BR 20-21) However, staff has determined there is not enough evidence in the record to justify the full $40,000 payment. Staff considers the meals ($21,750), refrigeration truck ($750), mobilization and demobilization ($11,000), and 7 percent tax for that amount ($2,345) were prudently paid. The total paid should have been $35,845 ($21,750 + $750 + $11,000 + $2,345). Based on staff's review of the record, staff recommends that an adjustment of $4,155 ($40,000 - $35,845) should be made to the requested logistic costs.

CONCLUSION

Based on the evidence in the record and the discussion above, staff recommends the original logistic costs of $245,705 be reduced by $4,155 due to the lack of evidence in the record. The remaining logistic costs of $241,550 are reasonable and were prudently incurred by FPUC, and should be approved for recovery.

Issue 15: In connection with the restoration of service associated with storm-related electric power outages affecting customers, were the costs identified by FPUC as "Normal Expenses Not Recovered in Base Rates" and included as "other operating expenses" reasonable and prudent, in incurrence and amount? If not, what amount should be made?

Recommendation: No, the costs identified by FPUC as "Normal Expenses Not Recovered in Base Rates" in the amount of $67,548 are not reasonable and prudent for storm surcharge recovery and should be disallowed. (M. Andrews)

Position of Parties

FPUC: Yes, the category of costs identified as "Normal Expenses Not Recovered in Base Rates" in the amount of $67,548 were reasonably and prudently incurred in accordance with Rule 25-6.0143 (1)(e), and paid, by FPUC for service restoration efforts associated with storm-related electric power outages affecting FPUC's customers. These amounts reflect expenses that were anticipated in base rates, but not recovered as result of the storm outages. As such, these amounts should be approved for recovery without adjustment.

OPC: No. The request for $67,548 should be disallowed.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC witness Cassel stated that in accordance with Rule 25-6.0143(1)(e), F.A.C., the costs identified as "Normal Expenses Not Recovered in Base Rates" in the amount of $67,548 was not lost revenue. (TR 180) He stated that the amount is a portion of O&M costs not recovered through base rates because of the storm outages. (TR 169, 180) Witness Cassel asserted that before the current formulation of Rule 25-6.0143, F.A.C., the Commission did approve recovery of O&M expenses reasoning that while lost revenues are not a cost, the normal O&M expenses not recovered in base rates should be recovered in the storm recovery mechanism. (TR 170) Witness Cassel stated that under the current rule, no change in this position is required. (TR 170) Witness Cassel argued that FPUC is not seeking lost revenue, but rather the O&M expenses not addressed in this Rule. (TR 169; FPUC BR 21-22)

OPC

OPC asserted that FPUC is relying on a decision predating the June 11, 2007 amendment to Rule 25-6.0143, F.A.C. (TR 182-186; OPC BR 15) OPC stated that the Rule proposal made clear that the objective of the amendment was to establish a single, consistent, and uniform methodology for determining which storm damage restoration costs can be appropriately charged to the storm reserve. (TR 183-184; OPC BR 15) OPC stated that the new paragraph (f) in Rule 25-6.0143(1), F.A.C., came directly from the Commission's decisions in the 2004 and 2005 hurricane cost recovery dockets (TR 183-184; OPC BR 15-16) Furthermore, OPC stated that the amendment laid out a non-exhaustive list of types of costs prohibited from being charged to the storm reserve. (TR 184; OPC BR 15)

ANALYSIS

FPUC has requested to recover $67,548 in O&M costs that were not recovered in base rate revenue as a result of reduced electric usage during and after the storm. (TR 169) Witness Cassel stated that the O&M costs were payroll during regular hours for storm restoration, and only overtime payroll was charged to the storm reserve. (TR 169) He asserted that to determine the amount of O&M costs not recovered in base rates, FPUC calculated the revenue lost from reduced usage. (TR 169)

Staff believes that FPUC's request for "Normal Expenses Not Recovered in Base Rates" is incongruent with Rule 25-6.0143(1)(d), F.A.C. The $67,548 amount represents the recovery of O&M costs, and these costs were regular payroll costs not recovered in base rate revenues. They were not incremental to costs normally charged to non-cost recovery clause operating expenses in the absence of a storm. Rule 25-6.0143(1)(d), F.A.C., precludes FPUC from recovering these non-incremental costs under the ICCA methodology.

Also, under Rule 25-6.0143(1)(f)9, F.A.C., lost revenues from services not provided due to a storm are prohibited from being charged to the reserve under the ICCA methodology. Witness Cassel stated that the $67,548 is not lost revenues, and represents the recovery of O&M costs not recovered from the base rate revenue while the Company was unable to provide service. (TR 169) Witness Cassel acknowledged that regular payroll cost would typically be recovered through base rates. (TR 180) The O&M costs were determined from the calculated lost revenue. (TR 169) While staff acknowledges that the O&M costs are a distinct cost, staff believes they are also a portion of lost revenue not eligible to be charged to the reserve. Although staff agrees with the Company's differentiation between lost revenues and "O&M costs not recovered," the Rule clearly prohibits any base rate recoverable costs from being charged to the reserve.

CONCLUSION

Based on Rule 25-6.0143(1)(d) and (f)9, F.A.C., staff recommends that costs incurred by FPUC as "Normal Expenses Not Recovered in Base Rates" are not reasonable and prudent for storm surcharge recovery, and should be disallowed.

Issue 16: What is the correct amount to be included in storm recovery to replenish the level of FPUC's storm reserve?

Recommendation: The appropriate amount of storm recovery to replenish the level of FPUC's storm reserve to $1.5 million is $1,927,648. (M. Andrews)

Position of the Parties

FPUC: The Company's storm reserve should be replenished to its pre-storm level of $1.5 million from its deficit as of December 31, 2017 of $497,967.

OPC: No more than $1,022,561 should be included in storm recovery to replenish the level of FPUC's storm reserve.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC asserted that it should be allowed to fully replenish its storm reserve to $1.5 million from its deficit of $497,976, as of December 31, 2017. (EXH 24; FPUC BR 22).

OPC

OPC has not taken issue with the level of FPUC's storm reserve to replenish. However, OPC disputes the recovery of the costs associated with replenishing the reserve and, consequently, the resolution of this issue depends on the resolution of the previous issues in dispute. Based on the previous adjustments, OPC contended no more than $1,022,561 should be included in storm recovery to replenish the level of FPUC's storm reserve to $1.5 million. (TR 98; OPC BR 16)

ANALYSIS

Pursuant to the provisions of the 2017 Settlement, approved by the Commission in Order No. PSC-2017-0488-PAA-EI, the level of storm reserve is $1.5 million. The appropriate amount of storm recovery to replenish the reserve to this level is $1,927,648.

CONCLUSION

Pursuant to the provisions of the 2017 Settlement, approved by the Commission in Order No. PSC-2017-0488-PAA-EI, the level of storm reserve is $1.5 million. The appropriate amount of storm recovery to replenish the reserve to this level is $1,927,648.

Issue 17: What is the total amount of storm-related costs and storm reserve replenishment FPUC is entitled to recover?

Recommendation: The appropriate amount to recover prudently incurred storm restoration costs of $427,648 and to replenish the level of FPUC's storm reserve to $1.5 million is $1,927,648. (M. Andrews)

Position of the Parties

FPUC: The Company has revised its request for recovery to exclude certain line clearing costs for a revised total request of $1,999,523, which is the appropriate amount to recover costs incurred during the 2016-2017 storms and to replenish the Company's storm reserve.[5]

OPC: None provided.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC
The appropriate amount to recover costs incurred from the storms and replenish the storm reserve is $1,999,405. (EXH 24; FPUC BR 23)

OPC
None provided.

ANALYSIS

Table 17-1 below reflects the Major Cost Categories from the previous issues, FPUC's associated amounts, and staff's recommended amounts.

[5] The amount of $1,999,523 is incorrect. The amount requested was revised from $2,163,230 to $1,999,405 on Exhibit MC-1, and in the direct testimony of Michael Cassel. (EXH 24; TR 42)

Table 17-1

FPUC'S Storm Restoration Costs

Major Cost Category	FPUC Requested	Staff Recommended
Payroll and Related Costs	$192,489	$192,489
Benefits	38,425	38,425
Overhead	22,856	22,856
Contractor	1,978,291	1,978,291
Line Clearing	97,724	97,724
Vehicle and Fuel	34,231	34,231
Materials and Supplies	89,294	89,294
Logistics	245,705	241,550
Other	83,643	16,096
Total Costs	$ 2,782,661*	$ 2,710,956

Source: FPUC Post Hearing Brief DN: 00209-2019
*FPUC cost categories are rounded.

Table 17-2 reflects the reserve balance and the amount to be recovered by customers to replenish the storm reserve.

Table 17-2

Amount of Storm Recovery to Replenish Reserve to $1.5M Level

Description	FPUC Requested	Staff Recommended
Storm Reserve Balance	$2,142,805	$ 2,142,805
Monthly Accruals to Reserve	$141,890	$141,890
Total Storm Costs Charged to Reserve	$2,782,661	$2,710,956
Reserve Balance	($497,966)	($426,261)
Reserve Needed to Fund Reserve to $1.5 M Level	$1,997,966	$1,926,261
Regulatory Assessment Fee Multiplier	1.00072	1.00072
Total System Losses to be Recovered From Customers	$1,999,405	$1,927,648

Source: Exhibit MC-1-revised, Page 1

CONCLUSION

Based on staff's recommendations in Issues 3, 7, 8, 9, 11, 12, 13, 14, and 15, the appropriate amount to recover prudently incurred storm restoration costs of $427,648 and to replenish the level of FPUC's storm reserve to $1.5 million is $1,927,648.

Issue 18: Should the Commission approve Florida Public Utilities Company's proposed tariff and associated charge?

Recommendation: No. If the Commission approves Issue 17, the Commission should give staff administrative authority to approve the revised tariff and associated storm recovery surcharge that implement the Commission vote regarding FPUC's storm-related costs and storm reserve replenishment. FPUC should file the revised tariff and associated charge within seven days of the Commission's vote. The storm recovery surcharge should be effective with the first billing cycle for April 2019 through the last billing cycle for March 2021 (two-year recovery period). (Guffey)

Staff Analysis:

Position of the Parties

FPUC: Yes. Given that the Company has agreed to additional adjustments since the tariff and charge were submitted, and other adjustments may be required by the Commission. The Company should be directed to file a revised tariff within 7 days of the Commission's decision in this proceeding consistent with the Commission decision. The Commission should direct the Commission staff to verify that said tariffs are consistent with the Commission's decision.

OPC: No, FPUC's proposed tariffs should be recalculated in accordance with Witness Schultz's recommended adjustments.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC asserted that since the Company has agreed to additional adjustments since the tariff and charge were submitted, and other adjustments may be required by the Commission. The Company should be directed to file a revised tariff within 7 days of the Commission's decision in this proceeding consistent with the Commission decision. (FPUC BR 23) The Commission should direct the Commission staff to verify that said tariffs are consistent with the Commission's decision. (FPUC BR 23)

OPC

OPC contended that FPUC's proposed tariffs should be recalculated in accordance with witness Schultz's recommended adjustments. (OPC BR 16)

ANALYSIS

In revised Exhibit MC-1 of the direct testimony of FPUC witness Cassel, FPUC provided the calculation of its proposed storm recovery surcharge. Based on FPUC's requested amount ($1,999,405), the calculated surcharge is 0.003183 per kilowatt-hour (kWh). (EXH 2, pg 1) Recovering the amount over a one-year period would result in a $3.18 impact on a 1,000 kWh

residential bill. (EXH 2, page 1) Witness Cassel testified in direct testimony that in order to help lessen the impact to its customers, FPUC proposed that the surcharge be collected over a two-year period. (TR 42) A two-year recovery period would lessen the residential 1,000 kWh bill impact from $3.18 to $1.59. (EXH 2) During the hearing, witness Cassel explained that FPUC considered different recovery periods and that FPUC has been significantly impacted by Hurricane Michael. (TR 51-52) Witness Cassel asserted that the two-year recovery period seemed like the most reasonable and prudent way to proceed to lessen the bill impact. (TR 52) OPC took no position on whether the two-year recovery period is appropriate. While the Commission has the option to approve a one-year surcharge, staff believes that witness Cassel presented a reasonable argument that a two-year surcharge in this instance is appropriate and would lessen customer impact.

Customer Notification

FPUC explained that it will notify its customers of the Commission-approved surcharge by mail during the week of March 11, 2019. FPUC shall provide the notification to staff for review and approval prior to it being mailed.

CONCLUSION

If the Commission approves Issue 17, the Commission should give staff administrative authority to approve the revised tariff and associated storm recovery surcharge that implement the Commission's vote regarding FPUC's storm-related costs and storm reserve replenishment. FPUC shall file the revised tariff and associated charge within seven days of the Commission's vote. The storm recovery surcharge should be effective with the first billing cycle for April 2019 through the last billing cycle for March 2021 (two-year recovery period). The first billing cycle for April is on April 5, 2019, which will be 30 days after the vote.

Issue 19: If applicable, how should any under-recovery or over-recovery be handled?

Recommendation: At the end of the storm restoration surcharge period, the actual amount recovered through the surcharge should be compared to the appropriate amount approved by the Commission, and a determination made whether any under/over recovery has occurred. The disposition of any over/under recovery, and associated interest, should be considered by the Commission at a later date. (M. Andrews)

Position of the Parties

FPUC: Any over or under-recovery should be handled by way of a true-up rate, which applies interest at the commercial paper rate to the over or under-recovered amount. Any true-up rate calculation should be allocated consistent with the Company's current, Commission-approved cost allocation methodology.

OPC: The over recovery should be handled as a one-time adjustment to customers' bills or, in the alternative, a one-time adjustment to the fuel clause for the remainder of 2019.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC asserts that any over or under-recovery should be handled by way of a true-up rate, which applies interest at the commercial paper rate to the over or under-recovered amount. (FPUC BR 23) Any true-up rate calculation should be allocated consistent with the Company's current, Commission-approved cost allocation methodology. (FPUC BR 23)

OPC

OPC contends that the over recovery should be handled as a one-time adjustment to customers' bills or, in the alternative, a one-time adjustment to the fuel clause for the remainder of 2019. (OPC BR 17)

ANALYSIS

At the end of the storm restoration surcharge period, the actual amount recovered through the surcharge should be compared to the appropriate amount approved by the Commission, and a determination will be made whether any under/over recovery has occurred. The disposition of any over/under recovery, and associated interest, would be considered by the Commission at a later date.

CONCLUSION

At the end of the storm restoration surcharge period, the actual amount recovered through the surcharge should be compared to the appropriate amount approved by the Commission, and a determination made whether any under/over recovery has occurred. The disposition of any over/under recovery, and associated interest, should be considered by the Commission at a later date.

Issue 20: Should the docket be closed?

Recommendation: No, this docket should remain open until a determination has been made at the end of the storm restoration surcharge period regarding whether any under/over recovery has occurred. The disposition of any under/over recovery should be considered by the Commission, and the docket closure should be determined at that time. (Dziechciarz, Weisenfeld)

Position of the Parties

FPUC: This docket should remain open until FPUC's costs are finalized and any over or under-recovery has been determined. Thereafter, the docket should be closed after the appropriate appellate period has concluded.

OPC: No.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC contended that FPUC and OPC have agreed that the docket should remain open until FPUC's storm costs are finalized and any over- or under-recovery has been determined. (FPUC BR 24) FPUC added that the docket should be closed after the appropriate appellate period has concluded. (FPUC BR 24)

OPC

OPC asserted that once the Commission makes the findings contained herein, it will be unnecessary to keep this docket open. Therefore, the docket should be closed. (OPC BR 17)

ANALYSIS

This docket should remain open until a determination has been made at the end of the storm restoration surcharge period regarding whether any under/over recovery has occurred. The disposition of any under/over recovery should be considered by the Commission, and the docket closure should be determined at that time.

CONCLUSION

This docket should remain open until a determination has been made at the end of the storm restoration surcharge period regarding whether any under/over recovery has occurred. The disposition of any under/over recovery should be considered by the Commission, and the docket closure should be determined at that time.

Item 6

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: February 21, 2019

TO: Office of Commission Clerk (Teitzman)

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

RE: Docket No. 20190001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

AGENDA: 03/05/19 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 15, 2019, Tampa Electric Company (TECO or Company) filed a Petition for Mid-Course Correction to its 2019 Fuel and Capacity Cost Recovery Factors. (Mid-Course Petition) The revision to its fuel cost recovery factors primarily reflects elevated projected fuel costs and revised capacity cost recovery factors associated with the impact of a canceled capacity transaction. The Mid-Course Petition seeks to change the respective 2019 fuel and capacity cost recovery factors that were approved in Order No. PSC-2018-0610-FOF-EI.[1]

On January 30, 2019, TECO filed the tariff sheets incorporating the changes identified in its Mid-Course Petition. (Attachment D)

[1]Order No. PSC-2018-0610-FOF-EI, issued December 26, 2018, in Docket No. 20180001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*, the Commission approved cost recovery factors for the period January through December, 2019. (2018 Fuel Order)

Mid-course corrections are part of the fuel and purchased power cost recovery clause (fuel clause) proceeding, and such corrections are used by the Commission between fuel clause hearings whenever costs deviate from revenues by a significant margin. Petitions for mid-course corrections to fuel factors are addressed in Rule 25-6.0424, Florida Administrative Code (F.A.C.). Under this rule, a utility must notify the Commission whenever it expects to experience an under-recovery or over-recovery greater than 10 percent. Pursuant to Rule 25-6.0424, F.A.C., the mid-course percentage is the estimated end-of-period total net true-up amount divided by the current period's total actual and estimated jurisdictional fuel revenue applicable to period amount. Mid-course corrections are considered preliminary procedural decisions, and any over-recoveries or under-recoveries caused by or resulting from the Commission-approved adjusted fuel or capacity factors may be included in the following year's fuel or capacity factors.

The Commission's jurisdiction to consider fuel clause proceedings derives from the Commission's authority to set fair and reasonable rates, found in Section 366.05, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve TECO's Mid-Course Petition to adjust its fuel and capacity cost recovery factors and the associated tariff sheets?

Recommendation: Yes. A mid-course adjustment is appropriate and staff recommends the Commission approve TECO's Mid-Course Petition and the associated tariff sheets, effective with the first billing cycle of April 2019.

The revised fuel and capacity cost recovery factors are presented in Attachment A and the associated tariff sheets are presented in Attachment D. (Barrett, Guffey)

Staff Analysis: On an annual basis, TECO and the other four investor-owned electric utilities (IOUs) in Florida participate in a series of technical hearings to evaluate actual and projected costs which have been recorded in cost recovery clauses. The purpose of this evaluation is to calculate cost recovery factors for the next calendar year. Although the specific dates vary from year to year, generally speaking, the annual cost recovery clause hearings are conducted in early November, and the most recent cost recovery clause hearings took place on November 5-6, 2018. The orders issued from the 2018 hearings set forth the cost recovery clause factors that were implemented by all IOUs in Florida. These revised factors became effective with the first billing cycle of January 2019.

In the 2018 Fuel Order, the Commission approved the fuel and capacity cost recovery factors for TECO that are currently in place. By its Mid-Course Petition, TECO seeks approval to implement adjustments to the fuel and the capacity cost recovery clause factors, effective with the April 2019 billing cycle, as discussed below.

Mid-course Adjustment for Fuel and Capacity Cost Recovery Factors

In the Mid-Course Petition, TECO presents data from two time periods, true up results from 2018, and projected information for 2019. A secondary distinction is drawn between fuel cost recovery amounts and capacity cost recovery amounts for each period, resulting in four individual components to evaluate as part of TECO's Mid-Course Petition:

1. Fuel cost recovery amounts from 2018;
2. Capacity cost recovery amounts from 2018;
3. Projected fuel cost recovery amounts for 2019; and
4. Projected capacity cost recovery amounts for 2019.

TECO analyzed its actual and estimated balances using the calculation set forth in Rule 25-6.0424, F.A.C., to arrive at two variations for recovering the amounts identified in the Mid-Course Petition.

First, the Company calculated a mid-course adjustment based on the recovery of all aspects of the fuel and capacity cost recovery balances. This calculation yielded a mid-course correction value of 24.9 percent. Although TECO referenced the results of this calculation, the Company did not include supporting schedules for this alternative in its Mid-Course Petition.

TECO also calculated a mid-course adjustment based on the recovery of revised capacity-related costs for 2018 and 2019, and the revised 2019 fuel costs. TECO's calculation did not include the revised shortfall of its 2018 fuel cost true-up. According to the Company, the mid-course calculation using these balances results in a mid-course correction of 16.0 percent. This alternative aligns with the requested relief, and TECO asserts that it will prepare a petition to request recovery of the final fuel cost amounts for 2018 for consideration at the November 5-7, 2019 hearing.

True-Up Amounts from 2018 (Fuel and Capacity)

On the fuel cost recovery side, TECO states that elevated natural gas prices were the principle driver of the $36,970,912 under-recovery balance for fuel for 2018. In response to a data request, the Company stated that lower than historic average gas storage levels and early season cold weather in the northeast sparked higher market prices in the latter portions of 2018. TECO did not incorporate the under-recovery balance in the calculations to determine the new cost recovery factors that are presented in the Mid-Course Petition. Rather, the Company asserts that this balance will be addressed in the normal hearing cycle planned for the fall of 2019. By forgoing cost recovery of this amount during the remainder of 2019, TECO hopes to mitigate what otherwise would be a significant increase in customer bills. By delaying the recovery of the unrecovered balance, the amount will be included in the calculation of total fuel expenses for 2020, and recovered in factors over a 12-month period, compared to a 9-month period if the balance was included in the requested mid-course correction.

On the capacity cost recovery side, TECO states that the true-up balance for 2018 was a $5,458,886 under-recovery. For context, an under-recovery amount of $2,784,988 was approved for collection in 2019 in the 2018 Fuel Order. In the Mid-Course Petition, the Company included the final true-up adjustment under-recovery amount of $2,673,898 in its calculations of the revised cost recovery factors for April through December, 2019.

Revised Projected Amounts for 2019 (Fuel and Capacity)

As a basis for its Mid-Course Petition, TECO revised its fuel and capacity cost recovery projections for 2019. The original projections for 2019 were filed on August 24, 2018, and evaluated in Docket No. 20180001-EI. The fuel and capacity cost recovery factors that were approved in the 2018 Fuel Order are based, in large part, on the forecasted projections for 2019.

As reflected in Schedule E1, TECO's original projection for fuel costs in 2019 reflects an estimate of $537,871,753 for its Total Fuel and Net Power Transactions. The Company states that its revised projection for 2019 shows an increase of $75,514,842, reflecting a new amount of $613,386,595. As with the under-recovered fuel cost recovery balance from 2018, TECO attributes the increase to elevated projected natural gas prices for the period. In response to a data request, the Company stated that the concerns over limited supplies of natural gas contributed to higher projected prices for 2019, compared to the prior forecast. As referenced earlier, weather-related concerns impact forward market prices for natural gas.

In the 2018 Fuel Order, the Commission approved $17,124,796 as the projected amount of capacity costs for TECO in 2019. The Company asserts that its original projection for capacity in 2019 was based upon a planned capacity purchase that did not materialize. Because this purchase

for 2019 did not materialize, the Company's revised end-of-period balance for 2019 is an over-recovery of $14,240,130.

Summary of Mid-Course Petition

TECO is requesting mid-course adjustments to fully recover the capacity-related balances (2018 and 2019), and the revised estimate of its 2019 fuel costs. At this time, the Company is not seeking to recover the 2018 true-up under recovery. The revised fuel and capacity cost recovery balances the Company seeks to recover would be recovered between April and December, 2019 through the fuel and capacity cost recovery factors, as shown on Tables 1 and 2 of Attachment A, and the associated tariff sheets presented in Attachment D.

Table 1-1 below shows that if TECO's Mid-Course Petition is approved, a residential customer using 1,000 kilowatt hours (kWh) of electricity will see a net increase of $4.05 per month on their bill, with the fuel cost recovery portion of their bill rising by $5.08 per month, partially offset by a reduction on the capacity portion of the bill.

Table 1-1
Requested Recovery
TECO Typical 1,000-kWh Residential Customer Bill Comparison
for the period January-December, 2019

(1)	(2)	(3)	(4)
Component	Current (January-December)	Proposed (April-December)	Bill Impact
Base Charge	$66.53	$66.53	$0.00
Fuel Cost Recovery	**24.05**	**29.13**	**5.08**
Conservation Cost Recovery	3.21	3.21	0.00
Capacity Cost Recovery	**1.03**	**(0.10)**[2]	**(1.13)**
Environmental Cost Recovery	2.22	2.22	0.00
Subtotal	$97.04	$100.99	$3.95
Gross Receipts Tax	2.49	2.59	0.10
Totals	**$99.53**	**$103.58**	**$4.05**

Source: Mid-Course Correction filing, Schedule E10, Bates Stamped Page 46.

Analysis

As noted above, the currently-approved fuel and capacity cost recovery factors for TECO were developed based, in large part, on the projected fuel and capacity cost amounts for 2019 that were filed in Docket No. 20180001-EI, on August 24, 2018. The Company stated that the main driver for the under-recovery balance for fuel in 2018 was the cost difference between projected and actual prices for natural gas. Because TECO observed these elevated market prices in the final months of 2018, the Company re-examined its 2019 fuel price forecasts and filed its Mid-Course Petition for adjusted cost recovery factors.

[2]The negative value shown is due to the timing of this proposed correction. Because the Mid-Course Petition is proposed to become effective with the first billing cycle in April 2019, TECO will over collect on capacity amounts by charging the currently-approved factors for the months of January through March, 2019. As a result, the over-collected amount more than offsets all capacity costs from 2018 and 2019, and the recovery factors that are proposed for April through December 2019 reflect negative values, shown on Table 2 of Attachment A.

Staff's review of the requested relief

TECO prepares fuel forecasts on a regular and routine basis, and filed its Mid-Course Petition in order to respond to market-driven changes to costs the Company incurred for the predominate fuel used in its generating fleet, natural gas. Although capacity-related over-recovered balances are presented, staff believes the balances for fuel-related costs are the principle concern that TECO has for requesting new cost recovery factors.

In order to prepare its forward year projection filing, the Company analyzed forecasted fuel price data for 2019 based on a forward natural gas price forecast utilizing the NYMEX natural gas futures contract prices for five consecutive business days in April 2018.[3] For its fuel price projections, a delivered price of $3.82 per MMBtu was calculated for natural gas.[4] In its original projection filing, TECO estimated 16,516,370 megawatt-hours (87.90 percent) of its generation would come from natural gas, while coal would account for 1,249,950 megawatt-hours (6.66 percent).[5] The original and revised forecasts used the same sources for forecasting data, although in response to a data request, the Company acknowledged that slightly modified forecasting assumptions were incorporated in its revised forecast.[6]

On a comparative basis, the revised fuel price forecast used NYMEX futures contract pricing data for natural gas prices for five consecutive business days in early December 2018. A revised delivered price of $4.20 per MMBtu was used for natural gas in the more recent fuel price projection. Based on the revised data, system generation is up slightly, with natural gas generation estimated at 16,822,800 megawatt-hours (86.34 percent), while coal is up slightly to 1,639,120 megawatt-hours (8.41 percent.)[7] In response to a data request, TECO confirmed that no fuel delivery or transportation arrangements changed between the period of time when the original and the revised forecasts were prepared, and emphasized that the primary reason for needing the requested mid-course adjustment to cost recovery factors is the change in the forecasted price of natural gas. The Company stated that the elevated prices that are presented in the most current forecast were likely triggered by storage level concerns. Staff observes that storage-related concerns and weather-driven demand are both factors in the commodity markets for natural gas that are well outside of TECO's control, but nevertheless influence the actual costs the Company has, or will, incur when purchasing natural gas.

As noted previously, TECO examined two variations for recovering the amounts identified in the Mid-Course Petition, and requested the option that recovers the capacity cost recovery amounts from 2018, the revised projected fuel cost recovery amounts for 2019, and the revised projected

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[3]The New York Mercantile Exchange (NYMEX) is a commodities futures exchange widely used by the electric industry for pricing natural gas.

[4]MMBTU is an acronym for one million British Thermal Units (BTU). A BTU is a measure of the energy content in fuel, and is used in the power, steam generation, heating and air conditioning industries. One BTU is equivalent to 1.06 Joules.

[5]Schedule E3, Exhibit No. PAR-3, Document No. 2, Page 9 of 30, as filed in Docket No. 20180001-EI, on August 24, 2018.

[6]Along with updated pricing for natural gas, the revised forecast incorporated more current information on planned outages and prices for purchased power.

[7]Schedule E3, Mid-Course Correction filing, Page 12 of 33, as filed in Docket No. 20190001-EI, on January 15, 2019. In response to a data request, the Company stated that it expects coal prices to remain relatively stable for 2019.

capacity cost recovery amounts for 2019. TECO evaluated both variations in the context of how the requested relief would impact the bill of a typical residential customer. Staff notes, however, that by not including all known changes in costs in its requested relief, the Company is pursuing an alternative that carries an element of risk.

Although staff believes the requested relief presents a reasonable alternative for a mid-course correction to TECO's 2019 fuel and capacity cost recovery factors, staff believes that with data from two time periods and a further breakdown between fuel cost recovery amounts and capacity cost recovery amounts for each period, other reasonable mid-course correction options can be constructed using the same data. In order for the Commission to consider the range of options available, two additional options that differ from the Company's requested relief are presented for the Commission to evaluate.

Option 1 (Full recovery of all known changes in costs)

As noted previously, mid-course corrections are considered preliminary procedural decisions, and any over-recoveries or under-recoveries caused by or resulting from the Commission-approved adjustments may be included in the following year's fuel or capacity factors. In the most recent mid-course correction petitions the Commission has evaluated,[8] all known changes in costs were evaluated and incorporated into the revised factor calculations. For consistency with that approach, Option 1 uses the Company's requested relief as a starting point, and adds in the true-up shortfall of the 2018 balance that TECO proposes to address at the November 5-7, 2019 hearing.

Staff believes that by taking action on all known and updated estimated costs at the point in time that such changes in costs are known, the effect of stacked (or "pancaked") cost recovery amounts is addressed. By not deferring action on any costs, the hearing can focus on any new costs or adjustments that developed without a concern of stacked amounts for recovery. Additionally, Option 1 allows for recovery of all balances through revised 2019 fuel and capacity cost recovery factors.

For comparative purposes, the schedules to support the full recovery of all known changes in amounts (Option 1) reflect that the fuel cost recovery portion of the bill for a residential customer using 1,000 kilowatt hours (kWh) of electricity would rise by $7.97 per month, rather than by $5.08 under the Company's requested option. The fuel amount is partially offset by the capacity

[8]In 2018, the Commission reviewed two mid-course corrections, one in 2017, and two others in 2016. Order No. PSC-2018-0313-PCO-EI, issued June 18, 2018, in Docket No. 20180001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*, the Commission approved a mid-course correction for Florida Power & Light Company; Order No. PSC-2018-0105-PCO-EI, issued February 26, 2018, in Docket No. 20180001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*, the Commission approved a mid-course correction for Florida Power & Light Company; Order No. PSC-2017-0219-PCO-EI, issued June 13, 2017, in Docket No. 20170001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*, the Commission denied a petition for a mid-course correction from Duke Energy Florida, LLC; Order No. PSC-2016-0120-PCO-EI, issued March 21, 2016, in Docket No. 20160001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*, the Commission approved mid-course corrections for Florida Power & Light Company and Duke Energy Florida, LLC.

cost amounts. The net bill impact for Option 1 is an increase of $7.01 per month, as reflected in Table 1-2 below:

Table 1-2
Option 1 - - Full recovery of all known changes in costs
TECO Typical 1,000-kWh Residential Customer Bill Comparison
for the period January-December, 2019

(1)	(2)	(3)	(4)
Component	Current (January-December)	Option 1 (April-December)	Bill Impact
Base Charge	$66.53	$66.53	$0.00
Fuel Cost Recovery	**24.05**	**32.02**	**7.97**
Conservation Cost Recovery	3.21	3.21	0.00
Capacity Cost Recovery	**1.03**	**(0.10)**	**(1.13)**
Environmental Cost Recovery	2.22	2.22	0.00
Subtotal	$97.04	$103.88	$6.84
Gross Receipts Tax	2.49	2.66	0.17
Totals	**$99.53**	**$106.54**	**$7.01**

Source: Tampa Electric Company's Response to Staff's First Data Request, Request No. 8, Schedule E10, Bates Stamped Page 15.

Staff believes Option 1 presents a reasonable alternative for a mid-course correction to TECO's 2019 fuel and capacity cost recovery factors, and is consistent with the most recent past mid-course correction petitions the Commission has evaluated.[9]

Option 2 (Full recovery of the 2018 costs only)

Option 2 is a proposal that blends aspects of TECO's requested relief and the first option. Absent a mid-course adjustment, the final cost recovery balances from a prior year are ordinarily presented at the fall hearing, and the adjustments resulting from those balances would be incorporated into the calculations to develop forward-year cost recovery factors. Because TECO proposed parsing the treatment of the fuel and capacity amounts from 2018 in the requested relief in its Mid-Course Petition, the traditional process is modified.

If the Mid-Course Petition is granted, the capacity balances from 2018 and 2019 are combined, whereas under Option 2, only the 2018 portion would be incorporated in revised factors for April through December 2019, and the adjustment balance for 2019 would be addressed in the fall hearing, with that balance being incorporated into the calculation to develop the cost recovery factors for 2020 and recovered over a 12-month period. Option 2 aligns the treatment of the 2018 fuel and capacity balances, and proposes to recover these amounts in modified factors for April through December 2019.

Under Option 2, no portion of estimated fuel and capacity balances for 2019 would be addressed in the mid-course adjustment. The mid-course adjustment would be limited to correcting the current recovery factors to recover the 2018 true-up of fuel and capacity costs. The 2019

[9]Id.

balances would be evaluated in the November 5-7, 2019 hearing. Although there is a risk that the balances for 2019 could grow larger before the hearing takes place, the opposite could occur as well, and the fuel and/or the capacity balances could be smaller. In addition, although the most current fuel price forecast reflects more updated information than the original forecast, the fuel and capacity balances for 2019 in the current forecast contains estimated data for every month. By pursuing Option 2 and by deferring recovery of the fuel and capacity estimates for 2019 at this time, the balances presented in the November hearing are likely to include 6 to 7 months of actual data, as well as estimated data based on a later forecast.

For comparative purposes, the schedules to support Option 2 reflect that the fuel cost recovery portion of the bill for a residential customer using 1,000 kilowatt hours (kWh) of electricity would rise by $2.64 per month, compared to $5.08 for the Company's requested option, and $7.97 under Option 1. The bill impact for the capacity portion would also rise by $0.25 per month. When the Gross Receipts Tax is incorporated, the total bill impact to fully recover only the 2018 costs is an increase of $2.96 per month, as reflected in Table 1-3 below:

Table 1-3
Option 2 - - Full recovery of 2018 costs only
TECO Typical 1,000-kWh Residential Customer Bill Comparison
for the period January-December, 2019

(1)	(2)	(3)	(4)
Component	Current (January-December)	Option 2 (April-December)	Bill Impact
Base Charge	$66.53	$66.53	$0.00
Fuel Cost Recovery	**24.05**	**26.69**	**2.64**
Conservation Cost Recovery	3.21	3.21	0.00
Capacity Cost Recovery	**1.03**	**1.28**	**0.25**
Environmental Cost Recovery	2.22	2.22	0.00
Subtotal	$97.04	$99.93	$2.89
Gross Receipts Tax	2.49	2.56	0.07
Totals	**$99.53**	**$102.49**	**$2.96**

Source: Tampa Electric Company's Response to Staff's Second Data Request, Request No. 7, Schedule E10, Bates Stamped Page 19.

Staff believes Option 2 presents a reasonable alternative for a mid-course correction to TECO's 2019 fuel and capacity cost recovery factors.

Summary of all cost recovery options

Table 1-4 below summarizes the three cost recovery options discussed above. For ease of reference, the cost recovery components that are part of TECO's Mid-Course Petition are listed below:

1. Fuel cost recovery amounts from 2018;
2. Capacity cost recovery amounts from 2018;
3. Projected fuel cost recovery amounts for 2019; and
4. Projected capacity cost recovery amounts for 2019.

Table 1-4
Summary of Options
TECO Typical 1,000-kWh Residential Customer Bill Comparison
for the period January-December, 2019

		Company Proposal (Cost recovery for components 2, 3, and 4 in mid-course correction)		Option 1 Proposal (Cost recovery for all components in mid-course correction)		Option 2 Proposal (Cost recovery for components 1 and 2 in mid-course correction)	
Compo-nent	Current (January-December)	Proposed (April-December)	Bill Impact	Proposed (April-December)	Bill Impact	Proposed (April-December)	Bill Impact
Base Charge	$66.53	$66.53	$0.00	$66.53	$0.00	$66.53	$0.00
Fuel Cost Recovery	**24.05**	**29.13**	**5.08**	**32.02**	**7.97**	**26.69**	**2.64**
Conserv. Cost Recovery	3.21	3.21	0.00	3.21	0.00	3.21	0.00
Capacity Cost Recovery	**1.03**	**(0.10)**	**(1.13)**	**(0.10)**	**(1.13)**	**1.28**	**0.25**
Envirom. Cost Recovery	2.22	2.22	0.00	2.22	0.00	2.22	0.00
Subtotal	$97.04	$100.99	$3.95	$103.88	$6.84	$99.93	$2.89
Gross Receipts Tax	2.49	2.59	0.10	2.66	0.17	2.56	0.07
Totals	**$99.53**	**$103.58**	**$4.05**	**$106.54**	**$7.01**	**$102.49**	**$2.96**

Customer Notifications

In response to a staff data request, TECO stated that it issued news releases and information on social media concurrent with its filing of the Mid-Course Petition (dated January 15, 2019). The Company will notify customers about this pending matter with on-bill messaging for paper and paperless bills in advance of the rates taking effect. In addition, TECO stated that a website link provides information regarding the proposed rate change effective with the April 2019 billing cycle.[10] The Company stated that it plans a second news release after the Commission votes on its Mid-Course Petition.

If approved by the Commission at the March 5, 2019 Agenda Conference, TECO's Mid-Course Petition will result in higher fuel cost recovery factors, and lower capacity cost recovery factors for TECO's customers, effective with the April 2019 billing cycle. Typically, effective dates are set a minimum of 30 days after a Commission vote modifying the charges as the result of a mid-

[10]Staff reviewed the news release information on the Company's website.

course correction.[11] This time limit is imposed in order to prevent new rates from being applied to energy consumed before the effective date of the Commission's action, i.e., the date of the vote. However, the Commission also has implemented charges in less than 30 days when circumstances warrant.[12] In this instance, the interval between the Commission's vote on this matter (March 5, 2019) and the proposed implementation date (April 2019 billing cycle, which begins on April 2, 2019) is 27 days. Although this filing, if approved, results in a net increase to cost recovery factors, staff believes the notification interval is sufficient.

Conclusion

A mid-course adjustment is appropriate and staff recommends the Commission approve TECO's Mid-Course Petition and the associated tariff sheets, effective with the first billing cycle of April 2019.

The revised fuel and capacity cost recovery factors are presented in Attachment A and the associated tariff sheets are presented in Attachment D.

Alternatively, the Commission may consider options to adjust TECO's fuel and capacity cost recovery factors. Option 1 is a mid-course correction that allows for the recovery of the 2018 and 2019 projected fuel and capacity costs through revised 2019 fuel and capacity factors, while Option 2 is a mid-course correction that limits the mid-course recovery to the 2018 projected fuel and capacity costs. The revised fuel and capacity cost recovery factors for Options 1 and 2 are presented in Attachments B and C, respectively. Under either of these options, the revised fuel and capacity cost recovery factors should become effective with the April 2019 billing cycle, which begins on April 2, 2019.

If the Commission approves Options 1, 2, or another alternative, the Commission should give staff administrative authority to approve the tariff sheets that implement the Commission's vote.

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[11] Gulf Power Co. v. Cresse, 410 So. 2d 492 (Fla. 1982); Order No. PSC-96-0907-FOF-EI, issued on July 15, 1996, in Docket No. Docket No. 19960001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*; Order No. PSC-1996-0908-FOF-EI, issued July 15, 1996, in Docket No. 19960001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*; Order No. PSC-1997-0021-FOF-EI, issued on January 6, 1997, in Docket No. 19970001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*.

[12] Order No. PSC-2001-0963-PCO-EI, issued April 18, 2001, in Docket No. 20010001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor* (allowing recovery of increase in fuel factor in order to decrease the carrying costs and therefore the total amount ratepayers were ultimately required to repay.); Order No. PSC-2000-2383-FOF-GU, issued December 12, 2000, in Docket No. 20000003-GU, *In re: Purchased gas adjustment (PGA) true-up (*allowing recovery of an increased gas fuel factor due to drastic increases in natural gas prices in winter of 2000-2001.*)*; Order No. PSC-2015-0161-PCO-EI, issued April 30, 2015, in Docket No. 20150001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor* (approving FPL's petition for a mid-course correction, thereby reducing fuel factors with less than 30 days notice).

Issue 2: Should this docket be closed?

Recommendation: The fuel docket is on-going and should remain open. (Brownless, Nieves)

Staff Analysis: The fuel docket is on-going and should remain open.

Attachment A - Table 1 (Requested Recovery)
TECO Revised Fuel Cost Recovery Factors for the period April-December, 2019

Metering Voltage Level	Fuel Cost Recovery Factors (cents per kWh)		
	Levelized Fuel Recovery Factor	First Tier (Up to 1,000 kWh)	Second Tier (Over 1,000 kWh)
STANDARD			
Distribution Secondary (RS only)	--	2.913	3.913
Distribution Secondary	3.227		
Distribution Primary	3.195		
Transmission	3.162		
Lighting Service	3.194		
TIME OF USE			
Distribution Secondary- On-Peak	3.411		
Distribution Secondary- Off-Peak	3.149		
Distribution Primary- On-Peak	3.377		
Distribution Primary- Off-Peak	3.118		
Transmission – On-Peak	3.343		
Transmission – Off-Peak	3.086		

Source: Mid-Course Correction filing, Schedule E1-E, Bates Stamped Page 20.

Attachment A - Table 2 (Requested Recovery)
TECO Capacity Cost Recovery Factors for the period April-December, 2019

Rate Class and Metering Voltage	**2019 Capacity Cost Recovery Factors**	
	Dollars / kW	Dollars / kWh
RS Secondary		-0.00010
GS and CS Secondary		-0.00009
GSD, SBF Standard		
Secondary	-0.03	
Primary	-0.03	
Transmission	-0.03	
GSD Optional		
Secondary		-0.00007
Primary		-0.00007
Transmission		-0.00007
IS, SBI		
Primary	-0.03	
Transmission	-0.03	
LS1 Secondary		-0.00002

Source: Mid-Course Correction filing, Exhibit D, Page 4 of 6, Bates Stamped Page 55.

Attachment B - Table 1 (Staff's Option 1 - - Full recovery of all costs)
TECO Fuel Cost Recovery Factors for the period April-December, 2019

Metering Voltage Level	Fuel Cost Recovery Factors (cents per kWh)		
	Levelized Fuel Recovery Factor	First Tier (Up to 1,000 kWh)	Second Tier (Over 1,000 kWh)
STANDARD			
Distribution Secondary (RS only)	--	3.202	4.202
Distribution Secondary	3.516		
Distribution Primary	3.481		
Transmission	3.446		
Lighting Service	3.480		
TIME OF USE			
Distribution Secondary- On-Peak	3.717		
Distribution Secondary- Off-Peak	3.431		
Distribution Primary- On-Peak	3.680		
Distribution Primary- Off-Peak	3.397		
Transmission – On-Peak	3.643		
Transmission – Off-Peak	3.362		

Source: TECO Response to Staff's First Data Request, No. 8, Schedule E1-E, Bates Stamped Page 13.

Attachment B - Table 2 (Staff's Option 1 - - Full recovery of all costs)
TECO Capacity Cost Recovery Factors for the period April-December, 2019

Rate Class and Metering Voltage	**2019 Capacity Cost Recovery Factors**	
	Dollars / kW	Dollars / kWh
RS Secondary		-0.00010
GS and CS Secondary		-0.00009
GSD, SBF Standard		
Secondary	-0.03	
Primary	-0.03	
Transmission	-0.03	
GSD Optional		
Secondary		-0.00007
Primary		-0.00007
Transmission		-0.00007
IS, SBI		
Primary	-0.03	
Transmission	-0.03	
LS1 Secondary		-0.00002

Source: Mid-Course Correction filing, Exhibit D, Page 4 of 6, Bates Stamped Page 55.

Attachment C - Table 1 (Staff's Option 2 - - Full recovery of 2018 costs only)
TECO Fuel Cost Recovery Factors for the period April-December, 2019

Metering Voltage Level	Fuel Cost Recovery Factors (cents per kWh)		
	Levelized Fuel Recovery Factor	First Tier (Up to 1,000 kWh)	Second Tier (Over 1,000 kWh)
STANDARD			
Distribution Secondary (RS only)	--	2.669	3.669
Distribution Secondary	2.983		
Distribution Primary	2.953		
Transmission	2.923		
Lighting Service	2.952		
TIME OF USE			
Distribution Secondary- On-Peak	3.153		
Distribution Secondary- Off-Peak	2.911		
Distribution Primary- On-Peak	3.121		
Distribution Primary- Off-Peak	2.882		
Transmission – On-Peak	3.090		
Transmission – Off-Peak	2.853		

Source: TECO's Response to Staff's 2nd Data Request, Schedule E1-E, Page 14.

Attachment C - Table 2 (Staff's Option 2 - - Full recovery of 2018 costs only)
TECO Capacity Cost Recovery Factors for the period April-December, 2019

Rate Class and Metering Voltage	2019 Capacity Cost Recovery Factors	
	Dollars / kW	Dollars / kWh
RS Secondary		0.00128
GS and CS Secondary		0.00110
GSD, SBF Standard		
Secondary	0.42	
Primary	0.42	
Transmission	0.41	
GSD Optional		
Secondary		0.00096
Primary		0.00095
Transmission		0.00094
IS, SBI		
Primary	0.33	
Transmission	0.32	
LS1 Secondary		0.00032

Source: TECO's Response to Staff's 2nd Data Request, Capacity Schedule, Page 23.

TECO TAMPA ELECTRIC AN EMERA COMPANY

SEVENTY-SIXTH REVISED SHEET NO. 6.020
CANCELS SEVENTY-FIFTH REVISED SHEET NO. 6.020

ADDITIONAL BILLING CHARGES

TOTAL FUEL AND PURCHASED POWER COST RECOVERY CLAUSE: The total fuel and purchased power cost recovery factor shall be applied to each kilowatt-hour delivered, and shall be computed in accordance with the formula prescribed by the Florida Public Service Commission. The following fuel recovery factors by rate schedule have been approved by the Commission:

RECOVERY PERIOD
(April 2019 through December 2019)

Rate Schedules	¢/kWh Fuel Standard	¢/kWh Fuel Peak	¢/kWh Fuel Off-Peak	¢/kWh Energy Conservation	¢/kWh Capacity	¢/kWh Environmental
RS (up to 1,000 kWh)	2.913			0.321	(0.010)	0.222
RS (over 1,000 kWh)	3.913			0.321	(0.010)	0.222
RSVP-1 (P_1)	3.227			(2.319)	(0.010)	0.222
(P_2)	3.227			(0.877)	(0.010)	0.222
(P_3)	3.227			5.936	(0.010)	0.222
(P_4)	3.227			34.911	(0.010)	0.222
GS, GST	3.227	3.411	3.149	0.292	(0.009)	0.221
CS	3.227			0.292	(0.009)	0.221
LS-1	3.194			0.180	(0.002)	0.217
GSD Optional						
Secondary	3.227			0.272	(0.007)	0.220
Primary	3.195			0.269	(0.007)	0.218
Subtransmission	3.162			0.267	(0.007)	0.216

Rate Schedules	¢/kWh Fuel Standard	¢/kWh Fuel Peak	¢/kWh Fuel Off-Peak	$/kW Energy Conservation	$/kW Capacity	¢/kWh Environmental
GSD, GSDT, SBF, SBFT						
Secondary	3.227	3.411	3.149	1.17	(0.03)	0.220
Primary	3.195	3.377	3.118	1.15	(0.03)	0.218
Subtransmission	3.162	3.343	3.086	1.14	(0.03)	0.216
IS, IST, SBI						
Primary	3.195	3.377	3.118	0.93	(0.03)	0.214
Subtransmission	3.162	3.343	3.086	0.92	(0.03)	0.212

Continued to Sheet No. 6.021

ISSUED BY: N. G. Tower, President

DATE EFFECTIVE:

TECO TAMPA ELECTRIC AN EMERA COMPANY

SEVENTY-~~FIFTH~~ SIXTH REVISED SHEET NO. 6.020
CANCELS SEVENTY-~~FOURTH~~ FIFTH REVISED SHEET NO. 6.020

ADDITIONAL BILLING CHARGES

TOTAL FUEL AND PURCHASED POWER COST RECOVERY CLAUSE: The total fuel and purchased power cost recovery factor shall be applied to each kilowatt-hour delivered, and shall be computed in accordance with the formula prescribed by the Florida Public Service Commission. The following fuel recovery factors by rate schedule have been approved by the Commission:

RECOVERY PERIOD
(~~January~~ April 2019 through December 2019)

Rate Schedules		¢/kWh Fuel Standard	¢/kWh Fuel Peak	¢/kWh Fuel Off-Peak	¢/kWh Energy Conservation	¢/kWh Capacity	¢/kWh Environmental
RS (up to 1,000 kWh)		~~2.405~~2.913			0.321	~~0.103~~(0.010)	0.222
RS (over 1,000 kWh)		~~3.405~~3.913			0.321	~~0.103~~(0.010)	0.222
RSVP-1	(P_1)	~~2.719~~3.227			(2.319)	~~0.103~~(0.010)	0.222
	(P_2)	~~2.719~~3.227			(0.877)	~~0.103~~(0.010)	0.222
	(P_3)	~~2.719~~3.227			5.936	~~0.103~~(0.010)	0.222
	(P_4)	~~2.719~~3.227			34.911	~~0.103~~(0.010)	0.222
GS, GST		~~2.719~~3.227	~~2.874~~3.411	~~2.653~~3.149	0.292	~~0.086~~(0.009)	0.221
CS		~~2.719~~3.227			0.292	~~0.086~~(0.009)	0.221
LS-1		~~2.691~~3.194			0.180	~~0.024~~(0.002)	0.217
GSD Optional							
Secondary		~~2.719~~3.227			0.272	~~0.075~~(0.007)	0.220
Primary		~~2.692~~3.195			0.269	~~0.074~~(0.007)	0.218
Subtransmission		~~2.665~~3.162			0.267	~~0.074~~(0.007)	0.216

Rate Schedules	¢/kWh Fuel Standard	¢/kWh Fuel Peak	¢/kWh Fuel Off-Peak	$/kW Energy Conservation	$/kW Capacity	¢/kWh Environmental
GSD, GSDT, SBF, SBFT						
Secondary	~~2.719~~3.227	~~2.874~~3.411	~~2.653~~3.149	1.17	~~0.32~~(0.03)	0.220
Primary	~~2.692~~3.195	~~2.845~~3.	~~2.626~~3.1	1.15	~~0.32~~(0.03)	0.218

ISSUED BY: N. G. Tower, President

DATE EFFECTIVE: ~~January 3, 2019~~

TECO TAMPA ELECTRIC AN EMERA COMPANY

SEVENTY-~~FIFTH~~ SIXTH REVISED SHEET NO. 6.020
CANCELS SEVENTY-~~FOURTH~~ FIFTH REVISED SHEET NO. 6.020

Subtransmission	~~2.665~~3.162	377 ~~2.817~~3.343	18 ~~2.600~~3.086	1.14	~~0.31~~(0.03)	0.216
IS, IST, SBI						
Primary	~~2.692~~3.195	~~2.845~~3.377	~~2.626~~3.118	0.93	~~0.24~~(0.03)	0.214
Subtransmission	~~2.665~~3.162	~~2.817~~3.343	~~2.600~~3.086	0.92	~~0.24~~(0.03)	0.212

Continued to Sheet No. 6.021

ISSUED BY: N. G. Tower, President

DATE EFFECTIVE: ~~January 3, 2019~~

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: Feburary 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Wooten, Ellis, Wright)
Office of the General Counsel (Murphy)

RE: Docket No. 20180073-EQ – Petition for approval of amended standard offer contract (Schedule COG-2) based on a combustion turbine avoided unit, by Duke Energy Florida, LLC.

AGENDA: 03/05/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Section 366.91(3), Florida Statutes (F.S.), requires that each investor-owned utility (IOU) continuously offer to purchase capacity and energy from renewable energy generators and small qualifying facilities. Florida Public Service Commission (Commission) Rules 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.), implement the statute and require each IOU to file with the Commission, by April 1 of each year, a standard offer contract based on the next avoidable fossil fueled generating unit of each technology type identified in the Utility's current Ten-Year Site Plan. On March 29, 2018, Duke Energy Florida, LLC (DEF) filed a petition for approval of its amended standard offer contract and rate schedule COG-2 based on its 2018 Ten-

Year Site Plan. On June 19, 2018, the Commission issued Order No. PSC-2018-0314-PAA-EQ approving DEF's petition.[1]

On November 16, 2018, DEF filed a petition for approval to modify the delivery voltage adjustment factors (DVAFs) found on Sheet 9.458 of its standard offer contract. Pursuant to DEF's standard offer contract, these voltage factors adjust the energy payments made to renewable energy generators and qualifying facilities located within DEF's service territory to reflect line losses avoided by DEF based on the delivery voltage level at which the facility's energy is received by DEF. DEF uses a value that is filed with the Federal Energy Regulatory Commission (FERC) every year on May 1 as a component of the DVAFs. On October 31, 2018, a settlement agreement was filed on behalf of DEF that alters DEF's DVAFs beginning January 1, 2019. On January 28, 2019, the FERC issued a letter order, *Duke Energy Fla., LLC,* 166 FERC ¶ 61,057 (2019),[2] approving the settlement agreement. DEF is not requesting modification of any other tariff sheets.

The Commission has jurisdiction over this standard offer contract pursuant to Sections 366.04 through 366.06 and 366.91, F.S.

[1]Order No. PSC-2018-0314-PAA-EQ, issued June 19, 2018, in Docket No. 20180073-EQ, *In re: Petition for approval of amended standard offer contract (Schedule COG-2) based on a combustion turbine avoided unit, by Duke Energy Florida, LLC.*
[2] FERC Docket No. ER18-1458-002.

Discussion of Issues

Issue 1: Should the Commission approve Duke Energy Florida, LLC's petition to adjust the delivery voltage adjustment factors found on Sheet 9.458 of its standard offer contract?

Recommendation: Yes. FERC's approval of DEF's settlement agreement necessitates modification of two of the three delivery voltage adjustment factors found on Sheet 9.458 of DEF's standard offer contract. The revised Sheet 9.458 provided by DEF reflects the necessary adjustments and should be approved by the Commission. (Wright)

Staff Analysis: DEF conducts an annual system line loss study for the prior calendar year to determine delivery efficiencies throughout its transmission and distribution network. The results of this study are used to derive system line loss factors for its transmission, primary distribution, and secondary distribution voltage levels, which are filed with the FERC every year on May 1. These efficiency factors are used in the calculation of the DVAFs found on Sheet 9.458 of DEF's standard offer contract. The current DVAFs are based on DEF's 2017 line loss study and are 1.0150 for transmission, 1.0254 for primary distribution, and 1.0627 for secondary distribution.

On October 31, 2018, a settlement agreement was filed on behalf of DEF that alters DEF's DVAFs beginning January 1, 2019. On January 28, 2019, the FERC approved the settlement agreement through its issuance of a letter order *Duke Energy Fla., LLC,* 166 FERC ¶ 61,057 (2019), included as Attachment A of this recommendation. In the settlement, DEF agreed to remove facilities owned by Seminole Electric Cooperative, Inc. (Seminole) and its members from the losses calculation, aligning delivery efficiency determination with the Network Integration Service Agreement between Seminole and DEF. The result was an increase in the derived transmission delivery efficiency of 0.01 percent, or a change from 98.52 percent to 98.53 percent. This change necessitates adjustment of two of the three DVAFs found on Sheet 9.458 of DEF's standard offer contract. The updated DVAFs consist of a transmission DVAF of 1.0149 and a primary distribution DVAF of 1.0253. The revised Sheet 9.458, in type-and-strike format, is included as Attachment B of this recommendation. Staff has reviewed these updated values and recommends approval of DEF's petition to amend Sheet 9.458 of its standard offer contract.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, DEF's standard offer contract may subsequently be revised. (Murphy)

Staff Analysis: This docket should be closed upon the issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, DEF's standard offer contract may subsequently be revised.

166 FERC ¶ 61,057
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 28, 2019

In Reply Refer To:
Duke Energy Florida, LLC
Docket No. ER18-1458-002

Duke Energy Corporation
550 South Tryon St. (DEC 45A)
Charlotte, NC 28202

Attn: Ann Warren
Associate General Counsel

Dear Ms. Warren:

1. On October 31, 2018, in Docket No. ER18-1458-002, Duke Energy Carolinas, LLC, filed a Settlement Agreement on behalf of Duke Energy Florida (DEF), among DEF, Florida Municipal Power Agency, and Seminole Electric Cooperative, Inc. (collectively, Settling Parties), to resolve all issues set for hearing in the July 20, 2018 order issued in this proceeding.[1]

2. On November 20, 2018, Commission Trial Staff filed comments in support of the Settlement Agreement. On December 6, 2018, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.[2]

3. The Settlement Agreement concerns DEF's proposed changes to the DEF Joint Open Access Transmission Tariff, Tariff Volume No. 4 (Joint OATT), to incorporate updated real power loss factors in accordance with its annual update procedures set forth

[1] *Duke Energy Fla., LLC*, 164 FERC ¶ 61,041 (2018). The Commission accepted DEF's proposed real power loss factors, as amended, for filing, suspended them for a nominal period, to become effective May 1, 2018, subject to refund, and set them for hearing and settlement judge procedures.

[2] *Duke Energy, Fla., LLC*, 165 FERC ¶ 63,022 (2018).

in Attachment Q of the Joint OATT. The Settling Parties have requested an effective date of January 1, 2019, for these tariff changes.

4. In the Terms of Settlement Agreement at Section 2.1.1, the Settling Parties agree that the Joint OATT should be modified to incorporate the tariff changes that are set forth in Attachment 1 to the Settlement Agreement, which will: (a) decrease the real power loss factor for deliveries at transmission voltages from 1.48 percent to 1.47 percent, and (b) decrease the real power loss factor for deliveries at distribution voltages from 2.48 percent to 2.47 percent.

5. Section 5.1 states that the "statutory 'just and reasonable' standard of review applies to future changes to the Settlement Agreement sought by the Commission acting *sua sponte* or at the request of a non-settling third party."

6. The Settlement Agreement resolves all issues set for hearing in this proceeding. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

7. The Settlement Joint OATT is hereby accepted to become effective January 1, 2019, as requested by the Settling Parties.

8. This letter order terminates Docket Nos. ER18-1458-000, ER18-1458-001, and ER18-1458-002.

By direction of the Commission. Commissioner McNamee is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

DUKE ENERGY.

SECTION No. IX
~~TWELFTH~~ THIRTEEN REVISED SHEET NO. 9.458
CANCELS ~~ELEVENTH~~ TWELFTH SHEET NO. 9.458

ESTIMATED UNIT FUEL COST

As required in Section 25-17.0832, F.A.C., the estimated fuel costs associated with DEF's Avoided Unit are based on current estimates of the price of natural gas and will be provided within 30 days of a written request for such projections by any interested person.

DELIVERY VOLTAGE ADJUSTMENT

DEF's average system line losses are analyzed annually for the prior calendar year, and delivery efficiencies are developed for the transmission, distribution primary, and distribution secondary voltage levels. This analysis is provided in the DEF's Procedures For Changing The Real Power Loss Factor (currently Attachment Q) in its Open Access Transmission Tariff and DEF's fuel cost recovery filing with the FPSC. An adjustment factor, calculated as the reciprocal of the appropriate delivery efficiency factor, is applicable to the above determined energy costs if the RF/QF is within DEF's service territory to reflect the delivery voltage level at which RF/QF energy is received by the DEF.

The current delivery voltage adjustment factors are:

Delivery Voltage	Adjustment Factor
Transmission Voltage Delivery	1.~~01500~~0149
Primary Voltage Delivery	1.~~02540~~0253
Secondary Voltage Delivery	1.0627

PERFORMANCE CRITERIA

Payments for firm Capacity are conditioned on the RF/QF's ability to maintain the following performance criteria:

A. Capacity Delivery Date

The Capacity Delivery Date shall be no later than the Required Capacity Delivery Date.

B. Availability and Capacity Factor

The Facility's availability and capacity factor are used in the determination of firm Capacity Payments through a performance based calculation as detailed in Appendix A to the Contract.

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL
EFFECTIVE:

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: February 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey) SKG EJD PAD JMH
Office of the General Counsel (Simmons) KS JSC

RE: Docket No. 20190023-EI – Petition for approval of modifications to rate schedule LS-1, lighting service, by Duke Energy Florida, LLC.

AGENDA: 03/05/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/18/19 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On January 17, 2019, Duke Energy Florida, LLC (DEF or utility), filed a petition for approval of modifications to its Lighting Service (LS-1) rate schedule. Specifically, DEF proposed to close the metal halide and sodium vapor fixture options for new installations, add new Light Emitting Diode (LED) fixtures, and add new pole options. The proposed tariffs are shown in legislative format in Attachment 1 to this recommendation.

On February 8, 2019, DEF responded to staff's first data request. The Commission has jurisdiction over this matter pursuant to Section 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve DEF's proposed modifications to its LS-1 rate schedule as shown in Attachment 1?

Recommendation: Yes. The Commission should approve DEF's proposed modifications to its LS-1 rate schedule as shown in Attachment 1. The proposed new LED fixture and pole options are cost based and expand the fixture and pole options available to customers. Closing the current metal halide and sodium vapor options for new installations allows DEF to recognize energy efficiencies and technological improvements in the lighting industry. The revised tariffs should become effective on March 5, 2019. (Guffey)

Staff Analysis: DEF's LS-1 rate schedule is available to customers for the purpose of lighting roadways and other outdoor areas. DEF proposed four revisions to its LS-1 rate schedule which are discussed below.

First, DEF proposed to close the metal halide fixture options for new installations. Existing metal halide lighting customers can continue to use them until either the fixture or the ballast, or both, fails. The ballast regulates the current to the lamps and provides voltage to start the lamps. At the time of fixture or ballast failure, the metal halide fixture will be replaced with a comparable LED fixture and applicable monthly rates will apply. LED fixtures do not require a ballast to regulate the current.

DEF explained that the Energy Independence and Security Act of 2007 requires that ballasts installed in metal halide fixtures meet higher energy efficiency standards, and as of early 2017, certain metal halide lamps of certain wattages cannot contain a probe-start ballast. DEF stated that metal halide fixtures and ballasts have been gradually phased out in order to meet the Energy Independence and Security Act of 2007 guideline requirements; therefore, manufacturers no longer produce metal halide fixtures.

Second, DEF proposed to close the sodium vapor fixture options for new installations. Although the Energy Independence and Security Act of 2007 does not limit the production of ballasts for sodium vapor fixtures, manufacturers are now primarily producing LED fixtures. DEF contends that the market is moving towards higher energy efficiency lighting technology and customers also prefer LED lighting.

Existing sodium vapor lighting customers can continue to use them until the fixture fails or the damaged fixture needs repair along with the replacement of the ballast. At that time, DEF explained that it will work with the customer to find a sodium vapor fixture that matches what is currently in the neighborhood or replace the sodium vapor fixture with a comparable LED fixture. DEF stated that as manufacturers continue to transition away from sodium vapor lights towards LED fixtures, finding a matching sodium vapor fixture may become increasingly difficult.

Third, in order to expand the fixture and pole options available to customers, DEF proposed to add several new LED fixtures and pole options to its existing offerings. The proposed new fixtures and poles are shown in revised Tariff Sheet Nos. 6.2811, 6.2812, 6.282 and 6.2821.

The utility provided cost support information for the newly introduced LED fixtures and poles. The charges for the LED fixtures are comprised of three components: a fixture charge, a maintenance charge, and a non-fuel energy charge, consistent with DEF's other lighting options. The fixture charges were developed based on material, design, labor, storage, and vehicle costs associated with the installation multiplied by the currently approved 1.59 percent fixture rental rate to determine the monthly fixture charge. The maintenance charges were developed based on DEF's estimated maintenance cost for the components (e.g., driver, photo control, luminaire) of the fixtures. The non-fuel energy charge is determined by multiplying the estimated kilowatt-hour usage by fixture type by the currently approved non-fuel energy charge for lighting service (2.547 cents per kilowatt-hour). All other Commission-approved LS-1 recovery clause factors will be applied to the estimated usage.

The monthly pole charges were developed based on the material costs and DEF's labor rates to install a pole multiplied by the currently approved 1.82 percent pole rental rate. The new pole types are aluminum or concrete.

Finally, DEF proposed to update Note 2 under Notes to Per Unit Charges on revised tariff sheet No. 6.283. The proposed revision will make the note more applicable to LED lighting fixtures, which do not contain ballasts, and state that the wattage ratings may vary with lamp configuration.

Conclusion

Staff reviewed the petition, data responses, and the necessary cost support information submitted by DEF, and believes the charges are reasonable and appropriate. The proposed new LED fixture and pole options are cost based and expand the fixture and pole options available to customers. Closing the current metal halide and sodium vapor options to new customers allows DEF to recognize energy efficiencies and technological improvements in the lighting industry. Staff recommends that DEF's proposed modifications to its LS-1 rate schedule as shown in Attachment 1 be approved. The revised tariffs should become effective on March 5, 2019.

Issue 2: Should this docket be closed?

Recommendation: If a protest is filed within 21 days of the issuance of the order, the tariffs 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. (Simmons)

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

DUKE ENERGY.

SECTION NO. VI
THIRTY-~~SECOND~~ THIRD REVISED SHEET NO. 6.280
CANCELS THIRTY-~~FIRST~~ SECOND REVISED SHEET NO. ~~6.280~~

RATE SCHEDULE LS-1
LIGHTING SERVICE

Availability:

Available throughout the entire territory served by the Company.

Applicable:

To any customer for the sole purpose of lighting roadways or other outdoor land use areas; served from either Company or customer owned fixtures of the type available under this rate schedule. Service hereunder is provided for the sole and exclusive benefit of the customer, and nothing herein or in the contract executed hereunder is intended to benefit any third party or to impose any obligation on the Company to any such third party.

Character of Service:

Continuous dusk to dawn automatically controlled lighting service (i.e. photoelectric cell); alternating current, 60 cycle, single phase, at the Company's standard voltage available.

Limitation of Service:

Availability of certain fixture or pole types at a location may be restricted due to accessibility.

Standby or resale service not permitted hereunder. Service under this rate is subject to the Company's currently effective and filed "General Rules and Regulations Governing Electric Service."

Rate Per Month:

Customer Charge:

Unmetered:	$ 1.31 per line of billing
Metered:	$ 3.77 per line of billing

Energy and Demand Charge:

Non-Fuel Energy Charge:	2.547¢ per kWh
Plus the Cost Recovery Factors listed in Rate Schedule BA-1, *Billing Adjustments,* except the Fuel Cost Recovery Factor and Asset Securitization Charge Factor:	See Sheet No. 6.105 and 6.106

Per Unit Charges:

I. **Fixtures:**

BILLING TYPE	DESCRIPTION	LAMP SIZE [2] INITIAL LUMENS OUTPUT	LAMP WATTAGE	kWh	CHARGES PER UNIT FIXTURE	MAINTENANCE	NON-FUEL ENERGY [3]
	Incandescent: [1]						
110	Roadway	1,000	105	32	$1.03	$4.07	$0.82
115	Roadway	2,500	205	66	1.61	3.67	1.68
170	Post Top	2,500	205	72	20.39	3.67	1.83
	Mercury Vapor: [1]						
205	Open Bottom	4,000	100	44	$2.55	$1.80	$1.12
210	Roadway	4,000	100	44	2.95	1.80	1.12
215	Post Top	4,000	100	44	3.47	1.80	1.12
220	Roadway	8,000	175	71	3.34	1.77	1.81
225	Open Bottom	8,000	175	71	2.50	1.77	1.81
235	Roadway	21,000	400	158	4.04	1.81	4.02
240	Roadway	62,000	1,000	386	5.29	1.78	9.83
245	Flood	21,000	400	158	5.29	1.81	4.02
250	Flood	62,000	1,000	386	6.20	1.78	9.83

(Continued on Page No. 2)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL

EFFECTIVE: ~~January 1, 2019~~

DUKE ENERGY®

SECTION NO. VI
~~TWENTY-NINTH~~THIRTIETH REVISED SHEET NO. 6.281
CANCELS TWENTY-~~EIGHTH~~ NINTH REVISED SHEET NO.
~~6.281~~

RATE SCHEDULE LS-1
LIGHTING SERVICE
(Continued from Page No. 1)

I. Fixtures: (Continued)

BILLING TYPE	DESCRIPTION	LAMP SIZE [2] INITIAL LUMENS OUTPUT	LAMP WATTAGE	kWh	CHARGES PER UNIT FIXTURE	MAINTENANCE	NON-FUEL ENERGY [3]
	Sodium Vapor: [1]						
300	HPS Deco Rdwy White	50,000	400	168	$14.73	$1.61	$4.28
301	Sandpiper HPS Deco Roadway	27,500	250	104	13.81	1.72	2.65
302	Sandpiper HPS Deco Rdwy Blk	9,500	100	42	14.73	1.58	1.07
305	Open Bottom [4]	4,000	50	21	2.54	2.04	0.53
310	Roadway [4]	4,000	50	21	3.12	2.04	0.53
313	Open Bottom [4]	6,500	70	29	4.19	2.05	0.74
314	Hometown II	9,500	100	42	4.08	1.72	1.07
315	Post Top - Colonial/Contemp [4]	4,000	50	21	5.04	2.04	0.53
316	Colonial Post Top [4]	4,000	50	34	4.05	2.04	0.87
318	Post Top [4]	9,500	100	42	2.50	1.72	1.07
320	Roadway-Overhead Only	9,500	100	42	3.64	1.72	1.07
321	Deco Post Top - Monticello	9,500	100	49	12.17	1.72	1.25
322	Deco Post Top - Flagler	9,500	100	49	16.48	1.72	1.25
323	Roadway-Turtle OH Only	9,500	100	42	4.32	1.72	1.07
325	Roadway-Overhead Only	16,000	150	65	3.78	1.75	1.66
326	Deco Post Top – Sanibel	9,500	100	49	18.16	1.72	1.25
330	Roadway-Overhead Only	22,000	200	87	3.64	1.83	2.22
335	Roadway-Overhead Only	27,500	250	104	4.16	1.72	2.65
336	Roadway-Bridge [4]	27,500	250	104	6.74	1.72	2.65
337	Roadway-DOT [4]	27,500	250	104	5.87	1.72	2.65
338	Deco Roadway–Maitland	27,500	250	104	9.62	1.72	2.65
340	Roadway-Overhead Only	50,000	400	169	5.03	1.76	4.30
341	HPS Flood-City of Sebring only [4]	16,000	150	65	4.06	1.75	1.66
342	Roadway-Turnpike [4]	50,000	400	168	8.95	1.76	4.28
343	Roadway-Turnpike [4]	27,500	250	108	9.12	1.72	2.75
345	Flood-Overhead Only	27,500	250	103	5.21	1.72	2.62
347	Clermont	9,500	100	49	20.65	1.72	1.25
348	Clermont	27,500	250	104	22.65	1.72	2.65
350	Flood-Overhead Only	50,000	400	170	5.19	1.76	4.33
351	Underground Roadway	9,500	100	42	6.22	1.72	1.07
352	Underground Roadway	16,000	150	65	7.58	1.75	1.66
354	Underground Roadway	27,500	250	108	8.10	1.72	2.75
356	Underground Roadway	50,000	400	168	8.69	1.76	4.28
357	Underground Flood	27,500	250	108	9.36	1.72	2.75
358	Underground Flood [4]	50,000	400	168	9.49	1.76	4.28
359	Underground Turtle Roadway	9,500	100	42	6.09	1.72	1.07
360	Deco Roadway Rectangular [4]	9,500	100	47	12.53	1.72	1.20
365	Deco Roadway Rectangular	27,500	250	108	11.89	1.72	2.75
366	Deco Roadway Rectangular	50,000	400	168	12.00	1.76	4.28
370	Deco Roadway Round [4]	27,500	250	108	15.41	1.72	2.75
375	Deco Roadway Round [4]	50,000	400	168	15.42	1.76	4.28
380	Deco Post Top – Ocala	9,500	100	49	8.78	1.72	1.25
381	Deco Post Top [4]	9,500	100	49	4.05	1.72	1.25
383	Deco Post Top-Biscayne	9,500	100	49	14.17	1.72	1.25
385	Deco Post Top – Sebring	9,500	100	49	6.75	1.72	1.25
393	Deco Post Top [4]	4,000	50	21	8.72	2.04	0.53
394	Deco Post Top [4]	9,500	100	49	18.16	1.72	1.25

(Continued on Page No. 3)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL

EFFECTIVE: ~~January 1, 2019~~

DUKE ENERGY.

SECTION NO. VI
~~NINTH~~ TENTH REVISED SHEET NO. 6.2811
CANCELS ~~EIGHTH~~ NINTH REVISED SHEET NO. 6.2811

RATE SCHEDULE LS-1
LIGHTING SERVICE
(Continued from Page No. 2)

I. Fixtures: (Continued)

BILLING TYPE	DESCRIPTION	LAMP SIZE [2] INITIAL LUMENS OUTPUT	LAMP WATTAGE	kWh	CHARGES PER UNIT FIXTURE	MAINTENANCE	NON-FUEL ENERGY [3]
	Metal Halide: [1]						
307	Deco Post Top-MH San bel P	11,600	150	65	$16.85	$2.68	$1.66
308	Clermont Tear Drop P	11,600	150	65	19.91	2.68	1.66
309	MH Deco Rectangular P	36,000	320	126	13.07	2.74	3.21
311	MH Deco Cube P	36,000	320	126	15.98	2.74	3.21
312	MH Flood P	36,000	320	126	10.55	2.74	3.21
319	MH Post Top Biscayne P	11,600	150	65	15.24	2.68	1.66
327	Deco Post Top-MH San bel [4]	12,000	175	74	18.39	2.72	1.88
349	Clermont Tear Drop [4]	12,000	175	74	21.73	2.72	1.88
371	MH Deco Rectangular [4]	38,000	400	159	14.26	2.84	4.05
372	MH Deco Circular [4]	38,000	400	159	16.70	2.84	4.05
373	MH Deco Rectangular [4,5]	110,000	1,000	378	15.30	2.96	9.63
386	MH Flood [4,5]	110,000	1,000	378	13.17	2.96	9.63
389	MH Flood-Sportslighter [4,5]	110,000	1,000	378	13.01	2.96	9.63
390	MH Deco Cube [4]	38,000	400	159	17.44	2.84	4.05
396	Deco PT MH San bel Dual [5]	24,000	350	148	33.73	5.43	3.77
397	MH Post Top-Biscayne [4]	12,000	175	74	14.98	2.72	1.88
398	MH Deco Cube [4,5]	110,000	1,000	378	20.34	2.96	9.63
399	MH Flood	38,000	400	159	11.51	2.84	4.05
	Light Emitting Diode (LED):						
106	Underground San bel	5,500	70	25	$20.80	$1.39	$0.64
107	Underground Traditional Open	3,908	49	17	13.57	1.39	0.43
108	Underground Traditional w/Lens	3,230	49	17	13.57	1.39	0.43
109	Underground Acorn	4,332	70	25	20.16	1.39	0.64
111	Underground Mini Bell	2,889	50	18	17.88	1.39	0.46
121	Shoebox Bronze III	21,164	213	75	20.42	1.39	1.91
122	Shoebox Bronze IV	20,555	213	75	20.42	1.39	1.91
123	Shoebox Bronze V	21,803	213	75	20.42	1.39	1.91
124	Shoebox Black III	21,164	213	75	20.42	1.39	1.91
126	Shoebox Black IV FWT	20,555	213	75	20.42	1.39	1.91
127	Shoebox Black V	21,803	213	75	20.42	1.39	1.91
130	Monticello 3000 Kelvin	4,430	50	17.5	20.16	1.39	0.45
133	ATBO Roadway	4,521	48	17	6.22	1.39	0.43
134	Underground ATBO Roadway	4,521	48	17	7.71	1.39	0.43
136	Roadway	9,233	108	38	7.05	1.39	0.97
137	Underground Roadway	9,233	108	38	8.55	1.39	0.97
138, 176	Roadway	18,642	216	76	11.61	1.39	1.94
139	Underground Roadway	18,642	216	76	13.11	1.39	1.94
141, 177	Roadway	24,191	284	99	14.08	1.39	2.52
142, 162	Underground Roadway	24,191	284	99	15.58	1.39	2.52
147, 174	Roadway	12,642	150	53	9.74	1.39	1.35
148	Underground Roadway	12,642	150	53	11.24	1.39	1.35
151	ATBS Roadway	4,500	49	17	5.07	1.39	0.43
156	Shoebox Bronze IV FWT	39,078	421	147	29.20	1.39	3.74
157	Shoebox Bronze V	43,317	421	147	29.20	1.39	3.74
158	Shoebox Black IV FWT	39,078	421	147	29.20	1.39	3.74
159	Shoebox Black V	43,317	421	147	29.20	1.39	3.74
163	Shoebox Pedestrian Bronze	3,130	50	17	12.91	1.39	0.43
164	Shoebox Pedestrian Black	3,130	50	17	14.05	1.39	0.43
167	Underground Mitchell	5,186	50	18	21.44	1.39	0.46
168	Underground Mitchell w/Top Hat	4,336	50	18	21.44	1.39	0.46

(Continued on Page No. 4)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL
EFFECTIVE: ~~January 1, 2019~~

DUKE ENERGY.

SECTION NO. VI
ORIGINAL SHEET NO. 6.2812

RATE SCHEDULE LS-1
LIGHTING SERVICE
(Continued from Page No. 3)

I. Fixtures: (Continued)

BILLING TYPE	DESCRIPTION	LAMP SIZE [2] INITIAL LUMENS OUTPUT	LAMP WATTAGE	kWh	CHARGES PER UNIT FIXTURE	MAINTENANCE	NON-FUEL ENERGY [3]
	Light Emitting Diode (LED): Continued						
169	Teardrop	8,472	150	52	28.54	1.39	1.32
181	Sanibel	10,820	150	52	21.31	1.39	1.32
182	Biscayne	4,655	60	21	19.11	1.39	0.53
183	Clermont	15,375	150	52	29.28	1.39	1.32
184	ATBS Roadway, Overhead Feed	4,195	40	14	4.57	1.39	0.36
185	ATBS Roadway, Underground Feed	4,195	40	14	6.06	1.39	0.36
186	ATBS Roadway, Overhead Feed	8,200	70	24	5.35	1.39	0.61
187	ATBS Roadway, Underground Feed	8,200	70	24	6.85	1.39	0.61
191	Flood Overhead Feed	13,729	130	46	10.57	1.39	1.17
192	Flood Overhead Feed	30,238	260	91	16.86	1.39	2.32
193	Clermont	7,451	50	18	26.91	1.39	0.46
194	Flood Underground Feed	13,729	130	46	12.06	1.39	1.17
195	LED Flood Underground Feed	30,238	260	91	18.35	1.39	2.32
196	Amber Roadway Overhead	4,133	70	25	11.28	1.39	0.64
197	Amber Roadway Underground	4,133	70	25	12.77	1.39	0.64
198	Amber Roadway Overhead	5,408	110	39	13.55	1.39	0.99
199	Amber Roadway Underground	5,408	110	39	15.04	1.39	0.99
361	Roadway [1]	6,000	95	33	16.93	2.43	0.84
362	Roadway [1]	9,600	157	55	20.07	2.43	1.40
363	Shoebox Type 3 [1]	20,664	309	108	41.08	2.84	2.75
364	Shoebox Type 4 [1]	14,421	206	72	32.59	2.84	1.83
367	Shoebox Type 5 [1]	14,421	206	72	31.65	2.84	1.83
369	Underground Biscayne	6,500	80	28	18.60	1.39	0.71

(Continued on Page No. 5)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL

EFFECTIVE:

DUKE ENERGY.

SECTION NO. VI
~~EIGHTEENTH~~ NINETEENTH REVISED SHEET NO. 6.282
CANCELS ~~SEVENTEENTH~~ EIGHTEENTH REVISED SHEET NO. ~~6.282~~

RATE SCHEDULE LS-1
LIGHTING SERVICE
(Continued from Page No. ~~34~~)

II. POLES

BILLING TYPE	DESCRIPTION	CHARGE PER UNIT
404	35' Deco Concrete – Mariner	$22.35
405	Concrete, 30/35'	5.05
406	16' Deco Conc – Single Sanibel	11.70
407	16' Decon Conc – Double Sanibel	12.61
408	26' Aluminum DOT Style Pole	45.92
409	36' Aluminum DOT Style Pole	54.80
410	Concrete, 15' [1]	2.31
411	16' Octagonal Conc [1]	2.18
412	32' Octagonal Deco Concrete	16.29
413	25' Tenon Top Concrete	11.84
415	Concrete, Curved [1]	4.77
418	35' Tenon Top Black Concrete	20.14
420	Wood, 30/35'	2.17
422	36ft OAL Aluminum Fluted Multi-Use Pole	117.51
423	29ft OAL Aluminum Fluted Multi-Use Pole	113.25
424	36ft OAL Aluminum 10" Multi-Use Pole	101.90
425	Wood, 14' Laminated [1]	2.38
428	Deco Fiberglass, 35', Bronze, Reinforced [1]	19.11
429	Deco Fiberglass, 41', Bronze, Reinforced [1]	31.54
430	Fiberglass, 14', Black [1]	2.51
431	Deco Fiberglass, 41', Bronze [1]	17.18
432	Deco Fiberglass, 35', Bronze, Anchor Base [1]	27.49
433	Deco Fiberglass, 35', Bronze [1]	13.60
434	Deco Fiberglass, 20', Black, Deco Base [1]	12.47
435	Aluminum, Type A [1]	6.59
436	Deco Fiberglass, 16', Black, Fluted [1]	19.50
437	Fiberglass, 16', Black, Fluted, Dual Mount [1]	21.94
438	Deco Fiberglass, 20', Black [1]	5.85
439	Black F berglass 16'	19.78
440	Aluminum, Type B [1]	7.33
441	15' Black Aluminum	6.54
442	40ft OAL Conc Static Cast Multi-Use Pole	46.18
443	45ft OAL Conc Static Cast Multi-Use Pole	48.73
445	Aluminum, Type C [1]	14.33
446	Deco Fiberglass, 30', Bronze [1]	11.57
447	Deco Fiberglass, 35', Silver, Anchor Base [1]	21.40
448	Deco Fiberglass, 41', Silver [1]	18.00
449	Deco Fiberglass, 16', Black, Fluted, Anchor Base [1]	17.35
450	Concrete, 1/2 Special	1.75
451	36ft OAL Aluminum Multi-Use Pole	84.19
452	36ft Aluminum Breakaway Pole	43.51
453	46ft Aluminum Breakaway Pole	46.87
454	35ft OAL Promenade Receptacle Pole	40.22
455	Steel, Type A [1]	4.11
457	46ft OAL Aluminum I-Drive Multi-Use Pole	75.92
460	Steel, Type B [1]	4.41
465	Steel, Type C [1]	6.17
466	16' Deco Con Vic II – Dual Mount	18.06
467	16' Deco Conc Washington – Dual	25.87
468	16' Deco Conc Colonial – Dual Mount	13.35
469	35' Tenon Top Quad Flood Mount	13.63
470	45' Tenon Top Quad Flood Mount	18.90
471	22' Deco Concrete	14.99
472	22' Deco Conc Single San bel	16.03
473	22' Deco Conc Double San bel	17.26
474	22' Deco Conc Double Mount	18.74
476	25' Tenon Top Bronze Concrete	17.54
477	30' Tenon Top Bronze Concrete	18.70
478	35' Tenon Top Bronze Concrete	20.14
479	41' Tenon Top Bronze Concrete	24.33
480	Wood, 40/45'	5.25
481	30' Tenon Top Concrete, Single Flood Mount	10.06
482	30' Tenon Top Conc, Double Flood Mount/Includes Bracket	12.29
483	46' Tenon Top Conc, Triple Flood Mount/Includes Bracket	18.80
484	46' Tenon Top Conc, Double Flood Mount/Includes Bracket	18.50
485	Concrete, 40/45'	10.19
486	Tenon Style Concrete 46' Single Flood Mount	15.31
487	35' Tenon Top Conc, Triple Flood Mount/Includes Bracket	13.53

(Continued on Page No. ~~56~~)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL
EFFECTIVE: ~~January 5, 2016~~

DUKE ENERGY.

SECTION NO. VI
~~EIGHTEENTH~~ NINETEENTH REVISED SHEET NO. 6.282
CANCELS ~~SEVENTEENTH~~ EIGHTEENTH REVISED SHEET

~~NO. 6.282~~

Page 5 of ~~68~~

488	35' Tenon Top Conc, Double Flood Mount/Includes Bracket	13.23
489	35' Tenon Top Concrete, Single Flood Mount	11.00

(Continued on Page No. ~~56~~)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL
EFFECTIVE: ~~January 5, 2016~~

DUKE ENERGY.

SECTION NO. VI
ORIGINAL SHEET NO. 6.2821

RATE SCHEDULE LS-1
LIGHTING SERVICE
(Continued from Page No. 5)

II. POLES

~~490~~	~~Special Concrete 13'~~ [1]	~~17.39~~
~~491~~	~~30' Tenon Top Conc, Triple Flood Mount/Includes Bracket~~	~~12.60~~
~~492~~	~~16' Smooth Decorative Concrete/The Colonial~~	~~8.99~~
~~493~~	~~19' White Aluminum~~ [1]	~~25.87~~
~~494~~	~~46' Tenon Top Concrete/Non-Flood Mount/1-4 Fixtures~~	~~16.27~~
~~495~~	~~Dual Mount 20' Fiberglass~~ [1]	~~10.84~~
~~496~~	~~30' Tenon Top Concrete/Non-Flood Mount/1-4 Fixtures~~	~~12.44~~
~~497~~	~~16' Decorative Concrete w/decorative base/The Washington~~	~~21.77~~

BILLING TYPE	DESCRIPTION	CHARGE PER UNIT
490	Special Concrete 13' [1]	17.39
491	30' Tenon Top Conc, Triple Flood Mount/Includes Bracket	12.60
492	16' Smooth Decorative Concrete/The Colonial	8.99
493	19' White Aluminum [1]	25.87
494	46' Tenon Top Concrete/Non-Flood Mount/1-4 Fixtures	16.27
495	Dual Mount 20' Fiberglass [1]	10.84
496	30' Tenon Top Concrete/Non-Flood Mount/1-4 Fixtures	12.44
497	16' Decorative Concrete w/decorative base/The Washington	21.77
498	35' Tenon Top Concrete/Non-Flood Mount/1-4 Fixtures	13.37
499	16' Decorative Concrete-Vic II	13.07

(Continued on Page No. 7)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL
EFFECTIVE:

DUKE ENERGY.

SECTION NO. VI
~~ELEVENTH~~ TWELFTH REVISED SHEET NO. 6.283
CANCELS ~~TENTH~~ ELEVENTH REVISED SHEET NO. 6.283

RATE SCHEDULE LS-1
LIGHTING SERVICE
(Continued from Page No. 64)

III. Additional Facilities

BILLING TYPE

	Electrical Pole Receptacle [4]	
401	**Single**	$3.00 per unit
402	**Double**	$3.90 per unit

Notes to Per Unit Charges:

(1) Restricted to existing installations.
(2) Lumens output and wattage ratings may vary with lamp configuration and/or age ~~may vary with lamp configuration and age. Wattage ratings do not include ballast losses. Actual wattage may vary up to +/- 5 watts.~~
(3) Shown for information only. Energy charges are billed by applying the foregoing energy and demand charges to the total monthly kWh.
(4) Electric use permitted only during the period of October through January, only on poles designated by the Company. Energy charged separately. Customers must notify Company of installation of customer-owned receptacles prior to such installation.
(5) Special applications only.

Additional Charges:

Fuel Cost Recovery Factor:	See Sheet No. 6.105
Asset Securitization Charge Factor:	See Sheet No. 6.105
Gross Receipts Tax Factor:	See Sheet No. 6.106
Right-of-Way Utilization Fee:	See Sheet No. 6.106
Municipal Tax:	See Sheet No. 6.106
Sales Tax:	See Sheet No. 6.106

Minimum Monthly Bill:

The minimum monthly bill shall be the sum of the Customer Charge and applicable Fixture, Maintenance and Pole Charges.

Terms of Payment:

Bills rendered hereunder are payable within the time limit specified on bill at Company-designated locations.

Terms of Service:

Service under this rate schedule shall be for a minimum initial term of ten (10) years from the commencement of service and shall continue thereafter until terminated by either party by written notice sixty (60) days prior to termination. Upon early termination of service under this schedule, the customer shall pay an amount equal to the remaining monthly lease amount for the term of contract including Contribution in Aid of Construction ("CIAC") under Special Provision No.16, applicable Customer Charges and removal cost of the facilities.

Special Provisions:

1. The customer shall execute a contract on the Company's standard filed contract form for service under this rate schedule.

2. Where the Company provides a fixture or pole type other than those listed above, the monthly charges, as applicable shall be computed as follows:

I. Fixture
(a) Fixture Charge: 1.59% of the Company's average installed cost.
(b) Maintenance Charge: The Company's estimated cost of maintaining fixture.

II. Pole
Pole Charge: 1.82% of installed cost.

3. The customer shall be responsible for the cost incurred to repair or replace any fixture or pole which has been willfully damaged. The Company shall not be required to make such repair or replacement prior to payment by the customer for damage.

4 Maintenance Service for customer-owned fixtures at charges stated hereunder shall be restricted to fixtures being maintained as of November 1, 1992.

(Continued on Page No. ~~67~~ 7)

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL
EFFECTIVE: ~~May 8, 2018~~

DUKE ENERGY.

SECTION NO. VI
~~SIXTH~~ SEVENTH REVISED SHEET NO. 6.284
CANCELS ~~FIFTH~~ SIXTH REVISED SHEET NO. 6.284

RATE SCHEDULE LS-1
LIGHTING SERVICE
(Continued from Page No. ~~57~~)

Special Provisions: (Continued)

5. kWh consumption for Company-owned fixtures shall be estimated in lieu of installing meters. kWh estimates will be made using the following formula:

$$kWh = \frac{\text{Unit Wattage (including ballast losses) x 350 hours per month}}{1{,}000}$$

6. kWh consumption for customer-owned fixtures shall be metered. Installation of customer-owned lighting facilities shall be provided for by the customer. Any costs incurred by the Company to provide for consolidation of existing lighting facilities for the purpose of metering shall be at the customer's expense.

7. No Pole Charge shall be applicable for a fixture installed on a company-owned pole which is utilized for other general electrical distribution purposes.

8. The Company will repair or replace malfunctioning lighting fixtures maintained by the Company in accordance with Section 768.1382, Florida Statutes (2005).

9. For a fixture type and/or pole type restricted to existing installations and requiring major renovation or replacement, the fixture and/or pole shall be replaced by an available similar non-restricted fixture and/or pole and the customer shall commence being billed at its appropriate rate. Where the customer requests the continued use of the same fixture type and/or pole type for appearance reasons, the Company will attempt to provide such fixture and/or pole and the customer shall commence being billed at a rate determined in accordance with Special Provision No. 2 for the cost of the renovated or replaced fixture and/or pole.

10. The customer will be responsible for trimming trees and other vegetation that obstruct the light output from fixture(s) or maintenance access to the facilities.

11. After December 31, 1998, all new leased lighting shall be installed on poles owned by the Company.

12. Alterations to leased lighting facilities requested by the customer after date of installation (i.e. redirect, install shields, etc.), will be billed to the customer in accordance with the Company's policy related to "Work Performed for the Public".

13. Service for street or area lighting is normally provided from existing distribution facilities. Where suitable distr bution facilities do not exist, it will be the customer's responsibility to pay for necessary additional facilities. Refer to Section III, paragraph 3.01 of the Company's General Rules and Regulations Governing Electric Service to determine the CIAC owed by the customer.

14. Requests for exchanging facilities, upgrades, relocations, removals etc. are subject to Section III, paragraph 3.05, of the Company's General Rules and Regulations Governing Electric Service.

15. For available LEDs, the customer may opt to make an initial, one-time Contribution in Aid of Construction payment of 50% of the installed cost of fixtures rated greater than 200 Watts and/or poles other than standard wood poles, to reduce the Company's installed cost. If a customer chooses this option, the monthly fixture and/or pole charge shall be computed as the reduced installed cost times the corresponding monthly percentage in 2.I.(a) and/or 2.II above.

16. As an alternative to making an initial one-time CIAC payment to extend distribution facilities to render lighting service, as referenced in Special Provision No. 13, the customer may elect to pay a monthly fee of 1.59% of the calculated CIAC amount.

ISSUED BY: Javier J. Portuondo, Managing Director Rates & Regulatory Strategy – FL
EFFECTIVE: ~~May 8, 2018~~

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: February 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Merryday)
Office of the General Counsel (Nieves)

RE: Docket No. 20190024-EI – Petition for approval of a smart meter opt-out tariff, by Tampa Electric Company.

AGENDA: 03/05/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/18/19 (60-day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On January 18, 2019, Tampa Electric Company (TECO or utility) filed a petition for approval of a smart meter opt-out tariff (opt-out tariff). The proposed tariff would be available to customers who choose to receive a non-communicating meter in lieu of the standard smart meter, or Automated Meter Infrastructure (AMI) smart meter.

On November 16, 2017, the Commission approved TECO's 2017 Amended and Restated Stipulation and Settlement Agreement (2017 Settlement), which allows TECO to apply existing depreciation rates to AMI meters if they are installed before the utility's next depreciation study.[1] Paragraph 12 of the 2017 Settlement allows the utility to file the proposed opt-out tariff as the tariff and associated charges are optional to customers.

[1] Order No. PSC-2017-0456-S-EI, issued November 27, 2017, in Docket No. 20170210-EI; *In re: Petition for limited proceeding to approve 2017 amended and restated stipulation and settlement agreement, by Tampa Electric Company.*

TECO's current residential meters are Automated Meter Reading (AMR) meters that emit a radio frequency signal. That signal is picked up by a meter reading vehicle driving by the neighborhood. Current commercial customers primarily have digital, non-communicating meters that require monthly meter reading visits. The utility states that the scope of the AMI project is to upgrade all meters in TECO's service territory to AMI meters.

The utility expects that some customers will elect to forego the new AMI meters and request a non-communicating meter; therefore, TECO filed the instant petition and associated opt-out tariff. The opt-out tariff would be applicable to customers that request a non-communicating, i.e., non-standard, meter and includes an initial one-time set-up fee of $96.27 and a monthly surcharge of $20.64. The proposed charges are based on TECO's incremental costs to provide the opt-out service.

The Commission approved similar opt-out tariffs and charges for Florida Power & Light Company (FPL) in 2015[2] and Duke Energy Florida, LLC (Duke) in 2018.[3] FPL's opt-out tariff includes an $89.00 one-time set-up fee with a $13.00 monthly surcharge. Duke's opt-out tariff includes a $96.34 one-time set-up fee with a $15.60 monthly surcharge. Several municipal electric utilities (City of Lakeland and Orlando Utilities Commission) and rural electric cooperatives (Sumter Electric, Talquin Electric, Tri-County Electric, and Peace River) also provide opt-out tariffs.

On February 8 and 15, 2019, TECO responded to staff's data requests. The legislative version of the opt-out tariff sheet No. 3.280 is shown in Attachment A to the recommendation.[4] The Commission has jurisdiction pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

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[2] Order No. PSC-15-0026-FOF-EI, issued on January 7, 2015, in Docket No. 130223-EI; *In re: Petition for approval of optional non-standard meter rider, by Florida Power & Light Company.*

[3] Order No. Order PSC-2018-0435-TRF-EI, issued on August 28, 2018, in Docket No. 180088-EI; *In re: Petition for limited proceeding for approval of a smart meter opt-out tariff, by Duke Energy Florida, LLC.*

[4] TECO's petition included other non-substantive tariff changes that have not been attached to the recommendation.

Discussion of Issues

Issue 1: Should the Commission approve TECO's proposed opt-out tariff?

Recommendation: Yes, the Commission should approve TECO's proposed opt-out tariff as shown in Attachment A. This tariff allows TECO to respond to customer requests for a non-communicating meter. Opt-out customers will be responsible for all costs associated with their request, thus protecting the general body of ratepayers. Additionally, the proposed opt-out tariff is in accordance with previous Commission decisions.

The tariff should become effective when TECO completes the billing system changes to implement the tariff, which is expected to be in the third quarter of 2019. TECO should notify Commission staff when the billing system changes are completed. Within three months after the AMI smart meter deployment is completed, TECO should report to the Commission (with a filing in this docket) on the costs of the program, revenues, and actual participation. (Merryday)

Staff Analysis: TECO began installing AMI meters in January 2017 with the goal of converting all of its existing drive-by AMR meters to AMI meters by 2021. The utility states that customers are currently being granted the option of not having their meters replaced and are being told that there are currently no charges imposed for taking advantage of this option; however, they are being informed that it is expected that such charges will be authorized and collected in the future. The instant petition seeks to approve the tariff to implement such charges at a later date.

The proposed tariff includes two separate fees: a one-time set-up fee of $96.27 (for the non-standard meter installation) and a monthly surcharge of $20.64 (for upfront IT costs and monthly meter readings). The set-up fee must be paid at the time the customer takes service under the opt-out tariff, regardless of the length of time the customer is enrolled; however, the utility explained that customers that have already rejected an AMI meter will not be assessed any opt-out tariff fees until the tariff is effective and a non-standard meter is installed (expected to be sometime in the third quarter of 2019). TECO states that this will allow customers time to elect to either continue or abandon their prior opt-out selection. These charges will be in addition to all other tariffed rates and charges applicable to an opt-out customer.

Customer Participation

TECO anticipates that approximately 0.2 percent – or 1,620 – of its approximate 810,000 customers will elect to opt out. The utility explained that TECO is experiencing a current opt-out rate of 0.27 percent and anticipates a reduction in participation if the fees in the instant petition are introduced. As of December 31, 2017, FPL had 5,966 customers enrolled in its smart meter opt-out tariff, which represented a 0.12 percent customer participation rate. Duke anticipated 0.15 percent – about 2,700 – of its 1.8 million eligible customers would opt out. The projected number of opt-out customers is used in developing the monthly surcharge.

Set-up Fee

The one-time set-up fee of $96.27 reflects the labor, transportation, and initial IT set-up costs to install each non-standard meter and enroll the customer in the opt-out program. In response to staff's data request, TECO indicated that no new positions would be created to perform the

incremental tasks associated with administering the opt-out tariff. Customers would not be required to pay the $96.27 set-up fee if an approved non-communicating meter already exists at customer premises or if customers relocate to premises with an approved non-communicating meter.

The set-up fee is applicable to all opt-out tariff participants regardless of duration of service under the opt-out tariff. The breakdown of the set-up fee components is as follows:

Table 1-1
Set-up Fee Cost Components

Task	Time Per Customer	Cost Per Customer	Description
Customer Service	10 minutes	$5.28	Customer Care Specialist to take calls for opt-out participants, explain tariff details, set up account, and handle initial questions/issues to support re-route.
Perform analysis to re-route meter	45 minutes	$27.00	Billing Specialist to analyze and plan approach to re-route meters, move meters to new route, and validate billing is correct.
Planner Dispatcher to reroute meter	5 minutes	$4.05	Planner/Dispatcher to move meter into new route upon direction from Billing Specialist.
Meter Field Rep to exchange meter	40 minutes	$29.15	Meter Field Rep to travel to customer premise, remove existing meter and replace with opt-out meter, close work orders.
Vehicle to exchange meter	40 minutes	$2.76	Use of a vehicle to change out meter.
IT developer to complete initial setup for opt-out customer	n/a[5]	$28.03	IT development work to prepare for customer sign-up for the opt-out program
Total one-time cost per customer		$96.27	

Source: Exhibit A to TECO's petition

TECO provided support for the time per customer based on each of the tasks to be performed. Staff believes the time estimates to be reasonable. The cost per customer is calculated by

[5] TECO requested confidentiality on the negotiated IT contractor information.

multiplying the time to complete the task by the hourly rate of the job performer. TECO provided cost support for its hourly rates which includes the confidential annual salary, payroll tax, benefits, pension, and incentives (bonus payments). Staff reviewed hourly rate information provided by TECO in its 2013 rate case[6] and believes the hourly rates included in this docket are reasonable. Furthermore, TECO's salaries and vehicle rates are comparable to those approved for FPL's and Duke's opt-out charges.

Monthly Surcharge

The monthly surcharge to take service under the opt-out tariff is $20.64, which reflects a combination of ongoing IT and meter reading related costs. TECO's IT costs to update the customer system to enable and support the opt-out program are predicted to be $407,966. TECO used a 5-year recovery period for these IT costs (which is the same recovery period the Commission approved for FPL's and Duke's opt-out tariff) to derive monthly IT related costs of $6.35 per customer.

After installation of a non-standard meter, the only ongoing costs to the utility will be the monthly meter readings, which the utility estimates to be $14.29 per customer. These costs reflect the meter reading position rates and the vehicle rates, both for an estimated 20 minutes per meter reading.

Customer Notice and Deployment

The utility states that AMI deployment began in January 2017 with the goal of converting all of its existing drive-by AMR meters to AMI meters by 2021. TECO explained that customers are currently being granted the option of not having their AMR meters replaced with an AMI meter and are being told that there are currently no charges for taking advantage of this option. TECO also informed customers that if the Commission approves an opt-out tariff, any approved opt-out charges will apply. TECO states that customers who have opted out during the AMI deployment process will be contacted when the opt-out tariff becomes effective. If the customers continue to desire to opt out, they will be enrolled in the opt-out tariff, receive a non-communicating meter, and be assessed the applicable tariffed charges.

TECO states that the utility will communicate to customers the deployment logistics of the AMI meters and provide them with facts to help them understand AMI technology. TECO's communication process includes information on the utility's website, door hangers, and mail notifications.

Reporting

Staff recommends that within three months after the AMI meter deployment is completed, TECO should report to the Commission on the costs of the program, revenues, and actual participation. Staff believes three months is a reasonable time to allow TECO to prepare and file a report in this docket, which should happen no later than May 31, 2022. IF AMI meter deployment is significantly delayed beyond the utility's anticipated completion date, the utility should notify the Commission with a filing in this docket.

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[6] Docket No. 130040-EI; *In re: Petition for rate increase by Tampa Electric Company.*

Staff notes that FPL is required to file annual smart meter progress reports. The Commission did not require Duke to file annual smart meter progress reports, but rather submit a filing in that docket three months after the AMI meter deployment is completed. As with Duke, staff believes that actual participation rates and costs may vary, and that a comparison of estimated costs presented in this petition and actual costs incurred is important to ensure the opt-out tariff remains cost-based or else should be adjusted through a revised tariff filing.

Conclusion

In the order approving FPL's opt-out tariff, the Commission noted that "since significant incremental costs would be incurred in providing [an opt-out tariff], it would be discriminatory to require standard meter customers to subsidize that service."[7] Staff believes that TECO provided sufficient cost support in its petition and responses to staff's data requests to support its assertion that the proposed tariff is cost-based.

The Commission should approve TECO's proposed opt-out tariff as shown in Attachment A. This tariff allows TECO to respond to customer requests for a non-communicating meter. Opt-out customers will be responsible for all costs associated with their request, thus protecting the general body of ratepayers. Additionally, the proposed opt-out tariff is in accordance with previous Commission decisions.

The tariff should become effective when TECO completes the billing system changes to implement the tariff, which is expected to be in the third quarter of 2019. TECO should notify Commission staff when the billing system changes are completed. Within three months after the AMI smart meter deployment is completed, TECO should report to the Commission (with a filing in this docket) on the costs of the program, revenues, and actual participation.

[7] Order No. PSC-15-0026-FOF-EI, issued on January 7, 2015, in Docket No. 130223-EI; *In re: Petition for approval of optional non-standard meter rider, by Florida Power & Light Company.*

Issue 2: Should this docket be closed?

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

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

TAMPA ELECTRIC COMPANY
EXHIBIT B

TECO TAMPA ELECTRIC AN EMERA COMPANY

ORIGINAL SHEET NO. 3.280

NON-STANDARD METER SERVICE RIDER (AMI OPT-OUT)

(Optional)

Schedule: NSMR-1

Availability: To all customers served throughout the Company's service area.

Applicable: This optional Rider Is available to customers who request a meter that either does not utilize radio frequency communications to transmit data or is otherwise required to be read manually provided that such a meter is available for use by the Company. Meters to be read manually shall be a non-communicating meter. The meter manufacturer and model chosen to service the customer's ("AMI Opt-Out Customer") premise are at the discretion of the Company and are subject to change at the Company's option at any time.

Character of Service: Electric energy supplied hereunder must meet the Character of Service and usage specifications consistent with service under the AMI Opt-Out Customers otherwise applicable tariff.

Rate:

Initial Set-Up Fee (one-time service fee)	$96.27
Rate per month	$20.64

All charges and provisions of the AMI Opt-Out Customer's otherwise applicable rate schedule shall also apply.

Limitation of Service: This Rider Is not available to Net Metered customers. This Rider Is also not available to customers who have tampered with the electric metered service or used service in a fraudulent or unauthorized manner at the current or any prior location. Service under this Rider is subject to orders of governmental bodies having jurisdiction and Company rules and regulations governing service.

Term of Service: Not less than one (1) billing period. The Company reserves the right to terminate this Rider at any time upon notice to the Customer for violation of any of the terms or conditions of this rider.

Special Provisions: Customers taking service under this Rider relocating to a new premise who wish to continue service under this Rider are required to request new service under this Rider, including payment of the Initial Set-Up Fee at the new premise except In the Instance where the previous customer at that premise had an approved non-communicating meter already in place. Customers wishing to take service under this Rider and relocating to a premise where an existing approved non-communicating meter Is already In place will not be required to pay the Initial Set-Up Fee. Customers who cancel service under this Rider and then later re-enroll for this service at any location would be required to submit another Initial Set-Up Fee.

ISSUED BY: N. G. Tower, President

DATE EFFECTIVE:

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