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Commission Conference Agenda
October 3, 2019

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Commission Conference Agenda
October 3, 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: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Richards, D. Buys, Cicchetti)
Office of the General Counsel (Schrader, Lherisson)

RE: Docket No. 20190158-EI - Application for authority to issue and sell securities during calendar year 2020, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Gulf Power Company.

AGENDA: 10/3/2019 - Consent Agenda - Final Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following application for authority to issue and sell securities on the consent agenda for approval.

Docket No. 20190158-EI – Application for authority to issue and sell securities during calendar year 2020, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Gulf Power Company (Gulf or Company).

Gulf seeks authority to issue and sell and/or exchange any combination of long-term debt and equities; and issue and sell short-term debt securities during 2020. The amount of equity securities issued and the maximum principal amount of long-term debt securities issued will not, in aggregate, exceed more than $1.5 billion during the calendar year 2020. The maximum aggregate principal amount of short-term debt at any one time will total not more than $800 million during the calendar year 2020.

In connection with this application, Gulf confirms that the capital raised pursuant to this application will be used in connection with the regulated electric operations of Gulf and not the unregulated activities of the Company or its affiliates.

Staff has reviewed Gulf's projected capital expenditures. The amount requested by the Company ($2.3 billion) exceeds its expected capital expenditures ($1.047 billion). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility for unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances. Staff believes the requested amounts are reasonable. Staff recommends Gulf's petition to issue securities during calendar year 2020 be approved.

For monitoring purposes, this docket should remain open until May 7, 2021, to allow the Company time to file the required Consummation Report.

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: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

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

RE: Docket No. 20190157-EI - Application for authority to issue and sell securities during calendar years 2020 and 2021, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company and Florida City Gas.

AGENDA: 10/3/2019 - Consent Agenda - Final Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following application for authority to issue and sell securities on the consent agenda for approval.

Docket No. 20190157-EI - Application for authority to issue and sell securities during calendar years 2020 and 2021, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company and Florida City Gas.

Florida Power & Light Company (FPL or Company) seeks authority to issue and sell and/or exchange any combination of long-term debt and equity securities and/or to assume liabilities or obligations as guarantor, endorser or surety in an aggregate amount not to exceed $6.35 billion during calendar year 2020.

In addition, FPL seeks permission to issue and sell short-term securities during the calendar years 2020 and 2021 in an amount or amounts such that the aggregate principal amount of short-term securities outstanding at the time of and including any such sale shall not exceed $4.1 billion.

Florida City Gas (FCG) seeks Commission approval to make long-term borrowings from FPL in an aggregate amount not to exceed $250 million in principal at any one time during 2020 and make short-term borrowings from FPL in an aggregate amount not to exceed $100 million in principal at any one time during calendar years 2020 and 2021.

In connection with this application, FPL confirms that the capital raised pursuant to this application will be used in connection with the regulated activities of FPL and FPL's subsidiaries, including FCG, and not the nonregulated activities of its subsidiaries or affiliates.

Staff has reviewed the Company's projected capital expenditures. The amount requested by the Company ($10.45 billion, of which $350 million is for FCG) exceeds its expected capital expenditures ($6.058 billion in 2020). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility for unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends FPL's petition to issue securities be approved.

For monitoring purposes, this docket should remain open until May 7, 2021, to allow the Company time to file the required Consummation Report.

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: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Williams)
Office of the General Counsel (Weisenfeld)

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 10/3/2019 - 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.
20190161-TX	Vector Axis Florida LLC	8940

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.

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: September 19, 2019

TO: Docket Nos. 20190150-TX and 20190151-TX – Application(s) for Certificate to Provide Telecommunications Service.

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 08314-2019 was filed on August 22, 2019, for the September 5, 2019 Commission Conference.

Due to the approach of Hurricane Dorian and its potential threat to areas throughout the State of Florida, the Commission's Conference set for Thursday, September 5, 2019, was cancelled. Dockets scheduled for consideration at that conference were deferred to the October 3, 2019, Commission Conference.

Accordingly, this item has been placed on the agenda for the October 3, 2019 Commission Conference, and staff's previously filed memorandum is attached.

/ajt

Attachment

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Williams, Yglesias de Ayala)
Office of the General Counsel (Trice, Murphy)

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 9/5/2019 - 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.
20190150-TX	Metro Fibernet, LLC d/b/a MetroNet	8938
20190151-TX	NGA 911, L.L.C.	8939

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: September 19, 2019

TO: Docket No. 20190041-WS – Proposed adoption of Rule 25-30.0115, F.A.C., Definition of Landlord and Tenant.

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk AT

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 08326-2019 was filed on August 27, 2019, for the September 5, 2019 Commission Conference.

Due to the approach of Hurricane Dorian and its potential threat to areas throughout the State of Florida, the Commission's Conference set for Thursday, September 5, 2019, was cancelled. Dockets scheduled for consideration at that conference were deferred to the October 3, 2019, Commission Conference.

Accordingly, this item has been placed on the agenda for the October 3, 2019 Commission Conference, and staff's previously filed memorandum is attached.

/ajt

Attachment

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: August 27, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (King) AK SML.
Division of Economics (Guffey, Coston) S.K.G. WEC JZH

RE: Docket No. 20190041-WS – Proposed adoption of Rule 25-30.0115, F.A.C., Definition of Landlord and Tenant.

AGENDA: 09/05/19 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

RULE STATUS: Proposal may be deferred

SPECIAL INSTRUCTIONS: None

Case Background

At the January 8, 2019 Agenda Conference, staff brought a recommendation to the Commission in Docket No. 20180142-WS recommending that the Commission issue an order to show cause to Palm Tree Acres for providing water and wastewater services without a certificate of authorization in contravention of Section 367.031, Florida Statutes (F.S.).[1] The core issue was whether Palm Tree Acres is a utility subject to the Commission's jurisdiction.

Section 367.021(12), F.S., defines a utility subject to the Commission's jurisdiction as "every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation," except for those individuals and entities

[1] Document No. 07686-2018, filed in Docket No. 20180142, *Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for Noncompliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C.*

exempted from Commission regulation as a utility in Section 367.022, F.S. Palm Tree Acres argued that it was one of the entities exempted from Commission regulation under Section 367.022, F.S. Specifically, it argued that it fit the exemption in Section 367.022(5), F.S., which provides that "[l]andlords providing service to their tenants without specific compensation for the service" are exempt from the Commission's jurisdiction.

Staff and certain residents of Palm Tree Acres argued that Palm Tree Acres was not a landlord as that term is used in Section 367.022(5), F.S., nor were the residents that owned their lots tenants.

Four days before the January 8, 2019 Agenda Conference, Palm Tree Acres sent the Commission a letter arguing that staff's interpretation of "landlord" and "tenant" in Section 367.022(5), F.S., constituted a rule of general applicability that was not adopted pursuant to the requirements of the Administrative Procedure Act. Thus, if the Commission pursued enforcement action via staff's interpretation of Section 367.022(5), F.S., Palm Tree Acres would initiate an unadopted rule challenge. Palm Tree Acres reinforced this intention at the January 8, 2019 Agenda Conference.

At the January 8, 2019 Agenda Conference, the Commission voted to defer consideration of staff's recommendation and initiated rulemaking to explore the possibility of adopting a rule defining "landlord" and "tenant" as used in Section 367.022(5), F.S.

Notice of initiation of rulemaking appeared in the February 15, 2019 edition of the Florida Administrative Register (vol. 45, issue 32). The notice also set the time and place for a staff-led rule development workshop, which was held on March 4, 2019. The workshop was attended by representatives from the Florida Manufactured Housing Association (FMHA); the Goss family, who owns several mobile home parks in Florida, including Palm Tree Acres; and the Office of Public Counsel (OPC). All three filed post-workshop comments on March 18, 2019.

This recommendation addresses whether the Commission should propose the adoption of a new rule to define the terms "landlord" and "tenant" in Section 367.022(5), F.S. The Commission has jurisdiction pursuant to Sections 120.54, 367.121(1)(f), and 367.022, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the adoption of Rule 25-30.0115, F.A.C., Definition of Landlord and Tenant?

Recommendation: Yes, the Commission should propose the adoption of Rule 25-30.0115, F.A.C., as set forth in Attachment A. Additionally, the Commission should certify the rule as a minor violation rule. (King, Guffey)

Staff Analysis: Section 367.021(12), F.S., defines a utility subject to the Commission's jurisdiction as "every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." Section 367.022, F.S., provides exemptions from Commission regulation for a finite group of individuals and entities. Section 367.022(5), F.S., contains an exemption for "[l]andlords providing service to their tenants without specific compensation for the service." Staff is recommending that the Commission propose a new rule that would define the terms "landlord" and "tenant," as used in that exemption. As set forth in Attachment A, staff's recommended rule language reads as follows:

> **25-30.0115 Definition of Landlord and Tenant**
>
> As used in Section 367.022(5), F.S.:
>
> (1) "landlord" is the party who conveys a possessory interest in real property to a tenant by way of a lease and who provides water and/or wastewater service to the tenant at that property; and
>
> (2) "tenant" is the party to whom the possessory interest in real property is conveyed by the landlord by way of a lease and who receives water and/or wastewater service from the landlord at that property.

The recommended language is based on the plain and ordinary meaning of landlord and tenant, and related terms, as defined by the eleventh edition of Black's Law Dictionary. Black's Law Dictionary defines landlord as "[s]omeone who rents a room, building, or piece of land to someone else." A lessor, which Black's deems a synonym to landlord, is "[s]omeone who conveys real or personal property by lease." A tenant is "[s]omeone who holds or possesses lands or tenements by any kind of right or title." And a lessee is "[s]omeone who has a possessory interest in real or personal property under a lease."

Finally, Black's also defines a "landlord-tenant relationship." The relationship is created by lease, either express or implied, and must include "a landlord's reversion, a tenant's estate, [and] transfer of possession and control of the premises." During the rulemaking process, staff used the word "agreement" instead of "lease" in discussions of potential rule language. However, staff recommends using "lease" instead of "agreement" because the former is more precise.

The only addition staff made to these dictionary definitions was a clause mandating that the landlord provide and the tenant receive the water and wastewater services at the conveyed property. This requirement comports with a plain reading of the text of Section 367.022(5), F.S., and the Legislature's declared intent of Commission regulation of water and wastewater utilities as it appears in Section 367.011, F.S.

Staff's recommended definitions of landlord and tenant are also consistent with previous Commission practice.[2] The decision in Order No. PSC-92-0746-FOF-WU is on point. In that case, the Commission denied Gem Estates' request for an exemption from Commission jurisdiction under Section 367.022(5), F.S., because the mobile home owners in Gem Estates owned their own land.[3] Because the residents owned their lots, the subdivision owner was not a landlord.

Stakeholder Comments

Staff received comments from the Goss family, FMHA, and OPC. OPC and the Goss family also submitted suggested changes to staff's recommended language. The Goss family and FMHA disagreed with staff's recommended language, and the Goss family's suggested language is substantially different from staff's recommended language. OPC, on the other hand, generally agreed with staff's recommended language, but made one suggested change that does not change the substance of staff's recommended language.

The Goss family owns 27 mobile home parks in Florida, including Palm Tree Acres. The crux of its argument is that staff's definitions of landlord and tenant are too narrow and ignore certain landlord-tenant relationships recognized in Chapter 723, F.S. Consistent with its argument that both mobile home park and mobile home subdivision owners should be considered landlords, the Goss family suggests the following changes to staff's recommended language:

> (1) "landlord" is the party who conveys a possessory interest in, *or access to,* real property to a tenant by way of agreement[4] between the two parties and

[2] *E.g.*, Order 24806, issued July 11, 1991, in Docket 19910385-SU, *In re: Request for exemption from Florida Public Service Commission regulation for a wastewater treatment plant in Highlands County by Oak Leafe Wastewater Treatment Plant* (noting "some of Oak Leafe's residents will own their lots," citing the definition for "tenant" in Section 83.43(4), F.S., and declaring that Oak Leafe will not provide service solely to tenants); Order 21711, issued August 10, 1989, in Docket No. 19890514-WS, *In Re: Request by Rubidel Recreation, Inc. for Exemption from FPSC Regulation for Water and Sewage Treatment Facilities in Lake County* ("Because there will be property owners in the [utility's] service area . . . , . . . the utility does not meet the requirements of [the exemption in Section 367.022(5), F.S.]."); *see, e.g.*, Order 24311, issued April 2, 1991, in Docket No. 1990733-WS, *In Re: Request for Exemption from Florida Public Service Commission Regulation for Water and Wastewater Systems in Lake County by Stewart/Barth Utility* (holding that the utility was not a landlord for the tenants of condominiums not owned by the utility); Order 23150, issued July 5, 1990, in Docket No. 19870060-WS, *In re: Resolution by Board of Sumter County Commissioners declaring Sumter County subject to jurisdiction of Florida Public Service Commission* (deciding that a mobile home park owner qualified as a landlord where several of its residents possessed their lots under 99-year leases).

[3] Issued August 4, 1992, in Docket No. 19920281-WU, *In re: Request for exemption from Florida Public Service Commission regulation for provision of water service by Gem Estates Water System in Pasco County*.

[4] As previously discussed, the word "agreement" was used in earlier drafts of the rule, but staff is recommending that the proposed rule use "lease" instead of "agreement" because the former is more precise.

> who provides water and/or wastewater service to the tenant *as part of that conveyance* ~~at that property~~; and
>
> (2) "tenant" is the party to whom the possessory interest in, *or access to*, real property is conveyed by the landlord and who receives water and/or wastewater service from the landlord *as part of that conveyance* ~~at that property~~.

The Florida Mobile Home Act

The Goss family's suggested language, which is based mainly on Chapter 723 of the Florida Statutes, is substantially different from staff's recommended language. Specifically, the Goss family argues that Chapter 723, also known as the Florida Mobile Home Act, labels mobile home subdivision owners as landlords and labels owners of lots in that subdivision as tenants. Therefore, the Goss family argues the Commission should likewise recognize mobile home subdivision owners as landlords in interpreting the exemption in Section 367.022(5), F.S. FMHA echoed this argument in its post-workshop comments, but it did not suggest specific rule language.

The Goss family supports this argument with the example of Palm Tree Acres, which is both a mobile home park and a mobile home subdivision regulated under Chapter 723. The Goss family argues that Palm Tree Acres is a landlord in its capacity as a mobile home subdivision because even though it does not rent the lot owners their lots, it is renting the lot owners access to and use of common amenities in the park/subdivision. This argument trades on a conflation of two terms of property law: license and lease.

> A tenant under a lease is one who has been given a possession of land which is "exclusive even of the landlord except as the lease permits his entry, and saving always the landlord's right to enter to demand rent or to make repairs." A licensee is one who has a "mere permission to use land, dominion over it remaining in the owner and no interest in or exclusive possession of it being given" to the occupant.

Turner v. Fla. State Fair Auth., 974 So. 2d 470, 473–74 (Fla. 2d DCA 2008) (quoting *Seabloom v. Krier*, 219 Minn. 362, 18 N.W.2d 88, 91 (1945)); *License*, Black's Law Dictionary (11th ed. 2019). Staff believes that by granting lot owners *access to and use of* a park's common areas, a mobile home subdivision owner creates a licensor-licensee relationship rather than a landlord-tenant relationship. *See Napoleon v. Glass*, 229 So. 2d 883, 885 (Fla. 3d DCA 1969).

To conform the Commission's definitions of landlord and tenant to the Goss family's interpretation of Chapter 723, F.S., the Goss family's suggested rule language, unlike staff's recommended language, does not include the phrase "at the property." Instead, the Goss family suggests that the definitions require that the provision water and wastewater services be part of the conveyance to the lot owners of access to or use of other property and services.

However, the landlord/tenant exemption makes little sense if the water and wastewater services are not provided at the leased property. In Section 367.011(3), F.S., the Legislature specifically declared that Commission regulation of water and wastewater utilities is predicated on concerns about public health, safety, and welfare. Such concerns arise in the context of public utilities

because the service is essential and the customer only has one choice of provider at any given location. But a tenant purchasing water and wastewater services from his or her landlord for delivery at the real property conveyed by the parties' lease has the ability to switch utilities by moving at the end of the lease. Landowners lack this ability because to move they would have to sell their property, presumably at a significant loss if the sole utility provides subpar services, charges excessive rates, or disconnects service to the property.

Additionally, staff disagrees with the broader arguments of the Goss family and FMHA that Chapter 723 defines mobile home subdivision owners as landlords and the owners of lots mobile home subdivisions as tenants. Chapter 723 is aimed primarily at regulating the relationship between a mobile home park owner and a mobile home owner who rents a lot from the park. *See* § 723.004, F.S. (finding there are factors unique to the relationship between a mobile home park owner and one who rents a lot from a mobile home park owner). Given the plain and ordinary definition of a landlord-tenant relationship is based on the conveyance of a possessory interest in real property, it should be no surprise that those terms would appear in statutes primarily regulating a relationship in which one person—a mobile home park owner—conveys a possessory interest in real property to another—a mobile home owner. The Goss family appears to argue that because Section 723.002(2), F.S., applies 8 of Chapter 723's almost 70 sections to mobile home subdivision owners and owners of lots in mobile home subdivisions, that somehow a landlord-tenant relationship is created between the subdivision owner and the lot owner. However, none of those 8 sections create a landlord-tenant relationship between mobile home subdivision owners and lot owners.

It is telling that the Goss family relies mainly on Section 723.058(3), F.S., to support its argument that Chapter 723 labels mobile home subdivision owners as landlords. That section provides that

> No mobile home owner, owner of a lot in a mobile home subdivision, or purchaser of an existing mobile home located within a park or mobile home subdivision, as a condition of tenancy, or to qualify for tenancy, or to obtain approval for tenancy in a mobile home park or mobile home subdivision, shall be required to enter into, extend, or renew a resale agreement.

At best, Section 723.058(3), F.S., uses the terms "lot owner" and "tenancy" in the same sentence. However, nowhere does Section 723.058(3), F.S., define a lot owner as a tenant or a subdivision owner as a landlord. The term "tenancy" is used, not as a term of art, but colloquially as a term to describe one's ability to take up residence in the park/subdivision. In short, the section prohibits a mobile home park or subdivision owner from conditioning one's ability to reside in the park or subdivision on the execution of a resale agreement. Using Section 723.058(3), F.S., to imply that the entire chapter is intended to create a landlord-tenant relationship between a mobile home subdivision owner and a lot owner is not supported by the law.

Additionally, staff believes it is outside the scope of the Commission's statutory authority to interpret Section 367.022(5), F.S., in a way that goes beyond the plain and ordinary meaning of the terms used by the Legislature in that section. Nothing in Chapters 723 or 367 indicate that the Commission should refer to Chapter 723 in defining terms used in Section 367.022(5), F.S.

Moreover, as discussed above, the Commission has consistently used the plain and ordinary meaning of the terms "landlord" and "tenant" when applying Section 367.022(5), F.S.

The Cost of Regulation

The Goss family and FMHA's second argument is that regulating mobile home subdivisions as utilities will saddle the subdivision's residents with much higher costs for water and wastewater services; therefore, the Commission should interpret "landlord" and "tenant" in a way that avoids imposing these costs. In a May 4, 2018 letter to the Commission's General Counsel, FMHA argued that staff's interpretation of Section 367.022(5), F.S., would subject "many of its member[]" parks and subdivisions to costly regulation. But in its post-workshop comments, FMHA stated that it could identify few parks and subdivisions, if any, that would be subject to regulation under staff's recommended rule.

The Goss family again turned to Palm Tree Acres as an example of these increased costs. It presented analysis showing that Palm Tree Acres' 19 lot owners would pay approximately $469 per month for water and wastewater services if Palm Tree Acres was regulated by the Commission. However, it appears that the analysis allocates regulatory costs to only those 19 customers, even though the utility currently has 244 customers. If the analysis had properly allocated those costs to all 244 customers, the monthly cost for those 19 customers would likely be considerably lower.

Staff has considered the stakeholder comments regarding the alleged increased costs of regulation, but finds them unpersuasive. First, as explained above, staff's recommended language is consistent with previous Commission practice. The scope of the Commission's jurisdiction remains unchanged, which means the rule would not bring any entities under the Commission's jurisdiction that were not previously subject to its jurisdiction.

Second, as explained above, the Goss family's suggested changes are not consistent with the plain and ordinary meaning of the terms landlord and tenant. Staff recommends definitions that hew to the plain and ordinary definitions of those words as found in Black's Law Dictionary for two reasons. One, Florida courts have developed well-established law guiding statutory interpretation that is based on using the plain and ordinary meaning of words as discerned by dictionaries. *W. Fla. Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 8–9 (Fla. 2012). Two, the Commission's interpretation of statutes is no longer afforded deference when reviewed by courts. Art. V, § 21, Fla. Const.; *Citizens v. Brown*, 269 So. 3d 498, 504 (Fla. 2019). Therefore, if a court was asked to review the Commission's interpretation of Section 367.022(5), F.S., as embodied in Rule 25-30.0115, F.A.C., the validity of the Commission's interpretation would depend almost completely on whether its interpretation conformed to the well-established rules of statutory interpretation used by courts. *See W. Fla. Reg'l Med. Ctr.*, 79 So. 3d at 8–9.

The Commission's rules are designed to implement the purposes of statutes. Many of those statutes contain broad policy goals that afford the Commission discretion in crafting programs to achieve those purposes. But Section 367.022, F.S., is different. It prescribes the Commission's jurisdiction in clear and definite terms. It does not give the Commission discretion to decide the limits of its jurisdiction. When the terms of a statute are plain and unambiguous, changing that plain meaning is solely within the purview of the Legislature.

Written or Oral Agreements

OPC largely agreed with staff's proposed rule language. It did, however, suggest the following change: "(1) 'landlord' is the party who conveys a possessory interest in real property to a tenant by way of agreement,[5] either written or oral, and who provides water and/or wastewater service to the tenant at that property . . . ."

OPC's concern is that, in the absence of its suggested addition, a landlord-tenant relationship could be limited based on whether the lease is written or oral. Staff recommends the Commission determine that this clarification is unnecessary. A lease of real property can be made orally[6] or in writing, and the current language incorporates both.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the agency head must certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Under Section 120.695(2)(b), F.S., a violation of a rule is minor if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Rule 25-30.0115, F.A.C., will be a minor violation rule. The rule is purely informational; therefore, a violation will not result in economic or physical harm to a person or an adverse effect on the public health, safety, or welfare or create a significant threat of such harm. Therefore, for the purposes of filing the rule for adoption with the Department of State, staff recommends that the Commission certify proposed Rule 25-30.0115, F.A.C., as a minor violation rule.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54(3)(b)1., F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after implementation. The adoption of this rule will not cause any of the impact/cost criteria to be exceeded.

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

In addition, the SERC states that the rule would have no impact on small businesses, would have no implementation or enforcement cost on the Commission or any other state and local government entity, and would have no impact on small cities or small counties. The SERC states

[5] As previously discussed, the word "agreement" was used in earlier drafts of the rule, but staff is recommending that the proposed rule use "lease" instead of "agreement" because the former is more precise.
[6] Florida's Statute of Frauds, which can be found in Section 725.01, F.S., limits an oral lease of real property to a length of one year or less.

that there will be no transactional costs likely to be incurred by individuals and entities required to comply with the requirements.

Conclusion

The Commission should propose the adoption of Rule 25-30.0115, F.A.C., as set forth in Attachment A. Additionally, the Commission should certify the rule as a minor violation rule.

Issue 2: Should this docket be closed?

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

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

25-30.0115 Definition of Landlord and Tenant

As used in Section 367.022(5), F.S.:

(1) "landlord" is the party who conveys a possessory interest in real property to a tenant by way of a lease and who provides water and/or wastewater service to the tenant at that property; and

(2) "tenant" is the party to whom the possessory interest in real property is conveyed by the landlord by way of a lease and who receives water and/or wastewater service from the landlord at that property.

Rulemaking Authority 350.127(2), 367.121(1)(f) FS. Law Implemented 367.022(5) FS.

History-New _____.

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: August 2, 2019

TO: Andrew King, Senior Attorney, Office of the General Counsel

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

RE: Statement of Estimated Regulatory Costs (SERC) for Proposed New Rule 25-30.0115, Florida Administrative Code (F.A.C.)

Attached is the SERC for proposed new Rule 25-30.0115, Definition of Landlord and Tenant, F.A.C. The new rule does not create any new policy changes or new requirements.

The attached SERC addresses the considerations required pursuant to Section 120.541, F.S. A staff rule development workshop was held on March 4, 2019 to solicit input on the proposed new rule language. Post workshop written comments were received from the Office of the Public Counsel, Florida Manufactured Housing Association, Federation of Manufactured Home Owners of Florida, Inc., and the Goss family, owners of several mobile home parks and subdivisions in Florida.

The proposed new rule is not imposing any new regulatory requirements, only defining the terms "landlord" and "tenant." The SERC analysis indicates that the proposed new rule will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of $1 million in aggregate within five years of implementation. The proposed new rule will have no impact on small businesses, will have no implementation cost on the Commission or other state and local government entities, and will have no impact on small cities or counties. None of the impact/cost criteria established in Section 120.541(2)(a), (c), (d), and (e), F.S. will be exceeded as a result of the proposed new rule.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-30.0115, F.A.C.

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

   Yes ☐ No ☒

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

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

   Yes ☐ No ☒

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

A. Whether the rule directly or indirectly:

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

Economic growth	Yes ☐ No ☒
Private-sector job creation or employment	Yes ☐ No ☒
Private-sector investment	Yes ☐ No ☒

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

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

1

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

Yes ☐ No ☒

Economic Analysis: The purpose of this rule revision is to add and define the words "landlord" and "tenant" which are used in Section 367.022(5), F.S., which establishes an exemption from Commission regulation of water and wastewater service. No new regulatory requirements are imposed by this rule.

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

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

The entities required to comply with this rule are water and wastewater utilities.

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

The rule will impact water and wastewater users involved in a landlord -tenant relationship per Section 367.022(5), F.S. The rule is stating the plain or ordinary and usual meaning of the terms "landlord" and "tenant".

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

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

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

☐ Minimal. Provide a brief explanation.

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

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

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

2

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

☒ None.

☐ Minimal. Provide a brief explanation.

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

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

☐ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

No new regulatory requirements are proposed in this rule. The rule is simply defining the terms "landlord" and "tenant" as stated in Section 367.022(5), F.S.

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

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

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

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

3

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

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

Additional Information:

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

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

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

4

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: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper, A. King)
Division of Economics (Coston, Draper, Galloway, Guffey, McNulty)
Division of Engineering (Doehling, Graves, L. King)
Office of Industry Development and Market Analysis (Breman, Crawford, Eichler)

RE: Docket No. 20190131-EU – Proposed adoption of Rule 25-6.030, F.A.C., Storm Protection Plan and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause.

AGENDA: 10/03/19 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

RULE STATUS: Proposal May Not Be Deferred. Rules must be proposed by October 31, 2019.

SPECIAL INSTRUCTIONS: None

Case Background

The 2019 Florida Legislature passed SB 796 to enact Section 366.96, Florida Statutes (F.S.),[1] entitled "Storm protection plan cost recovery." Section 366.96, F.S., requires each investor-owned electric utility (IOU)[2] to file a transmission and distribution storm protection plan (storm protection plan) for the Commission's review and directs the Commission to hold an annual

[1] A copy of Section 366.96, F.S., is appended as Attachment C.
[2] Section 366.96, F.S., uses the terms "public utilities" and "utility," and defines these terms as having the same meaning as "public utility" as defined in Section 366.02(1), F.S., except that it does not include a gas utility. The Commission often refers to these types of electric utilities as "investor-owned electric utilities" or "IOUs," and this is how staff refers to these types of utilities in this recommendation.

proceeding to determine the IOU's prudently incurred costs to implement the plan and allow recovery of those costs through a Storm Protection Plan Cost Recovery Clause (SPPCRC).

Section 366.96(3), F.S., requires the Commission to adopt rules to specify the elements that must be included in an IOU's filing for the Commission's review of its storm protection plan. Section 366.96(11), F.S., further requires that the Commission adopt rules to implement and administer the section and mandates that the Commission propose a rule for adoption as soon as practicable after the effective date of the act, but not later than October 31, 2019.

In furtherance of the Legislature's directive, the Commission's Notice of Development of Rulemaking was published in Volume 45, No. 11, of the Florida Administrative Register on June 7, 2019. The notice included two new rules: Rule 25-6.030, Florida Administrative Code (F.A.C.), which would specify the elements that must be included in an IOU's storm protection plan; and Rule 25-6.031, F.A.C., which would establish the SPPCRC.

Staff held rule development workshops to obtain stakeholder comments on the draft rules on June 25, 2019, and August 20, 2019. Representatives from Florida Power & Light Company (FPL), Tampa Electric Company (TECO), Duke Energy Florida, LLC (DEF), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), Florida Retail Federation (FRF), Florida Industrial Power Users Group (FIPUG), and the Office of Public Counsel (OPC) participated at the workshops and submitted post-workshop comments. Additionally, representatives from Florida Electric Cooperatives Association, Inc., (FECA) and Florida Municipal Electric Association (FMEA) submitted post-workshop comments.

The Notice of Development of Rulemaking also included a number of existing Commission rules that staff identified as potential candidates for amendment or repeal in order to fully implement the new legislation. Several stakeholders opined that it would be difficult to determine any effects on existing rules until Rules 25-6.030 and 25-6.031, F.A.C., were adopted and effective. Staff agrees. Thus, whether any other existing rules should be amended or repealed will be addressed in a future staff recommendation for the Commission's consideration after Rules 25-6.030 and 25-6.031, F.A.C., become effective.

Storm Protection Plans

Prior to the enactment of Section 366.96, F.S., IOUs submitted storm hardening plans pursuant to Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening, and recovered storm hardening costs through base rate proceedings. Section 366.96, F.S., changes this process.

Section 366.96, F.S., finds that it is in the state's interest for IOUs to protect and strengthen the state's transmission and distribution systems in order to reduce outage times and restoration costs associated with extreme weather conditions and enhance overall reliability. In furtherance of this interest, Section 366.96(3), F.S., requires each IOU to file a storm protection plan that covers the immediate 10-year planning period and explains the systematic approach the utility will follow to reduce restoration costs and outage times associated with extreme weather events. The statute requires the Commission to adopt rules to specify the elements that must be included in each utility's storm protection plan. The intent of Rule 25-6.030, F.A.C., Storm Protection Plan, is to meet this statutory mandate.

Section 366.96(5), F.S., requires that no later than 180 days after an IOU files a storm protection plan that contains all of the elements required by the Commission rule, the Commission must determine whether it is in the public interest to approve, approve with modification, or deny the plan. The statute requires that in reviewing the storm protection plan, the Commission must consider the following four criteria:

1. The extent to which the plan is expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability, including whether the plan prioritizes areas of lower reliability performance.

2. The extent to which storm protection of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the utility's service territory, including, but not limited to, flood zones and rural areas.

3. The estimated costs and benefits to the utility and its customers of making the improvements proposed in the plan.

4. The estimated annual rate impact resulting from implementation of the plan during the first 3 years addressed in the plan.

Thus, the information required by the Commission in Rule 25-6.030, F.A.C., Storm Protection Plan, must enable the Commission to review each utility's storm protection plan under the above criteria and ultimately determine whether the plan is in the public interest.

Staff envisions that after Rule 25-6.030, F.A.C., becomes effective, the Commission will open dockets to review each utility's storm protection plan. The Prehearing Officer will issue an Order Establishing Procedure (OEP) to set all the controlling dates in the dockets, including the date by which the IOUs must submit their plans and the hearing dates. Although separate dockets will be opened to address each IOU's storm protection plan, staff envisions that one hearing will be held to address all of the dockets. As mentioned above, the Commission will have 180 days after the IOU files its plan to approve, approve with modifications, or deny the plan.

Additionally, Section 366.96(6), F.S., mandates that at least every 3 years after approval of an IOU's storm protection plan, the utility must file for Commission review an updated storm protection plan that addresses each element specified by Commission rule. The Commission must approve, modify, or deny each updated plan pursuant to the criteria used to review the initial plan. Staff envisions that the Commission will open dockets every 3 years to review each utility's updated storm protection plan and that the Prehearing Officer will issue an Order Establishing Procedure to set all controlling dates in the dockets.

Section 366.96(10), F.S., also requires that beginning December 1 of the year after the first full year of implementation of a storm protection plan and annually thereafter, the Commission must submit a report on the status of IOUs' storm protection activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include, but is not limited to, identification of all storm protection activities completed or planned for completion, the actual costs and rate impacts associated with completed activities as compared to the estimated costs and rate impacts for those activities, and the estimated costs and rate impacts

associated with activities planned for completion. Staff is recommending requirements in Rule 25-6.030, F.A.C., to gather the information that the Commission will need to develop its report pursuant to the statute. Staff envisions that approval of this report will take place at a Commission Internal Affairs meeting.

Storm Protection Plan Cost Recovery Clause

Section 366.96(7), F.S., directs the Commission to conduct an annual proceeding, the "storm protection plan cost recovery clause," to determine an IOU's prudently incurred storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates. Rule 25-6.031, F.A.C., is intended to establish the SPPCRC, pursuant to the statute.

Section 366.96(9), F.S., specifically includes in those recoverable costs the depreciation costs associated with eligible capital expenditures, as well as a return on the undepreciated portions of capital expenditures at the company's weighted average cost of capital. If the Commission determines that costs were prudently incurred, those costs will not be subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility. Section 366.96(8), F.S., provides that costs may be recovered through the clause only if they are not recovered through base rates.

Once Rule 25-6.031, F.A.C., becomes effective, staff envisions that the Commission will open a docket to establish the SPPCRC and that like the Commission's other cost recovery clause dockets, the Prehearing Officer will issue an OEP to set forth all the controlling dates in the docket, including the dates by which any requests for cost recovery for the year must be filed. Staff also envisions that the SPPCRC will become a "roll-over" docket like the Commission's other cost recovery clause dockets.

There was discussion at the workshop and in post-workshop comments from stakeholders as to when the hearing in the SPPCRC should be held. Section 366.96, F.S., does not mandate IOUs to file for cost recovery each year under the new clause, nor does the section contain any dates by which the Commission must render its decision on any requests for cost recovery. Thus, staff believes that the Commission has the discretion to determine the hearing dates for this clause proceeding, and like the other cost recovery clauses any controlling dates for the proceeding should be determined by the Prehearing Officer, in conjunction with the Chairman's Office.

The Process for Storm Plan Approval and Cost Recovery

Staff envisions that once Rules 25-6.030 and 25-6.031, F.A.C., become effective, the Commission will open dockets simultaneously to address the plans and establish the SPPCRC. While each IOU will have a docket to address its storm protection plan, one hearing will be held to address all the plans. There will be a single docket and single hearing for the SPPCRC, which will address IOUs' recovery of costs incurred implementing the storm protection plans. The hearing on an IOU's petition for cost recovery will be held only after the Commission has approved the utility's storm plan. Accordingly, staff envisions that the process will work as follows: First, an electric utility will submit to the Commission a storm protection plan; then the Commission will hold a hearing in the plan docket to determine if the utility's storm protection plan is reasonable. If the utility's storm protection plan is approved, the utility's petition for cost recovery for that plan will be addressed in the hearing in the clause docket. If the utility's petition for cost recovery is approved in the SPPCRC, factors will be set and go into effect at a

date determined by the Commission. Though storm protection plan cost recovery factors will be calculated separately, they will be incorporated in the energy charge line item that includes the other clauses on customers' bills.

This recommendation addresses whether the Commission should propose new Rules 25-6.030 and 25-6.031, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54 and 366.96, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the adoption of Rule 25-6.030, F.A.C., Storm Protection Plan, and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause?

Recommendation: Yes. The Commission should propose the adoption of Rules 25-6.030 and 25-6.031, F.A.C., as set forth in Attachment A. The Commission should also certify Rules 25-6.030 and 25-6.031, F.A.C., as minor violation rules. (Breman, Eichler, Harper, A. King, Graves, Guffey)

Staff Analysis: The purpose of this rulemaking is to create Rule 25-6.030. F.A.C., to specify the elements that must be included in an investor-owned utility's storm protection plan, and Rule 25-6.031, F.A.C., to establish the SPPCRC. Staff is recommending that the Commission propose the rules as set forth in Attachment A.

Overarching Themes That Emerged During Rule Development

Staff held two rule development workshops on Rules 25-6.030 and 25-6.031, F.A.C. Three overarching themes seemed to drive the bulk of the stakeholder's comments. The first is whether Section 366.96, F.S., permits the Commission to allow recovery of projected costs in the SPPCRC. The second is when and through what filing should IOUs provide project-level detail to the Commission. The third is what the approval of a storm protection plan means for approval of costs in the SPPCRC. Before staff discusses its recommended language for each rule, staff believes that it is important to discuss these overarching issues.

Allowing for Projected Costs vs. Actual/Incurred Costs Only

Staff envisions the SPPCRC mirroring other Commission cost recovery clauses. In the Nuclear Cost Recovery Clause (NCRC), Energy Conservation Cost Recovery Clause (ECCR), and Environmental Cost Recovery Clause (ECRC), the Commission projects the costs the utility will incur in the next year and sets a factor that will allow the company to recover those costs from customers as the costs are incurred. Because the costs and the sales used to set the factor are estimated, the amount of money the utility actually recovers may be more or less than the actual costs. During the year the costs are incurred and the year after the costs are incurred, the Commission performs a true-up of the costs and the recovered amounts so that the utility ultimately recovers only those costs actually incurred.

OPC asserts that Section 366.96, F.S., only permits IOUs to recover their prudently incurred costs through the new cost recovery clause. OPC argues that the Commission can allow IOUs to recover projected costs that are later trued-up through the NCRC and ECRC because the statutes creating those clauses specifically reference "projected" costs. According to OPC, because Section 366.96, F.S., does not specifically provide for this same mechanism, it therefore prohibits it. In support of this argument, OPC points to earlier versions of SB 796 that contained language referring to the recovery of projected costs—language that was almost identical to the language used in the ECRC statute—and notes that the specific language on projected costs was removed as the bill made its way through legislative committees.

Staff disagrees with OPC's reading of the statute. While the terms "projected costs" and "true-up" are not in Section 366.96, F.S., the statute does not specifically bar the recovery of incurred

costs through the recovery of projected costs that are later trued-up. The statute is silent on the matter; it only says that the Commission must allow the IOUs to recover their prudently incurred costs. Additionally, the fact that language explicitly providing for the recovery of projected costs was removed by the Senate proves nothing about the meaning of the final version of the bill that became law. "[O]ur legislatures speak only through statutes,"[3] not the legislative history underlying them. Declaring the meaning of a statute based on speculation about why specific language was removed from the bill during the legislative process is improper.

The IOUs state that storm protection plan cost recovery should be based on projected costs and that OPC's reading of Section 366.96, F.S., is unduly restrictive. FPL states that this mechanism has worked well for a wide variety of costs in other clause proceedings "because it allows IOUs to begin recovery of costs as the costs are projected to be incurred, while providing staff and intervenors with essentially three opportunities to review the costs before their recovery is finalized." FPL also points out that the Commission has allowed recovery of projected costs subject to true-up with actual costs under Section 366.93(2), F.S., the NCRC, which provides generally for recovery of "costs incurred" and only refers to projected costs in connection with carrying costs on an IOU's projected construction cost balance.

Staff believes Section 366.96, F.S., gives the Commission discretion to determine the mechanism by which IOUs can recover their prudently incurred costs, including allowing IOUs to recover projected costs and truing-up those projections when actual cost data becomes available. First and foremost, by using this method, IOUs would ultimately recover only their actual prudently incurred costs. This not only comports with the current procedure in the NCRC and ECRC clauses, but it is also consistent with Section 366.96(7), F.S., which directs the Commission to allow the IOUs to recover "prudently incurred . . . storm protection plan costs . . . through a charge separate and apart from its base rates."

Second, allowing for the recovery of projected costs enables the IOUs to recover costs as they are incurred. This reduces regulatory lag and, ultimately, the costs passed on to customers, which is the purpose of cost recovery clauses. Staff believes IOUs will be entitled to recover carrying costs associated with the lag between when they incurred costs and when they recover them. Under OPC's interpretation, an IOU would incur costs in one year but couldn't request recovery of those costs until the next year's SPPCRC. If the Commission approved those costs in the SPPCRC, the utility could not begin recovering the costs until the year after. This leaves customers paying carrying costs for two years. Thus, using a cost recovery mechanism that should minimize that regulatory lag, as staff is recommending in draft Rule 25-6.031, F.A.C., should also minimize the carrying costs customers have to pay.

Third, allowing for the timely recovery of costs incentivizes IOUs to undertake capital-intensive projects that will achieve the purpose of the statute: hardening the state's electric transmission and distribution infrastructure to better withstand extreme weather conditions.

Fourth, the new statute is forward thinking as it emphasizes planning in its objective—the statute requires the IOUs to come up with a 10-year plan, not an annual one. Staff believes that consideration of projected costs would be consistent with the requirement of long-term planning

[3] Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 381 (citation omitted).

to ensure infrastructure is hardened. Allowing projected costs to be included in storm plan petitions gives the Commission a comprehensive view over the IOUs' long-term storm protection projects. This is in the public interest because it allows for transparency and review of the projects before the projects are completed and costs are incurred. Staff believes that the approval of a storm protection plan means it is reasonable for an IOU to continue to go forward with the scope of activities and to incur costs consistent with the approved plan.[4]

Staff believes it is in the consumers' interest for IOUs to recover their incurred costs as near in time to when they were incurred as possible. For the reasons set forth above, staff's recommended rules provide that projected costs are eligible for cost recovery.

When and Where Project-Level Details Should be Provided

Staff's recommended rules require IOUs to provide in their storm protection plan project-level data for each of the first three years of the plan. All of the IOUs commented that such a requirement is neither "feasible" nor "desirable." FPL asserts that the initiation of specific projects within a program is subject to change until shortly before initiation due to a host of factors. It argues that, as a consequence, accurately projecting project-level data two or more years in the future is difficult, if not impossible. Therefore, FPL suggests that the rules should only require the storm protection plan to contain project-level data for the first year of the plan. For the second and third years, it suggests that the data required be "more general" than the data required for the first year yet still "sufficiently detailed" to develop rate-impact estimates. FPL further suggests that project-level detail should be required annually in the clause docket for the subsequent planning year.

OPC and FRF assert that detailed project and spending information is needed to ensure the prevention of double recovery by IOUs. OPC states that "[a]t a minimum, year-by-year project and cost detail should be required on a basis that allows the Commission and customers to determine what costs, activities[,] and projects are being recovered in base rates at the time recovery is sought" in the SPPCRC.

Staff believes that project-level information for each of the first three years is necessary to provide a baseline for the Commission's review and comparison of costs sought in the SPPCRC. Additionally, without this level of detail, the Commission could not adequately address the legislative requirement of Section 366.96(4), F.S., as to rate impact, nor would it have enough information to make an informed decision to modify a plan pursuant to Section 366.96(5), F.S. For these reasons, staff's recommended rules require project-level detail for each of the first three years. This is further discussed in the sections of this recommendation pertaining to subsection (3) of Rule 25-6.030, F.A.C., and subsections (3) and (7) of Rule 25-6.031, F.A.C.

[4]Similarly, once a nuclear or environmental *plan* (i.e., projected activities and costs) is approved, it doesn't necessarily mean all *costs* will be deemed prudent and recoverable. The clause process does not allow for an automatic determination or a finding of prudence on projected levels of expenses just by virtue of approving the initial plan. The Commission may find the plan to be in the public interest and can authorize the utility to go forward with the plan. However, the prudence of the costs is not pre-determined at that point. Rather, the costs will be reviewed and audited in the cost recovery clause hearing.

How the Storm Rules Will Work Together

The third theme that arose from the rule development workshops was how the approval process for storm protection plans and the clause process would work together, if an IOU chooses to recover costs through the clause. In other words, what does approval of a storm protection plan actually mean in terms of cost recovery later on in the clause?

OPC raised concerns about whether it would have the opportunity to challenge the costs of a project that was part of program and plan that was previously approved by the Commission. Pursuant to Section 366.96, F.S., an electric utility may submit to the Commission a storm protection plan that includes the utility's proposed programs, projects, and activities that are designed to meet the objectives of the statute, i.e., reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. This is similar to the planning process in the ECRC. If the utility's storm protection plan is deemed to be in the public interest and is approved, the IOUs are authorized to go forward in implementing the approved plan. Approval of the plan (and programs and projects within the plan), however, does not constitute a de facto approval of the costs. Plan approval means the Commission has deemed the utility's plan reasonable and the utility may go forward with actions to implement the plan.

The prudence determination is made later in the clause process. As part of the cost recovery clause, an IOU seeking recovery for costs made pursuant to its approved storm protection plan would file its petition at the times directed by the Commission, pursuant to the OEP in the annual cost recovery proceeding. As part of its petition, the IOU would submit a list of projects it anticipates undertaking in the next year, including projected costs for those projects. The Commission would determine whether the anticipated projects and programmatic activity are consistent with the utility's storm protection plan as well as the reasonableness of the projected costs for those activities. As part of its petition, the utility would also include available actual cost data for the current year's activities as well as actual cost data for the previous year's activities. The Commission would determine the prudence of those actual incurred costs and, using the methods already used in other clauses, set factors for the recovery of the projected costs and true-up the recovery of costs actually incurred.

Rule 25-6.030, F.A.C., Storm Protection Plan

Rule 25-6.030, F.A.C., requires each IOU to file a petition with the Commission for approval of a storm protection plan. The rule describes the information that must be included in the storm protection plan, as well as information needed for the Commission to satisfy its duty to file an annual report with the executive and legislative branches detailing the IOUs' planned and completed storm protection projects and the related rate impacts.

Subsection (1): Application and Scope

This subsection requires each investor-owned electric utility to file a petition with the Commission for approval of a storm protection plan. It also mandates that the plan cover the utility's immediate 10-year planning period and must be updated every 3 years.

OPC suggests that language be added to this subsection to require each utility to file its plan on the third Monday of January of each year the plan update is to be considered for Commission approval. TECO states that it plans to prepare a storm protection plan and file it with the Commission within 4 to 5 months of the storm rules being adopted, e.g., no later than March 1,

2020. TECO suggests it would be more efficient for all of the IOUs to file their plans at the same time given that the timing of the Commission's approval must be within the 180 day limit provided by Section 366.96, F.S.

The Commission will have 180 days after the utility files its plan to approve, approve with modifications, or deny the plan; however, there is no requirement in the statute that the Commission must review the plans at a particular time of the year. Thus, staff does not recommend that the Commission include the language offered by OPC, as this language will remove some Commission discretion as to when the Commission wants to conduct its review of plans. As discussed in the Case Background, staff envisions that after Rule 25-6.030, F.A.C., becomes effective, the Commission will open a docket to review each utility's storm protection plan. The Prehearing Officer will issue an Order Establishing Procedure to set all the controlling dates in the docket, including the date by which investor-owned electric IOUs must submit their plans and the hearing dates. Staff envisions that this same procedure will be used to review future utility storm protection plans as well.

Subsection (2): Definitions

A storm protection plan is comprised of storm protection programs. A program may include specific projects. Paragraph (2)(a) defines a program as a category, type, or group of related storm protection projects that is undertaken to enhance the utility's existing infrastructure for the purpose of reducing restoration costs and outage times and improving overall service reliability. Paragraph (2)(b) defines a project as a specific activity designed to enhance a specified portion of existing electric transmission or distribution facilities for the purpose of reducing restoration costs and outage times, and improving overall service reliability.

Paragraph (2)(c) identifies the "Transmission and distribution facilities" that will be eligible for storm protection plans. "Transmission and distribution facilities" are defined as "all utility owned poles and fixtures, towers and fixtures, overhead conductors and devices, substations and related facilities, land and land rights, roads and trails, underground conduits, and underground conductors."

FPL and Gulf[5] argue that the definition of "transmission and distribution facilities" should be expanded to include additional types of assets, such as structures and improvements, station equipment, underground conductors and devices, battery storage equipment, meters and services. FPL also suggests the removal of "substations and related facilities" from the definition because these assets are included within the station equipment accounts.

TECO, DEF, and FPUC echo FPL's suggestions to expand the definition of "transmission and distribution facilities." FPUC argues that meters should be specifically enumerated in the definition of "transmission and distribution facilities," and DEF specifically suggests a change that would explain the definition by including the language "and associated facilities."

OPC comments that the definition of "transmission and distribution facilities" should be narrowed to track the Federal Energy Regulatory Commission's Uniform System of Accounts

[5] Gulf supported and adopted all of FPL's comments. Thus, any FPL comments that are reflected in this recommendation should also be considered comments by Gulf.

(USOA) definitions of "transmission and distribution facilities." OPC argues the USOA definition excludes meters, because the primary purpose of a meter is to measure electricity delivery. According to OPC, a meter is therefore incidental and ancillary to storm protection. Also, OPC argues battery storage assets should not be included as transmission and distribution facilities for purposes of storm protection because they are broadly categorized under the USOA as production plant. Thus, OPC argues storage assets are not solely for resilience against extreme weather.

Rule 25-6.030(3)(j), provides that the IOUs can submit in its plan "[a]ny other factors the utility requests the Commission to consider." FPUC expresses concerns that this language could be narrowly construed to include only factors pertaining to programs and projects consistent with the definition of "transmission and distribution facilities." FPUC's concerns appear to be based on a misunderstanding of the statute. The purpose of the statute is to encourage programs and projects that protect the utility's transmission and distribution system. It does not require that every program or project entail a physical change to the transmission and distribution system itself. Said differently, staff intends for paragraph (3)(j) to be interpreted to encompass factors pertaining to programs and projects that are designed to protect the utility's transmission and distribution facilities as that term is defined in the rule.

Subsection (3): Contents of the Storm Protection Plan

Subsection (3) provides the specific information that must be provided in each storm protection plan, including descriptions of the utility's service area, the areas prioritized for enhancement, and any areas where the utility has determined that enhancement of the utility's existing transmission and distribution facilities would not be feasible, reasonable, or practical.

Subsection (3) also requires the utility to provide certain cost estimates, such as an estimate of the annual jurisdictional revenue requirements for each year of the storm protection plan and an estimate of rate impacts for each of the first three years of the storm protection plan for residential, commercial, and industrial customers. Paragraph (3)(e) requires that for each of the first three years in an IOU's storm protection plan the utility provide a description of each proposed storm protection project that includes:

1. The actual or estimated construction start and completion dates;

2. A description of the affected existing facilities, including number and type(s) of customers served, historic service reliability performance during extreme weather conditions, and how this data was used to prioritize the proposed storm protection project; and

3. A cost estimate including capital and operating expenses; and

4. A description of the criteria used to select and prioritize proposed storm protection projects.

Paragraph (3)(f) requires the utility to provide a description of its proposed vegetation management activities. The utility's description must include the projected frequency (trim cycle), the projected miles of affected transmission and distribution overhead facilities, the

estimated annual labor and equipment costs for both utility and contractor personnel, and a description of how the vegetation management activity will reduce outage times and restoration costs due to extreme weather events.

Level of Project Detail Required in Storm Protection Plans

The IOUs take issue with the requirement for project-level information in years 2 and 3, arguing that it is not feasible or desirable for the specific projects for years 2 and 3 to be detailed in the plan. Because projects inevitably change due to a host of issues including access, customer acceptance, and changing priorities, the IOUs argue that years 2 and 3 are sufficiently detailed if the IOUs provide the type and number of projects and program costs to support the development of annual rate-impact estimates for the first 3 years. FPL suggests the following rule language in paragraph (3)(e) instead of staff's recommended rule language:

> (e) For ~~each of~~ the first three years in a utility's Storm Protection Plan, the utility must provide the following information:
> 1. For the first year of the plan, a description of each proposed storm protection project that includes:
> i. ~~1.~~ The actual or estimated construction start and completion dates;
> ii. ~~2.~~ A description of the affected existing facilities, including the number and type(s) of customers served, historic service reliability performance during extreme weather events~~, and how this data was used to prioritize the proposed storm protection project; and~~
> iii. ~~3.~~ A cost estimate including capital and operating expenses~~, both fixed and variable~~; and
> iv. ~~4.~~ A description of the criteria used to select and prioritize proposed storm protection projects.
> 2. For the second and third years of the plan, project related information such as estimated number and cost of projects under a specific program, in sufficient detail, to allow the development of preliminary estimates of rate impacts as required under subsection 3(h) of this rule.

FPL suggests that project-level detail be provided annually for the current year in the actual/estimated true-up filings under Rule 25-6.031, F.A.C.

TECO also opposes project-level detail in years 2 and 3 in the plan and suggests that the Commission consider the level of cost detail found in the Demand-Side Management Plans as a benchmark for the cost detail necessary in the storm protection plans. Likewise, DEF specifically cautioned against rule language requiring project-level information in each of the first 3 years because such a requirement may result in petitions for rule waiver. According to DEF, the requirement for 3 years of project-level data would force it to either "create data that will be subject to extensive revision and [is without] business purpose—an inefficient use of resources to both create and review—or file for a rule waiver." Moreover, all of the IOUs believe that project-level shifts within an approved program should not constitute a modification that requires Commission action.

FRF expresses support of project-level detail to ensure costs are not double recovered. FRF commented at the workshop that the rule should require extensive accounting data and more than just a description of selection and prioritization. FRF suggests IOUs should be required to demonstrate that selection and prioritization of all projects are based on objective principles and benefits to customers.

OPC states that project-level details are necessary to ensure that the costs being recovered through base rates are not also recovered through the SPPCRC. OPC further states that "[g]iven the public interest in protecting against storm damage, all IOUs should have specific plans with detailed cost-tracking that comports with representations made to the Commission and all stakeholders regarding what they have done, are continuing to do and will do to continue storm protection efforts." It also believes that the Commission should "require each utility to submit information for the last three years detailing all storm hardening projects that have been included in the IOUs construction budgets including status completion."

OPC suggests edits to the rule that allow for detailed information for the first 3 years of any 10-year plan. OPC states that the initial plan approval in particular should contain detailed project-by-project information for amounts slated for recovery and include detail along the same lines for the historical periods and for current and future periods covered by the approved storm hardening plans that are in effect. According to OPC, without sufficient detail in the plan and the clause filings, it will be difficult to identify and differentiate the approved storm costs the IOUs are recovering in base rates with current storm hardening plans versus the storm related costs IOUs ask for cost recovery for in the SPPCRC. OPC also suggests that detailed data is necessary to understand what costs are tied to settlement agreements and thus necessary to ensure customers do not pay twice for the same costs.

FPL takes issue with OPC's assertion that costs projected under an IOU's storm hardening plan that was previously approved prior to these new storm protection plan rules should be treated automatically as already recovered in base rates and thus excluded from cost recovery under the SPPCRC. FPL states that it takes no position on whether the rules need a detailed mechanism or protocol for determining a baseline to measure costs in the SPPCRC. However, costs initially projected to be incurred pursuant to an approved storm protection plan should be eligible for cost recovery under the SPPCRC.

The IOUs have the burden to prove that costs being requested through the SPPCRC are not being recovered in base rates. As such, staff believes that any petition for costs filed in the SPPCRC must evidence that the utility is not seeking double recovery and therefore OPC's concerns are more appropriately addressed by the filing requirements in Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause, which is further discussed below.

With regards to project-level detail for all 3 years and as previously discussed in the overarching themes section of the case background, staff believes that project-level detail for years 1, 2, and 3 provides a baseline for the Commission's review and comparison of costs sought in the SPPCRC from projects that were previously approved in a storm protection plan. This information is also relevant to comply with subsections (4) and (5) of Section 366.96, F.S. This level of detail is necessary for the Commission to adequately address the legislative requirement of Section 366.96(4), F.S. Also, without project-level detail for all 3 years, the Commission would not have

enough information to make an informed decision to modify a plan pursuant to Section 366.96(5), F.S.

Whether Franchise Agreement Information Should be Included in Storm Protection Plans

OPC argues that the storm protection plan should include Franchise Agreements to ensure that programs or projects are not proposed or modified to influence renewals. In response, DEF states such a provision would be beyond the scope of Section 366.96, F.S., and would be information more appropriately sought through discovery rather than the rule.

Staff's draft rule requires that each utility provide a description of the criteria used to select and prioritize proposed programs and projects. Staff believes that this requirement will provide sufficient information for vetting the basis of proposed programs and projects, including franchise agreements. Thus, such specific criteria in the rule are unnecessary.

Subsection (4): Annual Status Report

Subsection (4) requires that each utility submit to the Commission Clerk an annual status report on the utility's storm protection plan programs and projects. The rule provides that the annual status report must identify all storm protection plan programs and projects completed in the prior calendar year or planned for completion, provide actual costs and rate impacts associated with completed programs and projects as compared to the estimated costs and rate impacts for those programs and projects, and provide estimated costs and rate impacts associated with programs and projects planned for completion during the next year of the storm protection plan.

Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause

Rule 25-6.031, F.A.C., addresses how an IOU may file a petition for recovery of prudently incurred costs through the SPPCRC. Specifically, the rule creates an annual clause proceeding, which consists of a true-up of the previous year's costs, a true-up and estimation for the current year's costs, and a projection of next year's costs. The rule provides that costs recovered in base rates may not be recovered through the clause.

Subsection (2): Simultaneous Filings

Subsection (2) allows an IOU to file a petition for recovery of prudently incurred costs and reasonable projected costs through the SPPCRC after its storm protection plan is filed with the Commission. FPL argues that allowing a petition for cost recovery to be filed simultaneously with the storm protection plan reasonably allows for conducting the clause on an annual basis. OPC stated in the workshop that it would oppose simultaneous plan and clause filings the first time the rules are implemented because it would be too difficult to analyze base rates and incremental costs the first time. Recovery of storm protection plan costs through the SPPCRC is not required by the statute and is discretionary to the IOU.

Staff believes a simultaneous plan and clause petition would allow for administrative efficiency and reduce regulatory lag. Therefore, the rule allows an IOU to file a petition once its storm protection plan is filed with the Commission.

Subsection (2) also provides that if the Commission approves the utility's storm protection plan with modifications, the utility has 15 business days to file an amended cost recovery petition and

supporting testimony reflecting the modifications. FPL suggests rule language that requires an IOU to "promptly file an amended" clause petition in the event that the Commission approves its storm protection plan with modifications. While staff agrees in concept with allowing for prompt filings, staff believes that FPL's language is too ambiguous. It is staff's belief that a timeline of 15 business days conveys urgency while recognizing that some time will be needed for the utility to draft and file an amended clause petition.

Subsection (3): Annual Hearing to Determine Reasonableness of Projected Costs and Prudence of Actual Costs

Subsection (3) addresses the role of the annual cost recovery proceeding in determining the reasonableness of an IOU's projected costs and the prudence of its actual costs to implement an approved storm protection plan. The rule provides that an annual hearing to address petitions for recovery of storm protection plan costs will be held and will be limited to determining the reasonableness of projected storm protection plan costs, the prudence of actual storm protection plan costs incurred by the utility, and to establish storm protection plan cost recovery factors consistent with the requirements of this rule.

In line with its position that storm protection plans should not require the level of detailed information for years 2 and 3 of the plans as required for year 1,[6] FPL proposes that the actual/estimated true-up filing in the cost recovery clause include the project-level information. To accomplish this, FPL suggests that the following language be added to subsection (3) of Rule 25-6.031:

> The Commission shall determine the reasonableness of the lists of projects (by applicable program) filed by the utility pursuant to section (7)(b) of this rule based on whether such projects are consistent with the program criteria for such projects approved by the Commission under the utility's Storm Protection Plan.

Staff disagrees with FPL's suggestion that additional language is required to clarify the standard that will be applied in the SPPCRC hearings. Subsection (3) already notes that the Commission will determine the reasonableness of projected costs of the storm protection plan, which would necessarily entail a determination that the projects generating those costs are consistent with the plan. Moreover, FPL's suggested language seems to limit the Commission's reasonableness determination to only one review at the actual/estimated true-up stage. The current language allows the Commission the flexibility to make reasonableness reviews when necessary throughout the cost recovery process.

In its comments, OPC expresses a "fundamental concern" about the timing of the SPPCRC hearing, advocating that the hearing take place in the first 6 months of the year. OPC suggests that language be added to subsection (3) of the rule to specify that the annual hearing under the rule will be conducted no later than July 31 of each year after the calendar year in which the first phase of the plan was approved. OPC believes that the SPPCRC must be separated out from the other cost recovery clauses due to the amount of time that OPC anticipates it will take to determine whether storm protection plan costs are included in base rates and how such costs are to be determined.

[6] *See* discussion *supra* Subsection (3): Contents of the Storm Protection Plan.

FPL notes in its comments that applying the new clause factors on a mid-year cycle could lead to customer confusion and would introduce unnecessary complexity in the billing process. Although it has no objection to leaving the procedural detail out of the rule and using an Order Establishing Procedure to set all controlling dates, FPL provides a schedule in its comments that essentially mirrors that of the NCRC, with a hearing taking place in August/September and factors going into effect on January 1.

Unlike the Commission's determination on the utility's storm protection plan, Section 366.96, F.S., does not include statutory deadlines for the annual SPPCRC hearing. Thus, the Commission has full discretion to determine the hearing dates for this clause proceeding. Staff recommends that hearing dates for the proceeding should be determined by the Prehearing Officer working in conjunction with the Chairman's Office similar to the other cost recovery clauses.

As discussed in the Case Background, staff envisions that once Rule 25-6.031, F.A.C., becomes effective, the Commission will open a docket to establish the SPPCRC, and the Prehearing Officer will issue an Order Establishing Procedure to set forth all the controlling dates in the docket, including the dates by which any requests for cost recovery for the year must be filed. Staff also envisions that the SPPCRC will become a "roll-over" docket like the Commission's other cost recovery clause dockets.

Subsection (4): Deferred Accounting Treatment

Subsection (4) of the rule provides that costs recovered through the clause will be trued-up in the clause, and the clause true-up amounts will be afforded deferred accounting treatment at the 30-day commercial paper rate. FPUC suggests that the phrase "over and under-recovery" be inserted after the phrase "cost recovery true-up." Staff disagrees because the presence of a true-up event means either an over- or under-recovery event has occurred. Thus, staff believes keeping only the phrase "true-up" adequately addresses the occurrence of either an over- or under-recovery.

FPUC also suggests that additional language be added to subsection (4) of the rule to address the regulatory treatment of deferred capitalized expenses. Staff believes the rule does not need to address all existing types of deferred accounting events. As currently drafted, the rule requires information necessary to determine if a petition for cost recovery of prudently incurred costs is consistent with an IOU's approved storm protection plan. The Commission must also receive enough information to ensure that the utility is not recovering costs through the clause that it will also recover through base rates. Staff believes the recommended rule language does this. Creating a specific list of deferred capitalized expenses could only confuse rather than clarify eligible expenses. Therefore, FPUC's suggestion is not recommended.

Because OPC is opposed to any provisions in the rule which allow cost recovery for projected costs as opposed to actually incurred costs, OPC also took issue with subsection (4). OPC suggesting limiting the recovery of costs related to variances caused by sales forecasting variances or changes in the utility's prices for services or equipment. Staff disagrees with OPC's suggestion for the reasons discussed in the first subsection in the section discussing overarching themes.

Subsection (5): Treatment of Subaccounts

Subsection (5) of the rule requires IOUs to maintain subaccounts for costs subject to recovery to ensure separation of those costs from costs not subject to recovery through the clause.

Subsection (6): Recoverable Costs

Subsection (6) of the rule provides that an IOU's petition for recovery of costs prudently incurred to implement its storm protection plan may include costs incurred after the filing of the utility's storm protection plan. The utility may recover the annual depreciation expense on capitalized storm protection plan expenditures using the utility's most recent Commission-approved depreciation rates. Subsection (6) provides that the utility may recover a return on the undepreciated balance of the costs calculated at the utility's weighted average cost of capital using the return on equity most recently approved by the Commission. The rule requires that the utility submit its final true-up of storm protection plan revenue requirements based on actual costs for the prior year and previously filed costs and revenue requirements for such prior year along with a description of the work actually performed during such year.

DEF, TECO, and FPUC argue that subsection (6) should specifically allow for the recovery through the SPPCRC of costs incurred developing a storm protection plan. Read together, paragraph (2)(c) and subsection (7) of Section 366.96, F.S., allow for the recovery of "reasonable and prudent costs to *implement* an approved transmission and distribution storm protection plan." The plain language of Section 366.96, F.S., allows an IOU to recover the costs of *implementing* a storm protection plan, not *developing* it.

Paragraph (6)(b) of the rule states that the utility is not permitted to recover costs through the SPPCRC that are included for recovery through base rates or any other cost recovery mechanism. OPC suggests adding language that states that the "utility must file detailed information consistent with Rule 25-6.030(g), F.A.C., as a part of meeting its burden of demonstrating that clause-eligible costs are not being recovered in base rates or any other cost recovery mechanism." Staff assumes that OPC's rule reference is for the purpose of requiring an estimate of the annual jurisdictional revenue requirements for each year of the storm protection plan. Rule 25-6.030(3)(g), F.A.C., requires an IOU to provide an estimate of the annual jurisdictional revenue requirements for each year of the storm protection plan, so it is unnecessary for Rule 25-6.031, F.A.C., to restate that requirement. Moreover, staff believes each utility's demonstration that its costs are excluded from other recovery mechanisms will be adequately vetted through the clause hearing process pursuant to the filing requirements of Rule 25-6.031, F.A.C.

OPC also suggests that the term "mid-point" be inserted in paragraph (6)(c) after "equity" and before "most recently approved by the Commission." Staff believes this change is not needed because the return on equity approved by the Commission is used as the midpoint of a range of reasonableness.

In addition, FPL proposes the following language as paragraph (6)(d): "The utility may request recovery of cost of removal and any remaining investment associated with retirements of Storm Protection Plan investments recovered under the clause." Staff has two concerns about the proposed language. First, staff is unsure how FPL or other IOUs may determine remaining investment for any one asset. Under Rule 25-6.0436 Depreciation, F.A.C., and Rule 25-6.04361

Subcategorization of Electric Plant for Depreciation Studies and Rate Design, F.A.C., many assets, especially transmission and distribution assets, are grouped in mass property accounts, wherein asset age data for any single asset is unknown, thus the remaining investment in that particular asset is also unknown. Staff believes the methodology used to determine the net unrecovered investment amount for a type of asset replaced in a storm protection plan project must take into account the past recovery of both short and long lived assets relative to average service life. Ideally, such a method would be reflective of both the IOUs' gains received and losses incurred when such assets are removed, yielding net unrecovered investment. Second, the cost of removal is reflected in current depreciation rates for all assets, so some portion of removal costs for all current assets have already been recovered in base rates. Staff is concerned that this is not reflected in FPL's proposed rule language, which appears to allow for recovery of all removal costs through the clause. For these reasons, staff does not recommend adding FPL's recommended language.

Subsection (7): Cost Recovery Mechanism and Filing Requirements

Subsection (7) addresses the filing requirements for the SPPCRC and describes the mechanism used to project and true-up costs incurred to implement the utility's storm protection plan. Paragraphs (7)(a)–(c) describe the same three-step mechanism used in other clauses. The three steps are referred to in those paragraphs as the Final True-up for Previous Year, the Estimated True-up for Current Year, and the Projected Costs for Subsequent Year. In other words, the recovery of incurred costs is a moving three-year process that begins with the projection of future costs and ends with the final true-up of those projected costs. Paragraphs (7)(a)–(d) require the utility to submit data sufficient to allow the Commission to project future costs and determine incurred costs as that data becomes available. Paragraph (7)(d) also requires the utility to submit data establishing sales forecasting variances and changes in the utility's price of service and equipment. Paragraph (7)(e) requires the utility to submit its proposed factors and effective 12-month billing period.

OPC suggests striking paragraphs (7)(a), (7)(b), and (7)(c) to remove the filing requirements that true-up projected costs to actual incurred costs as well as the associated revenue requirements on a moving three-year basis. In its comments, OPC asserted that there is a lack of statutory authority for projected cost recovery as opposed to costs that have been incurred. OPC recommends striking paragraphs (7)(a) through (c) to conform the rule to that argument. As previously discussed, staff disagrees with OPC's premise that the rules should not allow for projected costs. Thus, staff believes there is no need to change subsection (7).

FPL suggests that paragraph (7)(b) of the rule be revised to show that this filing would include a listing of project-level information for the current year, consistent with its position that storm protection plans should not require the level of detailed information for years 2 and 3 of the plans, as required for year 1 (*see* staff's discussion on subsection (3)(e) of Rule 25-6.030). However, FPL did not propose comparable language for paragraph (7)(c) addressing projections or for true-up filings in paragraph (7)(a). FPL did not state what was unique about the current year filings of paragraph (7)(b) of the rule that necessitated the added language. As previously noted in the analysis for the storm protection plan rule, staff believes each utility's respective petitions should require a certain level of detail to support the utility's respective requests in the petitions for cost recovery in the clause. The recommended rule language of paragraph (7)(b)

adequately provides the filing requirements consistent with this belief. Thus, the suggested changes are not necessary.

OPC also suggests editing paragraph (7)(e) to make the word "factors" singular. But each utility has multiple rate classes, and each rate class has a unique factor. Therefore, multiple factors will be set for each utility. Staff therefore does not recommend incorporation of the editorial suggestion.

Subsection (8): Effect on Subsequent Rate Proceeding

Subsection (8) provides that recovery of costs under this rule does not preclude an IOU from proposing inclusion of unrecovered storm protection plan implementation costs in base rates in a subsequent rate proceeding. FPUC and FPL suggest subsection (8) should specifically identify or list for inclusion the "future revenue requirements for existing storm protection plan investments" as eligible costs for future base rate recovery. Staff disagrees. Subsections (2), (6), and (8) of the draft rule allow for recovery of costs prudently incurred to implement an IOU's storm protection plan. The rule allows for recovery of costs prudently incurred after the filing of the utility's plan that implement the utility's storm protection plan and that were costs not previously approved in another proceeding. Because Rule 25-6.031, F.S., already covers all types of expenses appropriate for clause recovery, there is no need for the rule to include a specific or enumerated list of the types of costs as suggested by the IOUs. Listing types of costs could confuse rather than clarify what is permitted for recovery under the rule.

Other Issues

FRF suggests that for transparency purposes, the rules should require the storm protection plan cost recovery charges be shown as a separate line item on customers' bills. TECO recommends that to avoid customer confusion, storm protection plan cost recovery charges be calculated separately but incorporated in the energy charge line item that includes the other clauses on customers' bills.

Section 366.96, F.S., does not mandate that storm protection plan cost recovery charges be shown as a separate line item on customers' bills. The statute is silent on the matter. Due to billing system reprograming, the IOUs state they would incur additional costs, which would ultimately be passed on to the customers if the Commission required that the storm protection plan charges be a separate line item. On the other hand, the IOUs say that no additional billing charges will be incurred as long as the storm protection plan charges are incorporated into the non-fuel energy charge on customers' bills.

Staff believes each utility's costs, and ultimately the customers' costs, would be higher if the Commission required a separate line item on customers' bills. The customers' bills will include approved storm protection plan cost recovery charges whether they are reflected as line items or included in the energy charge line on the bill. Staff believes that adding additional expenses for the sake of transparency is unnecessary and would be outweighed by lower costs to the customers. Thus, staff believes the rules should not mandate that the storm protection plan cost recovery charges be shown as a separate line item on customers' bills.

FRF also suggests adding a third rule, Rule 25-6.0301, F.A.C., which would require an IOU to seek Commission approval for changes to its storm protection plan that result in changes to the

total cost of the plan of more than a certain percentage of that total. Staff does not believe that such a rule is necessary. Each utility will have to report and explain cost variances in the SPPCRC proceedings. In these proceedings, the utility will have to show cost changes and the cause of those changes. IOUs will also have to show that all of their costs were prudently incurred to implement the utility's approved plan. In other words, requiring IOUs to seek the Commission's approval of a storm protection plan modification solely on the basis of a cost variance is unduly duplicative of the scrutiny that will be a part of the SPPCRC.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the agency head must certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Under Section 120.695(2)(b), F.S., a violation of a rule is minor if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Rule 25-6.030, F.A.C., and Rule 25-6.031, F.A.C., will be minor violation rules, as a violation of these rules will not result in economic or physical harm to a person or have an adverse effect on the public health, safety, or welfare or create a significant threat of such harm. Therefore, for the purposes of filing the rules for adoption with the Department of State, staff recommends that the Commission certify proposed Rule 25-6.030 and 25-6.031, F.A.C., as minor violation rules.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54(3)(b), F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment B to this recommendation. The SERC analysis also includes whether the rules are likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation.

The SERC concludes that any economic impacts that might be incurred by affected entities would be a result of the statute rather than the rules. Staff believes that the new rules will not likely directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within one year after implementation. Staff notes that the IOUs, in response to staff's SERC data request, provided potential financial impacts resulting from specific requirements of Chapter 366.96, F.S.[7]

Further, the SERC concludes that the rules will not likely have an adverse impact on economic growth, private-sector job creation or employment, private sector investment, business

[7] FPL anticipates modifications to its billing system. The estimated cost is $300,000 for five years.
Duke stated that the company does not expect any reprogramming of its billing system as long as the factors are incorporated into the non-fuel energy charge on customer bills.
TECO estimates incremental costs of $250,000 in the aggregate for the next five years to prepare the SPP, for regulatory efforts, and for additional billing system reprogramming.
Gulf Power estimates no more than $200,000 in total for the entire next five-year period to reprogram its billing system to accommodate the new SPP cost recovery clause factor.
FPUC stated that for the next five years, the company may incur the following incremental costs: $155,000 for preparation of the SPP, additional staff hires $440,000, system reprogramming to accommodate billing $40,000.

competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the new rules do not require legislative ratification pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the rules will have no adverse impact on small businesses, small cities, or small counties. The rules will have minimal impact on state and local revenues and transactional costs. Any implementation or enforcement costs on the Commission will be offset by the additional staff positions and funding provided under the new law. No regulatory alternatives were submitted pursuant to Section 120.541(1)(a), F.S. None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the recommended rules.

Conclusion

Based on the foregoing, staff recommends the Commission propose the adoption of Rules 25-6.030 and 25-6.031, F.A.C., as set forth in Attachment A. Staff also recommends that the Commission certify Rules 25-6.030 and 25-6.031, F.A.C., as a minor violation rules.

Issue 2: Should this docket be closed?

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

Staff Analysis: If no requests for hearing or comments are filed, the rules may be filed with the Department of State and the docket closed. When these rules become effective, staff will bring a recommendation in a separate docket for the Commission's consideration on any other existing Commission rules that need to be amended or repealed.

25-6.030 Storm Protection Plan.

(1) Application and Scope. Each utility as defined in Section 366.96(2)(a), F.S., must file a petition with the Commission for approval of a Transmission and Distribution Storm Protection Plan (Storm Protection Plan) that covers the utility's immediate 10-year planning period. Each utility must file, for Commission approval, an updated Storm Protection Plan at least every 3 years.

(2) For the purpose of this rule, the following definitions apply:

(a) "Storm protection program" – a category, type, or group of related storm protection projects that are undertaken to enhance the utility's existing infrastructure for the purpose of reducing restoration costs and reducing outage times associated with extreme weather conditions therefore improving overall service reliability.

(b) "Storm protection project" – a specific activity within a storm protection program designed for the enhancement of an identified portion or area of existing electric transmission or distribution facilities for the purpose of reducing restoration costs and reducing outage times associated with extreme weather conditions therefore improving overall service reliability.

(c) "Transmission and distribution facilities" – all utility owned poles and fixtures, towers and fixtures, overhead conductors and devices, substations and related facilities, land and land rights, roads and trails, underground conduits, and underground conductors.

(3) Contents of the Storm Protection Plan. For each Storm Protection Plan, the following information must be provided:

(a) A description of how implementation of the proposed Storm Protection Plan will strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management.

(b) A description of how implementation of the proposed Storm Protection Plan will reduce restoration costs and outage times associated with extreme weather conditions therefore improving overall service reliability.

(c) A description of the utility's service area, including areas prioritized for enhancement and any areas where the utility has determined that enhancement of the utility's existing transmission and distribution facilities would not be feasible, reasonable, or practical. Such description must include a general map, number of customers served within each area, and the utility's reasoning for prioritizing certain areas for enhanced performance and for designating other areas of the system as not feasible, reasonable, or practical.

(d) A description of each proposed storm protection program that includes:

1. A description of how each proposed storm protection program is designed to enhance the utility's existing transmission and distribution facilities including an estimate of the resulting reduction in outage times and restoration costs due to extreme weather conditions;

2. If applicable, the actual or estimated start and completion dates of the program;

3. A cost estimate including capital and operating expenses;

4. A comparison of the costs identified in subparagraph (3)(d)3. and the benefits identified in subparagraph (3)(d)1.; and

5. A description of the criteria used to select and prioritize proposed storm protection programs.

(e) For each of the first three years in a utility's Storm Protection Plan, the utility must provide a description of each proposed storm protection project that includes:

1. The actual or estimated construction start and completion dates;

2. A description of the affected existing facilities, including number and type(s) of customers served, historic service reliability performance during extreme weather conditions, and how this data was used to prioritize the proposed storm protection project;

3. A cost estimate including capital and operating expenses; and

4. A description of the criteria used to select and prioritize proposed storm protection projects.

(f) For each of the first three years in a utility's Storm Protection Plan, the utility must provide a description of its proposed vegetation management activities including:

1. The projected frequency (trim cycle);

2. The projected miles of affected transmission and distribution overhead facilities;

3. The estimated annual labor and equipment costs for both utility and contractor personnel; and

4. A description of how the vegetation management activity will reduce outage times and restoration costs due to extreme weather conditions.

(g) An estimate of the annual jurisdictional revenue requirements for each year of the Storm Protection Plan.

(h) An estimate of rate impacts for each of the first three years of the Storm Protection Plan for the utility's typical residential, commercial, and industrial customers.

(i) A description of any implementation alternatives that could mitigate the resulting rate impact for each of the first three years of the proposed Storm Protection Plan.

(j) Any other factors the utility requests the Commission to consider.

(4) By June 1, each utility must submit to the Commission Clerk an annual status report on the utility's Storm Protection Plan programs and projects. The annual status report shall include:

(a) Identification of all Storm Protection Plan programs and projects completed in the prior calendar year or planned for completion;

(b) Actual costs and rate impacts associated with completed activities under the Storm Protection Plan as compared to the estimated costs and rate impacts for those activities; and

(c) Estimated costs and rate impacts associated with programs and projects planned for completion during the next calendar year.

Rulemaking Authority 366.96, FS. Law Implemented 366.96, FS. History–New _____.

25-6.031 Storm Protection Plan Cost Recovery Clause.

(1) Application and Scope. This rule applies to each utility as defined in Section 366.96(2)(a), F.S.

(2) After a utility has filed its Transmission and Distribution Storm Protection Plan (Storm Protection Plan), the utility may file a petition for recovery of associated costs through the Storm Protection Plan cost recovery clause. The utility's petition shall be supported by testimony that provides details on the annual Storm Protection Plan implementation activities and associated costs, and how those activities and costs are consistent with its Storm Protection Plan. If the Commission approves the utility's Storm Protection Plan with modifications, the utility shall, within 15 business days, file an amended cost recovery petition and supporting testimony reflecting the modifications.

(3) An annual hearing to address petitions for recovery of Storm Protection Plan costs will be limited to determining the reasonableness of projected Storm Protection Plan costs, the prudence of actual Storm Protection Plan costs incurred by the utility, and to establish Storm Protection Plan cost recovery factors consistent with the requirements of this rule.

(4) Storm Protection Plan cost recovery clause true-up amounts shall be afforded deferred accounting treatment at the 30-day commercial paper rate.

(5) Subaccounts. To ensure separation of costs subject to recovery through the clause, the utility filing for cost recovery shall maintain subaccounts for all items consistent with the Uniform System of Accounts prescribed by this Commission, pursuant to Rule 25-6.014, F.A.C.

(6) Recoverable costs.

(a) The utility's petition for recovery of costs associated with its Storm Protection Plan may include costs incurred after the filing of the utility's Storm Protection Plan.

(b) Storm Protection Plan costs recoverable through the clause shall not include costs

recovered through the utility's base rates or any other cost recovery mechanism.

(c) The utility may recover the annual depreciation expense on capitalized Storm Protection Plan expenditures using the utility's most recent Commission-approved depreciation rates. The utility may recover a return on the undepreciated balance of the costs calculated at the utility's weighted average cost of capital using the return on equity most recently approved by the Commission.

(7) Pursuant to the order establishing procedure in the annual cost recovery proceeding, a utility shall submit the following for Commission review and approval as part of its Storm Protection Plan cost recovery filings:

(a) Final True-Up for Previous Year. The final true-up of Storm Protection Plan cost recovery for a prior year shall include revenue requirements based on a comparison of actual costs for the prior year and previously filed costs and revenue requirements for such prior year for each program and project filed in the utility's cost recovery petition. The final true-up shall also include identification of each of the utility's Storm Protection Plan programs and projects for which costs were incurred during the prior year, including a description of the work actually performed during such prior year, for each program and project in the utility's cost recovery petition.

(b) Estimated True-Up for Current Year. The actual/estimated true-up of Storm Protection Plan cost recovery shall include revenue requirements based on a comparison of current year actual/estimated costs and the previously-filed projected costs and revenue requirements for such current year for each program and project filed in the utility's cost recovery petition. The actual/estimated true-up shall also include identification of each of the utility's Storm Protection Plan programs and projects for which costs have been and will be incurred during the current year, including a description of the work projected to be performed during such current year, for each program and project in the utility's cost recovery petition.

(c) Projected Costs for Subsequent Year. The projected Storm Protection Plan costs recovery shall include costs and revenue requirements for the subsequent year for each program and project filed in the utility's cost recovery petition. The projection filing shall also include identification of each of the utility's Storm Protection Plan programs and projects for which costs will be incurred during the subsequent year, including a description of the work projected to be performed during such year, for each program and project in the utility's cost recovery petition.

(d) True-Up of Variances. The utility shall report observed true-up variances including sales forecasting variances, changes in the utility's prices of services and/or equipment, and changes in the scope of work relative to the estimates provided pursuant to subparagraphs (7)(b) and (7)(c). The utility shall also provide explanations for variances regarding the implementation of the approved Storm Protection Plan.

(e) Proposed Storm Protection Plan Cost Recovery Factors. The utility shall provide the calculations of its proposed factors and effective 12-month billing period.

(8) Recovery of costs under this rule does not preclude a utility from proposing inclusion of unrecovered Storm Protection Plan implementation costs in base rates in a subsequent rate proceeding.

Rulemaking Authority 366.96, FS. Law Implemented 366.96, FS. History–New _____.

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: September 19, 2019

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

FROM: Sevini K. Guffey, Public Utility Analyst II, Division of Economics SKG

RE: Statement of Estimated Regulatory Costs (SERC) for Proposed Adoption of New Rule 25-6.030, Florida Administrative Code (F.A.C.), Storm Protection Plan and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause.

During the 2019 session, the Florida Legislature passed Senate Bill 796 which added new requirements to Chapter 366, Florida Statutes (F.S.). Specifically, Senate Bill 796 created Section 366.96, F.S., requiring each investor-owned electric utility (IOU) to file a storm protection plan for Commission review. Section 366.96, F.S., also directs the Commission to hold an annual proceeding to allow the recovery of prudently incurred cost to implement the plan through a storm protection plan cost recovery clause. The law became effective on July 1, 2019.

To implement the new law, staff is recommending the adoption of proposed new Rules 25-6.030, Florida Administrative Code (F.A.C.) (Storm Protection Plan) and 25-6.031, F.A.C. (Storm Protection Plan Cost Recovery Clause). Staff is recommending the adoption of the rules so that Commission rules will be consistent with the requirements of the empowering statute enacted during the 2019 legislative session. The attached SERC addresses the considerations required pursuant to Section 120.541, F.S.

Staff held noticed rule development workshops on June 25 and on August 20, 2019, to obtain stakeholder comments on the draft rules. The electric IOUs and interested parties provided comments at the workshops and post workshop written comments. Information provided in the docket was incorporated into the staff's recommended rules.

On August 27, 2019, staff issued a SERC data request to the electric IOUs for which responses were received on September 10, 2019. The responses to staff's SERC data request indicate that the IOUs anticipate that any incremental costs to implement the initial filing of the storm protection plans pursuant to Rule 25-6.030, F.A.C., will be incurred as a result of the enactment of Section 366.96, F.S., rather than the adoption of proposed Rule 25-6.030, F.A.C. The IOUs also indicated that they are still evaluating the incremental resources that will be required to file petitions for storm protection costs and associated cost recovery factors and are, therefore, unable to provide at this time an estimate of incremental cost. The IOUs also indicated that if the Commission repeals Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening,

eliminating the workload for preparing storm hardening plans will be a partial offset to the workload for filing storm protection plans.

The IOUs provided estimated cost to accommodate the billing of new storm protection cost recovery factors pursuant to Rule 25-6.031, F.A.C. The incremental cost to the IOUs to bill a new cost recovery factor is the result of Section 366.96(7), F.S., and not caused by staff's proposed new rules. Therefore, none of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended rules.

At this time, it is difficult to determine whether the electric IOUs' storm protection plans will include additional storm hardening activities when compared to the existing storm hardening plans. If so, this may lead to incremental cost recovery from ratepayers. However, any resulting rate increases are expected to be mitigated to some extent by reduced outage times and are the results of the statutory requirements, rather than the recommended rules.

Section 120.541(2)(c), F.S., requires a SERC to state the cost to the Commission to implement and enforce a rule. Senate Bill 796 provides funding for four additional full time positions to meet the increased workload. The additional workload to the Commission is the result of Section 366.96, F.S., and not caused by staff's proposed new rules.

Finally, the attached SERC concludes that the rules will not likely have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the rules do not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rules will not have an adverse impact on small business and will have no impact on small cities or counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S.

cc: SERC File

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-6.030,F.A.C., Storm Protection Plan and Rule 25-6.031, F.A.C.,
Storm Protection Cost Recovery Clause

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

   Yes ☐ No ☒

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

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

   Yes ☐ No ☒

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

A. Whether the rule directly or indirectly:

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

Economic growth	Yes ☐ No ☒
Private-sector job creation or employment	Yes ☐ No ☒
Private-sector investment	Yes ☐ No ☒

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

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

1

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

Yes ☐ No ☒

Economic Analysis: During the 2019 session, the Florida Legislature enacted Senate Bill 796 which was incorporated into Chapter 2019-158, Laws of Florida. The Bill created Section 366.96, F.S., relating to electric investor-owned utility (IOU) storm protection plans. The new law became effective on July 1, 2019. To implement the new law, staff is recommending the adoption of new Rule 25-6.030, F.A.C. (Storm Protection Plan) and Rule 25-6.031, F.A.C. (Storm Protection Plan Cost Recovery Clause). Staff is recommending these rules so that the Commission's rules will be consistent with the requirements of the empowering statutes as enacted during the 2019 legislative session.

In response to staff's SERC data request, the electric IOUs stated that the new rules may require more details in the proposed storm protection plan (SPP) in comparison to the currently effective storm hardening plan (SHP). The IOUs stated they expect additional/incremental administrative costs such as preparing and filing the SPP, analysis of program components, responding to discovery, annual hearing support costs, and travel required to support annual hearings. However, the IOUs do not expect significant additional work.

The IOUs provided estimated cost to accommodate the billing of new storm protection cost recovery factors pursuant to Rule 25-6.031, F.A.C. The incremental cost to the IOUs to bill a new cost recovery factor is the result of Section 366.96(7), F.S., and not caused by staff's proposed new rules. Therefore, none of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended rules.

Generally, the IOUs state that they will be able to meet the requirements of the new rules with existing resources and minimal incremental costs. They also state that any estimated incremental costs will be incurred as a result of the specific requirements in Section 366.96(7), F.S. Therefore, any estimated additional transactional costs are caused by statutory changes and not by the rules. None of the rule impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded by an individual utility as a result of the recommended new rules.

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

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

The entities required to comply with the rules include the five electric IOUs. If there were to be new electric IOUs that would come under the jurisdiction of the Commission in the future, they would also be required to comply.

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

The types of individuals likely to be affected by the rule would be customers who are served by the five electric IOUs. The ultimate impact on customer bills cannot be determined at this time because they will vary for each IOU's Commission-approved storm protection plans and projects. These regulatory costs will be recovered from the IOU's customers through rates. [Source: Final Bill Analysis, 7/10/2019]

The five electric IOUs, in response to staff's data request, stated that the financial impact of this SPP would be to provide cost savings and other economic benefits from reduced restoration costs and outage times to consumers and improve the overall service reliability. The IOUs believe that the long-term benefits of a more reliable and resilient electric system will mitigate the financial impacts for its customers and will have a positive economic impact.

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

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

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

☒ Minimal. Provide a brief explanation.

The statute requires each electric IOU to file, at least every three years, a storm protection plan for the Commission's review and directs the Commission to hold an annual proceeding to determine the utility's prudently incurred costs to implement the plan and allow recovery of those costs through a storm Protection Plan Cost Recovery Clause. Additionally, Section 366.96(10), F.S. requires that beginning December 1 of the year after the first full year of implementation of the SPP and annually thereafter, the Commission must submit a status report of the utilities' storm protection activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The legislature, in recognition of the additional anticipated workload, has provided four additional FTE staff positions and funding for the next three fiscal years.

[source: Final Bill Analysis, 7/10/2019]

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

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

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

3

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

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

☐ None.

☒ Minimal. Provide a brief explanation.

DEF stated in its response to staff's SERC data request that the implementation of the proposed SPP could lead to additional hardening projects, thereby creating more jobs. Together with creating jobs, the potential reduction in electric outage times would also have a positive impact on Florida's economy.

FPUC also believes that the long-term benefits of a more reliable and resilient electric system will mitigate the dollar impacts for its customers.

An increase in prudent storm protection activities may reduce storm restoration costs and economic losses associated with power outages. Additionally, to the extent that IOU rates and charges increase due to the implementation of the Storm Protection Plan, certain tax revenues of state and local governments may increase [source: Final Bill Analysis, 7/10/2019]

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

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

☐ None. The rule will only affect the Commission.

☒ Minimal. Provide a brief explanation.

Please see Section A(3) for discussion regarding incremental transactional costs to be incurred by the electric IOUs. Any economic impacts that might be incurred by the affected entities would be a result of statutory changes promulgated under Section 366.96, F.S., and not caused by staff's recommended new rules. Because estimated additional transactional costs are caused by statutory changes and not by staff's recommended changes to Commission rules, none of the rule impacts/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended new rules.

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

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

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

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

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

The five electric IOUs, in response to staff's SERC data request, stated that the financial impact of this SPP would be to provide cost savings and other economic benefits from reduced restoration costs and outage times to consumers and thereby improve the overall service reliability. The IOUs believe that the long-term benefits of a more reliable and resilient electric system will mitigate the financial impacts for its customers and will have a positive economic impact.

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

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

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

Small cities and counties may have an increase in certain state and local tax revenues resulting from higher rates and charges that implement the proposed SPP. [source: Final Bill Analysis, 7/10/2019] However, as noted in Section A(3) above, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under Section 366.97, F.S., and not caused by staff's recommended new Commission rules.

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

☐ None.

Additional Information: Staff rule development workshops were held on June 25, 2019, and on August 20, 2019, regarding the new storm protection plan and cost recovery clause rules. Comments from affected utilities and parties were incorporated into the draft rules to provide additional clarification.

The legislative finding of the new Section 366.96, F.S., concludes that it is in the state's interest to strengthen electric utility infrastructure to withstand extreme weather conditions by promoting certain storm hardening activities, and that these activities can effectively reduce restoration costs and outage times and improve overall service reliability for customers.

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

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

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

Select Year: 2019 ▼ Go

The 2019 Florida Statutes

Title XXVII
RAILROADS AND OTHER REGULATED UTILITIES

Chapter 366
PUBLIC UTILITIES

View Entire Chapter

366.96 Storm protection plan cost recovery.—

(1) The Legislature finds that:

(a) During extreme weather conditions, high winds can cause vegetation and debris to blow into and damage electrical transmission and distribution facilities, resulting in power outages.

(b) A majority of the power outages that occur during extreme weather conditions in the state are caused by vegetation blown by the wind.

(c) It is in the state's interest to strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management.

(d) Protecting and strengthening transmission and distribution electric utility infrastructure from extreme weather conditions can effectively reduce restoration costs and outage times to customers and improve overall service reliability for customers.

(e) It is in the state's interest for each utility to mitigate restoration costs and outage times to utility customers when developing transmission and distribution storm protection plans.

(f) All customers benefit from the reduced costs of storm restoration.

(2) As used in this section, the term:

(a) "Public utility" or "utility" has the same meaning as set forth in s. 366.02(1), except that it does not include a gas utility.

(b) "Transmission and distribution storm protection plan" or "plan" means a plan for the overhead hardening and increased resilience of electric transmission and distribution facilities, undergrounding of electric distribution facilities, and vegetation management.

(c) "Transmission and distribution storm protection plan costs" means the reasonable and prudent costs to implement an approved transmission and distribution storm protection plan.

(d) "Vegetation management" means the actions a public utility takes to prevent or curtail vegetation from interfering with public utility infrastructure. The term includes, but is not limited to, the mowing of vegetation, application of herbicides, tree trimming, and removal of trees or brush near and around electric transmission and distribution facilities.

(3) Each public utility shall file, pursuant to commission rule, a transmission and distribution storm protection plan that covers the immediate 10-year planning period. Each plan must explain the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. The commission shall adopt rules to specify the elements that must be included in a utility's filing for review of transmission and distribution storm protection plans.

(4) In its review of each transmission and distribution storm protection plan filed pursuant to this section, the commission shall consider:

(a) The extent to which the plan is expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability, including whether the plan prioritizes areas of lower reliability performance.

(b) The extent to which storm protection of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the utility's service territory, including, but not limited to, flood zones and rural areas.

(c) The estimated costs and benefits to the utility and its customers of making the improvements proposed in the plan.

(d) The estimated annual rate impact resulting from implementation of the plan during the first 3 years addressed in the plan.

(5) No later than 180 days after a utility files a transmission and distribution storm protection plan that contains all of the elements required by commission rule, the commission shall determine whether it is in the public interest to approve, approve with modification, or deny the plan.

(6) At least every 3 years after approval of a utility's transmission and distribution storm protection plan, the utility must file for commission review an updated transmission and distribution storm protection plan that addresses each element specified by commission rule. The commission shall approve, modify, or deny each updated plan pursuant to the criteria used to review the initial plan.

(7) After a utility's transmission and distribution storm protection plan has been approved, proceeding with actions to implement the plan shall not constitute or be evidence of imprudence. The commission shall conduct an annual proceeding to determine the utility's prudently incurred transmission and distribution storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause. If the commission determines that costs were prudently incurred, those costs will not be subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility.

(8) The annual transmission and distribution storm protection plan costs may not include costs recovered through the public utility's base rates and must be allocated to customer classes pursuant to the rate design most recently approved by the commission.

(9) If a capital expenditure is recoverable as a transmission and distribution storm protection plan cost, the public utility may recover the annual depreciation on the cost, calculated at the public utility's current approved depreciation rates, and a return on the undepreciated balance of the costs calculated at the public utility's weighted average cost of capital using the last approved return on equity.

(10) Beginning December 1 of the year after the first full year of implementation of a transmission and distribution storm protection plan and annually thereafter, the commission shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report on the status of utilities' storm protection activities. The report shall include, but is not limited to, identification of all storm protection activities completed or planned for completion, the actual costs and rate impacts associated with completed activities as compared to the estimated costs and rate impacts for those activities, and the estimated costs and rate impacts associated with activities planned for completion.

(11) The commission shall adopt rules to implement and administer this section and shall propose a rule for adoption as soon as practicable after the effective date of this act, but not later than October 31, 2019.

History.—s. 1, ch. 2019-158.

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: September 19, 2019

TO: Docket No. 20190152-WS – Proposed Amendment of Rule 25-30.350, F.A.C., Underbillings and Overbillings for Water and Wastewater Service, and Rule 25-30.360, F.A.C., Refunds.

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk AT

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 08323-2019 was filed on August 22, 2019, for the September 5, 2019 Commission Conference.

Due to the approach of Hurricane Dorian and its potential threat to areas throughout the State of Florida, the Commission's Conference set for Thursday, September 5, 2019, was cancelled. Dockets scheduled for consideration at that conference were deferred to the October 3, 2019, Commission Conference.

Accordingly, this item has been placed on the agenda for the October 3, 2019 Commission Conference, and staff's previously filed memorandum is attached.

/ajt

Attachment

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper)
Division of Accounting and Finance (Norris, Sewards)
Division of Economics (Hudson, Ramos, Guffey)

RE: Docket No. 20190152-WS – Proposed Amendment of Rule 25-30.350, F.A.C., Underbillings and Overbillings for Water and Wastewater Service, and Rule 25-30.360, F.A.C., Refunds.

AGENDA: 09/05/19 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-30.350, Underbillings and Overbillings for Water and Wastewater Service, Florida Administrative Code (F.A.C.), addresses underbillings and overbillings by water and wastewater companies. Subsection (2) of the rule provides the criteria for underbillings and allows the customer to pay for the unbilled service over the same time period as the time period during which the underbilling occurred or some other mutually agreeable time period. In addition, the rule sets forth the criteria by which an overbilling is determined and sets forth the procedure for how the refund amount should be calculated based on available records. This rulemaking does not amend any of the underbillings requirements. The focus of this rulemaking is on the overbillings portion of Rule 25-30.350, F.A.C.

Rule 25-30.360, Refunds, F.A.C., provides a process for disbursing overbilling refunds to water and wastewater customers. The rule sets forth the procedures for the timing of refunds, basis of the refund, cases where refunds include interest, the method of refund distribursement, security money collected subject to a refund, and refund reports.

On April 18, 2019, Office of Public Counsel (OPC) filed a petition for declaratory statement that sought clarification on how the Commission applies Rule 25-30.350, F.A.C., and Rule 25-30.360, F.A.C., in the case of overbillings. On June 24, 2019, OPC withdrew its petition for declaratory statement after staff agreed to initiate rulemaking to explore whether Rule 25-30.350, F.A.C., and Rule 25-30.360, F.A.C., should be amended to clarify the process that the Commission uses to refund overbillings.

A Notice of Development of Rulemaking was published in Volume 45, No. 120, of the Florida Administrative Register on June 20, 2019. A rule development workshop was held on July 15, 2019. Representatives from OPC and Utilities Inc. Florida were in attendance.

This recommendation addresses whether the Commission should amend Rules 25-30.350 and 25-30.360, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 367.081, 367.091, and 367.161, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission amend Rule 25-30.350, Underbillings and Overbillings for Water and Wastewater Service, F.A.C., and Rule 25-30.360, Refunds, F.A.C.?

Recommendation: Yes, the Commission should amend Rule 25-30.350, F.A.C., and Rule 25-30.360, F.A.C, as set forth in Attachment A. The Commission should certify Rules 25-30.350 and 25-30.360, F.A.C., as minor violation rules. (Harper, Sewards, Norris, Hudson, Guffey, Ramos)

Staff Analysis: Rule 25-30.350, F.A.C., sets forth the procedure for calculating overbillings. Rule 25-30.360, F.A.C., sets forth the procedure for disbursing the amount of refunds. Staff believes that both Rule 25-30.350, F.A.C., and Rule 25-30.360, F.A.C., work in conjunction, i.e., once the Commission determines that a water or wastewater utility has overbilled a customer pursuant to Rule 25-30.350, F.A.C., any refund required due to overbilling must be disbursed by the utility pursuant to Rule 25-30.360, F.A.C. Staff recommends that both rules be amended to clarify that the two rules are to function in conjunction with each other.

Staff recommends that subsection (3) of Rule 25-30.350, F.A.C., include a reference to Rule 25-30.360, F.A.C., to clarify that if there is a determination of overbilling, any refunds for overbillings must be disbursed pursuant to Rule 25-30.360, F.A.C. Similarly, in subsection (1) of Rule 25-30.360, F.A.C., staff recommends adding a reference to Rule 25-30.350, F.A.C., to clarify that before a refund can be disbursed, the calculation for overbillings must first be made pursuant to Rule 25-30.350, F.A.C. In other words, all refund calculations are made pursuant to Rule 25-30.350, F.A.C., and the disbursement of the refunds are made pursuant to Rule 25-30.360, F.A.C.

In addition, staff recommends removing the discretionary language in subsection (1) of Rule 25-30.360, F.A.C., and the reference to the customer deposit rule. Subsection (1) should instead state that unless another rule specifically sets forth procedures for making refunds, Rule 25-30.360, F.A.C., is applicable in the case of a customer refund.[1]

Minor Violation Rules Certification

Rules 25-30.350 and 25-30.360, F.A.C., are on the Commission's list of minor violation rules. Pursuant to Section 120.695, F.S., as of July 1, 2017, the agency head shall certify whether any part of each rule filed for adoption is designated as a minor violation rule. A minor violation rule is a rule that would not result in economic or physical harm to a person or an adverse effect on the public health, safety, or welfare or create a significant threat of such harm when violated. Staff recommends that the Commission continue to certify both rules as minor violation rules.

[1]For example, a customer could receive monies back from a utility pursuant to Rule 25-30.311, Customer Deposits, F.A.C. Because Rule 25-30.311, F.A.C., specifically sets forth a procedure from making refunds, it would continue to be an exception to the more general refund requirements of Rule 25-30.360, F.A.C.

Statement of Estimated Regulatory Costs

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

The SERC concludes that the amendments to Rules 25-30.350 and 25-30.360, F.A.C., will likely not directly or indirectly increase regulatory costs in excess of $200,000 within 1 year after implementation. Further, the SERC concludes that the amendment of the rules will not likely increase regulatory costs, including any transactional costs, or have an adverse impact on business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the amendment of the rules does not require legislative ratification, pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the amendments to Rules 25-30.350 and 25-30.360, F.A.C., would have no impact on small businesses, would have no implementation or enforcement cost on the Commission or any other state and local government entity, and would have no impact on small cities or small counties. The SERC states that no additional transactional costs are likely to be incurred by individuals and entities required to comply with the requirements.

Conclusion

The Commission should amend Rules 25-30.350 and 25-30.360, F.A.C., as set forth in Attachment A. The Commission should certify Rules 25-30.350 and 25-30.360, F.A.C., as minor violation rules.

Issue 2: Should this docket be closed?

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

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

25-30.350 Underbillings and Overbillings for Water and Wastewater Service.

(1) A utility may not backbill customers for any period greater than 12 months for any undercharge in billing which is the result of the utility's mistake.

(a) The utility shall allow the customer to pay for the unbilled service over the same time period as the time period during which the underbilling occurred or some other mutually agreeable time period. The utility shall not recover in a ratemaking proceeding, any lost revenues which inure to the utility's detriment on account of this provision.

(b) The revised bill shall be calculated on a monthly basis, assuming uniform consumption during the month(s) subject to underbilling, based on the individual customer's average usage for the time period covered by the underbilling. The monthly bills shall be recalculated by applying the tariff rates in effect for that time period. The customer shall be responsible for the difference between the amount originally billed and the recalculated bill. All calculations used to arrive at the rebilled amount shall be made available to the customer upon the customer's request.

(2) 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.

(3) In the event of an overbilling, the customer may elect to receive the refund as a one-time disbursement, if the refund is in excess of $20, or as a credit to future billings. Refunds for overbillings shall be disbursed pursuant to Rule 25-30.360, F.A.C.

Rulemaking Authority 350.127(2), 367.121 FS. Law Implemented 367.091, 367.121 FS. History–New 11-10-86, Amended 6-17-13, _____.

25-30.360 Refunds.

(1) Applicability. ~~With the exception of deposit refunds,~~ ~~A~~all refunds under this chapter ~~ordered by the Commission~~ shall be made in accordance with ~~the provisions of~~ this rule, unless another rule in this chapter specifically sets forth the procedure for making refunds ~~otherwise ordered by the Commission~~. The calculation for overbillings shall be pursuant to Rule 25-30.350, F.A.C., and disbursed pursuant to this rule.

(2) Timing of Refunds. Refunds must be made within 90 days of the Commission's order unless a different time frame is prescribed by the Commission. A timely motion for reconsideration temporarily stays the refund, pending the final order on the motion for reconsideration. In the event of a stay pending reconsideration, the timing of the refund shall commence from the date of the order disposing of any motion for reconsideration. This rule does not authorize any motion for reconsideration not otherwise authorized by Chapter 25-22, F.A.C.

(3) Basis of Refund. 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. However, 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.

(4) Interest.

(a) In the case of refunds which the Commission orders to be made with interest, the average monthly interest rate until refund is posted to the customer's account shall be based on the 30 day commercial paper rate for high grade, unsecured notes sold through dealers by

major corporations in multiples of $1,000 as regularly published in the Wall Street Journal.

(b) This average monthly interest rate shall be calculated for each month of the refund period:

1. By adding the published interest rate in effect for the last business day of the month prior to each month the refund period and the published rate in effect for the last business day of each month of the refund period divided by 24 to obtain the average monthly interest rate;

2. The average monthly interest rate for the month prior to distribution shall be the same as the last calculated average monthly interest rate.

(c) The average monthly interest rate shall be applied to the sum of the previous month's ending balance (including monthly interest accruals) and the current month's ending balance divided by 2 to accomplish a compounding effect.

(d) Interest Multiplier. When the refund is computed for each customer, an interest multiplier may be applied against the amount of each customer's refund in lieu of a monthly calculation of the interest for each customer. The interest multiplier shall be calculated by dividing the total amount refundable to all customers, including interest, by the total amount of the refund, excluding interest. For the purpose of calculating the interest multiplier, the utility may, upon approval by the Commission, estimate the monthly refundable amount.

(e) Commission staff shall provide applicable interest rate figures and assistance in calculations under this Rule upon request of the affected utility.

(5) Method of Refund Distribution. For those customers still on the system, a credit shall be made on the bill. In the event the refund is for a greater amount than the bill, the remainder of the credit shall be carried forward until the refund is completed. If the customer so requests, a check for any negative balance must be sent to the customer within 10 days of the request. For customers entitled to a refund but no longer on the system, the company shall mail a refund check to the last known billing address except that no refund for less than $1.00 will be

made to these customers.

(6) Security for Money Collected Subject to Refund. In the case of money being collected subject to refund, the money shall be secured by a bond unless the Commission specifically authorizes some other type of security such as placing the money in escrow, approving a corporate undertaking, or providing a letter of credit. The company shall provide a report by the 20th of each month indicating the monthly and total amount of money subject to refund as of the end of the preceding month. The report shall also indicate the status of whatever security is being used to guarantee repayment of the money.

(7) Refund Reports. During the processing of the refund, monthly reports on the status of the refund shall be made by the 20th of the following month. In addition, a preliminary report shall be made within 30 days after the date the refund is completed and again 90 days thereafter. A final report shall be made after all administrative aspects of the refund are completed. The above reports shall specify the following:

(a) The amount of money to be refunded and how that amount was computed;

(b) The amount of money actually refunded;

(c) The amount of any unclaimed refunds; and

(d) The status of any unclaimed amounts.

(8) Any unclaimed refunds shall be treated as cash contributions-in-aid-of-construction.

Rulemaking Authority 350.127(2), 367.121 FS. Law Implemented 367.081, 367.0814, 367.082(2) FS. History–New 8-18-83, Formerly 25-10.76, 25-10.076, Amended 11-30-93, _____.

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: July 26, 2019

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

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

RE: **Statement of Estimated Regulatory Costs** for Proposed Rule 25-30.350, Underbillings and Overbillings for Water and Wastewater Service, Florida Administrative Code (F.A.C.), and Rule 25-30.360, Refunds, F.A.C.

The purpose of this rulemaking initiative is to clarify the procedure for customer refunds due to overbillings by water and wastewater companies.

The attached Statement of Estimated Regulatory Costs (SERC) addresses economic impacts and considerations required pursuant to Section 120.541, Florida Statutes (F.S.). The SERC analysis indicates that the proposed rule amendments will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. The proposed rule amendments would have no impact on small business, would have no implementation cost to the Commission or other state and local government entities, and would have no impact on small cities or counties.

A noticed rule development workshop was held on July 15, 2019. Comments received have been incorporated to the revised rules. No regulatory alternatives were submitted pursuant to Section 120.541(1)(g), F.S. The SERC concludes that none of the impacts/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e) F.S. will be exceeded as a result of the proposed rule revisions.

cc: SERC File

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rules 25-30.350, Underbillings and Overbillings for Water and Wastewater Service, F.A.C., and Rule 25-30.360, Refunds, F.A.C.

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

   Yes ☐ No ☒

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

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

   Yes ☐ No ☒

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

A. Whether the rule directly or indirectly:

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

Economic growth	Yes ☐ No ☒
Private-sector job creation or employment	Yes ☐ No ☒
Private-sector investment	Yes ☐ No ☒

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

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

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

Yes ☐ No ☒

Economic Analysis:

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

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

The number of entities required to comply with this rule includes 124 water utilities and 92 wastewater utilities within the State of Florida.

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

Types of individuals likely to be affected by this rule would be residential, commercial, and industrial water and wastewater utility customers of the above mentioned 124 water utilities and 92 wastewater utilities.

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

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

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

☐ Minimal. Provide a brief explanation.

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

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

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

☐ Minimal. Provide a brief explanation.

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

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

☐ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

Revised Rule 25-30.350, F.A.C. states that refunds for water and wastewater customers shall be disbursed pursuant to Rule 25-30.360, F.A.C. The revision adds clarification to provide a timeframe to disburse customer refunds.

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

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

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

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

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an

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

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

Additional Information:

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

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

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

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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: September 19, 2019

TO: Docket No. 20190108-WS – Request for initiation of formal proceedings for relief against Utilities, Inc. of Florida regarding over billing and broken meter, by Eugene R. Lopez (Complaint # 1270964W).

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk AT

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 08317-2019 was filed on August 22, 2019, for the September 5, 2019 Commission Conference.

Due to the approach of Hurricane Dorian and its potential threat to areas throughout the State of Florida, the Commission's Conference set for Thursday, September 5, 2019, was cancelled. Dockets scheduled for consideration at that conference were deferred to the October 3, 2019, Commission Conference.

Accordingly, this item has been placed on the agenda for the October 3, 2019 Commission Conference, and staff's previously filed memorandum is attached.

/ajt

Attachment

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Simmons, Crawford)
Office of Consumer Assistance and Outreach (Plescow, Hicks)
Division of Economics (Bethea, Hudson)
Division of Engineering (Doehling, Graves)

RE: Docket No. 20190108-WS – Request for initiation of formal proceedings for relief against Utilities, Inc. of Florida regarding over billing and broken meter, by Eugene R. Lopez (Complaint # 1270964W).

AGENDA: 09/05/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On February 16, 2018, Eugene Lopez filed informal complaint number 1270964W with the Public Service Commission (Commission) against Utilities, Inc. of Florida (UIF or Utility). In his informal complaint, Mr. Lopez alleged that due to a broken water meter, UIF improperly billed him in January and February of 2018 because his meter was not measuring his water usage. He also alleged he was being backbilled for up to 12 months of usage he may or may not have used.

Staff advised Mr. Lopez on March 20, 2019, that his informal complaint had been reviewed by the Commission's Process Review Team (PRT), in accordance with Rule 25-22.032, Florida

Administrative Code (F.A.C.), and it appeared that UIF had not violated any applicable statutes, rules, company tariffs, or Commission orders. Staff advised Mr. Lopez that if he disagreed with the complaint conclusion, he could file a petition for initiation of formal proceedings for relief against UIF.

Mr. Lopez filed a formal complaint on April 24, 2019, pursuant to Rule 25-22.036, F.A.C. In the complaint, Mr. Lopez states he has never exceeded 8,000 gallons of water usage in any month; over the past ten or so years, he has never paid more than $90 for his water usage; over the past several years, he has repeatedly informed UIF that his meter has not been working properly; and UIF claims it has no responsibility for the broken meter. Mr. Lopez claims UIF arbitrarily overcharged him in his January 2018 water bill due to a broken water meter.

On July 11, 2019, staff sent a letter to Mr. Lopez requesting any additional information or documentation that might assist the Commission in addressing his complaint. On July 19, 2019, Mr. Lopez told staff he had already provided all the necessary documentation to address his complaint.

Mr. Lopez seeks for the Commission to find that UIF overbilled him and to require UIF to reimburse him $188.85, the final disputed amount in the case. This recommendation addresses the appropriate disposition of Mr. Lopez's complaint against UIF. The Commission has jurisdiction over this matter pursuant to Sections 367.011 and 367.081, Florida Statutes.

Discussion of Issues

Issue 1: What is the appropriate disposition of Mr. Lopez's formal complaint?

Recommendation: Staff recommends that Mr. Lopez's formal complaint be denied. Mr. Lopez's account was properly billed in accordance with Florida statutes and rules and UIF's tariffs. UIF did not violate any applicable statute, rule, company tariff, or order of the Commission in the processing of Mr. Lopez's account. (Simmons)

Staff Analysis: Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order. Mr. Lopez's petition fails to show that UIF's billing of Mr. Lopez violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C. Therefore, the Commission should deny Mr. Lopez's petition for relief.

On January 9, 2018, UIF sent Mr. Lopez a monthly bill for $303.79, which represented consumption of 64,480 gallons between December 1, 2017, and January 3, 2018. Because Mr. Lopez was enrolled in Auto Pay, $250 (the maximum amount) was withdrawn from Mr. Lopez's account. This left a balance of $53.79. Mr. Lopez contacted UIF stating he did not agree with the January 2018 bill amount and denied the existence of any leaks or additional water consumption at his service address.

On January 29, 2018, at the request of Mr. Lopez, his meter was reread. The meter indicated additional usage of 14,555 gallons since January 3, 2018. On February 1, 2018, a regular meter reading was obtained, which indicated an additional usage of 1,045 gallons since January 29, 2018.[1] Because Mr. Lopez was not satisfied with the meter readings, a field meter test was scheduled for February 8, 2018.

The scheduled field meter test was performed on February 8, 2018. The meter test results reflected zero consumption at flow rates of 15 gallons per minute (GPM), 2GPM, and 0.25GPM. UIF stated that the meter appeared to have stopped working after the February 1, 2018, meter reading.[2] UIF stated that the non-functioning meter was a benefit to Mr. Lopez because the water consumed between February 1 and February 8 was not billed. UIF also stated Mr. Lopez's meter was a positive displacement meter[3] which only slows down over time, it does not speed up (i.e., the meter will not over-record water usage). UIF installed a new meter that same day. UIF sent to Mr. Lopez a monthly bill the same day for $169.65, including current charges of $109.46, which represented consumption of 15,600 gallons from January 3, 2018, to February 1, 2018, a $6.40

[1] On February 6, 2018, Mr. Lopez was sent a final notice to pay the remaining balance of $53.79 by February 16, 2018, to avoid an interruption in his service. Pursuant to Rule 25-22.032(3), F.A.C., Mr. Lopez became protected from disconnection for nonpayment of the disputed amount when his informal complaint was filed with the Commission on February 16, 2018.

[2] The meter showed a reading of 1836720, which was the same reading taken on February 1, 2018.

[3] A positive displacement meter is a flow meter that directly measures the volume of fluid passing through it. The accuracy of a displacement meter may be impacted by a number of factors, including excessive wear, temperature extremes, corrosion, and suspended solids. These factors may cause the meter to slip or bind, which would result in under-registration.

late payment charge, and a $53.79 past due balance. Mr. Lopez disagreed that he used 15,600 gallons during the billing period. The $303.79 from the January bill and $115 from the February bill (rounding of the $109.46 and $6.40) totaled the initial disputed amount of $418.79.

On February 16, 2018, Mr. Lopez's informal complaint was filed with the Commission. On that same day, staff forwarded the complaint to UIF requesting that the Utility investigate the matter and provide Mr. Lopez and staff with a response to the complaint by March 12, 2018, pursuant to Rule 25-22.032(6)(b), F.A.C.

UIF responded to Mr. Lopez's complaint on March 12, 2018, stating that he was only charged for water usage that registered through the meter and that he was not backbilled for unregistered water. UIF also stated that Mr. Lopez was correctly charged for usage that registered on the meter based on Commission-approved rates. However, UIF provided an adjustment credit of $79.76 and removed the $6.40 late fee charge. With the adjustment credit and late fee charge removed, Mr. Lopez had a remaining balance of $139.51.[4] UIF offered Mr. Lopez a four-month installment plan to pay the balance.

On April 4, 2018, staff sent a letter to Mr. Lopez stating that staff had reviewed UIF's billing of his account and determined that UIF had not backbilled his account and that the meter readings obtained and bills sent in the past 12 months were based on actual meter readings. The letter also stated that Mr. Lopez should contact staff by April 20, 2018, or the case would be considered resolved. The case was closed on April 27, 2018, due to no further contact from Mr. Lopez. Pursuant to Rule 25-22.032(7), F.A.C., the case was reopened and forwarded to the PRT on May 24, 2018, when Mr. Lopez contacted staff stating he objected to the resolution of his case.

On June 29, 2018, Mr. Lopez provided staff and UIF with a spreadsheet concerning billing from January through June of 2018. In his notes, he stated that the average usage with his new meter was 4,300 gallons per month. He estimated his water usage in January and February of 2018 to be 6,000 gallons each. Based on these amounts, Mr. Lopez stated that the total bill amount from January to June of 2018 should be $392.91, and the $250 Auto Pay amount reduced his account balance to $142.91. UIF received a check from Mr. Lopez for $142.91 on July 2, 2018.

In response to Mr. Lopez's proposal, UIF offered an additional $45.97 adjustment credit. When staff contacted Mr. Lopez to discuss the additional adjustment, Mr. Lopez refused to take it, stating he had already paid in full for the past six months of water service. The new amount in dispute was established as $188.85, which is the June bill, $331.76, minus the $142.91 check Mr. Lopez sent UIF. Mr. Lopez has since paid the $188.85, but seeks reimbursement.

After further investigation, the PRT concluded on March 20, 2019, that it appeared UIF had not violated any applicable statutes, rules, company tariffs, or Commission orders. Mr. Lopez did not agree with staff's finding and filed a formal complaint on April 24, 2019.

[4] The balance of $139.51 was determined as follows: $303.79 (January bill) - $250 (Auto Pay amount) = $53.79; $53.79 + $109.46 (February bill) + $6.40 (late fee) = $169.65; $169.65 + $56.02 (March bill) = $225.67; $225.67 - $79.76 (adjustment credit) - $6.40 = $139.51.

Based on the information provided to staff and discussions with both the Utility and Mr. Lopez, there is no evidence that UIF billed Mr. Lopez incorrectly. Mr. Lopez was billed based on actual meter readings and his account was not backbilled. Staff reviewed Mr. Lopez's usage and billing history for the years 2015-2018. While the January 2018 usage is higher than other months, the February 2018 usage is mostly in line with, or lower than, comparable months. As noted by UIF, positive displacement meters tend to under-record, not over-record, usage. Thus, staff recommends that the Commission deny Mr. Lopez's petition as it does not demonstrate that UIF's billing of his account violates any statutes, rules, or orders, or that UIF's calculation of the January and February 2018 bills is unreasonable.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Simmons)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

Item 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: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (DuVal, Cowdery)
Office of Industry Development and Market Analysis (Vogel)

RE: Docket No. 20190176-EI – Joint petition for approval of regulatory improvements for decentralized solar net-metering systems in Florida.

AGENDA: 10/03/19 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: 10/3/19 (30-Day Statutory Deadline)

SPECIAL INSTRUCTIONS: None

Case Background

On September 3, 2019, Achim Ginsberg-Klemmt, Chris Pierce, Darrell Prather, Geoffrey P. Dorney, Jeffrey L. Hill, John Bachmeier, J. Robert Barnes, Paul Romanoski, Terry Langlois, and Robert Winfield (collectively referred to herein as "Petitioners") filed a Joint Petition for Approval of Regulatory Improvements for Decentralized Solar Net-Metering Systems in Florida ("Petition"). Petitioners request that the Commission take certain action relating to the interconnection and net metering of customer-owned renewable generation by electric utilities[1] in Florida. Specifically, Petitioners request that the Commission revise certain terms and requirements related to interconnection and net metering. Although not styled as such, the Petition amounts to a petition to initiate rulemaking to amend Rule 25-6.065, Florida

[1] Section 366.02, Florida Statutes, defines an "electric utility" as any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within Florida.

Administrative Code (F.A.C.), Interconnection and Net Metering of Customer-Owned Renewable Generation.

Pursuant to Section 120.54(7)(a), Florida Statutes (F.S.), any person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. That section requires the Commission to either initiate rulemaking proceedings or deny the petition with a written statement of its reasons for the denial no later than 30 calendar days following the date of the filing of the petition. This recommendation addresses whether the Commission should grant the Petition. The Commission has jurisdiction pursuant to Sections 120.54(7), 350.127(2), and 366.91, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Petitioners' Joint Petition for Approval of Regulatory Improvements for Decentralized Solar Net-Metering Systems in Florida?

Recommendation: No. Staff recommends that the Commission treat the filing as a petition to initiate rulemaking to amend Rule 25-6.065, F.A.C., Interconnection and Net Metering of Customer-Owned Renewable Generation. Staff further recommends that the Petition be denied. (DuVal, Cowdery, Vogel)

Staff Analysis: Although not styled as a petition to initiate rulemaking, the Petition amounts to a Section 120.54(7)(a), F.S., petition to initiate rulemaking to amend Rule 25-6.065, F.A.C. While Petitioners do not cite a specific rule, their requested action would require amending the Commission's rule on interconnection and net metering. Therefore, staff recommends that the Commission treat the filing as a petition to initiate rulemaking to amend Rule 25-6.065, F.A.C.

Applicable Law

Petition to Initiate Rulemaking

Section 120.54(7)(a), F.S., states that any person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. The petition is required to specify the proposed rule and action requested. Although Petitioners do not specify the rule they wish to amend, it is obvious from the Petition that they are referring to Rule 25-6.065, F.A.C., as they cite to specific language from the rule. Section 120.54(7)(a), F.S., further requires the Commission to either initiate rulemaking proceedings or deny the petition with a written statement of its reasons for denial no later than 30 days from the date the petition was filed.

Interconnection and Net Metering

Section 366.91, F.S., Renewable energy, reflects the Legislature's finding that it is in the public interest to promote the development of renewable energy resources in this state. Pursuant to Section 366.91(5), F.S., electric utilities must have standardized interconnection agreements and net metering programs for customer-owned renewable generation. That statute further requires the Commission to establish requirements related to such agreements and programs and permits the Commission to adopt rules necessary to administer the provisions of Section 366.91(5), F.S.

Customer-owned renewable generation is defined in Section 366.91(2)(b), F.S., as "an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy." Section 366.91(2)(c), F.S., defines net metering as "a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on site."

Rule 25-6.065, F.A.C., sets forth the Commission's requirements for interconnection and net metering of customer-owned renewable generation.[2] The purpose of the rule includes promotion

[2] While the bulk of Rule 25-6.065, F.A.C., applies only to Florida investor-owned electric utilities, the reporting requirements set forth in subsection (10) also apply to municipal electric utilities and rural electric cooperatives within the state.

of the development of small customer-owned renewable generation, particularly solar and wind generation, and to minimize costs of power supply to investor-owned utilities and their customers. Rule 25-6.065(4)(a), F.A.C., requires that in order to qualify for interconnection, Tier 1 customer-owned renewable generation must have a gross power rating that is less than 90% of the customer's utility distribution service rating and generate 10kW or less. Further, Rule 25-6.065(8)(e)-(g), F.A.C., provides the process by which customers may accumulate and use the energy credits produced through the use of customer-owned renewable generation.

In addition to regulating the interconnection and net metering of customer-owned renewable generation, the Commission regulates Florida electric utilities' purchase of electricity from cogenerators and small power producers. Under Section 366.051, F.S., Florida electric utilities must purchase all electricity offered for sale by a small power producer within its service area or the small power producer may sell such electricity to any other electric utility in the state. Chapter 25-17, F.A.C., contains the Commission's rules regarding small power producers and the utilities' purchase of the electricity they generate.

Petition

Petitioners assert that they operate or plan to install "solar net-metering systems" within the Commission's jurisdiction and contend that the general public should be able to operate such systems without any utility-imposed limitations. The Petition also states that Florida electric utilities' ability to benefit from exclusive service areas and from the use of utility easements on public land without just compensation should be "rescinded."[3] Petitioners make three specific requests for Commission action. Each of these requests would require amending Rule 25-6.065, F.A.C.

First, Petitioners request that the Commission raise the maximum range for a Tier 1 customer's generating capacity from 10 kW to 50 kW. In support, Petitioners maintain that the 10 kW maximum is an unjustifiably strict limitation because interconnection agreements in other states' jurisdictions contain limitations for Tier 1 customers that range from 100 kW to 1,000 kW.

Second, Petitioners request that the Commission allow net metering customers or their contractors to choose the size of their net metering systems, provided that the electric power grid can support the system and the system complies with county codes and permit standards. Petitioners state that electric utilities in Florida commonly limit the size of new solar net-metering installations to the past year's electricity usage measured at a particular account. They further state that Florida Power & Light Company requires potential customers or contractors to submit technical components of their desired system in order to determine whether or not the system will be approved for interconnection. Petitioners assert that these limitations and processes unfairly prevent customers from attaining their desired system size and result in additional costs when customers wish to enlarge their systems due to increased future usage.

[3] The Legislature has made a policy decision, through Chapter 366, F.S., that limiting competition in the sale of electric service is in the public interest. *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 283-84 (Fla. 1988). Changing the regulatory scheme in Chapter 366, F.S., is not within the Commission's jurisdiction. Further, the procurement or use of easements is not relevant to the Commission's implementation of Section 366.91, F.S., or to the provisions of the Commission's interconnection and net metering rule.

Third, Petitioners request that the Commission raise the minimum compensation for surplus solar electricity generated by "decentralized solar net-metering systems" to a minimum of $0.08 per kWh. Petitioners allege that "decentralized solar electric systems" have the potential to raise "the amount of clean, regenerative electric power production" without requiring the additional land needed for utility-sized solar farms and that homeowners should be encouraged to construct "powerful decentralized solar net-metering systems in residential areas." They further assert that these systems will avoid transmission loss due to their proximity to the consumers and will contribute to general grid resilience through the use of battery backup systems or micro-grid capable inverter systems. Accordingly, Petitioners maintain that the requested compensation is needed to encourage the production of surplus solar electricity and to reflect the actual value of the peak-power generated by those systems during the daytime.

Analysis & Conclusion

Petitioners' first request appears to seek an amendment to the allowable range for Tier 1 customer-owned renewable generation as provided in Rule 25-6.065(4)(a), F.A.C. Petitioners do not provide any specific reasoning as to why the suggested amendment would promote the development of small customer-owned renewable generation or otherwise meet the purpose of the rule. Although Petitioners argue that other states' jurisdictions contain limitations for Tier 1 customers that range from 100 kW to 1,000 kW, there are other state jurisdictions that limit net metering eligibility to systems that have generating capacities that are less than those provided in the Commission's rules, and still others that do not offer net metering at all. Additionally, the rule already contains provisions for customer-owned renewable generation up to 2 MW through its Tier 2 and Tier 3 ranges.

Staff does not agree that the allowable range for Tier 1 customers should be amended. The tiers were developed to carve out different levels of customer-owned renewable generation that can be treated differently for purposes of fees, testing, interconnection studies, and insurance. Staff believes that the current allowable range for Tier 1 captures the vast majority of residential systems within the state. Moreover, customer-owned renewable generation within Florida has grown from 577 customers in 2008, when the provisions of Rule 25-6.065, F.A.C., were adopted, to 37,862 customers in 2018; the majority of which are Tier 1 customers. The increasing number of small customer-owned renewable generation indicates to staff that the purpose of the rule is being met under the current tier structure.

Petitioners' second request appears to seek an amendment to Rule 25-6.065, F.A.C., to add a new provision that would allow net metering customers or their contractors to choose the size of their net metering systems, to be limited only by whether the electric power grid can support the system and whether the system complies with county codes and permit standards. Pursuant to the rule, customer-owned renewable generation is limited to 2 MW. Although Petitioners maintain that industry imposed limitations unfairly prevent customers from attaining their desired net metering system size and result in additional future costs, staff does not agree that the suggested amendment would promote the development of small customer-owned renewable generation or otherwise meet the purpose of the rule. The Commission has promulgated separate rules in Chapter 25-17, F.A.C., that address electricity produced and sold by small power producers under 80MW.

Based on their arguments, it appears that Petitioners may be seeking to generate electricity at a capacity that is beyond what is currently needed to offset part or all of their individual electricity requirements. If the intent of this surplus generation is to become supply-side independent power producers by installing systems that are intended to generate in excess of customer load, Petitioners' request would be outside of the purpose of the Commission's interconnection and net metering rule. In fact, during the rulemaking proceedings to amend Rule 25-6.065, F.A.C., staff stated that certain provisions of the rule were meant to ensure that customers will not intentionally oversize their systems for the primary purpose of selling energy to the utility or becoming an independent power producer.[4]

Petitioners' third request is "to raise the minimum compensation for surplus solar electricity generated by decentralized solar net-metering systems to a minimum of $0.08 per KWh [sic]." This request appears to seek an amendment to Rule 25-6.065(8)(f) and (g), F.A.C., that would change the amount by which unused credits are purchased by the customer's utility at the end of the year or when a customer leaves the system. Rule 25-6.065(8)(f) and (g), F.A.C., currently reflects that this amount should be calculated "at an average annual rate based on the investor-owned utility's COG-1, as-available energy tariff." Staff believes that the current amount is appropriate because it is consistent with the rate paid by investor-owned utilities to all other power producers within the state.

Petitioners' argue that encouraging homeowners to construct "powerful decentralized solar net-metering systems in residential areas" is in the public interest. As discussed earlier, customer-owned renewable generation has substantially increased under the current rule. Therefore, staff believes the purpose of the rule is being met using the current amount by which unused credits are purchased by the customer's utility at the end of the year or when a customer leaves the system. If, by reference to "powerful decentralized solar net-metering systems," Petitioners intend to generate electricity at a capacity that is beyond what is needed to offset part or all of their individual electricity requirements, their requested relief is outside of the scope and purpose of the Commission's interconnection and net metering rule. If the purpose of this Petition is to allow individuals to generate and sell electricity on a wholesale basis, the provisions of Section 366.051, F.S., concerning cogeneration and small power production, and Chapter 25-17, F.A.C., would apply to such generation, not the Commission's interconnection and net metering rule.

Based on the foregoing, staff believes it is not necessary to open the interconnection and net metering rule for rulemaking at this time. Accordingly, staff recommends that the Commission deny the Petition for the reasons stated above.

[4] Docket No. 20070674-EI, *In re: Proposed amendment of Rule 25-6.065, F.A.C., Interconnection and Net Metering of Customer-Owned Renewable Generation.*

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

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: September 19, 2019

TO: Docket No. 20190119-TP – 2020 State certification under 47 C.F.R. §54.313 and §54.314, annual reporting requirements for high-cost recipients and certification of support for eligible telecommunications carriers.

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk AT

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 08315-2019 was filed on August 22, 2019, for the September 5, 2019 Commission Conference.

Due to the approach of Hurricane Dorian and its potential threat to areas throughout the State of Florida, the Commission's Conference set for Thursday, September 5, 2019, was cancelled. Dockets scheduled for consideration at that conference were deferred to the October 3, 2019, Commission Conference.

Accordingly, this item has been placed on the agenda for the October 3, 2019 Commission Conference, and staff's previously filed memorandum is attached.

/ajt

Attachment

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Wooten, Bates, Eastmond, Long)
Office of the General Counsel (Dziechciarz)

RE: Docket No. 20190119-TP – 2020 State certification under 47 C.F.R. §54.313 and §54.314, annual reporting requirements for high-cost recipients and certification of support for eligible telecommunications carriers.

AGENDA: 09/05/19 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 10/01/19 (Filing deadline with the Federal Communications Commission and Universal Service Administrative Company)

SPECIAL INSTRUCTIONS: None

Case Background

One of the primary principles of universal service support as described in the Telecommunications Act of 1996 (Telecom Act) is for consumers in all regions to have reasonably comparable access to telecommunications and information services at reasonably comparable rates.[1] The federal universal service high-cost program is designed to help ensure that consumers in rural, insular, and high-cost areas have access to modern communications networks capable of providing voice and broadband service, both fixed and mobile, at rates that

[1] 47 U.S.C. §254(b)(3) (2019)

are reasonably comparable to those in urban areas.[2] The program supports the goal of universal service by allowing eligible telecommunications carriers (ETCs) to recover some of the costs of service provision in high-cost areas from the federal Universal Service Fund. In order for carriers to receive universal service high-cost support, state commissions must certify annually to the Universal Service Administrative Company (USAC) and to the Federal Communications Commission (FCC) that each carrier complies with the requirements of Section 254(e) of the Telecom Act by using high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

Certification of ETCs for high-cost support is defined as follows:

> Certification of support for eligible telecommunications carriers
>
> (a) Certification. States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator [USAC] and the Commission [FCC] stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.[3]

Certification may be filed online with USAC through USAC's online portal. Immediately following online certification, the USAC website will automatically generate a letter that may be submitted electronically to the FCC to satisfy the submission requirements of 47 C.F.R. §54.314(c). In order for a carrier to be eligible for high-cost universal service support for all of calendar year 2020, certification must be submitted by the Commission by October 1, 2019.[4]

[2] FCC, "Universal Service for High Cost Areas - Connect America Fund," updated July 25, 2019, https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund, accessed July 30, 2019.
[3] 47 C.F.R §54.314(a) (2019)
[4] 47 C.F.R §54.314(d) (2019)

Discussion of Issues

Issue 1: Should the Commission certify to USAC and the FCC, through online certification with USAC and by electronic filing of a USAC-generated certification letter with the FCC, that BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast; Embarq Florida, Inc. d/b/a CenturyLink; Frontier Florida LLC; Frontier Communications of the South, LLC; Consolidated Communications of Florida Company; ITS Telecommunications Systems, Inc. d/b/a ITS Fiber; Knology of Florida, Inc. d/b/a WOW! Internet, Cable and Phone; Northeast Florida Telephone Company d/b/a NEFCOM; Quincy Telephone Company d/b/a TDS Telecom; Smart City Telecommunications LLC d/b/a Smart City Telecom; and Windstream Florida, LLC are eligible to receive federal high-cost support, that they have used the federal high-cost support in the preceding calendar year, and they will use the federal high-cost support they receive in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended?

Recommendation: Yes. The Commission should certify to USAC and the FCC, through online certification with USAC and by electronic filing of a USAC-generated certification letter with the FCC, that BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast; Embarq Florida, Inc. d/b/a CenturyLink; Frontier Florida LLC; Frontier Communications of the South, LLC; Consolidated Communications of Florida Company; ITS Telecommunications Systems, Inc. d/b/a ITS Fiber; Knology of Florida, Inc. d/b/a WOW! Internet, Cable and Phone; Northeast Florida Telephone Company d/b/a NEFCOM; Quincy Telephone Company d/b/a TDS Telecom; Smart City Telecommunications LLC d/b/a Smart City Telecom; and Windstream Florida, LLC are eligible to receive federal high-cost support, that they have used the federal high-cost support in the preceding calendar year, and they will use the federal high-cost support they receive in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. (Wooten, Bates, Eastmond, Long)

Staff Analysis: All Florida ETCs that are seeking high-cost support have filed affidavits with the Florida Public Service Commission (Commission) attesting that the high-cost funds received for the preceding calendar year and for the upcoming calendar year will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Additionally, each company has filed FCC Form 481 with USAC. Form 481 includes information such as emergency operation capability, FCC pricing standards comparability for voice and broadband service, holding company and affiliate brand details, and tribal lands service and outreach. Price cap carriers certify in Form 481 that high-cost support received was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor. Rate-of-return carriers certify in Form 481 that reasonable steps are being made to achieve FCC broadband upload and download standards and, if privately held, submit documents detailing the company's financial condition. Based on previous years' data, staff estimates that the amount of 2020 high-cost support that these carriers may receive in Florida will be approximately $45 million.[5]

[5] This estimate was obtained using data from the USAC high-cost funding data disbursement search tool and does not include wireless carriers.

Staff reviewed the affidavits and submissions made by each carrier to the Commission and to USAC. Each of the Florida ETCs receiving high-cost support has attested that all federal high-cost support provided to them within Florida was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Having reviewed the carriers' filings, staff recommends that the Commission certify to USAC and the FCC, through online certification with USAC and by electronic filing of a USAC-generated certification letter with the FCC, that BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast; Embarq Florida, Inc. d/b/a CenturyLink; Frontier Florida LLC; Frontier Communications of the South, LLC; Consolidated Communications of Florida Company; ITS Telecommunications Systems, Inc. d/b/a ITS Fiber; Knology of Florida, Inc. d/b/a WOW! Internet, Cable and Phone; Northeast Florida Telephone Company d/b/a NEFCOM; Quincy Telephone Company d/b/a TDS Telecom; Smart City Telecommunications LLC d/b/a Smart City Telecom; and Windstream Florida, LLC are eligible to receive federal high-cost support, that they have used the federal high-cost support received in the preceding calendar year, and that they will use the federal high-cost support they receive in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a Final Order. (Dziechciarz)

Staff Analysis: This docket should be closed upon issuance of a Final Order.

Item 8

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 19, 2019

TO: Docket No. 20190118-WU - Application for increase in water rates in Gulf County by Lighthouse Utilities Company, Inc.

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 08318-2019 was filed on August 22, 2019, for the September 5, 2019 Commission Conference.

Due to the approach of Hurricane Dorian and its potential threat to areas throughout the State of Florida, the Commission's Conference set for Thursday, September 5, 2019, was cancelled. Dockets scheduled for consideration at that conference were deferred to the October 3, 2019, Commission Conference.

Accordingly, this item has been placed on the agenda for the October 3, 2019 Commission Conference, and staff's previously filed memorandum is attached.

/ajt

Attachment

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (D. Andrews, Norris)
Division of Economics (Bruce, Hudson)
Division of Engineering (Knoblauch, Salvador)
Office of the General Counsel (Simmons, Crawford)

RE: Docket No. 20190118-WU – Application for increase in water rates in Gulf County by Lighthouse Utilities Company, Inc.

AGENDA: 9/5/19 – Regular Agenda – Decision on Suspension of Rates – Interested Persons May Participate.

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: 9/10/19 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

Lighthouse Utilities Company, Inc. (Lighthouse or Utility) is a Class B utility serving approximately 1,851 customers in Gulf County. Rates were last established for this Utility in 2011.[1] In 2018, Lighthouse recorded total operating revenues of $728,696 and operating expenses of $648,650.

On September 26, 2018, Lighthouse filed an application for a limited proceeding rate increase in Docket No. 20180179-WU to recover the costs of capital projects. On October 10, 2018, Hurricane Michael destroyed or damaged substantial portions of the Utility's water distribution

[1] Order No. PSC-2011-0368-PAA-WU, issued September 1, 2011, in Docket No. 20100128-WU, *In re: Application for increase in water rates in Gulf County by Lighthouse Utilities Company, Inc.*

system. Lighthouse and the Office of Public Counsel (OPC) were not able to reach an agreement on whether a limited proceeding was the appropriate procedure for seeking rate relief under those circumstances. In a letter dated May 17, 2019, the Utility withdrew its application for a limited proceeding rate increase and conveyed its desire to file an application for general rate relief.

On July 12, 2019, Lighthouse filed its application for approval of interim and final water rate increases. On August 9, 2019, staff sent the Utility a letter indicating deficiencies in the filing of its minimum filing requirements and the Utility's response to staff's deficiency letter is due on September 9, 2019. In a letter dated August 13, 2019, Lighthouse withdrew its request for interim rate relief.

In its application, Lighthouse requested a test year ended December 31, 2018, for purposes of final rates and requested that the application be processed using the Proposed Agency Action procedure. A substantial portion of the expenses, costs, and investment that are part of this application for rate relief are related to capital projects for improved system reliability. Another substantial portion of the rate relief is related to storm restoration and repair costs that the Utility has incurred and will continue to incur as a result of Hurricane Michael.

OPC's intervention in this docket was acknowledged by Order No. PSC-2019-0236-PCO-WU, issued June 18, 2019.

The 60-day statutory deadline for the Commission to suspend Lighthouse's requested final rates is September 10, 2019. This recommendation addresses the suspension of Lighthouse's requested final rates. The Commission has jurisdiction pursuant to Section 367.081, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Utility's proposed final water rates be suspended?

Recommendation: Yes. Lighthouse's proposed final water rates should be suspended. (D. Andrews)

Staff Analysis: Section 367.081(6), F.S., provides that the rates proposed by a utility shall become effective within sixty days after filing unless the Commission votes, for good cause, to withhold consent of implementation of the requested rates. Further, Section 367.081(10), F.S., permits the proposed final rates to go into effect under bond, escrow, or corporate undertaking five months after the official filing date unless final action has been taken by the Commission or the Commission's action is protested by the Utility.

Staff has reviewed the filing and has considered the proposed rates, the revenues thereby generated, and the information filed in support of the rate application. Staff believes that it is reasonable and necessary to require further amplification and explanation regarding this data, and to require production of additional and/or corroborative data. To date, staff has initiated an audit of Lighthouse's books and records. The audit report is tentatively due on October 4, 2019. In addition, staff sent a data request to Lighthouse on August 21, 2019, and the response is due by September 23, 2019. Further, staff believes additional requests will be necessary to process this case. Based on the foregoing, staff recommends that the Utility's proposed final rates be suspended.

Issue 2: Should this docket be closed?

Recommendation: This docket should remain open pending the Commission's final action on the Utility's requested rate increase. (Simmons)

Staff Analysis: This docket should remain open pending the Commission's final action on the Utility's requested rate increase.

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: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Doehling, Graves)
Division of Accounting and Finance (Norris, Sewards, Thurmond)
Division of Economics (Bruce, Hudson)
Office of the General Counsel (DuVal)

RE: Docket No. 20190124-WU – Petition for limited alternative rate increase in Lake County by Raintree Waterworks, Inc.

AGENDA: 10/03/19 – Regular Agenda – Proposed Agency Action – Except Issue No. 3 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 10/29/19 – 90-day deadline pursuant to Rule 25-30.457(11), F.A.C.

SPECIAL INSTRUCTIONS: None

Case Background

Raintree Waterworks, Inc. (Raintree or Utility) is a Class C water utility serving approximately 113 residential customers and 1 general service customer in Lake County. Raintree's last approved rate increase was in 2016.[1]

On June 6, 2019, Raintree filed a petition for a limited alternative rate increase (LARI) pursuant to Rule 25-30.457, Florida Administrative Code (F.A.C.). On July 1, 2019, staff notified the Utility that it met the initial requirements of Rule 25-30.457, F.A.C. Therefore, pursuant to Rule

[1]Order No. PSC-16-0256-PAA-WU, issued June 30, 2016, in Docket No. 20150199-WU, *In re: Application for staff-assisted rate case in Lake County by Raintree Waterworks, Inc.*

25-30.457(4), F.A.C., the official date of filing was established as July 31, 2019, and the 90-day time frame for the Florida Public Service Commission (Commission) to render a decision began on that date.

As stated above, the Commission last set rates for Raintree in 2016. In that rate case, the Commission found the Utility's overall quality of service to be satisfactory. Staff has not identified any water quality complaints filed with the Commission or the Florida Department of Environmental Protection (DEP) since the last rate case. The Utility has identified five complaints pertaining to DEP secondary standards. Staff notes that based on the most recent DEP Sanitary Survey, conducted on January 30, 2019, the Utility was determined to be in compliance with DEP's rules and regulations. A customer meeting was held on August 7, 2019, in Tavares, Florida. One customer attended and had no concerns with Raintree's quality of service.

The Commission has jurisdiction pursuant to Sections 367.0814(9) and 367.121(1), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve Raintree Waterworks, Inc.'s application for a LARI?

Recommendation: Yes. The Commission should approve Raintree's application for a LARI in the amount of 20 percent. This equates to an increase of $9,651. Pursuant to Rule 25-30.457(12), F.A.C., the Utility is required to hold any revenue increase granted subject to refund with interest for a period of 15 months after the filing of its 2019 Annual Report as it is the year the adjustment in rates will be implemented. To ensure overearnings will not occur due to the implementation of this rate increase, the Commission will conduct an earnings review of Raintree's 2019 Annual Report. If overearnings occur, such overearnings, up to the amount held subject to refund, with interest, must be disposed of for the benefit of the customers. After the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility must file reports with the Office of Commission Clerk no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed must also indicate the status of the security being used to guarantee repayment of any potential refund. (Thurmond)

Staff Analysis: Pursuant to Rule 25-30.457, F.A.C., any utility eligible to file for a staff-assisted rate case (SARC) may petition the Commission for a rate increase of up to 20 percent applied to metered or flat recurring rates as an alternative to a rate case. This Rule was designed to streamline the rate increase process for qualifying small water or wastewater companies, by establishing an abbreviated procedure for a limited rate increase that is less time consuming and thus less costly for utilities, their customers, and the Commission. This Rule is similar to the rules governing price index and pass-through increases in that neither an engineering review nor a financial audit of the utility's books and records is required.

On June 6, 2019, Raintree notified the Commission of its intent to implement a LARI of 20 percent pursuant to Rule 25-30.457, F.A.C. The application met the initial requirements of the rule, and July 31, 2019, was established as the official filing date.

Staff reviewed the Utility pursuant to the criteria listed in Rule 25-30.457(5), F.A.C., and recommends that Raintree qualifies for staff assistance pursuant to subsection (1) of this rule and the Utility's books and records appear to be organized consistent with Rule 25-30.110, F.A.C. Staff also verified that the Utility is current on the filing of regulatory assessment fees and annual reports. The Utility has been in operation over a year and filed additional relevant information in support of eligibility. The Utility's last rate case was granted more than two years ago, but less than seven years ago, prior to the receipt of the petition currently under review. Raintree is under earning based on information provided in the Utility's 2018 Annual Report. Based on the information described above, staff recommends approval of the Utility's petition.

The data presented in the application was based upon annualized revenues by customer class and meter size for the period ended December 31, 2018, the most recent 12-month period. However, the Utility also included miscellaneous service revenues which should not be included in the calculation. Based on annualized service revenues of $48,254, a 20 percent increase would result in an annual increase in revenues of $9,651. This produces total annual service revenues of $57,905.

Pursuant to Rule 25-30.457(12), F.A.C., the Utility is required to hold any revenue increase granted subject to refund with interest in accordance with Rule 25-30.360, F.A.C., for a period of 15 months after the filing of its 2019 Annual Report as it is the year the adjustment in rates will be implemented.

After the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility must file reports with the Office of Commission Clerk no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed must also indicate the status of the security being used to guarantee repayment of any potential refund.

Staff reviewed the personal financial statements of the primary shareholder, who is the Utility's president.[2] The president has provided a personal guarantee of any rate increase approved in this docket.[3] Based on the above, staff believes that in this circumstance the Utility's president has demonstrated the financial ability to guarantee the refund, if necessary.

To ensure overearnings will not occur due to the implementation of this rate increase, the Commission will conduct an earnings review of Raintree's 2019 Annual Report as it is the year the adjustment in rates will be implemented. If overearnings occur, such overearnings, up to the amount held subject to refund, with interest, will be disposed of for the benefit of the customers.

[2]Document No. 05301-2019 (Confidential), filed July 2, 2019.
[3]Document No. 05228-2019, filed June 28, 2019.

Issue 2: What are the appropriate monthly service rates for Raintree Waterworks, Inc.?

Recommendation: The existing service rates for Raintree should be increased by 20 percent in accordance with Rule 25-30.457, F.A.C. The recommended service rates are shown on Schedule No. 1. The Utility should file tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the rates should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no more than 10 days after the date of the notice. (Bruce)

Staff Analysis: Based on staff's recommended approval of the Utility's LARI in Issue 1, the existing service rates for Raintree should be increased by 20 percent in accordance with Rule 25-30.457, F.A.C. Therefore, staff calculated rates by applying the 20 percent increase across-the-board to the existing base facility and gallonage charges. The Utility's existing water rates and the staff recommended rates are shown on Schedule No. 1. The Utility should file tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the rates should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no more than 10 days after the date of the notice.

Issue 3: Should the recommended rates be approved for Raintree Waterworks, Inc., on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility?

Recommendation: Yes. Pursuant to Rule 25-30.457(15), F.A.C., in the event of a protest of the Proposed Agency Action (PAA) Order by a substantially affected person other than the Utility, Raintree should be authorized to implement the rates established in the LARI PAA Order on a temporary basis subject to refund, upon the Utility filing a SARC application within 21 days of the date the protest is filed.

The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. If the recommended rates are approved on a temporary basis, the incremental increase collected by the Utility will be subject to the refund provisions outlined in Rule 25-30.360, F.A.C. Pursuant to Rule 25-30.457(17), F.A.C., if the Utility fails to file a SARC application within 21 days in the event there is a protest, the application for a LARI will be deemed withdrawn. (Thurmond) (Final Agency Action)

Staff Analysis: This recommendation proposes an increase in water rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the Utility. Therefore, pursuant to Rule 25-30.457(15), F.A.C., in the event of a protest of the PAA Order by a substantially affected person other than the Utility, Raintree should be authorized to implement the rates established in the LARI PAA Order on a temporary basis subject to refund upon the Utility filing a SARC application within 21 days of the date the protest is filed.

The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. If the recommended rates are approved on a temporary basis, the incremental increase collected by the Utility will be subject to the refund provisions outlined in Rule 25-30.360, F.A.C. Pursuant to Rule 25-30.457(17), F.A.C., if the Utility fails to file a SARC application within 21 days in the event there is a protest, the application for a LARI will be deemed withdrawn.

Issue 4: Should this docket be closed?

Recommendation: No. In the event of a protest, Raintree may implement the rates established in the PAA Order on a temporary basis, subject to refund with interest, upon the Utility's filing of a SARC application within 21 days of the date of the protest. If Raintree fails to file a SARC within 21 days, the Utility's petition for a LARI will be deemed withdrawn pursuant to Rule 25-30.457(17), F.A.C. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets, which reflect the Commission-approved rates, and customer notice have been filed by Raintree and approved by staff, and so that staff may conduct an earnings review of the Utility pursuant to Rule 25-30.457(12), F.A.C. Upon staff's approval of the tariff and completion of the earnings review process as set forth in Rule 25-30.457(12)-(14), F.A.C., this docket should be closed administratively. (DuVal)

Staff Analysis: In the event of a protest, Raintree may implement the rates established in the PAA Order on a temporary basis, subject to refund with interest, upon the Utility's filing of a SARC application within 21 days of the date of the protest. If Raintree fails to file a SARC within 21 days, the Utility's petition for a LARI will be deemed withdrawn pursuant to Rule 25-30.457(17), F.A.C. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets, which reflect the Commission-approved rates, and customer notice have been filed by Raintree and approved by staff, and so that staff may conduct an earnings review of the Utility pursuant to Rule 25-30.457(12), F.A.C. Upon staff's approval of the tariff and completion of the earnings review process as set forth in Rule 25-30.457(12)-(14), F.A.C., this docket should be closed administratively.

Raintree Waterworks, Inc.
Monthly Water Rates

	Existing Rates	Staff Recommended Rates
Residential and General Service		
Base Facility Charge by Meter Size		
5/8" x 3/4"	$14.23	$17.07
3/4"	$21.35	$25.61
1"	$35.58	$42.68
1 1/2"	$71.15	$85.35
2"	$113.84	$136.56
3"	$227.68	$273.12
4"	$355.75	$426.75
6"	$711.50	$853.50
Gallonage Charge - Residential Service		
Charge Per 1,000 gallons		
0-3,000 gallons	$1.71	$2.05
3,001-8,000 gallons	$1.81	$2.17
Over 8,000 gallons	$2.72	$3.26
Gallonage Charge - General Service		
Charge Per 1,000 gallons	$2.24	$2.68

Item 10

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Thompson, Ellis)
Division of Accounting and Finance (D. Buys, Cicchetti, Richards)
Division of Economics (Bruce)
Office of the General Counsel (Murphy)

RE: Docket No. 20180138-SU – Application for staff-assisted rate case in Volusia County by North Peninsula Utilities Corporation.

AGENDA: 10/03/19 – Proposed Agency Action – Except for Issue Nos. 11, 12, and 13 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: 12/16/19 (15-Month Effective Date (SARC))

SPECIAL INSTRUCTIONS: None

Table of Contents

Case Background

North Peninsula Utilities Corporation (NPUC or Utility) is a Class B wastewater only utility serving approximately 428 residential and 5 general service customers in Volusia County. The Florida Public Service Commission (Commission) granted the transfer of Certificate No. 249-S from Shore Utility Corporation to NPUC, effective the date of the Commission vote on December 5, 1989.[1] The Utility's rates were last established in 2000 during an investigation of possible overearnings conducted by the Commission.[2] However, this is NPUC's first staff-assisted rate case (SARC). On November 21, 2016, the Commission issued an order approving in part and denying in part a proposed territory expansion by the Utility.[3]

On July 6, 2018, the Department of Environmental Protection (DEP) issued a Consent Order to NPUC, following the DEP's March 20, 2018, inspection for failing to properly maintain its wastewater treatment facility. The Consent Order requires NPUC to immediately implement preventative measures to ensure system failure does not occur due to deteriorating facility components while reconstruction is under way.

On July 20, 2018, NPUC filed its application for a SARC. Pursuant to Section 367.0814(2), Florida Statutes (F.S.), the official filing date of the SARC has been determined to be September 14, 2018. The 12-month period ended June 30, 2018, was selected as the test year for the instant case. NPUC is requesting recovery of costs associated with the improvements mandated by the Consent Order, as well as other improvements necessary for the upkeep of its wastewater treatment facility. According to NPUC's 2018 Annual Report, its total operating revenue was $261,335 and its net operating income was a loss of $15,175. The Commission has jurisdiction in this case pursuant to Sections 367.011, 367.081, 367.0812, 367.0814, and 367.091, F.S.

[1]Order No. 22345, issued December 27, 1989, in Docket No. 19891016-SU, *In re: Application of North Peninsula Utilities Corporation for transfer of Certificate No. 249-S from Shore Utility Corporation in Volusia County.*
[2]Order No. PSC-00-1676-PAA-SU, issued September 19, 2000, in Docket No. 20000715-SU, *In re: Investigation of possible overearnings by North Peninsula Utilities Corporation in Volusia County.*
[3]Order No. PSC-16-0522-PAA-SU, issued November 21, 2016, in Docket No. 20130209-SU, *In re: Application for expansion of certificate (CIAC) (new wastewater line extension charge) by North Peninsula Utilities Corp.*

Discussion of Issues

Issue 1: Is the quality of service provided by North Peninsula Utilities Corporation satisfactory?

Recommendation: Yes. NPUC has been responsive to customer complaints, and intends to complete the pro forma plant improvements discussed in Issue 4 to be in compliance with the DEP, and to help ensure customer satisfaction. Therefore, staff recommends that the quality of service be considered satisfactory. (Thompson)

Staff Analysis: Pursuant to Section 367.081(2)(a)1, F.S., and Rule 25-30.433(1), Florida Administrative Code (F.A.C.), in wastewater rate cases, the Commission shall determine the overall quality of service provided by the utility. For a wastewater only utility, the determination is made from an evaluation of the utility's attempt to address customer satisfaction. The Rule further states that outstanding citations, violations, and consent orders on file with the DEP and the county health department, along with any DEP and county health department officials' testimony concerning quality of service shall be considered. In addition, any customer testimony, comments, or complaints received by the Commission are also reviewed. The operating condition of the wastewater system is addressed in Issue 2.

The Utility's Attempt to Address Customer Satisfaction

Staff reviewed the complaints filed in the Commission's Consumer Activity Tracking System (CATS), filed with the DEP, and received by the Utility from July 1, 2013, through June 30, 2018. Staff has also performed a supplemental review of the complaints filed in CATS and with the DEP during the course of this docket, and following the customer meeting held on May 8, 2019. Table 1-1 shows the number of complaints reviewed by source and subject.

Table 1-1
Number of Complaints by Source and Subject

Subject of Complaint	CATS Records	DEP Records	Utility Records	Total
Overflows Outside Utility Property	2	1	9	12
Plant Noise	1	2	4	7
Plant Odor	1	3	5	9
Plant Fencing	-	-	1	1
Equipment State	1	1	1	3
Other	-	-	1	1
Total*	5	7	21	33

*A single customer complaint may be counted multiple times if it fits into multiple categories.

One complaint was filed in CATS during the specified timeframe on September 15, 2017. The customer reported that wastewater had overflowed into several front yards in the neighborhood. The Utility's response stated that the problem was caused by losing power during Hurricane Irma. Once the storm subsided, the Utility pumped down the lift station until power was restored. When the storm and river water receded from the customer's property, the Utility pumped out

the swale and disinfected the area to resolve the issue. Two additional complaints have been received during the course of this docket. One complaint was from the same customer and they again reported that wastewater had overflowed into their yard. They stated that this has happened five times since 2006, and that the Utility has not upgraded its equipment to resolve this issue. They stated that the Utility did not respond to the issue for over 24 hours; therefore, lime became caked onto their new pavers. The Utility's response stated that a power surge appeared to damage the alarm system that advises the Utility of issues. The Utility hired an electrician to repair this issue. Regarding the customer's statement about NPUC taking over 24 hours to respond to the issue, the Utility stated that the septic company's truck broke down on the way to clean the customer's area. The Utility asserted that the customer did not want an employee from the Utility to clean their pavers; therefore, a septic company cleaned them at a later date. The other complaint was related to pump noise and odor. The Utility requested that a Volusia County Environmental Specialist test the noise levels at the facility, and the Utility was determined to be in compliance with the Volusia County noise ordinance. Regarding the odor, the Utility stated that it could have been caused by periodic pumping of sludge, which is a part of normal operation, or equipment failures which are repaired as quickly as possible. These complaints have been closed.

The Utility received a total of 16 customer complaints during the specified timeframe and two during the course of this docket. The majority of complaints received were related to overflows, odor, and noise. NPUC stated that overflows outside the Utility property have been few, but those that occurred were due to electrical power failures, mechanical problems, or storms/hurricanes. The Utility has replaced parts for the control system to the lift stations and installed surge protectors for control panels, and it intends to continue to make upgrades to its electrical system and mechanical equipment through pro forma plant improvements discussed in Issue 4. Regarding plant odor, the Utility stated that this is due to periodic sludge pumping as previously noted or mechanical problems which are repaired as soon as possible. Staff did not notice any excessive odors during the site visit; however, as noted by the Utility, the odor does tend to be more prominent in the direction of the wind. Regarding plant noise, NPUC is in compliance with the Volusia County noise ordinance as stated above. However, the Utility has installed sound deadening fences to help with this issue. Other complaints received and resolved by the Utility include a fallen fence, a damaged manhole, and depression in a customer's yard due to a cracked clay pipe. The DEP provided four complaints during this timeframe related to odor, noise and equipment state, and one during the course of this docket related to an overflow. The complaint received related to an overflow overlapped one of the complaints received by the Utility during the course of this docket. The DEP investigated these issues, and the complaints were closed.

A customer meeting was held on May 8, 2019. Sixteen customers were in attendance and six customers provided oral comments. At the meeting, customers expressed concerns regarding the issues discussed above as well as rate concerns. The customers discussed the necessity of plant equipment improvements to control plant noise, odor, and overflows. The condition of the wastewater facility will be addressed in Issue 2.

Conclusion

NPUC has been responsive to customer complaints, and intends to complete the pro forma plant improvements discussed in Issue 4 to be in compliance with the DEP, and to help ensure customer satisfaction. Therefore, staff recommends that the quality of service be considered satisfactory.

Issue 2: Are the infrastructure and operating conditions of North Peninsula Utilities Corporation's wastewater system in compliance with DEP regulations?

Recommendation: NPUC is not currently in compliance with the DEP, but is working to address the issues noted in the DEP Consent Order through the pro forma plant improvements discussed in Issue 4. The Utility also plans to address other plant improvements necessary to ensure that its facilities and equipment are in safe, efficient, and proper condition. (Thompson)

Staff Analysis: Rule 25-30.225(2), F.A.C., requires each wastewater utility to maintain and operate its plant and facilities by employing qualified operators in accordance with the rules of the DEP. Rule 25-30.433(2), F.A.C., requires consideration of whether the infrastructure and operating conditions of the plant and facilities are in compliance with Rule 25-30.225, F.A.C. In making this determination, the Commission must consider testimony of the DEP and county health department officials, compliance evaluation inspections, citations, violations, and consent orders issued to the utility, customer testimony, comments, and complaints, and utility testimony and responses to the aforementioned items.

Wastewater System Operating Condition

NPUC's wastewater system is an existing 210,000 gallons per day (gpd) design capacity and 181,000 gpd annual average daily flow (AADF) permitted capacity domestic wastewater treatment plant (WWTP). Staff reviewed NPUC's compliance evaluation inspections conducted by the DEP to determine the Utility's overall wastewater facility compliance. A review of the March 7, 2017 inspection, indicated that NPUC's wastewater treatment facility was in compliance with the DEP's rules and regulations. However, as a result of the March 20, 2018, inspection NPUC was issued a Consent Order from the DEP to address noted disrepairs. The Consent Order requires NPUC to immediately implement preventative measures to ensure system failure does not occur due to deteriorating facility components while reconstruction is under way. This includes but is not limited to: (1) repairing the holes and corrosion in the tanks; (2) repairing the travelling bridge at Plant #3; (3) repairing or replacing the damaged splitter box; and (4) repairing the clarifier skimmer at Plant #3. The Utility is working to address the deficiencies noted in the Consent Order from the DEP through the pro forma plant improvements discussed in Issue 4. NPUC is required to provide quarterly progress updates to the DEP, and the most recent update is included as Attachment A. As of now, the work completed by NPUC to address noted deficiencies includes having partially repaired holes in the tanks, and having repaired the damaged splitter box.

Conclusion

NPUC is not currently in compliance with the DEP, but is working to address the issues noted in the DEP Consent Order through the pro forma plant improvements discussed in Issue 4. The Utility also plans to address other plant improvements necessary to ensure that its facilities and equipment are in safe, efficient, and proper condition.

Issue 3: What are the used and useful (U&U) percentages of North Peninsula Utilities Corporation's WWTP and collection system?

Recommendation: NPUC's WWTP and collection system should both be considered 100 percent U&U. Additionally, staff recommends no adjustment to purchased power and chemicals should be made for excessive infiltration and inflow (I&I). (Thompson)

Staff Analysis: NPUC's wastewater system was constructed in 1979. As stated in Issue 2, NPUC's wastewater facility is permitted by the DEP as a 181,000 gpd AADF facility. The collection system is composed of vitrified clay pipes (VCP) and polyvinyl chloride (PVC) pipes, and there are two lift stations in the service area. NPUC's wastewater collection system comprises 5,420 feet of 6 inch PVC force mains, 10,305 feet of 8 inch VCP collecting mains, and 10,777 feet of 8 inch PVC collecting mains. There are approximately 87 manholes in the service area.

Rates were last established for NPUC in Docket No. 20000715-SU, and the Utility's U&U for its WWTP and collection system were last determined in that docket as well.[4] In that docket, the Commission determined the Utility's WWTP and collection system to be 100 percent U&U.

Infiltration and Inflow

Infiltration typically results from groundwater entering a wastewater collection system through broken or defective pipes and joints; whereas, inflow results from water entering a wastewater collection system through manholes or lift stations. By convention, the allowance for infiltration is 500 gpd per inch diameter pipe per mile, and an additional 10 percent of residential water billed is allowed for inflow. Rule 25-30.432, F.A.C., provides that in determining the WWTP amount of U&U, the Commission will consider I&I.

Since all wastewater collection systems experience I&I, the conventions noted above provide guidance for determining whether the I&I experienced at a WWTP is excessive. Staff calculates the allowable infiltration based on system parameters, and calculates the allowable inflow based on water sold to customers. The sum of these amounts is the allowable I&I. Staff next calculates the estimated amount of wastewater returned from customers. The estimated return is determined by summing 80 percent of the water sold to residential customers with 90 percent of the water sold to non-residential customers. Adding the estimated return to the allowable I&I yields the maximum amount of wastewater that should be treated by the wastewater system without incurring adjustments to operating expenses. If this amount exceeds the actual amount treated, no adjustment is made. If it is less than the gallons treated, then the difference is the excessive amount of I&I.

The allowance for infiltration was calculated as 6,953,527 gallons per year. However, as discussed in Issue 10, the Utility has a flat rate billing structure, and the format of the metered water data provided would require a significant amount of time to determine the water usage per customer. Therefore, staff was unable to determine the allowance for inflow and thus the total allowable I&I, or the maximum amount of wastewater allowed to be treated.

[4]Order No. PSC-00-1676-PAA-SU, issued September 19, 2000, in Docket No. 20000715-SU, *In re: Investigation of possible overearnings by North Peninsula Utilities Corporation in Volusia County.*

Used and Useful Percentages

As noted above, the Commission previously found both the WWTP and collection system to be 100 percent U&U. The Utility has not increased the capacity of its WWTP, but it has expanded its territory since rates were last established. The Utility has currently only connected four new customers since the territory amendment, but has additional connection capacity of 288 equivalent residential connections (ERCs). However, the Utility has not built additional facilities to address the increased capacity of its collection system. Therefore, consistent with the Commission's previous decision, staff recommends the Utility's WWTP and collection system be considered 100 percent U&U.

Conclusion

NPUC's WWTP and collection system should be considered 100 percent U&U. Additionally, staff recommends no adjustment to purchased power and chemicals should be made for excessive I&I.

Issue 4: What is the appropriate average test year rate base for North Peninsula Utilities Corporation?

Recommendation: The appropriate average test year rate base for the Utility is $232,047. (Richards, Thompson)

Staff Analysis: The appropriate components of the Utility's rate base include utility plant in service (UPIS), land, accumulated depreciation, contributions-in-aid-of-construction (CIAC), accumulated amortization of CIAC, and working capital. The last proceeding that established balances for rate base was Docket No. 20000715-SU.[5] Staff selected the test year ended June 30, 2018, for the instant rate case. A summary of each component and the recommended adjustments follows.

Utility Plant in Service (UPIS)

The Utility recorded $960,499 for UPIS. Staff recommends a UPIS balance of $892,604 which represents a reduction of $67,895. The staff audit identified several adjustments resulting in a net decrease to UPIS of $77,595 to reflect the appropriate balances and additions that were not booked. Staff increased UPIS by $1,462 for the connection of a new customer. Staff also made an averaging adjustment to decrease UPIS by $5,409. Staff made an adjustment increasing UPIS by $47,088 to reflect pro forma plant additions offset by a decrease of $33,441 to reflect pro forma plant retirement. Staff recommends an average UPIS balance of $892,604 ($960,499 - $77,595 + $1,462 - $5,409 + $47,088 - $33,441).

Pro Forma Plant Additions

Table 4-1 shows NPUC's pro forma plant projects, some of which were explicitly mandated by the DEP Consent Order. Other projects are plant improvements necessary for the Utility to continue to provide reliable service to its customers, consistent with the DEP Consent Order and Rule 25-30.225, F.A.C. The wastewater treatment facility is located on a narrow peninsula between the Atlantic Ocean and the Halifax River in Ormond Beach, Florida. According to the Utility, weather and saltwater conditions have led to the corrosion of the wastewater facility. The Utility asserts that the area frequently experiences strong storms, and that the facility has dealt with two major hurricanes in recent years. During the site visit, staff corroborated the corrosive condition of the facility.

[5]Order No. PSC-2000-1676-PAA-SU, issued September 19, 2000, in Docket No. 20000715-SU, *In re: Investigation of possible overearnings by North Peninsula Utilities Corporation in Volusia County.*

As contemplated by Section 367.081(2)(a)2, F.S., staff has included pro forma items that have been completed or are anticipated to be completed by June 30, 2020, 24 months after the end of the test year. The Replace Travelling Bridge Return at Plant #3 was explicitly mandated for completion in the DEP Consent Order. The other items mandated for completion by the DEP are operation and maintenance (O&M) pro forma items; therefore, these and other O&M pro forma expense items are included in Table 7-3 in Issue 7. Table 4-2 is a cost breakdown of the pro forma plant projects.

Table 4-1
Pro-Forma Plant Items

Project	Acct. No.	Amount	Retirement
Replace Lift Station #1 Panel and New Electrical Equipment	371	$8,000	($6,000)
New Sludge Return Troughs in Plant #1	380	$7,911	($5,933)
Repaired and Replaced Parts for Control Systems to Lift Station	371	$1,670	($1,253)
Replace Air Supply Lines in Clarifiers	380	$3,447	($2,585)
Installed New Motors for the Treatment Plant and Lift Station #2	371	$2,360	($1,770)
Two New Mechanical Gear Drives	380	$8,105	($6,079)
Installed New Ultrasonic Flow Meter	364	$2,500	($0)
Installed Surge Protectors for Control Panels	380	$686	($515)
Replaced Main Circuit Board and Flying Lead Transformer	380	$315	($236)
Replaced Bad Wire to Subpanel and All Damaged Components	380	$3,660	($2,745)
Rebuilt Pump for Lift Station #2	371	$1,315	($986)
Installed New Magnetic Contactor	380	$468	($351)
Replace Travelling Bridge Return at Plant #3*	380	$5,275	($3,956)
Replaced Entrance Gate	354	$1,375	($1,031)

Source: Responses to staff data requests. *DEP mandated item.

Table 4-2
Pro Forma Plant

Acct.	Addition	Retirement	Dep Exp.	Net Plant	A/D Adj.
354	$1,375	$1,031	$13	$331	$1,019
364	$2,500	$0	$500	$2,000	($500)
371	$13,345	$10,009	$223	$3,114	$9,786
380	$29,868	$22,401	$498	$6,969	$21,903
	$47,088	$33,441	$1,233	$12,414	$32,207

Source: Responses to staff data requests.

Although the DEP explicitly mandated certain items for completion in the Consent Order, it required NPUC to "Immediately implement preventative measures to ensure system failure does not occur due to deteriorating facility components while the process of reconstruction is under way, including but not limited to . . ." those specific items. Also, Rule 25-30.225, F.A.C.,

requires each wastewater utility to construct, maintain, and operate its plant in such a way that ensures all of the utility's facilities and equipment are in proper condition for rendering safe and adequate service. The items requested in addition to the DEP mandated items are also necessary for the upkeep of the facility. Table 4-3 shows the status of completion for each pro forma project.

Table 4-3
Pro Forma Project Status of Completion

Project	Completed	To Be Completed by 12/31/2019	To Be Completed by 1/31/2020
Replace Lift Station #1 Panel and New Electrical Equipment		X	
New Sludge Return Troughs in Plant #1		X	
Repaired and Replaced Parts for Control Systems to Lift Station	X		
Replace Air Supply Lines in Clarifiers		X	
Installed New Motors for the Treatment Plant and Lift Station #2	X		
Two New Mechanical Gear Drives		X	
Installed New Ultrasonic Flow Meter	X		
Installed Surge Protectors for Control Panels	X		
Replaced Main Circuit Board and Flying Lead Transformer	X		
Replaced Bad Wire to Subpanel and All Damaged Components	X		
Rebuilt Pump for Lift Station #2	X		
Installed New Magnetic Contactor	X		
Replace Travelling Bridge Return at Plant #3*		X	
Replaced Entrance Gate	X		
Repair Holes in Tank*		X	
Repaired Splitter Box*	X		
Repair Clarifier Skimmer at Plant #3*		X	
Sanitary Manhole Repair			X
Repair Holes in Bulkhead & Sidewall of Plant #1		X	

Source: Responses to staff data requests. *DEP mandated item.

As stated in Issue 2, the work completed by NPUC to address the deficiencies noted in the DEP Consent Order includes having partially repaired holes in the tanks, and having repaired the damaged splitter box. Work is currently under way to complete the remaining projects mandated by the DEP, and the Utility intends to have each completed by the end of December 2019 as shown in Table 4-3.

Staff requested that all bids received be provided for each requested pro forma project. Two bids were provided for the Sanitary Manhole Repair, Replace Lift Station #1 Panel and New Electrical Equipment, and Replaced Entrance Gate projects, and the least cost bidder was selected. For the DEP mandated items, New Sludge Return Troughs in Plant #1, Two New Mechanical Gear Drives, Replace Air Supply Lines in Clarifiers, and Repair Holes in Bulkhead & Sidewall of Plant #1 pro forma projects, the Utility stated that additional bids were requested; however, other vendors were unwilling to provide bids against a vendor that is familiar with the facility. The Utility asserts that the vendor completing these projects has worked with the facility since operations began and has a thorough understanding of the needed improvements.

All other projects listed in Table 4-3 were emergency items requiring immediate attention; therefore, the Utility did not have time to request multiple bids. Due to the deadline of January 23, 2020, contemplated in the DEP Consent Order for the completion of all mandated items, and the requirements of Rule 25-30.225, F.A.C., staff recommends that these project costs are appropriate.

Land & Land Rights

The Utility recorded a test year land value of $46,800. Based on staff's review, no adjustments are necessary. Therefore, staff recommends that the land and land rights balance remain $46,800.

Accumulated Depreciation

The Utility recorded an accumulated depreciation balance of $926,024. Staff recommends an accumulated depreciation balance of $735,029, which represents a reduction of $190,995. Staff recalculated the accumulated depreciation balance using the prescribed depreciation rates set forth in Rule 25-30.140, F.A.C., and included depreciation associated with plant additions and retirements. Staff has decreased accumulated depreciation by $158,547 to reflect the appropriate test year starting balance of $767,477. Staff's balance includes adjustments the Utility should have recorded, and adjustments to correct accounts that the Utility continued to depreciate past the life of the asset. Staff increased accumulated depreciation by $21 for the connection of a new customer. Staff also made an averaging adjustment to accumulated depreciation that resulted in a decrease of $262. Further, staff made corresponding adjustments to accumulated depreciation based on the pro forma plant additions and retirements resulting in an additional decrease of $32,207. Staff's adjustments result in an accumulated depreciation balance of $735,029 ($926,024 – $158,547 + $21 – $262 – $32,207).

Contributions In Aid of Construction (CIAC)

The Utility recorded a CIAC balance of $640,994. Staff recommends a CIAC balance of $641,725, which represents an increase of $731. In June 2018, a new customer was connected to the Utility's force main, however, the Utility did not reflect a customer connection during the test year. As a result, staff increased CIAC by $1,462 ($762 main extension charge and a $700 inspection fee). Additionally, staff decreased CIAC by $731 to reflect an averaging adjustment. Staff recommends the appropriate CIAC balance is $641,725 ($640,994 + $1,462 – $731).

Accumulated Amortization of CIAC

The Utility recorded accumulated amortization of CIAC of $640,994. Staff recommends accumulated amortization of CIAC of $641,015, which represents an increase of $21. Prior to

adding the new customer connection, CIAC was fully amortized in the year ended 2007. Staff increased accumulated amortization of CIAC by $21 to reflect the new connection. Staff recommends accumulated amortization of CIAC balance of $641,015 ($640,994 + $21).

Working Capital Allowance

Working capital is defined as the short-term funds that are necessary to meet operating expenses of the Utility. Consistent with Rule 25-30.433(2), F.A.C., staff used the one-eighth of the O&M expense formula approach for calculating the working capital allowance. Staff also removed the unamortized balance of rate case expense of $1,147 ($4,589 ÷ 4) pursuant to Section 367.081(9), F.S.[6] Applying this formula, staff recommends a working capital allowance of $28,381 ($227,050 ÷ 8), based on the adjusted O&M expense of $227,050 ($228,197 – $1,147).

Rate Base Summary

Based on the foregoing, staff recommends that the appropriate average test year rate base is $232,047. Rate base is shown on Schedule No. 1-A. The related adjustments are shown on Schedule No. 1-B.

[6]Section 367.081(9), F.S., states, "A utility may not earn a return on the unamortized balance of the rate case expense. Any unamortized balance of rate case expense shall be excluded in calculating the utility's rate base."

Issue 5: What is the appropriate return on equity and overall rate of return for North Peninsula Utilities Corporation?

Recommendation: The appropriate return on equity (ROE) is 10.55 percent with a range of 9.55 percent to 11.55 percent. The appropriate rate of return is 6.70 percent. (Richards)

Staff Analysis: The Utility has negative common equity of $940,160 on its 2018 annual report due to a negative retained earnings balance. In accordance with Commission practice, staff set the negative common equity to zero.[7] The Utility does not have any customer deposits on its books. The Utility also recorded a long-term debt balance of $1,093,091.

The Utility's capital structure has been reconciled with staff's recommended rate base. The appropriate ROE for the Utility is 10.55 percent based upon the Commission-approved leverage formula currently in effect.[8] Staff recommends an ROE of 10.55 percent with a range of 9.55 percent to 11.55 percent, and an overall rate of return of 6.70 percent. The overall rate of return is the Utility's weighted average cost of long-term debt. The long-term debt is comprised of multiple notes at different rates, which equates to a weighted average of 6.70 percent, as detailed in Table 5-1. The ROE and overall rate of return are shown on Schedule No. 2.

Table 5-1
Long-Term Debt – Weighted Average

Loan	Amount	% of Total	Int.Rate	Weighted Cost
Intracoastal Bank	$727,307	66.54%	6.70%	4.46%
Line of Credit – PNC	17,136	1.57%	10.29%	0.16%
Business Card – PNC	13,696	1.25%	14.58%	0.18%
SeaCoast Bank	68,896	6.30%	6.08%	0.38%
Intracoastal Bank	218,968	20.03%	6.08%	1.22%
Pro Forma Project Loan	47,088	4.31%	7.00%	0.30%
Total	$1,093,091	100.00%		6.70%

Source: Audit Report and Utility responses to staff data requests.

[7]Order Nos. PSC-2016-0537-PAA-WU, issued November 23, 2016, in Docket No. 20150181-WU, *In re: Application for staff-assisted rate case in Duval County by Neighborhood Utilities, Inc.*; PSC-2015-0535-PAA-WU, issued November 19, 2015, in Docket No. 20140217-WU, *In re: Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.*; PSC-2013-0140-PAA-WU, issued March 25,2013, in Docket No. 20120183-WU, *In re: Application for staff-assisted rate case in Lake County by TLP Water, Inc.*

[8]Order No. PSC-2019-0267-PAA-WS, issued July 1, 2019, in Docket No. 20190006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

Issue 6: What are the appropriate test year revenues for North Peninsula Utilities Corporation?

Recommendation: The appropriate test year revenues for NPUC's wastewater system are $243,777. (Bruce)

Staff Analysis: NPUC does not keep a formal general ledger, but rather an excel spreadsheet of the check register. As a result, staff used the regulatory assessment fee (RAF) form as a basis for the test year revenues. The RAF forms reflected test year revenues of $242,291. Staff also evaluated the billing determinants and the number of miscellaneous occurrences during the test year. The Utility had a price index increase subsequent to the test year. The Utility's billing determinants and the rates that became effective after the test year result in annualized test year service revenues of $241,705. In addition, the Utility had 306 test year late payment occurrences. Applying the Utility's approved miscellaneous service charges to the number of occurrences during the test year result in miscellaneous revenues of $2,072. Thus, test year revenues should be $243,777 ($241,705 + $2,072). Staff made an adjustment of $1,486 ($243,777 - $242,291) to reflect the appropriate test year revenues. Based on the above, staff recommends that the appropriate test year revenues for NPUC's wastewater system are $243,777.

Issue 7: What is the appropriate test year operating expense for North Peninsula Utilities Corporation?

Recommendation: The appropriate amount of operating expense for the Utility is $254,765. (Richards)

Staff Analysis: The Utility recorded total operating expense of $322,537. The test year O&M expenses have been reviewed by staff, including invoices and other supporting documentation. Staff has made the following adjustments to the Utility's operating expenses as discussed below.

O&M Expenses

Sludge Removal (711)

The Utility recorded sludge removal expense of $22,860. Staff reviewed invoices provided by the Utility and agrees with the amount. Staff recommends no adjustment to sludge removal expense.

Purchased Power (715)

The Utility recorded purchased power expense of $12,245. Staff decreased purchased power expense by $949 to remove out of test year amounts. Staff also decreased this amount by $33 to reflect removal of late fees. Therefore, staff recommends purchased power expense of $11,263 ($12,245 – $949 – $33).

Chemicals (718)

The Utility recorded chemicals expense of $5,776. Staff decreased chemicals expense by $389 to remove out of test year amounts. Therefore, staff recommends chemicals expense of $5,387 ($5,776 – $389).

Materials and Supplies (720)

The Utility recorded materials and supplies expense of $613 for two orders of File Cards. Staff believes these cards are for billing the customers. Staff reviewed the invoices provided by the Utility in response to staff's second data request and agrees with this amount; therefore, staff recommends no adjustment to materials and supplies expense.[9]

Contractual Services – Engineering (731)

The Utility recorded contractual services – engineering expense of $800. The Utility retained the services of Cadenhead Environmental Engineering Services, Inc. (Cadenhead) to prepare a Florida Department of Environmental Protection (FDEP) permit renewal application. In response to staff's fifth data request, the Utility paid Cadenhead $1,600 to prepare and submit the renewal application to FDEP, which was paid in two installments of $800.[10] The application fee due to FDEP was $3,000 paid on March 2, 2018. The permit covers a five-year period. Staff increased engineering expense by $120 to reflect the total expense of $4,600 ($1,600 + $3,000) amortized over five years. Therefore, staff recommends contractual services – engineering expense of $920 ($4,600 / 5).

[9]Document No. 01029-2019, filed February 15, 2019.
[10]Document No. 03239-2019, filed March 20, 2019.

Contractual Services – Accounting (732)

The Utility recorded contractual services – accounting expense of $4,500. In response to staff's second data request, the Utility stated that Martin, Klayer and Associates provided bookkeeping and accounting services for $1,350 plus $750 for preparation of the Utility's tax return, IRS Form 1120S.[11] The bookkeeping and accounting services provided by Martin, Klayer and Associates took place outside of the test year and appear duplicative of the services provided by Willdan Financial Services, therefore staff recommends removing $1,350.

The Utility contracts with Willdan Financial Services to provide the following services at a cost of $2,400:

- Prepare the Annual Report for the year in an Excel compatible format for submission to the Florida Public Service Commission.
- Coordinate with Utility staff to prepare and submit the required Annual Report paperwork and copies to the Commission.
- Prepare any necessary true-up journal entries to be posted by the Utility to its accounting records.
- Prepare any necessary monthly journal entries including those for depreciation and amortization expense.
- Prepare Annual Indexing application and file with the Commission.

Staff recommends contractual services – accounting expense of $3,150 ($750 + $2,400)

Contractual Services – Legal (733)

The Utility recorded contractual services – legal expense of $1,030. This expense was for a one time legal matter. Staff removed this amount due to lack of supporting documentation from the Utility. In response to staff's seventh data request the Utility stated it contracts with Doran Sims Wolfe & Ciocchetti for legal expenses which relate to collection activities on behalf of NPUC.[12] On average, the Utility pays $150 for these collection activities four times a year. Therefore, staff recommends contractual services – legal expense of $600 ($150 × 4).

Contractual Services – Management Fees (734)

The Utility recorded Contractual Services – management fee of $135,487. This expense is paid to Peninsula Management Incorporated (PMI) based on a contract between NPUC and PMI to handle the administrative and management functions of the Utility. The President and Vice President of the Utility are also the owners of PMI. The first time an expense was approved for the PMI contract by the Commission was in Docket No. 19960984-SU.[13] The approved amount was $20,000. The PMI contract consists of two parts; Overhead and Administration, and a Management Fee. The Management Fee is compensation for the President and Vice President of NPUC who are also the owners. Staff recommends $29,812 for the Overhead and Administration

[11]Document No. 01029-2019, filed February 15, 2019.
[12]Document No. 03571-2019, filed April 8, 2019.
[13]Order No. PSC-1997-0263-FOF-SU, issued March 11, 1997, in Docket No. 19960984-SU, *In re: Investigation of possible overearnings in Volusia County by North Peninsula Utilities Corporation.*

portion of the contract, plus $62,273 for the Officer Salary portion of the contract, for a total Management Fee of $92,085 ($29,812 + $62,273).

Overhead and Administration

The Utility recorded $33,960 for the overhead and administration portion of the PMI contract. In attachment 4 of the Utility's response to staff's second data request, the Utility provided a list of the services and costs included in the PMI contract classified as Overhead and Administration.[14] Staff recommends two adjustments to the overhead and administration expense: a reduction of $3,600 for Miscellaneous Expenses and a reduction of $548 to Vehicle Expense. Table 7-1 summarizes the overhead and administration costs included in the PMI contract and staff's adjusted amounts.

Table 7-1
PMI Contract – Overhead and Administration

Service	Per Utility	Staff Adj.	Per Staff
Office Rental	$6,600	$0	$6,600
Employee Salary	$12,960	$0	$12,960
Utilities, Insurance, Supplies & Equipment	$4,800	$0	$4,800
Miscellaneous Expenses	$3,600	($3,600)	$0
Auto Expense	$6,000	($548)	$5,452
Total:	$33,960	($4,158)	$29,812

Source: Staff's second and fifth data requests.

Office Rental

The Utility shares office space with HW Peninsula, LLC which is also owned by NPUC's owners. In response to staff's fifth data request, the Utility provided a copy of the office lease dated December 1, 2009, which is currently in effect.[15] According to the Utility, NPUC's portion of the office rental is $6,600 per year. Staff believes this amount for office rental is reasonable and therefore, recommends no adjustment to the office rental portion of the contract with PMI.

Employee Salary

There is one employee who is paid through the PMI contract. This employee is responsible for many of the daily administrative duties necessary for NPUC such as billing, customer service, customer receipts and accounts receivable. In addition, the employee is responsible for setting up new customer accounts and closing cancelled customer accounts. The Utility, through PMI, pays an annual salary of $12,960 for this employee. Staff believes this amount as a salary for one employee is reasonable, and therefore, recommends no adjustment to the employee salary portion of the contract with PMI.

[14]Document No. 01029-2019, filed February 15, 2019, p. 78.
[15]Document No. 03239-2019, filed March 20, 2019.

Utilities, Insurance, Supplies and Equipment

According to the Utility, the annual costs for office utilities, insurance, supplies, equipment, accounting and office up-keep is $4,800. Staff believes this amount is reasonable for a business this size, and therefore, recommends no adjustment to NPUC's office utilities, insurance, supplies and equipment portion of the contract with PMI.

Miscellaneous Expenses

PMI charges the Utility $3,600 to cover miscellaneous expenses. In response to staff's fifth data request, the Utility stated that miscellaneous expenses include, "various miscellaneous expenses incurred throughout the year including printing supplies (ink and toner), small equipment purchases (i.e. dot-matrix printer for bills, laptops), incidentals, office supplies, etc."[16] Staff believes the $3,600 for miscellaneous expenses is duplicative of what is included in supplies and equipment above and unsupported, therefore staff recommends removing the $3,600 for miscellaneous expense.

Auto Expense

The Utility does not own any vehicles. NPUC/PMI owners and its employee use their personal vehicles for Utility purposes. PMI charges NPUC $6,000 per year for vehicle expense. In response to staff's first data request, the Utility logs approximately 9,400 miles of travel annually.[17] The Internal Revenue Service (IRS) standard mileage rate for 2019 is $0.58 per mile driven for business use. Based on the IRS standard, staff believes the appropriate vehicle expense is 9,400 miles times $0.58 per mile, or $5,452 annually. Therefore, staff decreased the vehicle expense by $548 ($6,000 – $5,452).

Management Fee

The management fee portion of the PMI contract is the combined compensation paid to the President and Vice President of NPUC. During the test year ended June 30, 2018, PMI billed NPUC $101,527 for the compensation portion of the management fee. The amount is determined on a per ERC basis and is currently based on 603 ERCs. The most recent PMI contract includes a management fee of $14.18 per ERC which was last increased in 2017. In response to staff's seventh data request, NPUC stated that in a typical month, the President works an average of 100 hours and the Vice President works an average of 15 hours on Utility matters, for a total of 115 hours per month.[18] Based on a typical work month of approximately 173 hours, 115 hours equates to 66 percent of one full-time officer. Staff believes compensation of $101,527 for two officers that collectively work 115 hours per month is unreasonable.

Using the 2018 American Water Works Association (AWWA) Small Utility Survey, staff determined the position of Small System General Manager with a salary range of $64,143 to $93,680 was representative of the duties performed by NPUC's President and Vice President as described in the Utility's response to staff's seventh data request.[19] A salary range for a President and Vice President was not listed in the 2018 AWWA Small Utility Survey. Considering that NPUC's President and Vice President combine to contribute 66 percent of one full-time officer,

[16]Document No. 03239-2019, filed March 20, 2019.
[17]Document No. 06745-2018, filed October 23, 2018, p. 79.
[18]Document No. 03571-2019, filed April 8, 2019.
[19]*Id.*

a reasonable salary range would be between $42,638 ($64,143 X 0.66) and $62,273 ($93,680 X 0.66). The Commission has approved president/owner salaries of $78,709,[20] $72,704,[21] and $63,200,[22] in recent SARC dockets similar to this rate case. Accordingly, staff believes compensation of $62,273 for the President and Vice President combined is reasonable and recommends a reduction of $38,804 to the Utility's requested amount of $101,527.

Contractual Services – Testing (735)

The Utility recorded a contractual services' – testing fee of $12,588. The Utility contracts with Wetherell Treatment Systems to perform state required tests as detailed in Table 7-2 below totaling $10,288. The Utility also contracts with Pace Analytical Services for other EPA regulated testing totaling $2,300. Staff agrees with this amount and therefore recommends no adjustment to contractual services – testing expense.

Table 7-2
State Required Tests performed by Wetherell Treatment Systems

Description	Amount
Effluent CBOD and TSS Tests	$4,248
Fecal Coliform Tests	$1,540
Nitrate Tests	$1,080
TDS and Chloride Analysis	$1,680
Nitrogen Tests	$1,020
Phosphorus Tests	$720
Total	$10,288

Source: Utility response to staff data requests

Contractual Services – Other (736)

The Utility recorded contractual services – other of $34,788. The Utility contracts outside individuals for the supervision and repairs of the treatment plant, in addition to the operation of the plant. The Utility recorded $25,317 for supervision and repairs of the plant. Staff reviewed all of the invoices and verified the expenses. Staff increased this amount by $95 to reflect the total amount reflected on the invoices. Staff recommends a total of $25,412 ($25,317 + $95) for plant supervision and repairs.

The plant operator generally works 12 hours per week. In an email to staff, the Utility advised that they entered into a new agreement with the plant operator, which increased the pay rate from $9,471 ($15.18 hourly) to $12,480 ($20.00 hourly) in order to more closely reflect the average pay rate for a state licensed plant operator.[23] This increase represents an additional $3,009

[20]Order No. PSC-2019-0362-PAA-SU, issued August 26, 2019, in Docket No. 20180218-SU, *In re: Application for staff-assisted rate case in Brevard County by TKCB, Inc.*
[21]Order No. PSC-2017-0107-PAA-WS, issued March 24, 2017, in Docket No. 20150257-WS, *In re: Application for staff-assisted rate case in Marion County, by East Marion Utilities, LLC.* p. 12.
[22]Order No. PSC-2017-0383-PAA-SU, issued October 4, 2017, in Docket No. 20160165-SU, *In re: Application for staff-assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer System, Inc.* p. 12.
[23]Document No. 07227-2019, filed August 9, 2019.

($12,480 – $9,471) annually. Staff believes the increased pay rate of $12,480 is reasonable and therefore recommends an increase of $3,009.

Staff also increased this amount by $3,715 to reflect expenses amortized over five years associated with pro forma projects shown in Table 7-3 below.

Table 7-3
Pro Forma O&M Items

Project	Acct. No.	Amount
Repair Holes in Tank*	380	$4,606
Repair Splitter Box*	380	$1,675
Repair Clarifier Skimmer at Plant #3*	380	$1,826
Sanitary Manhole Repair	363	$2,468
Repair Holes in Bulkhead & Sidewall of Plant #1	380	$8,000
Total	-	$18,575

Source: Responses to staff data requests. *DEP mandated item.

Table 7-4 details the services provided by contractual services – other. Staff recommends contractual services – other expense of $41,607 ($25,412 + $12,480 + $3,715).

Table 7-4
Services Provided in Contractual Services – Other

Description	Amount
Treatment Plant Supervision and Repairs	$25,412
Salary for Treatment Plant Operator	$12,480
Pro forma Expenses	$3,715
Total	$41,607

Source: Utility response to staff data requests.

Insurance – General Liability (757)

The Utility recorded insurance – general liability expense of $2,252. Staff decreased this amount by $30 to reflect removal of late fees charged to the Utility. Therefore, staff recommends insurance – general liability expense of $2,222 ($2,252 – $30).

Rate Case Expense (766)

The Utility paid a filing fee of $1,000 on September 5, 2018. The Utility, in its SARC filing, did not record any rate case expense. By Rule 25-22.0407, F.A.C., the Utility is required to mail notices of the customer meeting, notices of final rates in this case, and notices of four-year rate reduction to its customers. For these notices, staff has estimated $714 for postage expense, $346 for printing expense, and $65 for envelopes, resulting in a noticing expense of $1,125 ($714 + $346 + $65).

Staff estimated $200 for lodging expense for the Utility to send a representative to the Commission Conference. The distance from Ormond Beach to Tallahassee is 456 miles round trip.[24] Using the 2019 IRS approved business travel rate of $0.58 per mile, mileage expense is $264 (456 x $0.58). Total travel expense to attend the Commission Conference is estimated to be $464 ($200 + $264).

The Utility has retained the services of Willdan Financial Services to assist with this rate case and submitted three invoices each for $1,000 dated February 11, 2019; April 17, 2019; and July 1, 2019.[25] Florida Statute 367.0814 F.S. states:

> The Commission may award rate case expenses for attorney fees or fees of other outside consultants if such fees are incurred for the purpose of providing consulting or legal services to the Utility after the initial staff report is made available to customers and the Utility.

The Staff Report was filed on April 9, 2019, therefore only the costs incurred on the April 17, and July 1 invoices are eligible for recovery through rates.[26] Staff recommends a consultant fee of $2,000.

Based on the above, staff recommends total rate case expense of $4,589 ($1,000 + $1,125 + $464 + $2,000), which amortized over four years results in a rate case expense of $1,147 ($4,589 ÷ 4).

Regulatory Commission Expense – Other (767)

The Utility incurred expenses in a previous Service Territory Expansion in Docket No. 20130209-SU which have not been recovered through rates. The expansion was due, in part, to a DEP plan to move residents living on the peninsula off of their current septic tank system and on to a sewage system. In December of 2015, Volusia County enacted an ordinance that requires mandatory connection to municipal or investor owned wastewater facilities within five years when such facilities become available.[27] Rule 25-30.433, F.A.C., states that non-recurring expenses shall be amortized over a five-year period unless a shorter or longer period can be justified. Staff believes using a four-year amortization period is appropriate as the expenses were incurred over a four-year period from 2013 to 2016. If a longer amortization period were to be used, full recovery of the expenses would not be realized until after 2023.

In response to an inquiry by staff, the Utility reported a cost of $145,481, which amortized over four years, equates to $36,370 annually for legal and engineering expenses related to Docket No. 20130209-SU.[28] The Utility retained the services of GAI Consultants and Hartman Consultants, LLC to provide engineering services. Additionally, the Utility retained Holland & Knight and Dean Mead to provide legal services. Staff has verified invoices for GAI Consultants and agrees

[24]Florida Department of Transportation Official Highway Mileage Viewer.
[25]Document No. 05903-2019, filed July 23, 2019.
[26]Document No. 03588-2019, filed April 9, 2019.
[27]Order No. PSC-2016-0522-PAA-SU, issued November 21, 2016, in Docket No. 20130209-SU, *In re: Application for expansion of certificate (CIAC) (new wastewater line extension) by North Peninsula Utilities Corporation.*
[28]Document No. 05903-2019, filed July 23, 2019.

with the invoiced amount of $24,721. Staff also verified invoices for Hartman Consultants, LLC in the amount of $38,440.[29]

In reference to the $52,605 billed by Holland & Knight, the Utility indicated NPUC has an outstanding balance of $25,459 for the services provided by Holland & Knight. The Utility advised staff it has been in discussions with Holland & Knight to write-off all or a portion of the outstanding balance. As of December 31, 2018, there is an outstanding balance due to Holland & Knight of $25,459. Therefore, staff recommends allowing only the paid portion to Holland & Knight of $27,146 ($52,605 – $25,459) be eligible for recovery. The Utility reported a cost of $29,714 for legal services provided by Dean Mead.

Staff recommends a total amount of $120,022 ($24,721 + $38,440 + $27,146 + $29,714) be amortized over four years for an annual amount of $30,005 ($120,022 ÷ 4). This amount represents an adjustment of $6,365.

Miscellaneous Expense (775)

The Utility recorded miscellaneous expense of $7,067. In response to staff's fifth data request, staff discovered that a $1,000 payment to the City of Ormond Beach was a one-time deposit necessary for the Utility to provide water to a worksite in response to Hurricane Irma.[30] This amount was nonrecurring and the Utility received a refund of the deposit. Staff recommends removing the $1,000.

The Utility uses Roto-Rooter at various times throughout the year to help clear lines and perform other services as necessary. Two invoices were submitted by the Utility for work performed at residential addresses, one for $604 which was work performed due to Hurricane Irma including a $9 interest payment for a past due amount, and $650 for root clearing from a customer's wastewater lines. These invoices totaled $1,254 ($604 + $650). Staff removed the $9 interest payment and amortized the remaining $1,245 ($1,254 – $9) over five years for an annual amount of $249 ($1,245 ÷ 5).

In response to staff's second data request, the Utility submitted an invoice for Woody's Septic Tank for $1,313.[31] According to the invoice, the services provided by Woody's Septic Tank fell outside of the test year. Staff recommends removing the full amount of $1,313.

The Utility records $2,555 annually for postage as part of their billing expenses. With 433 customers, this amount equates to approximately $0.49 ($2,555 ÷ 12 ÷ 433) per customer per month. Staff agrees with this postage rate per customer. Staff agrees with all other costs associated with miscellaneous expense as detailed in Table 7-4. Therefore, staff recommends miscellaneous expense of $3,749 ($7,067 – $1,000 – $1,005 – $1,313)

[29]Document Nos. 05903-2019, filed July 23, 2019, and 08103-2019, filed August 15, 2019.
[30]Document No. 03239-2019, filed March 20, 2019.
[31]Document No. 01029-2019, filed February 15, 2019.

Table 7-4
Miscellaneous Expenses

Description	Per Utility	Staff Adj	Per Staff
City of Ormond Beach (Hydrant Meter Deposit)	$1,000	($1,000)	$0
Roto-Rooter	$1,254	($1,005)	$249
Woody's Septic Tank	$1,313	($1,313)	$0
Postage	$2,555	$0	$2,555
Annual Billing Software License	$520	$0	$520
Tools and Supplies	$275	$0	$275
Florida Department of State (Corporation Renewal)	$150	$0	$150
Total	$7,067	($3,318)	$3,749

Source: Utility response to staff data requests.

O&M Expenses Summary

The Utility recorded O&M expenses of $276,376 for the test year. Based on the above adjustments, staff recommends that the O&M expense balance be decreased by $48,179, resulting in a total O&M expense of $228,197 ($276,376 - $48,179). Staff's recommended adjustments to O&M expenses are shown on Schedule 3-C.

Depreciation Expense

The Utility recorded depreciation expense of $27,508 for the test year. Staff determined that the Utility continued to depreciate plant accounts after they had been fully depreciated. Staff recalculated depreciation expense using the prescribed rates set forth in Rule 25-30.140, F.A.C. and reduced depreciation expense by $22,910. Staff also removed depreciation expense of $41 from account 352 – Franchises which appeared to become fully depreciated after the end of the test year. Further, staff increased depreciation expense by $1,233 associated with pro forma plant additions. Based on the above, staff recommends a test year depreciation expense of $5,791 ($27,508 – $22,910 - $41 + $1,233).

Taxes Other Than Income (TOTI)

The Utility recorded TOTI of $18,653. Staff increased this amount by $67 to reflect the appropriate RAFs based on corrected Utility test year revenues. Staff increased TOTI by $888 to reflect the increased property taxes due to pro forma plant additions.[32] Staff increased TOTI by $1,169 to reflect the appropriate RAFs associated with the recommended revenue increase. Staff is therefore recommending TOTI of $20,777 ($18,653 + $67 + $888 + $1,169).

Income Tax

The Utility is a Subchapter S Corporation and therefore did not record any income tax expense for the test year. NPUC has shown a net loss for the last several years in its Annual Reports. Staff recommends no adjustment to income tax expense.

[32]Volusia County 2018 Real Estate bill, millage rate of 20.17250.

Operating Expenses Summary

The application of staff's recommended adjustments to North Peninsula's test year operating expenses result in operating expense of $254,765. Operating expenses are shown on Schedule No. 3-A. The related adjustments are shown on Schedule No. 3-B.

Issue 8: Should the Commission utilize the operating ratio methodology as an alternative method of calculating the wastewater revenue requirements for NPUC, and, if so, what is the appropriate margin?

Recommendation: Yes. As required by rule, the Commission must utilize the operating ratio methodology for calculating the revenue requirement for NPUC. The margin should be 12 percent of O&M expense, capped at $15,000. (Richards)

Staff Analysis: Rule 25-30.4575(2), F.A.C., requires that the Commission use the operating ratio methodology if the utility's rate base is below 125 percent of O&M expenses. The rule states the Commission will apply a margin of 12 percent when determining the revenue requirement, up to $15,000. The operating ratio methodology will be applied when the utility's rate base is no greater than 125 percent of O&M expenses. The use of the operating ratio methodology does not change the utility's qualification for a staff assisted rate case under Rule 25-30.455(1), F.A.C.

The operating ratio methodology is an alternative to the traditional calculation of revenue requirements. Under this methodology, instead of applying a return on the Utility's rate base, the revenue requirement is based NPUC's total O&M expenses plus a margin of $15,000. This methodology has been applied in cases in which the traditional calculation of the revenue requirement would not provide sufficient revenue to protect against potential variances in revenues and expenses. As discussed in Issues 4 and 7, staff has recommended a rate base of $232,047 and O&M expenses of $228,197. Based on recommended amounts, NPUC's rate base is 102 percent of total O&M expenses. Furthermore, the application of the operating ratio methodology does not change the Utility's qualification for a SARC. As such, NPUC meets the criteria for the operating ratio methodology established in Rule 25-30.4575(2), F.A.C. Therefore, staff recommends the application of the operating ratio methodology at a margin of 12 percent of O&M expenses with a cap of $15,000 for determining the wastewater revenue requirement.

Issue 9: What is the appropriate revenue requirement?

Recommendation: The appropriate revenue requirement is $269,765, resulting in an annual increase of $25,988 (10.66 percent). (Richards)

Staff Analysis: NPUC should be allowed an annual increase of $25,988 (10.66 percent). The calculations are shown in Table 9-1.

Table 9-1
Revenue Requirement

Adjusted O&M Expense	$228,197
Operating Margin (%)	12.00%
Operating Margin ($27,384 capped at $15,000 Cap)	$15,000
Adjusted O&M Expense	$228,197
Depreciation Expense (Net)	$5,791
Taxes Other Than Income	$20,777
Income Taxes	0
Revenue Requirement	$269,765
Less Test Year Revenues	243,777
Annual Increase	$25,988
Percent Increase	10.66%

Issue 10: What is the appropriate rate structure and rates for North Peninsula Utilities Corporation's wastewater systems?

Recommendation: The recommended rate structure and monthly wastewater rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Bruce)

Staff Analysis: NPUC is located in Volusia County within the St. Johns River Water Management District. The Utility provides wastewater service to 428 residential single family homes, four condominium associations, and a restaurant. Water service is provided by the City of Ormond Beach. The Utility's current wastewater rates consist of a monthly flat rate per ERC for the residential and general service classes, which was approved in 1985.[33] A residential single family home and condominium unit are billed as one ERC. However, the restaurant is billed as 14 ERCs.[34] For the condominium associations, the Utility sends one bill to each condominium association based on the respective number of ERCs.

In order to evaluate alternative rate structures, staff requested the Utility provide metered water data. The Utility provided 12 months of metered water data from the City of Ormond Beach (City); however, due to the format of the data, it would take a significant amount of administrative time to identify and isolate the water usage for each customer. The Utility also expressed concern that it would incur additional costs, on a prospective basis, for obtaining the monthly metered water usage data from the City for billing purposes. Therefore, staff does not believe that it is cost effective to bill based on the metered water usage. Staff recommends that the Utility continue the current flat rate structure based on ERCs. As a result, staff calculated 7,200 ERCs for wastewater as shown on Table 10-1. Staff's recommended flat rates are shown on Schedule No. 4. Because a single bill is sent to each condominium association, staff recommends bulk flat rates based on the respective ERCs.

[33] Order No. 16184, in Docket No. 850121-SU, issued June 4, 1986, *In re: Application of Shore Utility Corporation for a staff-assisted rate case in Volusia County, Florida.*
[34] Order No. PSC-09-0420-TRF-SU, in Docket No. 090040-SU.

Table 10-1
Staff's Calculated ERCs

Wastewater Customers	Number of Units	Monthly ERCs	Annual ERCs
Residential			
Single Family Residential Homes	428	428	5,136
General Service			
Las Olas Townhomes	6	6	72
Ocean Air	17	17	204
Seabridge North	65	65	780
Seabridge South	70	70	840
Restaurant	1	14	168
Total ERCs		**600**	**7,200**

The recommended rate structures and monthly wastewater rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 11: What is the appropriate amount by which rates should be reduced in four years after the published effective date to reflect the removal of the amortized rate case expense?

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

Staff Analysis: Section 367.081(8), F.S., requires that the rates be reduced immediately following the expiration of the four-year period by the amount of the rate case expense previously included in rates. The reduction will reflect the removal of revenue associated with the amortization of rate case expense and the gross-up for RAFs. This results in a reduction of $1,201.

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

Issue 12: Should the recommended rates be approved for North Peninsula Utilities Corporation on a temporary basis, subject to refund with interest, in the event of a protest filed by a party other than the Utility?

Recommendation: Yes. Pursuant to Section 367.0814(7), F.S., the recommended rates should be approved for the utility on a temporary basis, subject to refund with interest, in the event of a protest filed by a party other than the utility. NPUC should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the utility should be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the utility should file reports with the Commission's Office of Commission Clerk no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (Richards) (Final Agency Action)

Staff Analysis: This recommendation proposes an increase in wastewater rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility. Therefore, pursuant to Section 367.0814(7), F.S., in the event of a protest filed by a party other than the utility, staff recommends that the recommended rates be approved as temporary rates. NPUC should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. The recommended rates collected by the utility should be subject to the refund provisions discussed below.

NPUC should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of $17,558. Alternatively, the utility could establish an escrow agreement with an independent financial institution.

If the utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

1) The Commission approves the rate increase; or,

2) If the Commission denies the increase, the utility shall refund the amount collected that is attributable to the increase.

If the utility chooses a letter of credit as a security, it should contain the following conditions:

1) The letter of credit is irrevocable for the period it is in effect, and,

2) The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

1) The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement; and,

2) No monies in the escrow account may be withdrawn by the utility without the prior written authorization of the Commission Clerk, or his or her designee;

3) The escrow account shall be an interest bearing account;

4) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers;

5) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility;

6) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times;

7) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt;

8) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments;

9) The account must specify by whom and on whose behalf such monies were paid.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received as a result of the rate increase should be maintained by the utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

Should the recommended rates be approved by the Commission on a temporary basis, NPUC should maintain a record of the amount of the security, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the utility should file reports with the Commission's Office of Commission Clerk no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

Issue 13: Should North Peninsula Utilities Corporation be required to notify the Commission within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments?

Recommendation: Yes. The Utility should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. NPUC should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) primary accounts, as shown on Schedule No. 5, have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided not less than seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. (Richards) (Final Agency Action)

Staff Analysis: The Utility should be required to notify the Commission, in writing that it has adjusted its books in accordance with the Commission's decision. NPUC should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided not less than seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

Issue 14: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once these actions are complete, this docket should be closed administratively. (Murphy)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once these actions are complete, this docket should be closed administratively.

Cadenhead Environmental Engineering Services, Inc.

1982 SR 44, #201, New Smyrna Beach, Florida 32168
Phone: (904) 307-6824 (cell) Email Address: mark_cadenhead@bellsouth.net

July 23, 2019

Dr. Phil Kane
Department of Environmental Protection
Domestic Wastewater Section
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Dear Dr. Kane:

Re: North Peninsula Utilities WWTF (fka Seabridge WWTF)
Facility I.D. No.: FLA011188
Consent Agreement No.: 18-0258: Fourth Quarterly Report

In accordance with item 5.g of the subject Consent Agreement, a quarterly report is due by July 30, 2019. The following information is provided to meet that requirement. As supplement, please see the attached tracking document that is being maintained by the Respondent and the Professional Engineer.

The following items have been completed (or partially completed) during the past quarter:

1. 5.a.i: Evaluate the Facility including effluent disposal system, associated collection system and groundwater monitoring plan, to discover the cause or potential causes of the non-compliance. *(Discussions with the groundwater monitoring group indicated that the wells purge and develop properly and that there appear to be no physical issues with the wells. Salt water intrusion continues to be considered an issue with the wells for TDS. Monitoring will continue on schedule of quarterly. There were no exceedances of standards in the 2nd quarter 2019 monitoring.)*
2. 5.b.: Respondent shall submit a complete application for the Dept. wastewater permit to construct and or implement the modifications and monitoring plan revisions developed pursuant to Subparagraph 5.a.)ii.. *(Permit determination received January 23, 2019. For planned work, no permit is required at this time.)*
3. 5.d.i.: Repair holes in the tanks: *(Partially completed; more done during the most recently past quarter. Additional work planned by December 31, 2019.)*
4. 5.e.: Quarterly monitoring of groundwater performed on June 4, 2019. *All samples were compliant.*
5. 5.f.: Sodium was sampled in all wells. *(Please see the submitted 4th quarter 2018, 1st and 2nd quarters 2019 groundwater monitoring reports. Sodium was elevated in some wells but not above the groundwater standard. The indications remain that there most likely is saltwater intrusion.)*

6. 5. d.) iii. Repair or replace the damaged splitter box. *(Repaired January 14, 2019. Additional work was done, and more is planned as part of the final agreement with the PSC.)*

The following items were unanticipated expenditures during the past three (3) months based on operational issues at the plant creating a situation where funds must be redirected:

1. Continued work with Bayshore Electric to rewire some components at the lift stations.
2. New pump in the lift station at John Anderson.

The following items are proposed or scheduled to be completed within the upcoming 12-month period:

1. 5.a.i.: Based on future quarterly groundwater reports, continue to evaluate the groundwater monitoring plan and address such items as sodium in the wells and chlorides. Total Dissolved Solids continues to be elevated in most wells but were compliant for the June 4, 2019 sampling event.
2. 5.a.i.: Continue evaluation of the collection system and address any issues as necessary.
3. Based on the results of the PSC review of the proposed rate increase, either repairs will be made to the metal plants or the items as they relate to submitting a permit for modifications or work at the plant will be made as required by the Consent Agreement. Current work in progress has received a permit determination that no permit is required. The PSC has completed their preliminary review and made an initial rate increase proposal; sent additional questions and correspondence in May 2019 with response provided immediately. The proposal continues to be negotiated. A plant site visit and customer meeting involving the PSC was also conducted in May 2019. A final case evaluation should be completed and under review by the PSC during the upcoming quarter; and the final rate increase determination, following public comment period, *may* be set in September 2019. The dates are tentative for the final rate increase determination but based on the most current information available.
4. 5.c.: Complete the work that is required to extend the life of the plant by metal repairs or replacement. The concrete plant is in good condition. Much of that work is scheduled to be completed by December 31, 2019.
5. 5.d.: Complete all items listed as needing immediate attention. Some have already been addressed. The next quarterly report, due October 30, 2019 will give an update of all work completed.

Mr. Hillman has been working with the PSC extensively to obtain a rate increase to further extend work at the facility. Once the decision on the rate increase has been settled, a budget will be set to make funds available to complete the items of the Consent Agreement in a timely manner. The agency will be updated on any major advancements of the process but will also receive an additional quarterly report in October 2019.

If you have any questions, you may reach me at the letterhead address or at (904) 307-6824.

Sincerely,

Mark Cadenhead, P.E.

Mark Cadenhead, P. E., MBA, President
Cadenhead Environmental Engineering Services, Inc.

cc: Mr. Robert Hillman, President, North Peninsula Utilities w/o attachments

Reporting:	Date Due	Date Submitted	Items completed and items to be completed within 12-month period.
5. g.) Every calendar quarter after the effective date of the C.O. submit in writing a report containing status of progress of projects being completed under the C.O., info as to compliance or noncompliance with the applicable requirements of the C.O. including construction requirements and effluent limitations and any reasons for noncompliance. Include projection of the work to be performed pursuant to the Order during the 12-month period which will follow the report. Due within 30 days following the end of the quarter.			

1st Quarterly	Tuesday, October 30, 2018	Thursday, October 25, 2018	Completed: Paid penalty. Contracted with a P.E. Submitted 3rd quarter gw report with Sodium as part of the monitoring. Met with engineer and contractor at site to discuss upcoming work to be performed. Provided cost of work to be performed as itemized in C.O. Surveyed the clean outs; evaluated the pond(s); began repairs of holes in plant and other C.O. items noted such as traveling bridge returns and splitter box. Anticipated upcoming work next 12-months: Complete repairs at plant per the itemized list; add others as discussions with the PSC continue. Make repairs to the manhole that is allowing inflow. Provide another, updated report concerning work to be done to extend the life of the metal plants. Obtain permit determination from the agency once the scope of work following PSC decision is made for increase in rate(s).

2nd Quarterly	Wednesday, January 30, 2019	Monday, January 28, 2019	Completed or partially completed: Splitter box was repaired per the Respondent on January 14, 2019. GW monitoring conducted on October 31, 2018 and included sampling for Sodium. Sodium was elevated in some wells. The groundwater monitoring plan was discussed with the sampling group. The wells are in sufficient condition to purge and develop properly. Groundwater monitoring results will be reviewed and further evaluated as more data is available during future quarterly monitoring events. A permit determination was requested and received concerning the proposed work at the plant. No permit, based the current proposed scope of work, will be required. Holes in the plant continue to be addressed when and if they occur. *Anticipated work during next 12 months: All work required by the Agreement must be completed by January 23, 2020.*
3rd Quarterly	Tuesday, April 30, 2019	Tuesday, April 30, 2019	Submitted via email with original mailed 5/1/2019. Completed or partially completed: Additional work on the splitter box completed. Further work planned as part of PSC rate increase budgeting. 1st Qtr groundwater monitoring completed and submitted. Sodium was detected in wells but not above the limit. Any "holes" or deterioration needing immediate attention have been addressed. The flow meter had to be replaced and represented an unanticipated expense. Additional electrical work was needed at the lift stations and at the plant. Anticipated work during next 12 months: All work required by the Agreement must be completed by January 23, 2020.

4th Quarterly	Tuesday, July 30, 2019	Tuesday, July 30, 2019	Submitted 3rd Quarterly Report timely. Completed or partially completed: Additonal work on the splitter box completed. Further work planned as part of PSC rate increase budgeting. 2nd Qtr 2019 groundwater monitoring completed and submitted. Sodium was detected in wells but not above the limit. Any "holes" or deterioration needing immediate attention have been addressed. Additional work is contracted to Wetherell's to complete by end of December 2019. The sludge return and clarifier sweep gear drives of Plant #1 were completed. New gate was installed for security. Lift station electrical work completed by Bayshore Electric. New pumps installed by Wetherell's including in lift station but also in the plant area. North Peninsula increased some monitoring and operator oversight for a short period of time as construction is advancing. Wetherell's completed some additional steel work and repairing of holes. Repairs to manhole(s) in collection system completed and new pump in John Anderson lift station was installed. Air supply lines are in progress of being replaced. Anticipated work during next 12 months: All work required by the Agreement must be completed by January 23, 2020.
5th Quarterly	Wednesday, October 30, 2019		
Completion of Work and final report	Thursday, January 23, 2020		

North Peninsula Utilities (Seabridge) Consent Agreement: OGC File NO.: 18-0258
Date of execution of C.O.: July 27, 2018. Friday, July 27, 2018
Per item 6. all corrective actions are to be completed and full compliance within 545 days of the effective date: *Thursday, January 23, 2020*
Findings of the agency:
a. On March 20, 2018 an inspection noted that the plant was not properly operated and maintained. (Violation of F.A.C. 62-620.610(7).)
i. Numerous holes were noted in integral components of the WWTFs.
ii. Plant #3 had a broken inoperable travelling bridge.
iii. The splitter box for the combined facility exhibited potential failure characteristics.
b. Failed to submit groundwater monitoring reports for 3rd and 4th quarters 2017. (Violation of F.A.C. 62-600.680(1(a).)
c. Failed to monitor for Sodium in the wells as required by Condition III.1.,2. and 5.
d. Failed to properly address chloride exceedences in the monitoring wells as required by Condition III.B.1.,2., and 5.

C.O Item	Trigger Date	Due Date	Date Completed
5.a) Within 30 days of the effective date of the order retain the services of a professional engineer.	Friday, July 27, 2018	Sunday, August 26, 2018	Tuesday, August 7, 2018
5. a) i. Evaluate the Facility including effluent disposal system, associated collection system and groundwater monitoring plan, to discover the cause or potential causes of the non-compliance.			
5. a) ii. Design modification of the Facility including effluent disposal system, collection systems and monitoring plan to ensure the Facility will function in full and consistent compliance with all applicable rules of the Department.			Currently determined that a permit modification is not needed.
5. a.) iv. Oversee the construction of any modifications to the Facility.			Currently determined that a permit modification is not needed.
5. a.) v. Submit to the Department a Cert. of Completion prepared by P.E. stating that modifications to all areas including disposal and collection systems were in accordance with the provisions of the permit modifications.			Currently determined that a permit modification is not needed.

Comment	Responsible Party
Completed.	Mark and Bob.
Discuss scope and video of collection system. Check any clean outs that might be compromised. Review gw data and see if Plan is sufficient. If background issues for gw, then make proposals concerning changing limits based on background results.	Mark , Bob and WTS Sales.
If the evaluation of the plant requires design changes, a permit modification will be needed. What are the issues with the "disposal system" outside needing to clean the ponds? Are there parameters contributing to the gw issues?	Mark, Bob, WTS Sales and Pace Lab.
"Modifications" may not be needed depending on the results of renovation of the plant. A new splitter box for example is a part of maintenance and does not require a modification. We will ask for a permit determination for any work and get buy in from the agency.	Mark, Bob and WTS Sales.
If a permit is required, the COC form will be prepared. If just renovation and maintenance work are required, a signed and sealed report will be prepared.	Mark

5. a.) vi. Contact Dr. Phil Kane before initiating the treatment system evaluation described in Subparagraph(s) 5(a)i.			Done.
5. a.) vii. In the event the Dept. requires additional info to process the permit (RAI), a written response containing the response shall be submitted with 30 days of the request.			Currently determined that a permit modification is not needed.
5. b.) Within 180 days of the effective date of the C.O. Respondent shall submit a complete application for the Dept. wastewater permit to construct and or implement the modifications and monitoring plan revisions developed pursuant to Subparagraph 5.a.)ii.	Friday, July 27, 2018	Wednesday, January 23, 2019	Wednesday, January 23, 2019
5. c.) Within 365 days of the effective date of the wastewater permit issued in accordance with 5(b) complete construction of the modifications developed pursuant to 5(a) and submit the COC form prepared by a P.E. stating that modifications including to disposal and collection systems were constructed in accordance with the permit. (My language: or the evaluation report provided to the agency as part of item 5(b) above.)			
5. d.) Immediately implement preventative measures to ensure system failure does not occur while the reconstruction is under way, including but not limited to:			
5. d.) i. Repair the holes and corrosion in the tanks.			Ongoing.
5. d.) ii. Repair the travelling bridge at plant #3.			In progress.
5. d.) iii. Repair or replace the damaged splitter box.			Repairs done. Ongoing.
5. d.) iv. Repair the clarifier skimmer at plant #3.			In progress.

Once the evaluation is completed, contact Dr. Kane via phone and email concerning the proposed steps to address issues at the plant.	Mark with input from Bob and WTS Sales.
30 days to submit a response is a short turnaround but should be doable.	Mark with input from Bob and WTS Sales.
If it is determined from the evaluation and the Permit Determination request from DEP that a permit is not needed, a report should still be sent to the agency with dates to complete renovation and maintenance work.	***DEP issued a permit determination that based on the proposed work to be done; no change in process; and no increase in capacity; that a permit would not be required.***
If permit is issued or the date that the evaluation report is provided to the agency and approved, the "Due Date" column will be modified to provide the 365 days of construction allowance time. The agency issued a determination that based on the planned construction a permit is not needed. No capacity change and no added treatment.	Mark
	WTS Sales and Bob with Mark tracking.
Work began prior to September 11, 2018 and continues awaiting rate increase determination by PSC.	Bob and WTS Sales. Mark or others to provide photos of completed work.
Not completed. Work scheduled and/or in progress.	Bob and WTS Sales. Mark or others to provide photos of completed work.
Splitter box was repaired, per information obtained from the Respondent, on January 14, 2019. Further work completed in 2nd Quarter 2019.	Bob and WTS Sales. Mark or others to provide photos of completed work.
Not completed. Work scheduled and/or in progress.	Bob and WTS Sales. Mark or others to provide photos of completed work.

5. e.) Beginning immediately, submit quarterly groundwater monitoring reports by the due date established in the permit. **By the 28th of the month following the quarter of monitoring, i.e. October 28, 2018 for 3rd quarter of 2018.**			Done. 2nd quarter 2019 DMR sul
5. f.) Immediately begin sampling and reporting Sodium in all ground water monitoring reports as required by the Facility's Permit.			Sodium sampling began Tuesday, September 11, 2018 and is being conducted quarterly per the permit.
5. g.) Every calendar quarter after the effective date of the C.O. and continuing until all corrective actions are completed, submit a written report containing status and progress; info on compliance and non-compliance with the Order including construction or effluent limitation violations and reasons for non-compliance. ***The reports must also give projection of the work to be performed in the upcoming 12-month period. SEE TAB FOR QUARTERLY REPORTS.***			
6. Notwithstanding the time periods described in the paragraphs above, complete all corrective actions within 545 days of the effective date of the C.O.	Friday, July 27, 2018	Thursday, January 23, 2020	
7. Within 90 days of the effective date of the Order, a written estimate of the total cost of the corrective actions must be submitted to the Dept. The estimate should provide (itemized: etc) info on what was relied upon to provide the estimate.	Friday, July 27, 2018	Thursday, October 25, 2018	Monday, October 22, 2018
8. Pay stipulated penalties of $500.00 within 60 days of the executed date of the Order.	Friday, July 27, 2018	Tuesday, September 25, 2018	Friday, July 20, 2018

Pace Lab and North Peninsula Utilities will provide the engineer the groundwater monitoring reports by the 10th of the month following the month of operation for review and comment.	*N. Peninsula and Pace Lab to provide info to Mark.*
3rd quarter of 2018 (this quarter) was allowed by DEP to be the beginning of sampling but Sodium MUST be included. Quarterly monitoring of sodium continues per the requirements of the permit.	N. Peninsula and Pace Lab to provide info to Mark.
The spreadsheet may be updated and provided as part of the tracking for the report. A supplement should be added giving the projected work for the next 12-month period. The TAB for Quarterly Reports has a comment column that includes the Projected Work so these two pages may be submitted with a cover letter to meet the requirements of the Consent Agreement.	Mark to do with input from Bob and WTS Sales or Bob to do with input from Mark and WTS Sales.
	Report that all work is completed will be submitted by Mark using info from Bob, WTS Sales and Pace Lab.
The information provided to the PSC can also be used to help give a cost to bring the facility into compliance.	Bob and WTS Sales to provide information to Mark. Mark to prepare the info with the itemized items and submit.
Date is estimated based on the return of the signed C.O. to the Department.	Bob.

NORTH PENINSULA UTILITIES CORPORATION
TEST YEAR ENDED 06/30/2018
SCHEDULE OF WASTEWATER RATE BASE

SCHEDULE NO. 1-A
DOCKET NO. 20180138-SU

	DESCRIPTION	BALANCE PER UTILITY	STAFF ADJUST. TO UTIL. BAL.	BALANCE PER STAFF
1.	UTILITY PLANT IN SERVICE	$960,499	($67,895)	$892,604
2.	LAND & LAND RIGHTS	46,800	0	46,800
3.	NON-USED AND USEFUL COMPONENTS	0	0	0
4.	ACCUMULATED DEPRECIATION	(926,024)	190,995	(735,029)
5.	CIAC	(640,994)	(731)	(641,725)
6.	ACCUMULATED AMORTIZATION OF CIAC	640,994	21	641,015
7.	WORKING CAPITAL ALLOWANCE	0	28,381	28,381
8.	WASTEWATER RATE BASE	$81,275	$150,772	$232,047

NORTH PENINSULA UTILITIES CORPORATION
TEST YEAR ENDED 06/30/2018
ADJUSTMENTS TO RATE BASE

SCHEDULE NO. 1-B
DOCKET NO. 20180138-SU

		WASTEWATER
	UTILITY PLANT IN SERVICE	
1.	To reflect appropriate plant in service.	($77,595)
2.	To reflect addition of new customer.	1,462
3.	To reflect an averaging adjustment.	(5,409)
4.	To reflect pro forma addition.	47,088
5.	To reflect pro forma retirement	(33,441)
	Total	($67,895)
	ACCUMULATED DEPRECIATION	
1.	To reflect appropriate accumulated depreciation.	$158,547
2.	To reflect addition of new customer.	(21)
3.	To reflect an averaging adjustment.	262
4.	To reflect pro forma adjustment.	32,207
	Total	$190,995
	CIAC	
1.	To reflect addition for new customer.	($1,462)
2.	To reflect an averaging adjustment.	731
	Total	($731)
	ACCUMULATED AMORTIZATION OF CIAC	
	To reflect addition of new customer.	$21
	WORKING CAPITAL ALLOWANCE	
	To reflect 1/8 of test year O&M expenses.	$28,381

NORTH PENINSULA UTILITIES CORPORATION
TEST YEAR ENDED 06/30/2018
SCHEDULE OF CAPITAL STRUCTURE

SCHEDULE NO. 2
DOCKET NO. 20180138-SU

	CAPITAL COMPONENT	PER UTILITY	SPECIFIC ADJUST-MENTS	BALANCE AFTER ADJUSTMENTS	PRO RATA ADJUST-MENTS	BALANCE PER STAFF	PERCENT OF TOTAL	COST	WEIGHTED COST
1.	COMMON STOCK	$100	($100)	$0	$0	$0	0.00%		0.00%
2.	RETAINED EARNINGS	($940,660)	$940,660	$0	$0	$0	0.00%		0.00%
3.	PAID IN CAPITAL	$400	($400)	$0	$0	$0	0.00%		0.00%
4.	OTHER COMMON EQUITY	$0	$0	$0	$0	$0	0.00%		0.00%
	TOTAL COMMON EQUITY	($940,160)	$940,160	$0	$0	$0	0.00%	10.55%	0.00%
5.	LONG-TERM DEBT	$1,093,091	$0	$1,093,091	($861,044)	$232,047	100.00%	6.70%	6.70%
6.	SHORT-TERM DEBT	$0	$0	$0	$0	$0	0.00%	0.00%	0.00%
7.	PREFERRED STOCK	$0	$0	$0	$0	$0	0.00%	0.00%	0.00%
	TOTAL LONG TERM DEBT	$1,093,091	$0	$1,093,091	($861,044)	$232,047	100.00%	6.70%	6.70%
8.	CUSTOMER DEPOSITS	$0	$0	$0	$0	$0	0.00%	2.00%	0.00%
9.	TOTAL	$152,931	$940,160	$1,093,091	($861,044)	$232,047			6.70%

RANGE OF REASONABLENESS	LOW	HIGH
RETURN ON EQUITY	9.55%	11.55%
OVERALL RATE OF RETURN	6.70%	6.70%

NORTH PENINSULA UTILITIES CORPORATION — **SCHEDULE NO. 3-A**
TEST YEAR ENDED 06/30/2018 — **DOCKET NO. 20180138-SU**
SCHEDULE OF WASTEWATER OPERATING INCOME

		TEST YEAR PER UTILITY	STAFF ADJUST-MENTS	STAFF ADJ. TEST YEAR	ADJUST. FOR INCREASE	REVENUE REQ.
1.	**OPERATING REVENUES**	$242,292	$1,485	$243,777	$25,988 10.66%	$269,765
	OPERATING EXPENSES:					
2.	OPERATION & MAINTENANCE	$276,376	($48,179)	$228,197		$228,197
3.	DEPRECIATION (NET)	27,508	(21,717)	5,791		5,791
4.	AMORTIZATION	0	0	0		0
5.	TAXES OTHER THAN INCOME	18,653	955	19,608	1,169	20,777
6.	INCOME TAXES	0	0	0		0
7.	**TOTAL OPERATING EXPENSES**	$322,537	($68,942)	$253,595		$254,765
8.	**OPERATING INCOME/(LOSS)**	($80,245)		($9,818)		$15,000
9.	**WASTEWATER RATE BASE**	$81,275		$232,047		$232,047
10	**OPERATING MARGIN**					6.46%

NORTH PENINSULA UTILITIES CORPORATION TEST YEAR ENDED 06/30/2018 ADJUSTMENTS TO OPERATING INCOME	SCHEDULE 3-B DOCKET NO. 20180138-SU PAGE 1 OF 2
	WASTEWATER
OPERATING REVENUES	
1. To reflect the appropriate test year revenue.	$1,485
OPERATION AND MAINTENANCE EXPENSES	
1. Purchased Power (715)	
a. To reflect removal of out of test year amounts.	($949)
b. To reflect removal of late fees.	(33)
Subtotal	($982)
2. Chemicals (718)	
To reflect removal of out of test year amounts.	($389)
3. Contractual Services - Engineering (731)	
To reflect DEP permit and filing amortized over five years.	$120
4. Contractual Services - Accounting (732)	
To reflect removal of out of test year amounts.	($1,350)
5. Contractual Services - Legal (733)	
a. To reflect removal due to lack of supporting documentation.	($1,030)
b. To reflect average expenses related to collection activities.	600
Subtotal	($430)
6. Contractual Services - Mgt. Fees (734)	
a. To reflect removal of miscellaneous expenses from contract.	($3,600)
b. To reflect 2019 IRS adjustment to auto expense.	(548)
c. To reflect reduced management compensation portion of contract.	(39,254)
Subtotal	($43,402)
7. Contractual Services - Other (736)	
a. To reflect adjustments to repairs per invoice.	$95
b. To reflect increased pay rate for plant operator.	3,009
c. To reflect pro forma plant expenses amortized over five years.	3,715
Subtotal	$6,819
8. Insurance - General Liability (757)	
To reflect removal of late fees.	($30)
9. Rate Case Expense (766)	
Allowance for rate case expense amortized over four years.	$1,147
10. Regulatory Commission Expense - Other (767)	
To reflect removal of amount written off amortized over four years.	($6,365)

NORTH PENINSULA UTILITIES CORPORATION	SCHEDULE 3-B
TEST YEAR ENDED 06/30/2018	DOCKET NO. 20180138-SU
ADJUSTMENTS TO OPERATING INCOME	PAGE 2 OF 2
	WASTEWATER
11. Miscellaneous Expenses (775)	
a. To reflect removal of refunded deposit to City of Ormond Beach.	($1,000)
b. To reflect removal of late payment to Roto-Rooter.	(9)
c. To reflect five year amortization of Roto-Rooter expense.	(996)
d. To reflect removal of out of test year amount to Woody's Septic Tank.	(1,313)
Subtotal	($3,318)
TOTAL OPERATION AND MAINTENANCE ADJUSTMENTS	**($48,179)**
DEPRECIATION EXPENSE	
1. To reflect the appropriate test year depreciation expense.	($22,910)
2. To reflect Account 352 - Franchises being fully depreciated.	($41)
3. To reflect depreciation expense of new customer.	21
4. To reflect the amortization of CIAC for new customer.	(21)
5. To reflect pro forma additions.	1,233
Total	**($21,717)**
TAXES OTHER THAN INCOME	
1. To reflect appropriate test year RAFs.	$67
2. To reflect property taxes associated with pro forma plant additions.	888
Total	**$955**
TOTAL OPERATING EXPENSE	**($68,942)**

NORTH PENINSULA UTILITIES CORPORATION — **SCHEDULE NO. 3-C**
TEST YEAR ENDED 06/30/2018 — **DOCKET NO. 20180138-SU**
ANALYSIS OF WASTEWATER O&M EXPENSE

Acct. #	Description	TOTAL PER UTILITY	STAFF ADJUST-MENT	TOTAL PER STAFF
711	Sludge Removal	$22,860	$0	$22,860
715	Purchased Power	12,245	(982)	11,263
718	Chemicals	5,776	(389)	5,387
720	Materials and Supplies	613	0	613
731	Contractual Services - Engineering	800	120	920
732	Contractual Services - Accounting	4,500	(1,350)	3,150
733	Contractual Services - Legal	1,030	(430)	600
734	Contractual Services - Mgt. Fees	135,487	(43,402)	92,085
735	Contractual Services - Testing	12,588	0	12,588
736	Contractual Services - Other	34,788	6,819	41,607
757	Insurance - General Liability	2,252	(30)	2,222
766	Rate Case Expense (RCE)	0	1,147	1,147
767	Regulatory Commission Expense - Other	36,370	(6,365)	30,005
775	Miscellaneous Expense	7,067	(3,318)	3,749
	Total O & M Expense	$276,376	($48,179)	$228,197
	Working Capital is 1/8 of O&M Less RCE			$28,381

NORTH PENINSULA UTILITIES CORPORATION TEST YEAR ENDED 6/30/2018 MONTHLY WASTEWATER RATES			SCHEDULE NO. 4 DOCKET NO. 20180138-SU
	CURRENT RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential Flat Rate			
Single Family Residential Homes	$33.57	$37.47	$0.17
General Service Flat Rate			
Las Olas Townhomes	$201.42	$224.82	$1.00
Ocean Air	$570.69	$636.99	$2.84
Seabridge North	$2,182.05	$2,435.55	$10.84
Seabridge South	$2,349.90	$2,622.90	$11.68
Restaurant	$469.98	$524.58	$2.34

NORTH PENINSULA UTILITIES CORPORATION **SCHEDULE NO. 5**
TEST YEAR ENDED 06/30/2018 **DOCKET NO. 20180138-SU**
PLANT, ACCUM. DEPRECIATION, CIAC, & CIAC AMORTIZATION BALANCES

ACCOUNT	DESCRIPTION	PLANT 6/30/2018 (DEBIT)	ACCUM. DEP 6/30/2018 (CREDIT)
352	Franchises	$6,310	$6,269
353	Land and Land Rights	46,800	N/A
354	Structures & Improvements	166,919	156,857
360	Collection Sewers - Force	322,603	318,363
361	Collection Sewers - Gravity	5,410	3,317
363	Services to Customers	29,870	29,150
364	Flow Measuring Devices	2,500	500
370	Receiving Wells	1,278	1,127
371	Pumping Equipment	42,652	1,756
380	Treatment and Disposal - Equipment	$315,062	$217,692
	TOTAL INCLUDING LAND	$939,404	$735,029

CIAC AMORT 6/30/2018 (DEBIT)	CIAC 6/30/2018 (CREDIT)
$641,015	$641,725

Item 11

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Wu)
Division of Accounting and Finance (Cicchetti, Higgins, Smith II)
Office of the General Counsel (Brownless)

RE: Docket No. 20190056-GU – Petition for approval of 2019 consolidated depreciation study by Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and Florida Division of Chesapeake Utilities Corporation.

AGENDA: 10/03/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-7.045(4)(a), Florida Administrative Code (F.A.C.), requires natural gas public utilities to file a comprehensive depreciation study with the Florida Public Service Commission (Commission) for review at least once every five years from the submission date of the previous study. Florida Public Utilities Company's (FPUC or Company) last depreciation study was initially filed on January 13, 2014, and a revised version filed on July 2, 2014. The 2014 Study was approved by Order No. PSC-14-0698-PAA-GU.[1] FPUC's new study was due on or by January 14, 2019. However, on December 26, 2018, FPUC filed a petition to temporarily waive

[1]Order No. PSC-14-0698-PAA-GU, issued December 18, 2014, in Docket No. 140016-GU, *In re: 2014 depreciation study by Florida Public Utilities Company.*

Rule 25-7.045(4)(a), F.A.C.[2] The Company's request was ultimately granted, which permitted it to submit a depreciation study no later than March 4, 2019.[3] In accordance with Order No. PSC-2019-0067-PAA-GU, the Company filed its 2019 Depreciation Study on March 4, 2019, and a revised version on April 10, 2019 (2019 Study or Current Study). Staff's analysis and recommendations are based on the April 10, 2019, filing.[4] Further, as was the case with the Company's 2014 Depreciation Study, FPUC's 2019 Study is a consolidated depreciation study encompassing information from, and rates applicable to FPUC, FPUC - Indiantown Division, FPUC - Fort Meade, and the Florida Division of Chesapeake Utilities Corporation. For clarity, the aforementioned collective of operating divisions are singularly referred to as "FPUC or Company" throughout this recommendation.

A staff data request seeking additional information regarding the 2019 Study was issued on April 15, 2019, and Staff's Report was issued on June 11, 2019. The Company responded to Staff's First Data Request on May 17, 2019, and Staff's Report on July 2, 2019.

With respect to the Florida Division of Chesapeake Utilities Corporation (Chesapeake), staff reviewed the effect of the recommended depreciation rate reductions (Issue 2) on forecasted earnings for calendar year 2019 (Issue 3).[5] Based on staff's review, Chesapeake is projected to remain earning within its authorized return on equity range of 9.8 percent to 11.8 percent for 2019.[6]

Staff has completed its review of FPUC's 2019 Study and presents its recommendations to the Commission herein. Additionally, staff is not currently aware of any questions or concerns from the public with respect to this matter.

The Commission is vested with jurisdiction over these matters through several provisions of the Florida Statutes (F.S.), including Sections 350.115, 366.05, and 366.06, F.S.

[2]Document No. 07669-2018.
[3]Order No. PSC-2019-0067-PAA-GU, issued February 22, 2019, in Docket No. 20180230-GU, *In re: Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company*.
[4]Document No. 03618-2019.
[5]Document No. 08748-2019.
[6]Order No. PSC-10-0029-PAA-GU, issued January 14, 2010, in Docket No. 090125-GU, *In re: Petition for increase in rates by Florida Division of Chesapeake Utilities Corporation*.

Discussion of Issues

Issue 1: Should the currently prescribed depreciation rates for FPUC be revised?

Recommendation: Yes. The review of FPUC's plant and depreciation-related information indicates a need to revise the Company's currently prescribed depreciation rates. (Higgins)

Staff Analysis: FPUC's last depreciation study was filed on July 2, 2014. By Order No. PSC-14-0698-PAA-GU, the Commission approved revised depreciation rates that became retroactively effective January 1, 2014.[7]

The Company filed its Current Study in accordance with Order No. PSC-2019-0067-PAA-GU.[8] A review of the Company's recent plant activities and other relevant data indicates a need to revise depreciation rates. Staff's recommended depreciation rates and their underlying components are specifically discussed in Issue 2.

[7]Order No. PSC-14-0698-PAA-GU.
[8]Order No. PSC-2019-0067-PAA-GU.

Issue 2: What are staff's recommended depreciation parameters and resulting rates?

Recommendation: Staff recommends the Commission approve the lives, reserve percentages, net salvage percentages, and resulting depreciation rates applicable to FPUC's investments shown on Attachment A. As shown on Attachment B, the relevant corresponding total depreciation expense effect of staff's rate recommendations is a decrease of $893,899 or approximately 7.2 percent, from current depreciation expense levels at December 31, 2018. (Higgins, Wu)

Staff Analysis: The purpose of this review is to ensure that capital invested, as well as future plant retirement costs, are recovered over the useful lives of the assets studied. To this end, staff's recommendations are the result of a comprehensive review of FPUC's depreciation and plant-related data filed in this docket. Attachment A to this recommendation shows a comparison of currently-approved depreciation parameters and rates to those staff recommends becoming effective January 1, 2019 (Issue 3). Staff and the Company are in agreement on all proposed depreciation parameters and resulting rates. Shown on Attachment B is a comparison of depreciation expenses between currently-approved and recommended rates based on December 31, 2018 investment and reserve levels.

2019 Study Overview and Highlights

Order No. PSC-14-0698-PAA-GU

Due to certain matters raised during FPUC's preceding depreciation study review in 2014, the Commission wrote in Order No. PSC-14-0698-PAA-GU, "[t]he Company shall implement a procedure of maintaining clear documentation on each gross salvage and [cost of removal] booked so that we can verify these records through the Annual Status Report reviewing process."[9] Staff understands this issue is still present and that the causes continue to be addressed. In response to a staff inquiry, the Company stated that it is currently in the process of implementing standardized practices and procedures across all business units regarding retirement-related bookkeeping. However, Company efforts have been partially impeded by high employee turnover, communication issues, and corporate-level restructuring. In spite of these challenges, newly-revised policies regarding FPUC's fixed-asset accounting, which aim to mitigate future reoccurrences of similar issues, went into effect August 1, 2019.

Staff will monitor the effects of new Company policies regarding retirement-related bookkeeping through its Annual Depreciation Status Report (ADSR) review process, and report its findings to the Commission as part of staff's next depreciation study recommendation.[10]

Vintage Year Accounting - General Plant

The Company, through its 2019 Study, has requested authorization to adopt vintage year accounting for certain General Plant accounts.[11] At a high-level, vintage year accounting lessens

[9]Order No. PSC-14-0698-PAA-GU, Pages 4-5.
[10]Rule 25-7.045(6), F.A.C.
[11]See Federal Energy Regulatory Commission Accounting Release 15.

the work involved in plant record-keeping by simplifying accounting procedures for high volume, low value assets.

With the proposed adoption of vintage year accounting, assets at the date of adoption that meet or exceed the average service life (ASL) of the relevant accounts must be retired. Staff notes that, in general, an ASL is the average expected life of all units of a group of assets when new. The total amount of retirement dollars due to the adoption of vintage year accounting is approximately $690,500. Further, all General Plant accounts that are transitioned to vintage year accounting must do so at their theoretically correct reserve level. This is achieved by comparing book reserves to theoretical reserves to determine if an imbalance exists and correcting the reserve if so. The resulting reserve imbalance for FPUC's General Plant accounts that are moving to vintage year accounting is a deficiency of $1,350,980. Based on the Company's proposal, staff recommends amortizing the deficiency over 5 years resulting in an annual expense of $270,196.

Reserve Transfers

When a reserve imbalance exists, which is the difference between the theoretical reserve and the book reserve, reserve transfers may be performed.[12] The Commission has approved reserve transfers to reduce or eliminate reserve imbalances in the past. However, Rule 25-7.045(4)(e), F.A.C., does not require that reserve transfers be performed, only that reserve imbalances be identified. As a functional matter, the remaining life depreciation rate, which is calculated using the reserve percentage as one of the input parameters, corrects any reserve imbalance over the life of the account, thus "self-correcting" any imbalance. However, when a significant reserve imbalance is observed, a reserve transfer (or other treatment) may become necessary due to magnitude.

For the 2019 Study, a reserve surplus of $2.3 million was calculated using FPUC's proposed life and salvage parameters. The most significant reserve imbalances are found in the plastic and Gas Reliability Infrastructure Program (GRIP) mains accounts (376.1 and 376G), which are $11.1 million surplus and $7.1 deficit, respectively; and plastic and GRIP services accounts (380.1 and 380G), which are $2.6 million surplus and $3.1 million deficit, respectively.[13,14] However, FPUC proposed that the plastic and GRIP mains accounts be combined for one depreciation rate, and the plastic and GRIP services accounts be combined for one depreciation rate. Staff agrees with the Company. In so doing, the reserve imbalances are reduced to approximately a $4 million surplus for plastic mains and approximately a $0.5 million deficit for plastic services. Given this situation, staff believes that it is reasonable to forgo performing any reserve transfers in the current proceeding, but rather re-investigate the matter during the Company's next depreciation study review. Staff believes there will likely be better information for determining the necessity

[12]The theoretical reserve is the calculated balance that would be in the reserve if the estimates of depreciation life and salvage now considered appropriate had always been applied. The book reserve is the amount of plant investment actually recovered to date.
[13]Revised Attachment 2 of the 2019 Study, Exhibit DD, FPUC's response to Staff's Data Request, No. 38, and Staff Report, Page 3. Document Nos. 03618-2019, 04383-2019, and 05299-2019, respectively.
[14]Order No. PSC-12-0490-TRF-GU, issued September 24, 2012, in Docket No. 120036-GU, *In re: Joint petition for approval of Gas Reliability Infrastructure Program (GRIP) by Florida Public Utilities Company and the Florida Division of Chesapeake Utilities Corporation*.

of reserve transfers in the future as GRIP concludes in 2020. Consequently, staff recommends no reserve transfers be performed in this proceeding.

Account-Specific Analysis

Staff discusses its recommendations regarding FPUC's 2019 Study on a select account-by-account basis below. Staff notes not all accounts and/or underlying depreciation parameters used in developing the rates appearing on Attachment A are discussed in the narrative below. Rather staff chose to focus on apprising the Commission of what it believes are the more pertinent developments and associated effects over the study period.

Account 374.1 – Land Rights

This account contains the investment associated with easements, and it has an average age of 27.6 years. The current investment of the account was made in 1990 and 1991, and FPUC has no plans for near term retirement. Given these factors, the Company proposed an increase in the account's ASL from 30 years to 35 years. Staff believes the proposal is appropriate. Using the proposed ASL value with the account's average age and its existing SQ retirement dispersion, an average remaining life (ARL) of 7.4 years is calculated for the account.[15] For background, an ARL is the future expected service life in years of the asset-group survivors at a given age. With respect to the net salvage (NS) parameter, FPUC proposed to retain the existing value of zero percent. Staff notes NS represents the difference between the value of salvage and cost of removal resulting from plant retirement and disposal. Considering the nature of the account and the industry averages, staff believes the Company's salvage proposal is reasonable. Staff recommends approval of an ARL of 7.4 years and NS of zero percent for Account 374.1.

Account 376 – Distribution Mains

The mains accounts consist of plastic mains (376.1), steel mains (376.2), and GRIP mains (376G). Collectively, these accounts comprise 64 percent of FPUC's distribution plant investment and more than 60 percent of FPUC's total plant investment under study. In 2012, the Commission approved FPUC's GRIP initiative.[16] GRIP provides for the accelerated replacement of FPUC's bare steel and cast iron pipes. The program was initiated in response to concerns regarding aging infrastructure reliability and safety. As a result, the GRIP-related plant investment has increased by approximately 150 percent during the current study period; correspondingly, the mains accounts have experienced increased retirements. However, FPUC indicated that it "believes this situation will return to normal once GRIP ends in 2020."

[15]Bulletin 125, *Statistical Analysis of Industrial Reporting*, published in 1935, by Robley Winfrey of the Iowa State College Engineering Experimental Station. The retirement distributions (depicted as the "Iowa Curves") published in Bulletin 125 are widely-accepted representations of utility property retirement patterns. Iowa curves are comprised of a set of standardized patterns (or curve shapes) of asset retirement dispersions organized into four broad classes: "S," "R," "L," and "O" curves. The inherent logic of the Iowa Curves is that the same type of plant, living in the same environments, generally experiencing the same external factors, will continue to follow the same mortality pattern, or until factors/considerations change.
[16]Order No. PSC-12-0490-TRF-GU.

Each of the mains accounts has a currently-approved ASL of 45 years. FPUC proposed to increase the ASL of all three mains accounts to 55 years. The Company believes that with the replacement of the problematic mains, the new mains investment/technology should experience longer life. With the current expectation that plastic mains will experience an average life of greater than 55 years, staff believes the Company's proposal is appropriate.

The currently-prescribed retirement dispersion for plastic (inclusive of GRIP) and steel mains accounts is the S3 curve shape. FPUC acknowledged that during this study period retirement activities in the mains accounts indicated retirement dispersions with higher infant mortality (higher number of earlier retirements) than the S3 curve shape provides. However, the Company believes that the retirement dispersions used for estimating future lives should be based on account expectations of a return to normalcy (with less infant mortality), as the retirement activities are expected to go back to normal when the GRIP ends. Thus, FPUC believes the current S3 dispersion remains reasonable for the future study period. Staff considers this reasoning appropriate. Consequently, for the combined plastic and GRIP mains account, an ARL of 48 years is calculated by using a 55-year ASL with the account's average age of 7.3 years. For the steel mains account, an ARL of 37 years is calculated by using a 55-year ASL with the account's average age of 18.5 years. Staff recommends approval of ARLs of 48 years and 37 years, respectively, for plastic mains (inclusive of GRIP) and steel mains.

Currently, the plastic (inclusive of GRIP) and steel mains accounts have prescribed NS parameters of negative 16 percent and negative 28 percent, respectively. During this study period, the plastic mains experienced NS activities ranging from negative 24 percent to negative 668 percent with an average of negative 147 percent; and the steel mains experienced NS activities ranging from negative 56 percent to negative 1,228 percent with an average of negative 172 percent. FPUC considers the recent NS activity to be atypical (due to the GRIP replacements) and expects the NS levels of these accounts to return to normalcy in the future as the GRIP program concludes. As such, FPUC proposed retaining the currently-approved NS parameters for plastic (inclusive of GRIP) and steel mains accounts. Staff believes this is reasonable. Staff recommends approval of the NS parameters of negative 16 percent for plastic (inclusive of GRIP) mains account and negative 28 percent for steel mains account.

Account 379 – Measuring & Regulating Equipment (City Gate)

This account consists of pipes, controls, and other equipment used at city gate stations. During the current study period, this account has experienced an increase of approximately 72 percent in new plant investment and no retirements. Acknowledging "[a]verage service lives for other gas companies in the State range from 31 years to 35 years," FPUC proposed a slight increase in the ASL from 30 to 32 years. Staff considers the Company's proposal reasonable. This results in an ARL of 23 years calculated by using the account's average age of 9.5 years and existing R3 retirement dispersion. Staff recommends an ARL of 23 years be approved for this account.

Regarding NS, FPUC proposed to retain the currently-approved value of negative 5 percent. Recognizing there were no retirement activities in the account during the study period, staff believes this proposal is appropriate. Staff recommends that NS of negative 5 percent be approved for the account.

Account 380 – Distribution Services

Services accounts consist of plastic services (380.1), steel services (380.2), and GRIP services (380G). Collectively, these accounts comprise approximately 20 percent of FPUC's distribution plant investment and 19 percent of FPUC's total plant investment under study. As with the mains accounts, bare steel and cast iron services are being replaced as a result of GRIP and in response to concerns regarding reliability and safety of the aging infrastructure.

For the plastic services (inclusive of GRIP) account, the currently-approved ASL is 45 years. For the steel services account, the currently-approved ASL is 40 years. FPUC believes that all of its service accounts' investments now have longer life expectancies as a result of the replacement of the problematic services pipes. FPUC proposed to increase the ASL of all services accounts by 10 years, which brings the ASL of plastic services to 55 years and the ASL of steel services to 50 years. Staff considers FPUC's average service life proposals reasonable. The age of the combined plastic services account is 9.0 years, and the age of the steel services account is 31.3 years. The existing retirement dispersion of the plastic services is S3. FPUC believes, and staff concurs, that such dispersion may not accurately reflect the current retirement pattern of the account, but is reflective of future expectations. The existing retirement dispersion of steel services is the S2 curve shape. Using these parameters, the ARLs of the plastic services account and the steel services account is 46 years and 22 years, respectively. Staff recommends approval of these two ARL parameters.

For the plastic services (inclusive of GRIP) and steel services accounts, the currently-approved NS parameters are negative 22 percent and negative 125 percent, respectively. Similar to the mains accounts, the services accounts experienced a wide range of NS values during the current study period: plastic services ranged from negative 58 percent to negative 341 percent with an average of negative 101 percent, and steel services ranged from negative 49 percent to negative 357 percent with an average of negative 179 percent. FPUC considers these levels atypical and a result of GRIP-related replacements. The Company expects the NS levels will return to normalcy in the future as GRIP replacements decrease into the program's completion. As such, FPUC proposed retaining the currently-approved NS parameters for plastic services (inclusive of GRIP) and steel services of negative 22 percent, and negative 125 percent, respectively. Staff believes FPUC's salvage proposals are appropriate.

Account 385 – Industrial Measuring & Regulation Equipment

This account consists of measuring and regulating equipment at industrial stations. The currently-approved ASL of the account is 30 years. FPUC proposed a modest increase to 35 years. Staff believes the proposal is reasonable. Based on this, an ARL of 17.7 years is calculated using the account's average age of 18.9 years and its existing R3 curve shape retirement dispersion.

For the NS parameter, FPUC proposes to retain the currently-approved zero percent since there have been no retirement/salvage activities during the study period. Staff believes the Company's proposal is appropriate.

Account 390 – Structures & Improvements

The currently-approved NS rate for this account is 10 percent. The most recent 6-year analysis of actual NS is approximately 51 percent. In questioning this matter, the Company informed staff that the unusually high net salvage over the study period was due to the sale of its Winter Haven and Indiantown office buildings. These buildings were no longer needed post consolidation of the FPUC gas companies. While staff is not currently recommending a change from the 10 percent level based on only two data points, it will monitor this account's NS developments over the next study period for determining if the trend towards higher NS persists and if a change should be recommended to the Commission in the future.

Account 391.0 – Office Furniture

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 5.0 percent.

Account 391.2 – Office Equipment

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 7.1 percent.

Account 391.3 – Computer Hardware

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 10.0 percent.

Account 391.4 – Computer Software

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 10.0 percent.

Account 393 – Stores Equipment

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 3.8 percent.

Account 394 – Tools, Shop & Garage Equipment

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 6.7 percent.

Account 395 – Laboratory Equipment

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 5.0 percent.

Account 397 – Communication Equipment

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 7.7 percent.

Account 398 – Miscellaneous Equipment

Staff recommends the transition of this account to vintage year accounting at an annual amortization rate of 5.9 percent.

Conclusion

Staff recommends the Commission approve the lives, reserve percentages, net salvage percentages, and resulting depreciation rates applicable to FPUC's investments that are shown on Attachment A. As shown on Attachment B, the relevant corresponding total depreciation expense effect of staff's rate recommendations is a decrease of $893,899, or approximately 7.2 percent, from current depreciation expense levels at December 31, 2018. Further, with respect to Chesapeake, staff reviewed the effect of the recommended depreciation rate reductions on forecasted earnings for calendar year 2019.[17] Based on staff's review, Chesapeake is projected to remain earning within its authorized return on equity range of 9.8 percent to 11.8 percent for 2019.[18]

[17]Document No. 08748-2019.
[18]Order No. PSC-10-0029-PAA-GU.

Issue 3: What should be the implementation date for newly authorized depreciation rates?

Recommendation: For the depreciation rates approved by the Commission in Issue 2, staff recommends an implementation date of January 1, 2019. (Higgins, Wu)

Staff Analysis: The data submitted for the 2019 Study, including actual plant and reserve balances, is as of December 31, 2018. Thus, the underlying Company data and depreciation-related calculations appropriately match an implementation date of January 1, 2019.

Issue 4: Should the current amortization of investment tax credits (ITCs) and flow back of excess deferred income taxes (EDITs) be revised to reflect the approved depreciation rates and amortization schedules?

Recommendation: Yes. The current amortization of ITCs should be revised to match the actual recovery periods for the related property. The Company should file detailed calculations of the revised ITC amortization at the same time it files its earnings surveillance report covering the period ending December 31, 2019, as specified in Rule 27-7.1352, F.A.C. (Cicchetti, Smith II)

Staff Analysis: In Issue 3, staff recommended approval of revised depreciation rates for the Company to be effective January 1, 2019, which reflect changes to most accounts' remaining lives also to be effective January 1, 2019. Revising a utility's book depreciation lives generally results in a change in its rate of ITC amortization in order to comply with the normalization requirements of the Internal Revenue Code (IRC or Code) set forth in Sections 168(f)(2) and (i)(9),[19] former IRC Section 167(l),[20, 21] former IRC Section 46(f),[22,23] Federal Tax Regulations under the Code sections,[24] and Section 203(e) of the Tax Reform Act of 1986 (the Act).[25]

Staff, the Internal Revenue Service (IRS), and independent outside auditors examine a company's books and records, and the orders and rules of the jurisdictional regulatory authorities to determine if the books and records are maintained in the appropriate manner. The books are also reviewed to determine if they are in compliance with the regulatory guidelines regarding normalization.

Former IRC Section 46(f)(6) of the Code indicated that the amortization of ITC should be determined by the period of time actually used in computing depreciation expense for ratemaking purposes and on the regulated books of the utility.[26] While, Section 46(f)(6) was repealed, under IRC Section 50(d)(2), the terms of former IRC Section 46(f)(6) remain applicable to public utility property for which a regulated utility previously claimed ITCs. Because staff is recommending changes to the Company's remaining lives, it is also important to change the amortization of ITCs to avoid violation of the provisions of IRC Section 50(d)(2) and its underlying Treasury Regulations. The consequence of an ITC normalization violation is a repayment of unamortized ITC balances to the IRS. Therefore, staff recommends that the current amortization of ITCs should be revised to match the actual recovery periods for the related

[19]26 USC §§168(f)(2) and (i)(9).
[20]Former 26 USC §167(l), repealed by Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, §11812(a)(1-2)(1990).
[21]Under IRC Section 50(d)(2), the terms of former IRC Section 167(l) remain applicable to public utility property for which a regulated utility previously claimed ITCs, which is the case here. (I.R.S. Priv. Ltr. Rul. 200933023, 1n.1 (May 7, 2009)).
[22]Former 26 USC §46(f), repealed by Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, §11813(1990).
[23]Under IRC Section 50(d)(2), the terms of former IRC Section 46(f) remain applicable to public utility property for which a regulated utility previously claimed ITCs, which is the case here. (I.R.S. Priv. Ltr. Rul. 200933023, 1n.1 (May 7, 2009)).
[24]Treas. Reg. §1.168; Treas. Reg. §1.167; Treas. Reg. §1.46.
[25]Tax Reform Act of 1986, Pub. L. No. 99-514 (100 Stat. 2085, 2146)(1986).
[26]Former 26 USC §46(f)(6) (establishing proper determination of ratable portion).

property. The Company should file detailed calculations of the revised ITC amortization at the same time it files its earnings surveillance report covering the period ending December 31, 2019, as specified in Rule 25-7.1352, F.A.C.

Issue 5: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Brownless)

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

Attachment A

Comparison of Rates and Components

Account Number	Account Title	Current[1] Ave. Rem. Life (yrs.)	Current[1] Future Net Salvage (%)	Current[1] Remaining Life Rate (%)	Staff Recommended Ave. Rem. Life (yrs.)	Staff Recommended Reserve (%)	Staff Recommended Future Net Salvage (%)	Staff Recommended Remaining Life Rate (%)
DISTRIBUTION PLANT								
374.1	Land Rights	7.4	0	17.2	7.4	59.02	0	5.5
375	Structures & Improvements	18.9	0	2.5	23	42.02	0	2.5
376.1	Mains - Plastic	35	(16)	2.6	48	17.26	(16)	2.1
376.2	Mains - Steel	28	(28)	2.8	37	45.56	(28)	2.2
376G[2]	Mains - GRIP	35	(16)	2.6	48	17.26	(16)	2.1
378	M&R Station Equip. - General	21	(5)	3.3	23	25.21	(5)	3.5
379	M&R Station Equip. - City Gate	22	(5)	3.4	23	33.14	(5)	3.1
380.1	Services - Plastic	34	(22)	2.7	46	20.27	(22)	2.2
380.2	Services - Other	24	(125)	6.5	22	22.61	(125)	9.2
380G[2]	Services - GRIP	34	(22)	2.7	46	20.27	(22)	2.2
381	Meters	16.2	0	3.7	17.1	38.26	0	3.6
381.1	Meters - AMR Equipment	16.7	0	4.5	12.1	47.57	0	4.3
382	Meter Installations	25	(10)	3.1	27	23.76	(10)	3.2
382.1	Meter Installations - MTU/DCU	33	(10)	2.6	28	37.18	(10)	2.6
383	House Regulators	16.7	0	3.3	16.2	45.98	0	3.3
384	House Regulator Installations	21	0	2.7	16.3	55.65	0	2.7
385	Industrial M&R Station Equip.	16.9	0	3.4	17.7	59.64	0	2.3
387	Other Equipment	15.7	0	4.0	15.7	37.24	0	4.0
GENERAL PLANT								
390	Structures & Improvements	31	10	2.0	31	17.40	10	2.3
391	Office Furniture	15.6	0	3.7	20-Year Amortization			
391.2	Office Equipment	10.1	0	6.1	14-Year Amortization			
391.3	Computer Hardware	4.3	0	5.2	10-Year Amortization			
391.4	Computer Software	4.3	0	5.2	10-Year Amortization			
392.1	Transportation - Cars	5.1	10	11	4.4	13.54	10	17.4
392.2	Transportation - Light Trucks & Vans	4.8	20	8.0	5.1	37.37	20	8.4

Attachment A

Comparison of Rates and Components									
		Current[1]			Staff Recommended				
Account Number	Account Title	Ave. Rem. Life (yrs.)	Future Net Salvage (%)	Remaining Life Rate (%)	Ave. Rem. Life (yrs.)	Reserve (%)		Future Net Salvage (%)	Remaining Life Rate (%)
392.3	Transportation - Heavy Trucks	0	10	8.2	0	0.00		0	8.2
392.4	Transportation - Other	9.9	0	3.3	9.8	43.27		0	5.8
393	Stores Equipment	5.8	0	5.8	26-Year Amortization				
394	Tools, Shop & Garage Equip.	3.8	0	7.4	15-Year Amortization				
395	Laboratory Equipment	0	0	5.0	20-Year Amortization				
396	Power Operated Equip.	6.0	10	1.1	5.7	61.16		10	5.1
397	Communication Equip.	8.1	0	7.0	13-Year Amortization				
398	Miscellaneous Equip.	10.5	0	4.6	17-Year Amortization				
399	Miscellaneous Tangible	5-Year Amortization			5-Year Amortization				

[1]Order No. PSC-14-0698-PAA-GU.
[2]Account not shown on Order No. PSC-14-0698-PAA-GU. Rates applicable to Accounts 376.1 and 380.1 were applied during the period between depreciation studies.

Attachment B

Account Number	Account Title	Comparison of Expenses Current[1] Depreciation Rate (%)	Current[1] Annual Expense ($)	Staff Recommended Depreciation Rate (%)	Staff Recommended Annual Expense ($)	Change In Expense ($)
DISTRIBUTION PLANT						
374.1	Land Rights	17.2	2,221	5.5	710	(1,511)
375	Structures & Improvements	2.5	40,109	2.5	40,109	0
376.1	Mains - Plastic	2.6	2,441,461	2.1	$1,971,949	(469,512)
376.2	Mains - Steel	2.8	1,684,114	2.2	1,323,232	(360,882)
376G[2]	Mains - GRIP	2.6	2,602,559	2.1	2,102,067	(500,492)
378	M&R Station Equip. - General	3.3	143,871	3.5	152,591	8,720
379	M&R Station Equip. - City Gate	3.4	442,690	3.1	403,629	(39,061)
380.1	Services - Plastic	2.7	1,381,087	2.2	$1,125,330	(255,757)
380.2	Services - Other	6.5	116,239	9.2	164,523	48,284
380G[2]	Services - GRIP	2.7	697,998	2.2	$568,739	(129,259)
381	Meters	3.7	616,414	3.6	599,754	(16,660)
381.1	Meters - AMR Equipment	4.5	100,481	4.3	96,015	(4,466)
382	Meter Installations	3.1	419,307	3.2	432,834	13,527
382.1	Meter Installations - MTU/DCU	2.6	15,513	2.6	15,513	0
383	House Regulators	3.3	175,520	3.3	175,520	0
384	House Regulator Installations	2.7	28,172	2.7	28,172	0
385	Industrial M&R Station Equip.	3.4	62,857	2.3	42,521	(20,336)
387	Other Equipment	4.0	117,769	4.0	117,769	0
GENERAL PLANT						
390	Structures & Improvements	2.0	62,775	2.3	72,192	9,417
391	Office Furniture	3.7	59,572	5.0	80,503	20,931
391.2	Office Equipment	6.1	119,198	7.1	138,738	19,541
391.3	Computer Hardware	5.2	50,833	10.0	97,755	46,922
391.4	Computer Software	5.2	387,213	10.0	744,641	357,428
392.1	Transportation - Cars	11.0	17,852	17.4	28,239	10,387
392.2	Transportation - Light Trucks & Vans	8.0	440,778	8.4	462,817	22,039
392.3	Transportation - Heavy Trucks	8.2	0	8.2	0	0
392.4	Transportation - Other	3.3	3,011	5.8	5,292	2,281
393	Stores Equipment	5.8	1,484	3.8	972	(512)

Attachment B

Account Number	Account Title	Comparison of Expenses Current[1] Depreciation Rate (%)	Current[1] Annual Expense ($)		Staff Recommended Depreciation Rate (%)	Staff Recommended Annual Expense ($)	Change In Expense ($)
394	Tools, Shop & Garage Equip.	7.4	68,426		6.7	61,953	(6,473)
395	Laboratory Equipment	5.0	0		5.0	0	0
396	Power Operated Equip.	1.1	16,776		5.1	77,782	61,006
397	Communication Equip.	7.0	156,963		7.7	172,659	15,696
398	Miscellaneous Equip.	4.6	16,445		5.9	21,092	4,647
399	Miscellaneous Tangible	20.0	0		20.0	0	0
General Plant Reserve Deficiency					20.0	270,196	270,196
Total			**12,489,709**			**11,595,809**	**(893,899)**

[1]Order No. PSC-14-0698-PAA-GU.
[2]Account not shown on Order No. PSC-14-0698-PAA-GU. Rates applicable to Accounts 376.1 and 380.1 were applied during the period between depreciation studies.

Item 12

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 19, 2019

TO: Docket No. 20190076-EI - Petition for approval of revised underground residential distribution tariffs, by Duke Energy Florida, LLC.

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 08322-2019 was filed on August 22, 2019, for the September 5, 2019 Commission Conference.

Due to the approach of Hurricane Dorian and its potential threat to areas throughout the State of Florida, the Commission's Conference set for Thursday, September 5, 2019, was cancelled. Dockets scheduled for consideration at that conference were deferred to the October 3, 2019, Commission Conference.

Accordingly, this item has been placed on the agenda for the October 3, 2019 Commission Conference, and staff's previously filed memorandum is attached.

/ajt

Attachment

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Draper, Coston)
Office of the General Counsel (Trierweiler)

RE: Docket No. 20190076-EI – Petition for approval of revised underground residential distribution tariffs, by Duke Energy Florida, LLC.

AGENDA: 09/05/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 12/01/19 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

On April 1, 2019, Duke Energy Florida, LLC (Duke or utility) filed a petition for approval of revisions to its underground residential distribution (URD) tariffs. The URD tariffs apply to new residential subdivisions and represent the additional costs, if any, Duke incurs to provide underground distribution service in place of overhead service. The proposed (legislative version) URD tariffs are contained in Attachment A to the recommendation. Duke's current URD charges were approved in Order No. PSC-2017-0283-TRF-EI (2017 order).[1]

[1] Order No. PSC-2017-0283-TRF-EI, issued July 24, 2017, in Docket No. 20170069-EI, *In re: Petition for approval of revised underground residential distribution tariffs, but Duke Energy Florida, LLC.*

The Commission suspended Duke's proposed tariffs by Order No. PSC-2019-0212-PCO-EI.[2] Duke responded to staff's first data request on May 31, 2019. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

[2] Order No. PSC-2019-0212-PCO-EI, issued June 3, 2019, in Docket No. 20190076-EI, *In re: Petition for approval of revised underground residential distribution tariffs, by Duke Energy Florida, LLC.*

Discussion of Issues

Issue 1: Should the Commission approve Duke's proposed URD tariffs and associated charges?

Recommendation: Yes, the Commission should approve Duke's proposed URD tariffs and associated charges as shown in Attachment A, effective September 5, 2019. (Draper, Coston)

Staff Analysis: Rule 25-6.078, Florida Administrative Code (F.A.C.), defines investor-owned utilities' (IOU) responsibilities for filing updated URD tariffs. Duke has filed the instant petition pursuant to subsection (3) of the rule, which requires IOUs to file supporting data and analyses for updated URD tariffs if the cost differential varies from the Commission-approved differential by more than ten percent. On October 15, 2018, pursuant to Rule 25-6.078, F.A.C., Duke informed the Commission that its differential for the low density subdivision decreased by 81 percent from the differential approved in the 2017 order, requiring Duke to file the instant petition.

The URD tariffs provide charges for underground service in new residential subdivisions and represent the additional costs, if any, the utility incurs to provide underground service in place of overhead service. The cost of standard overhead construction is recovered through base rates from all ratepayers. In lieu of overhead construction, customers have the option of requesting underground facilities. Any additional cost is paid by the customer as contribution-in-aid-of-construction (CIAC). Typically, the URD customer is the developer of a subdivision.

Traditionally, three standard model subdivision designs have been the basis upon which each IOU submits URD tariff changes for Commission approval: low density, high density, and a high density subdivision where dwelling units take service at ganged meter pedestals (groups of meters at the same physical location). While actual construction may differ from the model subdivisions, the model subdivisions are designed to reflect average overhead and underground subdivisions.

Costs for underground construction have historically been higher than costs for standard overhead construction and the additional cost is paid by the customer as a CIAC. However, as shown on Table 1-1, Duke's proposed URD differential charges are $0 per lot for the low density and ganged meter subdivisions. Therefore, the URD customer will not be assessed a CIAC charge for requesting underground service in the low density and ganged meter subdivisions. For the high density subdivision the proposed differential decreased from $403 to $34 per lot. The decrease in the differentials is primarily attributable to changes in Duke's operational costs, as discussed in more detail in the section of the recommendation titled operational costs.

Table 1-1 shows the current and proposed URD differentials for the low density, high density, and ganged meter subdivisions. The charges shown are per-lot charges.

Table 1-1
Comparison of URD Differential per Lot

Types of Subdivision	Current URD Differential	Proposed URD Differential
Low Density	$694	$0
High Density	$403	$34
Ganged Meter	$158	$0

Source: Order PSC-2017-0283-TRF-EI and Duke's 2019 Petition

The calculations of the proposed URD charges include (1) updated labor and material costs along with the associated loading factors and (2) operational costs. The costs are discussed below.

Labor and Material Costs

The installation costs of both overhead and underground facilities include the labor and material costs to provide primary, secondary, and service distribution lines, as well as transformers. The costs of poles are specific to overhead service while the costs of trenching and backfilling are specific to underground service. The utilities are required by Rule 25-6.078 (5), F.A.C., to use current labor and material costs.

Duke's labor costs for overhead and underground construction are comprised of costs associated with work performed by both in-house employees and outside contractors. Duke's in-house labor rates are based upon actual labor costs negotiated in bargaining unit contracts and labor rates with contractors are negotiated. Table 1-2 compares total 2017 and 2019 labor and material costs for the three subdivision models.

Table 1-2
Labor and Material Costs per Lot

	2017 Costs	2019 Costs	Difference
Low Density			
Underground Labor/Material Costs	$1,477	$1,620	$143
Overhead Labor/Material Costs	$1,069	$1,323	$254
Per lot Differential	$408	$297	($111)
High Density			
Underground Labor/Material Costs	$1,181	$1,484	$303
Overhead Labor/Material Costs	$865	$1,009	$144
Per lot Differential	$316	$475	$159
Ganged Meter			
Underground Labor/Material Costs	$686	$581	($105)
Overhead Labor/Material Costs	$609	$750	$141
Per lot Differential	$77	($169)	($246)

Source: 2017 Order and Duke's 2019 filing

As Table 1-2 shows, the majority of overhead and underground labor and material costs have increased since 2017. Because of a design change as discussed in more detail in the section of the recommendation titled subdivision design changes, the only exception to the increase in costs can be seen in the underground ganged meter labor and material costs (decrease from $686 to $581).

Subdivision Design Changes

Duke stated that the utility began using a new underground design software in the fall of 2017. Duke explained that the new software incorporates the most recent loading parameters for cables and transformers to design the most cost-effective way (in terms of number of transformers, transformer size, and cable length) to serve a home. The high density subdivision design was modified to reflect front lot construction as required by Rule 25-6.0341(1), F.A.C.

With respect to the underground ganged meter subdivision design, Duke explained that the design was modified to reflect townhome construction. Duke has had very few new underground mobile home parks that are typically served by a ganged meter, but several new townhome projects taking underground service at a ganged meter. The result of incorporating townhome construction is more units served from the ganged meter, and therefore, reduced per lot costs. As seen in Table 1-2 above, the total underground labor and material costs decreased from $686 to $581.

The three overhead designs had minor modifications to meet both National Electric Safety Code and Duke's construction standards. Specifically, the overhead design was modified to incorporate Duke's current standards that require increased insulation levels, taller poles, and increased spaces between the phases.

Operational Costs

Rule 25-6.078(4), F.A.C., requires that the differences in net present value (NPV) of operational costs between overhead and underground systems, including average historical storm restoration costs over the life of the facilities, be included in the URD charge. The inclusion of the operational cost is intended to capture longer term costs and benefits of undergrounding.

Operational costs include operations and maintenance costs along with capital costs and represent the cost differential between maintaining and operating an underground versus an overhead system over the life of the facilities. The inclusion of the storm restoration cost in the URD calculations lowers the differential, since an underground distribution system generally incurs less damage than an overhead system as a result of a storm, and therefore, less restoration costs when compared to an overhead system.

The utility used a 5-year average of historical operational costs (2014-2018) for its calculations in this docket. The methodology used by Duke in this filing for calculating the NPV of operational costs was approved in Order No. PSC-12-0348-TRF-EI.[3] Staff notes that operational costs may vary among IOUs due to multiple factors, including differences in size of service

[3] Order No. PSC-12-0348-TRF-EI, issued July 5, 2012, in Docket No. 110293-EI, *In re: Petition for approval of revised underground residential distribution tariffs, by Progress Energy Florida, Inc.*

territory, miles of coastline, regions subject to extreme winds, age of the distribution system, or construction standards.

Non-storm Operational Costs

Duke's operational costs for an overhead system have increased more than the operational cost for an underground system. The resulting differentials are shown in Column B in Table 1-3. For the low density subdivision, the operational cost differential in 2017 was $350 (indicating that underground operational costs were higher than overhead operational costs). As shown in Table 1-3, the operational cost differential for the low density subdivision is now $80. For the high density and ganged meter subdivisions, the operational cost differentials decreased from $126 and $109 to -$20 and -$1, respectively, indicating that overhead operational costs are slightly higher than underground operational costs. Duke explained that the primary reason for this change in operational costs is the increase in overhead operational costs as a result of Duke's increased maintenance, such as pole replacements, on its overhead distribution system.

Avoided Storm Restoration Costs

Duke explained that the recent hurricane season significantly increased the avoided storm restoration costs impacts. Specifically, Duke stated the utility incorporated overhead storm restoration costs for hurricanes Irma, Nate, Michael, Matthew, Hermine, and tropical storm Colin. Therefore, the amount representing avoided storm restoration costs significantly increased from 2017.

Table 1-3 presents the pre-operational, non-storm operational, and the avoided storm restoration cost differentials between overhead and underground systems. The proposed differential is $0 when the calculation results in a negative number.

Table 1-3
NPV of Operational Costs Differential per Lot

Type of Subdivision	Pre-Operational Costs (A)	Non-storm Operational costs (B)	Avoided Storm costs (C)	Proposed URD Differentials (A)+(B)+(C)
Low Density	$297	$80	($726)	$0
High Density	$475	($20)	($421)	$34
Ganged Meter	($169)	($1)	($312)	$0

Source: 2019 Filing

Conclusion

Staff has reviewed Duke's proposed URD tariffs and associated charges, its accompanying work papers, and its responses to staff's data request. Staff believes the proposed URD tariffs and associated charges are reasonable. Staff recommends approval of Duke's proposed URD tariffs and associated charges as shown in Attachment A, effective September 5, 2019.

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved and 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. (Trierweiler)

Staff Analysis: If Issue 1 is approved and 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.

DUKE ENERGY.

SECTION NO. IV
~~SECOND~~ THIRD REVISED SHEET NO. 4.110
CANCELS ~~FIRST~~ SECOND REVISED SHEET NO. 4.110

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PART XI

UNDERGROUND RESIDENTIAL DISTRIBUTION POLICY

11.01 Definitions:

The following words and terms used under this policy shall have the meaning indicated:

(1)	Applicant:	Any person, partnership, association, corporation, or governmental agency controlling or responsible for the development of a new subdivision or dwelling unit and applying for the construction of underground electric facilities.
(2)	Building:	Any structure, within subdivision, designed for residential occupancy and containing less than five (5) individual dwelling units.
(3)	Commission:	Florida Public Service Commission.
(4)	Company:	Duke Energy Florida, ~~Inc~~ LLC
(5)	Direct Burial:	A type of construction involving the placing of conductors in the ground without the benefit of conduit or ducts. O her facilities, such as transformers, may be above ground.
(6)	Distribution System:	Electric service facili ies consisting of primary and secondary conductors, service laterals, transformers, and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage.
(7)	Feeder Main:	A three-phase primary installation which serves as a source for primary laterals and loops through suitable overcurrent devices.
(8)	Mobile Home (Trailer):	A non-self propelled vehicle or conveyance, permanently equipped to travel upon the public highways, that is usod either temporarily or permanently as a residence or living quarters.
(9)	Multiple-Occupancy Building:	A structure erected and framed of component structural parts and designed to contain five (5) or more individual dwelling units.
(10)	Point of Delivery:	The point where the Company's wires or apparatus are connected to those of he Customer.
(11)	Primary Lateral:	That part of the electric distribution system whose function is to conduct electricity at the primary lovel from the feeder main to the transformers serving he secondary street mains. It usually consists of a single-phase conductor or insulated cable, toge her with necessary accessory equipment for supporting, terminating and disconnecting from the primary mains by a fusible element.
(12)	Service Lateral:	The underground service conductors between the street or rear property main, including any risers at a pole or other structure or from transformers, and the first point of connection to the service entrance conductors in a terminal or meter box on he exterior building wall.
(13)	Subdivision:	The tract of land which is divided into five (5) or more building lots or upon which five (5) or more separate dwelling units are to be located, or the land on which is to be constructed new multiple-occupancy buildings.
(14)	Townhouse:	A one(1)-family dwelling unit of a group of three (3) or more such units separated only by firewalls. Each townhouse unit shall be constructed upon a separate lot and serviced with separate utilities and shall otherwise be independent of one ano her.

(Continued on Next Page)

ISSUED BY: Javier J. Portuondo, Managing Director, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~April 29, 2013~~

DUKE ENERGY.

SECTION NO. IV
~~NINETEENTH~~ TWENTIETH REVISED SHEET NO. 4.113
CANCELS ~~EIGHTEENTH~~ NINETEENTH REVISED SHEET NO. 4.113

~~Page 4 of 7~~

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(2) Contribution by Applicant:

(a) Schedule of Charges:

Company standard design underground residential distribution 120/240 volt single-phase service (see also Part 11.03(7)):

To subdivisions with a density of 1.0 or more but less than six (6) dwelling units per acre ..... ~~$694.00~~ 0.00 per dwelling unit

To subdivisions with a density of six (6) or more dwelling units per acre ..... ~~$403.00~~14.00 per dwelling unit

To subdivisions with a density of six (6) or more dwelling units per acre taking service at ganged meter pedestals ..... ~~$158.000~~.00 per dwelling unit

To mul i-occupancy buildings ..... See Part 11.06(2)

(b) The above costs are based upon arrangements that will permit serving the local underground distribution system within he subdivision from overhead feeder mains. If feeder mains within he subdivision are deemed- necessary by the Company to provide and/or maintain adequate service and are required by the Applicant or a governmental agency to be installed underground, the Applicant shall pay the Company the average differen ial cost between such underground feeder mains wi hin he subdivision and equivalent overhead feeder mains as follows:

Three-phase primary main or feeder charge per trench-foot within subdivision:

(U.G. - Underground, O.H. - Overhead)

#1/0 AWG U.G. vs. #1/0 AWG O.H ..... ~~$3.03~~0.00 per foot

500 MCM U.G. vs. 336 MCM O.H ..... ~~$11.54~~0.00 per foot

1000 MCM U.G. vs. 795 MCM O.H. ..... ~~$12.66~~0.00 per foot

The above costs are based on underground feeder construction using the direct burial method. If conduit is required, the following addi ional charge(s) will apply:

2 inch conduit ..... ~~$2.06~~2.08 per foot
4 inch conduit ..... ~~$3.40~~3.55 per foot
6 inch conduit ..... ~~$5.06~~5.74 per foot
Cable pulling – single phase ..... ~~$1.76~~2.34 per foot
Cable pulling – 3 phase small wire ..... ~~$1.76~~3.87 per foot
Cable pulling – 3 phase feeder ..... ~~$3.63~~4.69 per foot

The above costs do not require the- use of pad-mounted switchgear(s), terminal pole(s), pull boxes or feeder splices. If such facilities are required, a differential cost for same will be determined by the Company on an individual basis and added to charges determined above.

(c) Credits (not to exceed the "average differential costs" stated above) will be allowed where, by mutual agreement, the Applicant provides trenching and backfilling for the use of the Company's facilities in lieu of a portion of the cash payment described above. These credits, based on the Company's design drawings, are:

Primary and/or Secondary Systems, for each Foot of Trench ..... ~~$2.84~~3.54

Service Laterals, for each Foot of Trench ..... ~~$3.84~~3.54

(Continued on Next Page)

ISSUED BY: Javier J. Portuondo, Managing Director, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~July 13, 2017~~

DUKE ENERGY.

SECTION NO. IV
~~EIGHTEENTH~~ NINETEENTH REVISED SHEET NO. 4.114
CANCELS ~~SEVENTEENTH~~ EIGHTEENTH REVISED SHEET NO. 4.114

Page 5 of 7

(3) Point of Delivery:

The point of delivery shall be determined by the Company and will be on the front half of the side of the building that is nearest the point at which the underground secondary electric supply is available to the property. The Company will not install a service on the opposite side of he building where the underground secondary electric supply is available to the property. The point of delivery will only be allowed on the rear of the building by special excep ion. The Applicant shall pay the estimated full cost of service lateral length required in excess of that which would have been needed to reach the Company's designated point of service.

(4) Location of Meter and Socket:

The Applicant shall install a meter socket at the point designated by the Company in accordance with the Company's specifications. Every effort shall be made to locate he meter socket in unobstructed areas in order that the meter can be read without going through fences, etc.

(5) Development of Subdivisions:

The above charges are based on reasonably full use of the land being developed. Where he Company is required to construct underground electric facilities hrough a sec ion or sections of the subdivision or development where service will not be required for at least two (2) years, the Company may require a deposit from the Applicant before construction is commenced. This deposit, to guarantee performance, will be based on the estimated total cost of such facilities rather than the differential cost. The amount of the deposit, without interest, in excess of any charges for underground service will be returned to he Applicant on a prorata basis at quarterly intervals on the basis of installations to new customers. Any portion of such deposit remaining unrefunded, after five (5) years from he date the Company is first ready to render service from the extension, will be retained by the company.

(6) Relocation or Removal of Existing Facilities:

If the Company is required to relocate or remove existing overhead and/or underground distribution facilities in the implementation of these Rules, all costs thereof shall be borne exclusively by he Applicant. These costs shall include costs of relocation or removal, the in-place value (less salvage) of the facilities so removed, and any additional costs due to existing landscaping, pavement or unusual conditions.

(7) Other Provisions:

If soil compac ion is required by the Applicant at locations where Company trenching is done, an additional charge may be added to he charges set forth in this tariff. The charge will be es imated based on the Applicant's compaction specifications.

11.04 UNDERGROUND SERVICE LATERALS FROM ~~OVERHEAD~~ EXISTING SECONDARY ELECTRIC DISTRIBUTION SYSTEMS.

(1) New Underground Service Laterals:

When requested by he Applicant, the Company will install underground service laterals from ~~overhead~~ exis ing secondary systems to newly constructed residen ial buildings containing less han five (5) separate dwelling units.

(2) Contribution by Applicant:

(a) The Applicant shall pay the Company the following average differen ial cost between an overhead service and an underground service lateral:

For Service Lateral up to 80 feet ..... ~~$439.00~~$44.00

For each foot over 80 feet up to 300 feet ..... $ 0.0 per foot

Service laterals in excess of 300 feet shall be based on a specific cost estimate.

(b) Credits will be allowed where, by mutual agreement, the Applicant provides trenching and backfilling in accordance with the Company specifica ions and for the use of the Company facilities, in lieu of a portion of the cash payment described above. These credits, based on the Company's design drawings, are as follows:

For each Foot of Trench ..... $ ~~2.91~~3.54

The provisions of Paragraphs 11.03(3) and 11.03(4) are also applicable.

(Continued on Next Page)

ISSUED BY: Javier J. Portuondo, Managing Director, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~July 13, 2017~~

DUKE ENERGY.

SECTION NO. IV
~~EIGHTEENTH~~ NINETEENTH REVISED SHEET NO. 4.115
CANCELS ~~SEVENTEENTH~~ EIGHTEENTH REVISED SHEET NO. 4.115

Page 6 of 7

11.05 UNDERGROUND SERVICE LATERALS REPLACING EXISTING RESIDENTIAL OVERHEAD SERVICES:

Applicability:

When requested by the Applicant, the Company will install underground service laterals from existing overhead lines as replacements for existing overhead services to existing residential buildings containing less than five (5) separate dwelling units.

Rearrangement of Service Entrance:

The Applicant shall be responsible for any necessary rearranging of his existing electric service entrance facilities to accommodate the proposed underground service lateral in accordance with the Company's specifications.

Trenching:

The Applicant shall also provide, at no cost to the Company, a suitable trench and perform the backfilling and any landscaping, pavement, or other suitable repairs. If he Applicant requests the Company to supply the tranch or remove any additional equipment othar than the Service Lateral, the charge to he Applicant for this work shall be based on a specific cost estimate.

Contribu ion by Applicant:

The charge excluding trenching costs shall be as follows:

For Service Lateral ..... ~~$815.00~~1 237.00 per service

11.08 UNDERGROUND DISTRIBUTION FACILITIES TO MULTIPLE-OCCUPANCY RESIDENTIAL BUILDINGS:

(1) Availability:

Underground electric distribution facilities may be installed within the tract of land upon which multiple-occupancy residential buildings containing five (5) or more separate dwelling units will be constructed.

(2) Contribution by Applicant:

There will be no contribution from the Applicant so long as the Company is free to construct the extension in he most economical manner, and reasonably full use is made of the tract of land upon which the multiple-occupancy buildings will be constructed. Other conditions will require a contribu ion from the Applicant.

(3) Responsibility of Applicant:

(a) Furnish details and specifica ions of he proposed building or complex of buildings. The Company will use these in the design of the electric distribution facili ies required to render service.

(b) Where the Company determines that transformers are to be located inside the building, the Applicant shall provide:

i. The vault or vaults necessary for he transformers and the associated equipment, including the ventilation equipment.

ii. The necessary raceways or conduit for the Company's supply cables from he vault or vaults to a suitable point five (5) feet outside he building in accordance with the Company's plans and specifications.

iii. Conduits underneath all buildings when required for he Company's supply cables. Such conduits shall extend five (5) feet beyond he edge of the buildings for joining to the Company's facilities.

iv. The service entrance conductors and raceways from the Applicant's service equipment to the designated point of delivery within he vault.

(Continued on Next Page)

ISSUED BY: Javier J. Portuondo, Managing Director, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~July 13, 2017~~

Item 13

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Coston, Draper)
Office of the General Counsel (Schrader)

RE: Docket No. 20190078-EI – Petition for approval of 2019 revisions to underground residential distribution tariffs, by Gulf Power Company.

AGENDA: 10/03/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 12/01/19 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

On April 1, 2019, Gulf Power Company (Gulf or utility) filed a petition for approval of revisions to its underground residential distribution (URD) tariffs. The URD tariffs apply to new residential subdivisions and represent the additional costs Gulf incurs to provide underground distribution service in place of overhead service. The proposed URD tariffs (legislative version) are contained in Attachment A to the recommendation. Gulf's current URD charges were approved in Order No. PSC-2017-0356-TRF-EI.[1]

[1] Order No. PSC-2017-0356-TRF-EI, issued September 20, 2017, in Docket No. 20170074-EI, *In re: Petition for approval of 2017 revisions to underground residential distribution tariffs, by Gulf Power Company.*

The Commission suspended Gulf's proposed tariffs by Order No. PSC-2019-0214-PCO-EI.[2] Gulf responded to staff's first data request on June 20, 2019. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, 366.06, Florida Statutes (F.S.).

[2] Order No. PSC-2019-0214-PCO-EI, issued June 3, 2019, in Docket No. 20190078-EI, *In re: Petition for approval of 2019 revisions to underground residential distribution tariffs, by Gulf Power Company.*

Discussion of Issues

Issue 1: Should the Commission approve Gulf's proposed URD tariffs and associated charges?

Recommendation: Yes, the Commission should approve Gulf's proposed URD tariffs and associated charges, as shown in Attachment A, effective October 3, 2019. (Coston, Draper)

Staff Analysis: Rule 25-6.078, Florida Administrative Code (F.A.C.), specifies investor-owned utilities' (IOU) responsibilities for filing updated URD tariffs. Gulf filed the instant petition pursuant to subsection (3) of the rule, which requires IOUs to file supporting data and analyses for updated URD tariffs if the cost varies from the Commission-approved differential by more than ten percent. On October 30, 2018, Gulf informed the Commission that its differential for the low density subdivision increased by 14 percent from the differential approved in the 2017 order.

The URD tariffs provide charges for underground service in new residential subdivisions and represent the additional costs, if any, the utility incurs to provide underground service in place of overhead service. The cost of standard overhead construction is recovered through base rates from all ratepayers. In lieu of overhead construction, customers have the option of requesting underground facilities. Any additional cost is paid by the customer as contribution-in-aid-of construction (CIAC). Typically, the URD customer is the developer of a subdivision.

Gulf's URD charges are based on two standard model subdivisions: a 210-lot low density subdivision and a 176-lot high density subdivision. While actual construction may differ from the model subdivisions, the model subdivisions are designed to reflect average overhead and underground subdivisions.

Table 1-1 shows the current and proposed URD differentials for the low and high density subdivisions. The charges shown are per-lot charges. Gulf's URD tariffs also provide for reduced charges if the customer chooses to supply and/or install the primary and secondary trench and duct system.

Table 1-1
Comparison of URD Differential per Lot

Type of Subdivision	Current URD Differential	Proposed URD Differential
Low Density	$498	$568
High Density	$562	$609

Source: Commission Order PSC-2017-0356-TRF-EI and 2019 Petition.

As shown in Table 1-1, the proposed URD differentials show an increase for both model subdivisions. The calculations of the proposed URD charges include (1) updated labor and material costs along with the associated loading factors and (2) operational costs. These costs are discussed below.

Labor and Material Costs

The installation costs of both underground and overhead facilities include the labor and material costs to provide primary, secondary, and service distribution lines, as well as transformers. The costs of poles are specific to overhead service, while the costs of trenching and backfilling are specific to underground service. Utilities are required, by Rule 25-6.078(5) F.A.C., to use current labor and materials costs in calculating its underground and overhead differential.

Gulf stated that there have not been any design changes to either the low or high density subdivision since 2015. The mix of Gulf employee and contractor labor remains the same as it was in 2017. Gulf employees continue to perform distribution construction activities. However, contract labor is also utilized to perform distribution overhead construction. Both Gulf and contractor labor rates have increase as specified in their respective contracts. Table 1-2 below compares total 2017 and 2019 per-lot labor and material costs for the two subdivisions.

Table 1-2
Labor and Material Costs per Lot

	2017 Costs	2019 Costs	Difference
Low Density			
Underground Labor/Material Costs	$2,460	$2,749	$289
Overhead Labor/Material Costs	$1,740	$1,972	$232
Per lot Differential	$720	$777	$57
High Density			
Underground Labor/Material Costs	$1,976	$2,198	$222
Overhead Labor/Material Costs	$1,352	$1,528	$176
Per lot Differential	$624	$670	$46

Source: Commission Order PSC-2017-0356-TRF-EI and 2019 Petition.

As Table 1-2 shows, there has been an increase in underground and overhead labor and material costs. Gulf explained that the increase is due to increases in its direct labor rate, material costs, and engineering and supervision overhead for both labor and materials. Specifically, labor costs have increased approximately 20 percent for both overhead and underground since 2017.

Operational Costs

Rule 25-6.078(4), F.A.C., requires that the differences in net present value (NPV) of operational costs between overhead and underground systems, including average historical storm restoration costs over the life of the facilities, be included in the URD charge. The inclusion of the operational cost is intended to capture longer term costs and benefits of undergrounding.

Operational costs include operations and maintenance costs and capital costs and represent the cost differential between maintaining and operating an underground versus an overhead system over the life of the facilities. The inclusion of the storm restoration cost in the URD differential lowers the differential, since an underground distribution system generally incurs less damage than an overhead system as a result of a storm and, therefore, less restoration costs when compared to an overhead system. Gulf's operational costs, last updated for the 2017 filing

represent a five-year average of historical operational costs (2013-2017). The methodology used by Gulf for calculating the NPV of operational costs was approved in Order No. PSC-12-0531-TRF-EI.[3] Gulf's NPV calculation used a 32-year life of the facilities and a 7.35 percent discount rate. Staff notes that operational costs may vary in amount for different IOUs as a result of differences in size of service territory, miles of coastline, regions subject to extreme winds, age of the distribution system, or construction standards.

Gulf's combined non-storm operational costs and avoided storm costs have decreased slightly for both overhead and underground since 2017. In the low density model, the combined cost differential is -$209, as compared to -$222 in 2017. For the high density model, the combined cost differential is -$61, as compared to -$62 in 2017. Overhead operational costs for both subdivisions are higher than underground operational costs. Therefore, the inclusion of the operational costs results in a reduction to the pre-operational differential.

Gulf states that hurricane Michael storm costs are not included in the calculations of avoided storm costs in this filing. Staff notes that Rule 25-6.078(3), F.A.C., requires IOUs to file with the Office of Commission Clerk in the undocketed filings by October 15 of each year an updated calculation of the low density subdivision using current costs. If the calculated cost differential varies from the Commission-approved differential by more than ten percent, the utility is required to file a petition for updated URD tariffs on or before April 1 of the following year.

Table 1-3 presents the pre-operational, non-storm operational, and the avoided storm restoration cost differentials between overhead and underground systems. As noted above, the operational cost differentials are slightly lower than in the 2017. Overall, the proposed URD differential increase is related to the pre-operational labor and materials.

Table 1-3
NPV of Operational Costs Differential per Lot

Type of Subdivision	Pre-Operational (A)	Non-storm Operational costs (B)	Avoided Storm costs (C)	Proposed URD Differentials (A)+(B)+(C)
Low Density	$777	($174)	($35)	$568
High Density	$670	($43)	($18)	$609

Source: 2019 Petition and Staff Data Requests.

Conclusion

Staff has reviewed Gulf's proposed URD tariffs and associated charges, its accompanying work papers, and responses to staff's data requests. Staff believes the proposed URD tariffs and associated charges are reasonable. Staff recommends approval of Gulf's proposed URD tariffs and associated charges, as shown in Attachment A, effective October 3, 2019.

[3] Order No. PSC-12-0531-TRF-EI, issued October 4, 2012, in Docket No. 120075-EI, *In re: Request by Gulf Power Company to modify its underground residential differential tariffs.*

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved and 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. (Schrader)

Staff Analysis: If Issue 1 is approved and 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.

Gulf Power

Section No. IV
~~Fifteenth~~ Sixteenth Revised Sheet No. 4.25
Canceling ~~Fourteenth~~ Fifteenth Revised Sheet No. 4.25

PAGE	EFFECTIVE DATE

6.2.8 DAMAGE TO COMPANY'S EQUIPMENT. The Applicant shall be responsible to ensure that the Company's distribution facilities once installed, are not damaged, destroyed, or otherwise disturbed during the construction of the project. This responsibility shall extend not only to those in his employ, but also to his subcontractors. Should damage occur, the Applicant shall be responsible for the full cost of repairs.

6.2.9 PAYMENT OF CHARGES. The Company shall not be obligated to install any facilities until payment of applicable charges, if any, has been completed.

6.3 UNDERGROUND DISTRIBUTION FACILITIES FOR NEW RESIDENTIAL SUBDIVISIONS

6.3.1 AVAILABILITY. After receipt of proper application and compliance by the Applicant with applicable Company rules and procedures, the Company will install underground distribution facilities to provide single phase service to new residential subdivisions of five (5) or more building lots.

6.3.2 CONTRIBUTION BY APPLICANT.

(a) Prior to such installations, the Applicant and the Company will enter into an agreement outlining the terms and conditions of installation, and the Applicant will be required to pay the Company in advance the entire cost as described below:

Option	Low Density Subdivision ($ per lot)	High Density Subdivision ($ per lot)
1. Gulf supplies and installs all primary, secondary, and service trench, duct, and cable.	~~$498~~568	~~$562~~609
2. Applicant installs primary and secondary trench and duct system. Gulf supplies primary and secondary duct and supplies and installs service duct. Gulf supplies and installs primary, secondary, and service cable.	~~$307~~349	~~$428~~455
3. Applicant supplies and installs primary and secondary trench and duct. Gulf supplies primary and secondary cable. Gulf supplies and installs service duct and cable.	~~$184~~209	~~$327~~344

All construction done by the Applicant must meet the Company's specifications. All installations must be approved by the Company's authorized representative.

(b) The Applicant is required to pay a charge per foot and a cost differential for transformers and services (see "Three Phase Lift Station" charts below) for three phase commercial loads requiring 120/240 volt open delta, 120/208 volt wye, or 277/480 volt wye service in new residential subdivisions for each three phase service. This average cost will be added to the advanced payment in 6.3.2(a) above.

ISSUED BY: Charles S. Boyett

Gulf Power

Section No. IV
~~Nineteenth~~ Twentieth Revised Sheet No. 4.26
Canceling ~~Eighteenth~~ Nineteenth Revised Sheet No. 4.26

PAGE	EFFECTIVE DATE

6.3.2 (continued)

THREE PHASE LIFT STATION
COSTS TO PROVIDE 3 PH SVC TO LIFT STATION W/IN TYPICAL SUBDIVISION - OPTION 1

CUSTOMER REQUEST: 120/208 or 277/480

	AVAILABLE UNDERGROUND FACILITIES		
MOTOR SIZE	SINGLE PHASE	TWO PHASES	THREE PHASES
< 5HP	~~$21.70~~25.87 per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service	~~$15.18~~17.77 per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service
5HP < X < 25HP	~~$8.88~~11.58 per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	~~$10.80~~12.86 per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service
> 25HP	~~$4.54~~6.67 per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service	~~$2.36~~3.47 per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service

CUSTOMER REQUEST: 120/240 OPEN DELTA

	AVAILABLE UNDERGROUND FACILITIES		
MOTOR SIZE	SINGLE PHASE	TWO PHASES	THREE PHASES
< 5HP	~~$10.80~~13.01 per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service
5HP < X < 25HP	~~$2.16~~3.20 per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service
> 25HP	~~$2.16~~3.20 per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service

ISSUED BY: Charles S. Boyett

Gulf Power

Section No. IV
~~Seventh~~ Eighth Revised Sheet No. 4.26.1
Canceling ~~Sixth~~ Seventh Revised Sheet No. 4.26.1

PAGE	EFFECTIVE DATE

6.3.2 (continued)

THREE PHASE LIFT STATION
COSTS TO PROVIDE 3 PH SVC TO LIFT STATION W/IN TYPICAL SUBDIVISION - OPTION 2

CUSTOMER REQUEST: 120/208 or 277/480

	AVAILABLE UNDERGROUND FACILITIES		
MOTOR SIZE	SINGLE PHASE	TWO PHASES	THREE PHASES
< 5HP	~~$30.98~~25.03 per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service	~~$14.79~~17.32 per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service
5HP < X < 25HP	~~$8.46~~10.74 per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	~~$10.41~~12.41 per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service
> 25HP	~~$3.78~~5.83 per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service	~~$1.97~~3.02 per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service

CUSTOMER REQUEST: 120/240 OPEN DELTA

	AVAILABLE UNDERGROUND FACILITIES		
MOTOR SIZE	SINGLE PHASE	TWO PHASES	THREE PHASES
< 5HP	~~$10.67~~12.62 per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service
5HP < X < 25HP	~~$1.84~~2.81 per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service
> 25HP	~~$1.84~~2.81 per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service

ISSUED BY: Charles S. Boyett

Gulf Power

Section No. IV
~~Seventh~~ Eighth Revised Sheet No. 4.26.2
Canceling ~~Sixth~~ Seventh Revised Sheet No. 4.26.2

PAGE	EFFECTIVE DATE

6.3.2 (continued)

THREE PHASE LIFT STATION
COSTS TO PROVIDE 3 PH SVC TO LIFT STATION W/IN TYPICAL SUBDIVISION - OPTION 3

CUSTOMER REQUEST: 120/208 or 277/480

MOTOR SIZE	AVAILABLE UNDERGROUND FACILITIES		
	SINGLE PHASE	TWO PHASES	THREE PHASES
< 5HP	~~$18.26~~21.94 per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service	~~$13.43~~15.77 per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus one oh transformer, cutout, arrester, and service
5HP < X < 25HP	~~$5.44~~7.65 per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	~~$9.05~~10.86 per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service
> 25HP	~~$1.07~~2.74 per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service	~~$0.61~~1.47 per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service	$0 cost per ft plus 3ph padmount tx, pad, and ug service minus 3 oh transformers, 3 cutouts, 3 arresters, cluster mt, and service

CUSTOMER REQUEST: 120/240 OPEN DELTA

MOTOR SIZE	AVAILABLE UNDERGROUND FACILITIES		
	SINGLE PHASE	TWO PHASES	THREE PHASES
< 5HP	~~$0.21~~1.08 per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus one oh transformer, cutout, arrester, and service
5HP < X < 25HP	~~$0.46~~1.27 per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service
> 25HP	~~$0.46~~1.27 per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service	$0 cost per ft plus 2 padmount tx, 2 pads, and ug service minus 2 oh transformers, 2 cutouts, 2 arresters, and service

ISSUED BY: Charles S. Boyett

Item 14

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 19, 2019

TO: Docket No. 20190132-EI - Petition for authority for approval of non-firm energy pilot program and tariff by Florida Public Utilities Company.

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk AT

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 08327-2019 was filed on August 22, 2019, for the September 5, 2019 Commission Conference.

Due to the approach of Hurricane Dorian and its potential threat to areas throughout the State of Florida, the Commission's Conference set for Thursday, September 5, 2019, was cancelled. Dockets scheduled for consideration at that conference were deferred to the October 3, 2019, Commission Conference.

Accordingly, this item has been placed on the agenda for the October 3, 2019 Commission Conference, and staff's previously filed memorandum is attached.

/ajt

Attachment

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Coston, Draper)
Office of the General Counsel (Brownless)

RE: Docket No. 20190132-EI – Petition for authority for approval of non-firm energy pilot program and tariff by Florida Public Utilities Company.

AGENDA: 09/05/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 60-day suspension date waived by the utility until 09/05/2019

SPECIAL INSTRUCTIONS: None

Case Background

On June 18, 2019, Florida Public Utilities Company (FPUC or utility) filed a petition for approval of a non-firm energy pilot program and tariff (pilot program). Under the proposed pilot program, FPUC would purchase non-firm energy from Florida Power & Light Company (FPL), pursuant to its wholesale purchased power contract with FPL, and resell the non-firm energy to qualifying industrial customers who own self-generation. The utility proposes the pilot to end on December 31, 2020.

On July 2, 2019, FPUC waived the 60-day file and suspend provision of Section 366.06(3), Florida Statutes (F.S.), until the September 5, 2019 Agenda Conference. On July 23, 2019, FPUC responded to staff's first data request. In its response, FPUC included corrected tariff sheets. Specifically, FPUC removed the $500 monthly administrative charge that was erroneously included in the tariffs filed with the petition and corrected a tariff sheet's numbering.

On August 22, 2019, FPUC filed certain additional minor corrections to the proposed tariffs. The revised tariff sheets, as filed on August 22, 2019 are shown in Attachment A to this recommendation. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission approve FPUC's petition for the approval of its pilot program and associated tariff?

Recommendation: Yes, the Commission should approve FPUC's petition for the pilot program and associated tariff effective September 5, 2019. The proposed tariff sheets are shown in Attachment A to this recommendation. If FPUC wishes to extend or make permanent the pilot program, FPUC should petition the Commission regarding the future of the pilot program prior to the December 31, 2020 expiration date. (Coston, Draper)

Staff Analysis: FPUC does not generate electricity to serve its customers; rather, FPUC's Northeast Division currently purchases power to serve its customers from FPL pursuant to a wholesale purchased power agreement.[1] FPUC recovers its payments to FPL from its customers through the fuel and purchased power cost recovery clause factors (fuel factors) the Commission approves in the annual fuel hearing.

On April 10, 2017, FPUC and FPL executed a Native Load Firm All Requirements Power and Energy Agreement (agreement) that includes a provision allowing FPUC to purchase non-firm energy from FPL pursuant to FPL's wholesale TS-1 tariff. The TS-1 tariff is an economy energy tariff under which FPL sells non-firm energy at FPL's forecasted incremental fuel cost to wholesale customers. The TS-1 tariff has been approved by the Federal Energy Regulatory Commission (FERC).

The proposed pilot program is designed for FPUC to purchase non-firm energy from FPL pursuant to the TS-1 tariff and sell the non-firm energy to qualifying industrial customers. Specifically, to qualify for the proposed pilot program, customers must qualify for FPUC's General Service Large Demand (GSLD), GSLD-1, or standby tariffs and own dispatchable self-generation. The proposed pilot program is limited to a maximum of three customers.

FPUC currently provides service to two industrial customers that would qualify for the proposed pilot program: Rayonier Advanced Materials (Rayonier) and WestRock. Both customers produce paper and lumber products and are operating on Amelia Island. FPUC explained that when the utility discussed with Rayonier and WestRock the option of being able to purchase non-firm energy from FPL, both customers expressed interest in a non-firm energy option to add to their generation mix.

Rayonier and WestRock have on-site generation that provides the majority of their energy and capacity requirements. FPUC explained that these two customers use coal, natural gas, or heat from burning wood by-products to generate electricity. FPUC serves as a back-up energy resource. The amount of energy Rayonier and WestRock purchase from the utility varies based on the operational status of the facilities. The utility states that the pilot program could allow the participants to purchase non-firm energy at a lower price than the cost to self-generate, which could provide a benefit to the production costs of Rayonier and WestRock.

[1] FPUC's Northwest Division currently purchases power from Gulf Power Company pursuant to a wholesale purchased power agreement.

Customers who choose to take service under the pilot program agree to a minimum of 12 months of service; service will continue thereafter until the customer submits a written notice of termination to FPUC. Pursuant to the proposed pilot program, FPL will notify FPUC each Friday morning of the hourly non-firm energy prices starting Sunday at midnight. FPUC will then notify the participating customers of the non-firm energy prices (expressed in dollars per megawatt-hour) by 10 am. The customers must submit to FPUC their non-firm energy purchases, or nominations, for the following week by 2 pm of the same day and FPUC will forward that information to FPL. Participating customers must purchase a minimum of 1,500 megawatt-hours per year.

The utility explained that Rayonier and WestRock would immediately benefit from the proposed pilot program. While the proposed pilot program would be available to three customers, FPUC explained that the utility is not aware of a third customer who currently would be interested in the pilot program.

The non-firm energy costs charged by FPL to FPUC will be directly passed by the utility to the non-firm pilot customers. The utility states it would not assess any administrative, energy, or demand surcharges under the proposed pilot program. FPUC explained that it expects its administrative cost to administer the non-firm pilot to be minimal; however, FPUC would petition the Commission to modify the pilot program tariff in the future should administrative charges be appropriate. Additionally, FPUC stated the cost to purchase non-firm energy from FPL and revenues received from customers participating in pilot program would not be included in the utility's Purchased Power Cost Recovery filing, Docket No. 20190001-EI.

FPUC proposed to offer the non-firm tariff as a pilot in order to determine whether this energy supply option is beneficial to participating customers and the utility. FPUC states that the pilot program will be revenue neutral to the utility and the general body of ratepayers as the cost of the non-firm energy will be passed directly through to the customers participating in the pilot.

Furthermore, FPUC explained that the utility's overall load factor in its Northeast Division is currently impacted by the demand and energy purchases from Rayonier and WestRock. When these customers make short term purchases of electricity from FPUC, it increases FPUC's monthly maximum demand. However, this increase in demand does not increase the total energy amount by the same percentage, which results in a negative impact on the utility's load factor. FPUC states that the proposed pilot program would provide participants the incentive to purchase energy over longer periods of time resulting in a positive impact on FPUC's load factor in the Northeast Division. FPUC's load factor is considered by wholesale energy providers when negotiating the pricing contained in purchased power contracts. An improved load factor would benefit FPUC's general body of ratepayers through lower fuel factors when future agreements for wholesale power are negotiated.

Conclusion

The Commission should approve FPUC's petition for the pilot program and tariff, as shown in Attachment A, effective September 5, 2019. This pilot program would allow FPUC to assess the benefits of offering a non-firm energy program to its industrial customers with self-generation. The pilot program would be revenue-neutral to the utility and have a potential benefit to both participants and FPUC's general body of ratepayers. If FPUC wishes to extend or make

permanent the pilot program, FPUC should be required to petition the Commission regarding the future of the program prior to the December 31, 2020 expiration date.

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 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. (Brownless)

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

Florida Public Utilities Company
F.P.S.C Electric Tariff
Third Revised volume No. 1

Original Sheet No. 66.1

NON-FIRM ENERGY PROGRAM NFEP-EXP (EXPERIMENTAL)

Availability

Available within the territory served by the Company in Jackson, Calhoun, and Liberty Counties and on Amelia Island in Nassau County. This service is limited to a maximum of 3 Customers. The Rate Schedule shall expire on December 31, 2020.

Applicability

Applicable to Customers which are self-generators with dispatchable generation and are eligible for Rate Schedule GSLD, GSLD1 or Standby or who have executed a Special Contract approved by the Commission. Eligible Customers would nominate, in accordance with the procedures outlined below, an amount of electric load they commit to purchase that is above and in addition to the Customer's established baseline. Non-Firm (NF) Energy nominations must be made in 1,000 KW increments and is currently limited to a minimum of 1,000 kW and maximum of 15,000 kW. The Customer is not obligated to nominate NF Energy for any specific period but must nominate a minimum of 1,500 MWh per year. There is no payment penalty associated with the experimental tariff.

The default period for NF Energy nominations will be 7 days. Nominations for longer periods, e.g. monthly, will be made available when market conditions warrant. The same procedure for nominations and acceptance will apply to all periods. Customer may nominate NF Energy for on-peak hours, off-peak hours, or all hours. On-peak hours are Hour Ending (H.E.) 08:00 to H.E 23:00 weekdays and off-peak hours are H.E. 24:00 to HE 07:00 and all hours on weekends and established holidays. On-peak and off-peak hours are subject to change.

Once the Company confirms the Customer's nomination, the Customer is obligated to pay for all NF Energy nominated at the offered rate regardless of whether the Customer takes all NF Energy nominated for the month, unless recalled in accordance with NF Recall provisions.

Monthly Rate

The rates and all other terms and conditions of the Customer's otherwise applicable rate schedule shall be applicable under this program.

All NF Energy shall be charged at the hourly price, in $/MWh, as offered by the Company. Once nominated by the Customer and accepted by the Company, the Customer is responsible to pay the full NF Energy Charge for the nomination period regardless of whether the Customer takes all NF Energy nominated for the month. Any purchases that exceed the combined total of the Customer's baseline and NF Energy nominations will be billed based on the Customer's otherwise applicable rate. The NF Energy charges are in addition to the charges based on the Customers otherwise applicable rate.

Monthly NF Administrative Charge:
$0.00 per Customer per month

Monthly NF Demand Charge:
$0.00 per kW of NF demand

Issued by: Kevin Webber, President

Effective:

Florida Public Utilities Company
F.P.S.C Electric Tariff
Third Revised volume No. 1

Original Sheet No. 66.2

NON-FIRM ENERGY PROGRAM NFEP-EXP (EXPERIMENTAL)

(Continued From Sheet No. 66.1)

Monthly Rate

NF Energy Charge:
Amount as offered and accepted for each nomination

Monthly NF Demand

The Monthly NF Demand shall equal the maximum hour of NF Energy nominated by the Customer for the calendar month.

Minimum Monthly Bill

The Minimum Monthly Bill shall consist of the Monthly NF Administrative Charge plus applicable taxes and fees.

Term of Service

The Customer agrees to a minimum of 12 months of service under the Program. Service will continue thereafter until the Customer submits to the Company a written notice of termination. Service will discontinue at the end of the calendar month that notice of termination is received.

Nomination and Acceptance Procedure

1. By 10:00 AM each Friday, when NF Energy is available, the Company will provide the Customer with NF Energy price quotations for the following period beginning 0:00 (midnight) the following Sunday (time period is Monday 00:00 – Sunday 24:00).
2. The Customer will submit a NF Energy nomination schedule to the Company by 2 pm of the same day that the offer is submitted.
3. NF Energy nominations are accepted once the Company confirms receipt of the nomination. The Company will then schedule delivery of the NF Energy, if any, beginning 0:00 (midnight) the following Sunday.

Nomination Recall Provisions:

Once accepted, nominations by Customer may only be withdrawn if a Force Majeure is declared. A Force Majeure may be declared by the Customer if the Customer's equipment suffers major failure such that the Customer is prevented from taking the NF Energy. In such case, the Customer will notify the Company's designated contact by approved method as soon as condition is known and the Company will attempt to withdraw the scheduled delivery of NF Energy. If possible to do so, the Customer will no longer be responsible for purchasing the balance of NF Energy nominated during the event. Customer may declare Force Majeure a maximum of once per month.

Company may terminate NF Energy delivery at any time due to system emergencies or unusual pricing by notifying Customer of such termination, and Company has no obligation to deliver NF Energy.

Issued by: Kevin Webber, President

Effective:

Item 15

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, Coston)
Office of the General Counsel (Trierweiler)

RE: Docket No. 20190137-EU – Joint petition for approval of territorial agreement in Marion County, by Clay Electric Cooperative, Inc. and City of Ocala.

AGENDA: 10/03/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On July 2, 2019, Clay Electric Cooperative, Inc. (Clay) and the City of Ocala Electric Utility (Ocala), collectively the joint petitioners, filed a petition seeking Commission approval of a territorial agreement (agreement) delineating their respective modified service boundaries in Marion County. The proposed agreement, map depicting the current service territories and proposed changes, and written descriptions of the territorial boundaries are provided in Attachment A to this recommendation.

In 1986, the Commission approved a territorial agreement that established the boundaries for Clay and Ocala's service territories in Marion County.[1] The 1986 agreement was a 25-year agreement which was effective from January 7, 1987 to January 7, 2012. Since 2012, the parties state that they have continued to honor and operate pursuant to the terms of the 1986 agreement. Pursuant to Section 6.1, the proposed agreement will be in effect for a term of 25 years from the date of the issuance of the Commission Order.

During the review of this joint petition, staff issued a data request to Clay and Ocala on July 19, 2019, for which responses were received on August 8, 2019. The responses have been placed in the docket file. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

[1] Order No. 16967, issued December 17, 1986, in Docket No. 860658-EU, *In re: Joint Petition for Approval of Territorial Agreement Between the City of Ocala and Clay Electric Cooperative, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve the proposed amended territorial agreement between Clay and Ocala in Marion County?

Recommendation: Yes, the Commission should approve the amended territorial agreement between Clay and Ocala in Marion County. The proposed territorial agreement is in the public interest and it will enable Clay and Ocala to serve their customers in an efficient manner. (Guffey)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.[2]

Prior to the 1986 agreement, parts of Marion County and areas east of City of Ocala were being served by both utilities. The 1986 agreement delineated and established specific service territories in Marion County for Clay and Ocala.[3] In the instant docket, the parties state that they have made modest modifications to their service boundaries in order to accurately reflect land development that has occurred since 1986 and to provide reliable and efficient service to the impacted customers.

Through the proposed agreement, the joint petitioners will transfer 30 (25 residential and 5 general service commercial) customers from Clay to Ocala. In addition, three residential and two general service commercial Clay customers will be transferred to Ocala. The joint petitioners explained that customer transfers will be completed within 36 months of the order approving the agreement; however, to make the process easy and simple for customers, the utilities have agreed not to immediately transfer any customers. Customer transfers will occur when a customer applies for service at a new location or when a customer changes the type of account (i.e., residential to commercial).[4] The joint petitioners further stated that any customers not transferred as a result of a change in service or type of account will be transferred prior to the expiration of the 36 months. In response to staff's data request, the joint petitioners stated that when the 30 CEC customers are transferred to Ocala, they will be billed pursuant to Ocala's approved tariffs and when five Ocala customers are transferred to CEC, they will be billed pursuant to CEC's approved tariffs. No special or temporary tariff rates are anticipated for the transferred customers of both utilities.[5]

The amended territorial agreement also contemplates the transfer of certain secondary service distribution facilities between the parties. In response to staff's data request, the petitioners stated these facilities have been fully depreciated due to age and condition and therefore no purchase

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[2] *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).
[3] Order No. 16967, issued December 17, 1986, in Docket No. 860658-EU, *In re: Joint Petition for Approval of Territorial Agreement Between the City of Ocala and Clay Electric Cooperative, Inc.*
[4] Response #4 in Staff's first Data Request.
[5] Joint response to questions 16 and 17 in Staff's First Data Request.

price is assessed. Rather, the parties will exchange the facilities on a like-kind basis. The joint petitioners assert that the proposed amended territorial agreement will prevent uneconomic duplication of facilities and, if approved, shall continue and remain in effect for a period of 25 years from the date of the Commission's Order.

Customer Notification

In accordance with Rule 25-6.0440(1)(d), F.A.C., the petitioners state that prior to the filing of this petition, the impacted customers were notified by mail of the transfer and provided a description of the differences in rates between Clay and Ocala.[6] In response to staff's data request, the utilities stated that they have not received any negative responses from impacted customers. The Commission has not received any objections from impacted customers either. In response to staff's data request, the petitioners provided updated customer notification letters.[7] As of June 2018, the bill for a Clay residential customer using 1,000 kilowatt-hours (kWh) per month was $112.90 and the bill for an Ocala residential customer using 1,000 kWh per month was $114.64.

Conclusion

After review of the petition and the petitioners' joint responses to staff's data request, staff believes that the proposed agreement is in the public interest and will enable Clay and Ocala to serve their current and future customers efficiently. It appears that the proposed agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in reliability of electric service. As such, staff believes that the proposed agreement between Clay and Ocala will not cause a detriment to the public interest and recommends Commission approval.

[6] Exhibit D of the petition.
[7] Response #13 and Exhibits 2 and 3 in response #14 to Staff's First Data Request.

Issue 2: Should this docket be closed?

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

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

ATTACHMENT A

Territorial Agreement

Clay Electric Cooperative, Inc.

And

The City of Ocala Florida

Marion County

TERRITORIAL AGREEMENT
BETWEEN
CLAY ELECTRIC COOPERATIVE, INCORPORATED
AND THE
CITY OF OCALA

THIS AGREEMENT, made and entered into this 26th day of July, 2018 (the "Effective Date"), by and between the following (each a "party"):

- Clay Electric Cooperative, Inc., an electric cooperative organized and existing under the laws of the State of Florida ("Clay").
- City of Ocala, a Florida municipal corporation ("City").

WHEREAS:

A. Clay, by virtue of Florida Statutes, Chapter 425, and the Charter issued to it thereunder, is authorized and empowered to furnish electricity and power to its members, private individuals, corporations and others, as defined by the laws of Florida, and pursuant to such authority, presently furnishes electricity and power members and customers in areas of Marion County, Florida, and elsewhere;

B. City, by virtue of the laws of Florida, is authorized and empowered to furnish electricity and power to persons, firms and corporations in Marion County, Florida, and pursuant to such authority presently furnishes electricity and power to customers in areas of Marion County;

C. The respective areas of service of the parties hereto are contiguous within Marion County, and therefore, future duplication of service facilities may occur unless such duplication is precluded by a territorial agreement;

D. The Florida Public Service Commission has previously recognized that any such duplication of service facilities may result in needless and wasteful expenditures detrimental to the public interest;

E. The Florida Public Service Commission is empowered by Section 366.04, Florida Statutes, to approve territorial agreements and resolve territorial disputes;

F. The parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid duplications and to that end desire to operate within delineated retail service areas;

G. Clay and City previously entered into a Territorial Agreement dated May 22, 1986 (the "Prior Agreement"); and

H. In order to accomplish the current area allocation as to existing and future customers, the parties have delineated boundary lines in portions of Marion County, and such boundary lines define and delineate the retail service areas of the portions of Marion County to be served by the parties.

NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties hereto, subject to and upon the terms and conditions herein set forth, do herby agree as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Territorial Boundary Lines. As used herein, the term "Territorial Boundary Lines" shall mean boundary lines which delineate the shaded areas on the maps attached hereto as **Exhibits A** and **B** which differentiate and divide Clay Territorial Area from City Territorial Area, and as more particularly described in the description attached hereto and marked **Exhibit C**. In the event of any discrepancy between **Exhibits A** or **Exhibit B**, on the one hand, and **Exhibit C** on the other hand, **Exhibit C** shall prevail.

Section 1.2. Clay Territorial Areas. As used herein, the term "Clay Territorial Areas" shall mean the geographic areas shown on **Exhibit A** as lying outside of the shaded areas.

Section 1.3. City Territorial Areas. As used herein, the term "City Territorial Areas" shall mean the geographic areas shown on **Exhibit A** as lying within the shaded areas.

Section 1.4. Distribution Lines. As used herein, the term "Distribution Lines" shall mean all lines and related facilities for the flow of electric energy of either party having a rating of less than 69 kV.

Section 1.5. Express Distribution Feeders. As used herein, the term "Express Distribution Feeders" shall mean a three phase line and related facilities, at distribution voltage, that transports power through the other party's territory but services no load within such territory.

Section 1.6. Transmission Lines. As used herein the term "Transmission Lines" shall mean all lines and related facilities for the flow of electric energy of either party having a rating of 69 kV or above.

Section 1.7. New Customers. As used herein, the term "New Customer" shall mean all retail electric consumers applying for service, whether or not at a new or existing location, to either City or Clay after the Effective Date of this Agreement, and located within the Territorial Area of either party at the time such application is made.

Section 1.8. Annexed Area. As used herein, the term "Annexed Area" shall mean any area presently located in Clay's Territorial Area and subsequently annexed by City.

Section 1.9. Existing Customers. As used herein, the term "Existing Customer" shall mean all retail electric consumers that have service, from either City or Clay, on the Effective Date of this Agreement.

ARTICLE II. AREA DESIGNATION AND NEW CUSTOMERS

Section 2.1. Service Areas. The Clay Territorial Areas are hereby set aside to Clay as its exclusive retail service areas for the term hereof; and the City Territorial Areas are hereby set aside to City as its exclusive retail service areas for the term of this Agreement. Except as otherwise expressly provided herein (included pursuant to Section 2.3 and Section 3.4), neither party shall deliver any electric energy for retail use by a customer within the Territorial Area of the other party.

Section 2.2. New Customers. The parties shall each have the right and the responsibility to provide retail electric service to all New Customers within their respective Territorial Areas. Neither party shall hereafter serve or offer to serve a New Customer located in the

Territorial Area of the other party except expressly provided herein (included pursuant to Section 2.3 and Section 3.4).

Section 2.3. Interim Service; Existing Customers.

2.3.1. Interim Service to New Customers. Where a party entitled to serve a New Customer pursuant to Section 2.2 believes that the extension of its facilities to such New Customer would be more appropriate or compatible with its operational requirements and plans at a future time, such party may, in its discretion, request the other party to provide service to the New Customer on an interim basis. Such request shall be made in writing and the other party shall promptly (and in any event within twenty-one (21) days of the request) notify the requesting party if it will accept or decline the request. If such request is accepted, the party providing interim service shall be deemed to provide such service only on behalf of the requesting party, who shall remain entitled to serve the New Customer to the same extent as if it had provided service in the first instance. If required by applicable laws or regulations, the parties shall notify the Public Service Commission of any such agreement for interim service which is anticipated to last more than one year. The party providing interim service shall not be required to pay the other party for any loss of revenue associated with the provision of interim service. At such time as the requesting party elects to begin providing service directly to the New Customer, after reasonable written notice to the party providing interim service (which shall be no less than twenty-one (21) days), the party providing interim service shall cease providing interim service and, thereafter, service shall be furnished to the New Customer in accordance with Section 2.1 and Section 2.2 above.

2.3.2. Existing Customers.

a. City and Clay have determined that each of them has Existing Customers, listed on the attached **Exhibit D**, that are located within the Territorial Area of the other party.

b. In order to minimize inconvenience to their Existing Customers, each party may continue to serve their respective Existing Customers listed on **Exhibit D**, even though the location at which they are using electric service shall be located in the Territorial Area of the other party as of the date of approval of this Agreement by the Commission. This Section shall also apply to additional requirements for electric service (such as adding load or voltage) by the Existing Customers listed on **Exhibit D** at their existing locations.

c. Existing Customers listed on **Exhibit D** may become Existing Customers of the other party, at any time after approval of this Agreement by the Commission, in which event the parties agree that such Existing Customers shall be then transferred as soon as reasonably practicable, taking into account economics, good engineering practices, and the efficient operation of the affected utility. Either party may, from time to time, advise the Existing Customers on **Exhibit D** of their option to request a transfer to the appropriate utility and request their current preference in that regard. Neither party shall impose undue burden on an Existing

Customer listed on **Exhibit D** requesting to become an Existing Customer of the other party under this Section 2.3.2.c.

d. Further, either party may elect to provide electric service to the Existing Customers listed on **Exhibit D** by providing written notice of such election to the other party to this Agreement at least 90 days in advance of the date the party providing the notice will be able to provide such service; the party providing notice shall be obligated to construct any additional lines and facilities necessary to provide such electric service. Neither party shall impose undue burden on an Existing Customer listed on **Exhibit D** that becomes a customer of the other party under this Section 2.3.2.d.

Section 2.4. Transferred Areas.

2.4.1. The map attached hereto as **Exhibit B** depicts in green areas that were to be served by Clay under the Prior Agreement, and in pink areas that were to be served by City under the Prior Agreement.

2.4.2. Under this Agreement, the green areas are included within the City Territorial Area, and the pink areas are included within the Clay Territorial Area. City is currently providing service to some customers within one or more of the green areas, and Clay may currently be providing service to some customers within one or more of the pink areas.

2.4.3. The provisions of this Section 2.4 shall prevail over any existing provision in the Prior Agreement (including Section 2.4 of the Prior Agreement). Without limiting the foregoing, the parties acknowledge that no compensation is owed to either party under the Prior Agreement or by virtue of the transfer of the pink or green areas as depicted on the attached **Exhibit B**.

Section 2.5. Bulk Power Supply for Resale. Nothing herein shall be construed to prevent either party from providing bulk power supply to wholesale customers (including other utilities) for resale purposes wheresoever they may be located. Further, no other provision of this Agreement shall be construed as applying to bulk power supply for resale.

ARTICLE III. OPERATION AND MAINTENANCE

Section 3.1. Facilities to Remain. All generating plants, transmission lines, substations, distribution lines and related facilities now used by either party in conjunction with its respective electric utility system, and which are used directly or indirectly and are useful in serving customers in its respective Territorial Area, shall be allowed to remain where situated, can be maintained, replaced and upgraded, and shall not be subject to removal hereunder; provided, however, that each party shall operate and maintain such lines and facilities in such manner as to minimize any interference with operations of the other party.

Section 3.2. Joint Use. The parties hereto realize that it may be necessary, under certain circumstances and in order to carry out this Agreement, to make arrangements for the joint use of their respective service facilities; in such event arrangement shall be made by separate instruments incorporating standard engineering practices and providing proper clearances with respect thereto.

Section 3.3. New Facilities in Territory of Other Party. Neither party shall construct Distribution Facilities in the Territorial Area of the other party without the express written consent of the other party. Express Distribution Feeders are exempt from this Section 3.3; provided, however, that each party shall construct, operate and maintain its Express Distribution Feeders in a safe manner so as to minimize any interference with the operation of the other party's facilities.

Section 3.4. Facilities to be served. Nothing herein shall be construed to prevent or in way inhibit the right and authority of City or Clay to serve any of their own facilities or equipment which are used to further either party's core or other business purposes as an electric, water, waste water, natural gas or telecommunication utility, regardless of where those facilities may be located, and for such purposes, to construct all necessary lines and facilities; provided, however, that such party shall construct, operate and maintain such lines and facilities in such manner as to minimize any interference with the operation of the other party's facilities.

ARTICLE IV. ANNEXATION

Section 4.1. Annexed Areas. In the event any portion of the area outside the City Territorial Area and within Clay's Territorial Area is subsequently annexed by and into the city limits of City; (a) City may require a mutually agreeable franchise agreement with Clay in return for City's permission to occupy rights-of-way within the City's municipal limits; or (b) if mutually agreed by both parties, City will purchase the Clay facilities and customers.

ARTICLE V. PREREQUISITE APPROVAL

Section 5.1. Florida Public Service Commission. The provisions of this Agreement, are subject to the regulatory authority of the Florida Public Service Commission, and appropriate approval by that body of the provisions of this Agreement shall be a prerequisite to the validity and applicability hereof and neither party shall be bound hereunder until that approval has been obtained. The parties shall cooperate in good faith in an effort to obtain such approval, and shall provide all information as requested by the Florida Public Service Commission in connection therewith.

Section 5.2. Liability in the Event of Disapproval. In the event approval pursuant to Section 6.1 is not obtained, neither party will have a cause of action against the other arising under this Agreement.

ARTICLE VI. DURATION

Section 6.1. This Agreement shall continue and remain in effect for a period of twenty-five (25) years from the date of the rendering of the Florida Public Service Commission's Order approving this Agreement pursuant to Section 5.1.

ARTICLE VII. CONSTRUCTION OF AGREEMENT

Section 7.1. Intent and Interpretation. It is hereby declared to be the purpose and intent of this Agreement, in accordance with which all provisions of this Agreement shall be interpreted and construed, to eliminate and avoid the needless and wasteful expenditures, duplication of facilities and potentially hazardous situations, which might otherwise result from unrestrained competition between the parties operating in overlapping service areas, if any.

ARTICLE VIII. MISCELLANEOUS

Section 8.1. Negotiations. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the parties hereto unless the same shall be in writing and hereto attached and signed by both parties.

Section 8.2. Successors and Assigns. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the parties hereto and their respective representatives, successors and assigns.

Section 8.3. Notice.

8.3.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this Section:

a. For Clay: CEO/General Manager, Clay Electric Cooperative, INC., Post Office Box 308, Keystone Heights, Florida 32656; email: _____.

b. For City: City Manager of City of Ocala, 201 SE 3rd Street, 2nd Floor, Ocala, Florida 34471; email: jzobler@ocalafl.org.

a). With a copy to: Director of City of Ocala Electric Department, 201 SE 3rd Street, Ocala, FL 34471; email: mpoucher@ocalafl.org.

8.3.2. Each such Communication shall be deemed delivered:

a. On the date of delivery if by personal delivery;

b. On the date of email transmission if by email (subject to Section 8.3.5); and

c. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.

d. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

8.3.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subsection.

8.3.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

8.3.5. Concerning Communications sent by email:

a. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received;

b. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns;

c. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.

d. The sender must print the email to establish that is was sent (though it need not do so at the time the email was sent); and

e. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

Section 8.4. Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceability provision were omitted.

Section 8.5. Cost and Attorney Fees. If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which: arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

Section 8.6. JURY TRIAL. EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN

ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

IN WITNESS WHEREOF, this Agreement has been caused to be executed in triplicate by Clay in its name by its President, and its Corporate Seal hereto affixed, by the City Council President and attested by the City Clerk, on the day and year first above written; and one of such triplicate copies has been delivered to each of the parties hereto.

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SIGNATURES START ON NEXT PAGE

ATTEST:

By: Susan S. Reeves
Susan S. Reeves as Secretary

Clay Electric Cooperative, Inc., an electric cooperative organized and existing under the laws of the State of Florida

By: John H. Whitehead
John H. Whitehead as President

(SEAL)

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ATTEST:

Angel B. Jacobs
City Clerk

Approved as to form and legality

Patrick G. Gilligan
City Attorney

City of Ocala, a Florida municipal corporation

~~Matthew J. Wardell~~ Mary S. Rich
President, Ocala City Council
Pro-Tem

CITY OF OCALA
GOD BE WITH US
MARION COUNTY, FLORIDA

ACCEPTED BY CITY COUNCIL
June 5, 2018
DATE
OFFICE OF THE CITY CLERK

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EXHIBIT A
TERRITORIAL AREA MAP

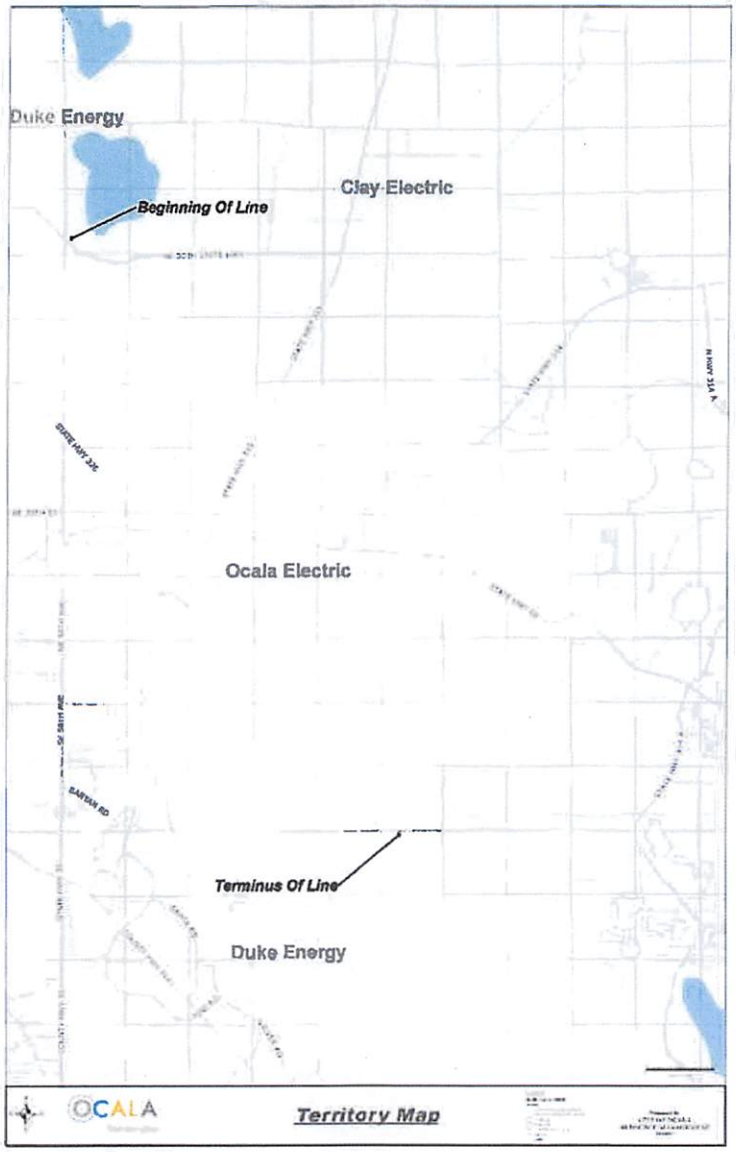

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EXHIBIT B
TERRITORIAL AREA MAP (SHOWING AREAS BEING TRANSFERRED)

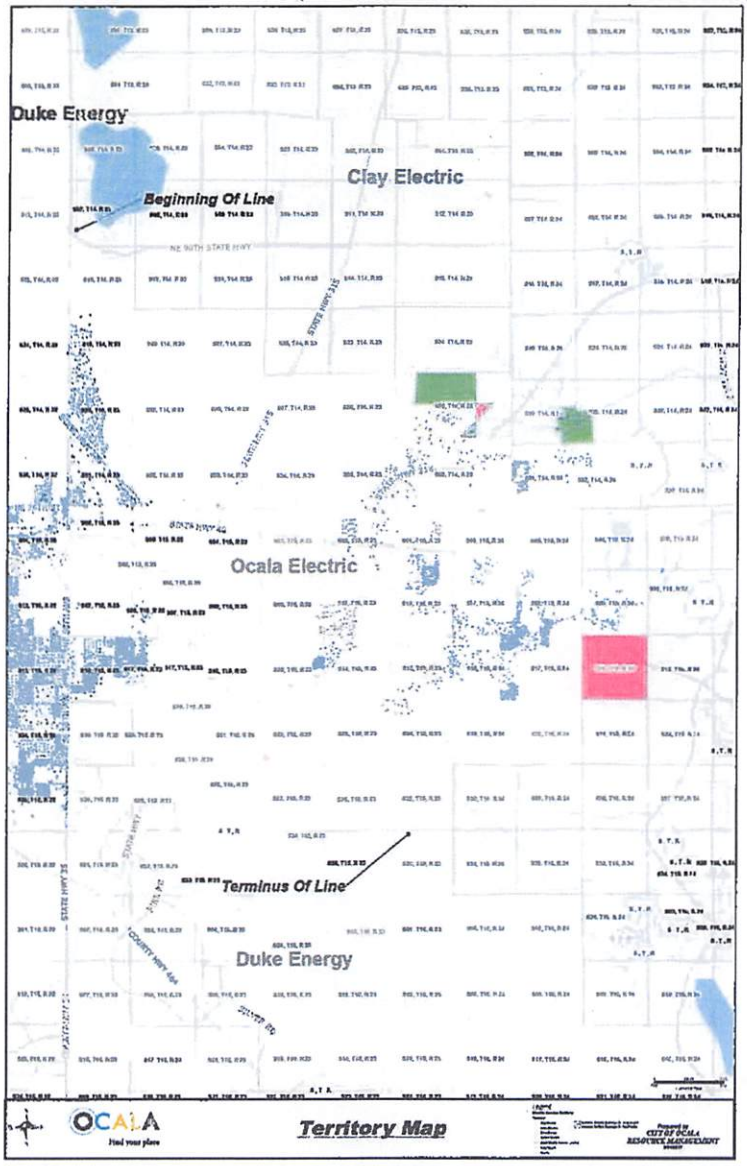

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EXHIBIT C
BOUNDARY

TERRITORIAL AGREEMENT
BETWEEN
CLAY ELECTRIC COOPERATIVE, INC.
AND
CITY OF OCALA
TERRITORIAL BOUNDARY

A line in Townships 14 and 15 South, Range 23 East and Townships 14 and 15 South, Range 24 East, Marion County, Florida described as follows:

Begin at the intersection of the West line of Section 7, Township 14 South, Range 23 East, with the centerline of the Anthony-Burbank County Road as now established; thence southeasterly along said road's centerline, 3100 feet, more or less, to the East line of the West one-half of Section 18, said Township and Range; thence south along said East line, 2400 feet, more or less, to the North line of the South one-half of said Section 18; thence east along said North line, 2640 feet, more or less, to the West line of Section 17, said Township and Range; thence south along said West line, 2640 feet, more or less, to the South line of said Section 17; thence east along said South line and continuing along the South line of Section 16, said township and Range, 10,560 feet, more or less, to the West line of Section 22, said Township and Range; thence south along said West line, 5280 feet, more or less, to the Southwest corner of said Section; thence east along the South line of said Section 22, and continuing along the South line of Section 23 and 24, said Township and Range, 17,250 feet, more or less, to the Northwest corner of Government Lot 2, of Section 25, said Township and Range; thence south along the West line of Government lots 2 and 13, 5280 feet to the North line of Section 36, said Township and Range; thence east along said North line of Section 36, a distance of 2960 feet, more or less, to the East line of said Section 36; thence south along said East line, 600 feet, more or less, to the South line of Section 30, Township 14 South, Range 24 East; thence east along the last-described South line 3990 feet, to the East line of the SW 1/4 of the SE 1/4 of said section 30; thence north along said East line, 900 feet to the South line of the North 420 feet of said SW 1/4 of the SE 1/4; thence west along said South line, 521.66 feet to the West line of the East 521.66 feet of said SW 1/4 of the SE 1/4; thence north along said West line, 400 feet to the south R/W line of NE 52nd Place Road, thence east along said R/W line, 470 feet to the east R/W line of NE 138th Avenue Road, thence northerly along said east R/W line, 1400 feet to an intersection with the North line of the SE 1/4 of said section 30, thence east, along said North line, 395 feet to the West line of the South 1/4 of the SE 1/4 of the NE 1/4 of said Section 30; thence north along said West line 331 feet to the North line of said South 1/4; thence east along said North line, 1328 feet to the East line of said South 1/4; thence south along said East line 331 feet to the North line of the SW 1/4 of Section 29, Township 14 South, Range 24 East; thence east 1320 feet to the East line of the West 1/2 of said SW 1/4; thence south along said East line, 2640 feet to the North line of Section 32, Township 14 South, Range 24 East; thence east along the said North line of said Section 32, 4,110 feet,

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more or less, to the Northeast corner of said Section 32 located in the waters of Lake Charles; thence south along the East line of said Section 32, a distance of 5280 feet, more or less, to the division line between Township 14 South and Township 15 South; thence west along the last-described Township line, 4800 feet, more or less, to the Northeast corner of Section 5, Township 15 South, Range 24 East; thence south along the East line of said Section 5 and continuing along the East line Section 8, said Township and Range, 7,600 feet, more or less, to the North line of the South three-quarters of Section 9, said Township and Range; thence east along the last described North line, 5,280 feet, more or less, to the East line Section 9, thence south along the East line of Section 9 said Township and Range 3,960 feet, more or less, to the Northeast corner of Section 16, said Township and Range, thence west along the North line of Section 16, 5,280 feet, more or less, to the East line of Section 17, thence south along the East line of Section 17, and Section 20, said Township and Range, 10,560 feet, more or less, to the North line of Section 29, said Township and Range; thence west along said North line and continuing along the North line of Section 30, said township and Range, 10,560 feet, more or less, to the division line between Range 23 East and Range 24 East; thence south along said Range line, 5280 feet, more or less, to the Southeast corner of Section 25, Township 15 South, Range 23 East; thence west along the South line of said Section 25, said Township and Range, 4,460 feet, more or less, to the centerline of the Ocklawaha River and the terminus of the above-described line.

EXHIBIT "D"

City serving in Clay territory

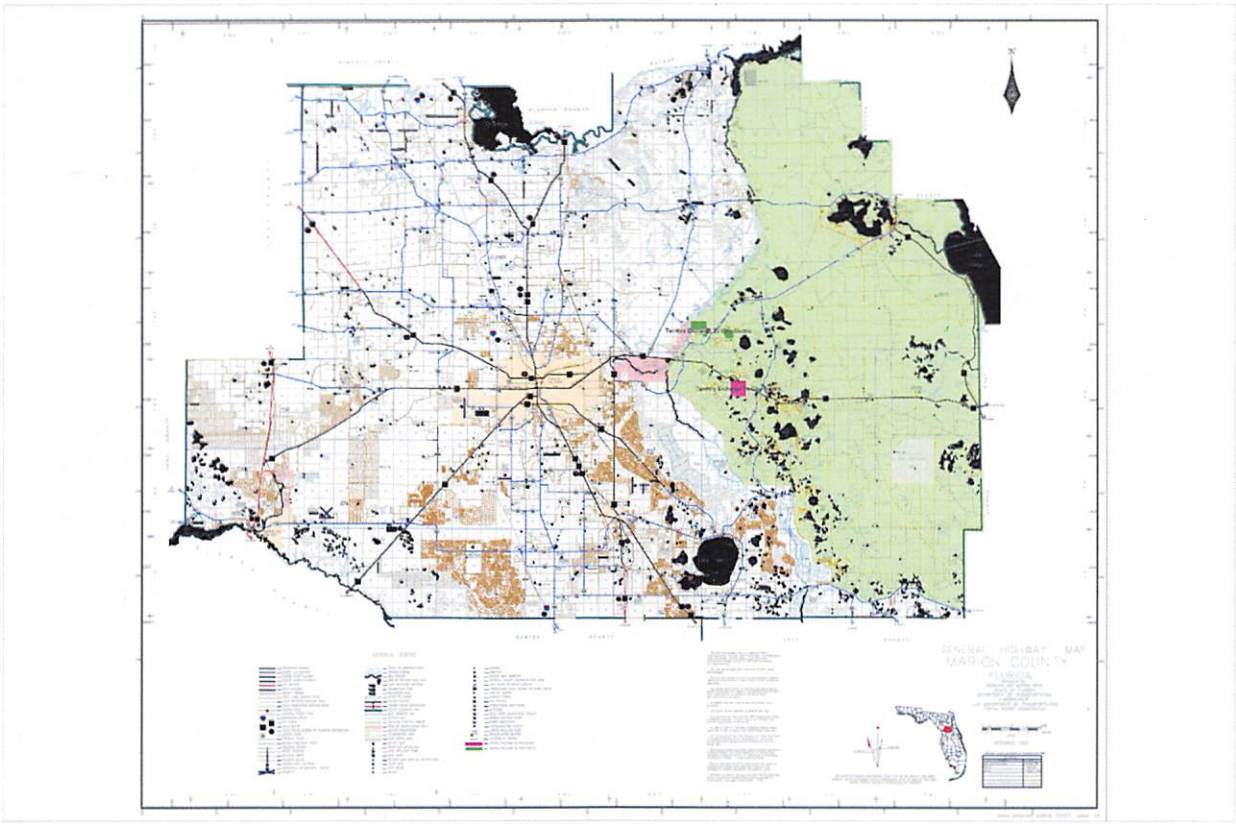
1. John L Smoot - 2080 NE 152ND CT
2. McCloure Douglas Inc. - 15231 NE 14TH STREET RD
3. Edgar Minerals Inc - 15450 NE 14TH STREET RD
4. Ihosvany Perez - 2030 NE 152ND CT
5. Edgar Minerals Inc - 2651 NE 147TH TER

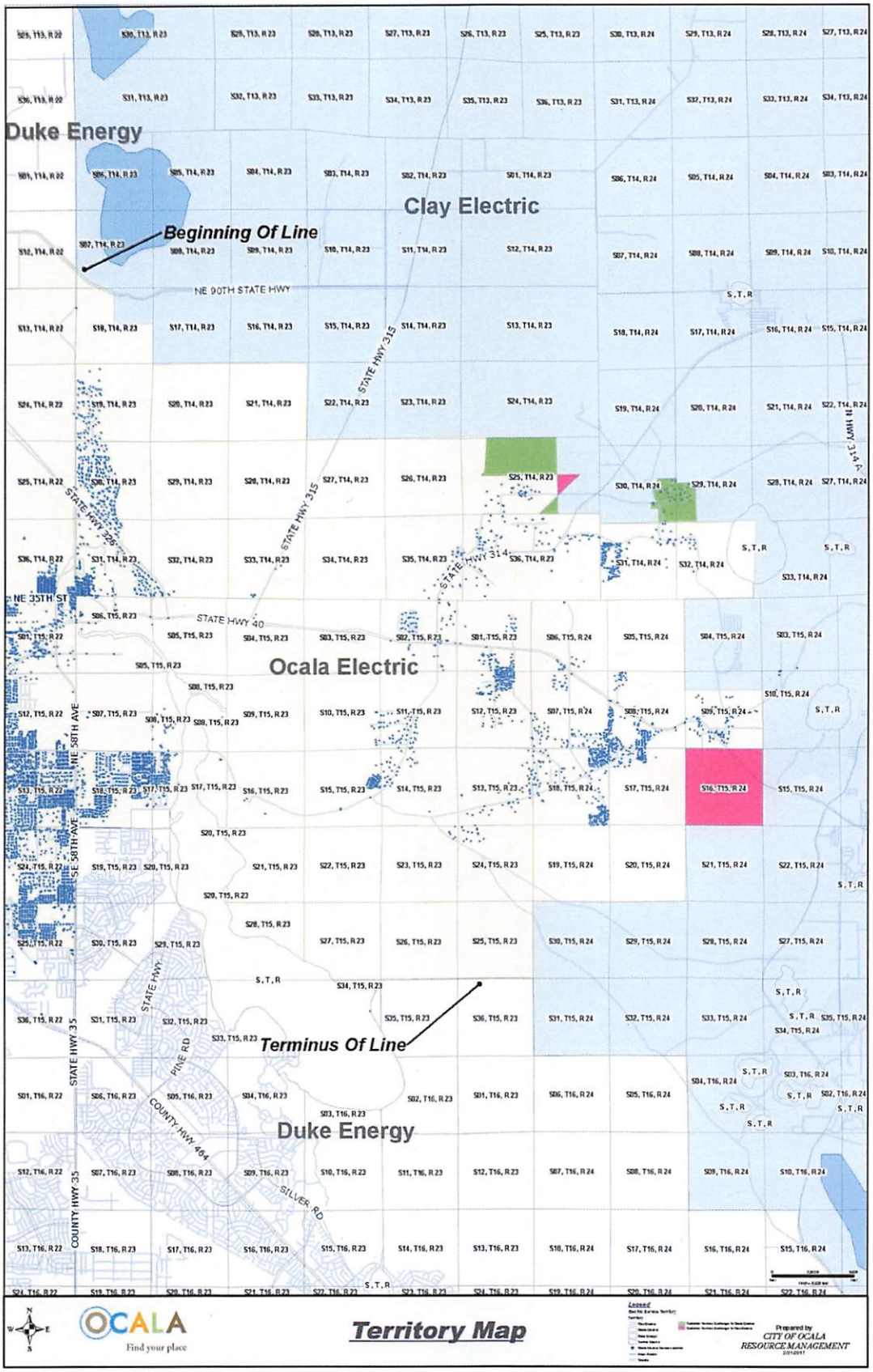
Clay serving in the City territory

1. LAMAR CENTRAL OUTDOOR LLC - 14480 E HIGHWAY 40
2. UNDERHOOD LLC - 14502 E HIGHWAY 40
3. UNDERHOOD LLC - 14502 E HIGHWAY 40
4. CURKENDALL CHARLES - 14478 E HIGHWAY 40
5. SHAMNARINE KAPILDEO - 14480 E HIGHWAY 40
6. LAST RESORT ENTERPRISES LLC - 14400 E HIGHWAY 40
7. NETILES NADINE - 14235 E HIGHWAY 40
8. NICOLETTI KATHY - 1046 NE 144 CT
9. RICH LAURIE - 1055 NE 144 CT SUTHERS S/D BL
10. FAITH FAMILY FELLOWSHIP CHURCH INC - 14480 NE 10TH PL
11. SIEG IDA - 14752 NE 10TH PL
12. BRINSON JENNIFER - 14771 NE 10TH PL
13. RODRIGUEZ BLAKE - 14825 NE 10TH PL
14. RIMES CHUCKY - 14690 NE 10TH PL
15. TALLMAN MARYANN - 14790 NE 10TH PL
16. HAYDEN JEAN - 14805 NE 10TH PL
17. SIEG IDA - 14755 NE 10TH PL
18. TREPANIER DAINE - 14588 NE 10TH PL
19. BOTIERN DAVID - 14750 NE 10TH PL
20. ENOS KEN - 14836 NE 10TH PL
21. LEONARD RONALD - 14640 NE 10TH PL
22. HALEY DAVID - 1199-A NE 145TH AVENUE RD
23. ENOS KEN - 14839 NE 10TH PL
24. ENOS KEN - 14835 NE 10TH PL
25. SIEG TERENCE - 14832 NE 10TH PL
26. STRICKER TAMMIE - 14970 NE 10TH PL
27. SIEG BYRON - 14910 NE 10 PL
28. HAYDEN STEVEN - 14850 NE 14TH STREET RD
29. HALEY DAVID - 1189 NE 145TH AVENUE RD
30. M&M MORTGAGE SERVICES - 14701 NE 10TH PL

EXHIBIT A

MAPS DEPICTING THE TERRITORIAL BOUNDARY LINES AND SERVICE TERRITORIES OF CLAY ELECTRIC COOPERATIVE AND THE CITY OF OCALA IN MARION COUNTY




Duke Energy
Clay Electric
Beginning Of Line
NE 90TH STATE HWY
STATE HWY 315
STATE HWY 326
STATE HWY 314
NE 35TH ST
STATE HWY 40
Ocala Electric
NE 58TH AVE
SE 58TH AVE
STATE HWY
PINE RD
STATE HWY 35
COUNTY HWY 464
Terminus Of Line
Duke Energy
SILVER RD
COUNTY HWY 35
OCALA
Find your place
Territory Map
Prepared by
CITY OF OCALA
RESOURCE MANAGEMENT

MARION COUNTY - CLAY ELECTRIC CITY OF OCALA TERRITORIAL AGREEMENT

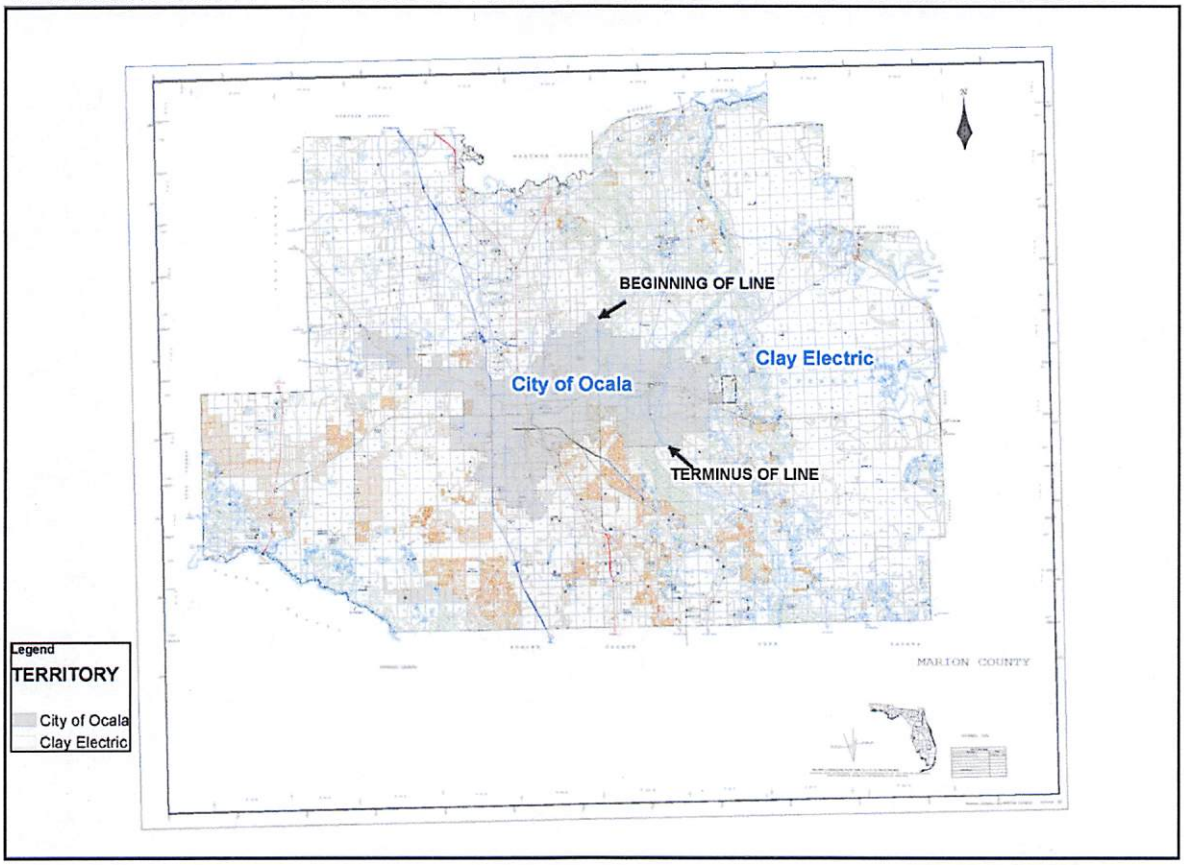


EXHIBIT C

WRITTEN DESCRIPTION OF THE TERRITORIAL BOUNDRAY IN MARION COUNTY

EXHIBIT C

Marion County - Written Description of the Territorial Boundary Lines

TERRITORIAL AGREEMENT
BETWEEN
CLAY ELECTRIC COOPERATIVE, INC.
AND
CITY OF OCALA
TERRITORIAL BOUNDARY

A line in Townships 14 and 15 South, Range 23 East and Townships 14 and 15 South, Range 24 East, Marion County, Florida described as follows:
Begin at the intersection of the West line of Section 7, Township 14 South, Range 23 East, with the centerline of the Anthony-Burbank County Road as now established; thence southeasterly along said road's centerline, 3100 feet, more or less, to the East line of the West one-half of Section 18, said Township and Range; thence south along said East line, 2400 feet, more or less, to the North line of the South one-half of said Section 18; thence east along said North line, 2640 feet, more or less, to the West line of Section 17, said Township and Range; thence south along said West line, 2640 feet, more or less, to the South line of said Section 17; thence east along said South line and continuing along the South line of Section 16, said township and Range, 10,560 feet, more or less, to the West line of Section 22, said Township and Range; thence south along said West line, 5280 feet, more or less, to the Southwest corner of said Section; thence east along the South line of said Section 22, and continuing along the South line of Section 23 and 24, said Township and Range, 17,250 feet, more or less, to the Northwest corner of Government Lot 2, of Section 25, said Township and Range; thence south along the West line of Government lots 2 and 13, 5280 feet to the North line of Section 36, said Township and Range; thence east along said North line of Section 36, a distance of 2960 feet, more or less, to the East line of said Section 36; thence south along said East line, 600 feet, more or less, to the South line of Section 30, Township 14 South, Range 24 East; thence east along the last-described South line 3990 feet, to the East line of the SW 1/4 of the SE 1/4 of said section 30; thence north along said East line, 900 feet to the South line of the North 420 feet of said SW 1/4 of the SE 1/4; thence west along said South line, 521.66 feet to the West line of the East 521.66 feet of said SW 1/4 of the SE 1/4; thence north along said West line, 400 feet to the south R/W line of NE 52nd Place Road, thence east along said R/W line, 470 feet to the east R/W line of NE 138th Avenue Road, thence northerly along said east R/W line, 1400 feet to an intersection with the North line of the SE 1/4 of said section 30, thence east, along said North line, 395 feet to the West line of the South 1/4 of the SE 1/4 of the NE 1/4 of said Section 30; thence north along said West line 331 feet to the North line of said South 1/4; thence east along said North line, 1328 feet to the East line of said South 1/4; thence south along said East line 331 feet to the North line of the SW 1/4 of Section 29, Township 14 South, Range 24 East; thence east 1320 feet to the East line of the West 1/2 of said SW 1/4; thence south along said East line, 2640 feet to the North line of Section 32, Township 14 South, Range 24 East; thence east along the said North line of said Section 32, 4,110 feet,

EXHIBIT C

Marion County - Written Description of the Territorial Boundary Lines

more or less, to the Northeast corner of said Section 32 located in the waters of Lake Charles; thence south along the East line of said Section 32, a distance of 5280 feet, more or less, to the division line between Township 14 South and Township 15 South; thence west along the last-described Township line, 4800 feet, more or less, to the Northeast corner of Section 5, Township 15 South, Range 24 East; thence south along the East line of said Section 5 and continuing along the East line Section 8, said Township and Range, 7,600 feet, more or less, to the North line of the South three-quarters of Section 9, said Township and Range; thence east along the last described North line, 5,280 feet, more or less, to the East line Section 9, thence south along the East line of Section 9 said Township and Range 3,960 feet, more or less, to the Northeast corner of Section 16, said Township and Range, thence west along the North line of Section 16, 5,280 feet, more or less, to the East line of Section 17, thence south along the East line of Section 17, and Section 20, said Township and Range, 10,560 feet, more or less, to the North line of Section 29, said Township and Range; thence west along said North line and continuing along the North line of Section 30, said township and Range, 10,560 feet, more or less, to the division line between Range 23 East and Range 24 East; thence south along said Range line, 5280 feet, more or less, to the Southeast corner of Section 25, Township 15 South, Range 23 East; thence west along the South line of said Section 25, said Township and Range, 4,460 feet, more or less, to the centerline of the Ocklawaha River and the terminus of the above-described line.

Item 16

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Coston)
Office of the General Counsel (Trierweiler)

RE: Docket No. 20190144-EI – Petition for expedited approval of shared solar rider tariff modification, by Tampa Electric Company.

AGENDA: 10/03/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 60-day Suspension waved until 10/03/2019

SPECIAL INSTRUCTIONS: None

Case Background

By Order No. PSC-2019-0215-TRF-EI, the Commission approved Tampa Electric Company's (TECO or utility) Shared Solar Tariff (SSR-1 tariff).[1] The SSR-1 tariff provides residential and commercial customers with the option to purchase energy produced from a TECO-owned solar generation facility to replace all or a portion of their monthly energy consumption. Participants are charged a Shared Solar Charge of $0.063 per kilowatt-hour. The SSR-1 tariff became effective on June 25, 2019, after TECO completed programming its billing system to administer the SSR-1 tariff.

On July 19, 2019, TECO filed for approval of a modification to tariff Sheet No. 3.305 of the SSR-1 tariff. This recommendation addresses the proposed modification to tariff Sheet No. 3.305 as shown in Attachment A to the recommendation. On September 3, 2019, the utility waived the

[1]Order No. PSC-2019-0215-TRF-EI, issued June 3, 2019, in Docket No 20180204-EI, *In re: Petition for approval of shared solar tariff, by Tampa Electric Company.*

60-day file and suspend provision of Section 366.06(3), Florida Statutes (F.S.), until the October 3, 2019 Agenda Conference. The Commission has jurisdiction pursuant to Section 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission approve TECO's proposed modification to the SSR-1 tariff?

Recommendation: Yes, the Commission should approve TECO's proposed modification to tariff sheet No. 3.305, as shown in Attachment A, effective October 3, 2019. (Coston)

Staff Analysis: TECO has proposed deleting language in its current SSR-1 that precludes customers in its budget billing program from participating in the voluntary SSR-1 tariff. The budget billing plan, or levelized payment plan, is an optional tariff that allows customers to make budgeted monthly payment amounts to help stabilize their monthly payments. TECO explained that at the time the utility developed the SSR-1 tariff, the billing system had limitations that were excluding customers on the budget billing plan from participating in the SSR-1 tariff. As a result of the billing system limitations, TECO included in its original petition for the SSR-1 tariff a provision which provided that customers may not take service under both the budget billing plan and the SSR-1 tariff. As of August 13, 2019, 102 customers have subscribed to TECO's SSR-1 tariff.

TECO stated that following the Commission's approval of the SSR-1 tariff, the utility was able to modify its billing system to allow the SSR-1 tariff to be made available to customers also taking service under the utility's budget billing plan. Therefore, TECO proposed to modify tariff sheet No. 3.305 to allow customers that elect to participate in the budget billing program to also take service under the SSR-1 tariff. TECO states it currently has 55,602 customers that utilize the budget billing program.

The proposed removal of Special Provision No. 6 on tariff sheet No. 3.505 will make the SSR-1 tariff available to levelized payment plan customers. Staff recommends that TECO's proposed modification to tariff sheet No. 3.305, as shown in Attachment A, is reasonable and should be approved effective October 3, 2019.

Issue 2: Should this docket be closed?

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

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

TECO. TAMPA ELECTRIC AN EMERA COMPANY

FIRST REVISED SHEET NO. 3.305
CANCELS ORIGINAL SHEET NO. 3.305

Continued from Sheet No. 3.300

TERM OF SERVICE: Subscription to the SSR-1 Rider will be for a period of one (1) month. The subscription will automatically renew on a month-to-month basis, until the customer provides notice of cancellation. After cancellation request is received, subscription will be removed from account within two billing cycles.

Requests to rejoin the SSR-1 Rider after previous cancellation may be subject to price changes and subscription availability. Participating customers who relocate to another Tampa Electric Company metered residence may transfer their subscription to the new premises. A participating customer cannot transfer their rights under this Rider to another customer.

State or Federal Legislation Opt-Out Clause: If State or Federal laws are instituted requiring Tampa Electric to provide renewable energy to all customers on some basis, the Company reserves the right to cancel all contracts and sales through this tariff without penalty.

SPECIAL PROVISIONS:

1. The bill calculated under this tariff is subject to change in such an amount as may be approved and/or amended by the Florida Public Service Commission.
2. Service hereunder is subject to the Rules and Regulations for Electric Service on file with the Florida Public Service Commission.
3. Billing will begin with the first billing cycle of the month following the month service under this Rider has been granted to the SSR-1 customer. Billing will cease should the Shared Solar facility utilized for service under this Rider cease operation for any reason or if the Opt-Out Clause listed above is enforced by Tampa Electric.
4. No charges made under this Rider in prior months will be refunded or adjusted if service under this Rider is discontinued for any reason.
5. The Company will retain ownership of the Renewable Energy Credits (RECs) and all other environmental attributes including but not limited to carbon emission reduction credits, which will not be otherwise sold by the Company. Customers may request to have RECs deposited into a designated account at their own expense.
6. ~~Customers may not take service under the Levelized Payment Plan and Shared Solar Rider.~~

ISSUED BY: N. G. Tower, President

DATE EFFECTIVE: ~~June 25, 2019~~

Item 17

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, Coston, Draper)
Division of Accounting and Finance (Mouring)
Office of the General Counsel (Schrader)

RE: Docket No. 20190142-EU – Joint petition for approval of amendment to territorial agreement in Nassau County, by Florida Power & Light Company and Okefenoke Rural Electric Membership Corporation.

AGENDA: 10/03/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On July 17, 2019, Florida Power & Light Company (FPL) and Okefenoke Rural Electric Membership Corporation (Okefenoke), collectively the joint petitioners, filed a petition seeking Commission approval of clarification and amendment (2019 amendment) to the joint petitioners' current territorial agreement as it relates to certain boundaries in Nassau County.

In May 1992, FPL filed three petitions to resolve territorial disputes with Okefenoke in Baker and Nassau Counties. The three dockets were consolidated for hearing purposes; however, after lengthy negotiations the parties reached an agreement the Commission approved in 1995 (1995

agreement).[1] The parties currently operate pursuant to the 1995 agreement. The proposed 2019 amendment would correct a discrepancy in the maps delineating the territorial boundaries approved in the 1995 agreement in an area known as the Crawford Diamond in Nassau County and allow FPL to provide electric service to the adjacent property. All other provisions of the 1995 agreement would remain in effect. There are no customer transfers contemplated in the 2019 amendment. The 1995 agreement is included as Exhibit A to the joint petition in the instant docket.

During the review of this petition, staff issued two data requests to the joint petitioners for which responses were received on August 27, 2019. The responses have been placed in the docket file. In response to staff's first data request, FPL provided an updated page 1 of the 2019 amendment to indicate the date of the amendment. On September 20, 2019, the joint petitioners filed the signature page of the 2019 amendment. The 2019 amendment, dated July 13, 2019, is provided in Attachment A to this recommendation. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

[1] Order No. PSC-95-0668-FOF-EU, issued May 31, 1995, in Docket No. 920420-EU, *In re: Petition to resolve territorial dispute in Baker County with Okefenoke Rural Electric Membership Corporation by Florida Power and Light Company*.

Discussion of Issues

Issue 1: Should the Commission approve the proposed 2019 clarification and amendment to the 1995 territorial agreement between FPL and Okefenoke?

Recommendation: Yes, the Commission should approve the proposed 2019 clarification and amendment to the 1995 territorial agreement between FPL and Okefenoke. The proposed amendment will resolve the boundary line discrepancy that exists in the area referred to as the Crawford Diamond in Nassau County and will enable FPL and Okefenoke to serve their customers in an efficient manner. (Guffey, Coston, Draper)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.[2]

FPL is an investor-owned utility operating under the jurisdiction of this Commission pursuant to Chapter 366, F.S. Okefenoke is a rural electric corporation organized and existing under the laws of Georgia and registered to conduct business in Florida pursuant to Section 425.27, F.S. Both petitioners presently provide electric service in Baker and Nassau Counties and are operating pursuant to the 1995 agreement. The 1995 agreement does not specify a term; Section 4.1 of the 1995 agreement states that the agreement will continue and remain in effect until the Commission, by order, modifies or withdraws its approval after proper noticing and hearing.

Through the proposed 2019 amendment, the joint petitioners seek to clarify a discrepancy in the maps approved in the 1995 agreement and to amend the 1995 agreement to allow FPL to serve a property which is currently located within Okefenoke's service territory. The proposed amendment involves an area called the Crawford Diamond, which is located in Nassau County. The Crawford Diamond is a 1,815 acre property which is zoned as an industrial park. The petitioners explained that the Crawford Diamond is located adjacent to railroads and road infrastructure. FPL explained to staff in response to a data request that, through its economic development team, it is promoting this location to attract new commercial and industrial customers. In addition, FPL explained to staff that it is conducting preliminary engineering and permitting to potentially construct the Nassau Solar Energy Center in the Crawford Diamond. However, there are no customers or electric service facilities in the Crawford Diamond or the adjacent property at this time. The clarification and the amendment to the 1995 agreement are discussed below.

The joint petition states that two conflicting maps approved in the 1995 agreement can be interpreted to allow both FPL and Okefenoke to serve a portion of the Crawford Diamond. The 1995 agreement includes several pages of maps (shown in Attachment A to the order approving the 1995 agreement). Specifically, the petition states that the map on page 25 of the 1995 agreement and the maps on pages 47 and 48 of the maps are not consistent. The area of

[2] *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

discrepancy within the Crawford Diamond is shown on page 7 of 13 in Attachment A to this recommendation. The parties now seek to clarify the discrepancy and amend the territorial boundaries approved in the 1995 agreement to allow FPL to serve the area of discrepancy.

The proposed 2019 amendment also seeks Commission approval to allow FPL to serve potential future customers in a 335.86 acre property that is adjacent to the area of discrepancy discussed above. The property is currently in Okefenoke's service territory. Page 8 of 13 in Attachment A to this recommendation indicates the revised territorial boundary lines.

In addition to the proposed 2019 amendment, FPL and Okefenoke have entered into a Memorandum of Understanding (MOU) dated November 15, 2018. The joint petitioners attached the MOU in Exhibit E of their petition in the instant docket. The joint petitioners are not seeking Commission approval of the MOU. The joint petitioners explained that the MOU represents the negotiated provisions necessary to resolve the discrepancy in the 1995 agreement maps. The MOU also includes other terms and provisions that are not generally included in territorial agreements for Commission approval. The MOU will terminate if the Commission does not issue an order approving the 2019 amendment by December 31, 2019.

Pursuant to the MOU, FPL plans to construct an FPL-owned substation and associated transmission and distribution lines in the Crawford Diamond. FPL will also build a second substation and transfer this substation to Okefenoke for $10 (Okefenoke substation). Any transmission assets installed by FPL to serve the Okefenoke substation would be retained by FPL. In response to staff's second data request, FPL estimates the construction cost for the Okefenoke substation to be approximately $6.8 to $7.6 million. The Okefenoke substation will be constructed on FPL land which then will be transferred to Okefenoke pursuant to a special warranty deed. Exhibit A to the MOU shows that the Okefenoke substation will be built at the boundary line between FPL and Okefenoke. FPL stated that once the Okefenoke substation is completed, and the transfer of ownership of the substation and the land on which it is located has been made from FPL to Okefenoke, FPL will come back to the Commission to request further modification of the territorial agreement and indicate that the subject property has been transferred to Okefenoke and will thereafter be part of Okefenoke's service territory.

In an email provided to staff that has been included in the docket file, FPL asserts that it is currently not seeking recovery of any costs to build the Okefenoke substation and FPL is not asking the Commission in this docket to make a prudence determination regarding FPL's activities. FPL stated that if the Commission approves the proposed 2019 amendment and the costs to construct the Okefenoke substation are incurred, FPL may seek recovery of those costs in a future base rate filing. If such a filing is made by FPL, the Commission would be asked to review the cost and prudence associated with the Okefenoke substation and the associated transmission assets FPL would retain.[3]

Conclusion

The joint petitioners assert that the 2019 amendment will provide certainty to future electric customers and the joint petitioners regarding the provision of electric service within the Crawford Diamond. No customers will be transferred as a result of the proposed 2019

[3] See Document No. 08721-2019, filed on September 11, 2019, in Docket No. 20190142-EU.

amendment. The joint petitioner's further state the proposed 2019 amendment represents a mutually agreeable solution to the boundary discrepancy, provides benefits to both FPL and Okefenoke, and eliminates the need for the Commission to resolve a potential future territorial dispute.

After review of the petition, the responses to staff's data requests, and a follow-up response from FPL, staff believes that the proposed 2019 amendment is in the public interest. The proposed amendment will resolve the boundary line discrepancy that exists in the area referred to as the Crawford Diamond in Nassau County and will enable FPL and Okefenoke to serve their customers in an efficient manner. In addition, no current customers will be affected as a result of the proposed 2019 amendment. As such, staff believes that the proposed clarification and amendment to the 1995 agreement between FPL and Okefenoke will not cause a detriment to the public interest and recommends Commission approval.

However, the Commission should note that in approving the 2019 amendment, the Commission makes no finding regarding the prudence or potential recovery of the costs to construct the Okefenoke substation that will be transferred to Okefenoke. Those costs would be subject of a future, appropriate rate proceeding.

Issue 2: Should this docket be closed?

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

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

CLARIFICATION AND AMENDMENT TO TERRITORIAL AGREEMENT BETWEEN FLORIDA POWER AND LIGHT COMPANY AND OKEFENOKE RURAL ELECTRIC MEMBERSHIP CORPORATION f/k/a OKEFENOKE RURAL ELECTRIC MEMBERSHIP COOPERATIVE

This Clarification and Amendment to the Territorial Agreement, dated as of July 13, 2019, ("2019 Amendment") is entered into by Florida Power and Light Company ("FPL") and Okefenoke Rural Electric Membership Corporation f/k/a/ Okefenoke Rural Electric Membership Cooperative ("OREMC"). FPL is a corporation with headquarters at 700 Universe Boulevard, Juno Beach, Florida 33408; an investor-owned utility operating under the jurisdiction of the Florida Public Service Commission ("Commission") pursuant to the provisions of Chapter 366, Florida Statutes; and a wholly-owned subsidiary of NextEra Energy, Inc., a registered holding company under the Federal Public Utility Holding Company Act and related regulation. OREMC is an electric corporation organized and existing under the laws of the State of Georgia and registered to transact business in the State of Florida pursuant to Section 425.27 of the Statutes of Florida. FPL and OREMC are electric utilities as defined by Section 366.02(2), Florida Statutes, and are herein collectively referred to as the "Parties".

WITNESSETH

WHEREAS, the Parties have an existing Territorial Agreement relating to their respective retail service areas in Baker and Nassau Counties, Florida, which was approved by the Commission by Order No. PSC-95-0668-FOF-EU on May 31, 1995 in Docket No. 920420-EU, (such agreement referred to as the "Territorial Agreement"); and;

WHEREAS, the Parties now desire to clarify and amend the territorial boundaries in the existing Territorial Agreement as it relates to a specified area in Nassau County commonly known as the Crawford Diamond and specified property contiguous to the Crawford Diamond;

1

and,

WHEREAS, clarifying and amending the specified territorial boundaries in the existing Territorial Agreement will avoid uneconomic duplication of services, provide for the cost effective provision of service to future utility customers as there are currently no customers receiving electric service in the Crawford Diamond or in the additional property contiguous to the Crawford Diamond which is affected by this 2019 Amendment, and will be in the public interest.

NOW THEREFORE, in consideration of the following mutual covenants and other good and valuable consideration, including FPL obtaining the sole right to serve in the territory described in this 2019 Amendment and FPL's agreement to construct facilities for OREMC more fully described in the Memorandum of Understanding between FPL and OREMC dated November 15, 2018, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree to clarify and amend the Territorial Agreement as follows:

1. **Clarification of Discrepancy in Existing Territorial Agreement**. The Parties agree and acknowledge that the Territorial Agreement to be clarified and amended by this 2019 Amendment contains a discrepancy in the maps on file with the Commission. More specifically, the referenced discrepancy in the Territorial Agreement is found when comparing the area shown on page 25 of the maps on file with the Commission in Docket No. 920420-EU to the area shown on pages 47 and 48 of those same maps, an area commonly referred to as the Crawford Diamond. In the absence of this 2019 Amendment, the conflicting maps can be interpreted to allow both FPL and OREMC to serve within a portion of the Crawford Diamond. This 2019 Amendment resolves that discrepancy by virtue of an agreement between the parties that the map

attached to this 2019 Amendment as Exhibit C supersedes and replaces the maps attached to the Territorial Agreement in only the specific locations identified in Exhibit A. Pursuant to this 2019 Amendment, FPL has the sole right to serve in the designated area identified on Exhibit C and described more fully in paragraph 5(a) below.

2. **Transition of OREMC service territory to FPL**. Separate and apart from the area identified in paragraph 1 of this 2019 Amendment, this 2019 Amendment addresses additional property contiguous to the Crawford Diamond which the Parties agree is currently located within the OREMC service territory as described in the Territorial Agreement on file with the Commission. This 2019 Amendment resolves by agreement of the Parties that the additional areas contiguous to the Crawford Diamond, as specifically identified on the map attached to this 2019 Amendment as Exhibit C, supersedes and replaces the maps attached to the Territorial Agreement in only the specific locations identified in Exhibit A. Pursuant to this 2019 Amendment, FPL has the sole right to serve in the designated areas contiguous to the Crawford Diamond identified on Exhibit C and described more fully in paragraph 5(b) below.

3. **No impact on existing customers**. There are no current customers whose accounts will be transferred or who will be affected or impacted by the approval of this 2019 Amendment, as there are currently no customers receiving electric service in the Crawford Diamond or in the additional contiguous area addressed by this 2019 Amendment.

4. **No uneconomic duplication of facilities.** No electric utility facilities currently exist on the property that is the subject of this 2019 Amendment. In order to avoid unnecessary duplication of facilities and to serve anticipated development, the Parties agree to clarify and amend the boundaries in the Territorial Agreement as more fully described herein. Because

there are currently no customers receiving electric service in the Crawford Diamond or in the additional contiguous areas addressed by this 2019 Amendment, this 2019 Amendment will allow for the deliberate planning, development and construction of electric facilities as service may be required by future customers of the Parties.

5. **Parcels affected by 2019 Amendment**.

a) The first parcel described as the Crawford Diamond, located within Sections 010 and 011, which, by virtue of this 2019 Amendment will hereinafter be served solely by FPL, is described on Exhibit D:

b) The property contiguous to the Crawford Diamond, located within Sections 003 and 004 to the north, Sections 004 and 009 to the west, and Sections 009 and 010 to the south, which, by virtue of this 2019 Amendment will hereinafter be served solely by FPL, is described on Exhibit D:

6. **Condition Precedent.** The approval of this 2019 Amendment by the Commission without modification, unless otherwise agreed to by the Parties, shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This 2019 Amendment shall have no effect whatsoever until such approval has been granted by the Commission, and the date of the Commission's Final Order, if any, granting such approval shall be deemed to be the effective date of the 2019 Amendment

7. **Existing Territorial Agreement**. All other provisions of the Territorial Agreement shall remain in effect.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have caused this Clarification and Amendment to Territorial Agreement to be signed by their respective duly authorized representatives as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

By: _____

Name: Manny Miranda

Title: Senior Vice President, Power Delivery

OKEFENOKE RURAL ELECTRIC MEMBERSHIP CORPORATION

By: _____

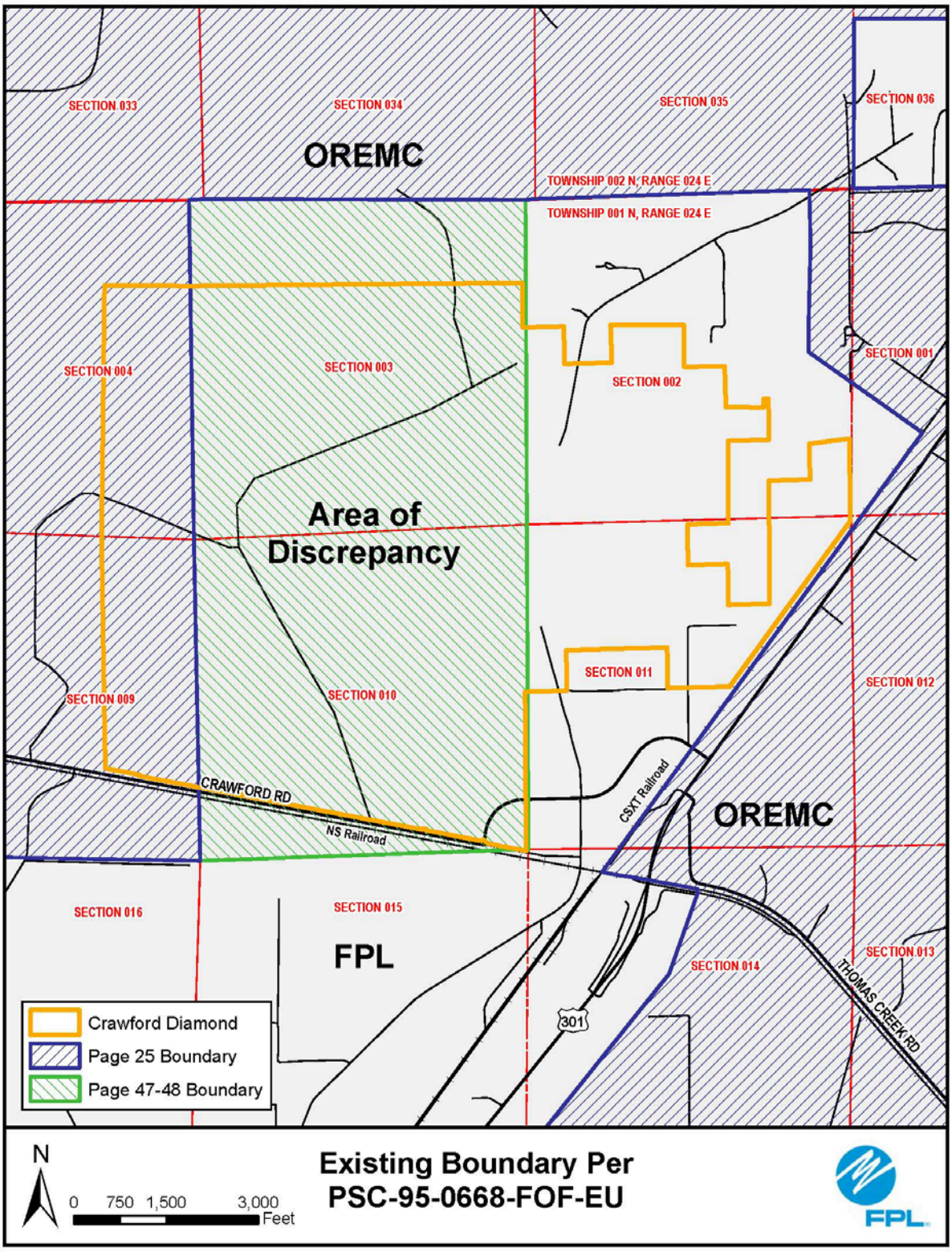
Name: John Middleton

Title: General Manager

5

Exhibit C

Map of the area to be served by FPL in accordance with this 2019 Amendment


SECTION 033
SECTION 034
SECTION 035
SECTION 036
OREMC
TOWNSHIP 002 N, RANGE 024 E
TOWNSHIP 001 N, RANGE 024 E
SECTION 004
SECTION 003
SECTION 002
SECTION 001
Area of Discrepancy
SECTION 011
SECTION 012
SECTION 009
SECTION 010
CRAWFORD RD
NS Railroad
CSXT Railroad
OREMC
SECTION 016
SECTION 015
FPL
SECTION 014
SECTION 013
THOMAS CREEK RD
301
Crawford Diamond
Page 25 Boundary
Page 47-48 Boundary
N
0 750 1,500 3,000
Feet
Existing Boundary Per
PSC-95-0668-FOF-EU
FPL

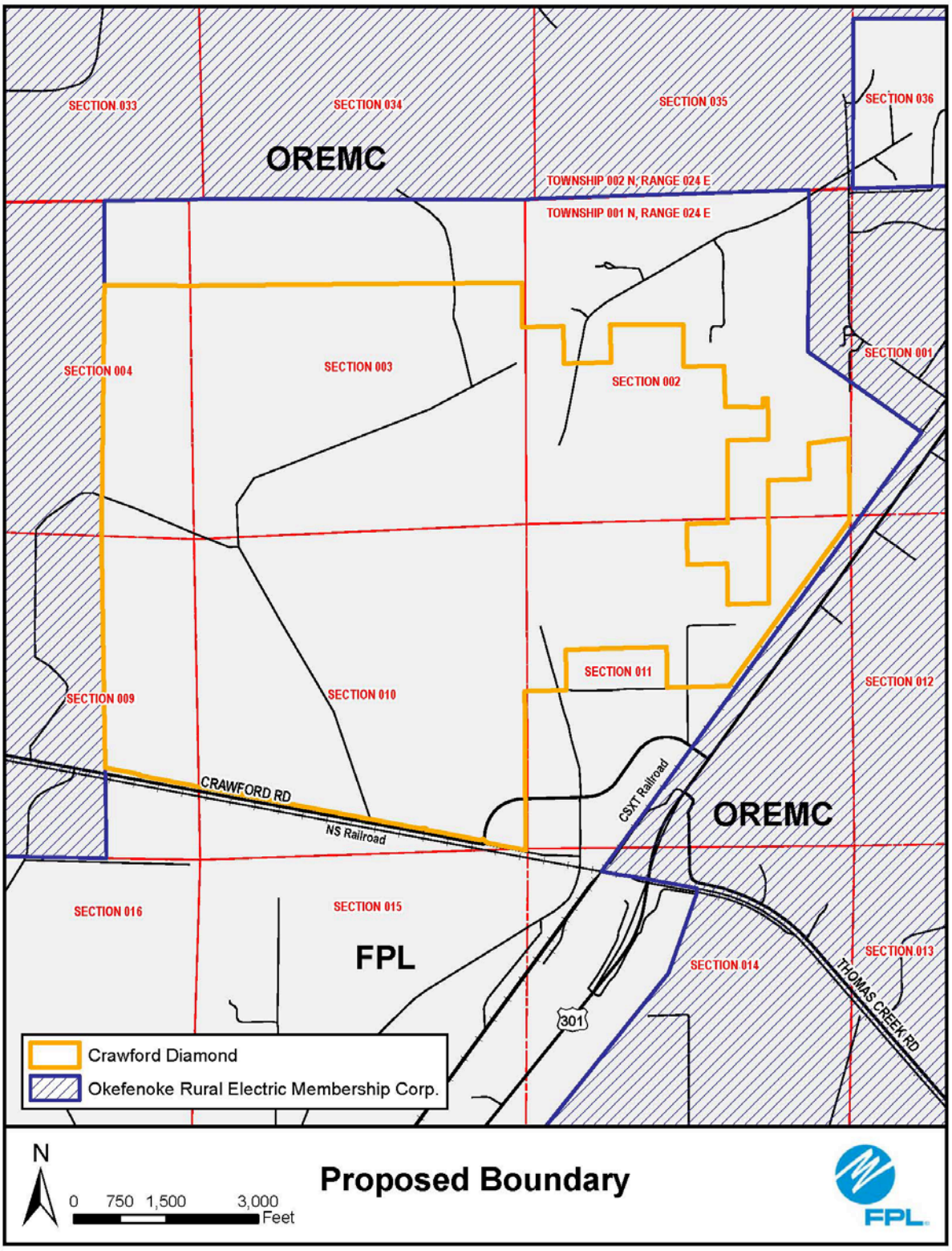

SECTION 033
SECTION 034
SECTION 035
SECTION 036
OREMC
TOWNSHIP 002 N, RANGE 024 E
TOWNSHIP 001 N, RANGE 024 E
SECTION 004
SECTION 003
SECTION 002
SECTION 001
SECTION 011
SECTION 012
SECTION 009
SECTION 010
CRAWFORD RD
NS Railroad
CSXT Railroad
OREMC
SECTION 016
SECTION 015
FPL
SECTION 014
SECTION 013
THOMAS CREEK RD
301
Crawford Diamond
Okefenoke Rural Electric Membership Corp.
N
0 750 1,500 3,000
Feet
Proposed Boundary
FPL

Exhibit D

Legal description of the area to be served by FPL in accordance with this 2019 Amendment

SCHEDULE "A"
SKETCH OF DESCRIPTION

Surveyors Notes:

1. *This legal description and sketch is not valid without the original signature and seal of the signing licensed Florida surveyor and mapper.*
2. *The purpose of this legal description and sketch is to describe and depict the location of three (3) specific contiguous parcels of land. This is not a boundary survey.*
3. *The configuration and location of the lands described and depicted hereon is based on instructions and survey maps provided by the client.*
4. *Bearings shown hereon relative to the North American Datum of 1983/ 2007 adjustment (NAD 83/90) and are expressed in the Florida State Plane Coordinate System, North Zone (901), with the grid bearing of the east line of Section 3, Township 1 North, Range 24 East as being South 00°34' 09" East.*
5. *This legal description and sketch is based, in part, on a boundary survey performed by LD Bradley Land Surveyors, dated 08/14/2017, W.O. No. : 17-129.*
6. *Lands shown hereon were not abstracted for ownership, easements, rights-of-way or other title matters by this firm.*
7. *Additions or deletions to this sketch and description are prohibited without the written consent of the signing Florida licensed surveyor and mapper.*
8. *This sketch and description is certified for the exclusive use of Florida Power & Light Company.*

LEGAL DESCRIPTIONS:

Parcel 1- Additional Contiguous Lands North

A parcel of land lying in Sections 3 and 4, Township 1 North, Range 24 East, Nassau County, Florida, being more particularly described as follows:

Section 3: North ¼ of said Section

Section 4: East ½ of the East ½ of the North ¼ of said Section

Containing 211.34 Acres, More or Less

FOR THE FIRM

ROBERT M. JONES
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER
LICENSE No. LS 4201

THIS IS NOT A SURVEY

PROJECT TITLE:
SKETCH OF DESCRIPTION
NASSAU CO. SOLAR SITE ENERGY SITE

REVISIONS		
DATE	BY	DESCRIPTION
6/6/2019	TW	Revised per Clients Comments

Wood Environment & Infrastructure Solutions, Inc.
550 Northlake Boulevard, Suite 1000
Altamonte Springs, FL 32701 USA
Phone: (407) 522-7570
www.woodplc.com
Certificate of Authorization Number LB-0007932

DRAWN BY: TW		CHKD. BY: RMJ
DATE: 5/1/2019		DATE: 5/1/2019
JOB No. 6374181122	SCALE: N/A	SHT. 1 OF 14
DRAWING NAME: 637419___ - FPL Nassau Co. Solar Site.dwg		

PARCEL 2 - FEE OWNED LANDS

TRACT A

A parcel of land, being a portion of Crawford, Florida, Section 11 and being a portion of Addition To Crawford, Florida, Section 2, both on file in the office of the Clerk of Court of Nassau County, Florida, and being a portion of Sections 3, 4, 9 and 10, all in Township 1 North, Range 24 East, Nassau County, Florida, and being more particularly described as follows:

Commence at the Northwest corner of Addition To Crawford, Florida, on file in the office of the Clerk of Court of Nassau County, Florida, said point also being the Northwest corner of Section 2, Township 1 North, Range 24 East Nassau County, Florida; thence on the West line of said Addition To Crawford, Florida and also being the West line of said Section 2, S 00°34'09" E, a distance of 1336.44 feet to the Point of Beginning; thence continue on said West line, S 00°34'09" E, a distance of 722.92 feet; thence N 88°33'14" E, a distance of 664.65 feet to a point on the East line of Lot 1358 of said Addition To Crawford, Florida; thence on said East line, S 00°34'02" E, a distance of 611.01 feet to the centerline of a 60 foot Roadway of said Addition To Crawford, Florida on file in the office of the Clerk of Court of Nassau County, Florida; thence on said centerline, N 88°17'02" E, a distance of 202.09 feet to a point on the Westerly Right of Way line of Woods Road also known as Old Callahan-Baldwin Road (60 foot Right of Way); thence N 88°17'02" E, a distance of 61.47 feet to a point on the Easterly Right of Way line of Woods Road also known as Old Callahan-Baldwin Road (60 foot Right of Way); thence departing said Easterly Right of Way continue on said centerline, N 88°17'02" E, a distance of 510.03 feet; thence N 01°41'38" W, a distance of 610.37 feet; thence N 89°58'01" E, a distance of 1194.31 feet; thence S 00°06'21" E, a distance if 676.84 feet; thence N 89°56'40" E, a distance of 660.08 feet; thence S 01°31'08" E, a distance of 661.23 feet; thence S 89°51'51" E, a distance of 610.98 feet; thence N 00°38'24" E, a distance of 135.68 feet to a point on the North line of Lot 1347 of aforesaid Addition To Crawford, Florida; thence on said North line, N 88°15'35" E, a distance of 82.97 feet to the centerline of 5th Street (60 foot Roadway per Plat); thence on said centerline, S 00°13'42" E, a distance of 666.33 feet; thence S 88°13'52" W, a distance of 663.25 feet on the South line of said Lot 1347 and to the Southwest corner of said Lot 1347, said point also being the Northeast corner of Lot 1337 of said Addition To Crawford, Florida; thence on the East line of said Lot 1337 and on the East line of Lot 1330 of said Addition To Crawford, Florida, S 00°20'09" E, a distance of 1333.25 feet to the centerline of Pine Avenue (60 foot Roadway per Plat) said point also being the South line of said Addition To Crawford, Florida and also being the North line of Crawford, Florida on file in the office of the Clerk of Court of Nassau County, Florida; thence on said centerline, S 88°10'25" W, a distance of 662.17 feet to the centerline of 9th Street (60 foot Roadway per Plat); thence on said centerline and being in said Crawford, Florida, S 00°22'16" E, a distance 662.92 feet; thence N 88°16'11" E, a distance of 662.55 feet on the North line of Lot 13 of said Crawford, Florida to the Northeast corner of said Lot 13; thence on the East line of said Lot 13, S 00°24'22" E, a distance of 664.02 feet to the Southeast corner of said Lot 13 said point also being the Northwest corner of Lot 19 of said Crawford, Florida; thence on the North line of said Lot 19, N 88°21'56" E, a distance of 662.93 feet to the centerline of 5th Street (60 foot Roadway per Plat); thence on said centerline, N 00°26'28" W, a distance of 1330.25 feet; thence continue on said centerline and being in aforesaid Addition To Crawford, Florida, N 00°17'21" W, a distance of 666.31 feet; thence N 88°12'09" E, a distance of 662.71 feet on the North line Lot 1332 of said Addition To Crawford, Florida to the Northeast corner of said Lot 1332 said point also being the Southwest Corner of Lot 1334 of said Addition To Crawford, Florida; thence on the West line of said Lot 1334, N 00°14'32" W, a distance of 580.92 feet; thence N 82°36'02" E, a distance of 668.20 feet to a point on the East line of said Addition To Crawford, Florida; thence on said East line, S 00°11'43" E, a distance of 1311.86 feet to the Southeast corner of said Addition To Crawford, Florida said point also being the Northeast corner of aforesaid Crawford, Florida; thence on the East line of said Crawford, Florida, S 00°30'38" E, a distance of 22.30 feet to a point on the Northwesterly Right of Way line of Seaboard Coast Line Railroad Company (200 foot Right of Way); thence on said Northwesterly Right of Way line, S 36°07'04" W, a distance of 3338.75 feet to the centerline of Cypress Avenue (60 foot Roadway per Plat); thence on said centerline, S 88°33'26" W, a distance of 1009.42 feet; thence N 00°21'13" W, a distance of 662.35 feet on the West line of the Easterly ½ of Lot 28 said Crawford, Florida to the Northwest corner of said Easterly ½ of Lot 28 said point also being on the South line of lot 21 of said Crawford, Florida; thence on the South line of said Lot 21 and on the South line of Lots 22 and 23 of said Crawford, Florida, S 88°27'41" W, a distance of 1643.29 feet to the Southwest corner of said Lot 23 and said point also being the Northeast corner of Lot 25 of said Crawford, Florida; thence on the East line of said Lot 25, S 00°15'55" E, a distance of 659.62 feet to the centerline of aforesaid Cypress Avenue; thence on said centerline, S 88°33'26" W, a distance of 90.02 feet along said centerline to a point on aforesaid Easterly Right of Way line of Woods Road also known as Old Callahan-Baldwin Road; thence continue on said centerline S 88°33'26" W, a distance 61.87 feet to the Westerly Right of Way line of Woods Road also known as Old Callahan-Baldwin Road; thence departing said Westerly Right of Way line on said centerline, S 88°33'26" W, a distance 511.81 feet to the West line of said

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NASSAU CO. SOLAR SITE ENERGY SITE

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wood.
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Crawford, Florida, and also being on the East line of Section 10, Township 1 North, Range 24 East Nassau County, Florida; thence on said East line, N 00°13'47" W, a distance of 1317.04 feet to the Southeast corner of the North ¼ of said Section 10; thence departing said East line and on the South line of said North ¼ of Section 10, S 88°16'55" W, a distance of 5414.79 feet to the Southwest corner of said North ¼ of Section 10 said point being the Southeast corner of the Northeast ¼ of the Northeast ¼ of Section 9, Township 1 North, Range 24 East Nassau County, Florida; thence departing said South line and on the South line of said Northeast ¼ of the Northeast ¼ of Section 9, N 88°01'12" W a distance of 1457.27 feet to the Southwest corner of said Northeast ¼ of Section 9; thence departing said South line and on the West line of said Northeast ¼ of the Northeast ¼ of Section 9, N 00°55'50" W a distance of 1323.45 feet to the Northwest corner of said Northeast ¼ of the Northeast ¼ of Section 9 said point also being the Southwest corner of the East ½ of the East ½ of the South ¾ of Section 4 , Township 1 North, Range 24 East, Nassau County, Florida; thence departing said West line and on the West line of said East ½ of the East ½ of the South ¾ of Section 4, N 00°41'33" E, a distance of 4077.62 feet to the Northwest corner of said East ½ of the East ½ of the South ¾ of Section 4; thence departing said West line and on the North line of said East ½ of the East ½ of the South ¾ of Section 4, S 89°30'07" E, a distance of 1379.01 feet to the Northwest corner of the South ¾ of Section 3, Township 1 North, Range 24 East, Nassau County, Florida; thence departing said North line and on the North line of said South ¾ of Section 3, N 89°28'34" E, a distance of 5417.14 feet to the Point of Beginning.

Containing 1318.99 Acres +/-

TRACT B:

A parcel of land, being a portion of Section 10, Township 1 North, Range 24 East, Nassau County, Florida, and being more particularly described as follows:

Commence at the Southeast corner of Section 10, Township 1 North, Range 24 East Nassau County, Florida; thence on the East line of said Section 10, N 00°13'47" W, a distance of 33.44 feet to a point on the Northerly County Maintained Right of Way line of Crawford Road and the Point of Beginning; thence departing said East line and on said Northerly County Maintained Right of Way line for the next 2 courses, N 78°55'15" W, a distance of 633.61 feet; thence N 49°03'03" W, a distance of 21.44 feet to a point on the Southeasterly Right of Way line of Crawford Industrial Park Rood (66 foot right of Way); thence departing said Southeasterly Right of Way line continue along said Northerly County Maintained Right of Way line, N 47°40'54" W, a distance of 89.58 feet to a point on the Northwesterly Right of Way line of Crawford Industrial Park Rood (66 foot right of Way); thence departing said Northwesterly Right of Way line and on said Proposed Northerly Right of Way line, for the next 13 courses, S 55°05'35" W, a distance of 35.84 feet: thence N 79°27'20" W, a distance of 916.59 feet; thence N 10°32'40" E, a distance of 20.00 feet; thence N 79°27'20" W, a distance of 55.00 feet; thence S 10°32'40" W, a distance of 20.00 feet; thence N 79°27'20" W, a distance of 2987.13 feet; thence N 10°32"40" E, a distance of 20.00 feet; thence N 79°27"20" W, a distance of 25.00 feet; thence S 10°32'40" W, a distance of 20.00 feet; thence N 79°27'20" W, a distance of 1675.00 feet: thence N 10°32'40" E, a distance of 20.00 feet; thence N 79°27'20" W, a distance of 25.00 feet; thence S 10°32'40" W, a distance of 20.00 feet; thence N 79°27'20" W, a distance of 531.59 feet to a point on the West line of the East 1/2 of the East 1/2 of the South 3/4 of Section 9, Township 1 North, Range 24 East. Nassau County. Florida; thence departing said Proposed Northerly Right of Way line and on said West line, N 00°55'50" W, a distance of 2493.01 feet to the Northwest corner of said East 1/2 of the East 1/2 of the South 3/4 of Section 9; thence departing said West line and on the North line of said East 1/2 of the East 1/2 of the South 3/4 of Section 9, S 88°01'12" E, a distance of 1457.27 feet to the Northeast corner of said East 1 /2 of the East 1/2 of the South 3/4 of Section 9 said point also being the Northwest corner of the South 3/4 of aforesaid Section 10; thence departing said North line and on the North line of said South .3/4 of Section 10, N 88°16'55" E, a distance of 5414.79 feet to the Northeast corner of said South 3/4 of Section 10; thence deporting said North line and on the East line of Section 10, S 00°13'47" E, a distance of 3030.09 feet to a point on the Northwesterly Right of Way line of Crawford Industrial Park Road; thence departing said Northwesterly Right of Way line and on said East line, S 00°13"47" E, a distance of 66.01 feet to a point on the Southeasterly Right of Way line of Crawford Industrial Park Road; thence departing said Southeasterly Right of Way line and on said East line, S 00°13"47" E, a distance of 821.59 feet to the Point of Beginning.

Containing 495.66 Acres +/-

Parcel 2 Total Acres 1814.65 +/-

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wood.

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Parcel 3- Additional Contiguous Lands South

A parcel of land lying in Sections 9 and 10 Township 1 North, Range 24 East, Nassau County, Florida, being more particularly described as follows:

Section 9: That part of the East ½ of the East ½ of the South ¾ of said Section 9 lying south of the proposed north right-of-way line of Crawford Road

Section 10: That part of said Section 10 lying south of the proposed north right-of-way line of Crawford Road

Containing 124.52 Acres +/-

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