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Commission Conference Agenda
September 1, 2020

Item 1

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FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Deas, Wendel) CH
Office of the General Counsel (Murphy, Passidomo) TLT

RE: Applications for Certificate of Authority to Provide Telecommunications Service

AGENDA: 9/1/2020 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

DOCKET NO.	COMPANY NAME	CERT. NO.
20200183-TP	Tel-Star Communications of Florida Inc.	8954
20200171-TX	Easton Telecom Services, L.L.C.	8955

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 entities 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: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Cowdery) SMC
Division of Economics (Coston, Draper, Guffey) JGH
Division of Engineering (Buys) TB

RE: Docket No. 20200186-EU – Proposed repeal of Rule 25-6.047, FAC, Constant Current Standards; Rule 25-6.081, FAC, Construction Practices; and Rule 25-6.082, FAC, Records and Reports, and amendment of Rule 25-6.054, FAC, Laboratory Standards; Rule 25-6.074, FAC, Applicability; and Rule 25-6.104, FAC, Unauthorized Use of Energy.

AGENDA: 09/01/20 – Regular Agenda – Rule Proposal - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

By letter of March 12, 2019, staff of the Joint Administrative Procedures Committee (JAPC) requested that we review sixteen of our rules from Chapter 25-6, Florida Administrative Code (F.A.C.), Electric Service by Electric Public Utilities, to determine if any of the older rules needed to be updated, whether technical changes were needed, or whether the rules needed to be amended for clarity to ensure comprehension and compliance. Staff determined as a result of its review that three of the rules should be recommended for repeal as obsolete and that three of the rules should be amended. The three rules recommended for repeal are Rules 25-6.047, F.A.C., Constant Current Standards; 25-6.081, F.A.C., Construction Practices; and 25-6.082, F.A.C., Records and Reports. The three rules recommended for amendment are Rules 25-6.054, F.A.C.,

Laboratory Standards; 25-6.074, F.A.C., Applicability; and 25-6.104, F.A.C., Unauthorized Use of Energy.

A Notice of Rule Development for Rules 25-6.047, 25-6.082, 25-6.054, 25-6.074, and 25-6.104, F.A.C., appeared in the February 7, 2020 edition of the Florida Administrative Register (F.A.R.). There was no request for a rule development workshop, and a workshop was not held. Combined written comments were provided on Rule 25-6.104, F.A.C., Unauthorized Use of Energy, by Florida Power & Light Company, Tampa Electric Company, Duke Energy Florida, Inc., Gulf Power Company, and Florida Public Utilities Company.

A Notice of Rule Development for Rule 25-6.081, F.A.C., appeared in the June 7, 2019 edition of the F.A.R., along with twelve other rules that staff had determined might be affected by the adoption of Rules 25-6.030, F.A.C., Storm Protection Plan and 25-6.031, F.A.C., Storm Protection Cost Recovery Clause.[1] Staff rule development workshops were held on all these rules on June 25, 2019, and on August 20, 2019. No comments were provided at the workshops or in post-workshop comments on Rule 25-6.081, F.A.C., and staff determined that Rule 25-6.081, F.A.C., did not need to be amended as a result of the new storm protection plan and cost recovery clause rules. However, JAPC's March 12, 2019 comments raised concerns about Rule 25-6.081, F.A.C., so it was added to this docket.

This recommendation addresses whether the Commission should propose the repeal of Rules 25-6.047, 25-6.081, and 25-6.082, F.A.C., and the amendment of Rules 25-6.054, 25-6.074, and 25-6.104, F.A.C. The Commission has jurisdiction pursuant to Sections 350.127(2), 366.03, 366.04(2)(a),(c), (f) and (5), 366.05(1) and (3), and 120.54, Florida Statutes (F.S.).

[1] Docket No. 20190131-EU, In re: 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.

Discussion of Issues

Issue 1: Should the Commission propose the repeal of Rules 25-6.047, F.A.C., Constant Current Standards; 25-6.081, F.A.C., Construction Practices; and 25-6.082, F.A.C., Records and Reports, and the amendment of Rules 25-6.054, F.A.C., Laboratory Standards; 25-6.074 F.A.C., Applicability; and 25-6.104, F.A.C., Unauthorized Use of Energy?

Recommendation: Yes, the Commission should propose the repeal of Rules 25-6.047, 25-6.081, and 25-6.082, F.A.C., and the amendment of Rules 25-6.054, 25-6.074, and 25-6.104, F.A.C., as set forth in Attachment A. The Commission should also certify Rules 25-6.054, 25-6.074, and 25-6.104, F.A.C., as minor violation rules. (Cowdery, P. Buys, Draper, Coston, Guffey)

Staff Analysis: The purpose of this rulemaking is to repeal or update and clarify these Chapter 25-6, F.A.C., rules in response to concerns or questions raised by JAPC staff. Staff determined that three of the rules should be repealed as obsolete and unnecessary and that three of the rules should be amended. Staff's recommendation for each rule is discussed below.

Rule 25-6.047, F.A.C., Constant Current Standards

JAPC staff asked that the Commission review and advise whether updates are needed to Rule 25-6.047, F.A.C., which has not been amended since adoption in 1969. This rule addresses equipment supplying constant current street lighting circuits. The rule has become obsolete and unnecessary because electric utilities no longer utilize this type of equipment. For this reason, staff recommends that the Commission should repeal Rule 25-6.047, F.A.C.

Rule 25-6.054, F.A.C., Laboratory Standards

The Laboratory Standards rule establishes reference standards for certain watthour meters. Section (4) of the rule requires each utility to maintain historical performance records for each watthour meter used as a basic reference standard for certain types of comparisons. This rule was last amended in 1997. JAPC staff raised a concern that the rule text did not identify a specific period of time that the historical performance records must be maintained by utilities. In order to address this concern, staff recommends that the Commission amend section (4) to state that the referenced historical performance records be maintained until the meter is no longer in use.

Rule 25-6.074, F.A.C., Applicability

Rules 25-6.074 through 25-6.082, F.A.C., are the Commission's rules for residential electric underground extensions. The substance of Rule 25-6.074, F.A.C., requires that extensions of electric distribution lines necessary to furnish permanent electric service to certain new structures must be made underground when required by an applicant or required by a governmental authority. This rule has not been amended since it was adopted in 1971.

JAPC staff asked that it be advised as to the necessity of Rule 25-6.074, F.A.C., in light of the definition of a rule pursuant to section 120.52(16), F.S.[2] In order to address this concern, staff

[2] Section 120.52(16), F.S., defines a rule as each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes

recommends that the Commission delete certain provisions as obsolete and unnecessary. Staff recommends that the Commission delete as obsolete the language in Subsection (1) stating that the rule applies to extensions applied for after the 1971 effective date of the rule. Additionally, staff recommends that the Commission should delete Subsection (2) that provides that extensions must be made in accordance with the rules for residential electric underground extensions. Section (2) is unnecessary because other rules addressing residential electric underground extensions by their terms apply to the extensions identified in Rule 25-6.074, F.A.C.

Rule 25-6.081, F.A.C., Construction Practices

Rule 25-6.081, F.A.C. is another of the rules for residential electric underground extensions. JAPC staff raised the concern that Rule 25-6.081, F.A.C., which has not been amended since it was adopted in 1971, does not meet the Section 120.52(16), F.S., definition of "rule" and appears to contain undefined goals without definitions, standards, or how compliance is to be determined.

Subsections (1) and (2) of the Construction Practices rule are meant to encourage utilities to keep the cost of underground construction as low as possible. Subsection (3) encourages joint use of trenches by utilities "to the extent practicable" "where economies can be realized without impairment to safety or service" with "care being taken to conform to any applicable Code and utility specification," and Subsection (4) encourages replacement of retired aerial facilities with underground construction "to the extent practicable" and "whenever economically feasible."

Staff agrees with the concern raised by JAPC staff. Rule 25-6.081, F.A.C., contains what staff would characterize as aspirational goals. As pointed out by JAPC staff, the provisions of Rule 25-6.081, F.A.C., do not meet the current requirements of Chapter 120, F.S., because they do not impose specific standards for meeting the goals or determining compliance with the rule.

Staff does not believe that Rule 25-6.081, F.A.C., can be amended to impose specific standards for meeting the identified goals. There are more specific rules concerning residential electric underground extensions that impose standards or requirements. As explained above, Rule 25-6.074, F.A.C., requires that extensions of electric distribution lines necessary to furnish permanent electric service to certain new structures must be made underground when required by an applicant or required by a governmental authority. Rule 25-6.076, F.A.C., addresses rights of way and easements, and Rule 25-6.077, F.A.C., addresses installation of underground distribution systems within new subdivisions. For the reasons explained above, staff recommends that Rule 25-6.081, F.A.C., should be repealed as obsolete and unnecessary.

Rule 25-6.082, F.A.C., Records and Reports

Rule 25-6.082, F.A.C., also addresses residential electric underground extensions. The Records and Reports rule contains certain recordkeeping requirements for underground distribution construction, operation and maintenance costs, and the use of joint trenching. This rule was last amended in 1997.

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any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

JAPC raised the concern that this rule did not specify how long these records must be maintained and asked whether another relevant record retention rule applied. Staff believes that Rule 25-6.078, F.A.C., Schedule of Charges, supersedes Rule 25-6.082, F.A.C. The data required by Rule 25-6.082, F.A.C., is provided to the Commission pursuant to Rule 25-6.078, F.A.C. For this reason, staff recommends that Rule 25-6.082, F.A.C., be repealed as obsolete and unnecessary.

Rule 25-6.104, Unauthorized Use of Energy, F.A.C.

The Unauthorized Use of Energy rule states that in the event of unauthorized or fraudulent use or meter tampering, the utility may bill the customer on a reasonable estimate of the energy used. This rule was last amended in 1982. JAPC stated that it is unclear how the Commission would determine whether an estimated charge is "reasonable."

In order to address this concern, and based on input from the investor-owned utilities in their written comments, staff is recommending that the Commission amend the unauthorized use of energy rule to allow the utility to bill the customer for the time period at issue using an estimate of the energy used, which may include factors such as historical usage, meter data, meter test data, approximate size of the residence or building, the types of appliances and equipment using electricity, use of air conditioning and electric heating, and the number of occupants. This language gives specificity and clarity to the rule and identifies factors currently used by utilities in determining estimates under this rule.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., the agency head must certify for each rule filed for adoption whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rules 25-6.047, 25-6.054, 25-6.074, 25-6.081, 25-6.082, and 25-6.104, F.A.C., are currently listed on the Commission's website as rules for which a violation would be minor because violation of the rules would 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.

If Rules 25-6.047, 25-6.081, and 25-6.082, F.A.C., are repealed as recommended by staff, these rules will be deleted from the Commission's website listing of minor violation rules after the repeals are certified by the Department of State. The amendments to Rules 25-6.054, 25-6.074, and 25-6.104, F.A.C., would not change their status as minor violation rules. Thus, staff recommends that the Commission certify Rules 25-6.054, 25-6.074, and 25-6.104, 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 concludes that the 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. Further, the SERC economic analysis 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. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended amendments to Rules 25-6.0440 and 25-6.0441, F.A.C.

Conclusion

Staff recommends that the Commission propose the repeal of Rules 25-6.047, 25-6.081, and 25-6.082, F.A.C., and the amendment of Rules 25-6.054, 25-6.074, and 25-6.104, F.A.C., as set forth in Attachment A. The Commission should also certify Rules 25-6.054, 25-6.074, and 25-6.104, F.A.C., as minor violation rules.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing, information regarding the SERC, proposals for a lower cost regulatory alternative, or JAPC comments are filed, the rules should be filed with the Department of State, and the docket should be closed. (Cowdery)

Staff Analysis: If no requests for hearing, information regarding the SERC, proposals for a lower cost regulatory alternative, or JAPC comments are filed, the rules should be filed with the Department of State, and the docket should be closed.

25-6.047 Constant Current Standards.

~~(1) Equipment supplying constant current street lighting circuits shall be so adjusted as to furnish as nearly as is practicable the rated current of the circuit supplied and, under normal operating conditions, the current shall not vary more than 4% above or below the rated current of the circuit.~~

~~(2) At least once a year the current output of the equipment supplying constant current circuits shall be checked and the equipment adjusted if necessary.~~

Rulemaking Authority 366.05(1) FS. Law Implemented 366.03, 366.04(2)(c), (5) FS. History–New 7-29-69, Formerly 25-6.47, Repealed _____.

25-6.054 Laboratory Standards.

(1) Each utility shall have available one or more watthour meters to be used as basic reference standards. The watthour meters must have an adequate capacity and voltage range to test all portable standards used by the utility and must meet the requirements described in subsection 25-6.055(1), F.A.C.

(a) Watthour meters used as basic reference standards shall not be in error by more than plus or minus 0.05 percent at 1.00 power factor or by more than 0.10 percent at 0.50 power factor. Watthour meters shall not be used to check or calibrate portable standard watthour meters unless the basic reference standard watthour meter has been checked and adjusted, if necessary, to the prescribed accuracy within the preceding twelve months.

(b) The percent registration of each basic reference standard watthour meter shall be compared with the percent registration of all other basic reference standard watthour meters used by the utility.

(2) Each utility shall establish traceability of its watthour standard to the national standards at least annually using one of the following methods:

(a) Through the Measurement Assurance Program (MAP) in which the National Institute of Standards and Technology (NIST) has provided a transport standard; or

(b) Through a transport standard which is of the same nominal value and of quality equal to the basic reference standards that are sent to NIST or to an independent laboratory approved by the Commission.

(3) If error exceeding that referenced in paragraph 25-6.054(1)(a), F.A.C., in the percent registration of a watthour meter used as a basic reference standard is observed in the comparisons in paragraph 25-6.054(2)(b), F.A.C., the utility shall investigate the source of the error. If the cause of the error cannot be corrected, use of the watthour meter as a basic reference standard shall be discontinued.

(4) Each utility shall maintain the following historical performance records for each watthour meter used as a basic reference standard until the meter is no longer in use ~~for the following types of comparisons~~:

(a) Comparisons of basic reference standards with national standards; and

(b) Intercomparisons made with other basic reference standards.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.05(1),(3) FS. History–New 7-29-69, Amended 4-13-80, 5-13-85, Formerly 25-6.54, Amended 5-19-97, _____.

25-6.074 Applicability.

~~(1)~~ Extensions of electric distribution lines ~~applied for after the effective date of these rules, and~~ necessary to furnish permanent electric service to all structures within a new residential subdivision, or to new multiple-occupancy buildings, shall be made underground when requested by an applicant or required by governmental authority.

~~(2) Such extensions of service shall be made by the utility in accordance with the provisions in these rules.~~

Rulemaking Authority <u>*350.127(2),*</u> *366.05(1) FS. Law Implemented 366.03 FS. History–New 4-10-71, Formerly 25-6.74, Amended* _____.

25-6.081 Construction Practices.

~~(1) The provisions in these rules are based on the premise that each applicant and utility will provide a cooperative effort to keep the cost of construction and installation of underground systems as low as possible.~~

~~(2) Each utility shall undertake to further improve underground construction proficiency toward the end that the downward trends in underground construction costs may be continued.~~

~~(3) To the extent practicable, joint use of trenches by all utilities shall be undertaken where economies can be realized without impairment to safety or service, care being taken to conform to any applicable Code and utility specification.~~

~~(4) To the extent practicable, where existing aerial facilities are being retired and removed from service, replacement will be made with underground construction whenever economically feasible.~~

Rulemaking Authority 366.05(1) FS. Law Implemented 366.03 FS. History–New 4-10-71, Formerly 25-6.81, Repealed_____.

25-6.082 Records and Reports.

~~(1) To insure the development and availability of appropriate data necessary to satisfy the reporting requirements of Rule 25-6.078, F.A.C., herein, each utility shall maintain separate records or sub-accounts for underground distribution construction, operation and maintenance costs.~~

~~(2) Records shall also be maintained of experienced results obtained in the use of joint trenching, in such manner and detail as will afford an opportunity to evaluate the economies available using this practice.~~

*Rulemaking Authority 366.04(2)(f), 366.05(1) FS. Law Implemented 350.115, 366.03, 366.04(2)(a), (f) FS. History–New 4-10-71, Formerly 25-6-82, Amended 10-29-97, Repealed*_____.

25-6.104 Unauthorized Use of Energy.

In the event of unauthorized or fraudulent use, or meter tampering, the utility may bill the customer for the time period at issue using an ~~on a reasonable~~ estimate of the energy used, which may include factors such as historical usage, meter data, meter test data, approximate size of the residence or building, the types of appliances and equipment using electricity, use of air conditioning and electric heating, and the number of occupants.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.03, 366.05(1) FS. History–New 7-29-69, Amended 4-13-80, 5-3-82, 11-21-82, _____.

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

DATE: July 23, 2020

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

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

RE: **Statement of Estimated Regulatory Costs (SERC)** for Recommended Repeal of Rules 25-6.047, Constant Current Standards; 25-6.081, Construction Practices; and 25-6.082, Records and Reports; Florida Administrative Code (F.A.C.) and Recommended Amendments to Rules 25-6.054, Laboratory Standards; 25-6.074, Applicability; and 25-6.104, Unauthorized Use of Energy, F.A.C.

Commission staff is recommending the repeal of Rules 25-6.047, Constant Current Standards; 25-6.081, Construction Practices; and 25-6.082, Records and Reports, F.A.C., because these rules have become obsolete, and do not meet the current requirements of Chapter 120, Florida Statutes (F.S.).

Commission staff is also recommending amendments to Rules 25-6.054, Laboratory Standards; 25-6.074, Applicability; and 25-6.104, Unauthorized Use of Energy, F.A.C., that are applicable to investor-owned electric utilities. Recommended amendments to Rule 25-6.054, F.A.C., will identify a specific period of time that the historical performance records must be maintained by electric utilities. Recommended amendments to Rule 25-6.074, F.A.C., delete unnecessary rule language in section (1) and delete section (2) in its entirety as it is obsolete. Recommended amendments to Rule 25-6.104, F.A.C., provides that the estimate of energy used for the time period at issue should be based upon factors such as historical usage, meter data, meter test data, approximate size of the residence or building, types of electric appliances and equipment in use, air conditioning and electric heating, and number of occupants for identification and recovery of the costs of unauthorized or fraudulently used energy. The recommended amendments to this rule codify existing utility practice to determine estimates under this rule. The recommended revisions are discussed in detail in the staff recommendation.

A Notice of Rule Development for Rules 25-6.047, 25-6.081, 25-6.082, 25-6.054, 25-6.074, and 25-6.104, F.A.C., appeared in the February 7, 2020 edition of the F.A.R. There was no request for a rule development workshop, and a workshop was not held.

The attached SERC addresses the economic impacts and considerations required pursuant to Section 120.541, F.S. The SERC analysis indicates that the recommended repeal of Rules 25-6.047, 25-6.081, and 25-6.082, F.A.C., and recommended amendments to Rules 25-6.054, 25-6.074, and 25-6.104, F.A.C., 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 recommended amendments would not potentially have adverse impacts on small businesses, 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.

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 25-6.047, 25-6.054, 25-6.074, 25-6.081, 25-6.082, and 25-6.104, F.A.C.

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

Yes ☐ No ☒

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

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

Yes ☐ No ☒

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

A. Whether the rule directly or indirectly:

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

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

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

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

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

1

Yes ☐ No ☒

Economic Analysis: Staff is recommending the repeal of Rules 25-6.047, Constant Current Standard; 25-6.081, Construction Practices; and 25-6.082, Records and Reports, F.A.C. because they have become obsolete, and/or do not meet the current requirements of Chapter 120, F.S. The repeal would not have an economic impact on the five investor-owned electric utilities.

Recommended amendments to Rule 25-6.054, Laboratory Standards, F.A.C., will identify a specific period of time that the historical performance records must be maintained by utilities. Recommended amendments to Rule 25-6.074, Applicability, F.A.C., delete as obsolete and unnecessary the rule language in sections (1) and (2). Recommended amendments to Rule 25-6.104, Unauthorized Use of Energy, F.A.C. provides that the estimate of energy used for the time period at issue should be based upon factors such as historical usage, meter data, meter test data, approximate size of the residence or building, types of electric appliances and equipment in use, air conditioning and electric heating, and number of occupants for identification and recovery of the costs of unauthorized or fraudulent use of energy. The recommended amendments to this rule codify existing practice currently used by utilities to determine estimates under this rule and will not create an additional economic impact on the five investor-owned electric utilities.

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.

Florida's five investor-owned electric utilities will be required to comply with the three amended rules related to laboratory standards, applicability of residential underground extensions, and unauthorized use of energy.

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

Recommended amendments to Rule 25-6.104, F.A.C. codifies existing practice currently used by electric utilities to estimate energy used for the time period at issue when Individuals tamper with electric meters and/or use electricity fraudulently.

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.

☐ 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.

☐ Minimal. Provide a brief explanation.

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

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

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

certification. As to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

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

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

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

Additional Information:

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

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

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

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: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Watts, Doehling, Ramos) TB
Division of Accounting and Finance (Blocker, Norris) ALM
Office of the General Counsel (Schrader) JSC

RE: Docket No. 20200155-WU – Application for certificate to operate water utility in Okaloosa County by Okaloosa Waterworks, Inc.

AGENDA: 09/01/20 – Regular Agenda – Rule Waiver; Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED:

PREHEARING OFFICER: Brown

CRITICAL DATES: 10/12/2020 (90-Day Rule Waiver Statutory Deadline)

SPECIAL INSTRUCTIONS: None

Case Background

On June 10, 2020, Okaloosa Waterworks, Inc. (Okaloosa) filed a Petition for Variance or Waiver of Rule 25-30.120, Florida Administrative Code (F.A.C.) (Waiver Petition). Rule 25-30.120, F.A.C., states, in part, that a utility is obligated to remit regulatory assessment fees (RAFs) for any year in which it is subject to the Florida Public Service Commission's (Commission) jurisdiction on or before December 31 of that year. The waiver is sought in connection with Okaloosa's application for an original water certificate[1] and a pass through increase of regulatory assessment fees (Certificate and Pass Through Application) also filed in this docket.

The utility was previously owned by the Blackman Community Water System (Blackman), a not-for-profit corporation providing service solely to its members, originally formed in

[1] Okaloosa is an existing utility currently charging for service.

December 2004.[2] U.S. Water Services Corporation (U.S. Water) acquired the utility via public auction on February 12, 2020. U.S. Water subsequently transferred ownership of the utility to Okaloosa, which was incorporated under the laws of Florida on February 13, 2020.

Okaloosa provides water service to approximately 228 residential customers consisting of single-family residential homes and 9 general service customers in northern Okaloosa County, near Baker, Florida. All of the customers are water only, and have 5/8" x ¾" meters. According to Okaloosa, Blackman's Board of Directors established the utility's current rates and charges on August 8, 2016. Okaloosa states that it has been charging these same rates and charges as Blackman since its acquisition of the utility.

Pursuant to Section 120.542(5), Florida Statutes (F.S.), staff published notice of Okaloosa's Waiver Petition in the Florida Administrative Register on June 15, 2020. In accordance with Rule 28-104.003(1), F.A.C., interested persons have 14 days after the publication of the notice to submit written comments. The Commission has not received any written comments pertaining to the Waiver Petition, and the time for such comments has expired.

On July 9, 2020, after an initial review of the Waiver Petition, staff sent Okaloosa a request for additional information related to its request for rule variance or waiver, pursuant to Section 120.54(7), F.S. Okaloosa responded with this additional information on July 13, 2020.[3]

This recommendation addresses Okaloosa's Waiver Petition. Issues relating to Okaloosa's Certificate and Pass Through Application will be addressed in a subsequent staff recommendation. The Commission has jurisdiction over this matter pursuant to Sections 367.071 and 120.542, F.S.

[2] Pursuant to Section 367.022(7), F.S., nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives are exempt from Commission regulation.
[3] Document No. 03739-2020.

Discussion of Issues

Issue 1: Should the Commission approve Okaloosa's request for waiver or variance of Rule 25-30.120, F.A.C.?

Recommendation: Yes, Okaloosa has demonstrated that the purpose of the underlying statutes of Rule 25-30.120, F.A.C., will be, or has been, achieved by other means, and that the strict application of the rule would place a substantial hardship on Okaloosa. Therefore, staff recommends that the Commission approve Okaloosa's Waiver Petition, and temporarily waive the requirements of Rule 25-30.120, F.A.C., until such time as 1) the Commission establishes approved rates for Okaloosa and Commission staff administratively approves a pass through of RAFs pursuant to Section 367.081(4)(b), F.S., or 2) within three months of the Commission's vote regarding Okaloosa's Waiver Petition, whichever occurs first. (Schrader)

Staff Analysis: As stated above, Okaloosa filed a Waiver Petition seeking a waiver or variance of a requirement of Rule 25-30.120, F.A.C. The rule requires that a utility pay RAFs for a given year if the utility is subject to the Commission's jurisdiction as of December 31 of that year or is subject to such jurisdiction during any part of that year. Okaloosa's Waiver Petition seeks a temporary waiver or the variance of this RAF payment obligation until such time as Okaloosa is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S. That section allows water and wastewater utilities to automatically revise rates, with verified notice to the Commission 45 days prior to implementing such revision, when the utility is subject to changes to certain specified costs—including RAFs. The effect of approving this Waiver Petition would be to permanently waive any RAFs that would have been otherwise due from Okaloosa to the Commission for the months it has owned and operated the utility, until the date Okaloosa's Certificate and Pass Through Application is approved.

Section 120.542(2), F.S., authorizes the Commission to grant waivers or variances from its rules when the petitioner subject to the rule has demonstrated that 1) the purpose of the underlying statute will be or has been achieved by other means, and 2) a strict application of the rule would cause the applicant substantial hardship or would violate principles of fairness. "Substantial hardship," as defined in Section 120.542, F.S., means that the petitioner has demonstrated economic, technological, legal, or other hardship. A violation of "principles of fairness" occurs when the an agency's literal application of a rule would affect a particular person in a manner significantly different from the way it would affect other persons who are similarly situated and subject to that rule.

As stated in Okaloosa's Waiver Petition, Blackman was founded as an exempt cooperative and was not subject to the Commission's jurisdiction until being acquired by U.S. Water and subsequently transferred to Okaloosa. Thus, the cost of RAFs was not accounted for in Blackman's rates.

The particular provision of Rule 25-30.120, F.A.C., for which Okaloosa is seeking a waiver or variance from is the obligation, under subsection (2), that requires all utilities under the Commission's jurisdiction during a particular calendar year pay to RAFs for that year. The

underlying statutory provisions pertaining to the payment of RAFs and Rule 25-30.120, F.A.C., are Sections 367.145 and 350.113, F.S. Of note, Subsections 367.145(1) and (3), F.S., state that:

> (1) The commission shall set by rule a regulatory assessment fee that each utility must pay in accordance with s. 350.113(3);
> . . . .
> (3) Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the commission pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems.

Section 350.113, F.S., specifies the purposes and management of the Commission's Florida Public Service Regulatory Trust Fund, which is where RAFs are deposited. Of specific relevance here, 350.113(3), F.S., states, in part, that RAFs "to the extent practicable, be related to the cost of regulating" each type of regulated utility.

Sections 367.145 and 350.113, F.S., convey that the purpose of assessing RAFs is to fund the cost of the Commission's regulation of utilities. Central to Okaloosa's argument is that RAFs are not included in its current rates due to those rates being established by Blackman's Board in 2016, which is prior to the utility becoming subject to the Commission's jurisdiction in February 2020. Regulated utilities can request that the cost of RAFs be included in their rates utilitizing the pass through provisions in Section 367.081(4)(b), F.S. The Commission has previously stated that pass through items cannot be approved without the utility first having "approved rates" established by the Commission.[4] Therefore, as Okaloosa notes, a pass through of RAFs is not permissible until such time as it receives its water certificate and the Commission establishes approved rates for Okaloosa. For that reason, Okaloosa argues it is placed at an unfair financial disadvantage due to its inability to collect RAFs in its current rates.

Okaloosa contends that the Commission has incurred minimal to no costs of regulating the utility under Chapter 367, F.S., absent the review of Okaloosa's Certificate and Pass Through Application in this docket. Okaloosa also notes that it has paid the applicable filing fee of $1,500 as required by Section 367.145(2), F.S., and Rule 25-30.020, F.A.C., for the processing of its filing. Additionally, as Okaloosa points out in its July 13, 2020 response to staff,[5] the Commission has previously granted a waiver of RAFs for water utilities in similar situations.[6]

[4] Order No. PSC-2018-0075-PAA-WU, issued February 12, 2018, in Docket No. 20170155-WU, In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.; and PSC-2018-0441-PAA-WU, issued August 29, 2018, in Docket No. 20170253-WU, In re: Application for grandfather water certificate in Leon County by Lake Talquin Water Company, Inc.
[5] Document No. 03739-2020.
[6] Order No. PSC-2018-0075-PAA-WU, issued February 12, 2018, in Docket No. 20170155-WU, In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.; and PSC-2018-0441-PAA-WU, issued August 29, 2018, in Docket No. 20170253-WU, In re: Application for grandfather water certificate in Leon County by Lake Talquin Water Company, Inc.

Based on the foregoing analysis and the information provided within Okaloosa's Waiver Petition, staff believes that Okaloosa has met the requirements of Section 120.542, F.S., in regard to temporarily waiving the requirements of Rule 25-30.120, F.A.C. Okaloosa has demonstrated that the purpose of the of the statutes underlying Rule 25-30.120, F.A.C. will be, or has been, achieved by other means, because minimal Commission regulation of the utility has been required to this point. Further, staff believes the strict application of Rule 25-30.120, F.A.C., would place a substantial hardship on Okaloosa by requiring it to pay regulatory expenses for which it is not currently compensated through rates. Therefore, staff recommends that the Commission approve Okaloosa's Waiver Petition, and temporarily waive the requirements of Rule 25-30.120, F.A.C., until such time as 1) the Commission establishes approved rates for Okaloosa and Commission staff administratively approves a pass through of RAFs pursuant to Section 367.081(4)(b), F.S., or 2) within three months of the Commission's vote regarding Okaloosa's Waiver Petition, whichever occurs first.

Issue 2: Should this docket be closed?

Recommendation: This docket should remain open pending the Commission's final decision regarding Okaloosa's Certificate and Pass Through Application. If no person whose substantial interests are affected by the proposed agency action for the rule waiver files a protest within 21 days of the issuance of the order, a consummating order should be issued. (Schrader)

Staff Analysis: This docket should remain open pending the Commission's final decision regarding Okaloosa's Certificate and Pass Through Application. If no person whose substantial interests are affected by the proposed agency action for the rule waiver files a protest within 21 days of the issuance of the order, a consummating order should be issued.

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: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (DuVal) SMC
Division of Accounting and Finance (Bulecza-Banks, Buys, Cicchetti, Fletcher, Mouring) ALM
Division of Economics (Coston, Draper, Galloway, McNulty) JGH
Division of Engineering (Ellis, Ramos) TB

RE: Docket No. 20200182-EI – Joint petition for declaratory statement regarding application of MFR requirements in Rule 25-6.043(1), F.A.C. or, in the alternative, petition for variance, by Florida Power & Light Company and Gulf Power Company.

AGENDA: 09/01/20 – Regular Agenda – Decision on Declaratory Statement as to Issue No. 1 – Proposed Agency Action as to Issue No. 2 – Participation is at the Discretion of the Commission as to Issue No. 1 – Interested Persons May Participate as to Issue No. 2

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: 10/07/20 (Final Order on Request for Declaratory Statement Must be Issued by this Date pursuant to Section 120.565(3), Florida Statutes, and Request for Variance Deemed Approved if Not Granted or Denied by this Date pursuant to Section 120.542(8), Florida Statutes)

SPECIAL INSTRUCTIONS: None

Case Background

On July 9, 2020, Joint Petitioners, Florida Power & Light Company (FPL) and Gulf Power Company (Gulf), filed a joint petition for a declaratory statement or, in the alternative, a variance from Rule 25-6.043(1), Florida Administrative Code (F.A.C.) (Joint Petition). FPL and Gulf ask the Commission to declare that, based on the facts presented, Joint Petitioners' proposed approach for preparing Minimum Filing Requirements (MFRs) for a rate case filed in 2021 would meet the MFR requirements set forth in Rule 25-6.043(1), F.A.C. In the alternative, Joint Petitioners request a variance from Rule 25-6.043(1), F.A.C., that would allow use of the proposed approach, as described within the Joint Petition.

Rule 25-6.043(1), F.A.C.

Rule 25-6.043(1), F.A.C., sets forth the general filing instructions for investor-owned electric utilities' MFRs when submitting applications for changes in rates.

Rule 25-6.043(1), F.A.C., states, in pertinent part:

> (a) The petition under Sections 366.06 and 366.071, F.S., for adjustment of rates must include or be accompanied by:
>
> 1. The information required by Commission Form PSC/AFD/011-E (2/04), entitled "Minimum Filing Requirements for Investor-Owned Electric Utilities" which is incorporated into this rule by reference. The form may be obtained from the Commission's Division of Accounting and Finance.

This requirement implements the Commission's authority under Section 366.06, Florida Statutes (F.S.), to investigate, determine, and consider certain costs and factors when fixing and changing rates for investor-owned electric utilities.

Section 366.06(1), F.S., states, in pertinent part:

> All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service . . .. In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

Joint Petition

The Joint Petition states that NextEra Energy, FPL's parent company, completed its acquisition of Gulf in January 2019. Subsequently, FPL and Gulf began to consolidate various aspects of

their utility operations but still presently operate as separate entities with their own sets of books and rates for their respective customers. FPL and Gulf have requested the Federal Energy Regulatory Commission's approval of an internal corporate reorganization in which Gulf will merge with and into FPL, effective January 1, 2021. Joint Petitioners state that this decision is expected no later than the end of October 2020.

Joint Petitioners reviewed the MFR requirements for a rate filing in 2021 that would result in new consolidated rates reflecting the integration of FPL and Gulf operations in a fully-consolidated FPL ("Consolidated FPL"). Joint Petitioners' review identified that although MFR data for 2022 and beyond would be based on the operations of Consolidated FPL, only limited data will be available on a consolidated basis prior to 2022.

Accordingly, in paragraph 8 of the Joint Petition, FPL and Gulf propose to prepare the individual MFRs that seek data for the test period and prior years for which consolidated data are not available as follows:

> (a) There are 55 MFRs that contemplate the reporting of accounting and other data for years prior to the test year. Those MFRs are identified on Exhibit 1 to this petition. For the Exhibit 1 MFRs, FPL proposes to provide Consolidated FPL data for the 2022 test year on an initial page or set of pages ("Page 1"). Then, for reporting on any years prior to the 2022 test year on the Exhibit 1 MFRs, FPL and Gulf would provide standalone data for legacy FPL operations on a second page or set of pages ("Page 2") and standalone data for legacy Gulf operations on a third page or set of pages ("Page 3"). Together, Pages 1, 2 and 3 would provide a complete view of the requested data for all of the years required by the Exhibit 1 MFRs, while recognizing the reality that in the years prior to 2022, FPL and Gulf were operated as separate entities with their own standalone rate base, operating expenses, etc. Attached as part of Exhibit 1 is a mock-up of MFR B-22 showing on Pages 1, 2 and 3 illustrative data for Consolidated FPL, standalone legacy FPL and standalone legacy Gulf, respectively.
>
> (b) In addition to the 55 MFRs identified in Exhibit 1, there are 8 other MFRs that likewise contemplate the reporting of accounting and other data for years prior to the test year but also require calculations and/or comparisons of data between the 2022 test year and the earlier years. The calculations and comparisons would not be meaningful if made using Consolidated FPL data for the 2022 test year and standalone legacy FPL (or standalone legacy Gulf) data for the prior years. Those MFRs are identified on Exhibit 2 to this petition. In order to provide a basis for the calculations and comparisons required for the Exhibit 2 MFRs, FPL and Gulf propose to add the legacy FPL and legacy Gulf data together for years prior to 2022 and report the resulting totals in the necessary locations on Page 1 of the Exhibit 2 MFRs. FPL would include a footnote to those MFRs making it clear that the totals may not precisely reflect what the results of actual consolidation would have been if FPL and Gulf had been operated as one company but represent the available

> information for the purpose of the MFRs. Attached as part of Exhibit 2 is a mock-up of each Exhibit 2 MFR showing where the "Legacy FPL + Legacy Gulf" totals would be provided, along with the appropriate footnote.

Joint Petitioners' response to Staff's First Data Request, filed July 24, 2020, stated that two additional MFR schedules, Schedules F6 and F7, should be included with the 55 schedules in Exhibit 1. Schedule F6 is "Forecasting Models – Sensitivity of Output to Changes in Input Data," and Schedule F7 is "Forecasting Models – Historical Data."

Joint Petitioners request that the Commission issue a declaratory statement confirming Joint Petitioners' assertion that the proposed approach in Paragraphs 8(a) and 8(b) of the Joint Petition, as described above, would adequately and appropriately satisfy the MFR requirements of Rule 25-6.043(1), F.A.C. Alternatively, Joint Petitioners request that the Commission grant FPL a variance from Rule 25-6.043(1), F.A.C., to allow FPL to complete and file the Exhibit 1 and Exhibit 2 MFRs as proposed in Paragraphs 8(a) and 8(b) of the Joint Petition, as described above.

Procedural Matters

Pursuant to Section 120.565(3), F.S., and Rule 28-105.0024, F.A.C., a Notice of Declaratory Statement was published in the July 13, 2020 edition of the Florida Administrative Register to inform interested persons of the Joint Petition. No requests to intervene were filed, and the time for filing such a request expired on August 3, 2020.

Pursuant to Section 120.542(6), F.S., a Notice of Variance or Waiver was published in the July 13, 2020 edition of the Florida Administrative Register. No comments were received, and the time for filing comments expired on July 27, 2020.

This recommendation addresses FPL and Gulf's Joint Petition. Pursuant to Section 120.565(3), F.S., a final order on a request for a declaratory statement must be issued within 90 days. Pursuant to Section 120.542(8), F.S., the Commission must grant or deny a request for variance within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. As such, the statutory deadline for this proceeding is October 7, 2020. The Commission has jurisdiction pursuant to Sections 120.542 and 120.565, F.S., and Chapter 366, F.S.

Discussion of Issues

Issue 1: Should the Commission grant FPL and Gulf's Joint Petition for Declaratory Statement?

Recommendation: No, the Joint Petition for Declaratory Statement should be denied. (DuVal)

Staff Analysis: Joint Petitioners request that the Commission issue a declaratory statement confirming that the proposed approach described in Paragraphs 8(a) and 8(b) of the Joint Petition would meet the MFR requirements set forth in Rule 25-6.043(1), F.A.C.

Law Governing Petitions for Declaratory Statement

Section 120.565, F.S., sets forth the necessary elements of a petition for declaratory statement. This section provides:

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

Rule 28-105.001, F.A.C., states the purpose of a declaratory statement:

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

Rule 28-105.002(5), F.A.C., requires that a petition for declaratory statement include a description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances. A party seeking a declaratory statement must not only show that it is in doubt as to the existence of some right or status, but also that there is a bona fide, actual, present, and practical need for the declaration. *State Department of Environmental Protection v. Garcia*, 99 So. 3d 539, 544-45 (Fla. 3d DCA 2011). A declaratory statement is intended to enable members of the public to definitively resolve ambiguities of law in the planning of their future affairs and to enable the public to obtain definitive binding advice as to the applicability of agency law to a particular set of facts. *Department of Business and Professional Regulation, Div. of Pari-Mutual Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374, 382 (Fla. 1999).

Declaratory Statement requested by FPL and Gulf

FPL and Gulf ask the Commission to issue a declaratory statement affirming that:

> Preparing the Exhibit 1 and Exhibit 2 MFRs as described in Paragraphs 8(a) and 8(b) of FPL's and Gulf's July 9, 2020 joint petition for declaratory statement would adequately and appropriately satisfy the MFR requirements of Rule 25-6.043(1) for years prior to 2022 when FPL and Gulf operations were not yet consolidated.

Staff's Analysis of Joint Petition for Declaratory Statement

The purpose of a declaratory statement is to address the applicability of statutory provisions, orders, or rules of the agency in particular circumstances. Section 120.565, F.S.; *See Chiles v. Department of State, Division of Elections*, 711 So. 2d 151, 154 (Fla. 1st DCA 1998). Further, pursuant to Rule 28-105.001, F.A.C., a petition for a declaratory statement may be used to resolve questions or doubts as to how an agency's statutes and rules may apply to the petitioner's particular circumstances.

The Joint Petition contains specific facts as required by Section 120.565(2), F.S., and provides that the requested declaratory statement will enable Joint Petitioners to file MFRs for the establishment of rates for Consolidated FPL that provide a meaningful representation of operations for both the pre- and post-consolidation periods. However, the Joint Petition does not ask the Commission to issue a declaratory statement concerning the applicability of the Commission's pertinent statutes and rules to Joint Petitioners' particular circumstances. Rather, the Joint Petition asks the Commission to permit Joint Petitioners to provide alternative MFR information in lieu of the MFR information required by Rule 25-6.043(1), F.A.C., due to unavailability or impossibility stemming from Joint Petitioners' particular circumstances.

The declaratory statement procedure is meant to help individuals resolve ambiguities of law encountered in the planning of their future affairs regarding the applicability of an agency's laws to the individual's particular set of facts. *Dept. of Bus. and Prof'l Reg.*, 747 So. 2d at 382. The Joint Petition does not allege that ambiguity exists regarding the applicability of Section 366.06, F.S., and Rule 25-6.043(1), F.A.C., to Joint Petitioners' 2021 rate case filing. To the contrary, the Joint Petition acknowledges the requirement to file MFRs in a 2021 rate case filing and outlines Joint Petitioners' proposal to provide information that will satisfy the requirements of the Commission's laws. More narrowly, the requested declaratory statement imparts a procedure for *how* a merged company can submit satisfactory MFR filings, not *if* a merged company is required to submit satisfactory MFR filings. Thus, a declaratory statement is not the proper vehicle for the relief requested by the Joint Petitioners.

Conclusion

Based on the above, staff recommends that the Commission deny Joint Petitioners' request for a declaratory statement.

Issue 2: Should the Commission grant FPL and Gulf's alternative request for variance from Rule 25-6.043(1), F.A.C.?

Recommendation: Yes, FPL and Gulf's alternative request for variance from Rule 25-6.043(1), F.A.C., should be granted to allow FPL to complete and file the Exhibit 1 MFRs (as modified to include Schedules F6 and F7) and Exhibit 2 MFRs as proposed in Paragraphs 8(a) and 8(b) of the Joint Petition for a 2021 rate case filing, subject to discovery and cross-examination procedures remaining intact. (DuVal)

Staff Analysis: Joint Petitioners request that, if the requested declaratory statement is denied, the Commission grant FPL a variance from Rule 25-6.043(1), F.A.C., to allow FPL to complete and file the MFRs attached as Exhibits 1 and 2 as proposed in Paragraphs 8(a) and 8(b) of the Joint Petition for a 2021 rate case filing. Upon staff's inquiry, Joint Petitioners later modified Exhibit 1 to include two additional MFR schedules.[1] The rule requires investor-owned electric utilities to file MFR schedules when submitting a petition for rate relief. These schedules include substantial accounting, engineering, rate, cost of capital, and other data that the Commission, staff, and parties use in reviewing the rate request. Joint Petitioners assert that their proposed approach would achieve the purpose of the underlying statute implemented by Rule 25-6.043(1), F.A.C., and that not permitting their proposed approach would create a substantial hardship and violate principles of fairness.

Law Governing Petitions for Variance

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

Purpose of the Underlying Statute

The purpose of Section 366.06, F.S., is to ensure that investor-owned electric utilities only charge or receive rates that have been approved by the Commission; to ensure that the Commission only approves rates that are fair, just, and reasonable for each customer class; and to set a procedure for fixing and changing rates.

Joint Petitioners request a variance from the Rule 25-6.043(1), F.A.C., requirement for submission of certain MFR information for a 2021 rate case filing because certain consolidated data does not yet exist. Instead, FPL would submit the MFR information as described in Paragraphs 8(a) and 8(b) and Exhibits 1 and 2 of the Joint Petition for a 2021 rate case filing. Joint Petitioners assert that this proposed approach will provide the Commission with the type of information contemplated by those MFRs, to the maximum extent available, and ensure that the Commission can evaluate a rate case filing based on those MFRs. For these reasons, Joint Petitioners assert that its proposed filings would achieve the underlying purpose of Section 366.06, F.S.

[1] Joint Petitioners provided that Schedules F6 and F7, omitted from the Joint Petition, should be included with the 55 schedules appearing in Exhibit 1. Schedule F6 is "Forecasting Models – Sensitivity of Output to Changes in Input Data" and Schedule F7 is "Forecasting Models – Historical Data."

Staff believes that Joint Petitioners' proposed approach to preparing MFRs for a 2021 rate case filing will allow the Commission to evaluate the rate case based on those MFRs and fulfill its statutory obligation to approve rates that are fair, just, and reasonable, as long as the Commission, staff, and parties maintain the ability to conduct appropriate discovery and cross-examination on such information. Therefore, staff recommends that the purpose of the underlying statute will be achieved by other means for a 2021 rate case filing, providing that discovery and cross-examination procedures remain intact.

Substantial Hardship

Joint Petitioners assert that application of the rule would create a substantial hardship and violate principles of fairness because they do not believe that a more reasonable or meaningful way exists to submit MFRs for a 2021 rate case filing. Joint Petitioners further state that if no variance is granted, FPL risks being found deficient in its rate case filing, which would impose a substantial hardship and violate principles of fairness.

Staff believes that a strict application of Rule 25-6.043(1), F.A.C., in Joint Petitioners' potential 2021 rate case filing would create a substantial hardship for Joint Petitioners based on the unavailability of certain MFR information. Therefore, staff recommends that Joint Petitioners have demonstrated that a strict application of the rule would create a substantial hardship under the circumstances described by Joint Petitioners.

Conclusion

Based on the above, staff recommends that the Commission grant Joint Petitioners' request for variance from Rule 25-6.043(1), F.A.C., to allow FPL to complete and file the Exhibit 1 MFRs (as modified to include Schedules F6 and F7) and Exhibit 2 MFRs as proposed in Paragraphs 8(a) and 8(b) of the Joint Petition for a 2021 rate case filing, subject to discovery and cross-examination procedures remaining intact.[2]

[2] Pursuant to Section 120.542(1), F.S., agencies are authorized to impose conditions on a grant of variance to the extent necessary in order to achieve the purpose of the underlying statute.

Issue 3: Should this docket be closed?

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

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

Item 4A

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 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Crawford, Stiller)
Division of Accounting and Finance (Cicchetti)
Division of Engineering (Ballinger)

RE: Docket No. 20200001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

AGENDA: August 18, 2020 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: 90 days from the date of delivery of Recommended Order. Section 120.569(1)(l)2, F.S.

SPECIAL INSTRUCTIONS: None

Case Background

The Commission opened Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, referred to as the Fuel Clause, on January 2, 2019. The Fuel Clause is a perennial docket closed, reopened, and renumbered every year in which the Commission processes all petitions filed by investor-owned electric utilities seeking to recover the cost of fuel and fuel-related activities needed to generate electricity.

Duke Energy Florida, LLC (DEF) is an investor-owned electric utility operating in the State of Florida. DEF reaffirmed its party status in Docket No. 20190001-EI on January 3, 2019. Likewise, the Office of Public Counsel (OPC), authorized by Section 350.0611, Florida Statutes (F.S.), to provide legal representation to Florida electric utility customers before the

Commission, reaffirmed its party status in Docket No. 20190001-EI on January 4, 2019. The Florida Industrial Power Users Group (FIPUG), an association of utility customers who consume large amounts of electricity, and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS Phosphate), a fertilizer company, reaffirmed their party status on January 4, 2019 and January 15, 2019, respectively.

The Commission issued Order No. PSC-2019-0059-PCO-EI on February 13, 2019, establishing the procedures to be followed. On March 1, 2019, DEF filed its Petition for approval of fuel cost recovery and capacity cost recovery with generating performance incentive factor actual true-ups for the period ending December 2018. At that time DEF also filed the direct testimony of Jeffrey Swartz which incorporated Exhibit JS-1, filed in the 2018 Fuel Clause. On September 13, 2019, OPC filed the direct testimony and exhibits of Richard A. Polich, non-confidential Exhibits RAP-1 through RAP-2, and confidential Exhibits RAP-3 through RAP-9. On September 26, 2019, DEF filed the rebuttal testimony of Jeffrey Swartz with confidential Exhibits JS-2 through JS-4.

A Prehearing Conference was held on October 22, 2019, and Prehearing Order No. PSC-2019-0466-PHO-EI was issued on October 31, 2019. At that time two issues associated with the testimony of witnesses Swartz and Polich were identified: Issues 1B and 1C. Issue 1B and 1C state as follows:

> Issue 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant, and if not, what action should the Commission take with respect to replacement power costs?
>
> Issue 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow Plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

It became readily apparent that large portions of the testimony and exhibits of both witnesses Swartz and Polich associated with these issues, as well as the Commission staff's proposed trial exhibits, were highly confidential in nature. This fact made it impossible to conduct meaningful direct or cross examination without reference to, and discussion of, confidential material. The only way to conduct a hearing based substantially on confidential material would be to close the hearing to the public. Because the Commission must conduct all of its proceedings in the sunshine under the law[1] the Commission does not have the ability to close a hearing, even one which deals extensively with confidential materials and testimony. Therefore, in order to maintain the confidentiality of these materials, DEF Bartow Unit 4 Issues 1B and 1C were referred by the Commission to the Division of Administrative Hearings (DOAH) on November 8, 2019.

[1] Section 286.011, F.S.

Administrative law judge (ALJ) Lawrence P. Stevenson conducted a closed final evidentiary hearing on February 4-5, 2020. At the hearing, DEF presented the confidential testimony of Jeffrey Swartz, with his prefiled direct and rebuttal testimony inserted into the record as though read. DEF's Exhibit Nos. 80-82 were admitted into evidence. OPC presented the confidential testimony of Richard A. Polich, with his prefiled testimony inserted into the record as though read. OPC's Exhibit Nos. 68-75, 101-109, and 115-117 were admitted into evidence. Commission staff Exhibit Nos. 110 and 111 were admitted into evidence. FIPUG's Exhibit No. 118 and PCS Phosphate's Exhibit Nos. 112 and 113 were also admitted into evidence. The revised Comprehensive Exhibit List (CEL) was admitted into evidence by stipulation as Exhibit No. 114.

A three-volume transcript of the final hearing was filed with the Commission Clerk on February 18, 2020, and was provided to the DOAH Clerk on February 24, 2020. DEF, Commission staff, and OPC, jointly with PCS Phosphate and FIPUG, timely filed confidential proposed recommended orders on March 20, 2020. The ALJ issued his Recommended Order[2] on April 27, 2020. A redacted version of the Recommended Order is found in Attachment A to this recommendation.

On May 12, 2020, DEF submitted exceptions to the Recommended Order. A redacted version of DEF's exceptions is found in Attachment B to this recommendation. OPC, jointly with PCS Phosphate and FIPUG (collectively, the Intervenors), filed a Response to DEF's Exceptions, a redacted version of which is found in Attachment C to this recommendation.

Overview of the Recommended Order

This case involves the operation of DEF's Bartow Unit 4 combined cycle natural gas plant and whether DEF operated the plant prudently from the time it was brought on line in June 2009 until February 2017. Bartow Unit 4 is comprised of a steam turbine manufactured by Mitsubishi Hitachi Power Systems (Mitsubishi) with a gross output of 420 MW connected to four M501 Type F combustion turbines. The steam turbine is an "after-market" unit which was originally designed for Tenaska Power Equipment, LLC (Tenaska) to be used in a 3x1 configuration with three M501 Type F combustion turbines with a gross output of 420 MW. Prior to purchasing the steam turbine, DEF's predecessor, Progress Energy Florida, LLC contracted with Mitsubishi to evaluate the steam turbine design conditions and to update the [redacted] for a 4x1 configuration. As required by its contract, [redacted]

The Bartow plant has experienced five outages since it was brought on line in June 2009: March 2012 (planned), August 2014 (planned), April 2016 (planned), October 2016 (forced), and February 2017 (forced).

In March 2012 during a scheduled outage, DEF discovered that the [redacted] L-0 blades in the low pressure section of the steam turbine were damaged. The [redacted] L-0 blades were replaced with

[2] "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof.

[redacted] and the plant was operated until August 2014 when the plant was taken out of service to [redacted] The plant came back on line in December 2014 and ran until April 2016 when it was taken off line for routine valve work and L-0 blade inspection. The plant was placed back in service in May 2016 with a [redacted] and operated until October 2016, when DEF shut the plant down due to excessive vibration and loss of [redacted] In December 2016 the plant was put back in service with the [redacted], and was taken out of service in February of 2017 due to a [redacted] DEF brought the plant back on line in April 2017 with a pressure plate installed in the low pressure section of the steam turbine, which effectively decreased the output of the plant from 420 to 380 MW. DEF continued to operate the plant with the pressure plates until September 28, 2019.

There are two amounts that are associated with the initial prudence question: 1) replacement power costs for the February 2017 outage in the amount of $11.1 million, and 2) May 2017 through September 2019 unit derating[3] costs in the amount of $5,016,782 million.

Petitioner, DEF, has the burden of proving by a preponderance of the evidence, that it acted prudently in the operation of Bartow Unit 4 up to and restoring the unit to service after the February 2017 forced outage. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after March 2017, and the installation of a pressure plate, Bartow Unit 4 could no longer produce its rated nameplate capacity of 420 MW. The standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made." [4]

In his Recommended Order, the ALJ detailed the relevant facts and legal standards required to determine whether DEF acted prudently in its operation of Bartow Unit 4 from June 2009 until February 2017. In his conclusion, the ALJ recommended that the Commission find that DEF failed to demonstrate that it acted prudently in the operation of its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that DEF should refund a total of $16,116,782 to its customers.

Legal standards for review of recommended orders

Section 120.57(1)(l), F.S., establishes the standards an agency must apply in reviewing a Recommended Order following a formal administrative proceeding. The statute provides that the agency may adopt the Recommended Order as the Final Order of the agency or may modify or reject the Recommended Order. An agency may only reject or modify an ALJ's findings of fact if, after a review of the entire record, the agency determines and states with particularity that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.[5]

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[3] "Derating" is the reduction in MW output due to installing pressure plates in place of the L-0 blades in the low pressure section of the steam turbine.
[4] *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).
[5] Section 120.57(1)(l), F.S.

Section 120.57(1)(l), F.S., also states that an agency in its final order may reject or modify conclusions of law over which it has substantive jurisdiction and interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying a conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying the conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.[6]

In regard to parties' exceptions to the ALJ's Recommended Order, Section 120.57(1)(k), F.S., provides that the Commission does not have to rule on exceptions that fail to clearly identify the disputed portion of the Recommended Order by specific page numbers or paragraphs or that do not identify the legal basis for the exception, or those that lack appropriate and specific citations to the record.[7] Section 120.57(1)(l), F.S., requires the Commission's final order to include an explicit ruling on each exception and sets a high bar for rejecting an ALJ's findings.

This recommendation, which is based upon a review of the entire record of the hearing and post-hearing submissions, addresses whether the Commission should adopt the ALJ's Recommended Order as filed, make any changes to the order, or act on any of the matters raised in DEF's exceptions to the Recommended Order. Issue 1 addresses the post-hearing submissions by DEF and Issue 2 addresses the adoption of the ALJ's Recommended Order. The Commission has jurisdiction over this matter pursuant to Sections 120.57, 366.04, 366.05, and 366.06, F.S., and substantive jurisdiction over the conclusions of law discussed below.

[6] *Id.*
[7] Section 120.57(1)(k), F.S.

Discussion of Issues

Issue 1: Should the Commission accept any of the exceptions to conclusions of law filed by DEF?

Recommendation: No. DEF has not presented any legally sufficient basis for rejecting or modifying any portion of the Recommended Order. Therefore, staff recommends that the Commission should deny DEF's exceptions to Conclusions of Law 110-114 and 119-125. (Crawford, Stiller)

Staff Analysis: DEF filed exceptions to the ALJ's Conclusions of Law 110-114 and 119-125.

DEF Exception to Conclusion of Law 110

DEF takes exception with the ALJ's Conclusion of Law 110, which states:

> 110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [redacted]

First, as a general criticism, DEF argues that when weighing the facts presented at hearing, although stating the correct legal standard of review - what a reasonable utility manager should have done based on what he knew or should have known at the time - the ALJ did not apply that standard but instead evaluated DEF's actions from the perspective of what is currently known. DEF states that this type of "hindsight" and "Monday-morning quarterbacking" prudence analysis has been found to be inappropriate under *Florida Power Corporation v. Public Service Comm. (Florida Power),* 456 So. 2d 451, 452 (Fla. 1984).

Second, DEF disagrees with the ALJ's conclusion that the 420 MW design point was a limitation on the steam turbine. DEF argues that the record supports the conclusion that the 420 MW design point is a fall out number based on various combinations of operating parameters provided by Mitsubishi. DEF argues that operating within the parameters given by Mitsubishi was prudent given what DEF knew or should have known during Period 1. At that time, DEF contends that there was no reason to believe that increasing the output above 420 MW would damage the unit as long as the operating parameters were complied with. Thus, DEF concludes that the fact that the [redacted] in February 2017 does not mean that the plant operator reasonably should have known that would happen in June 2009.

Third, DEF argues that DEF's compliance with lower than 420 MW output after Period 1 and its [redacted] to operate the unit at [redacted] do not logically support the conclusion that DEF agreed the unit originally could not be operated above 420 MW. These actions, according to DEF, allowed the unit to continue to be operated to produce the most power

possible while research into the cause of the Period 1 outage was conducted. DEF argues that getting the unit back on line producing as much power as possible is implementation of long standing Commission policy that utilities operate generating units for maximum efficiency. DEF asserts that these actions are not evidence of DEF's acceptance of 420 MW as a limitation on the output of the unit.

Intervenors' Response

Intervenors contend that DEF, while conceding that the ALJ referenced the correct legal standard for prudence review, never explains or demonstrates exactly how the ALJ applied "Monday-morning quarterbacking" to reach any of the conclusions in Conclusions of Law 110. In the determination of what a utility knew or should have known at any past point in time, Intervenors state that there is necessarily a review of contemporaneous prior actions and documents. They contend that that review was done here. Intervenors note that DEF has not argued that there is no competent substantial evidence supporting the ALJ's conclusions in Conclusions of Law 110 and cites nine separate parts of the record that do logically support the ALJ's conclusion that DEF did not act prudently in running the unit above 420 MW in Period 1.

Intervenors further argue that the *Florida Power* case relied upon by DEF is not applicable here for several reasons. In *Florida Power*, the Commission classified "non-safety related" repair work as "safety-related" repair work and then applied the higher standard of care for "safety-related" repair work to determine if Florida Power had conducted the repairs prudently. Finding that the record indicated that the extensive repair work was not *per se* safety-related, the Court found that the Commission could not apply the higher standard of care. *Florida Power,* 456 So. 2d at 451. Intervenors argue that in this case, the facts upon which the ALJ relied regarding the repair of the unit are supported by competent substantial evidence and are not in dispute, nor does DEF argue that the inferences drawn from the facts by the ALJ are unreasonable. Intervenors state that DEF would simply draw different conclusions from the same set of facts, i.e., would have the Commission weigh the evidence differently, an action prohibited by Chapter 120, F.S.

Staff Analysis and Conclusion:

Here DEF is asking the Commission to modify a conclusion of law. When rejecting or modifying a conclusion of law, the Commission must state with particularity its reasons for doing so, and must make a finding that the substituted conclusion of law is as or more reasonable than the one rejected or modified.[8] Rejection or modification of a conclusion of law may not form the basis for rejection or modification of a finding of fact.[9] With respect to DEF's exception to Conclusion of Law 110, staff recommends that DEF has failed to provide an adequate basis for rejecting or modifying the Conclusion of Law, and DEF's exception should therefore be denied.

[8] Section 120.57(1)(l), F.S.; *Prysi v. Department of Health,* 823 So. 2d 823, 825 (Fla. 1st DCA 2002)
[9] Section 120.57(1)(l), F.S.

Further, DEF has not raised exceptions to any of the 102 factual findings made by the ALJ in his Recommended Order. As its rationale for not doing so, DEF cites the high standard that must be met to set aside an ALJ's finding of fact.[10] The failure to file exceptions to findings of fact constitutes a waiver of the right to object to those facts on appeal. *Mehl v. Office of Financial Regulation,* 859 So. 2d 1260 (Fla. 1st DCA 2003); *Environmental Coalition of Florida v. Broward County,* 586 So. 2d 1212 (Fla. 1st DCA 1991). Nor has DEF argued that the proceedings conducted by the ALJ that produced those facts did not comply with the essential requirements of law. Thus, for all practical purposes, DEF has accepted all of the ALJ's 102 factual findings.

If the ALJ's findings of fact are supported by competent substantial evidence, the agency may not reject or modify them even to make alternative findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Department of Environmental Protection (Kanter),* 267 So. 3d 483, 487-88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC,* SC19-636, 2019 WL 2428577 (Fla. June 11, 2019)(citing *Lanz v. Smith,* 106 So. 3d 518, 521 (Fla. 1st DCA 2013)).

Finally, an agency is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on, the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Department of Health,* 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Heifetz v. Department of Business Regulation,* 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

Staff agrees with DEF and the Intervenors that the standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made."[11] However, in reaching the conclusion of law that DEF failed to show by a preponderance of the evidence that it acted prudently in Period 1, DEF contends that the ALJ did not follow this standard but instead evaluated DEF's actions in light of present knowledge. However, DEF never specifically identifies the facts it could not have known which were relied upon by the ALJ in reaching his conclusion of imprudence. Without identifying the facts upon which the ALJ improperly relied, it is impossible to evaluate this contention and it must be rejected.

The ALJ bases his conclusion that a preponderance of the evidence established the actions of DEF in Period 1 were imprudent on three facts. First, the Mitsubishi aftermarket steam turbine was manufactured with a design point of 420 MW of output. Second, witness Swartz's testimony that the 420 MW was not an operational limitation was unpersuasive. Third, DEF accepted this limitation in Periods 2-5 and worked with [redacted]

With regard to the first point, DEF does not contest that the steam turbine was aftermarket manufactured with a design point of 420 MW. This conclusion is supported by Findings of Fact Nos. 14-26. With regard to the second point, the ALJ extensively discusses the arguments

[10] DEF Exceptions at 2.
[11] *Southern Alliance for Clean Energy v. Graham,* 113 So. 3d 742, 750 (Fla. 2013).

presented by DEF witness Swartz that the 420 MW is not an operational limitation for this steam turbine in Findings of Fact Nos. 16-32 which culminate in Finding of Fact No. 33. Finding of Fact No. 33, a finding that DEF did not contest, states: "The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine." Since DEF did not take exception to the identical statement in Finding of Fact No. 33, DEF has waived its ability to contest Conclusion of Law 110 on the grounds that the design point did not act as an operational limitation. However, even if DEF had taken exception to Finding of Fact 33, it is clear that the ALJ considered and rejected witness Swartz's arguments that DEF did not act imprudently by operating the steam turbine for extended periods of time at more than 420 MW.

With regard to the third point, DEF does not dispute that in Periods 2-5 it complied with the [redacted] placed on it by Mitsubishi and worked with Mitsubishi to [redacted] DEF disputes the significance of having done so. DEF argues that by working with Mitsubishi in Periods 2-5 it was acting to maximize the steam turbine's output for the benefit of its customers. As a general matter, DEF has argued that if a conclusion of law is "infused with overriding policy considerations," the agency, not the ALJ, should decide that issue.[12] Although not specifically identified, apparently, DEF believes that "maximization of output" is such an "overriding policy consideration" which should be given agency deference when determining operational prudence. However, DEF has not identified any statute, rule or Commission order that identifies "maximization of output" as a Commission policy. Additionally, the idea of agency deference, even in the interpretation of an agency's own rules and statutes, is now highly questionable given the passage of Amendment 6 to the Florida Constitution.[13]

Additionally, staff does not find the *Florida Power* decision cited by DEF on the issue of hindsight to be relevant. In *Florida Power,* the Commission made a finding of fact that was not supported by the record - that "non- safety related" repair work was "safety-related" repair work - and then improperly applied the higher standard of care for "safety-related" repair work. The crux of the problem in *Florida Power* was this unsupported finding of fact. Here DEF is not contesting any of the ALJ's 102 findings of fact as being unsupported by competent substantial evidence. Nor is DEF arguing that the legal conclusions the ALJ has drawn from these uncontested facts are unreasonable. Here there is no mistake of fact triggering the misapplication of a legal standard. In this case all parties agree on the standard to be applied, DEF simply does not like the result reached by the ALJ.

Because DEF has failed to establish that its exception to Conclusion of Law 110 is as or more reasonable that that of the ALJ, staff recommends that DEF's Exception to Conclusion of Law 110 be denied.

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[12] *Pillsbury v. State, Department of Health & Rehabilitative Services,* 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999).

[13] "Section 21. Judicial interpretation of statutes and rules. – In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."

DEF Exception to Conclusion of Law 111

DEF takes exception with the ALJ's Conclusion of Law 111, which states:

> 111. DEF's RCA [Root Cause Analysis] concluded that the blade failures were caused [redacted] This conclusion is belied by the fact that [redacted] Mitsubishi cannot be faulted for [redacted] n a way that would allow an operator to run the turbine consistently beyond its capacity.

DEF takes exception to the conclusion that the L-0 blade failures were not caused by [redacted] on the L-0 blades and that the turbine was consistently run above its capacity. DEF argues that Mitsubishi was contracted specifically to assess whether this particular steam turbine could handle the proposed 4x1 steam configuration. DEF states that Mitsubishi did not originally identify [redacted] and it was reasonable for DEF in Period 1 to rely upon Mitsubishi's assessment. The better comparison, according to DEF, is not with other [redacted], but with blade failures in Periods 2-5 when the unit was run at less than 420 MW. Finally, DEF notes that the exact time that the L-0 blades were damaged in Period 1 cannot be established. DEF states that the damage could have occurred during the half of the time in Period 1 when the steam turbine was operated at less than 420 MW.

Intervenors' Response

Intervenors respond that the conclusions of law in Paragraph 111 are supported by competent substantial evidence of record. Further, to the extent that a finding is both a factual and legal conclusion, Intervenors state that it cannot be rejected when there is competent substantial evidence to support the conclusion and the legal conclusion necessarily follows. *Berger,* 653 So. 2d at 480; *Strickland,* 799 So. 2d at 279; *Dunham,* 652 So. 2d at 897. Additionally, Intervenors contend that it is the ALJ, not the Commission, who is authorized to interpret the evidence presented and to decide between two contrary positions supported by conflicting evidence. *Heifetz v. Dept. of Business Regulation,* 475 So. 2d 1277, 1281-2 (Fla. 1st DCA 1985). With regard to DEF's reliance on the fact that it is impossible to tell when the L-0 blades were damaged in Period 1, Intervenors find this to be irrelevant since the ALJ does not address that fact in Paragraph 111.

Staff Analysis and Conclusion:

This conclusion of law constitutes the ALJ's rejection of DEF's Root Cause Analysis (RCA) conclusion that [redacted] The ALJ cites the fact that in [redacted] steam turbines with a [redacted] of the same [redacted] only Bartow Unit 4 has had [redacted] Further, Bartow Unit 4 had the [redacted] loading in

[14] Finding of Fact No. 67.

the entire fleet, in [redacted] for the rest of the fleet.[15] Additionally, the ALJ found that as late as June 2017 DEF agreed with [redacted] was one of "the most significant contributing factors" toward the L-0 blade failure.[16] Given these facts, none of which are disputed by DEF, the ALJ found DEF's exclusion of [redacted] from its final RCA to be troubling, as does staff.

The ALJ's Conclusion of Law was adequately supported by the relevant findings of fact. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. For this reason, staff recommends that DEF's Exception to Conclusion of Law 111 be denied.

DEF Exception to Conclusion of Law 112

DEF takes exception with the ALJ's Conclusion of Law 112, which states:

112. [redacted]

DEF states that Mitsubishi did not ultimately attribute the blade failure in Period 1 to operation in excess of 420 MW but found in September 22, 2017, that [redacted] DEF argues that given the fact that the turbine was not operated above 420 MW in Periods 2 through 5, it is more reasonable to conclude that the damage to the blades in Period 1 was the result of [redacted]

Intervenors' Response

Intervenors contend that DEF does not contest that there are findings of fact supported by competent substantial evidence in the record to support the ALJ's conclusion of law. Thus, Intervenors conclude that the Commission, under those circumstances, can't reject the ALJ's conclusion of law or substitute its own judgment for that of the ALJ.

Staff Analysis and Conclusion:

This conclusion of law constitutes the ALJ's acceptance of Mitsubishi's RCA which concluded [redacted] After [redacted] on the steam turbine in December 2014, Mitsubishi concluded that the damage to the L-0 blades in all

[15] Finding of Fact No. 83.
[16] Finding of Fact No. 70.

five Periods was attributable to [redacted][17] Mitsubishi published its RCA findings in September of 2017. As late as June 2017 DEF agreed with Mitsubishi that [redacted] was one of "the most significant contributing factors" toward the L-0 blade failure.[18] Finally, Mitsubishi has stayed with its assessment that the blade damage was created by [redacted] which did not allow the [redacted]

DEF is simply rearguing its case that its RCA should be substituted for that of Mitsubishi. DEF has not contested the facts upon which Conclusion of Law 112 is based. Conclusion of Law 112 is the companion to Conclusion of Law 111 and staff recommends that it should be upheld for the same reasons – that there is competent substantial evidence to support this conclusion and the conclusion is reasonable given the facts proven by a preponderance of the evidence presented. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. Thus, staff recommends that DEF's Exception to Conclusion of Law 112 be denied.

DEF Exception to Conclusion of Law 113

DEF takes exception with the ALJ's Conclusion of Law 113, which states:

> 113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

DEF defends not contacting Mitsubishi by citing the following evidence in the record: 1) [redacted] 2) the MW output of a steam turbine is not an "operating parameter"; and 3) Mitsubishi knew DEF would operate the plant in excess of 420 MW. For these reasons, DEF argues that it is "as or more reasonable" to conclude that DEF did not need to contact Mitsubishi.

Intervenors' Response

Intervenors argue that DEF is simply rehashing the evidence presented and urging the Commission to make new findings that are "as or more reasonable" than the findings made by the ALJ. The ALJ states that he found OPC's expert persuasive on this point and it is the exclusive prerogative of the ALJ, not the Commission, to evaluate the credibility of a witness and the weight to be given to his/her testimony. Intervenors contend that since there is competent substantial evidence supporting the conclusion that DEF should have called Mitsubishi, this conclusion cannot be modified.

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[17] Finding of Fact Nos. 37, 63.
[18] Finding of Fact No. 70.
[19] Finding of Fact No. 78.

Staff Analysis and Conclusion

When viewed as a whole, the ALJ has based his analysis of this case by focusing on several areas. First, the nature of the after-market steam turbine and what limitations, if any, were inherent in its original 3x1 design. Second, the type and meaning of guarantees given by Mitsubishi for its current use in a 4x1 configuration. Third, the cause of the damage to the low pressure L-0 40" blades. Analysis of these three areas results in a finding regarding whether DEF acted prudently in the operation of the steam turbine which in turn drives the decision of whether replacement power costs for the April 2017 outage should be recovered or denied.

The ALJ's findings of fact establish that the steam turbine was originally designed to be used in a 3x1 configuration with a design point maximum of 420 MW. The 3x1 configuration used three M501 Type F combustion turbines connected to the steam turbine.[20] The 4x1 design configuration used by DEF used four M501 Type F combustion turbines connected to the same steam turbine.[21] [redacted] with a [redacted].[23] These guaranteed outputs were based on [redacted] calculated using only three combustion turbines and heat recovery steam generators with duct firing. Of the [redacted] run by [redacted] to predict how the steam turbine would operate, not one showed it producing more than 420 MW.[24]

Under these circumstances it is reasonable to believe that Mitsubishi would have instructed its consultant to run [redacted] if it thought the steam turbine could handle it.[25] This is especially true since DEF was proposing the use of an additional 501 Type F combustion turbine and heat recovery steam generator, giving DEF's proposed configuration the ability to produce far more steam than needed to generate 420 MW of output when compared to the original 3x1 application for which the steam turbine was designed.[26] Additionally, neither DEF nor Mitsubishi had any experience running a 4x1 combined cycle plant prior to commencing operation of Bartow Unit 4.[27] In sum, for these reasons the ALJ found that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [redacted] scenarios set out in the Purchase Agreement.[28]

Given these extremely unique circumstances, the ALJ concluded that DEF's failure to contact Mitsubishi before pushing output beyond 420 MW was not prudent. Contacting Mitsubishi would have allowed DEF to receive written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW and would have effectively [redacted] to

[20] Finding of Fact No. 14.
[21] Finding of Fact No. 6.
[22] Entitled the [redacted] executed between Florida Progress and Mitsubishi.
[23] Finding of Fact No. 26.
[24] Finding of Fact No. 87.
[25] Finding of Fact No. 87.
[26] Finding of Fact No. 31.
[27] Finding of Fact No. 85.
[28] Finding of Fact No. 102.

reflect the higher MW output.[29] The ALJ's conclusion of law is supported by competent substantial evidence of record. Because DEF has failed to demonstrate that its conclusion of law is as or more reasonable than the ALJ's, staff recommends that DEF's Exception to Conclusion of Law 113 be denied.

DEF Exception to Conclusion of Law 114

DEF takes exception with the ALJ's Conclusion of Law 114, which states:

> 114. The record evidence demonstrated an [redacted] that [redacted] associated with [redacted] DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or [redacted] To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

DEF argues that it is "as or more reasonable" to conclude from the evidence presented that DEF's actions did not cause or contribute significantly to the vibrations that damaged the L-0 blades. DEF contends this is true because the L-0 blades were damaged in Periods 2-5 when the unit was not run above 420 MW as well as Period 1 when it was. DEF further states that the ALJ is imposing the impossible standard of proving a negative. DEF argues that it does not have the burden to prove that damage did not occur as a result of its actions. Rather, DEF states that it is only required to show that it acted as a reasonable utility manager would have done given the facts known or reasonably knowable at the time without the benefit of hindsight review.

Intervenors' Response

Intervenors argue that Conclusion of Law 114 summaries the findings of fact that support the ALJ's ultimate determination. Intervenors state that these findings of fact are supported by competent substantial evidence and the Commission may not reject them. With regard to the contention that the ALJ required DEF to prove a negative, Intervenors argue that DEF has the burden of proof to demonstrate that it acted prudently in the operation of Bartow Unit 4 which requires it to establish a *prima facie* case that it did act prudently and to rebut evidence of its imprudence. The Intervenors assert that DEF did neither here and the ALJ's conclusion may not be disturbed.

Staff Analysis and Conclusion

As discussed in staff's analysis of Conclusions of Law 110-113 above, the ALJ found that a preponderance of the evidence supported the finding that the L-0 blade damage was caused by [redacted] Further, the ALJ found that the weight of the evidence supported the conclusion that the [redacted] was the result of excessive steam flow through the low pressure section of the steam turbine caused by

[29] Factual Finding No. 93.

operating the steam turbine above 420 MW. DEF does not contest that these findings of fact are supported by competent substantial evidence of record.

Commission staff agrees with the ALJ that DEF has the burden of proving that it acted prudently in the operation of its steam turbine, i.e., the burden to make a *prima facie* case supported by competent substantial evidence that it acted prudently. The burden of proof also requires DEF to rebut evidence produced that it acted imprudently. Here under the unique circumstances of this case, DEF has failed to prove it acted prudently in light of the information that was available to it at the time as found by the ALJ in Conclusion of Law 110. DEF's exception to Conclusion of Law 114 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons, staff recommends that DEF's Exception to Conclusion of Law 114 be denied.

DEF Exception to Conclusion of Law 119

DEF takes exception with the ALJ's Conclusion of Law 119, which states:

> 119. It is speculative to state that the original Period L-0 blades would still be operating today had DEF observed the [redacted] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

Specifically, DEF disputes the ALJ's conclusion that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. DEF argues that there is no causal link between the operation of the unit in Period 1 and the forced outage that occurred in Period 5. DEF contends that the lack of a causal link is proven by the fact that there was no residual damage done to the steam turbine itself in Period 1 and all parties agreed that DEF's operation of the plant subsequent to Period 1 was prudent.

Intervenors' Response

Intervenors state that the conclusions in Paragraph 119 are based on the ALJ's findings of fact in Paragraphs 84 and 89 which are supported by competent substantial evidence and OPC's expert's credible testimony. Intervenors argue that to the extent that this conclusion is an inference from the ALJ's factual findings, the ALJ is permitted to draw reasonable inferences from competent substantial evidence in the record. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017). Further, Intervenors state that the fact that more than one reasonable inference can be drawn from the same evidence of record is not grounds for setting aside the ALJ's conclusion. *Id.*

Staff Analysis and Conclusion

This conclusion of law is in response to OPC witness Polich's testimony that the low pressure L-0 blades would still have been in use but for the operation of the steam turbine in excess of 420

MW.[30] While the ALJ rejected that conclusion as too speculative, he did accept witness Polich's testimony that the damage to the blades was most likely cumulative during Period 1, making it irrelevant exactly when during the operation of the unit in Period 1 the damage occurred.[31] DEF's witness Swartz testified that the damage to the blades could have occurred in Period 1 during the 50% of the time that the steam turbine was operated under 420 MW, i.e., when by Intervenors' standards, the unit was being operated prudently. Where reasonable people can differ about the facts, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence. *Amador v. School Board of Monroe County,* 225 So. 3d 853, 857-8 (Fla. 3d DCA 2017). Additionally, the hearing officer is entitled to rely on the testimony of a single witness even if the testimony contradicts the testimony of a number of other witnesses. *Stinson v. Winn,* 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

DEF's exception to Conclusion of Law 119 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons staff recommends that DEF's Exception to Conclusion of Law 119 be denied.

DEF Exception to Conclusion of Law 120

DEF takes exception with the ALJ's Conclusion of Law 120, which states:

> 120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:
>
> > You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.
> >
> > It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [redacted] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [redacted] Well, the answer is both.
> >
> > The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration . . . that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.
> >
> > On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

[30] Finding of Fact No. 84.
[31] Finding of Fact No. 89; Footnote 4.

* * *

> So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established . . . may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

DEF argues that Conclusion of Law 120 is a slightly edited, verbatim recitation of PCS Phosphate counsel's final argument which the ALJ adopts, characterizing it as summarizing "the equities of the situation very well." DEF takes exception to that portion of the final argument stating that under the circumstances presented in this case, it is not appropriate to assign the cost of the February 2017 forced outage to DEF's customers. DEF argues that it is as or more reasonable to conclude that here, where DEF consistently acted prudently, DEF should not be forced to bear replacement power costs.

Intervenors' Response

As demonstrated in its response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not act prudently and should bear replacement power costs. Intervenors state that DEF is simply rearguing the case it presented to the ALJ which the ALJ found to be unpersuasive.

Staff Analysis and Conclusion

As noted above, this conclusion of law is an edited version of PCS Phosphate counsel's final argument which the ALJ agrees has summarized the "equities of the situation very well." The ALJ agrees that excessive vibrations over time caused the steam turbine problems. Further, whether the vibration was due to the way the plant was run or due to a[redacted] is that both are true. The ALJ concludes that DEF was at fault for pushing excessive steam flow into the turbine. The ALJ further agrees that by operating the unit above 420 MW, without contacting Mitsubishi, DEF impeded its ability to claim that Mitsubishi was entirely at fault. Under these circumstances, PCS Phosphate's counsel, and the ALJ, conclude that consumers should not bear replacement power costs.

Upon review of this material, it is clear that it is a summary of Conclusions of Law 110-114 above. These conclusions are supported by competent substantial evidence of record and staff has recommended that they be accepted. Again, DEF reargues the factual underpinnings of the ALJ's Conclusion of Law without adequately demonstrating that DEF's conclusion is as or more reasonable. Therefore, DEF's Exception to Conclusion of Law 120 should be denied.

DEF Exception to Conclusion of Law 121

DEF takes exception with the ALJ's Conclusion of Law 121, which states:

> 121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

Specifically, DEF takes exception with the ALJ's conclusion that it did not exercise reasonable care in operating the steam turbine and should have sought the cooperation of Mitsubishi prior to operating the steam turbine above 420 MW. DEF again argues that it is as or more reasonable to conclude that operation within the express parameters given by Mitsubishi was prudent and did not require further consultation with the manufacturer.

Intervenors' Response

As demonstrated in their response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not exercise reasonable care operating the plant in excess of 420 MW without consulting Mitsubishi first. Intervenors assert that the Commission is not free to reject or modify conclusions of law that are supported by competent substantial evidence and logically flow from that evidence.

Staff Analysis and Conclusion

This conclusion is a statement of the ALJ's ultimate conclusion that DEF did not exercise reasonable care in the operation of the steam turbine given its configuration and design without consulting Mitsubishi. This ultimate conclusion is supported by competent substantial evidence as discussed in Conclusions of Law 110-114 above. Because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's, staff recommends that DEF's Exception to Conclusion of Law 121 be denied.

DEF Exception to Conclusion of Law 122

DEF takes exception with the ALJ's Conclusion of Law 122, which states:

> 122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least $11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

DEF takes exception to the ALJ's conclusion that DEF should refund replacement power costs to its customers. Citing the arguments made in its exceptions to Paragraphs 110-114 and 119, DEF states that DEF did act prudently in the operation of its Bartow Unit 4 plant and, therefore, it is as or more reasonable to conclude that no replacement power costs should be refunded to customers.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record and is consistent with applicable law. Therefore, the Intervenors conclude that the Commission cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Staff Analysis and Conclusion

This conclusion of law is based on the ALJ's Conclusions of Law 110-114, supported by competent substantial evidence of record, that DEF acted imprudently in its operation of the steam turbine in Period 1. Since DEF disagrees that it acted imprudently in incurring the replacement power costs, it argues that the $11.1 million should not be refunded to customers. The amount of the refund is not contested. The findings of fact underlying Conclusion of Law 122 are not in dispute. Ultimately, the conclusion is supported by competent substantial evidence. Because DEF has failed to demonstrate that DEF's conclusion was as or more reasonable that the ALJ's, staff recommends that DEF's Exception to Conclusion of Law 122 be denied.

DEF Exception to Conclusion of Law 123

DEF takes exception with the ALJ's Conclusion of Law 123, which states:

> 123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

For the reasons stated in its exception to Paragraph 110, DEF argues that it did demonstrate by a preponderance of the evidence that it operated the steam turbine prudently in Period 1. Thus, DEF contends that it is as or more reasonable to conclude that DEF carried its burden of proof that the steam turbine was operated prudently in Period 1.

Intervenors' Response

Intervenors contend that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Paragraphs 110-114 and 119, and is consistent with applicable law. Therefore, Intervenors argue that the Commission cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Staff Analysis and Conclusion

A review of DEF's exception reveals that it is simply re-argument of its position taken in Conclusion of Law No. 110 discussed above. For the reasons stated therein, staff recommends

that DEF's Exception to Conclusion of Law be denied because DEF has failed to demonstrate that its conclusion is as or more reasonable that the ALJ's.

DEF Exception to Conclusion of Law 124

DEF takes exception with the ALJ's Conclusion of Law 124, which states:

> 124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by the installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back on line in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [redacted] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is $5,016,782.

DEF argues that the operation of the steam turbine in Period 1 was proven by DEF by a preponderance of the evidence to be prudent. DEF contends that this fact, coupled with the undisputed evidence that DEF also operated the steam turbine prudently in Periods 2-5, demonstrates that it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not a consequence of DEF's operation of the steam turbine during Period 1.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of Law 110-114 and 119. Intervenors contend that DEF's is simply rearguing its case that its operation of the steam turbine was prudent, and therefore no refunds associated with the installation of the pressure plate are required. Intervenors assert that the basis for the ALJ's conclusion that derating costs of $5,016,782 should be refunded to customers is his finding of DEF's imprudence in operation of the steam turbine in Period 1. For these reasons, Intervenors conclude that there is no basis to set aside that finding or to set aside this conclusion of law.

Staff Analysis and Conclusion

There is no question that installation of the pressure plate caused the derating of the steam turbine from 420 to 380 MW.[32] Likewise, the parties have agreed that the period of time associated with the derating is April 2017 through the end of September 2019.[33] Nor do the parties disagree that the amount associated with the derating is $5,016,782.[34] DEF is simply rearguing its position that its operation of the steam turbine was not responsible for blade damage in Period 5, a position considered and rejected by the ALJ.[35] As discussed in

[32] Finding of Fact No. 60.
[33] Finding of Fact No. 61.
[34] Finding of Fact No. 80.
[35] Finding of Fact No. 119.

Conclusions of Law 110-114 and 119 above, there is competent substantial evidence to support the ALJ's conclusion that DEF's imprudent actions in Period 1 resulted in the derating. That being the case, staff recommends that DEF's Exception to Conclusion of Law 124 be denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ.

DEF Exception to Conclusion of Law 125

DEF takes exception with the ALJ's Conclusion of Law 125, which states:

> 125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is $16,116,782, without interest.

DEF takes exception to this conclusion on the grounds that DEF did prove by a preponderance of the evidence that it acted prudently in the operation of the steam turbine in Period 1. That being the case, DEF contends that it is as or more reasonable to conclude that no refund to its customers of any amount is required.

Intervenors' Response

Intervenor's argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of Law 110-114 and 119. Intervenors state that DEF is simply rearguing its case that its operation of the steam turbine was prudent and therefore no refunds are required. Intervenors assert that the Commission cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Staff Analysis and Conclusion

This is a fall-out conclusion based upon Conclusions of Law 110-114 and 119 discussed above, which results in the ultimate conclusion of law that DEF acted imprudently. Conclusions of Law 110-114 and 119 are based on competent substantial evidence of record. For that reason, staff recommends that DEF's Exception to Conclusion of Law 125 should be denied, because DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ.

Conclusion

DEF has failed to show that the ALJ's conclusions are not reasonable or that the facts from which his conclusions are drawn are not based on competent substantial evidence of record. Further, DEF has not argued that the proceeding did not comport with the essential requirements of law. Finally, DEF has not specifically stated how the ALJ's conclusions of law are contrary to prior Commission policy statements for utility operation. For these reasons, staff recommends that the Commission deny DEF's exceptions to Conclusions of Law 110-114 and 119-125 since

DEF has failed to demonstrate that its proposed modifications to those conclusions are as or more reasonable than that of the ALJ.

Issue 2: Should the Commission approve the Recommended Order submitted by the Administrative Law Judge?

Recommendation: Yes. The Commission should approve the attached Recommended Order (Attachment A) as the Final Order in this docket. (Crawford, Stiller)

Staff Analysis: Upon review of the entire record in this case, staff has recommended that DEF has failed to demonstrate that its exceptions to the ALJ's conclusions of law are as or more reasonable that the ALJ's. The conclusions of law to which DEF has filed exceptions are based upon competent substantial evidence of record and the proceedings held before the ALJ comported with the essential requirements of law. Further, DEF has not filed exceptions to any of the factual findings in this case. That being the case, under the provisions of Section 120.57(1)(l), F.S., the ALJ's Recommended Order should not be modified.

That being said, it is important to note that this case is highly fact specific and for that reason will have limited precedential value. There is literally no other plant in DEF's system that has four combustion turbines connected to one steam turbine nor any other plant in DEF's system that uses an after-market steam turbine designed for a 3x1 configuration in a 4x1 configuration. The ALJ was persuaded by OPC witness Polich's testimony that because Bartow Unit 4 was operated to produce more than 420 MW, too much steam was forced into the low pressure section of the steam turbine damaging the L-O blades. Adoption of the Recommended Order with this conclusion of law should not translate into a general policy decision by the Commission that under any set of circumstances it is imprudent to run a unit above its nameplate capacity.

Based on the foregoing, staff recommends that the Commission adopt the ALJ's Recommended Order, found in Attachment A, as it Final Order, regarding this petition. Accordingly, DEF should be required to refund $11.1 million in replacement power associated with its April 2017 Bartow Unit 4 outage and $5,016.782 for the de-rating of the unit from May 2017 until December of 2019, for a total refund of $16,116,782.

Issue 3: Should this docket be closed?

Recommendation: No. While the Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor docket is assigned a separate docket number each year for administrative convenience, it is a continuing docket and should remain open. (Crawford, Stiller)

Staff Analysis: While the Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor docket is assigned a separate docket number each year for administrative convenience, it is a continuing docket and should remain open.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FUEL AND PURCHASED POWER COST RECOVERY CLAUSE WITH GENERATING PERFORMANCE INCENTIVE FACTOR,

Case No. 19-6022

/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 4 and 5, 2020, in Tallahassee, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

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[1] References to DEF include Progress Energy, DEF's predecessor in interest in the Bartow power plant that is the subject of this proceeding. DEF purchased Progress Energy in 2011.

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STATEMENT OF THE ISSUES

Two issues have been referred by the Commission to DOAH for a disputed-fact hearing:

ISSUE 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at

the Bartow plant and, if not, what action should the Commission take with respect to replacement power costs?

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

PRELIMINARY STATEMENT

On January 2, 2019, the Commission opened Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor,* commonly referred to as the "Fuel Clause" docket. The Fuel Clause docket is a recurring, annual docket to which all investor-owned electric utilities serving customers in Florida are parties. Through the Fuel Clause docket, utilities are permitted to recover reasonably and prudently incurred costs of the fuel and fuel-related activities needed to generate electricity. Among the issues raised in the 2019 Fuel Clause docket was DEF's request to recover the replacement power costs incurred in connection with an unplanned outage to the steam turbine at DEF's Bartow Unit 4 combined cycle power plant (the "Bartow Plant") in February 2017. Issues 1B and 1C were raised as part of the 2019 Fuel Clause docket.

On November 5, 2019, the Commission held a final hearing in the 2019 Fuel Clause docket. All issues related to DEF's request to recover its fuel and purchased power costs were addressed, except for Issues 1B and 1C. Both Issues 1B and 1C involved extensive claims of confidentiality with respect to the pre-filed testimony of DEF witness Jeffrey Swartz, OPC witness Richard Polich, and the proposed trial exhibits.

The Commission found that it was impracticable to conduct direct or cross-examination in an open hearing without extensive reference to

confidential material. Despite its apparent authority under section 366.093, Florida Statutes, to declare documents confidential, the Commission took the position that it lacked authority to close a public hearing to protect materials and topics it had previously determined to be confidential. The Commission therefore referred Issues 1B and 1C to DOAH for a closed evidentiary hearing and issuance of a Recommended Order.

On November 26, 2019, a telephonic status conference was held to set hearing dates, establish the procedures for handling confidential material, the need for discovery, the use of written testimony, and the use of the Comprehensive Exhibit List ("CEL") admitted into evidence at the Commission's November 5, 2019, hearing. At the status conference, the parties agreed to the hearing dates of February 4 and 5, 2020. The undersigned requested the parties to confer and file a motion setting forth proposed procedures for the handling of confidential material before, during, and after the hearing. The parties filed a Joint Motion on Confidentiality on December 6, 2019, which was adopted by Order issued December 9, 2019.

On December 23, 2019, the Commission's record was transmitted to DOAH on two CD-ROM discs. Disc One contained non-confidential information and Disc Two contained information held as confidential.

The final hearing was convened and completed as scheduled on February 4 and 5, 2020. At the outset of the hearing, the parties submitted an updated CEL from the November 2019 proceeding before the Commission. The revised CEL listed 114 exhibits. The revised CEL was numbered as Exhibit 114 and admitted by stipulation.

DEF presented the direct and rebuttal testimony of Jeffrey R. Swartz, its Vice President of Generation. DEF moved for the admission of Exhibits 80 through 82, which were admitted into the record.

OPC presented the testimony of Richard Polich, an engineer with expertise in the design of power generation systems, including steam turbines. OPC moved for the admission of Exhibits 68 through 75 and 101 through 109, which were admitted into the record. At the hearing, OPC Exhibits 115 through 117 were marked, moved, and admitted into the record.

The Commission moved for the admission of Exhibits 110 and 111, which were admitted into the record.

FIPUG moved for the admission of Exhibit 118, which was admitted into the record.

White Springs moved for the admission of Exhibits 112 and 113, which were admitted into the record.

The three-volume Transcript of the final hearing was filed with DOAH on February 24, 2020. Pursuant to an agreement approved by the undersigned, the parties timely filed their Proposed Recommended Orders on March 20, 2020. DEF and the Commission filed separate Proposed Recommended Orders. OPC, FIPUG, and White Springs submitted a joint Proposed Recommended Order (unless otherwise specified, references to OPC as to positions stated in its Proposed Recommended Order should be understood to include FIPUG and White Springs). All three Proposed Recommended Orders have been duly considered in the writing of this Recommended Order.

Unless otherwise indicated, statutory references are to the 2019 edition of the Florida Statutes.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

THE PARTIES

1. The Commission is the state agency authorized to implement and enforce Chapter 366, Florida Statutes, which governs the regulation of every "public utility" as defined in section 366.02(1).

2. DEF is a public utility and is therefore subject to the Commission's jurisdiction. DEF is a subsidiary of Duke Energy, one of the largest energy holding companies in the United States.

3. OPC is statutorily authorized to represent the citizens of the state of Florida in matters before the Commission, and to appear before other state agencies in connection with matters under the Commission's jurisdiction. § 350.0611(1), (3), and (5), Fla. Stat.

4. FIPUG is an association comprising large commercial and industrial power users within Florida. A substantial number of FIPUG's members are customers of DEF.

5. White Springs operates energy intensive phosphate mining and processing facilities in Hamilton County and is one of DEF's largest industrial customers.

THE BARTOW PLANT

6. The Bartow Plant is a 4x1 combined cycle power plant composed of combustion turbine generators whose waste heat is used to produce steam that powers a steam turbine manufactured by Mitsubishi Hitachi Power Systems ("Mitsubishi"). "4x1" references the fact that there are four Siemens

180 megawatt ("MW") Type 501 F combustion turbines, each connected to one of four heat recovery steam generators ("HRSG"), all of which in turn are connected to one steam turbine.

7. A combined cycle power plant uses gas and steam turbines together to produce electricity. Combustion of natural gas in the combustion turbine turns a generator that produces electricity. The waste heat from the combustion turbine is routed to an HRSG. The HRSG produces steam that is then routed to the steam turbine which, in turn, generates extra power.

8. Combined cycle plants can be set up in multiple configurations, providing considerable operational flexibility and efficiency. It is not necessary for all four HRSGs to provide steam to the steam turbine at the same time. The Bartow Plant can operate on all possible configurations of 4x1, i.e., 1x1, 2x1, 3x1, or 4x1. It also has the ability to augment heat through the use of duct burners. The combustion turbines can operate in "simple cycle" mode to generate electricity when the steam turbine is off-line.

9. The steam turbine is made up of a high pressure ("HP")/intermediate pressure ("IP") section and a low-pressure ("LP") section. Each of these turbine sections has a series of blades. As the steam passes through the blades, the steam exerts its force to turn the blades which, in their turn, cause a rotor to spin. The rotor is connected to a generator, and the generator produces electricity.

10. Steam leaving the HRSGs is introduced to the steam turbine at a high-pressure inlet into the HP turbine. The steam is returned to the HRSG for reheating, then enters the IP turbine. Finally, steam exiting the IP turbine is directed into the LP turbine.

11. The LP section of the steam turbine is dual-flow. The steam is admitted in the middle and flows axially in opposite directions through two opposing mirror-image turbine sections, each of which contains four sets of blades. After passing through the LP section, the steam exhausts into a condenser.

12. The sets of blades increase in size from the front to the back of the LP section. The blades get longer as the steam flows through the turbine. The steam loses energy as it passes through the machine and thus more surface area of blade is needed for the weaker steam to produce the force needed to spin the rotor. The final stage of blades in the LP section consists of 40" L-0 blades, the longest blades in the steam turbine.

13. [redacted]

14. The Mitsubishi steam turbine was originally designed for Tenaska Power Equipment, LLC ("Tenaska"), to be used in a 3x1 combined cycle configuration with three M501 Type F combustion turbines connected to the steam turbine with a gross output of 420 MW of electricity. For reasons unexplored at the hearing, Tenaska never took delivery of the turbine. It was stored in a Mitsubishi warehouse under controlled conditions that kept it in like-new condition.

15. During the design and planning process for the Bartow Plant, DEF's employees responsible for obtaining company approval to build the plant, reported to senior executives that they had found this already-built steam turbine. The Business Analysis Package of DEF's project authorization documents stated that the Mitsubishi steam turbine "proved to be a very good fit for the 4 CT and 4 HRSG combinations."

16. Prior to purchasing the steam turbine, DEF contracted with Mitsubishi to evaluate the design conditions to ensure the steam turbine was compatible with the Bartow Plant's proposed 4x1 combined cycle configuration. [redacted]

[redacted]

17. A "heat balance" is an engineering calculation that predicts the performance and output of power plant equipment based on different variables of ambient conditions and operating parameters. Any change in a variable causes a distinct "heat balance" and calculation of the expected plant output and performance.

18. One such variable was "power factor," a measure of the efficiency of how current is converted to useful power. A power factor of 1.0 indicates "unity," i.e., the most efficient possible conversion of load current. [redacted]

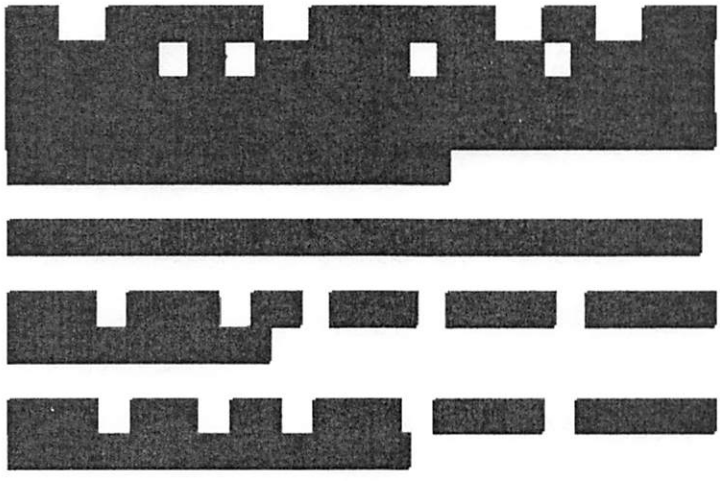
19. Jeffrey R. Swartz, DEF's Vice President of Generation, testified that DEF in fact operates the Bartow Plant at a power factor number that falls between .97 and .995.

20. [redacted]

[redacted]

24. Mr. Swartz further asserted that, prior to completion of the Purchase Agreement, Mitsubishi understood that DEF intended to operate the steam turbine in a 4x1 configuration with a power factor exceeding [redacted] which would result in the generation of more than 420 MW of electrical output.

25. Section 3.2 of the Purchase Agreement, titled [redacted] states, in relevant part:



26. The plain language of section 3.2.1 establishes [redacted]

[2] MPS stands for Mitsubishi Power Systems, Inc.

[redacted] It is unclear how Mr. Swartz translated this language into a [redacted]

27. In any event, the parties disagree as to the significance of the 420 MW maximum output designation. DEF and the Commission contend that the designated megawatt capacity of a steam turbine is not a control mechanism or a limit that the operator must stay below, but is the byproduct of operating the unit within the design parameters provided by the manufacturer at various combinations of such factors as steam flows, steam temperatures, steam pressures, exhaust pressures, ambient temperatures, and humidity.

28. DEF and the Commission contend that the numbers stated in the [redacted] are calculated estimates of the conditions that will achieve [redacted] output. If DEF was able in practice to operate the steam turbine within the design parameters and achieve output in excess of [redacted] then it was simply delivering maximum value to its ratepayers.

29. OPC asserts 420 MW is an operational limitation. [redacted] OPC points out that Mitsubishi conducted extensive [redacted] (from December 2014 until April 2016) that resulted in a document titled, [redacted]" dated March 18, 2015 (the "Report"). The Report expressly stated that the [redacted] The Report also stated that the [redacted] These statements were supported by section 3.2.1.2 of the Purchase Agreement, which states that [redacted] of the steam turbine.

30. OPC points out that section 4.1 of the Purchase Agreement, titled [redacted] expressly states: [redacted]

[redacted]

31. OPC notes that [redacted] reached [redacted] of output using only [redacted] OPC further notes that the Bartow Plant had a [redacted] meaning that it had the ability to produce [redacted] of output when compared to the [redacted] for which the steam turbine was originally designed.

32. The Mitsubishi steam turbine converts steam energy into rotational force (horsepower) that in turn drives an electric generator. The generator purchased by DEF for the Bartow Plant that was attached to the Mitsubishi steam turbine was manufactured by a different vendor and is rated at 468 MW. The generator thus was capable of reliably producing more electrical output than Mitsubishi stated its steam turbine was designed to supply.

33. The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine.

OUTAGES AND BLADE FAILURES

34. DEF has classified the periods during which the Bartow Plant has been operational as: Period 1-- from June 2009 until March 2012; Period 2-- from April 2012 until August 2014; Period 3-- from December 2014 until April 2016; Period 4-- from May 2016 until October 2016; and Period 5-- from December 2016 until February 2017.

35. DEF placed the Bartow Plant into commercial service in June 2009. Later that year, DEF began operating the steam turbine above 420 MW

under varying system conditions. Mr. Swartz estimated that DEF operated the steam turbine above 420 MW about half the time between June 2009 and March 2012, the time span that has been designated as Period 1 of the five periods in question in this proceeding. The Bartow Plant operated for a total of 21,734 hours during Period 1.

36. In March 2012, while conducting a routine inspection of the steam turbine during a planned power outage, DEF found that [redacted] DEF consulted with Mitsubishi regarding the damage. Mitsubishi inspected the blades and recommended [redacted]

37. Mitsubishi concluded that the damage to the blades was caused by [redacted] Up to this point, Mitsubishi had [redacted] DEF and Mitsubishi had assumed that if [redacted] of the steam turbine, then the [redacted] would be acceptable. After discovery of the blade failure in March 2012, [redacted][3]

38. Period 2 commenced in April 2012 and ended in August 2014, a period of 28 months. At the beginning of Period 2, DEF and Mitsubishi replaced all of the L-0 blades on the affected end of the LP turbine with [redacted]

39. During Period 2, DEF operated the steam turbine a total of 21,284 hours. For all but two hours of this period, DEF operated the steam turbine

[3] [redacted]

at less than 420 MW and complied with Mitsubishi's [redacted]

40. During a planned outage beginning in August 2014, Mitsubishi replaced the [redacted] used in Period 2 with [redacted] thus beginning Period 3. During this planned outage, DEF and Mitsubishi conducted an inspection of the Period 2 [redacted] blades. The inspection revealed a [redacted] consistent with ordinary usage over the course of Period 2. There was no damage noted to [redacted] There was some [redacted] described as [redacted]

41. Between Period 2 and Period 3, Mitsubishi and DEF installed [redacted] in the steam turbine to allow for [redacted] which they expected would help them to understand why the L-0 blades were experiencing damage and to [redacted] protect the equipment.

42. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 2.

43. Period 3 commenced in December 2014 and ended in April 2016. During Period 3, DEF operated the steam turbine a total of 10,286 hours. DEF never exceeded 420 MW of output, except for a [redacted]

44. During Period 3, Mitsubishi [redacted] on the steam turbine. The [redacted]

calculated that the Bartow steam turbine experienced approximately [redacted] and Mitsubishi's fleet experience had been [redacted] on last stage blades including the 40" L-0 blades. Mitsubishi was uncertain what impact the L-0 blades would experience at [redacted]

45. Mitsubishi concluded that [redacted]

46. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 3.

47. Despite DEF's having [redacted] DEF and Mitsubishi's examination of the steam turbine at the end of Period 3 revealed that [redacted] DEF and Mitsubishi decided that [redacted] were installed.

48. Period 4 commenced in June 2016 and ended five months later in October 2016. During Period 4, DEF operated the steam turbine a total of 2,942 hours. DEF did not exceed 420 MW of output during this period and [redacted]

49. Just five months after the commencement of Period 4, DEF detected vibration changes in the LP turbine and stopped operation of the steam turbine to inspect the L-0 blades. During this inspection, DEF and Mitsubishi once again found several damaged L-0 blades. At the time of this blade damage, DEF was operating the steam turbine below 420 MW and observing the operating parameters established by Mitsubishi [redacted]

50. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 4.

51. Period 5 began in December 2016 and ended two months later in February 2017.

52. At the beginning of Period 5, DEF and Mitsubishi [redacted] of 1,561 hours. DEF never exceeded 420 MW of output during this period and operated the steam turbine within the operating parameters established by Mitsubishi [redacted]

54. On February 9, 2017, the steam turbine was removed from service when DEF detected the presence of sodium in the steam water cycle. The cooling water used for the condenser is salt water from Tampa Bay. Mr. Swartz testified that any indication of sodium inside the condenser above minute amounts is alarming. During this shutdown, DEF performed an inspection of the steam turbine and discovered that a [redacted]

device known as a rupture disk had failed in the LP turbine and that the L-0 blades were damaged. DEF concluded that [redacted] the rupture disk. This forced outage lasted until April 8, 2017.

55. Based on the sequence of events, DEF was able to determine with certainty that the blade damage during Period 5 occurred on February 9, 2017. At that time, DEF was operating the steam turbine below 420 MW and within the operating parameters established by Mitsubishi [redacted]

56. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 5.

57. During the February 2017 forced outage of the steam turbine, DEF continued to operate the Bartow Plant with the gas turbines running in simple cycle mode.

58. DEF took three primary actions in the wake of the Period 5 outage: a root cause analysis ("RCA") team, established after the first blade failure in Period 1, continued its mission to investigate and prepare an RCA; a restoration team was formed to bring the steam turbine back online; and a team was formed to evaluate a long-term solution for the steam turbine.

[redacted]

60. Instead, DEF and Mitsubishi installed pressure plates in place of the L-0 blades as an interim solution that would bring the steam turbine back into operation quickly and give Mitsubishi and DEF time to develop a permanent solution. A pressure plate is a non-rotating plate that has holes drilled into it. The pressure plate reduces the pressure of the steam passing through a steam turbine, keeping the steam from damaging the unit's condenser. A pressure plate does not use the steam passing through it to produce electricity and therefore decreases the efficiency of a steam turbine.

The pressure plate applied by DEF limited the output of the steam turbine to 380 MW.

61. The parties have agreed and the undersigned accepts that the period of the steam turbine's "de-rating" from 420 MW to 380 MW should be calculated as running from April 2017 through the end of September 2019.

THE MITSUBISHI AND DEF ROOT CAUSE ANALYSES

62. Mitsubishi's [redacted] during Period 3 [redacted] of its RCA in a 35-page "Bartow RCA Summary" ("Mitsubishi RCA"). The Mitsubishi RCA documented the [redacted]

64. The Mitsubishi RCA also stated that an [redacted]

65. After the discovery of the blade damage in March 2012, DEF formed an RCA team and began a years-long RCA process that ended with its own February 6, 2018, RCA report ("DEF RCA").

66. DEF's RCA [redacted]

67. [redacted]

team produced between 2012 and the final DEF RCA in February 2018. Mr. Swartz declined to call these documents "drafts" of the RCA, preferring to say they were "working papers" that provided snapshots of the RCA team's investigation at a given time. Mr. Swartz emphasized that only the February 2018 RCA report stated DEF's official position as to the cause of the blade failures.

69. The working papers indicate that as late as October 15, 2016, DEF [redacted]

70. The working papers show that as late as June 26, 2017, DEF maintained that one of "the most significant contributing factors toward root

cause of the history of Bartow Unit 4 L-0 events" was [redacted]

71. OPC accurately states that the DEF working documents demonstrate that during the RCA process, before and after the Period 5 event, DEF consistently identified excessive steam flow in the LP turbine as one of the "most significant contributing factors" toward blade failure over the history of the steam turbine, the [redacted].

72. Mr. Swartz attempted to minimize the significance of the working papers by stating that DEF was obliged to investigate the issue of excessive steam flow because [redacted]

73. DEF's final RCA did not include a statement that excessive steam flow was a significant contributing factor in the blade failures. The final DEF RCA instead noted that "excessive steam flow" had been a "potential" operational factor that DEF examined during the RCA process. The RCA states that DEF had been unable to find a correlation between [redacted] and the five failure periods. In particular, the RCA pointed out that [redacted]

74. OPC concludes that the final DEF RCA was DEF's self-serving attempt to exonerate its own overloading of the steam turbine and to shift responsibility onto Mitsubishi for [redacted] DEF contends that it simply followed the data throughout the RCA process and arrived at the only conclusion consistent with the findings of its engineers.

POST-RCA ACTIONS

75. As noted above, pressure plates were installed in place of the L-0 blades at the conclusion of Period 5. The pressure plates allowed DEF to keep the steam turbine running at a lower level of output while it sought a permanent solution to the blade damage problem.

76. In 2018, DEF solicited proposals to implement a long-term solution that would allow it to reliably operate the steam turbine to support 450 MW of electrical output from the generator. Three vendors responded. [redacted] DEF selected the Mitsubishi proposal.

77. In December 2019, Mitsubishi installed [redacted] As of the hearing date, DEF had operated the Bartow Plant with the [redacted] L-0 blades without incident on a 1x1, 2x1, and 3x1 configuration, but had yet to operate with all four combustion turbines.

78. OPC points out that in proposing its [redacted] blades, Mitsubishi did not waver from the conclusion of its RCA. Mitsubishi stated the following as the first three bullet points in the introduction to its paper describing the testing of the [redacted] blades:

[redacted]

REPLACEMENT POWER AND DE-RATING COSTS

79. The record evidence established that the replacement power costs stemming from the February 2017 outage are $11.1 million.

80. Further, the record evidence established that DEF incurred replacement power costs from May 2017 through September 2019, the period of the "de-rating" of the steam turbine, i.e., the reduction in output from 420 MW to 380 MW while it operated with the pressure plate. Those costs, calculated by year, are $1,675,561 (2017), $2,215,648 (2018), and $1,125,573 (2019), for a total of $5,016,782.

81. Therefore, the total replacement power costs incurred as a result of DEF's operation of the steam turbine are $16,116,781, without considering interest.

DISCUSSION

82. As noted above, the parties have a fundamental disagreement as to the significance of the 420 MW maximum output designation that Mitsubishi placed on the steam turbine. The Energy Information Administration of the U.S. Department of Energy defines "generator nameplate capacity" as the "maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer." There was no dispute that 420 MW was the "nameplate capacity" of the Mitsubishi steam turbine. OPC argues that the nameplate capacity of 420 MW is by definition an operational limitation and that operation of the steam turbine beyond the maximum rated output of 420 MW threatened safe operation.

83. OPC points to the fact that there are 3 [redacted]

[redacted] OPC notes that the DEF RCA report does not explain why a [redacted]

84. As to DEF's argument that [redacted] OPC replies that had DEF operated the turbine within its original operating limitations during Period 1, there is every reason to believe that the original L-0 blades would still be functioning, consistent with [redacted] In other words, there would have been no Periods 2, 3, 4, or 5 but for DEF's actions during Period 1.

85. OPC points out that neither DEF nor any other subsidiary of Duke Energy had experience running a 4x1 combined cycle plant prior to purchasing the Mitsubishi steam turbine and commencing operation of the Bartow Plant. Further, neither DEF nor Mitsubishi had any experience operating a steam turbine at the [redacted]

86. Given the lack of experience on either side, OPC contends that DEF should have consulted Mitsubishi before purchasing the steam turbine to ask whether Mitsubishi believed it was capable of an output in excess of its nameplate capacity of 420 MW. [redacted]

87. OPC's expert witness, Richard Polich, pointed out that Mitsubishi's consultant ran over [redacted]

88. Mr. Polich testified that the Mitsubishi steam turbine was an aftermarket unit designed for a [redacted] To support his opinion, Mr. Polich pointed out that when DEF finally did ask whether the turbine could run past 420 MW, [redacted]

89. DEF ran the unit beyond 420 MW without consulting Mitsubishi. Mr. Polich found it a tribute to the design of the [redacted] 40" L-0 blades that they did not suffer damage sooner than they did. The steam turbine operated from June 2009 until March 2012 before the blade damage was noted. It was impossible to state exactly when the blade damage occurred in Period 1, but Mr. Polich opined that the damage was most likely cumulative.[4]

90. Mr. Polich noted that the blade failure in Period 5 was the fastest of any period, though the [redacted] Mr. Polich further noted that the DEF RCA did not address why the blades lasted longer in Periods 1 and 2 than in the other three periods. Mr. Polich reasonably concluded that there had to be something about the blades' [redacted]

[4] DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, pointing out that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420 MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.

that allowed them to last longer, and something in the [redacted] that caused them to fail quickly.

91. Mr. Polich believed that the [redacted] He noted that there were 28 months of operation below 420 MW during Period 2 and that there was basically no damage to the blades beyond the usual [redacted]

92. Mr. Polich thought that [redacted] Mr. Polich did not believe the five periods could be correlated, [redacted]

93. Mr. Polich testified that DEF would have acted prudently from both a warranty and a regulatory perspective by requesting written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW of output.

94. Mr. Swartz countered that it would not be a "typical conversation" in the industry to ask Mitsubishi whether and how long the unit could be operated above 420 MW. He pointed out that pounds per hour per square foot of steam flow is not a parameter that can be measured during operation. It is a calculated number that DEF could not possibly have used to govern operation of the turbine.

95. Mr. Swartz testified that "420 MW" is the electrical output of the generator, which is coupled to the steam turbine. The steam turbine's operation is governed by parameters such as pressures, steam flows, and temperatures. Mr. Swartz stated that it is common in the industry to speak in terms of megawatts to get a feel for the size of the unit, but that generator output is dependent on many factors.

96. Mr. Swartz stated that when Mitsubishi criticized DEF for operations above 420 MW, it was using that term as a proxy for [redacted] It was his opinion that 420 MW was not an operational limit on the steam turbine.

97. Mr. Swartz testified that the [redacted] He stated that operation of the steam turbine above 420 MW could be correlated with [redacted] but many other factors are involved in determining what a generator can produce.

98. Mr. Swartz stated that the power factor was the key to DEF's ability to operate the steam turbine above 420 MW. Mitsubishi used [redacted] with a power factor of [redacted] to predict an output of 420 MW. Using the same operating factors, DEF was able to run the steam turbine at a power rating between .97 and .995. Mr. Swartz testified that this increased efficiency enabled the Bartow generator to operate above 420 MW.

99. Mr. Swartz conceded that the [redacted] at least from DEF's perspective. If DEF was able to obtain more, such was to the ultimate benefit of its ratepayers and was consistent with the operating limitations set forth in the Purchasing Agreement.

100. OPC responds that the record of this proceeding contains no indication that at any time during the five-year long, continuous, iterative RCA process did DEF's engineers suggest that the power factor of [redacted] in [redacted] an indication that the steam turbine output of 420 MW could be safely exceeded.

101. OPC points to several statements recorded during the RCA process indicating that DEF's engineers and Mitsubishi alike acknowledged that 420 MW was the design limit of the steam turbine: [redacted]

[redacted]

102. OPC's essential criticism was that DEF pushed the Mitsubishi steam turbine beyond its operational limits, whether the issue is framed in terms of megawatts of electrical output beyond the design point or in terms of steam flow [redacted] The evidence was clear that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [redacted] The evidence was also clear that DEF made no effort before the fact to notify Mitsubishi of its intended intensity of operation or to ask Mitsubishi whether it could safely exceed the [redacted] Mr. Swartz was unable to explain away this criticism and thus DEF failed to meet its burden of demonstrating that it prudently operated the Bartow Plant during the times relevant to this proceeding.

CONCLUSIONS OF LAW

103. DOAH has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

104. The Commission has the authority to regulate electric utilities in the State of Florida pursuant to the provisions of chapter 366, including sections 366.04, 366.05, and 366.06.

105. An "electric utility" is defined 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 the state." § 366.02(2), Fla. Stat.

106. DEF is an investor-owned electric utility operating within the State of Florida subject to the jurisdiction of the Commission pursuant to chapter 366.

107. OPC, FIPUG, and White Springs are parties to the Fuel Clause docket, which included the issues to be resolved here, and as such are entitled to participate as parties in this proceeding.

108. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Petitioner, DEF, has the burden of proving, by a preponderance of the evidence, that it acted prudently in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow Plant. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

109. The legal standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made." *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [redacted]

111. DEF's RCA concluded that the blade failures were caused [redacted] This conclusion is belied by the fact that [redacted] Mitsubishi cannot be faulted for

[redacted] in a way that would allow an operator to run the turbine consistently beyond its capacity.

112. [redacted]

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

114. The record evidence demonstrated an [redacted] that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

115. DEF demonstrated by a preponderance of the evidence that its actions during Periods 2 through 5 were prudent.

116. DEF argues that even if it failed to exercise prudence during Period 1, those actions were so attenuated by DEF's subsequent actions during Periods 2 through 5 that the outage and de-rating that began in 2017 cannot be fairly attributed to DEF's failures from 2009 through March 2012. If the imprudent operation in Period 1 did not cause the Period 5 outage, then the imprudent operation cannot be a basis for disallowance of the replacement power costs at issue.

117. OPC argues that Periods 2 through 5 would not have been necessary had DEF operated the turbine within its original operating limitations during Period 1. OPC contends that, based on [redacted], there is every reason to believe that the original L-0 blades would still be functioning but for DEF's overstressing them in Period 1.

118. OPC states that the applicable standard for prudence review is how a prudent and reasonable utility manager would have operated a new steam turbine under the conditions and circumstances which were known, or reasonably should have been known, when decisions were made in 2008 through 2012. OPC argues that it was imprudent and unreasonable for DEF to regularly supply steam to the steam turbine at levels causing the steam turbine to operate above the design point of 420 MW, especially given the fact that the steam turbine was not designed for the Bartow Plant and was sold to DEF with an [redacted]

119. It is speculative to state that the original Period 1 L-0 blades would still be operating today had DEF observed the [redacted] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

> You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.
>
> It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [redacted]

> [redacted] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [redacted] Well, the answer is both.
>
> The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration ... that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.
>
> On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.
>
> * * *
>
> So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established ... may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least $11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

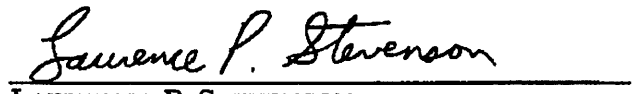
124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back online in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [redacted] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is $5,016,782.

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is $16,116,782, without interest.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Public Service Commission enter a final order finding that Duke Energy Florida, LLC, failed to demonstrate that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that Duke Energy Florida, LLC, therefore may not recover, and thus should refund, the $16,116,782 for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019.

DONE AND ENTERED this 27th day of April,2020, in Tallahassee, Leon County, Florida.



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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FUEL AND PURCHASED POWER COST RECOVERY CLAUSE WITH GENERATING PERFORMANCE INCENTIVE FACTOR / Case No. 19-6022

PSC Docket No. 20190001-EI

DUKE ENERGY FLORIDA, LLC'S, EXCEPTIONS TO THE RECOMMENDED ORDER

Duke Energy Florida, LLC ("DEF"), pursuant to section 120.57(1)(k), Florida Statutes, and rule 28-106.217, Florida Administrative Code, hereby submits its exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020 ("RO").[1]

INTRODUCTION

When considering the RO, the Public Service Commission ("PSC") may reject or modify the conclusions of law recommended by the ALJ.[2] When rejecting or modifying a conclusion of law, the PSC must state with particularity its reasons for doing so and must make a finding that the PSC's substituted conclusion of law is as or more reasonable than that which was rejected or modified.[3] To be clear, on issues of law, the PSC is not required to defer to the ALJ,[4] and where the issue of law under review is infused with overriding policy considerations, the PSC, not the ALJ, should decide the issue of law.[5]

The PSC may also reject or modify a finding of fact contained in the RO if the PSC determines from a review of the entire record, and states with particularity in the final order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on

[1] The Hearing Transcript will be cited as "T. p.__." The Recommended Order will be cited as RO. ¶__. Joint exhibits will be cited as Jt. Ex. ___, p. ___. OPC's exhibits will be cited as "OPC Ex.__, p. __." FIPUG's exhibits will be cited as "FIPUG Ex.__, p.__." PCS Phosphate's exhibits will be cited as "PCS Phosphate Ex.__, p.__."
[2] Section 120.57(1)(l), Florida Statutes.
[3] *Id.*
[4] *State Contracting & Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998).
[5] *Pillsbury v. State, Dep't of Health & Rehabilitative Servs.*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999) ("if the matter under review is susceptible of ordinary methods of proof, such as determining the credibility of witnesses or the weight to be given particular evidence, the matter should be determined by the hearing officer. If, however, the matter is infused with overriding policy considerations, the issue should be left to the discretion of the agency.") (citing *Bush v. Brogan*, 725 So. 2d 1237 (Fla. 2d DCA 1990)).

which the findings were based did not comply with essential requirements of law.[6]

As detailed in DEF's exceptions below, the ALJ has proposed several conclusions of law that should be rejected both because they are inconsistent with the PSC's overriding policy considerations regarding public utilities in Florida and because the ALJ has improperly interpreted the facts when making those conclusions of law. While DEF takes exception to multiple findings of fact, due to the standard of review discussed above, DEF will not relitigate those points here nor ask this Commission to reweigh evidence. As discussed below, even accepting the ALJ's findings of fact, this Commission should still reject the ALJ's legal and policy conclusions.

DEF'S EXCEPTIONS TO THE CONCLUSIONS OF LAW

Exception to RO ¶ 110

DEF takes exception to the ALJ's conclusion in paragraph 110 that DEF failed to demonstrate that its actions during Period 1 were prudent. First, it is helpful to re-state the standard this Commission routinely interprets and applies to determine whether a utility's actions are prudent. The ALJ correctly stated part of the test for prudence[7], but he left out an important factor. Namely, that hindsight cannot form the basis of a prudence determination. *Fla. Power Corp. v. Public Service Com'n*, 456 So. 2d 451, 452 (Fla. 1984). As support for the ALJ's conclusion, the ALJ relies on evidence that the steam turbine ("ST") DEF purchased for installation at the Bartow Plant had a nameplate rating of 420 MW and that DEF [redacted] after the initial blade failure.

[6] Section 120.57(1)(l), Florida Statutes.

[7] The standard for determining prudence is what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013) (RO ¶ 109).

Before committing to purchase the ST, DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed 4x1 combined cycle design configuration. As part of this assessment, DEF informed Mitsubishi that DEF intended to operate the Bartow Plant and the ST in 4x1 configuration with a power factor exceeding [redacted] which would result in the generation of more than 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356. During Period 1, DEF operated the ST in accordance with the operating parameters specified by Mitsubishi for operation of the ST, which did not include a parameter that prohibited DEF from operating the ST in excess of 420 MW. T. 272, 284, 346, 377-378. It was only after the initial blade failure during Period 1 that [redacted] T. 260. DEF operated the ST in accordance with [redacted] but asked Mitsubishi to determine whether anything could be done [redacted] during Period 1. In response, Mitsubishi [redacted] T. 152, 277. Mitsubishi did not determine it was necessary [redacted]

Significantly, Mitsubishi did not conclude that DEF operated the ST during Period 1 in violation of the operating parameters it provided DEF for the ST. Instead, MHPS surmised that [redacted]. T. 97, 386. Moreover, the fact that Mitsubishi [redacted] makes plain that Mitsubishi believed the ST was capable of operating above 420 MW [redacted]

In the utility industry, the nameplate rating of a steam turbine is not regarded as an

"operating parameter" above which the steam turbine may not be operated. T. 140-143, 281-282, 284. Instead, the general standard followed in the utility industry is to operate steam turbines within operating parameters provided by the original equipment manufacturer while also striving to achieve the most efficiency for utility customers. T. 141. Operating parameters provided by Mitsubishi for the ST included steam pressures, operating temperatures and other parameters common to steam turbines. T. 346, 377-378. Nothing in DEF's experience operating the Bartow Plant or in Mitsubishi's analysis of whether the ST design conditions were compatible with the Bartow Plant indicated that DEF's operation of the ST in accordance with the operating parameters established by Mitsubishi would result in damage to the L-0 blades. Based upon DEF's and Mitsubishi's combined prior knowledge, DEF had appropriate operating parameters in place, and DEF properly followed these parameters. Only an after-the-fact analysis determined the specific cause of the damage to the L-0 blades.

Indeed, the ALJ's conclusion that the 420MW nameplate rating was an operating parameter is based, at least in part, on DEF's alleged "acceptance" of the limitation. The ALJ states that DEF accepted the limit because it (1) [redacted] and (2) requested that Mitsubishi [redacted] This conclusion is nonsensical because it does not support that DEF accepted the 420 MW as a limitation. Rather, it shows that DEF was acting as a prudent utility would be expected to act in such a situation. As this Commission is well aware, a prudent utility operates its generating units to maximize output for the benefit of its customers. Working with the manufacturer to ensure that the unit can be operated as DEF always intended it to run is not an acceptance of a previous limitation; it is a sign that DEF was acting prudently to protect its investment. Taken to its logical conclusion, the ALJ would have preferred DEF to simply fix the blades and back down the operation to 420 MW and not make any efforts whatsoever to operate

the unit in the most beneficial manner for its customers. What DEF learned through subsequent periods, however, is that [redacted] the blades still suffered damage. In sum, even though it continued to follow all OEM provided guidance, DEF is still being subjected to "Monday-morning quarterbacking" and findings of imprudence.

A preponderance of the evidence adduced at the final hearing reflects, and the PSC should conclude, that DEF prudently operated the ST during Period 1 in accordance with each of the operating parameters provided by Mitsubishi. This conclusion is as or more reasonable than the conclusion reached by the ALJ, which relied upon hindsight and would arbitrarily limit a utility's operation of a steam turbine to the turbine's nameplate rating regardless of whether the steam turbine has the capacity to safely operate at greater efficiency. The conclusion would also inhibit a utility's ability to maximize output for the benefit of its customers.

Exception to RO ¶ 111

DEF takes exception to the ALJ's conclusion in paragraph 111 that DEF's determination that the L-0 blade failures were the result of [redacted] is belied by the fact that [redacted] As reflected by Mitsubishi's own root cause analysis, [redacted] T. 97, 386. Despite the fact that DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed design configuration, Mitsubishi did not identify [redacted] as a potential problem at the Bartow Plant. Under these circumstances, comparing the ST with other Mitsubishi facilities is not beneficial to the prudence analysis at hand.

It is more constructive to compare the blade failures that occurred at the ST during Period 1 (when the ST was operated above 420 MW) with the blade failures that occurred at the ST during Periods 2 through 5 (when the ST was operated below 420 MW). This comparison reveals that the L-0 blades may have failed when DEF was operating the ST above 420 MW but unequivocally suffered damage on four separate occasions when DEF was operating the ST below 420 MW. Indeed, the RO notes that it is not possible to determine when the damage occurred in period 1, and thus it is impossible to say how the unit was being operated at the time of damage; the RO mistakenly concludes that "the exact moment of damage is beside the point"[8] because it fails to account for cumulative wear to the machine. As a matter of law and regulatory policy, the ALJ's conclusion must be wrong – if the damage to the unit occurred prior to any alleged imprudence,[9] DEF cannot be held responsible for the consequences of the damage. It is as or more reasonable to conclude, therefore, that DEF's determination that the L-0 blade failures resulted from [redacted] is supported by a preponderance of evidence that the blades failed during prudent operation of the ST.

DEF takes further exception to the ALJ's conclusion in paragraph 111 that DEF operated the ST consistently beyond its capacity. As explained in DEF's exception to paragraph 110 above, the operating parameters provided by Mitsubishi for the ST were parameters common to steam turbines, including steam pressures and operating temperatures. T. 346, 377-378. DEF complied with these operating parameters. T. 272, 284, 346, 377-378. Mitsubishi provided DEF with no other operating parameters or capacities for the ST. It is, thus, as or more reasonable to conclude

[8] *See* RO, at fn. 11 ("DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, point tout that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.").

[9] Again, DEF disputes that operation of a generation unit above nameplate capacity, but within all OEM provided operating parameters is imprudent or that the nameplate capacity is an operating parameter.

that DEF prudently operated the ST within each of the operating parameters provided by Mitsubishi.

Exception to RO ¶ 112

DEF takes exception to the ALJ's conclusion in paragraph 112 that Mitsubishi attributed the blade failure during Period 1 to [redacted] In fact, in its root cause analysis ("RCA") dated September 22, 2017, Mitsubishi determined that [redacted] (underscoring added) Jt. Ex. 82, p. 12 of 35. It is undisputed that DEF operated the ST below 420 MW during Periods 2 through 5. Jt. Ex. 80, P. 5; T. 285, 347-350, 352, 380. Because DEF always operated the ST below 420 MW during Periods 2 through 5 and the L-0 blades, nevertheless, suffered damage during each of those periods, it is more reasonable to conclude that the [redacted] that ultimately damaged the L-0 blades during Period 1 was not the result of DEF's operation of the ST above 420 MW, but was instead caused by L-0 blades that were not [redacted] by the Bartow Plant. T. 97, 386; Jt. Ex. 83. If the ST's manufacturer was not able anticipate that damage to the L-0 blades would result from operating the ST in accordance with the manufacturer's operating parameters, it would be unreasonable and contrary to the established prudence standard to expect DEF to have anticipated this. It is, therefore, as or more reasonable to conclude that the damage to the L-0 blades that occurred during Period 1 was the combined result of [redacted]

Exception to RO ¶ 113

DEF takes exception to the ALJ's conclusion in paragraph 113 that it would have been prudent for DEF to consult with Mitsubishi about the ability of the ST to operate above 420 MW

and above steam flows anticipated in the original design for the ST. With respect to steam flows within the low pressure turbine where the L-0 blades are located, it is important to note that Mitsubishi provided DEF [redacted] T. 377-378. As such, it would be as or more reasonable to conclude that prudence did not require DEF to consult with Mitsubishi in connection with steam flow limits within the low-pressure turbine during Period 1 operation of the ST. As indicated above, the output of a steam turbine is not an "operating parameter" provided by a manufacturer; rather the output is a product that follows from operation within the manufacturer-provided parameters. T. 140-143, 281-282, 284. As also indicated above, Mitsubishi understood that DEF intended to operate the Bartow Plant in a configuration that would generate in excess of 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356. Due to this, it is as or more reasonable to conclude that prudence did not require DEF to consult with Mitsubishi before operating the ST within the operating parameters supplied by Mitsubishi.

Exception to RO ¶ 114

DEF takes exception to the ALJ's conclusion in paragraph 114 that DEF failed to satisfy its burden of showing its actions in operating the ST during Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. DEF operated the ST during Periods 1 through 5 in accordance with the manufacturer's operating parameters. T. 346, 377-378. DEF's actions and decisions in operating the ST within Mitsubishi's operating parameters were prudent. Consequently, it is as or more reasonable to conclude that DEF's actions in operating the ST in Period 1 did not cause or contribute significantly to the L-0 blade damage that occurred during Periods 1 through 5. In addition, it appears that the ALJ, by stating that DEF failed its burden to show that its actions did NOT cause the damage, is imposing an impossible standard of proving a negative. A utility does not have the burden to prove that something did not occur; such a requirement would be nearly impossible to meet. Rather, DEF's burden in this case was to show

that it acted as a reasonable utility manager would, given the facts known or reasonably knowable at the time, and without the benefit of hindsight review. Under that standard, even assuming that nameplate capacity was some sort of operational condition (which is not the case), the more appropriate interpretation of the facts determined in the case is that, because there was damage to the blades even when operating below 420 MW in later periods, DEF's actions in operating the unit such that the output was higher than 420 MW were prudent and not the cause of the damage.

Exception to RO ¶ 119

DEF takes exception to the ALJ's conclusion in paragraph 119 that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is undisputed that DEF prudently operated the ST during Periods 2 through 5. T. 347-350. It is also not disputed that there was no residual damage to any component within the ST following Period 1. T. 103-105. In fact, the only damage that resulted from Period 1 operation of the ST was to the L-0 blades, [redacted] at the conclusion of Period 1. Jt. Ex. 80, p. 5; T. 148, 150-151, 330. Consequently, there is no causal link between the Period 1 operation of the ST and the damage experienced by the L-0 blades during subsequent periods. Such a groundless contention cannot form the basis for denying a utility's fuel cost recovery. *In Re: Fuel & Purchased Power Cost Recovery Clause with Generation Performance Incentive Factor (Crystal River 3 1989 Outage)*, 91 FPSC 12:165, *12 (Dec. 9, 1991).

Since there is no dispute that DEF prudently operated the ST during Periods 2 through 5 and since it is also undisputed that there was no residual damage to the ST following Period 1 operation, it is as or more reasonable to conclude that the damage to the L-0 blades that occurred during Periods 2 through 5 was not precipitated by DEF's operation of the ST during Period 1.[10]

[10] Even if one were to assume DEF's operation of the ST above 420 MW during Period 1 was imprudent, if such operation did not cause the Period 5 outage, then it makes no difference whether DEF was imprudent in its operation

To conclude, as the ALJ does, that DEF should be held responsible for the forced outage that occurred during Period 5 – despite any direct causal link between DEF's operation of the ST during Period 1 and the Period 5 outage – would set a dangerous precedent that would discourage utility operators from continuing to operate a power plant that may have been imprudently operated at some point for fear that any subsequent forced outage experienced by the power plant could be attributed to the earlier imprudence, regardless of how remote in time that earlier imprudence may have been.

Exception to RO ¶ 120

DEF takes exception to the ALJ's conclusion in paragraph 120 that it would not be appropriate to assign the cost of the February 2017 forced outage to the consumers. It is as or more reasonable to conclude that where, as here, a utility operates a power plant within the manufacturer's express operating parameters and does not know, or have reason to know, that such operation could result in a forced outage of the power plant, the utility should not be forced to bear the resulting replacement power costs.

Exception to RO ¶ 121

For the reasons explained above in its exceptions to RO ¶ 110, 111 and 113, DEF takes exception to the ALJ's conclusion in paragraph 121 that DEF did not exercise reasonable care in operating the ST and should have sought the cooperation of Mitsubishi prior to operating the ST above 420 MW. It is as or more reasonable to conclude that DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage and was not required to consult with Mitsubishi prior to operating the ST above 420 MW. There is also no record evidence to demonstrate that consulting with Mitsubishi prior to

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of the ST during portions of Period 1 because the replacement power costs at issue could not be said to be a result of the Company's mismanagement. See *Fla. Power Corp. v. Cresse*, 413 So. 2d 1187, 1190-1191 (Fla. 1982).

operating the ST above 420 MW would have resulted in any change in events.

Exception to RO ¶ 122

DEF takes exception to the ALJ's conclusion in paragraph 122 that DEF must refund power costs to DEF's customers. For the reasons explained above, DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage. Consequently, it is as or more reasonable to conclude that DEF is not required to refund power costs to its customers.

Exception to RO ¶ 123

For the reasons set forth in its exception to the ALJ's conclusion in paragraph 110, DEF takes exception to the ALJ's conclusion in paragraph 123 that DEF failed to show that it operated the ST prudently during Period 1. It is as or more reasonable to conclude that DEF carried its burden to show that it prudently operated the ST during Period 1 within each of the operating parameters provided by Mitsubishi.

DEF takes further exception to the ALJ's conclusion in paragraph 123 that DEF failed to meet its burden of showing that the Period 5 blade damage and the resulting replacement power costs were not the consequence of DEF's operation of the ST during Period 1. Because DEF proved by a preponderance of evidence that its operation of the ST during Period 1 was prudent and because it is undisputed that DEF's operation of the ST during Periods 2 through 5 was also prudent, it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not the consequence of DEF's operation of the ST during Period 1.

Exception to RO ¶ 124

DEF takes exception to the ALJ's conclusions in paragraph 124 that the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the ST during Period 1. Because DEF proved

by a preponderance of evidence that its operation of the ST during Period 1 was prudent and because it is undisputed that DEF's operation of the ST during Periods 2 through 5 was also prudent, it is as or more reasonable to conclude that the installation of the pressure plate was not the consequence of DEF's operation of the ST during Period 1.

DEF takes further exception to the ALJ's conclusion in paragraph 124 that DEF should be required to refund replacement power costs related to the installation of the pressure plate. For the reasons explained above, DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage. Consequently, it is as or more reasonable to conclude that DEF is not required to refund power costs to its customers.

Exception to RO ¶ 125

DEF takes exception to the ALJ's conclusions in paragraph 125 that DEF was imprudent in its operation of the ST during Period 1 and, consequently, should be required to refund $16,116,782 to its customers. For the reasons discussed at length above, it is as or more reasonable to conclude that DEF operated the ST prudently at all times relevant to the replacement power costs and is, therefore, not required to refund any amount to its customers.

CONCLUSION

As detailed above, the above-referenced conclusions of law recommended by the Administrative Law Judge are inconsistent with the standard of prudence delineated in this Commission's precedent as well as the Commission's overriding policy considerations regarding public utilities in Florida. Adoption of the ALJ's conclusions would send negative operational signals to the state's utilities; specifically, adoption of the RO would signal that utilities should not

strive to maximize the efficient output of generating units, which, contrary to logic and economic principles, would result in limiting operations of the most efficient and economic sources of generation in favor of less efficient, less economic, and less environmentally friendly sources of generation (e.g., oil-fired peaker units). Moreover, it would send a signal to all utilities that, regardless of compliance with all industry-recognized operational parameters, they may still be found imprudent based on failure to comply with a later-established operational parameter (unrecognized at the time); this would upend the well-established prudence standard and subject all utilities to increased risk and increased costs which are eventually borne by customers. This Commission should reject these conclusions.

Respectfully submitted this 12th day of May 2020.

/s/ Matthew R. Bernier
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor	Docket No. PSC-20190001-EI DOAH Case No. 19-6022

OFFICE OF PUBLIC COUNSEL, PCS PHOSPHATE – WHITE SPRINGS, AND THE FLORIDA INDUSTRIAL POWER USERS GROUP JOINT RESPONSE TO DUKE ENERGY FLORIDA, LLC'S EXCEPTIONS TO RECOMMENDED ORDER

The Office of Public Counsel, PCS Phosphate – White Springs, and the Florida Industrial Power Users Group, pursuant to section 120.57(1)(k), Florida Statutes (2020), and Rule 28-106.217, Florida Administrative Code, jointly respond to the Exceptions submitted by Duke Energy Florida, LLC ("DEF") to the Recommended Order in the above-styled matter. This Response is being submitted confidentially only because it is required due to a claim of confidentiality DEF has made to the Commission on behalf of the original equipment manufacturer.

OVERVIEW

The Public Service Commission ("PSC" or "Commission") forwarded this matter to the Division of Administrative Hearings on November 8, 2019, and requested that an Administrative Law Judge ("ALJ") conduct a formal evidentiary hearing on the following issues of disputed material fact:

> ISSUE 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant, and if not, what action should the Commission take with respect to replacement power costs?
>
> ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

The Division of Administrative Hearings assigned an ALJ who conducted a formal evidentiary hearing on February 4 and 5, 2020. The parties collectively presented the live testimony of two expert witnesses, submitted extensive additional pre-filed testimony and 34 exhibits into evidence including a voluminous composite exhibit and other records. The official transcript of the final hearing is contained in three volumes, not including exhibits and additional pre-filed testimony admitted into evidence.

At the conclusion of the evidentiary hearing all parties, including the Commission, submitted detailed proposed recommended orders containing proposed findings of fact and conclusions of law. After duly considering the entirety of the record, applicable law, and the proposed recommended orders, the ALJ issued a detailed Recommended Order containing numerous Findings of Fact and Conclusions of Law, and recommending that the Commission enter a Final Order finding that:

> Duke Energy Florida, LLC, failed to demonstrate that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that Duke Energy Florida, LLC, therefore may not recover, and thus should refund, the $16,116,782 for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019.

DEF submitted twelve exceptions to the Recommended Order. In spite of stating that it would "not relitigate those [factual] points ... nor ask this Commission to reweigh evidence," each of DEF's exceptions asks the Commission to reject findings of fact that, as demonstrated below, are supported by competent substantial evidence. The exceptions also ask the Commission to invade the exclusive province of the ALJ and make new findings of fact, often without citing to any portion of the record, and based on such new findings to overturn the ALJ's ultimate determination. For the reasons stated below, the Commission should reject each of the DEF exceptions and adopt the findings of the Recommended Order.

THE COMMISSION'S SCOPE OF AUTHORITY WHEN RULING ON EXCEPTIONS

The Commission has limited authority to reject or modify the ALJ's findings of fact and conclusions of law. Pursuant to section 120.57(1)(*l*), Florida Statutes,[1] the Commission may not reject or modify the ALJ's findings of fact unless the Commission "first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence, or that the proceedings on which the findings were based did not comply with essential requirements of law."

If the ALJ's findings of fact are supported by competent substantial evidence, the Commission cannot reject or modify them even to make alternate findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Dep't of Envtl. Prot.*, 267 So. 3d 483, 487–88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-639, 2019 WL 2428577 (Fla. June 11, 2019), citing *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013).

Moreover, the Commission may not "reject a finding that is substantially one of fact simply by treating it as a legal conclusion," regardless of whether the finding is labeled a conclusion of law. *Gross v. Dep't of Health*, 819 So. 2d 997, 1005 (Fla. 5th DCA 2002); *Gordon v. State Comm'n on Ethics*, 609 So.2d 125, 127 (Fla. 4th DCA 1992); *Kanter Real Estate*, 267 So. 3d at 487-88, citing *Abrams v. Seminole Cty. Sch. Bd.*, 73 So. 3d 285, 294 (Fla. 5th DCA 2011). Similarly, a finding that is both a factual and legal conclusion cannot be rejected when there is substantial competent evidence to support the factual conclusion, and where the legal conclusion necessarily

[1] All statutory and rule references are to the 2019 versions, unless otherwise indicated. The Transcript of the final hearing was filed on February 24, 2020. Citation to the Transcript herein will be the witness's last name followed by the abbreviation "Tr." followed by the citation to the page.

follows. *Berger v. Dep't of Prof. Reg.*, 653 So. 2d 479, 480 (Fla. 3d DCA 1995); *Strickland v. Florida A&M Univ.*, 799 So. 2d 276, 279 (Fla. 1st DCA 2001); *Dunham v. Highlands County Sch. Bd.*, 652 So. 2d 894, 897 (Fla. 2nd DCA 1995).

It is the sole prerogative of the ALJ to consider the evidence presented, to resolve conflicts in the evidence, to judge the credibility of witnesses, to draw permissible inferences from the evidence, and to reach ultimate findings of fact based on the competent substantial evidence of record. *Ft. Myers Real Estate Holdings, LLC v. Dep't of Bus. & Prof'l Regulation*, 146 So. 3d 1175 (Fla. 1st DCA 2014), citing *Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

"Competent substantial evidence" is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The Commission may reject an ALJ's findings of fact only where there is no competent substantial evidence from which the findings can reasonably be inferred. *Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Belleau v. Dep't of Environmental Protection*, 695 So.2d 1305, 1306 (Fla. 1st DCA 1997); *Strickland v. Florida A&M Univ.*, 799 So.2d at 278. Absent such an express and detailed finding, the Commission is bound to accept the ALJ's findings of fact. *See Southpointe Pharmacy v. Dep't of Health & Rehab. Serv.*, 596 So. 2d 106, 109 (Fla. 1st DCA 1992).

The Commission is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Dep't of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Strickland*, 799 So.2d at 279; *Schrimsher v. Sch. Bd. of Palm Beach County*, 694 So. 2d 856, 860 (Fla. 4th DCA

1997); *Heifetz*, 475 So.2d at 1281; *Wash & Dry Vending Co. v. Dep't of Bus. Reg.*, 429 So. 2d 790, 792 (Fla. 3rd DCA 1983).

The Commission may reject or modify a conclusion of law over which it has substantive jurisdiction, but must state with particularity its reasons for rejecting or modifying such conclusion of law, and make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. Section 120.57(1)(*l*), Fla. Stat.; *Prysi*, 823 So. 2d at 825. Rejection or modification of a conclusion of law may not form the basis for rejection or modification of a finding of fact. Section 120.57(1)(*l*), Fla. Stat.

RESPONSE TO DEF EXCEPTIONS

RESPONSE TO DEF EXCEPTION NO. 1.

DEF excepts to Paragraph 110 of the Recommended Order, which is set forth verbatim below:

> 110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [redacted]

DEF acknowledges that the ALJ set forth the correct legal standard for determining prudence as established by the Florida Supreme Court. *See* DEF Exceptions, footnote 7. DEF nevertheless mistakenly argues that the ALJ applied the incorrect legal standard in determining that DEF failed to demonstrate that it acted prudently during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant. DEF suggests, without basis or explanation, that the ALJ relied on "hindsight" in determining that DEF's actions were imprudent.

As evidenced by the Recommended Order, however, and consistent with the appropriate standard of legal review, the ALJ expressly assessed all evidence presented relating to the conditions and circumstances that were known, or should have been known, by DEF ***at the time DEF made the decision and took action*** to repeatedly and extensively operate the steam turbine ("ST") in excess of 420 MW and when DEF ***failed to take the action*** it should have taken to consult with Mitsubishi.

In Paragraph 109 of the Recommended Order, the ALJ expressly states the legal standard applied in the Recommended Order:

> 109. The legal standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, ***at the time the decision was made.***" *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

(Emphasis added). Contrary to DEF's suggestion, and as evidenced by the entirety of the record, the ALJ thoroughly considered evidence of the conditions and circumstances known, or that should have been known, to DEF ***at the time the decisions were made***. The ALJ found, based on a detailed, systematic review of the competent substantial evidence of record, that DEF knew, or should have known, that its actions (including the failure to act) "***during period 1***" were imprudent.

DEF fails to provide any valid factual or legal basis for DEF's assertion that the ALJ improperly used "hindsight," or "Monday morning quarterbacking," in determining that DEF acted imprudently during Period 1. The determination of "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, ***at the time the decision was made***" necessarily involves a review of prior actions and contemporaneous materials reflecting the conditions and circumstances that existed at the time the decision in question was made.

DEF does not dispute that the ALJ's findings of fact set forth in Paragraph 110 are supported by competent substantial evidence. Instead, DEF simply recasts its preferred version of the facts, which were duly considered and rejected by the ALJ.

The ALJ's determination that DEF acted imprudently is supported by numerous uncontested findings of fact set forth in the Recommended Order, each of which are supported by competent substantial evidence, including but not limited to:

- The Mitsubishi steam turbine was originally designed for Tenaska Power Equipment, LLC ("Tenaska"), to be used in a 3x1 combined cycle configuration with three M501 Type F combustion turbines connected to the steam turbine with a gross output of 420 MW of electricity. (Recommended Order, ¶ 14) (Polich, Tr. 305, 325, 329; Swartz, Tr. 42, 163, 212, 255; Ex. 80 at 2, 3; Ex. 111).
- The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine. (Recommended Order, ¶ 33) (Polich, Tr. 303, 305, 325, 329, 330; Ex. 80 at 2; Ex. 108 at 2437-2561; Ex. 109 at 12432, 12438; Ex. 116 at 4, 21; Swartz, Tr. 42, 82-83; 127-28, 130-31, 137, 163, 212, 255; Ex. 111; Ex. 80 at 3).
- Mitsubishi concluded that the damage to the blades was caused by [redacted]

[redacted] (Recommended Order, ¶ 37) (Ex 82 at 5; Ex. 73 at 3; Ex. 116 at 4).

- The [DEF RCA] working papers indicate that as late as October 15, 2016, DEF agreed that the [redacted] (Recommended Order, ¶ 69) (Swartz, Tr. 90, 161-162, 82-83; Ex. 115 at 19; Ex. 116 at 4, 21; Ex. 109 at Bates 12432).
- OPC accurately states that the DEF working documents demonstrate that during the RCA process, before and after the Period 5 event, DEF consistently identified excessive steam flow in the LP turbine as one of the "most significant contributing factors" toward blade failure over the history of the steam turbine, [redacted] (Recommended Order, ¶ 71) (Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).
- The Energy Information Administration of the U.S. Department of Energy defines "generator nameplate capacity" as the "maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer." There was no dispute that 420 MW was the

"nameplate capacity" of the Mitsubishi steam turbine. (Recommended Order, ¶ 82) (Swartz, Tr. 224, 209-210; Ex. 111; Ex. 118).

- Given the lack of experience on either side, OPC contends that DEF should have consulted Mitsubishi before purchasing the steam turbine to ask whether Mitsubishi believed it was capable of an output in excess of its nameplate capacity of 420 MW. [redacted] (Recommended Order, ¶ 86) (Polich, Tr. 308-309, 320-321, 365-366; Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Ex. 72; Ex. 80 at 5; Swartz, Tr. 73, 108, 137).
- The evidence was clear that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [redacted] The evidence was also clear that

DEF made no effort before the fact to notify Mitsubishi of its intended intensity of operation or to ask Mitsubishi whether it could safely exceed the [redacted] Mr. Swartz was unable to explain away this criticism and thus DEF failed to meet its burden of demonstrating that it prudently operated the Bartow Plant during the times relevant to this proceeding. (Recommended Order, ¶ 102) (Polich, Tr. 308-309, 320-321, 365-366; Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Swartz, Tr. 73, 108, 137: Ex. 72; Ex. 80 at 5).

- DEF purchased an aftermarket steam turbine from Mitsubishi with knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. (Recommended Order, ¶ 110) (Polich, Tr. 305, 325; Swartz, Tr. 212, 255).

Contrary to DEF's suggestion, the ALJ stated and applied the correct legal standard to the evidence of record pertaining to the facts and circumstances that existed ***at the time that DEF made the decision and took action*** to operate the Bartow steam turbine repeatedly and extensively in excess of 420 MW. The ALJ found, based on the competent substantial evidence of record, that the operational limit of the Bartow steam turbine was "420 MW based on the Mitsubishi design point and the expected maximum electrical output," and that DEF's decision and action to operate the ST repeatedly and extensively in excess of 420 MW, based on information that DEF knew, or should have known, was imprudent. The ALJ found, based on competent substantial evidence of record, that DEF should have consulted with Mitsubishi before DEF operated the ST above the design point of 420 MW. (Recommended Order, ¶ 102) (Polich, Tr. 308-309, 320-321, 365-366;

Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Swartz, Tr. 73, 108, 137; Ex. 72; Ex. 80 at 5). The ALJ found that DEF presented no evidence that DEF consulted with Mitsubishi prior to doing so, and further found that DEF's expert "was unable to explain away this criticism." *Ibid.* The ALJ's findings of fact and competent substantial evidence of record support the ALJ's ultimate determination set forth in Paragraph 110 of the Recommended Order that DEF failed to carry its burden of proof to demonstrate that DEF acted prudently during the period in question.

The case cited by DEF, *Fla. Power Corp. v. Public Service Com'n*, 456 So. 2d 451, 452 (Fla. 1984), relating to the application of "hindsight" is inapposite and readily distinguishable on its facts. In *Fla. Power Corp.*, the Florida Supreme Court held that the Commission could not retroactively, i.e., "in hindsight," re-designate "non-safety-related" repair work as "safety-related," and thus the Commission could not retroactively apply the higher standard of care applicable to "safety-related work" when determining whether the work at issue was prudently performed. *See Fla. Power Corp.* 456 So. 2d at 451 ("Our review of the record indicated that the extended repair work involved at the time was not per se safety-related," thus "a safety-related standard" that involved "a very different risk and a much higher standard of care," could not be retroactively applied.); *See also Fla. Power Corp. v. Public Service Com'n*, 424 So. 2d 745, 747 (Fla. 1982) ("Our independent review of the record discloses that the particular task which resulted in the accident was but a small part of the extended repairs to the fuel transfer mechanism. The record further indicates that the repair work, per se, was not safety-related, and this was, in part, why the use of the test weight was not recognized as being safety-related."). In essence, the Supreme Court held that the Commission could not change the standard of care "rules of the game," namely whether a task was or was not "safety-related" at the time it was performed, when the action in

question was later reviewed. Here, nothing supports the notion that any "rules of the game" were changed while the ALJ considered the disputed facts of the case.

DEF goes on to extensively reargue and rehash arguments that DEF previously presented to the ALJ and that the ALJ rejected. DEF improperly urges the Commission to make alternative findings that contradict the findings made by the ALJ, which the Commission may not do. DEF also urges the Commission to make new findings that, upon examination, are not supported by any evidence of record. DEF makes the following assertion on page 3 of its Exceptions:

> Before committing to purchase the ST, DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed 4x1 combined cycle design configuration. As part of this assessment, DEF informed Mitsubishi that DEF intended to operate the Bartow Plant and the ST in 4x1 configuration with a power factor exceeding [redacted] which would result in the generation of more than 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356.

A careful review of each of the pages cited by DEF fails to reveal any evidence remotely indicating that Mitsubishi had been informed that DEF intended to operate the ST above 420 MW. DEF presented no evidence at the final hearing to contest Mr. Polich's testimony that DEF did not inform Mitsubishi of its intent to operate the ST above 420 MW, much less that DEF intended to operate it at [redacted] (Polich, Tr. 329-330.)

DEF attempts to re-argue that "Mitsubishi believed the ST was capable of operating above 420 MW [redacted] The ALJ, however, found DEF's argument unpersuasive. See Recommended Order, Paragraphs 111, 112, 113, 114, 118, 119 and 121.

DEF further attempts to re-argue that "[i]n the utility industry, the nameplate rating is not regarded as an 'operating parameter,'" and that "the general standard followed in the industry is to operate steam turbines within operating parameters provided by the original equipment manufacturer while also striving to achieve the most efficiency for utility customers." The ALJ,

based on the entirety of the record, found DEF's arguments "unpersuasive" with respect to the prudence of DEF's decisions and actions during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant.[2]

DEF next reargues that "DEF had appropriate operating parameters in place, and DEF properly followed these parameters," throughout Periods 1-5, and that the ALJ erred by viewing DEF's [redacted] of Mitsubishi's 420 MW operating parameter in Periods 2 - 5 as a concession that it was a "previous limitation." The ALJ, based on competent substantial evidence of record, concluded that DEF's actions after the first blade failures acknowledged and confirmed that the design point and operating limitation of the steam turbine was 420 MW. The competent substantial evidence relied on by the ALJ includes the [redacted] provided by Mitsubishi. (Swartz, Tr. 90, 161-162, 82-83; Ex. 115 at 19; Ex. 116 at 4, 21; Ex. 109 at Bates 12432). As evidenced by the Recommended Order, the then-contemporaneous evidence of the 420 MW design limitation that was available in 2006-2008 and DEF's consistent and ready acknowledgement of that operational limit in 2012 was more persuasive to the ALJ than the testimony and arguments presented by DEF at the final hearing. The ALJ expressly found the testimony of DEF's expert witness on this point "unpersuasive." (Recommended Order, Paragraph 110). It is the sole province of the ALJ to determine and weigh

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[2] The ALJ found that the concept of "nameplate" is but one of many indicia of the intended operational limit of the ST and, as set forth in the ALJ's findings of fact, that Mitsubishi clearly informed DEF of the limit of the ST through [redacted] The ALJ further found, based on competent substantial evidence of record, that DEF's operation of the ST for approximately half of the total 21,734 hours at 420 MW or above, with 2,973 of those hours ***above*** 420 MW in Period 1, was not an incidental exceedance of a number on a nameplate label, but instead was a failure to exercise reasonable care in operating the steam turbine in a configuration for which it was not designed. (Recommended Order, ¶ 35) (Swartz, Tr. 285, 137, 127-129, 130-131, 76-77, 82-83, 159-162, 169; Polich, Tr. 302-305, 330, 332; Ex. 115 at 19, 24; Ex. 116 at 4, 21; Ex. 108 at 2437-2561; Ex. 109 at Bates 12432-12439).

the credibility of witness testimony, and the Commission may not substitute its view of the evidence for that of the ALJ.

Finally, DEF suggests that the Commission should reject the ALJ's ultimate determination that DEF acted imprudently in this case, because the ALJ's determination of DEF's imprudence in this case "would also inhibit a utility's ability to maximize output for the benefit of its customers." DEF's assertion lacks merit. The ALJ's determination in this case is based on the evidence of record and is consistent with applicable law. The Recommended Order contains no findings of fact or conclusions of law that would inhibit a utility's ability or incentive to prudently maximize output for the benefit of its customers. The only thing a final order adopting the Recommended Order would inhibit or discourage is imprudent utility power plant operation and management, not prudently optimizing output.

Paragraph 110 of the Recommended Order applies the correct legal standard, is based on factual findings supported by competent substantial evidence and cannot be disturbed. DEF's exception to Paragraph 110 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 2.

DEF excepts to Paragraph 111 of the Recommended Order, which is set forth verbatim below:

> 111. DEF's RCA concluded that the blade failures were caused by [redacted] This conclusion is belied by the fact that [redacted] Mitsubishi cannot be faulted for [redacted] in a way that would allow an operator to run the turbine consistently beyond its capacity.

This paragraph of the Recommended Order contains factual findings that support the ALJ's ultimate conclusions of law. The Commission may not reject the findings of fact in Paragraph 111

unless there is no competent substantial evidence to support them. Similarly, a finding that is both a factual and a legal conclusion cannot be rejected when there is substantial competent evidence to support the factual conclusion and the legal conclusion necessarily follows. *Berger, 653 So. 2d at 480;* Strickland, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897.

The ALJ's findings of fact set forth in Paragraph 111 are supported by competent, substantial evidence and cannot be disturbed. (Swartz, Tr. 179; Ex. 82 at 5; Ex. 103 at 55; Ex. 104 at 14; Ex. 115 at 180). The ALJ is solely authorized to weigh and balance the evidence, determine the credibility of witnesses, and draw reasonable inferences from the evidence. *See Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d at 1281-2. DEF does not suggest any error of law, does not dispute that the findings of fact are supported by competent substantial evidence, and does not contend that the proceedings failed to comply with essential requirements of law. Instead, DEF simply re-argues the evidence of record and makes new arguments. Pursuant to section 120.57(1)(*l*), Florida Statutes, the Commission may not reweigh the evidence, consider "evidence" not of record, nor modify or reject an ALJ's factual finding when the finding is supported by competent substantial evidence of record. This is true even when the record may contain conflicting evidence, and when the Commission may disagree with the ALJ's view of the evidence. As noted by the court in *Heifetz*:

> If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Finally, in its second Exception, DEF again re-argues the issue of the timing of when the damage occurred in Period 1; however, this issue is not addressed in Paragraph 111 of the Recommended Order. The findings of fact in Paragraph 111 of the Recommended Order are supported by competent, substantial evidence of record and may not be disturbed. (Swartz Tr. 108; 179; Ex. 80 at 6; Ex 82 at 5; Ex. 103 at 55; Ex. 104 at 14; Ex. 115 at 180). DEF's exception to Paragraph 111 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 3.

DEF excepts to Paragraph 112 of the Recommended Order, which is set forth verbatim below:

112. [redacted]

Paragraph 112 of the Recommended Order contains findings of fact that support the ALJ's conclusions of law. The Commission may not reject the findings of fact unless there is no competent substantial evidence of record to support them. The ALJ's findings of fact in Paragraph 112 are supported by competent substantial evidence of record, including:

- Mitsubishi prepared a root cause assessment, dated September 2017, in which it determined that [redacted] (Swartz, Tr. 100; Ex. 82 at 5-6).
- Mitsubishi concluded that [redacted]

[redacted] (Swartz, Tr. 111-12, 86-88; Ex 82 at 5; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 123, 137, 153, 165, and 179).

DEF does not dispute that the ALJ's findings of fact are supported by competent substantial evidence. DEF nevertheless re-argues its version of the evidence as to the "root cause" of the blade failures, and urges the Commission to find facts that contradict the facts found by the ALJ. The ALJ's findings of fact and conclusions in Paragraph 112 of the Recommended Order are supported by competent substantial evidence of record and cannot be disturbed. DEF's exception to Paragraph 112 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 4.

DEF excepts to Paragraph 113 of the Recommended Order, which is set forth verbatim below:

> 113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

This paragraph of the Recommended Order contains factual findings that support the ALJ's conclusions. The Commission may not reject these findings of fact unless there is no competent substantial evidence to support them. DEF does not dispute that the findings of fact are supported by competent substantial evidence, nor proffer or support a different legal analysis or conclusion in its exception. Instead, DEF rehashes the evidence and urges the Commission to make new findings that contradict the findings made by the ALJ, arguing that its proposed new findings are

"as or more reasonable" than the findings made by the ALJ. Pursuant to 120.57(1)(*l*), Florida Statutes, the Commission may not substitute new findings of fact for those made by the ALJ even if the Commission views the proposed new findings "as or more reasonable" than those made by the ALJ. The legal standard for rejecting or modifying an ALJ's finding of fact is whether the ALJ's finding is supported by competent substantial evidence of record. In Paragraph 113 of the Recommended Order, the ALJ expressly finds the expert testimony of Mr. Polich credible and persuasive, and the testimony presented by DEF unpersuasive, with respect to the issue of whether DEF acted as a reasonable utility manager would have done in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. As noted above, the credibility of witnesses is wholly a factual determination within the sole province of the ALJ. *Strickland*, 799 So. 2d at 278 ("the weighing of evidence and judging of the credibility of witnesses by the Administrative Law Judge are solely the prerogative of the Administrative Law Judge as finder of fact.").

The ALJ determined, based on the competent, substantial evidence of record, that DEF failed to carry its burden of proof that it acted prudently during the period in question. (Swartz, Tr. 82-83, 116, 127-129, 130-131, 137; Polich, Tr. 308-309, 320-321; Ex. 105 at Bates 6875; Ex. 108 at 2437-2561; Ex. 109 at Bates 12432-12439; and Ex. 116 at 4 and 21).

The ALJ's findings of fact in Paragraph 113 of the Recommended Order are supported by competent substantial evidence of record and cannot be disturbed. DEF's exception to Paragraph 113 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 5.

DEF excepts to Paragraph 114 of the Recommended Order, which is set forth verbatim below:

> 114. The record evidence demonstrated an [redacted] that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

Paragraph 114 of the Recommended Order summarizes the findings of fact that support the ALJ's ultimate determination. The Commission may not reject these factual portions of the paragraph unless there is no competent substantial evidence supporting them. DEF does not dispute that the findings of fact and conclusions in Paragraph 114 of the Recommended Order are supported by competent, substantial evidence, nor does DEF proffer or support a different legal analysis or conclusion in its exception. Instead, DEF simply offers the conclusory statement that it would be "as or more reasonable to conclude that DEF actions did not cause or contribute significantly to the L-0 blade damage that occurred during Periods 1 through 5." The Commission's scope of review is whether the findings of fact are supported by competent substantial evidence of record. The ALJ's findings of fact in Paragraph 114 are supported by competent substantial evidence of record. (Swartz, Tr. 42, 73, 108, 163, 121-122, 126, 127, 132, 137; Polich, Tr. 303-306, 329-330; Ex. 72; Ex. 80 at 2, 3, and 5; Ex. 108 at Bates 2461; Ex. 109 at Bates 12432-12439; Ex. 115 at 23, 29, 39, 59, 67, 75, 123, 137, 153, 165, and 179 and Ex. 116 at 4 and 21).

In its exception DEF asserts that the ALJ's findings of fact and conclusions of law imposed an "impossible standard of proving a negative" on DEF, as the party with the burden of proof. DEF's argument does not fairly reflect the ALJ's findings of fact and conclusions of law. The ALJ

correctly determined, and DEF does not dispute, that the utility carries the burden of proof to demonstrate the prudence of DEF's decisions and actions during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant. The ALJ determined, based on the competent substantial evidence of record that DEF failed to carry its burden of proof to demonstrate that it acted prudently during the period in question. The ALJ found, based on the competent substantial evidence of record that DEF acted imprudently, and further found that DEF failed to rebut the evidence of its imprudence. The Recommended Order reflects that DEF failed to establish a prima facie case that it acted prudently and failed to provide evidence to rebut the persuasive evidence of its imprudence. The ALJ applied the correct legal standards with respect to the burden of proof and the determination of prudence. The ALJ's findings of fact set forth in Paragraph 114 of the Recommended Order are based on competent substantial evidence of record and may not be disturbed. DEF's exception to Paragraph 114 of the Recommended Order must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 6.

DEF excepts to Paragraph 119 of the Recommended Order, which is set forth verbatim below:

> 119. It is speculative to state that the original Period 1 L-0 blades would still be operating today had DEF observed the [redacted] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

In its exception, DEF re-argues that there was no [redacted] to the ST following Period 1, and urges the Commission to reject the ALJ's finding of fact that "[i]t is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1." DEF

asks the Commission to substitute a new finding that "the damage to the L-0 blades that occurred during Periods 2 through 5 was not precipitated by DEF's operation of the ST during Period 1." (DEF Exceptions, p. 9).

The findings and conclusions in Paragraph 119 of the Recommended Order summarize the ALJ's findings of fact in Paragraphs 84 and 89 of the Recommended Order that "[t]here would have been no Periods 2, 3, 4, or 5 but for DEF's actions during Period 1" and rejecting DEF's argument that DEF's operation of the unit at [redacted] bears no relation to the ultimate failure of the ST in Period 5. Indeed, in Paragraph 89 of the Recommended Order, the ALJ finds that:

> DEF ran the unit beyond 420 MW without consulting Mitsubishi. Mr. Polich found it a tribute to the design of the [redacted] 40" L-0 blades that they did not suffer damage sooner than they did. The steam turbine operated from June 2009 until March 2012 before the blade damage was noted. It was impossible to state exactly when the blade damage occurred in Period 1, but Mr. Polich opined that the damage was most likely cumulative.

In footnote 4 of the Recommended Order, the ALJ further finds that:

> DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, pointing out that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420 MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.

The ALJ's findings of fact are supported by competent substantial evidence of record, including the credible expert testimony of Mr. Polich relating to the cumulative operational effects on the Bartow facility. Moreover, as the finder of fact in a formal administrative proceeding, the ALJ is permitted to draw reasonable inferences from the competent substantial evidence in the record. *Amador v. Sch. Bd. of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017) ("[w]here

reasonable people can differ about the facts, however, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence"), citing *Greseth v. Dep't of Health & Rehab. Servs*, 573 So. 2d 1004, 1006–1007 (Fla. 4th DCA 1991).

The ALJ's findings in Paragraphs 84, 89, and 119 of the Recommended Order are supported by competent substantial evidence of record, including:

- If DEF had operated the steam turbine at the Bartow Unit 4 in accordance with the design output of 420 MW or less, there is no engineering basis to conclude that the original L-0 blades would not still be in operation today. (Polich, Tr. 308-309, 320-321).
- [redacted] (Polich, T. 304-309, 334, 352; Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).
- [redacted] (Swartz, T. 108, 179; Ex. 103 at 55; Ex.80 at 6; Ex. 104 at 14; Ex. 115 at 180).
- The installation of the pressure plate and associated de-rate were due to improper operation above 420 megawatts in Period 1. (Polich, Tr. 361).
- A prudent utility manager, from both a warranty and a regulatory perspective, would have requested written verification from

Mitsubishi that the steam turbine could be safely operated above 420 MW of output. (Polich, Tr. 361-362; 304-309).

The ALJ's findings of fact and conclusions in Paragraph 119 are supported by competent substantial evidence of record and the Commission is not free to substitute new or alternative findings urged by DEF. Moreover, DEF had the burden of proof to demonstrate that it acted prudently and that the costs incurred were not the result of DEF's imprudent actions or inactions. To the contrary, DEF failed to carry that burden and prove its actions in operating the plant were prudent and it failed to prove that the damages were the result of prudent operations and thus should be recovered from ratepayers. DEF's exception to Paragraph 119 of the Recommended Order must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 7.

DEF excepts to Paragraph 120 of the Recommended Order, which is set forth verbatim below:

> 120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:
>
> You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.
>
> It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [redacted] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [redacted]? Well, the answer is both.
>
> The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration ... that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

> On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.
>
> * * *
>
> So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established ... may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

In Paragraph 120 of the Recommended Order, the ALJ expresses agreement with counsel's summation of the "equities of the situation." As discussed in detail in the responses to DEF's Exceptions 1 – 6 above, the ALJ's numerous factual findings supporting the ALJ's ultimate determination that DEF acted imprudently and should be required to bear the resulting replacement power costs are supported by competent substantial evidence. (Polich, Tr. 304-309, 361-362; Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).

In its Exception to Paragraph 120 of the Recommended Order, DEF does not dispute that the ALJ's findings of fact and ultimate determination are supported by competent substantial evidence. Instead, DEF offers a conclusory argument and improperly urges the Commission to reject the ALJ's findings of fact and to substitute contradictory findings. As set forth in the responses to Exceptions 1 through 6 above, the ALJ's findings that DEF acted imprudently and determination that DEF should be required to bear the resulting replacement power costs are supported by competent substantial evidence of record and are consistent with applicable law. The Commission is not free to reject the ALJ's finding that DEF acted imprudently and to thereby modify the ALJ's ultimate determination that the costs of the forced outage should be borne by DEF. DEF's exception to Paragraph 120 is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 8.

DEF excepts to Paragraph 121 of the Recommended Order, which is set forth verbatim below:

> 121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

Paragraph 121 of the Recommended Order summarizes the ALJ's numerous findings relating to whether DEF acted imprudently. As reflected throughout the Recommended Order, and set forth in detail in the responses to Exceptions 1 - 6 above, the ALJ's ultimate determination that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed, is supported by competent substantial evidence. The Commission is not free to reject or modify findings of facts, or conclusions of law that logically flow from such findings, when the findings are supported by competent substantial evidence of record. DEF's exception to Paragraph 121 is without merit and should be DENIED.

RESPONSE TO DEF EXCEPTION NO. 9.

DEF excepts to Paragraph 122 of the Recommended Order, which is set forth verbatim below:

> 122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least $11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

Paragraph 122 of the Recommended Order summarizes the ALJ's numerous findings relating to whether DEF acted imprudently, and should be required to bear the resulting replacement power costs. As reflected throughout the Recommended Order, and set forth in detail in the responses to

Exceptions 1 - 6 above, the ALJ's ultimate determination that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed, and therefore should be required to bear the resulting replacement power costs, is supported by competent substantial evidence of record. Because the ALJ's findings of fact are supported by competent substantial evidence of record and the ALJ has applied the correct law to the facts, DEF's exception is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 10.

DEF excepts to Paragraph 123 of the Recommended Order, which is set forth verbatim below:

> 123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

In its exception to Paragraph 123 of the Recommended Order, DEF does not dispute that the ALJ's conclusion in Paragraph 123 is supported by competent, substantial evidence and is consistent with applicable law. Instead, DEF improperly offers the conclusory argument that the Commission should reject the ALJ's findings, re-weigh the evidence, and substitute new and directly contrary findings that are favorable to DEF. As set forth in detail in the responses to DEF's Exceptions 1 - 6 above, the ALJ's findings of fact are supported by competent substantial evidence of record and the ALJ applied the correct legal standard to the evidence of record. DEF's exception is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 11.

DEF excepts to Paragraph 124 of the Recommended Order, which is set forth verbatim below:

> 124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back online in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [redacted] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is $5,016,782.

The fundamental premise of DEF's exception to Paragraph 124 of the Recommended Order is DEF's conclusory re-argument that "DEF proved by a preponderance of the evidence that its operation of the ST during Period 1 was prudent." The ALJ found, based on the competent substantial evidence of record, that DEF's operation of the ST during Period 1 was ***not*** prudent.

DEF further excepts to the ALJ's conclusion that DEF should be required to refund replacement power costs related to the installation of the pressure plate. As set forth in detail in the Recommended Order, and in the responses to DEF's Exceptions 1 - 6 above, the ALJ's findings are supported by competent substantial evidence. The ALJ duly considered DEF's imprudent destruction of a portion of the full capability of the ST that required installation of the pressure plate. (Polich, Tr. 361). The basis for the ALJ's finding that ratepayers should be refunded replacement power costs is DEF's imprudence in operating the Bartow unit. The pressure plate bandage stopped the bleeding, resulting in a 40 MW de-rated output, but did not immunize DEF from the effects of its underlying imprudence.

Notably, DEF does not except to the ALJ's related findings and conclusions in Paragraph 108 of the Recommended Order, in which the ALJ sets forth DEF's burden of proof as it relates to any replacement power costs arising from installation of the pressure plate:

> 108. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Petitioner, DEF, has the burden of proving, by a preponderance of the evidence, that it acted prudently in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow Plant. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

DEF had the burden of proof to show that it acted prudently and that the costs incurred were not the result of DEF's imprudent actions. It did not carry that burden. To the contrary, DEF failed to prove its actions in operating the plant were prudent, and further failed to prove that the damages resulting from the de-rate were the result of prudent operations and thus should be recovered from ratepayers. Therefore, DEF should be required to refund the amounts determined in the Recommended Order. DEF's Exception to Paragraph 124 of the Recommended Order should be DENIED.

RESPONSE TO DEF EXCEPTION NO. 12.

DEF excepts to Paragraph 125 of the Recommended Order, which is set forth verbatim below:

> 125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is $16,116,782, without interest.

DEF's exception to Paragraph 125 of the Recommended Order is a conclusory restatement of DEF's re-argument that DEF "operated the ST prudently at all times relevant to the replacement

power costs and is, therefore, not required to refund any amount to its customers." As set forth in detail in the Recommended Order and in the responses to DEF's Exceptions 1 - 6 above, the ALJ found, based on the competent substantial evidence of record, that DEF failed to carry its burden of proof to demonstrate that DEF acted prudently during Period 1 and that no adjustment to replacement power costs should be made to account for the fact that, after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. DEF does not contend that the finding of fact and conclusion set forth in Paragraph 125 of the Recommended Order is not supported by competent substantial evidence, but instead urges the Commission to re-weigh the evidence and substitute a new conclusion without even proffering an alternative legal analysis, which the Commission may not do.

CONCLUSION

The Commission referred this matter to the Division of Administrative Hearings to conduct a formal evidentiary hearing on two questions of disputed fact. The ALJ conducted the formal evidentiary hearing, heard and reviewed extensive testimony of expert witnesses, reviewed voluminous documentary evidence, made numerous findings of fact that are supported by competent substantial evidence, and applied the correct legal standard to determine that DEF did not meet its burden of proof to show that that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage; and that DEF therefore may not recover, and thus should refund, $16,116,782 to its customers for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019. DEF's exceptions to the Recommended Order are without merit and should be denied, and the Commission should adopt the Recommended Order in full as the Final Order of the Commission.

DATED THIS 21st day of May 2020.

RESPECTFULLY SUBMITTED,

J.R. Kelly
Public Counsel

/s/ Charles J. Rehwinkel
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following parties as indicated below, on this 21st day of May 2020.

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**Hand Filing with PSC Clerk
†Overnight delivery or electronic delivery

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: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Wendel, Fogleman) CH
Office of the General Counsel (Murphy) TLT

RE: Docket No. 20180213-TL – Complaint by the Florida Inland Navigation District against BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast for failure to relocate utility line.

AGENDA: 9/1/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On November 14, 2018,[1] the Florida Inland Navigation District (FIND) filed a complaint against BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) for failure to relocate unpermitted subaqueous utility lines beneath the Intracoastal Waterway (IWW) in Broward County (2018 Complaint).[2] FIND is an independent special taxing district of the State of Florida that plans and implements IWW projects to promote safe navigation and the enjoyment of water-based activities along the east coast of Florida.[3] FIND asserts that this failure by AT&T has delayed completion and increased the cost of the Broward Deepening Project, in which the IWW channel was to be deepened along a two mile section in the city of Fort

[1] The Complaint was dated October 2, 2018.
[2] In its 2018 Complaint, FIND variously refers to AT&Ts facilities as "line" and "lines."
[3] Chapter 374, Florida Statutes (F.S.).

Lauderdale. A major purpose of the project is to allow access of mega-yachts to the channel. The traffic of these vessels is believed to provide an economic benefit to the city. During the planning and design of the project, FIND located and identified submerged utility lines within the anticipated zone of the project.

In September 2015, FIND notified AT&T that an active set of unpermitted utility lines belonging to AT&T would need to be replaced with deeper permitted utility lines. AT&T notified FIND in December 2015, that after completing an analysis of the required efforts it would be able to have the utility lines replaced by December 2016. However, after receiving all of the necessary permitting, AT&T's replacement project did not proceed according to the schedule provided to FIND. In February 2017, AT&T notified FIND of the need for a larger manhole that would encompass the new subaqueous ducts required for the project. This resulted in a shift of the project from a utility line replacement, to a relocation effort. AT&T acquired all necessary new or modified permits by August 2017, and scheduled a pre-construction meeting for January 2018.

After the pre-construction meeting AT&T was notified by the City of Fort Lauderdale that its construction could not be accommodated, as the manhole drilling would be conducted in the footprint of a parking garage that was currently being constructed. AT&T was again required to acquire new or modified permits. AT&T revised its construction schedule and notified FIND that all permits would be submitted by the end of 2018, with construction beginning in early 2019.

In its 2018 Complaint, FIND asserts that AT&T's delay has caused FIND and the Florida taxpayers unnecessary costs, and that until AT&T relocates its utility lines, the full benefits of the Broward Deepening Project cannot be realized.

In the time since the 2018 Complaint was filed with the Commission, staff has been in contact with FIND, AT&T, the parking garage management, the United States Army Corps of Engineers, the Florida Department of Environmental Protection, and the Broward County Department of Environmental Protection and Growth Management. In June 2019, staff determined that there were still issues with AT&T obtaining needed permits and FIND indicated it would like for staff to continue to monitor this matter.

In October 2019, staff learned that AT&T had acquired all needed permits and that AT&T was taking bids for performing the work thereafter. Subsequently, staff learned of additional delays with the utility line relocation project because AT&T had not found a contractor to do the work. In late January 2020, staff learned that AT&T had named a contractor, and that FIND's engineers believe construction would begin in the first quarter of 2020. Nonetheless, FIND has asked that staff bring a recommendation to the Commission regarding FIND's 2018 Complaint. The relief requested by FIND in its 2018 Complaint is "that the Commission, in its supervisory role over Florida's regulated utilities, review and consider this situation, and encourage AT&T (and its permitting agents) to relocate its subaqueous utility lines in a timely and effective manner."

Discussion of Issues

Issue 1: Should the Commission require AT&T to relocate its subaqueous utility lines, beneath the Intracoastal Waterway in Broward County, in a timely and effective manner?

Recommendation: No. The Commission does not have jurisdictional authority to require AT&T to relocate its subaqueous utility lines, beneath the Intracoastal Waterway in Broward County, in a timely and effective manner. (Wendel, Fogleman, Murphy)

Staff Analysis: Neither Chapter 364, F.S., (governing Commission regulation of telecommunications companies) nor Chapter 350, F.S., (establishing the Commission's general authority) authorizes the Commission to require AT&T to relocate subaqueous utility lines currently located beneath the IWW. For a number of months, Commission staff has reviewed this matter, and encouraged AT&T to relocate its subaqueous utility lines as requested by FIND. However, absent Commission authority to compel action by both AT&T and the entities which must review and permit AT&T's line relocation, there does not appear to be anything the Commission can do to accelerate the project.

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 Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order. (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 Proposed Agency Action 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: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

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

RE: Docket No. 20200157-TP – 2021 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: 09/01/20 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 10/01/20 (Filing deadline with the Federal Communications Commission and the 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 are reasonably comparable to those in urban areas.[2] The program supports the goal of universal

[1] 47 U.S.C. §254(b)(3) (2020)
[2] FCC, "Universal Service for High Cost Areas - Connect America Fund," updated July 13, 2020, https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund, accessed July 16, 2020.

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 will 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 2021, certification must be submitted by the Commission by October 1, 2020.[4]

[3] 47 C.F.R §54.314(a) (2020)
[4] 47 C.F.R §54.314(d) (2020)

Discussion of Issues

Issue 1: Should the Commission certify to USAC and 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 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, 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 were used, and funds 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 2021 high-cost support that these carriers may receive in Florida will be approximately $34 million.[5]

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-

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

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 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 7

FILED 8/20/2020
DOCUMENT NO. 04742-2020
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Norris, Blocker, D. Buys, Thurmond) BF ALM
Division of Economics (Bethea, Bruce, Hudson, Sibley) JGH
Division of Engineering (Doehling, Ellis, Johnson, King, Kistner, Knoblauch, Ramos, Thompson) TB
Office of the General Counsel (Trierweiler, Crawford) JSC

RE: Docket No. 20200139-WS – Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.

AGENDA: 09/01/20 – Regular Agenda – Decision on Suspension of Rates and Interim Rates – Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: 09/11/20 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

Utilities, Inc. of Florida (UIF or Utility) is a Class A utility providing water and wastewater service to 27 systems in the following counties: Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole. UIF is a wholly-owned subsidiary of Utilities, Inc. (UI). The Utility's last rate proceeding, processed in Docket No. 20160101-WS, utilized a historic December 31, 2015, test year.[1] That proceeding culminated in Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, approving a single consolidated rate structure, as

[1] *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

amended by Order No. PSC-2017-0361A-FOF-WS, issued October 4, 2017. On remand from the First District Court of Appeal, Order No. PSC-2019-0363-PAA-WS was issued on August 27, 2019.

In 2019, the Utility recorded total company operating revenues of $16,396,327 and $20,840,529 for water and wastewater, respectively. UIF reported net operating income for 2019 of $3,726,366 for water and $5,185,175 for wastewater. In 2019, UIF had 33,736 and 23,885 respective water and wastewater customers for its combined systems.

On July 13, 2020, UIF filed an application for approval of interim and final water and wastewater rate increases. By letter dated August 5, 2020, staff advised the Utility that its Minimum Filing Requirements (MFRs) had deficiencies. The deadline to correct those deficiencies is September 4, 2020. To date, the official date of filing has not been established for noticing purposes.

The Utility's application for increased interim and final water and wastewater rates is based on the historical 13-month average period ended December 31, 2019. The requested final rates include adjustments for pro forma projects.

UIF requested interim rates designed to generate revenues of $17,217,167 for water operations and $20,988,143 for wastewater operations. This represents a revenue increase of $624,643, or 3.76 percent, for water and $689,957, or 3.40 percent, for wastewater. UIF requested final rates designed to generate additional revenues of $2,823,848, or 17.01 percent, for water operations and $6,529,383, or 32.17 percent, for wastewater operations.

Upon its request, the Office of Public Counsel (OPC) was added as an interested person to this docket on April 20, 2020. The intervention of the OPC was acknowledged by Order No. PSC-2020-0259-PCO-WS, issued on July 24, 2020.

On April 21, 2020, UIF filed a Petition for Variance or Waiver of a specific provision from Rule 25-30.437(3), Florida Administrative Code (F.A.C.). The portion of the rule from which the Utility requested waiver addresses the requirement to provide additional detailed billing analyses for each rate change period in the test year. By Order No. PSC-2020-0211-PAA-WS, issued June 26, 2020, the Commission approved the Utility’s petition.

The 60-day statutory deadline for the Commission to suspend the Utility’s requested final rates and address its interim rate request is September 11, 2020. This recommendation addresses the suspension of the Utility’s requested final rates and requested interim rates. The Commission has jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes (F.S.).

Discussion of Issues

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

Recommendation: Yes. The Utility's proposed final water and wastewater rates should be suspended. (Thurmond)

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 to withhold consent of implementation of the requested rates. Further, the above referenced statute permits the proposed final rates to go into effect, under bond, escrow, or corporate undertaking eight months after filing unless final action has been taken by the Commission.

Staff has reviewed the filing and 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. This further examination will include a review by staff accountants and engineers. To date, staff has initiated an audit of UIF's books and records, as well as an audit of UI, the Utility's parent, to examine allocated investment and operating expenses. This combined audit is tentatively due on October 21, 2020. Staff believes additional discovery requests will be necessary. Therefore, staff recommends suspension of the Utility's proposed rate increase to allow staff and any intervenors sufficient time to adequately and thoroughly examine the appropriateness of the Utility's request for final rate relief.

Issue 2: Should any interim revenue increase be approved?

Recommendation: Yes. UIF should be authorized to collect annual revenues as indicated below:

	Adjusted Test Year Revenues	$ Increase	Revenue Requirement	% Increase
Water	$16,298,944	$918,223	$17,217,167	5.63%
Wastewater	$19,936,921	$1,051,222	$20,988,143	5.27%

(Blocker, Thurmond, Norris, Thompson, Hudson)

Staff Analysis: On July 13, 2020, UIF filed its rate base, cost of capital, and operating statements to support its requested interim increase in rates. Pursuant to Section 367.082(1), F.S., in order to establish a prima facie entitlement for interim relief, the Utility shall demonstrate that it is earning outside the range of reasonableness on its rate of return. Pursuant to Section 367.081(2)(a), F.S., in a proceeding for an interim increase in rates, the Commission shall authorize, within 60 days of the filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return. Based on the Utility's filing and the recommended adjustments below, staff believes that the Utility has demonstrated a prima facie entitlement in accordance with Section 367.082(1), F.S.

Pursuant to Section 367.082(5)(b)1, F.S., the achieved rate of return for interim purposes must be calculated by applying adjustments consistent with adjustments made in the Utility's most recent rate proceeding and annualizing any rate changes. Staff reviewed UIF's interim request, as well as Orders from the Utility's most recent rate proceedings, and believes adjustments are necessary as discussed below. Staff has attached accounting Schedules to illustrate staff's recommended rate base, capital structure, and test year operating income amounts. Rate base is labeled as Schedule Nos. 1-A and 1-B, with the adjustments shown on Schedule No. 1-C. Capital structure is labeled as Schedule No. 2. Operating income is labeled as Schedule Nos. 3-A and 3-B, with the adjustments shown on Schedule No. 3-C.

Rate Base

Staff reviewed the Utility's interim used and useful (U&U) calculations on a per system basis. The review is based upon previous Commission decisions and available usage and capacity data contained in UIF's MFR schedules. Consistent with Commission practices, staff recommends no adjustments for all water treatment, storage, and distribution and collection systems that have been determined to be 100 percent U&U by the prior rate case order.[2]

[2] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

Except for four wastewater treatment plants (WWTP), staff recommends no adjustments to the WWTP U&U values contained in UIF's interim rate base. The Labrador, LUSI Lake Groves, Marion, and Mid-County WWTP U&U values approved in the prior rate case orders[3] were 79.94 percent, 53.54 percent, 68.65 percent, and 93.67 percent, respectively. Based on current system conditions, and using the methodology approved in the prior rate case order, staff recommends that the Labrador and Mid-County WWTPs be considered 100 percent U&U, and the LUSI Lake Groves and Marion WWTPs be considered 64.76 percent and 78.43 percent U&U, respectively.

U&U values have not been previously established by the Commission for the LUSI Barrington wastewater system as the transfer of this system to UIF was approved by the Commission in 2019.[4] However, for interim purposes, staff recommends that the LUSI Barrington WWTP and collection system be considered 100 percent U&U.

Pursuant to Rule 25-30.433(3), F.A.C., the working capital allowance for Class A utilities shall be calculated using the balance sheet method. In Order No. PSC-2017-0361-FOF-WS, the Commission determined that deferred rate case expense from systems with surcharges should not be included in working capital, as the surcharge already includes the associated return from inclusion in working capital. As such, staff recommends a reduction to water and wastewater working capital of $20,473 and $16,008, respectively, to remove unamortized prior rate case expense currently recovered through surcharges. Staff also recommends decreasing water and wastewater working capital by $33 and $4,162, respectively, to correct unamortized balances of its Project Phoenix. Project Phoenix is the system for managing accounting, customer service, customer billing, and financial and regulatory reporting functions used by UI and its subsidiaries. In total, staff recommends reductions of $20,506 and $20,170 to water and wastewater working capital, respectively.

Cost of Capital

Pursuant to the provisions of the interim statute, an interim increase should be calculated using the minimum ROE limit authorized in the Utility's last rate case. Based on an analysis of the MFRs, Order No. PSC-2017-0361-FOF-WS, and adjustments to rate base discussed above, staff recommends that the overall rate of return be 6.61 percent.

Net Operating Income

In order to attain the appropriate amount of interim test year operating revenues, staff removed the Utility's requested interim revenue increase of $624,643 from water and $689,957 from wastewater. Staff also reduced water and wastewater regulatory assessment fees (RAFs) by $28,109 and $31,048 respectively, to reflect the removal of the Utility's requested interim revenue increases. In addition, the utility annualized the test year revenues using rates in effect subsequent to the test year. For purposes of determining interim rates, the appropriate rates for

[3] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.* Order No. PSC-2019-0363-PAA-WS, issued August 27, 2019, Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

[4] Order No. PSC-2019-0071-PAA-SU, issued February 25, 2019, Docket No. 20170174-SU, *In re: Application for transfer of assets of exempt utility, amendment of Certificate No. 465-S, and petition for partial variance or waiver of Rule 25-30.030(5)(b), F.A.C. by Utilities, Inc. of Florida.*

annualizing test year revenues are the rates in effect at the end of the test year. Staff annualized test year revenues using the rates in effect on December 31, 2019, which results in a decrease to test year revenues of $293,580 for water and $361,265 for wastewater. Based on the above, staff recommends that the appropriate interim test year revenue, before any increase, is $16,298,944 and 19,936,921 for water and wastewater, respectively.

On interim MFR Schedules B-1 and B-2, the Utility reflected operation and maintenance (O&M) expense of $8,583,750 and $10,465,127 for water and wastewater, respectively. Additional adjustments should be made consistent with the treatment from UIF's last rate case. A 3-year average should be reflected for Eagle Ridge's materials and supplies expense, as well as health insurance reimbursements in pensions and benefits expense. Although not reflected in the Utility's filing, as both expenses are subaccounts within UIF's total O&M expense, the Utility did provide the expense detail in its 2020 Price Index application. Based on that filing, staff increased O&M expense by $89,281 for water and $84,200 for wastewater.

Excessive Unaccounted Water

In the prior rate case order,[5] the Commission determined that the LUSI and Sanlando water systems had no excessive unaccounted for water (EUW). Based on current system conditions, and using the methodology approved in the prior rate case order, staff recommends EUW adjustments for the LUSI Four Lakes and Sanlando water systems of 1.95 percent and 2.08 percent, respectively, to the 2019 water treatment expense for each system.

In the prior rate case order,[6] the Commission determined that the Labrador, Pasco Orangewood, Pinellas Lake Tarpon, Seminole Oakland Shores, Seminole Phillips, and Seminole Weathersfield water systems had EUW percentages of 4.6 percent, 7.66 percent, 10.2 percent, 2.23 percent, 1.56 percent, and 1.31 percent, respectively. Based on current system conditions, and using the methodology approved in the prior rate case order, staff recommends that these systems have no EUW, and recommends adjustments to the 2019 water treatment expense to reflect this for each of these systems.

In the prior rate case order,[7] the Commission determined that the Lake Placid, Marion, and Seminole Little Wekiva water systems had EUW percentages of 3.06 percent, 1.35 percent, and 4.81 percent, respectively. Based on current system conditions, and using the methodology approved in the prior rate case order, staff recommends EUW adjustments for the Lake Placid, Marion, and Seminole Little Wekiva water systems of 9.96 percent, 8.79 percent, and 5.54 percent, respectively, to the 2019 water treatment expense for each of these systems. Based on the above, staff recommends an adjustment to decrease water O&M expense by $9,281 to account for staff's adjustments to EUW.

[5] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*
[6] *Id.*
[7] *Id.*

Infiltration & Inflow

In the prior rate case order,[8] the Commission determined that the Pasco Wis-Bar and Seminole Lincoln Heights wastewater systems had excessive infiltration and inflow (I&I) percentages of 17.22 percent and 32.9 percent, respectively. Based on current system conditions, and using the methodology approved in the prior rate case order, staff recommends excessive I&I adjustments for the Pasco Wis-Bar and Seminole Lincoln Heights wastewater systems of 5.72 percent and 11.25 percent, respectively, to the 2019 wastewater treatment expense for each system.

In the prior rate case order,[9] the Commission determined that the Sandalhaven Englewood Water District wastewater system had excessive I&I of 8.37 percent. Based on current system conditions, and using the methodology approved in the prior rate case order, staff recommends that this system has no excessive I&I, and recommends adjustments to the 2019 wastewater treatment expense to reflect this. Overall, staff recommends an adjustment to increase wastewater O&M expense by $73,725 to account for staff's adjustments to excessive I&I.

Amortization Expense

On interim MFR Schedules B-1 and B-2, the Utility reflected adjusted amortization balances of $50,263 and $105,166 for water and wastewater, respectively. As reflected on interim MFR Schedule B-3, the Utility made a test year adjustment to decrease depreciation expense and increase amortization expense by $46,704 and $101,889 for water and wastewater, respectively, in order to reclassify amortization expense associated with early plant retirements. Based on staff's review of Order No. PSC-2017-0361-FOF-WS, the amortization expense associated with early retirements should be $46,750 for the Summertree water system, $193,294 for the Longwood wastewater system, and $30,511 for the Sandalhaven wastewater system. As a result of its review, staff recommends increasing amortization expense by $46 and $121,916 for water and wastewater, respectively.

Revenue Requirement

In its filing, the Utility requested interim revenue requirements to generate annual revenue of $17,217,167 for water and $20,988,143 for wastewater. Consistent with staff's recommended rate base, cost of capital, and operating income, the resulting interim revenue requirements are $17,265,238 for water and $21,313,226 for wastewater. However, it is Commission practice to limit the revenue requirement to the total amount sought in a utility's petition.[10] Therefore, staff recommends that the appropriate interim revenue requirements should be $17,217,167 for water

[8] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*.

[9] *Id.*

[10] Order Nos. PSC-16-0249-PCO-WS, issued June 29, 2016, in Docket No. 20160030-WS, *In re: Application for increase in water rates in Lee County and wastewater rates in Pasco County by Ni Florida, LLC.*; PSC-13-0673-FOF-WS, issued December 19, 2013, in Docket No. 20130212-WS, *In re: Application for increase in water/wastewater rates in Polk County by Cypress Lakes Utilities, Inc.*; PSC-07-0568-PAA-WU, issued July 9, 2007, in Docket No. 20070041-SU, *In re: Application for limited proceeding rate increase in Monroe County by Key Haven Utility Corporation*; PSC-05-0287-PAA-SU, issued March 17, 2005, in Docket No. 20040972-SU, *In re: Application for rate increase in Pinellas County by Ranch Mobile WWTP, Inc.*; and PSC-95-0191-FOF-WS, issued February 9, 1995, in Docket No. 19940917-WS, *In re: Application for rate increase for increased water and wastewater rates in Seminole, Orange, and Pasco Counties by Utilities, Inc. of Florida*.

and $20,988,143 for wastewater. The schedule for operating income is attached as Schedule Nos. 3-A and 3-B, and the adjustments are shown on Schedule No. 3-C. Although staff is recommending to limit the interim revenue requirement, the percentage increase is greater than what the Utility reflected in its initial filing. This is due to staff's previously discussed adjustment to reduce test year revenues.

Issue 3: What are the appropriate interim water and wastewater rates?

Recommendation: The recommended interim rate increase of 5.76 percent for water and 5.46 percent for wastewater should be applied as an across-the-board increase to the service rates in effect as of December 31, 2019. The rates, as shown on Schedule Nos. 4-A and 4-B, should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until the required security has been filed, 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, Bethea, Sibley)

Staff Analysis: Staff recommends that interim service rates for UIF be designed to allow the Utility the opportunity to generate annual operating revenues of $17,217,167 for water and $20,988,143 for wastewater. Before removal of miscellaneous and reuse revenues, this would result in an increase of $918,223 (5.63 percent) for water and $1,051,222 (5.27 percent) for wastewater. To determine the appropriate increase to apply to the service rates, miscellaneous revenues should be removed from the water and wastewater test year revenues. In addition, reuse revenues should be removed from the wastewater test year revenues. The calculations are as follows:

Table 3-1
Percentage Service Rate Increase - Water

		Water
1	Total Test Year Revenues	$16,298,944
2	Less: Miscellaneous Revenues	$360,497
3	Test Year Revenues from Service Rates	$15,938,447
4	Revenue Increase	$918,223
5	Percentage Service Rate Increase (Line 4/Line 3)	5.76%

Source: Staff's Recommended Revenue Requirement and MFRs

Table 3-2
Percentage Service Rate Increase - Wastewater

		Wastewater
1	Total Test Year Revenues	$19,936,921
2	Less: Miscellaneous Revenues	$330,906
3	Less: Reuse Revenues	$342,097
4	Test Year Revenues from Service Rates	$19,263,918
5	Revenue Increase	$1,051,222
6	Percentage Service Rate Increase (Line 5/Line 4)	5.46%

Staff recommends that the recommended interim rate increase of 5.76 percent for water and 5.46 percent for wastewater should be applied as an across-the-board increase to the service rates in effect as of December 31, 2019.[11] The rates, as shown on Schedule Nos. 4-A and 4-B, should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until the required security has been filed, 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.

[11] The Utility had a 2020 price index effective May 31, 2020. Interim rate increases are applied to the rates in effect at the end of the test year.

Issue 4: What is the appropriate security to guarantee the interim increase?

Recommendation: A cumulative corporate undertaking is acceptable contingent upon receipt of the written guarantee of the parent company, Utilities, Inc. (UI or Company), and written confirmation that the cumulative outstanding guarantees on behalf of UI-owned utilities in other states will not exceed $4.6 million (inclusive of all Florida utilities). UI should be required to file a corporate undertaking on behalf of its subsidiaries to guarantee any potential refunds of revenues collected under interim conditions. UI's guaranteed amount subject to refund should be $1,810,655. Pursuant to Rule 25-30.360(6), F.A.C., the Utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and in accordance with Rule 25-30.360, F.A.C. (D. Buys, Thurmond)

Staff Analysis: Pursuant to Section 367.082, F.S., revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the Commission. As recommended in Issue 2, the total interim increase is $1,974,310. In accordance with Rule 25-30.360, F.A.C., staff calculated the potential refund of revenues and interest collected under interim conditions to be $1,810,655. This amount is based on an estimated 11 months of revenue being collected from staff's recommended interim rates over the Utility's current authorized rates shown on Schedule No. 4.

Utilities, Inc. of Florida (UIF) is a wholly-owned subsidiary of Utilities, Inc. (UI) which provides all investor capital to its subsidiaries. UIF requested to use a corporate undertaking to guarantee the amount subject to refund of $1,810,655 collected during the 11-month period when interim rates are in effect.

The criteria for a corporate undertaking include sufficient liquidity, equity ownership, profitability, and interest coverage to guarantee any potential refund. Staff reviewed UI's 2019, 2018, and 2017 financial statements to determine if the Company can support a corporate undertaking on behalf of its subsidiary. In all three of its most recent financial statements, UI reported an insufficient working capital amount and current ratio due to current liabilities exceeding current assets. However, the interest coverage ratio is more than twice the required level. In addition, UI reported more than adequate ownership equity and achieved adequate profitability in each of the three most recent years. The preferred limit for a corporate undertaking is $4.6 million.

Based on staff's review of the financial statements made available by UI, staff believes UI has adequate resources to support a corporate undertaking in the amount requested. Based on this analysis, staff recommends that a corporate undertaking of $1,810,655 is acceptable contingent upon receipt of the written guarantee of UI and written confirmation that the cumulative outstanding guarantees on behalf of UI-owned utilities in other states will not exceed $4.6 million (inclusive of all Florida utilities). The brief financial analysis above is only appropriate for deciding if UI can support a corporate undertaking in the amount requested and should not be considered a finding regarding staff's position on other issues in this proceeding.

Pursuant to Rule 25-30.360(6), F.A.C., the Utility should provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund

be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. Such costs are the responsibility of, and should be borne by, the Utility.

Issue 5: Should this docket be closed?

Recommendation: The docket should remain open pending the Commission's final action on the Utility's requested rate increase. (Trierweiler, Thurmond)

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

Utilities, Inc. of Florida
Schedule of Water Rate Base
Test Year Ended 12/31/19

Schedule No. 1-A
Docket No. 20200139-WS

	Description	Test Year Per Utility	Utility Adjust-ments	Adjusted Test Year Per Utility	Staff Adjust-ments	Staff Adjusted Test Year
1	Plant in Service	$121,858,071	($6,169,205)	$115,688,866	$0	$115,688,866
2	Land and Land Rights	296,859	0	296,859	0	296,859
3	Non-used and Useful Components	0	0	0	0	0
4	Accumulated Depreciation	(51,397,784)	4,825,793	(46,571,991)	0	(46,571,991)
5	CIAC	(41,304,592)	0	(41,304,592)	0	(41,304,592)
6	Amortization of CIAC	20,893,605	(850)	20,892,755	0	20,892,755
7	Acquisition Adjustments	56,355	(56,355)	0	0	0
8	AA of Acquisition Adj.	192,642	(192,642)	0	0	0
8	Advances for Construction	(36,767)	0	(36,767)	0	(36,767)
9	Working Capital Allowance	0	1,795,933	1,795,933	(20,506)	1,775,427
10	Construction Work in Progress (CWIP)	2,628,722	(2,628,722)	0	0	0
11	**Rate Base**	$53,187,111	($2,426,048)	$50,761,063	($20,506)	$50,740,557

Utilities, Inc. of Florida
Schedule of Wastewater Rate Base
Test Year Ended 12/31/19

Schedule No. 1-B
Docket No. 20200139-WS

	Description	Test Year Per Utility	Utility Adjust-ments	Adjusted Test Year Per Utility	Staff Adjust-ments	Staff Adjusted Test Year
1	Plant in Service	$131,296,074	$6,169,205	$137,465,279	$0	$137,465,279
2	Land and Land Rights	583,041	0	583,041	0	583,041
3	Non-used and Useful Components	0	(2,465,167)	(2,465,167)	559,121	(1,906,046)
4	Accumulated Depreciation	(57,140,576)	(4,115,946)	(61,256,522)	0	(61,256,522)
5	CIAC	(44,997,031)	0	(44,997,031)	0	(44,997,031)
6	Amortization of CIAC	30,720,963	(1,464,628)	29,256,335	0	29,256,335
7	CWIP	(605,083)	605,083	0	0	0
8	Acquisition Adjustments	1,238,784	(1,238,784)	0	0	0
9	AA of Acquisition Adj.	(163,693)	163,693	0	0	0
10	Advances for Construction	1,315	0	1,315	0	1,315
11	Working Capital Allowance	0	2,351,030	2,351,030	(20,170)	2,330,860
12	**Rate Base**	$60,933,794	$4,486	$60,938,280	$538,951	$61,477,231

Utilities Inc. of Florida
Adjustments to Rate Base
Test Year Ended 12/31/2019

Schedule No. 1-C
Docket No. 20200139-WS

	Explanation	Water	Wastewater
	Non-Used and Useful		
	To reflect net non-used and useful adjustment.	$0	$559,121
	Working Capital		
1	To remove unamortized deferred rate case expense in surcharges.	($20,473)	($16,008)
2	To correct unamortized balances of Project Phoenix.	(33)	(4,162)
	Total	($20,506)	($20,170)

Utilities, Inc. of Florida
Capital Structure-Simple Average
Test Year Ended 12/31/19

Schedule No. 2
Docket No. 20200139-WS

	Description	Total Capital	Specific Adjust-ments	Subtotal Adjusted Capital	Prorata Adjust-ments	Capital Reconciled to Rate Base	Ratio	Cost Rate	Weighted Cost
Per Utility									
1	Long-term Debt	$257,846,154	$0	$257,846,154	($212,910,719)	$44,935,435	40.23%	5.78%	2.33%
2	Short-term Debt	28,461,538	0	28,461,538	(23,502,670)	4,958,868	4.44%	4.04%	0.18%
4	Common Equity	279,391,931	0	279,391,931	(230,700,375)	48,691,556	43.59%	9.40%	4.10%
5	Customer Deposits	248,501	0	248,501	0	248,501	0.22%	0.00%	0.00%
6	Deferred Income Taxes	7,143,896	0	7,143,896	0	7,143,896	6.40%	0.00%	0.00%
7	Tax Credits - Zero Cost	73,443	0	73,443	0	73,443	0.07%	0.00%	0.00%
8	Other	5,647,645	0	5,647,645	0	5,647,645	5.06%	0.00%	0.00%
9	**Total Capital**	$578,813,108	$0	$578,813,108	($467,113,764)	$111,699,344	100.00%		6.61%
Per Staff									
10	Long-term Debt	$257,846,154	$0	$257,846,154	($212,674,366)	$45,171,788	40.25%	5.78%	2.33%
11	Short-term Debt	28,461,538	0	28,461,538	(23,475,392)	4,986,146	4.44%	4.04%	0.18%
13	Common Equity	279,391,931	0	279,391,931	(230,445,561)	48,946,370	43.62%	9.40%	4.10%
14	Customer Deposits	248,501	0	248,501	0	248,501	0.22%	0.00%	0.00%
15	Deferred Income Taxes	7,143,896	0	7,143,896	0	7,143,896	6.37%	0.00%	0.00%
16	Tax Credits - Zero Cost	73,443	0	73,443	0	73,443	0.07%	0.00%	0.00%
17	Other	5,647,645	0	5,647,645	0	5,647,645	5.03%	0.00%	0.00%
18	**Total Capital**	$578,813,108	$0	$578,813,108	($466,595,319)	$112,217,789	100.00%		6.61%

	LOW	HIGH
RETURN ON EQUITY	9.40%	11.40%
OVERALL RATE OF RETURN	6.61%	7.48%

Utilities, Inc. of Florida
Statement of Water Operations
Test Year Ended 12/31/19

Schedule No. 3-A
Docket No. 20200139-WS

	Description	Test Year Per Utility	Utility Adjust-ments	Adjusted Test Year Per Utility	Staff Adjust-ments	Staff Adjusted Test Year	Revenue Increase	Revenue Requirement
1	**Operating Revenues:**	$16,396,327	$820,840	$17,217,167	($918,223)	$16,298,944	$918,223 5.63%	$17,217,167
	Operating Expenses							
2	Operation & Maintenance	8,659,460	(75,710)	8,583,750	80,000	8,663,750		8,663,750
3	Depreciation	2,885,066	(45,620)	2,839,446	0	2,839,446		2,839,446
4	Amortization	0	50,263	50,263	46	50,309		50,309
5	Taxes Other Than Income	1,653,481	28,176	1,681,657	(41,320)	1,640,337	41,320	1,681,657
6	Income Taxes	(528,046)	1,234,790	706,744	(257,144)	449,600	215,034	664,635
7	**Total Operating Expense**	$12,669,961	$1,191,899	$13,861,860	($218,418)	$13,643,442	$256,354	$13,899,796
8	**Operating Income**	$3,726,366	($371,059)	$3,355,307	($699,805)	$2,655,502	$661,869	$3,317,371
9	**Rate Base**	$53,187,111		$50,761,063		$50,740,557		$50,740,557
10	**Rate of Return**	7.01%		6.61%		5.23%		6.54%[12]

[12] Due to staff's recommendation to limit the Utility's revenue requirement, consistent with Commission practice, the achieved rate of return is less than the 6.61 percent recommended by staff.

Utilities, Inc. of Florida
Statement of Wastewater Operations
Test Year Ended 12/31/19

Schedule No. 3-B
Docket No. 20200139-WS

	Description	Test Year Per Utility	Utility Adjust-ments	Adjusted Test Year Per Utility	Staff Adjust-ments	Staff Adjusted Test Year	Revenue Increase	Revenue Requirement
1	**Operating Revenues:**	$20,840,529	$147,614	$20,988,143	($1,051,222)	$19,936,921	$1,051,222 5.27%	$20,988,143
	Operating Expenses							
2	Operation & Maintenance	10,494,286	(29,159)	10,465,127	157,925	10,623,052		10,623,052
3	Depreciation	3,773,374	(78,765)	3,694,609	31,117	3,725,726		3,725,726
4	Amortization	0	105,166	105,166	121,916	227,082		227,082
5	Taxes Other Than Income	1,872,394	(25,522)	1,846,872	(51,657)	1,795,215	47,305	1,842,520
6	Income Taxes	(484,700)	1,333,050	848,350	(351,750)	496,600	246,181	742,781
7	**Total Operating Expense**	15,655,354	1,304,770	16,960,124	(92,449)	16,867,675	293,486	17,161,161
8	**Operating Income**	$5,185,175	($1,157,156)	$4,028,019	($958,773)	$3,069,246	$757,736	$3,826,982
9	**Rate Base**	$60,933,794		$60,938,280		$61,477,231		$61,477,231
10	**Rate of Return**	8.51%		6.61%		4.99%		6.23%[13]

[13] Due to staff's recommendation to limit the Utility's revenue requirement, consistent with Commission practice, the achieved rate of return is less than the 6.61 percent recommended by staff.

Utilities, Inc. of Florida
Adjustment to Operating Income
Test Year Ended 12/31/19

Schedule 3-C
Docket No. 20200139-WS

	Explanation	Water	Wastewater
	Operating Revenues		
1	To remove requested interim revenue increase.	($624,643)	($689,957)
2	To reflect the appropriate amount of test year revenues.	(293,580)	(361,265)
	Total	($918,223)	($1,051,222)
	Operation and Maintenance Expense		
1	To reflect adjustment to heath insurance reimbursement expense, per the last rate case.	$89,281	$75,376
2	To reflect adjustment to Eagle Ridge materials & supplies expense, per the last rate case.	0	8,824
3	To reflect EUW adjustment.	(9,281)	0
4	To reflect I&I adjustment.	0	73,725
	Total	$80,000	$157,925
	Depreciation Expense - Net		
	To reflect net depreciation on non-U&U adjustment above.	$0	$31,117
	Amortization-Other Expense		
	To correct amortization of early retirements, per the last rate case..	$46	$121,916
	Taxes Other Than Income		
1	To remove RAFs on requested interim revenue increase	($28,109)	($31,048)
2	To reflect RAFs on test year revenue adjustments above.	(13,211)	(16,257)
3	To remove property taxes on non-used and useful adjustment.	0	(4,352)
	Total	($41,320)	($51,657)

Utilities Inc. of Florida
Test Year Ended 12/31/19
Water Rates

Schedule No. 4-A
Docket No. 20200139-WS

	Utility's Rates in Effect at 12/31/2019 (1)	Utility's Existing Rates (2)	Utility's Requested Interim	Utility's Final Requested	Staff Recommended Interim Rates
Residential and General Service					
Base Facility Charge by Meter Size					
5/8" x 3/4"	$11.07	$11.28	$11.71	$13.24	$11.71
3/4"	$16.61	$16.92	$17.57	$19.86	$17.57
1"	$27.68	$28.20	$29.29	$33.11	$29.28
1-1/2"	$55.35	$56.40	$58.57	$66.21	$58.55
2"	$88.56	$90.24	$93.71	$105.94	$93.68
3"	$177.12	$180.48	$187.43	$211.88	$187.36
4"	$276.75	$282.00	$292.85	$331.06	$292.75
6"	$553.50	$564.00	$585.70	$662.12	$585.50
8"	$885.60	$902.40	$937.13	$1,059.39	$936.80
10"	$1,605.15	$1,635.60	$1,698.54	$1,920.14	$1,697.95
Charge per 1,000 gallons - Residential Service					
0-4,000 gallons	$1.56	$1.59	$1.65	$1.87	$1.65
4,001-12,000 gallons	$2.33	$2.37	$2.46	$2.78	$2.46
Over 12,000 gallons	$3.89	$3.96	$4.11	$4.65	$4.11
Charge per 1,000 gallons - General Service	$2.63	$2.68	$2.78	$3.15	$2.78
Private Fire Protection Service					
1 1/2"	$4.61	$4.70	$4.88	$5.52	$4.88
2"	$7.38	$7.52	$7.81	$8.83	$7.81
3"	$14.76	$15.04	$15.62	$17.66	$15.61
4"	$23.06	$23.50	$24.40	$27.59	$24.40
6"	$46.13	$47.00	$48.81	$55.18	$48.79
8"	$73.80	$75.20	$78.09	$88.28	$78.07
10"	$133.76	$136.30	$141.55	$160.01	$141.50
Typical Residential 5/8" x 3/4" Meter Bill Comparison					
3,000 Gallons	$15.75	$16.05	$16.66	$18.85	$16.66
6,000 Gallons	$21.97	$22.38	$23.23	$26.28	$23.23
8,000 Gallons	$26.63	$27.12	$28.15	$31.84	$28.15

(1) The interim rate increase was applied to the rates in effect as of 12/31/2019.
(2) The current rates became effective May 31, 2020 as a result of a price index.

Utilities Inc. of Florida
Test Year Ended 12/31/19
Wastewater Rates

Schedule No. 4-B
Docket No. 20200139-WS
Page 1 of 2

	Utility's Rates in Effect at 12/31/2019 (1)	Utility's Existing Rates (2)	Utility's Requested Interim Rates	Utility's Requested Final Rates	Staff Recommended Interim Rates
Residential Service (RS1)					
All Meter Sizes	$26.20	$26.72	$27.64	$35.46	$27.63
Charge per 1,000 gallons (8,000 gallon cap)	$4.19	$4.27	$4.42	$5.67	$4.42
Residential Service (RS2)					
All Meter Sizes	$52.39	$53.44	$55.29	$70.92	$55.26
Charge per 1,000 gallons (16,000 gallon cap)	$4.19	$4.27	$4.42	$5.67	$4.42
Residential Service (RS3)					
Flat Rate	$47.13	$48.06	$49.72	$63.78	$49.70
Residential Service (RS4)					
Flat Rate	$94.26	$96.13	$99.45	$127.56	$99.40
General Service (GS1)					
Base Facility Charge by Meter Size					
5/8" x 3/4"	$26.20	$26.72	$27.64	$35.46	$27.63
3/4”	$39.30	$40.08	$41.47	$53.19	$41.45
1"	$65.50	$66.80	$69.11	$88.64	$69.08
1-1/2"	$131.00	$133.60	$138.22	$177.29	$138.15
2"	$209.60	$213.76	$221.15	$283.66	$221.04
3"	$419.20	$427.52	$442.29	$567.32	$442.08
4"	$655.00	$668.00	$691.08	$886.44	$690.75
6"	$1,310.00	$1,336.00	$1,382.17	$1,772.88	$1,381.50
8”	$2,096.00	$2,137.60	$2,211.46	$2,836.60	$2,210.40
10”	$3,799.00	$3,874.40	$4,008.28	$5,141.34	$4,006.35
Charge per 1,000 gallons	$5.02	$5.11	$5.29	$6.78	$5.29

(1) The interim rate increase was applied to the rates in effect as of 12/31/2019.
(2) The current rates became effective May 31, 2020 as a result of a price index.

Utilities Inc. of Florida
Test Year Ended 12/31/19
Wastewater Rates

Schedule No. 4-B
Docket No. 20200139-WS
Page 2 of 2

	Utility's Rates in Effect at 12/31/2019 (1)	Utility's Existing Rates (2)	Utility's Requested Interim Rates	Utility's Requested Final Rates	Staff Recommended Interim Rates
General Service (GS2)					
5/8" x 3/4"	$52.40	$53.44	$55.29	$70.92	$55.26
3/4"	$78.60	$80.16	$82.93	$106.37	$82.89
1"	$131.00	$133.60	$138.22	$177.29	$138.15
1 1/2"	$262.00	$267.20	$276.43	$354.58	$276.30
2"	$419.20	$427.52	$442.29	$567.32	$442.08
3"	$838.40	$855.04	$884.59	$1,134.64	$884.16
4"	$1,310.00	$1,336.00	$1,382.17	$1,772.88	$1,381.50
6"	$2,620.00	$2,672.00	$2,764.33	$3,545.76	$2,763.00
8"	$4,192.00	$4,275.20	$4,422.93	$5,673.21	$4,420.80
10"	$7,598.00	$7,748.80	$8,016.56	$10,282.69	$8,012.70
Charge per 1,000 gallons	$5.02	$5.11	$5.29	$6.78	$5.29
General Service (GS3)					
Flat Rate	$47.13	$48.06	$49.72	$63.78	$49.70
General Service (GS4)					
Flat rate (905 ERCs)	$42,652.65	$43,494.30	$44,997.22	$57,717.12	$44,978.50
Bulk Service (BS1)					
All Meter Sizes (58 ERCs)	$1,519.60	$1,549.76	$1,603.31	$2,056.54	$1,602.54
Charge per 1,000 gallons	$4.19	$4.27	$4.42	$5.67	$4.42
General Reuse Service (GRS1) (3)					
All Meter Sizes	$7.82	$7.92	$8.19	$10.51	$7.92
Charge per 1,000 gallons	$1.48	$1.50	$1.55	$1.99	$1.50
Typical Residential 5/8" x 3/4" Meter Bill Comparison (RS1)					
3,000 Gallons	$38.77	$39.53	$40.90	$52.47	$40.89
6,000 Gallons	$51.34	$52.34	$54.16	$69.48	$54.15
8,000 Gallons	$59.72	$60.88	$63.00	$80.82	$62.99

(1) The interim rate increase was applied to the rates in effect as of 12/31/2019.
(2) The current rates became effective May 31, 2020 as a result of a price index.
(3) Reuse rates were not increased for interim. Reuse rates are market based rates and will be evaluated for final recommendation.

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: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Lewis, Ramos) TB
Division of Accounting and Finance (Richards, D. Brown) MC ALM
Division of Economics (Bethea) JJH
Office of the General Counsel (Dziechciarz) TLT

RE: Docket No. 20200168-WU – Application for staff-assisted rate case in Polk County, and request for interim rate increase, by McLeod Gardens Utilities, LLC.

AGENDA: 09/01/20 – Regular Agenda – Decision on Interim Rates – Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 11/12/21 (15-Month Effective Date (Staff-assisted rate case))

SPECIAL INSTRUCTIONS: None

Case Background

McLeod Gardens Utilities, LLC (McLeod or Utility) is a Class C utility serving approximately 96 residential water customers in Polk County. The Utility was transferred to the present operator in 2016.[1] McLeod's rates and charges were approved in its last staff-assisted rate case in 2002 when the Utility was known as McLeod Gardens Water Company.[2] Subsequent to the

[1]Order No. PSC-2017-0367-PAA-WU, issued September 29, 2017, in Docket No. 20160193-WU, *In re: Application for approval of transfer of certain water facilities and Certificate No. 619-W from McLeod Gardens Water Company to McLeod Gardens Utilities, LLC, in Polk County.*
[2]Order No. PSC-02-1733-PAA-WU, issued December 9, 2002, in Docket No. 20011677-WU, *In re: Application for staff-assisted rate case in Polk County by Tevalo, Inc. d/b/a McLeod Gardens Water Company.*

Utility's last rate case, its rates have been amended through five price index increases. According to McLeod's 2019 Annual Report, total gross revenue was $33,563 and total operating expense was $41,418.

On June 19, 2020, McLeod filed an application for a staff-assisted rate case. A test year ended December 31, 2019, has been established for the purposes of interim and final rates.

This recommendation addresses the Utility's request for interim rates. The Commission has jurisdiction pursuant to Sections 367.082 and 367.0814(4), Florida Statutes (F.S).

Discussion of Issues

Issue 1: Should an interim revenue increase be approved?

Recommendation: Yes. McLeod should be authorized to collect interim revenues as indicated below:

	Test Year Revenues	$ Increase	Revenue Requirement	% Increase
Water	$33,563	$2,608	$36,171	7.77%

(Richards, D. Brown)

Staff Analysis: On June 19, 2020, McLeod filed an application requesting an interim revenue increase in its water rates. Section 367.0814(4), F.S., details the criteria for evaluating a request for an interim rate increase for staff-assisted rate cases.

Section 367.0814(4), F.S., states:

> The Commission may, upon its own motion, or upon petition from the regulated utility, authorized the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. To establish interim relief, there must be a demonstration that the operation and maintenance expenses exceed the revenues of the regulated utility, and interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the Uniform System of Accounts for Class C Water and Wastewater Utilities (1996) of the National Association of Regulatory Utility Commissioners.

Staff has reviewed the Utility's operation and maintenance (O&M) expenses in relation to its revenues. Based on the Utility's filing, staff recommends that McLeod has demonstrated a *prima facie* entitlement to an interim rate increase in accordance with Section 367.0814(4), F.S.

Revenue Increase

In order to establish interim rate relief as prescribed by Section 367.0814(4), F.S., staff used the Utility's revenues reflected in its 2019 Annual Report for the test year ended December 31, 2019. The test year revenues are $33,563, which includes $31,790 from water service rates and $1,773 from miscellaneous service revenues. The test year O&M expenses are $36,054. The difference between the Utility's reported revenues and O&M expenses is $2,491.

In addition, the interim water increase should be grossed up to include regulatory assessment fees (RAFs). The Commission has previously determined that it would be inappropriate to approve an increase in a utility's rates to cover its operating expenses and deny that same utility the funds to pay RAFs.[3] Furthermore, by approving an interim rate increase that allows for the

[3]Order No. PSC-01-1654-FOF-WS, issued August 13, 2001, in Docket No. 20010396-WS, *In re: Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.*

payment of RAFs, the Utility should be able to fully cover its O&M expenses. The RAFs associated with the interim increase equal $117.

In total, McLeod should be allowed an interim water revenue increase of $2,608 ($2,491 + $117) to produce revenues sufficient to cover O&M expenses and additional RAFs. Thus, staff recommends the appropriate interim revenue requirement should be $36,171. This is a 7.77 percent increase above the Utility's test year revenues. Table 1-1 illustrates staff's interim increase calculation.

Table 1-1
Determination of Interim Increase

	Water
1. Utility Test Year O&M Expenses	$36,054
2. Less: Utility Test Year Revenues	$33,563
3. Revenues to Cover O&M Expenses	$2,491
4. Interim Revenue Increase	$2,491
5. RAFs on Interim Rate Increase	$117
6. Total Interim Revenue Increase ($)	$2,608
7. Total Interim Revenue Increase (%)	7.77%

Source: Utility's 2019 Annual Report and staff's calculations.

Issue 2: What are the appropriate interim water rates?

Recommendation: The recommended interim rate increase of 8.20 percent for water should be applied as an across-the-board increase to the service rates in effect as of December 31, 2019. The rates, as shown on Schedule No. 1, should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until the required security has been filed, 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. (Bethea)

Staff Analysis: Staff recommends that interim service rates for McLeod be designed to allow the Utility the opportunity to generate annual operating revenues of $36,171 for water. Before removal of miscellaneous revenues, this would result in an increase of $2,608 (7.77 percent). To determine the appropriate increase to apply to the service rates, miscellaneous revenues should be removed from the test year revenues. The calculation is as follows:

Table 2-1
Percentage Service Rate Increase

		Water
1	Total Test Year Revenues	$33,563
2	Less: Miscellaneous Revenues	$1,773
3	Test Year Revenues from Service Rates	$31,790
4	Revenue Increase	$2,608
5	Percentage Service Rate Increase (Line 4/Line 3)	8.20%

Source: Staff's Interim Recommended Revenue Requirement

Staff recommends that the interim rate increase of 8.20 percent for water be applied as an across-the-board increase to the service rates in effect as of December 31, 2019.[4] The rates, as shown on Schedule No. 1 should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until the required security has been filed, 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.

[4]The Utility had a 2020 price index effective June 5, 2020. Interim rate increases are applied to rates in effect at the end of the test year.

Issue 3: What is the appropriate security to guarantee the interim increase?

Recommendation: The Utility should be required to open an escrow account or secure a surety bond or letter of credit to guarantee any potential refund of revenues collected under interim conditions. If the security provided is an escrow account, the Utility should deposit $217 into the escrow account each month. Otherwise, the surety bond or letter of credit should be in the amount of $1,736. Pursuant to Rule 25-30.360(6), F.A.C., the Utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and in accordance with Rule 25-30.360, F.A.C. (Richards, D. Brown)

Staff Analysis: Pursuant to Section 367.082, F.S., revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the Commission. As recommended in Issue 1, the interim increase for water is $2,608. In accordance with Rule 25-30.360, F.A.C., staff calculated the potential refund of revenues and interest collected under interim conditions to be $1,736. This amount is based on an estimated eight months of revenue being collected under the recommended interim rates shown on Schedule No. 1.

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed McLeod's financial condition. Because the Utility has no meaningful liquidity, has negative interest coverage, has reported significant net losses year over year, and has negative ownership equity, staff does not believe the Utility has the financial capability to support a corporate undertaking in the amount requested at this time. Instead, staff recommends that the Utility be required to secure a surety bond, letter of credit, or escrow agreement to guarantee any potential refund.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

1) The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement.
2) No monies in the escrow account may be withdrawn by the Utility without the express approval 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.

If the security provided is a surety bond or a letter of credit, said instrument should be in the amount of $1,736. If the Utility chooses a surety bond as security, the surety bond should state that it will be released or terminated only upon subsequent order of the Commission. If the Utility chooses to provide a letter of credit as security, the letter of credit should state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered releasing the funds to the Utility or requiring a refund.

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.

Issue 4: Should this docket be closed?

Recommendation: No. Staff recommends that this docket should remain open to address the merits of McLeod's staff-assisted rate case. (Dziechciarz)

Staff Analysis: Staff recommends that this docket should remain open to address the merits of McLeod's staff-assisted rate case.

MCLEOD GARDENS UTILITIES, LLC.
TEST YEAR ENDED DECEMBER 31, 2019
MONTHLY WATER RATES

SCHEDULE NO. 1
DOCKET NO. 20200168-WU

	RATES IN EFFECT AS OF 12/31/2019 (1)	CURRENT RATES (2)	STAFF RECOMMENDED INTERIM RATES
Residential and General Service			
Base Facility Charge by Meter Size			
5/8"X3/4"	$11.65	$11.88	$12.61
3/4"	$17.48	$17.82	$18.92
1"	$29.13	$29.70	$31.53
1-1/2"	$58.25	$59.40	$63.05
2"	$93.20	$95.04	$100.88
3"	$186.40	$190.08	$201.76
4"	$291.25	$297.00	$315.25
6"	$582.50	$594.03	$630.50
Gallonage Charge			
Charge per 1,000 gallons - Residential and General Service	$2.91	$2.97	$3.15
Typical Residential 5/8" x 3/4" Meter Bill Comparison			
2,000 Gallons	$17.47	$17.82	$18.91
4,000 Gallons	$23.29	$23.76	$25.21
6,000 Gallons	$29.11	$29.70	$31.51

(1) The interim rate increase was applied to the rates in effect as of 12/31/2019.
(2) The current rates became effective June 5, 2020 as a result of a price index.

Item 9

FILED 8/20/2020
DOCUMENT NO. 04746-2020
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Wright, Kistner) TB
Division of Accounting and Finance (Richards, D. Brown) MC ALM
Division of Economics (Hudson, Sibley) JGH
Office of the General Counsel (Murphy) JLT

RE: Docket No. 20200169-WS – Application for staff-assisted rate case in Lake County, and request for interim rate increase, by Lake Yale Utilities, LLC.

AGENDA: 09/01/20 – Regular Agenda – Decision on Interim Rates – Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 11/12/21 (15-Month Effective Date (Staff-assisted rate case))

SPECIAL INSTRUCTIONS: None

Case Background

Lake Yale Utilities, LLC (Lake Yale or Utility) is a Class C utility serving approximately 405 residential customers and one general service water customer, and approximately 336 residential customers and one general service wastewater customer in Lake County. The Commission last set rates in an original certificate proceeding in 1994.[1] However, the Utility's rates have been amended through eight price index rate increases. The Utility was transferred to the present

[1]Order No. PSC-94-0171-FOF-WS, issued February 10, 1994, in Docket No. 19930133-WS, *In re: Application for Water and Wastewater Certificates in Lake County by LAKE YALE CORPORATION d/b/a LAKE YALE UTILITY COMPANY.*

operator in 2018.[2] The Utility has never had a staff-assisted rate case before the Commission. According to Lake Yale's 2019 Annual Report, total gross water revenue was $68,906, total gross wastewater revenue was $55,021, total water operating expense was $62,611, and total wastewater operating expense was $64,539.

On June 19, 2020, Lake Yale filed its application for a staff-assisted rate case. The Utility has requested a test year ended December 31, 2019, for purposes of interim and final rates.

This recommendation addresses the Utility's request for interim rates. The Commission has jurisdiction pursuant to Sections 367.082 and 367.0814(4), Florida Statutes (F.S).

[2]Order No. PSC-2018-0554-PAA-WS, issued November 20, 2018, in Docket No. 20170220-WS, *In re: Application for approval of transfer of Lake Yale Treatments Associates, Inc. water and wastewater systems and Certificate Nos. 560-W and 488-S in Lake County to Lake Yale Utilities, LLC.*

Discussion of Issues

Issue 1: Should an interim revenue increase be approved?

Recommendation: Yes. Lake Yale should be authorized to collect interim revenues as indicated below:

	Test Year Revenues	$ Increase	Revenue Requirement	% Increase
Water	$68,906	$0	$68,906	0.00%
Wastewater	$55,021	$9,966	$64,987	18.11%

Test year revenues are sufficient to cover staff-adjusted operation and maintenance (O&M) expenses for the water system, but not the wastewater system. As such, an interim revenue increase is warranted for the wastewater system but not the water system. (Richards, D. Brown)

Staff Analysis: On June 19, 2020, Lake Yale filed an application requesting an interim revenue increase in its wastewater rates. Section 367.0814(4), F.S., details the criteria for evaluating a request for an interim rate increase for staff-assisted rate cases.

Section 367.0814(4), F.S., states:

> The Commission may, upon its own motion, or upon petition from the regulated utility, authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. To establish interim relief, there must be a demonstration that the operation and maintenance expenses exceed the revenues of the regulated utility, and interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the Uniform System of Accounts for Class C Water and Wastewater Utilities (1996) of the National Association of Regulatory Utility Commissioners.

Staff has reviewed the Utility's O&M expenses in relation to its revenues. Based on the Utility's filing, staff recommends that Lake Yale has demonstrated a *prima facie* entitlement to an interim rate increase in accordance with Section 367.0814(4), F.S.

Revenue Increase

In order to establish interim rate relief as prescribed by Section 367.0814(4), F.S., staff used the Utility's revenues reflected in its 2019 Annual Report for the test year ended December 31, 2019. The filed revenues exceeded O&M expenses for the water system, but not for the wastewater system. Thus, staff recommends an interim increase for the wastewater system only. The test year revenues for wastewater are $55,021, and the test year O&M expenses for wastewater are $64,539. The difference between the Utility's reported revenues and O&M expenses for wastewater is $9,518.

In addition, the interim wastewater increase should be grossed up to include regulatory assessment fees (RAFs). The Commission has previously determined that it would be

inappropriate to approve an increase in a Utility's rates to cover its operating expenses and deny that same utility the funds to pay RAFs.[3] Furthermore, by approving an interim rate increase that allows for the payment of RAFs, the Utility should be able to fully cover its O&M expenses. The RAFs associated with the interim increase equal $448.

In total, Lake Yale should be allowed an interim wastewater revenue increase of $9,966 ($9,518 + $448) to produce revenues sufficient to cover O&M expenses and additional RAFs. Thus, staff recommends the appropriate interim revenue requirement should be $64,987. This is an 18.11 percent increase above the Utility's wastewater test year revenues. Table 1-1 illustrates staff's interim increase calculation.

Table 1-1
Determination of Interim Increase

	Water	Wastewater
1. Utility Test Year O&M Expenses	$62,611	$64,539
2. Less: Utility Test Year Revenues	$68,906	$55,021
3. Revenues to Cover O&M Expenses	($6,295)	$9,518
4. Interim Revenue Increase	$0	$9,518
5. RAFs on Interim Rate Increase	$0	$448
6. Total Interim Revenue Increase ($)	$0	$9,966
7. Total Interim Revenue Increase (%)	0.00%	18.11%

Source: Utility's 2019 Annual Report and staff's calculations.

[3]Order No. PSC-01-1654-FOF-WS, issued August 13, 2001, in Docket No. 20010396-WS, *In re: Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.*

Issue 2: What are the appropriate interim wastewater rates?

Recommendation: The interim rate increase of 18.11 percent should be applied as an across-the-board increase to the wastewater service rates in effect as of December 31, 2019. The rates, as shown on Schedule No. 1, should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until the required security has been filed, staff has approved the proposed customer notice, and the notice has been received by the customers. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice. (Sibley)

Staff Analysis: Staff recommends that wastewater interim service rates for Lake Yale be designed to allow the Utility the opportunity to generate annual operating revenues of $64,987 for wastewater. Since there were no miscellaneous service revenues reported by the Utility for the test year, this would result in an increase of $9,966 (18.11 percent) to service rates.

Staff recommends that the wastewater interim rate increase of 18.11 percent should be applied as an across-the-board increase to the service rates in effect as of December 31, 2019.[4] The rates, as shown on Schedule No. 1, should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until the required security has been filed, staff has approved the proposed customer notice, and the notice has been received by the customers. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice.

[4]The Utility had a 2020 price index effective June 5, 2020. Interim rate increases are applied to the rates in effect at the end of the test year.

Issue 3: What is the appropriate security to guarantee the interim increase?

Recommendation: The Utility should be required to open an escrow account or secure a surety bond or letter of credit to guarantee any potential refund of revenues collected under interim conditions. If the security provided is an escrow account, the Utility should deposit $831 into the escrow account each month. Otherwise, the surety bond or letter of credit should be in the amount of $6,648. Pursuant to Rule 25-30.360(6), F.A.C., the Utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and in accordance with Rule 25-30.360, F.A.C. (Richards, D. Brown)

Staff Analysis: Pursuant to Section 367.082, F.S., revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the Commission. As recommended in Issue 1, the interim increase for wastewater is $9,966. In accordance with Rule 25-30.360, F.A.C., staff calculated the potential refund of revenues and interest collected under interim conditions to be $6,648. This amount is based on an estimated eight months of revenue being collected under the recommended interim rates shown on Schedule No. 1.

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed Lake Yale's financial condition. Because the Utility has no meaningful liquidity, has negative interest coverage, has reported significant net losses year over year, and has negative ownership equity, staff does not believe the Utility can support a corporate undertaking in the amount requested at this time. Staff recommends Lake Yale be required to secure a surety bond, letter of credit, or escrow agreement to guarantee any potential refund.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

1. The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement.
2. No monies in the escrow account may be withdrawn by the Utility without the express approval 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.

If the security provided is a surety bond or a letter of credit, said instrument should be in the amount of $6,648. If the Utility chooses a surety bond as security, the surety bond should state that it will be released or terminated only upon subsequent order of the Commission. If the Utility chooses to provide a letter of credit as security, the letter of credit should state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered releasing the funds to the Utility or requiring a refund.

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.

Issue 4: Should this docket be closed?

Recommendation: No. Staff recommends that this docket should remain open to address the merits of Lake Yale's staff-assisted rate case. (Murphy)

Staff Analysis: Staff recommends that this docket should remain open to address the merits of Lake Yale's staff-assisted rate case.

LAKE YALE UTILITIES, LLC **SCHEDULE NO. 1**
TEST YEAR ENDED DECEMBER 31, 2019 **DOCKET NO. 20200169-WS**
MONTHLY WASTEWATER RATES

	RATES IN EFFECT AT 12/31/19 (1)	CURRENT RATES (2)	STAFF RECOMMENDED INTERIM RATES
Residential Service			
All Meter Sizes	$10.67	$10.86	$12.60
Charge per 1,000 gallons	$2.72	$2.77	$3.21
10,000 gallon cap			
General Service			
5/8" X 3/4"	$10.67	$10.86	$12.60
3/4"	$16.01	$16.29	$18.90
1"	$26.68	$27.15	$31.50
1 1/2"	$53.35	$54.30	$63.00
2"	$85.36	$86.88	$100.80
3"	$170.72	$173.76	$201.60
4"	$266.75	$271.50	$315.00
6"	$533.50	$543.00	$630.00
8"	$853.60	$868.80	$1,008.00
Charge per 1,000 gallons	$3.24	$3.30	$3.83
Typical Residential 5/8" x 3/4" Meter Bill Comparison			
3,000 Gallons	$18.83	$19.17	$22.23
6,000 Gallons	$26.99	$27.48	$31.86
10,000 Gallons	$37.87	$38.56	$44.70

(1) The interim rate increase was applied to the rates in effect as of 12/31/2019.
(2) The current rates became effective June 5, 2020 as a result of a price index.

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: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, Hampson) JGH
Office of the General Counsel (Trierweiler) JSC

RE: Docket No. 20200162-EU – Joint petition for approval of amendment to territorial agreement in St. Johns County, by Florida Power & Light Company and JEA.

AGENDA: 09/01/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On June 3, 2020, Florida Power & Light Company (FPL) and JEA, collectively the joint petitioners or parties, filed a petition seeking Commission approval of a Third Amendment to their existing territorial agreement in St. Johns County. The existing service boundary line bifurcates a planned subdivision located in St. Johns County. The proposed Third Amendment allows FPL and JEA to swap certain parcels within their respective service territories in St. Johns County, which will allow JEA to serve the entire planned subdivision. The proposed Third Amendment, legal descriptions, and maps depicting the swapped land parcels and revised service boundaries are provided in Attachment A to this recommendation.

The Commission approved the parties' first territorial agreement in St. Johns County in 1965.[1] Thereafter, the territorial boundary was re-affirmed by the Commission in 1980.[2] In 1996, as the

[1] Order No. 3799, issued April 28, 1965, in Docket No. 7421-EU.

result of a territorial dispute, FPL and JEA entered into a new territorial agreement which replaced the prior agreement.[3] After the discovery of an inconsistency between the 1996 Agreement and a territorial agreement between JEA and Clay Electric Cooperative, a new territorial agreement between FPL and JEA was approved by the Commission in 1998.[4] In 2012, the Commission approved an amendment that altered a segment of the territorial boundaries between the parties so that a single utility could serve the electric needs of a new private development planned for an undeveloped area.[5] In 2014, the parties entered into the second amendment to the existing territorial agreement to alter the boundary to align it with planned roadways and accommodate new expanding development.[6]

This recommendation addresses the proposed Third Amendment to the existing territorial agreement. During the review of this joint petition, staff issued a data request to the joint petitioners on June 30, 2020, for which responses were received on July 14, 2020. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

[2] Order No. 9363, issued May 9, 1980, in Docket No. 790886-EU, *In re: Petition of Jacksonville Electric Authority for approval of a territorial agreement between JEA and Florida Power and Light Company*.
[3] Order No. PSC-96-0212-FOF-EU, issued February 14, 1996, and finalized by Order No. PSC-96-0755-FOF-EU, issued June 10, 1996, in Docket No. 950307-EU, *In re: Petition of Jacksonville Electric Authority to Resolve a Territorial Dispute With Florida Power & Light Company in St. Johns County*.
[4] Order No. PSC-98-1687-FOF-EU, issued December 14, 1998, in Docket No. 980755-EU, *In re: Joint petition for approval of new territorial agreement between Florida Power & Light Company and Jacksonville Electric Authority*.
[5] Order No. PSC-12-0561-PAA-EU, issued October 22, 2012, in Docket No. 120171-EU, *In re: Joint petition for approval of amendment to territorial agreement in St. Johns County between Florida Power & Light Company, a Florida corporation, and JEA, a Florida municipal corporation*.
[6] Order No. PSC-14-0469-PAA-EU, issued August 29, 2014, in Docket No. 20140130-EU, *In re: Joint petition for approval of amendment to territorial agreement between Florida Power & Light Company and JEA.*

Discussion of Issues

Issue 1: Should the Commission approve the proposed Third Amendment to the existing territorial agreement between FPL and JEA in St. Johns County?

Recommendation: Yes, the Commission should approve the proposed Third Amendment, dated June 3, 2020, to the existing territorial agreement between FPL and JEA in St. Johns County. The proposed Third Amendment to the territorial agreement will allow JEA to serve an entire planned residential development and it will enable FPL and JEA to serve their other customers in the county in an efficient manner. (Guffey, Hampson)

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.[7]

Proposed Third Amendment to Territorial Agreement

On June 3, 2020, FPL and JEA entered into the Third Amendment to their 1998 territorial agreement, which shall continue and remain in effect until the Commission, by order, modifies or withdraws its approval of this Agreement after proper notice and hearing. Other than the proposed parcel swaps, all other parts of the territorial agreement remain in effect. The proposed Third Amendment finalizes the territorial boundary adjustments between FPL and JEA that are necessary to accommodate development and facilitate the provision of electricity to the expanding development by one utility, and is also intended to avoid duplication of services in the areas subject to the parcel swaps. Pursuant to the agreed upon amendment, three parcels (5, 6, and 7) located within JEA's territory will be transferred to FPL and one parcel (parcel 4) located within FPL's territory will be transferred to JEA. Total acreage of the swapped parcels is 22.30 acres located in St. Johns County.

Currently, the subject parcels are undeveloped; and therefore, there are no customers or electric facilities in parcels 4, 5, 6, and 7 pursuant to paragraph 2 of the proposed 2020 Amendment. With the parcel swap, JEA will provide electricity to 342 residential customers in the planned development for parcel 4 (13.43 acres), and FPL will provide electricity to parcels 5, 6, and 7 (total of 8.87 acres) if developed in the future. With the parcel swap, the parties will be better positioned to provide electric service in the future to other development within this area.

Customer Notification

Paragraph 18 of the petition states that since the areas subject to the parcel swap in this 2020 Amendment are currently undeveloped, there are no infrastructure or customer accounts to be transferred; therefore, no customers were notified pursuant to Rule 25-6.0440(1), F.A.C.

In paragraph 20 of the petition, the parties state that approval of the proposed 2020 Amendment will not cause a decrease in reliability of electric service to the existing or future customers.

[7] *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

Conclusion

After review of the petition and the petitioners' joint responses to staff's data request, staff believes the proposed Third Amendment will enable FPL and JEA to exchange four land parcels within their respective retail service territories, achieve necessary changes to accommodate development, and serve their current and future customers efficiently. It appears that the proposed Third Amendment to the existing 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 Third Amendment dated June 3, 2020, to the exiting territorial agreement between FPL and JEA in St. Johns County should be approved by the Commission. The proposed Third Amendment to the territorial agreement should become effective on the date the Commission Order approving it becomes final.

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. (Trierwiler)

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.

THIRD AMENDMENT TO TERRITORIAL AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY
AND
JEA

This Third Amendment to the Territorial Agreement, dated June 3, 2020, ("2020 Amendment") is entered into by Florida Power & Light Company a corporation organized and existing under the laws of the State of Florida ("FPL") and JEA, a body politic and corporate created by Charter (collectively, the "Parties"), and each of which is an electric utility as defined in Section 366.02(2), Florida Statutes.

W I T N E S S E T H

1. **WHEREAS,** FPL and JEA have an existing Territorial Agreement entered into in 1998, as amended by that certain Amendment to Territorial Agreement between FPL and JEA, dated May 25, 2012 ("2012 Amendment"), and by that certain Second Amendment to Territorial Agreement between FPL and JEA, dated March 13, 2014 ("2014 Amendment") (such agreement and amendments are collectively referred to as the "Territorial Agreement");

2. **WHEREAS**, the current territorial boundary between FPL and JEA traverses an area where an expanding private development is planned in northeast St. Johns County, Florida;

3. **WHEREAS,** the 2012 Amendment and 2014 Amendment aligned the territorial boundaries between FPL and JEA over certain parcels that will be included in the development, and the Parties now desire to amend the Territorial Agreement to finalize the territorial boundary adjustments between FPL and JEA that are necessary to accommodate the development; and

4. **WHEREAS,** amending the territorial boundary in the Territorial Agreement will avoid uneconomic duplication of services and provide for the cost effective provision of service to utility customers;

5. **NOW THEREFORE,** in consideration of the following mutual covenants and other good and valuable consideration, 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 amend the Territorial Agreement as follows:

1. Territorial Exchange. The Parties agree to amend the boundaries in the Territorial Agreement in order to exchange four parcels within their respective retail service territories.

a) The first parcel is located within FPL's bounded service territory northwest of the intersection of Preservation Trail and Crestview Drive and is approximately 13.43 acres ("Swap Parcel 4"). A legal description and sketch of Swap Parcel 4 is attached as Exhibit "A." Upon approval of this 2020 Amendment by the Florida Public Service Commission ("FPSC"), Swap Parcel 4 will be transferred from FPL to JEA.

b) The second parcel is located within JEA's bounded service territory south of the intersection of Palm Valley Road and Preservation Trail and is approximately 0.50 acres ("Swap Parcel 5"). A legal description and sketch of Swap Parcel 5 is attached as Exhibit "B." Upon approval of this 2020 Amendment by the FPSC, Swap Parcel 5 will be transferred from JEA to FPL.

c) The third parcel is located within JEA's bounded service territory north of Park Lake Drive and Tavernier Drive and is approximately 0.55 acres ("Swap Parcel 6"). A legal description and sketch of Swap Parcel 6 is attached as Exhibit "C." Upon approval of this 2020 Amendment by the FPSC, Swap Parcel 6 will be transferred from JEA to FPL.

d) The fourth parcel is located within JEA's bounded service territory north of Nocatee Parkway, south of Palm Valley Road, and is bordered on the west by Crosswater Parkway, and is approximately 7.82 acres ("Swap Parcel 7"). A legal description and sketch of Swap Parcel 7 is attached as Exhibit "D." Upon approval of this 2020 Amendment by the FPSC, Swap Parcel 7 will be transferred from JEA to FPL.

2. Transition. There are currently no existing customers or electric facilities within Swap Parcel 4, Swap Parcel 5, Swap Parcel 6, or Swap Parcel 7. Thus, no transition of electric service is required.

3. Condition Precedent. The approval of this 2020 Amendment by the FPSC without modification, unless otherwise agreed to by the Parties, shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This 2020 Amendment shall have no effect whatsoever until such approval has been granted by the FPSC, and the date of the FPSC's order, if any, granting such approval shall be deemed to be the effective date of the 2020 Amendment.

4. Existing Territorial Agreement. All other parts of the Territorial Agreement shall remain in effect.

IN WITNESS WHEREOF, this 2020 Amendment has been caused to be executed by FPL in its name by its Senior Vice President, and by JEA in its name by its Chief Executive Officer, on the day and year first written above.

FLORIDA POWER & LIGHT COMPANY

By: _____

Date: June 3, 2020

Name: Manuel B. Miranda

Title: Senior Vice President, Power Delivery

JEA

By: _____

Date: _____

Name: Paul McElroy

Title: Interim Chief Executive Officer

5

IN WITNESS WHEREOF, this 2020 Amendment has been caused to be executed by FPL in its name by its Senior Vice President, and by JEA in its name by its interim Chief Executive Officer, on the day and year first written above.

FLORIDA POWER & LIGHT COMPANY

By: _____

Date: _____

Name: Manuel B. Miranda

Title: Senior Vice President, Power Delivery

JEA

By: Paul E. McElroy

Date: June 3, 2020

Name: Paul McElroy

Title: Interim Chief Executive Officer

Exhibit "A"

Legal description and sketch of Swap Parcel 4 in accordance with Rule 25-6.0440, F.A.C.

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January 7, 2020

Work Order No. 19-316.00
File No. 126A-30.00A

Territory Exchange 4

A portion of Section 31, Township 4 South, Range 29 East, together with a portion of Section 6, Township 5 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the intersection of the Southerly terminus of and the centerline of Crestview Drive, a variable width right of way, as depicted on Town Center Roads Phase III, recorded in Map Book 74, pages 62 through 67, of the Public Records of said county; thence South 21°32'44" West, along the Southerly prolongation of said centerline of Crestview Drive, 123.30 feet to its intersection with the centerline of Preservation Trail, a variable width right of way as presently established; thence Northwesterly along said centerline of Preservation Trail the following 3 courses: Course 1, thence Northwesterly along the arc of curve concave Northeasterly having a radius of 2550.00 feet, through a central angle of 10°02'10", an arc length of 446.66 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North 63°26'11" West, 446.09 feet; Course 2, thence North 58°25'07" West, 327.46 feet to the point of curvature of a curve concave Southwesterly having a radius of 881.00 feet; Course 3, thence Northwesterly along the arc of said curve, through a central angle of 04°08'39", an arc length of 63.72 feet to its intersection with the former centerline of Palm Valley Road, a former 100 foot right of way as vacated by Resolution No. 2008-13, recorded in Official Records Book 3101, page 739, of said Public Records, said arc being subtended by a chord bearing and distance of North 60°29'26" West, 63.71 feet; thence North 55°19'25" East, departing said centerline of Preservation Trail and along said former centerline of Palm Valley Road, 1528.71 feet to its intersection with said centerline of Crestview Drive; thence Southerly along said centerline of Crestview Drive the following 4 courses: Course 1, thence South 21°32'44" West, departing said former centerline, 675.58 feet to the point of curvature of a curve concave Northwesterly having a radius of 2026.00 feet; Course 2, thence Southwesterly along the arc of said curve, through a central angle of 06°02'13", an arc length of 213.47 feet to a point of reverse curvature, said arc being subtended by a chord bearing and distance of South 24°33'50" West, 213.37 feet; Course 3, thence Southwesterly along the arc of a curve concave Southeasterly having a radius of 1580.40 feet, through a central angle of 06°02'13", an arc length of 166.52 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South 24°33'50" West, 166.44 feet; Course 4, thence South 21°32'44" West, 197.40 feet to the Point of Beginning.

Containing 13.43 acres, more or less.

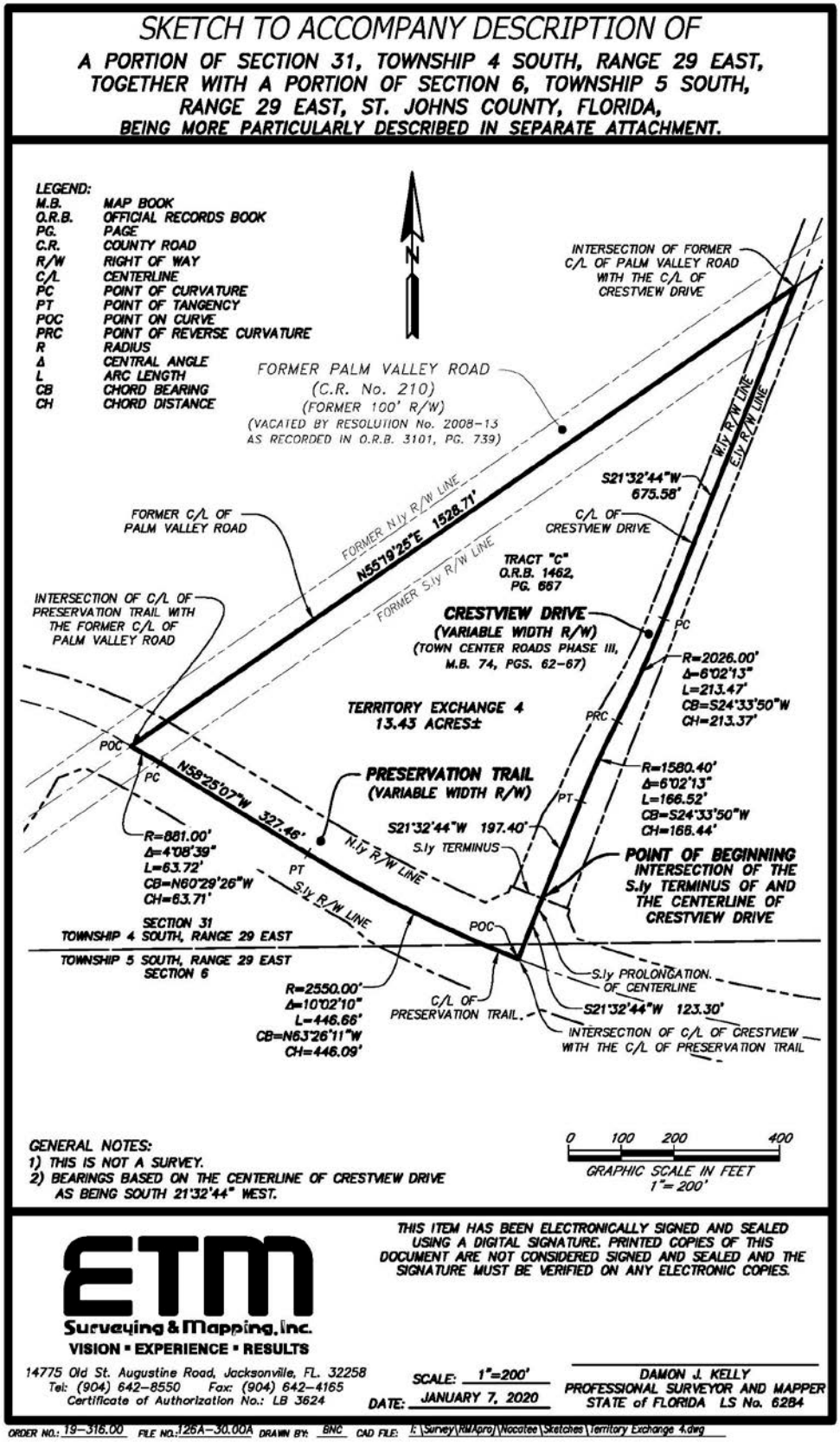
SKETCH TO ACCOMPANY DESCRIPTION OF
A PORTION OF SECTION 31, TOWNSHIP 4 SOUTH, RANGE 29 EAST, TOGETHER WITH A PORTION OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA,
BEING MORE PARTICULARLY DESCRIBED IN SEPARATE ATTACHMENT.
LEGEND:
M.B. MAP BOOK
O.R.B. OFFICIAL RECORDS BOOK
PG. PAGE
C.R. COUNTY ROAD
R/W RIGHT OF WAY
C/L CENTERLINE
PC POINT OF CURVATURE
PT POINT OF TANGENCY
POC POINT ON CURVE
PRC POINT OF REVERSE CURVATURE
R RADIUS
Δ CENTRAL ANGLE
L ARC LENGTH
CB CHORD BEARING
CH CHORD DISTANCE
N
INTERSECTION OF FORMER C/L OF PALM VALLEY ROAD WITH THE C/L OF CRESTVIEW DRIVE
FORMER PALM VALLEY ROAD
(C.R. No. 210)
(FORMER 100' R/W)
(VACATED BY RESOLUTION No. 2008-13 AS RECORDED IN O.R.B. 3101, PG. 739)
W.ly R/W LINE
E.ly R/W LINE
S21°32'44"W 675.58'
FORMER C/L OF PALM VALLEY ROAD
FORMER N.ly R/W LINE
N55°19'25"E 1528.71'
FORMER S.ly R/W LINE
C/L OF CRESTVIEW DRIVE
TRACT "C" O.R.B. 1462, PG. 667
INTERSECTION OF C/L OF PRESERVATION TRAIL WITH THE FORMER C/L OF PALM VALLEY ROAD
CRESTVIEW DRIVE
(VARIABLE WIDTH R/W)
(TOWN CENTER ROADS PHASE III, M.B. 74, PGS. 62-67)
PC
R=2026.00'
Δ=6°02'13"
L=213.47'
CB=S24°33'50"W
CH=213.37'
TERRITORY EXCHANGE 4
13.43 ACRES±
PRC
POC
PRESERVATION TRAIL
(VARIABLE WIDTH R/W)
R=1580.40'
Δ=6°02'13"
L=166.52'
CB=S24°33'50"W
CH=166.44'
PC
N59°25'07"W 327.46'
PT
S21°32'44"W 197.40'
N.ly R/W LINE
S.ly TERMINUS
POINT OF BEGINNING
INTERSECTION OF THE S.ly TERMINUS OF AND THE CENTERLINE OF CRESTVIEW DRIVE
R=881.00'
Δ=4°08'39"
L=63.72'
CB=N60°29'26"W
CH=63.71'
PT
S.ly R/W LINE
SECTION 31
TOWNSHIP 4 SOUTH, RANGE 29 EAST
TOWNSHIP 5 SOUTH, RANGE 29 EAST
SECTION 6
POC
S.ly PROLONGATION OF CENTERLINE
R=2550.00'
Δ=10°02'10"
L=446.66'
CB=N63°26'11"W
CH=446.09'
C/L OF PRESERVATION TRAIL
S21°32'44"W 123.30'
INTERSECTION OF C/L OF CRESTVIEW WITH THE C/L OF PRESERVATION TRAIL
GENERAL NOTES:
1) THIS IS NOT A SURVEY.
2) BEARINGS BASED ON THE CENTERLINE OF CRESTVIEW DRIVE AS BEING SOUTH 21°32'44" WEST.
0 100 200 400
GRAPHIC SCALE IN FEET
1"= 200'
THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.
ETM
Surveying & Mapping, Inc.
VISION • EXPERIENCE • RESULTS
14775 Old St. Augustine Road, Jacksonville, FL. 32258
Tel: (904) 642-8550 Fax: (904) 642-4165
Certificate of Authorization No.: LB 3624
SCALE: 1"=200'
DATE: JANUARY 7, 2020
DAMON J. KELLY
PROFESSIONAL SURVEYOR AND MAPPER
STATE of FLORIDA LS No. 6284
ORDER NO.: 19-316.00 FILE NO.: 126A-30.00A DRAWN BY: BNC CAD FILE: I:\Survey\RMApro\Nocatee\Sketches\Territory Exchange 4.dwg

Exhibit "B"

Legal description and sketch of Swap Parcel 5 in accordance with Rule 25-6.0440, F.A.C.

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14775 Old St. Augustine Road • Jacksonville, Florida 32258

January 7, 2020

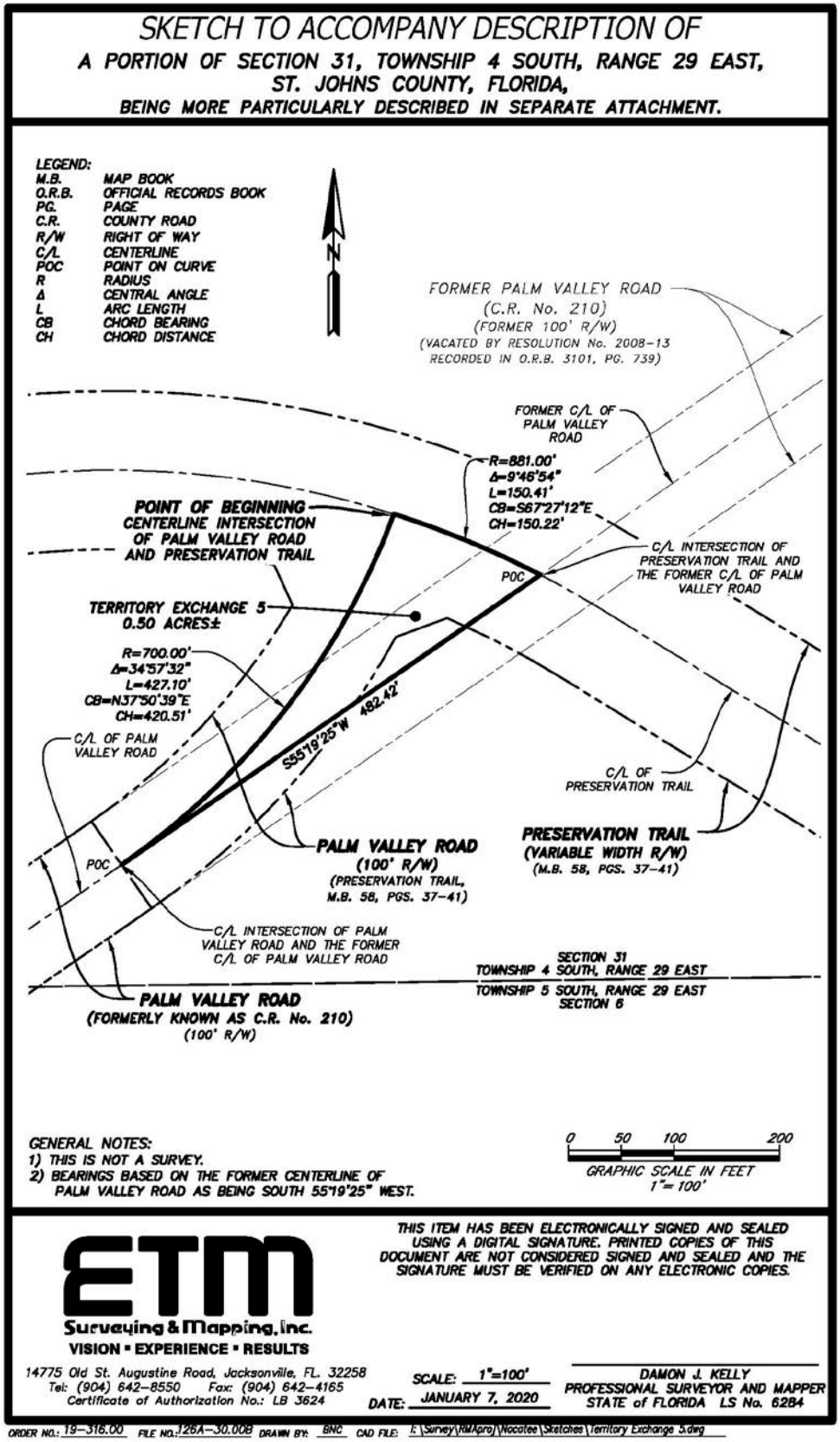
Work Order No. 19-316.00
File No. 126A-30.00B

Territory Exchange 5

A portion of Section 31, Township 4 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the centerline intersection of Palm Valley Road, a 100 foot right of way, and Preservation Trail, a variable width right of way, both as depicted on Preservation Trail, recorded in Map Book 58, pages 37 through 41, of the Public Records of said county; thence Southeasterly along said centerline of Preservation Trail and along the arc of a curve concave Southwesterly having a radius of 881.00 feet, through a central angle of 09°46'54", an arc length of 150.41 feet to its intersection with the former centerline of former Palm Valley Road, a former 100 foot right of way vacated by Resolution No. 2008-13, recorded in Official Records Book 3101, page 739, of said Public Records, said arc being subtended by a chord bearing and distance of South 67°27'12" East, 150.22 feet; thence South 55°19'25" West, departing said centerline of Preservation Trail and along said former centerline, 482.42 feet to its intersection with said centerline of Palm Valley Road; thence Northeasterly, departing said former centerline, along said centerline of Palm Valley Road and along the arc of a curve concave Northwesterly having a radius of 700.00 feet, through a central angle of 34°57'32", an arc length of 427.10 feet to the Point of Beginning, said arc being subtended by a chord bearing and distance of North 37°50'39" East, 420.51 feet.

Containing 0.50 acres, more or less.


SKETCH TO ACCOMPANY DESCRIPTION OF
A PORTION OF SECTION 31, TOWNSHIP 4 SOUTH, RANGE 29 EAST,
ST. JOHNS COUNTY, FLORIDA,
BEING MORE PARTICULARLY DESCRIBED IN SEPARATE ATTACHMENT.
LEGEND:
M.B. MAP BOOK
O.R.B. OFFICIAL RECORDS BOOK
PG. PAGE
C.R. COUNTY ROAD
R/W RIGHT OF WAY
C/L CENTERLINE
POC POINT ON CURVE
R RADIUS
Δ CENTRAL ANGLE
L ARC LENGTH
CB CHORD BEARING
CH CHORD DISTANCE
N
FORMER PALM VALLEY ROAD
(C.R. No. 210)
(FORMER 100' R/W)
(VACATED BY RESOLUTION No. 2008-13
RECORDED IN O.R.B. 3101, PG. 739)
FORMER C/L OF PALM VALLEY ROAD
R=881.00'
Δ=9°48'54"
L=150.41'
CB=S67°27'12"E
CH=150.22'
POINT OF BEGINNING
CENTERLINE INTERSECTION
OF PALM VALLEY ROAD
AND PRESERVATION TRAIL
C/L INTERSECTION OF PRESERVATION TRAIL AND THE FORMER C/L OF PALM VALLEY ROAD
POC
TERRITORY EXCHANGE 5
0.50 ACRES±
R=700.00'
Δ=34°57'32"
L=427.10'
CB=N37°50'39"E
CH=420.51'
S55°19'25"W 482.42'
C/L OF PALM VALLEY ROAD
C/L OF PRESERVATION TRAIL
PALM VALLEY ROAD
(100' R/W)
(PRESERVATION TRAIL,
M.B. 58, PGS. 37-41)
PRESERVATION TRAIL
(VARIABLE WIDTH R/W)
(M.B. 58, PGS. 37-41)
POC
C/L INTERSECTION OF PALM VALLEY ROAD AND THE FORMER C/L OF PALM VALLEY ROAD
SECTION 31
TOWNSHIP 4 SOUTH, RANGE 29 EAST
TOWNSHIP 5 SOUTH, RANGE 29 EAST
SECTION 6
PALM VALLEY ROAD
(FORMERLY KNOWN AS C.R. No. 210)
(100' R/W)
GENERAL NOTES:
1) THIS IS NOT A SURVEY.
2) BEARINGS BASED ON THE FORMER CENTERLINE OF PALM VALLEY ROAD AS BEING SOUTH 55°19'25" WEST.
0 50 100 200
GRAPHIC SCALE IN FEET
1"= 100'
THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.
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14775 Old St. Augustine Road, Jacksonville, FL. 32258
Tel: (904) 642-8550 Fax: (904) 642-4165
Certificate of Authorization No.: LB 3624
SCALE: 1"=100'
DATE: JANUARY 7, 2020
DAMON J. KELLY
PROFESSIONAL SURVEYOR AND MAPPER
STATE of FLORIDA LS No. 6284
ORDER NO.: 19-316.00 FILE NO.: 126A-30.00B DRAWN BY: BNC CAD FILE: I:\Survey\RMApro\Nocatee\Sketches\Territory Exchange 5.dwg

Exhibit "C"

Legal description and sketch of Swap Parcel 6 in accordance with Rule 25-6.0440, F.A.C.

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14775 Old St. Augustine Road • Jacksonville, Florida 32258

January 7, 2020

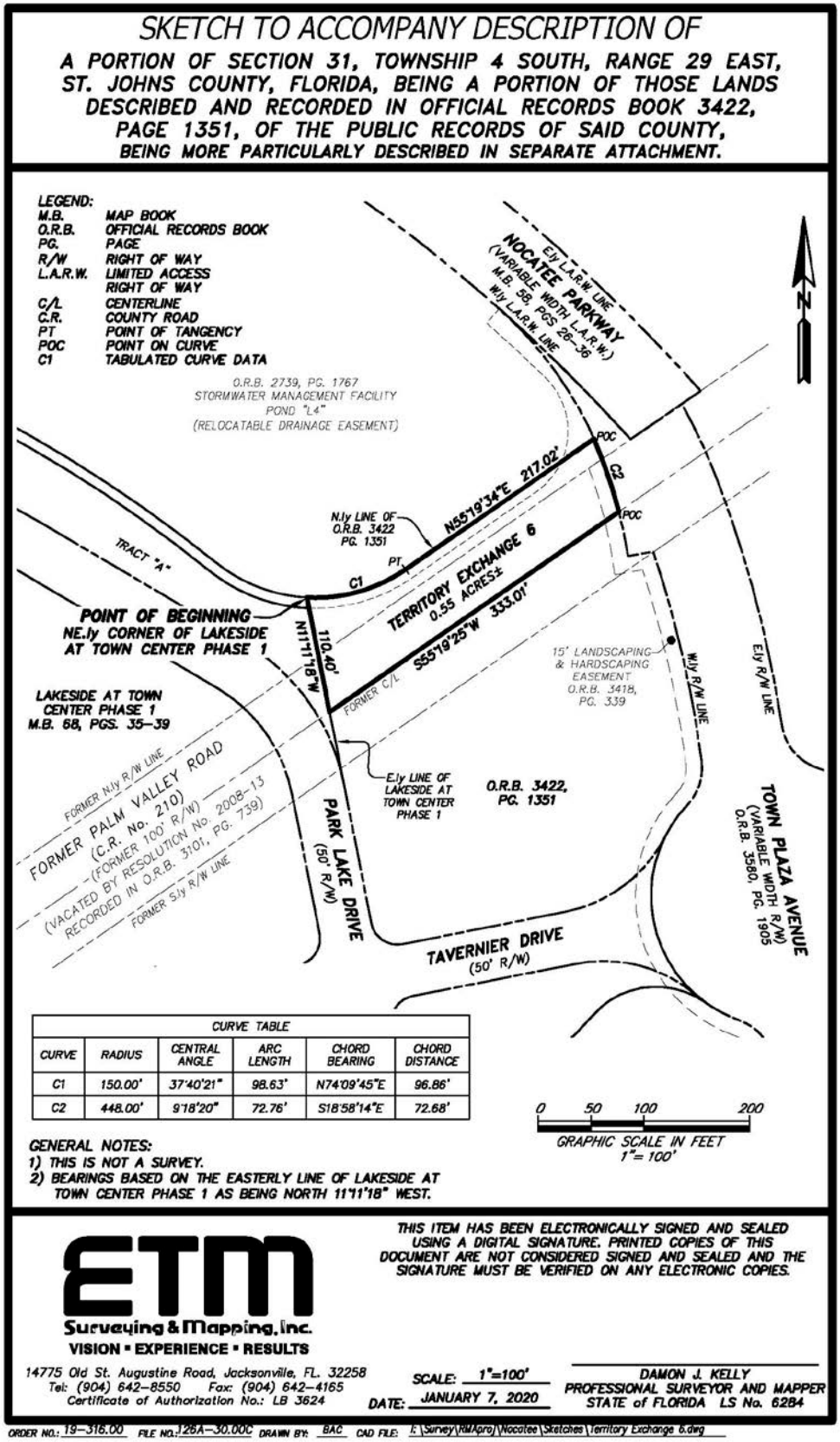
Work Order No. 19-316.00
File No. 126A-30.00C

Territory Exchange 6

A portion of Section 31, Township 4 South, Range 29 East, St. Johns County, Florida, being a portion of those lands described and recorded in Official Records Book 3422, page 1351, of the Public Records of said county, being more particularly described as follows:

For a Point of Beginning, commence at the Northeasterly corner of Lakeside at Town Center Phase 1, a plat recorded in Map Book 68, pages 35 through 39, of said Public Records, said corner lying on the Northerly line of said Official Records Book 3422, page 1351; thence Easterly along said Northerly line and along the arc of a curve concave Northerly having a radius of 150.00 feet, through a central angle of 37°40'21", an arc length of 98.63 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North 74°09'45" East, 96.86 feet; thence North 55°19'34" East, continuing along said Northerly line, 217.02 feet to a point lying on the Westerly right of way line of Town Plaza Avenue, a variable width right of way as described and recorded in Official Records Book 3580, page 1905, of said Public Records; thence Southerly, departing said Northerly line, along said Westerly right of way line and along the arc of a curve concave Westerly having a radius of 448.00 feet, through a central angle of 09°18'20", an arc length of 72.76 feet to its intersection with the former centerline of Palm Valley Road, a former 100 foot right of way vacated by Resolution No. 2008-13, recorded in Official Records Book 3101, page 739, of said Public Records, said arc being subtended by a chord bearing and distance of South 18°58'14" East, 72.68 feet; thence South 55°19'25" West, departing said Westerly right of way line and along said former centerline, 333.01 feet to a point lying on the Easterly line of said Lakeside at Town Center Phase 1; thence North 11°11'18" West, departing said former centerline and along said Easterly line, 110.40 feet to the Point of Beginning.

Containing 0.55 acres, more or less.


SKETCH TO ACCOMPANY DESCRIPTION OF
A PORTION OF SECTION 31, TOWNSHIP 4 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA, BEING A PORTION OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 3422, PAGE 1351, OF THE PUBLIC RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED IN SEPARATE ATTACHMENT.
LEGEND:
M.B. MAP BOOK
O.R.B. OFFICIAL RECORDS BOOK
PG. PAGE
R/W RIGHT OF WAY
L.A.R.W. LIMITED ACCESS RIGHT OF WAY
C/L CENTERLINE
C.R. COUNTY ROAD
PT POINT OF TANGENCY
POC POINT ON CURVE
C1 TABULATED CURVE DATA
NOCATEE PARKWAY
(VARIABLE WIDTH M.B. 58, PGS 26-36 L.A.R.W.)
E'ly L.A.R.W. LINE
W'ly L.A.R.W. LINE
O.R.B. 2739, PG. 1767
STORMWATER MANAGEMENT FACILITY
POND "L4"
(RELOCATABLE DRAINAGE EASEMENT)
POC
C2
POC
N.ly LINE OF O.R.B. 3422 PG. 1351
N55°19'34"E 217.02'
TRACT "A"
PT
C1
TERRITORY EXCHANGE 6
0.55 ACRES±
S55°19'25"W 333.01'
POINT OF BEGINNING
NE.ly CORNER OF LAKESIDE AT TOWN CENTER PHASE 1
N11°11'18"W 110.40'
15' LANDSCAPING & HARDSCAPING EASEMENT O.R.B. 3418, PG. 339
W'ly R/W LINE
E'ly R/W LINE
LAKESIDE AT TOWN CENTER PHASE 1
M.B. 68, PGS. 35-39
FORMER C/L
FORMER N'ly R/W LINE
FORMER PALM VALLEY ROAD
(C.R. No. 210)
(FORMER 100' R/W)
(VACATED BY RESOLUTION No. 2008-13 RECORDED IN O.R.B. 3101, PG. 739)
FORMER S'ly R/W LINE
E'ly LINE OF LAKESIDE AT TOWN CENTER PHASE 1
O.R.B. 3422, PG. 1351
PARK LAKE DRIVE
(50' R/W)
TAVERNIER DRIVE
(50' R/W)
TOWN PLAZA AVENUE
(VARIABLE WIDTH R/W)
O.R.B. 3580, PG. 1905
CURVE TABLE
CURVE | RADIUS | CENTRAL ANGLE | ARC LENGTH | CHORD BEARING | CHORD DISTANCE
C1 | 150.00' | 37°40'21" | 98.63' | N74°09'45"E | 96.86'
C2 | 448.00' | 9°18'20" | 72.76' | S18°58'14"E | 72.68'
0 50 100 200
GRAPHIC SCALE IN FEET
1" = 100'
GENERAL NOTES:
1) THIS IS NOT A SURVEY.
2) BEARINGS BASED ON THE EASTERLY LINE OF LAKESIDE AT TOWN CENTER PHASE 1 AS BEING NORTH 11°11'18" WEST.
THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.
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Tel: (904) 642-8550 Fax: (904) 642-4165
Certificate of Authorization No.: LB 3624
SCALE: 1"=100'
DATE: JANUARY 7, 2020
DAMON J. KELLY
PROFESSIONAL SURVEYOR AND MAPPER
STATE of FLORIDA LS No. 6284
ORDER NO.: 19-316.00 FILE NO.: 126A-30.00C DRAWN BY: BAC CAD FILE: I:\Survey\RMApro\Nocatee\Sketches\Territory Exchange 6.dwg

Exhibit "D"

Legal description and sketch of Swap Parcel 7 in accordance with Rule 25-6.0440, F.A.C.

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January 7, 2020

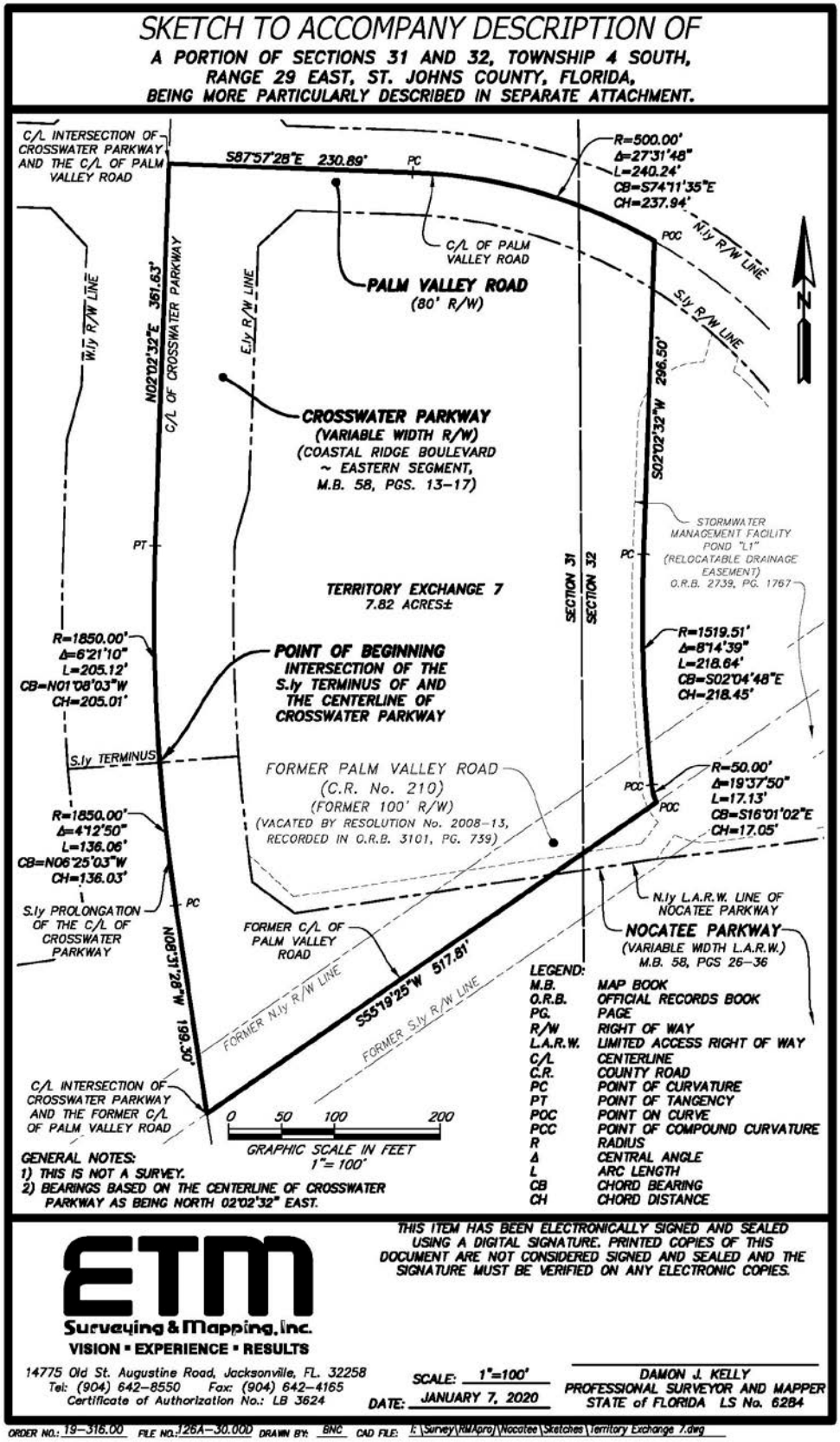
Work Order No. 19-316.00
File No. 126A-30.00D

Territory Exchange 7

A portion of Sections 31 and 32, Township 4 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the intersection of the Southerly terminus of and the centerline of Crosswater Parkway, a variable width right of way, as depicted on Coastal Ridge Boulevard ~ Eastern Segment, recorded in Map Book 58, pages 13 through 17 of the Public Records of said county; thence Northerly, along said centerline of Crosswater Parkway and along the arc of a curve concave Easterly having a radius of 1850.00 feet, through a central angle of 06°21'10", an arc length of 205.12 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North 01°08'03" West, 205.01 feet; thence North 02°02'32" East, continuing along said centerline, 361.63 feet to its intersection with the centerline of Palm Valley Road, an 80 foot right of way as presently established; thence South 87°57'28" East, departing said centerline of Crosswater Parkway and along said centerline of Palm Valley Road, 230.89 feet to the point of curvature of a curve concave Southerly having a radius of 500.00 feet; thence Easterly continuing along said centerline and along the arc of said curve, through a central angle of 27°31'48", an arc length of 240.24 feet to a point on said curve, said arc being subtended by a chord bearing and distance of South 74°11'35" East, 237.94 feet; thence South 02°02'32" West, departing said centerline, 296.50 feet to the point of curvature of a curve concave Easterly having a radius of 1519.51 feet; thence Southerly along the arc of said curve, through a central angle of 08°14'39", an arc length of 218.64 feet to a point of compound curvature, said arc being subtended by a chord bearing and distance of South 02°04'48" East, 218.45 feet; thence Southerly along the arc of a curve concave Easterly having a radius of 50.00 feet, through a central angle of 19°37'50", an arc length of 17.13 feet to a point lying on the former centerline of Palm Valley Road (County Road No. 210), a former 100 foot right of way vacated by Resolution No. 2008-13, recorded in Official Records Book 3101, page 739, of said Public Records, said arc being subtended by a chord bearing and distance of South 16°01'02" East, 17.05 feet; thence South 55°19'25" West, along said former centerline, 517.81 feet; thence North 08°31'28" West, departing said former centerline of Palm Valley Road, 199.30 feet to the point of curvature of a curve concave Easterly having a radius of 1850.00 feet, lying on the Southerly prolongation of said centerline of Crosswater Parkway; thence Northerly, along said Southerly prolongation and along the arc of said curve, through a central angle of 04°12'50", an arc length of 136.06 feet to the Point of Beginning, said arc being subtended by a chord bearing and distance of North 06°25'03" West, 136.03 feet.

Containing 7.82 acres, more or less.


SKETCH TO ACCOMPANY DESCRIPTION OF
A PORTION OF SECTIONS 31 AND 32, TOWNSHIP 4 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED IN SEPARATE ATTACHMENT.
C/L INTERSECTION OF CROSSWATER PARKWAY AND THE C/L OF PALM VALLEY ROAD
S87°57'28"E 230.89'
PC
R=500.00'
Δ=27°31'48"
L=240.24'
CB=S74°11'35"E
CH=237.94'
POC
N.ly R/W LINE
C/L OF PALM VALLEY ROAD
PALM VALLEY ROAD
(80' R/W)
S.ly R/W LINE
W.ly R/W LINE
N02°02'32"E 361.63'
C/L OF CROSSWATER PARKWAY
E.ly R/W LINE
CROSSWATER PARKWAY
(VARIABLE WIDTH R/W)
(COASTAL RIDGE BOULEVARD ~ EASTERN SEGMENT, M.B. 58, PGS. 13-17)
S02°02'32"W 296.50'
STORMWATER MANAGEMENT FACILITY POND "L1" (RELOCATABLE DRAINAGE EASEMENT) O.R.B. 2739, PG. 1767
PT
PC
SECTION 31
SECTION 32
TERRITORY EXCHANGE 7
7.82 ACRES±
R=1850.00'
Δ=6°21'10"
L=205.12'
CB=N01°08'03"W
CH=205.01'
POINT OF BEGINNING
INTERSECTION OF THE S.ly TERMINUS OF AND THE CENTERLINE OF CROSSWATER PARKWAY
R=1519.51'
Δ=8°14'39"
L=218.64'
CB=S02°04'48"E
CH=218.45'
S.ly TERMINUS
FORMER PALM VALLEY ROAD
(C.R. No. 210)
(FORMER 100' R/W)
(VACATED BY RESOLUTION No. 2008-13, RECORDED IN O.R.B. 3101, PG. 739)
R=50.00'
Δ=19°37'50"
L=17.13'
CB=S16°01'02"E
CH=17.05'
PCC
POC
R=1850.00'
Δ=4°12'50"
L=136.06'
CB=N06°25'03"W
CH=136.03'
S.ly PROLONGATION OF THE C/L OF CROSSWATER PARKWAY
PC
N.ly L.A.R.W. LINE OF NOCATEE PARKWAY
NOCATEE PARKWAY
(VARIABLE WIDTH L.A.R.W.)
M.B. 58, PGS 26-36
FORMER C/L OF PALM VALLEY ROAD
N08°31'28"W 198.30'
FORMER N.ly R/W LINE
S55°19'25"W 517.81'
FORMER S.ly R/W LINE
C/L INTERSECTION OF CROSSWATER PARKWAY AND THE FORMER C/L OF PALM VALLEY ROAD
0 50 100 200
GRAPHIC SCALE IN FEET
1"= 100'
LEGEND:
M.B. MAP BOOK
O.R.B. OFFICIAL RECORDS BOOK
PG. PAGE
R/W RIGHT OF WAY
L.A.R.W. LIMITED ACCESS RIGHT OF WAY
C/L CENTERLINE
C.R. COUNTY ROAD
PC POINT OF CURVATURE
PT POINT OF TANGENCY
POC POINT ON CURVE
PCC POINT OF COMPOUND CURVATURE
R RADIUS
Δ CENTRAL ANGLE
L ARC LENGTH
CB CHORD BEARING
CH CHORD DISTANCE
GENERAL NOTES:
1) THIS IS NOT A SURVEY.
2) BEARINGS BASED ON THE CENTERLINE OF CROSSWATER PARKWAY AS BEING NORTH 02°02'32" EAST.
THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.
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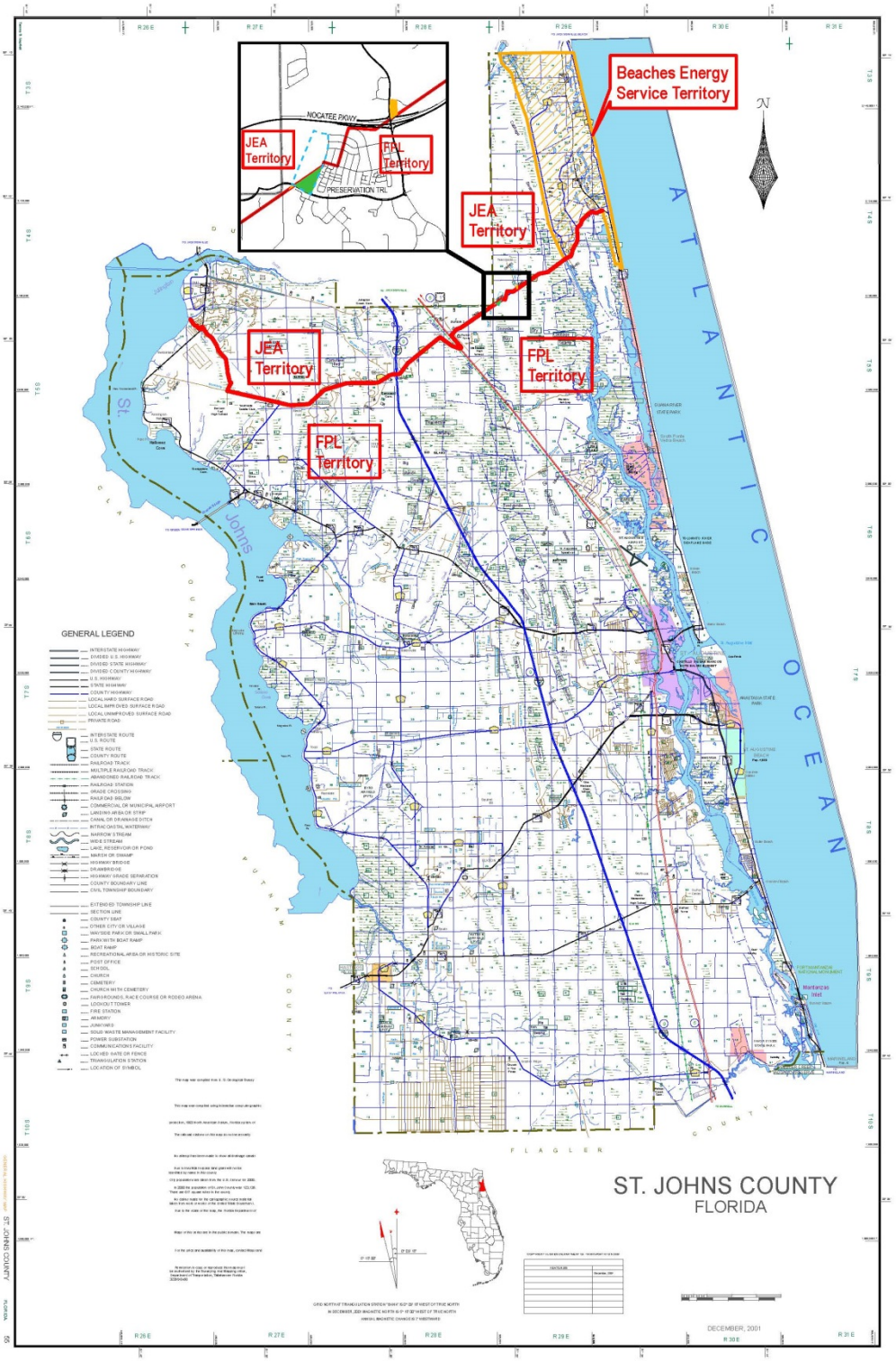
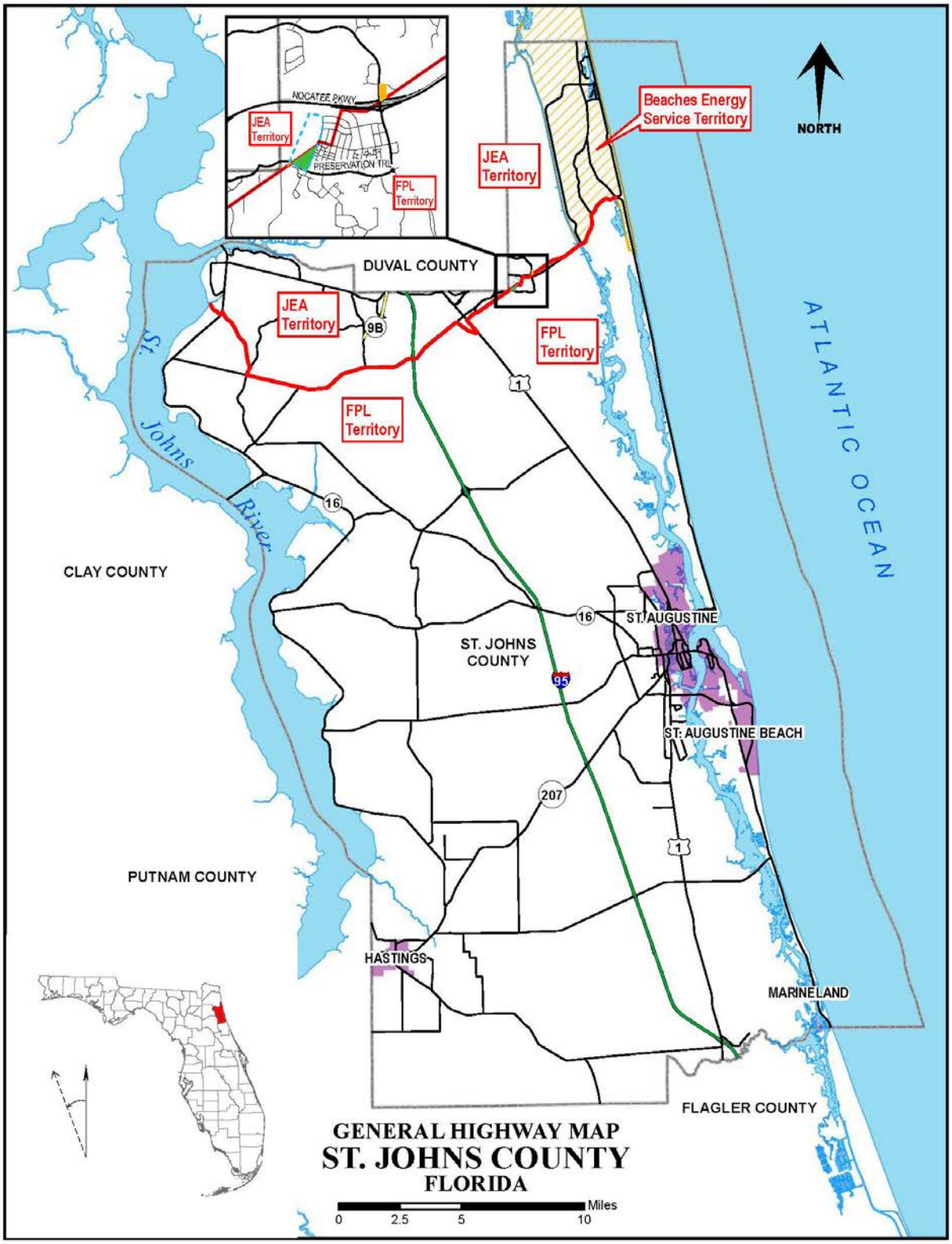
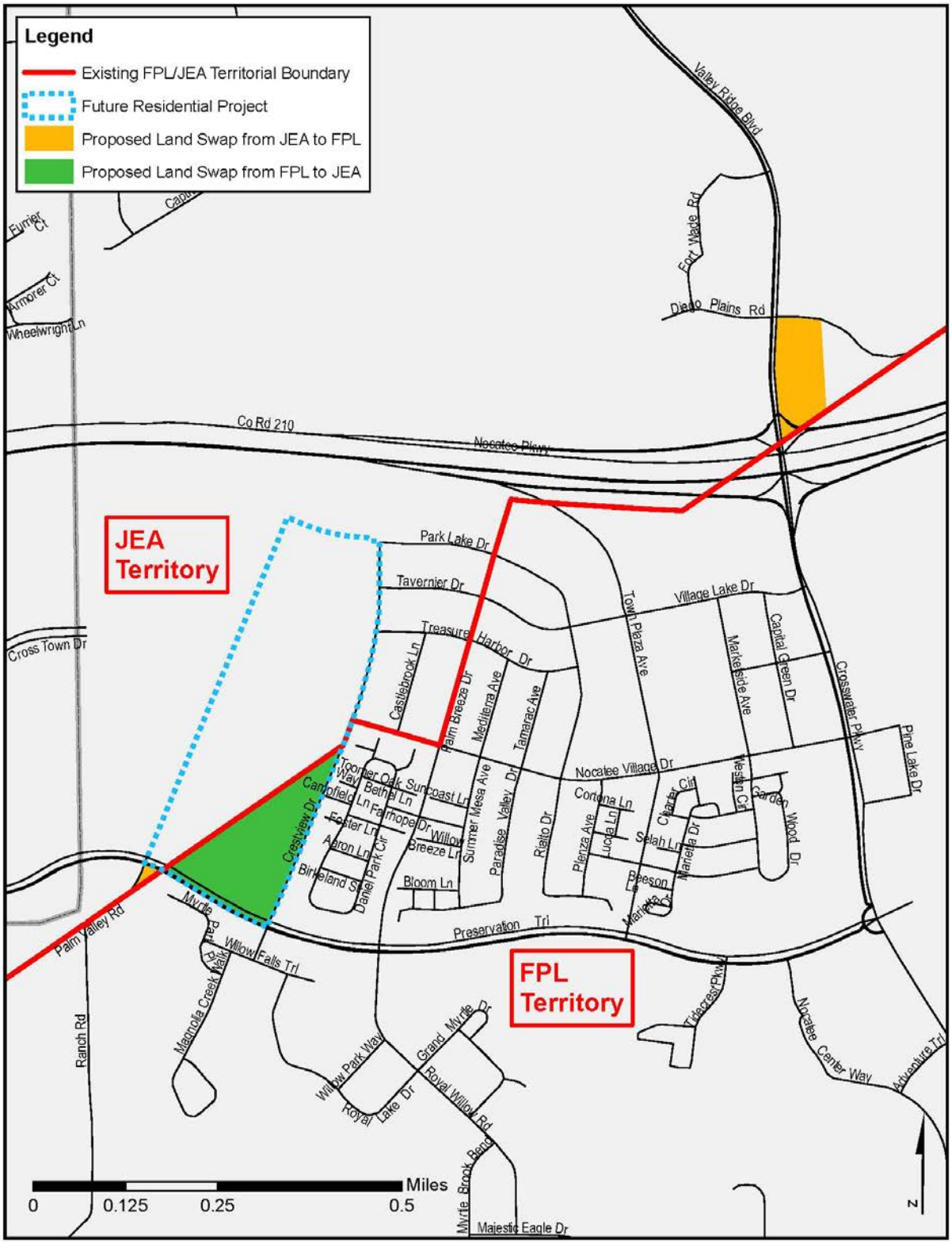
DATE: JANUARY 7, 2020
DAMON J. KELLY
PROFESSIONAL SURVEYOR AND MAPPER
STATE of FLORIDA LS No. 6284
ORDER NO.: 19-316.00 FILE NO.: 126A-30.00D DRAWN BY: BNC CAD FILE: I:\Survey\RMApro\Nocatee\Sketches\Territory Exchange 7.dwg

Appendix "B"

Official Florida Department of Transportation ("DOT") General Highway County map, as well as two more detailed maps, for each affected county depicting the boundary lines established by the territorial agreement, in accordance with Rule 25-6.0440, F.A.C.


Beaches Energy Service Territory
JEA Territory
FPL Territory
JEA Territory
JEA Territory
FPL Territory
FPL Territory
NOCATEE PKWY
PRESERVATION TR
ATLANTIC OCEAN
St. Johns
GENERAL LEGEND
FLAGLER
ST. JOHNS COUNTY
FLORIDA
DECEMBER, 2001


NOCATEE PKWY
JEA Territory
PRESERVATION TRL
FPL Territory
JEA Territory
Beaches Energy Service Territory
NORTH
DUVAL COUNTY
JEA Territory
9B
FPL Territory
FPL Territory
1
St. Johns River
ATLANTIC OCEAN
16
CLAY COUNTY
16
ST. AUGUSTINE
ST. JOHNS COUNTY
95
ST. AUGUSTINE BEACH
207
1
PUTNAM COUNTY
HASTINGS
MARINELAND
FLAGLER COUNTY
GENERAL HIGHWAY MAP
ST. JOHNS COUNTY
FLORIDA
Miles
0
2.5
5
10


Legend
Existing FPL/JEA Territorial Boundary
Future Residential Project
Proposed Land Swap from JEA to FPL
Proposed Land Swap from FPL to JEA
JEA Territory
FPL Territory
Valley Ridge Blvd
Fort Wade Rd
Diego Plains Rd
Co Rd 210
Nocatee Pkwy
Furrier Ct
Armorer Ct
Wheelwright Ln
Cross Town Dr
Park Lake Dr
Tavernier Dr
Treasure Harbor Dr
Village Lake Dr
Castlebrook Ln
Palm Breeze Dr
Mediterra Ave
Tamarac Ave
Town Plaza Ave
Marketside Ave
Capital Green Dr
Crosswater Pkwy
Pine Lake Dr
Nocatee Village Dr
Toomer Oak Way
Suncoast Ln
Bethel Ln
Campfield Ln
Fairhope Dr
Foster Ln
Aaron Ln
Birkeland St
Daniel Park Dr
Crestview Dr
Willow Breeze Ln
Summer Mesa Ave
Paradise Valley Dr
Rialto Dr
Corona Ln
Lucia Ln
Plenza Ave
Selah Ln
Manetta Dr
Breeson Dr
Chester Cir
Westin Cir
Garden Wood Dr
Bloom Ln
Preservation Trl
Palm Valley Rd
Myrtle Park Walk
Willow Falls Trl
Magnolia Creek Walk
Ranch Rd
Willow Park Way
Grand Myrtle Dr
Royal Lake Dr
Royal Willow Rd
Myrtle Brook Bend
Majestic Eagle Dr
Tidecrest Pkwy
Nocatee Center Way
Adventure Trl
Miles
0
0.125
0.25
0.5
N

Item 11

FILED 8/20/2020
DOCUMENT NO. 04747-2020
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Hampson, Guffey) JGH
Office of the General Counsel (Trierweiler) JSC

RE: Docket No. 20200164-EU – Joint petition for approval of amendment to territorial agreement in Lee County, by Florida Power & Light Company and Lee County Electric Cooperative.

AGENDA: 09/01/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On June 4, 2020, Florida Power & Light Company (FPL) and Lee County Electric Cooperative (LCEC), collectively the joint petitioners, filed a petition seeking Commission approval to amend their existing territorial agreement in Lee County. The proposed amendment (2020 Amendment) seeks to modify the territorial boundaries of their existing territorial agreement to allow both utilities to more efficiently serve a planned private development and to avoid the uneconomic duplication of facilities. On June 10, 2020, the joint petitioners filed an amendment to the petition to correct a typographical error in the 2020 Amendment.[1]

[1] Document No. 03022-2020

In 1965, the Commission approved the joint petitioners' original territorial agreement by Order No. 3799.[2] In 1993, the Commission approved a new territorial agreement relating to the service areas in Charlotte, Collier, Hendry, and Lee Counties.[3] In 1997, the Commission approved a minor modification to the boundary line between FPL and LCEC in Lee County to reflect development in the area.[4] In 2015, the Commission approved an amendment to reflect service by FPL and LCEC to the Babcock Ranch Community Independent Special District.[5]

The 2020 Amendment, legal descriptions and sketches of the parcels to be exchanged are provided in Attachment A of this recommendation. The Florida Department of Transportation General Highway County map and two more detailed maps depicting the proposed boundary lines are provided in Attachment B of this recommendation. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

[2] Order No. 3799, issued April 28, 1965, in Docket No. 7421-EU.
[3] Order No. PSC-93-0705-FOF-EU, issued May 10, 1993, in Docket No. 930092-EU, *In re: Joint application for approval of territorial agreement between Florida Power & Light Company and Lee County Electric Cooperative, Inc.*
[4] Order No. PSC-97-0527-FOF-EU, issued May 7, 1997, in Docket No. 970105-EU, *In re: Petition for approval of change in territorial boundary under territorial agreement with Lee County Electric Cooperative, Inc., by Florida Power & Light Company.*
[5] Order No. PSC-15-0021-PAA-EU, issued January 5, 2015, in Docket No. 20140210-EU, *In re: Joint petition for approval of amendment to territorial agreement in Charlotte, Lee, and Collier counties, by Florida Power & Light Company and Lee County Electric Cooperative.*

Discussion of Issues

Issue 1: Should the Commission approve the proposed 2020 Amendment to the territorial agreement between FPL and LCEC?

Recommendation: Yes, the Commission should approve the proposed 2020 Amendment to the territorial agreement between FPL and LCEC, dated June 3, 2020. The 2020 Amendment is in the public interest and will avoid uneconomic duplication of facilities. (Hampson, 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.[6]

Amendment of Territorial Boundaries

The joint petitioners have proposed an exchange of two parcels, known as Exchange Parcel A and Exchange Parcel B, in order to achieve additional operational efficiencies and to avoid the uneconomic duplication of facilities. The joint petitioners have proposed this exchange as a result of a planned private development in Lee County. Both Exchange Parcels are currently undeveloped, with no existing customers or electric facilities. As such, there are no customers to notify regarding changes in service. Additionally, in Paragraph 14 of the petition, the joint petitioners state that approval of the 2020 Amendment will not cause a decrease in electric service reliability to existing or future customers of either utility.

Exchange Parcel A is approximately 160 acres large and will be transferred from LCEC to FPL, if approved by the Commission. Exchange Parcel A includes an area planned for 132 residential lots, which will be located in the aforementioned planned development. Exchange Parcel B is approximately 30 acres large and will be transferred from FPL to LCEC. Within Exchange Parcel B is approximately 26 acres of commercial land that is to be utilized for the planned development's amenity center. Legal descriptions and sketches of the Exchange Parcels are included in Attachment A of this recommendation.

Conclusion

After review of the joint petition and amendment filed on June 10, 2020, staff believes that the 2020 Amendment to the territorial agreement will enable FPL and LCEC to avoid an unnecessary duplication of facilities and to serve their current and future customers in an efficient manner. As such, staff recommends that the Commission should approve the proposed 2020 Amendment to the territorial agreement between FPL and LCEC, dated June 3, 2020. The effective date of the 2020 Amendment will be the date on which the Commission's final order granting approval of the amendment in its entirety is no longer subject to judicial review.

[6] *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

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 the 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 the Consummating Order.

AMENDMENT TO TERRITORIAL AGREEMENT
BETWEEN
FLORIDA POWER AND LIGHT COMPANY
AND
LEE COUNTY ELECTRIC COOPERATIVE

This Amendment to the Territorial Agreement, dated June 3, 2020, ("2020 Amendment") is entered into by Florida Power & Light Company ("FPL") and Lee County Electric Cooperative (collectively, the "Parties"), each of which is a corporation organized and existing under the laws of the State of Florida and an electric utility as defined in Section 366.02(2), Florida Statutes.

W I T N E S S E T H

WHEREAS, the Parties have an existing Territorial Agreement relating to their respective retail service areas in Charlotte, Collier, Hendry and Lee Counties, Florida, which was approved by the Florida Public Service Commission (the "PSC") by Order No. PSC-93-0705-FOF-EU, and which was amended in 1997 and approved by the PSC by Order No. PSC-97-0527-FOF-EU, and which was further amended in 2014 and approved by the PSC by Order No. PSC-15-0021-PAA-EU (such agreement and amendments are collectively referred to as the "Territorial Agreement"); and

WHEREAS, the Parties now desire to amend the territorial boundary in the existing Territorial Agreement as it relates to a specified area where a private development is planned in Lee County, Florida; and

WHEREAS, amending the territorial boundary in the existing Territorial Agreement will avoid uneconomic duplication of services and provide for the cost effective provision of service to utility customers;

1

NOW THEREFORE, in consideration of the following mutual covenants and other good and valuable consideration, 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 amend the Territorial Agreement as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.

2. **Territorial Exchange.** In order to avoid unnecessary duplication of facilities and to serve anticipated development, the Parties agree to amend the boundaries in the Territorial Agreement in order to exchange two undeveloped parcels within their respective retail service territories where both utilities currently have minimal infrastructure in place.

a) The first parcel is within the territory boundary of LCEC and includes an area planned for 132 residential lots that are located on the southwestern part of the planned development ("Exchange Parcel A"). A legal description and sketch of Exchange Parcel A is attached as Exhibit "A". Upon approval of this 2020 Amendment by the PSC, Exchange Parcel A will be transferred from LCEC to FPL.

b) The second parcel is within the territory boundary of FPL on the northwestern part of the planned development and includes approximately 26 acres of commercial land that is to be utilized for the development's Amenity Center ("Exchange Parcel B"). A legal description and sketch of Exchange Parcel B is attached as Exhibit "B". Upon approval of this 2020

Amendment by the PSC, Exchange Parcel B will be transferred from FPL to LCEC.

3. **Transition.** There are currently no existing customers or electric facilities within Exchange Parcel A or Exchange Parcel B. Thus, no transition of electric service is required.

4. **Condition Precedent and Effective Date.** The approval of this 2020 Amendment by the PSC without modification, shall be an absolute condition precedent to the validity, enforceability and applicability hereof. The effective date of this 2020 Amendment shall be the date on which the final order of the PSC granting approval of this amendment in its entirety becomes no longer subject to judicial review.

5. **Existing Territorial Agreement**. All other parts of the Territorial Agreement shall remain in effect.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, this 2020 Amendment has been caused to be executed by FPL in its name by its Senior Vice President, and by LCEC in its name by its Chief Executive Officer, on the day and year first written above.

FLORIDA POWER & LIGHT COMPANY

By: _____

Date: 6/3/20

Name: Manuel B. Miranda

Title: Senior Vice President, Power Delivery

LEE COUNTY ELECTRIC COOPERATIVE

By: Denise Vidal

Date: 6-2-20

Name: Denise Vidal

Title: Chief Executive Officer

4

LEGAL DESCRIPTION
OF A PARCEL LYING IN SECTION 31, TOWNSHIP 46 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA

PARCEL "A"

A PARCEL OF LAND BEING ALL THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 46 SOUTH, RANGE 27 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 31; THENCE S.00°50'31"E. ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31 FOR A DISTANCE OF 2635.19 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 31; THENCE S.86°01'18"W. ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31 FOR A DISTANCE OF 2636.16 FEET TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 31; THENCE N.00°55'01"W., ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31 FOR A DISTANCE OF 2639.49 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 31; THENCE N.89°06'55"E. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31 FOR A DISTANCE OF 2639.61 FEET TO THE NORHTEAST CORNER OF SAID SECTION 31, AND POINT OF BEGINNING.

PARCEL CONTAINS 160 ACRES, MORE OR LESS

THIS IS NOT A SURVEY

BY: _____
TIMOTHY LEE MANN
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. LS# 5838

DATE SIGNED: 3-9-2020

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

NOTES:

1. BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER AS BEARING S.00°50'31"E.
2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

PARCEL "A"

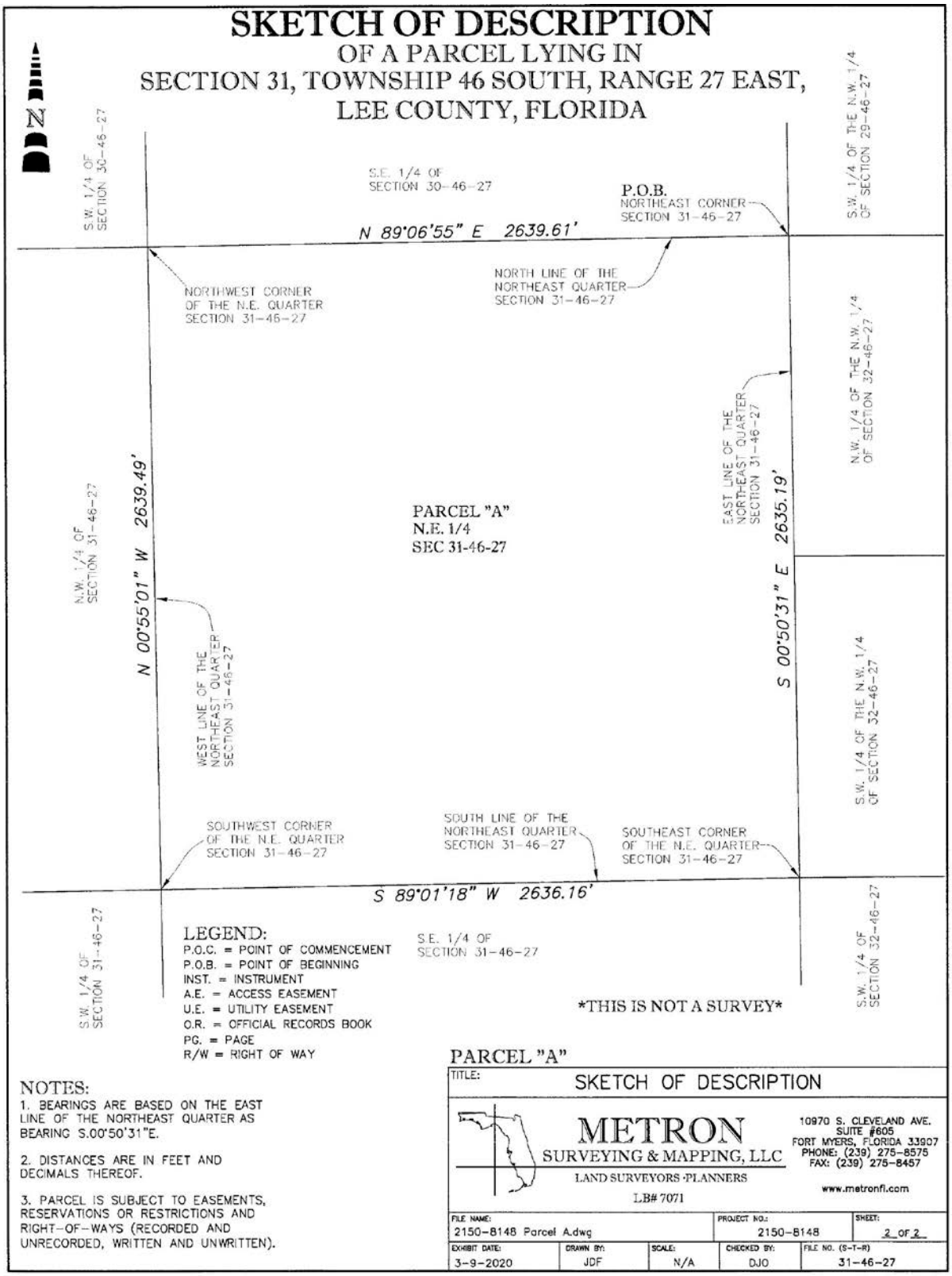
TITLE:	SKETCH OF DESCRIPTION

METRON SURVEYING & MAPPING, LLC
LAND SURVEYORS-PLANNERS
LB# 7071

10970 S. CLEVELAND AVE.
SUITE #505
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
FAX: (239) 275-8457
www.metronfl.com

FILE NAME:	PROJECT NO.:	SHEET:
2150-8148 Parcel A.dwg	2150-8148	1 OF 2

EXHIBIT DATE:	DRAWN BY:	SCALE:	CHECKED BY:	FILE NO. (S-T-R)
3-9-2020	JDF	N/A	DJO	31-46-27


SKETCH OF DESCRIPTION
OF A PARCEL LYING IN
SECTION 31, TOWNSHIP 46 SOUTH, RANGE 27 EAST,
LEE COUNTY, FLORIDA
N
S.W. 1/4 OF SECTION 30-46-27
S.E. 1/4 OF SECTION 30-46-27
P.O.B. NORTHEAST CORNER SECTION 31-46-27
S.W. 1/4 OF THE N.W. 1/4 OF SECTION 29-46-27
N 89°06'55" E 2639.61'
NORTHWEST CORNER OF THE N.E. QUARTER SECTION 31-46-27
NORTH LINE OF THE NORTHEAST QUARTER SECTION 31-46-27
N.W. 1/4 OF THE N.W. 1/4 OF SECTION 32-46-27
EAST LINE OF THE NORTHEAST QUARTER SECTION 31-46-27
N.W. 1/4 OF SECTION 31-46-27
N 00°55'01" W 2639.49'
PARCEL "A"
N.E. 1/4
SEC 31-46-27
S 00°50'31" E 2635.19'
WEST LINE OF THE NORTHEAST QUARTER SECTION 31-46-27
S.W. 1/4 OF THE N.W. 1/4 OF SECTION 32-46-27
SOUTHWEST CORNER OF THE N.E. QUARTER SECTION 31-46-27
SOUTH LINE OF THE NORTHEAST QUARTER SECTION 31-46-27
SOUTHEAST CORNER OF THE N.E. QUARTER SECTION 31-46-27
S 89°01'18" W 2636.16'
S.W. 1/4 OF SECTION 31-46-27
S.E. 1/4 OF SECTION 31-46-27
S.W. 1/4 OF SECTION 32-46-27
LEGEND:
P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
INST. = INSTRUMENT
A.E. = ACCESS EASEMENT
U.E. = UTILITY EASEMENT
O.R. = OFFICIAL RECORDS BOOK
PG. = PAGE
R/W = RIGHT OF WAY
THIS IS NOT A SURVEY
NOTES:
1. BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER AS BEARING S.00°50'31"E.
2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
PARCEL "A"
TITLE: SKETCH OF DESCRIPTION
METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS · PLANNERS
LB# 7071
10970 S. CLEVELAND AVE.
SUITE #605
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
FAX: (239) 275-8457
www.metronfl.com
FILE NAME: 2150-8148 Parcel A.dwg
PROJECT NO.: 2150-8148
SHEET: 2 OF 2
EXHIBIT DATE: 3-9-2020
DRAWN BY: JDF
SCALE: N/A
CHECKED BY: DJO
FILE NO. (S-T-R) 31-46-27

LEGAL DESCRIPTION
OF A PARCEL LYING IN SECTION 30, TOWNSHIP 46 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA

PARCEL "B"

A PARCEL OF LAND BEING PART OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 46 SOUTH, RANGE 27 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 30; THENCE N.00°47'51"W. ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 30 FOR A DISTANCE OF 2647.70 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 30; THENCE N.00°55'29"W. ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30 FOR A DISTANCE OF 964.08 FEET TO THE POINT OF BEGINNING AND THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 312.00 FEET; THENCE ALONG SAID CURVE AND LEAVING SAID EAST LINE THROUGH A CENTRAL ANGLE OF 09°07'21", A CHORD BEARING OF N.87°31'43"W., A CHORD LENGTH OF 49.62 FEET AND AN ARC LENGTH OF 49.68 FEET TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 888.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°29'25", A CHORD BEARING OF S.86°47'15"W., A CHORD LENGTH OF 315.88 FEET AND AN ARC LENGTH OF 317.57 FEET; THENCE S.77°14'38"W. FOR A DISTANCE OF 62.11 FEET; THENCE N.12°03'17"W. FOR A DISTANCE OF 94.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2443.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°30'35", A CHORD BEARING OF N.74°11'25"E., A CHORD LENGTH OF 319.97 FEET AND AN ARC LENGTH OF 320.20 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE LEFT HAVING A RADIUS OF 63.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 71°21'37", A CHORD BEARING OF N.34°45'19"E., A CHORD LENGTH OF 73.49 FEET AND AN ARC LENGTH OF 78.46 FEET; THENCE N.00°55'29"W. FOR A DISTANCE OF 103.26 FEET; THENCE S.89°04'31"W. FOR A DISTANCE OF 139.34 FEET; THENCE N.51°47'35"W. FOR A DISTANCE OF 146.48 FEET; THENCE S.87°13'04"W. FOR A DISTANCE OF 160.70 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2105.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°07'41", A CHORD BEARING OF S.84°24'17"W., A CHORD LENGTH OF 481.26 FEET AND AN ARC LENGTH OF 482.32 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 200.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°35'13", A CHORD BEARING OF N.46°14'16"W., A CHORD LENGTH OF 271.74 FEET AND AN ARC LENGTH OF 298.76 FEET; THENCE N.03°26'39"W. FOR A DISTANCE OF 852.69 FEET; THENCE N.89°30'04"E. FOR A DISTANCE OF 1123.96 FEET; THENCE N.00°55'29"W. FOR A DISTANCE OF 238.25 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY OF CORKSCREW ROAD; THENCE N.89°32'30"E. ALONG SAID RIGHT-OF-WAY FOR A DISTANCE OF 92.00 FEET TO A POINT ON THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30; THENCE S.00°55'29"E. LEAVING SAID RIGHT-OF-WAY AND ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30 FOR A DISTANCE OF 1635.14 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 30.3 ACRES, MORE OR LESS.

THIS IS NOT A SURVEY

BY: _____
TIMOTHY LEE MANN
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. LS# 5838

DATE SIGNED: 3-9-2020

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

NOTES:

1. BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 46 SOUTH, RANGE 27 EAST AS BEARING S.00°55'29"E.

2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.

3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

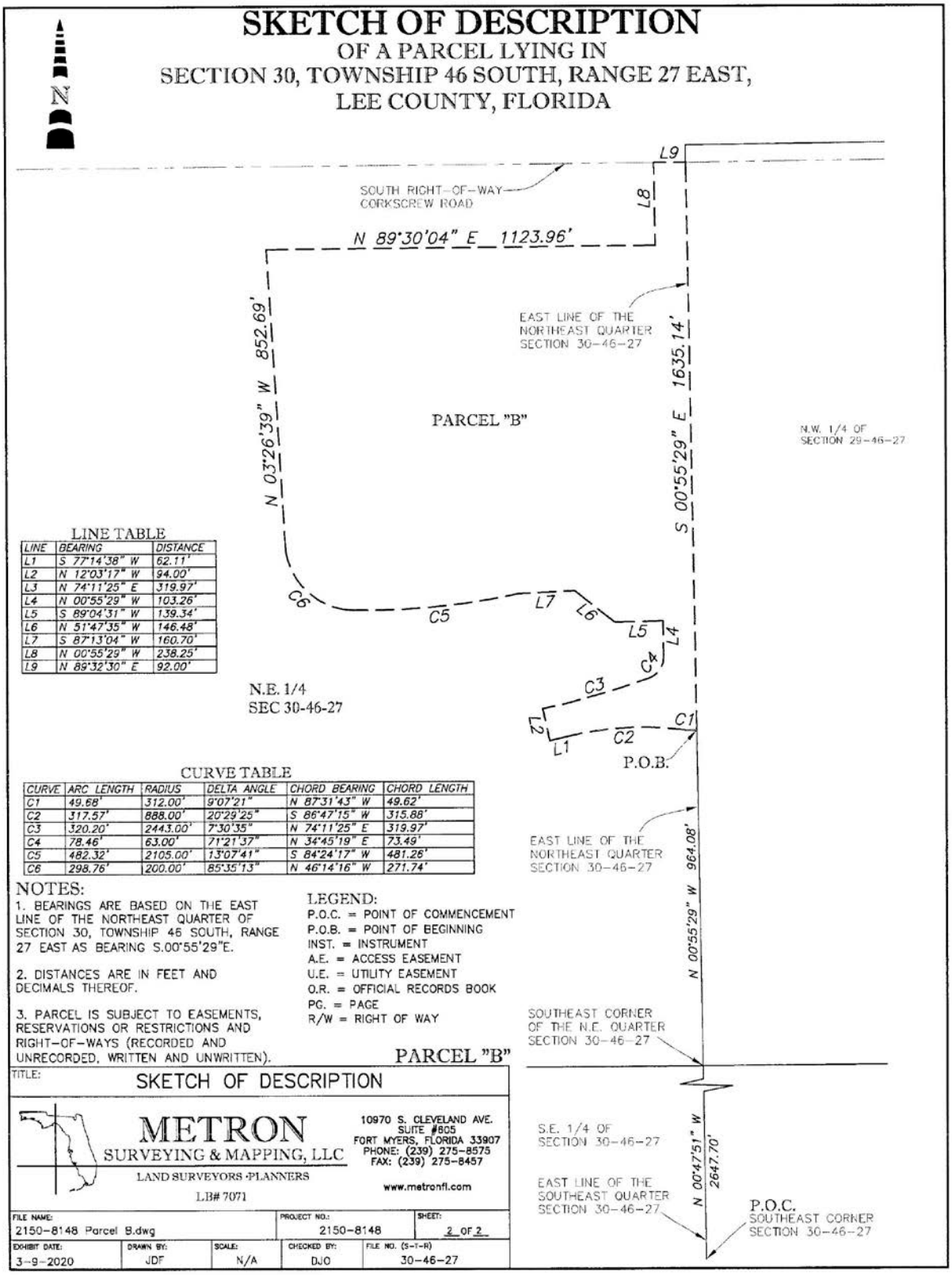
PARCEL "B"

TITLE: SKETCH OF DESCRIPTION

METRON SURVEYING & MAPPING, LLC
LAND SURVEYORS · PLANNERS
LB# 7071

10970 S. CLEVELAND AVE.
SUITE #605
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
FAX: (239) 275-8457
www.metronfl.com

FILE NAME:			PROJECT NO.:	SHEET:
2150-8148 Parcel B.dwg			2150-8148	1 OF 2
EXHIBIT DATE:	DRAWN BY:	SCALE:	CHECKED BY:	FILE NO. (S-T-R)
3-9-2020	JDF	N/A	DJO	30-46-27



LINE TABLE

LINE	BEARING	DISTANCE
L1	S 77°14'38" W	62.11'
L2	N 12°03'17" W	94.00'
L3	N 74°11'25" E	319.97'
L4	N 00°55'29" W	103.26'
L5	S 89°04'31" W	139.34'
L6	N 51°47'35" W	146.48'
L7	S 87°13'04" W	160.70'
L8	N 00°55'29" W	238.25'
L9	N 89°32'30" E	92.00'

CURVE TABLE

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	49.68'	312.00'	9°07'21"	N 87°31'43" W	49.62'
C2	317.57'	888.00'	20°29'25"	S 86°47'15" W	315.88'
C3	320.20'	2443.00'	7°30'35"	N 74°11'25" E	319.97'
C4	78.46'	63.00'	71°21'37"	N 34°45'19" E	73.49'
C5	482.32'	2105.00'	13°07'41"	S 84°24'17" W	481.26'
C6	298.76'	200.00'	85°35'13"	N 46°14'16" W	271.74'

NOTES:

1. BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 46 SOUTH, RANGE 27 EAST AS BEARING S.00°55'29"E.
2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

LEGEND:

P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
INST. = INSTRUMENT
A.E. = ACCESS EASEMENT
U.E. = UTILITY EASEMENT
O.R. = OFFICIAL RECORDS BOOK
PG. = PAGE
R/W = RIGHT OF WAY

PARCEL "B"

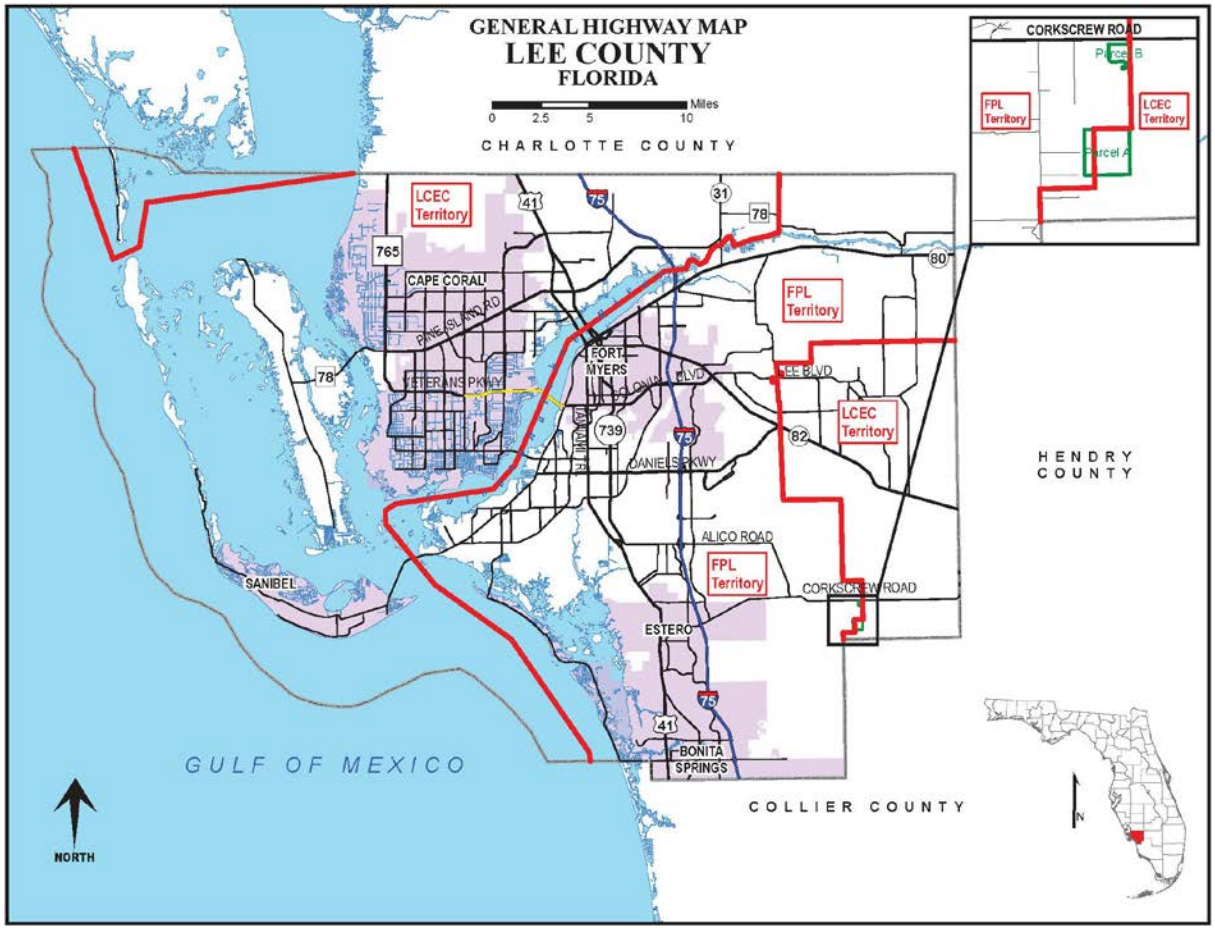
TITLE: SKETCH OF DESCRIPTION

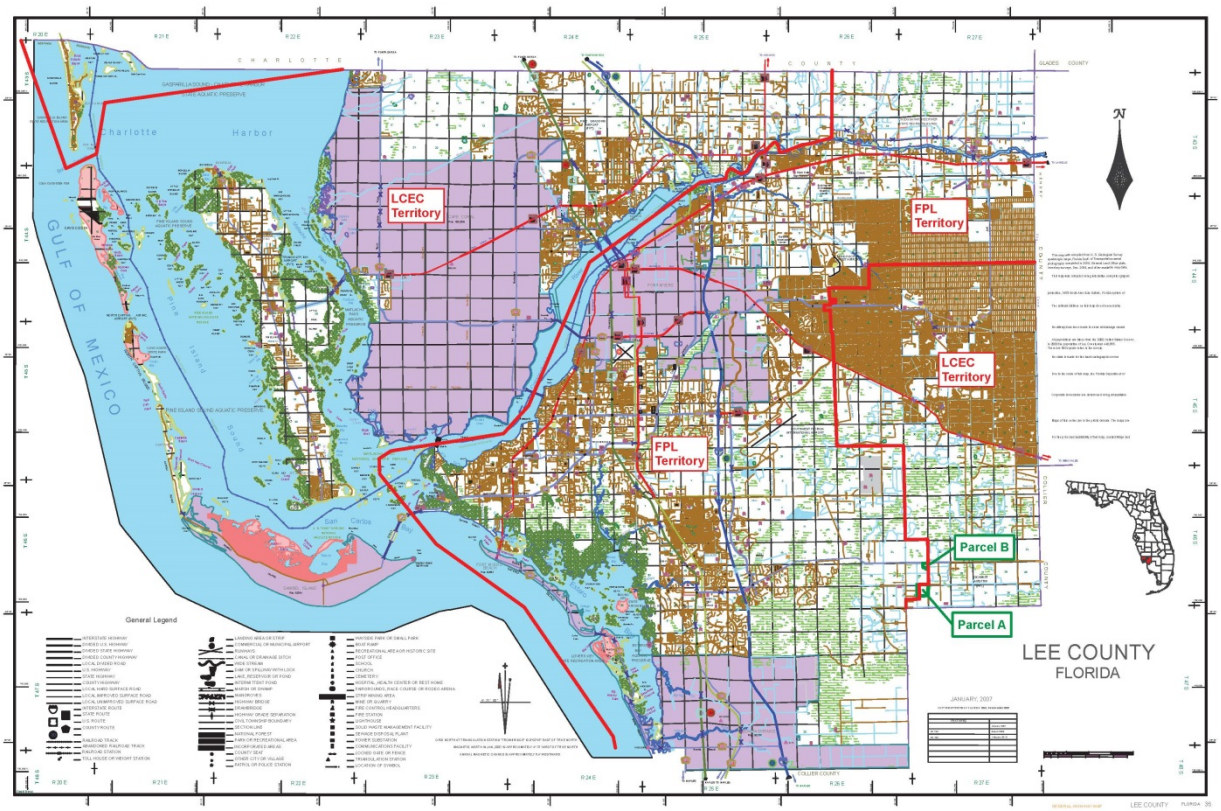
METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS · PLANNERS
LB# 7071

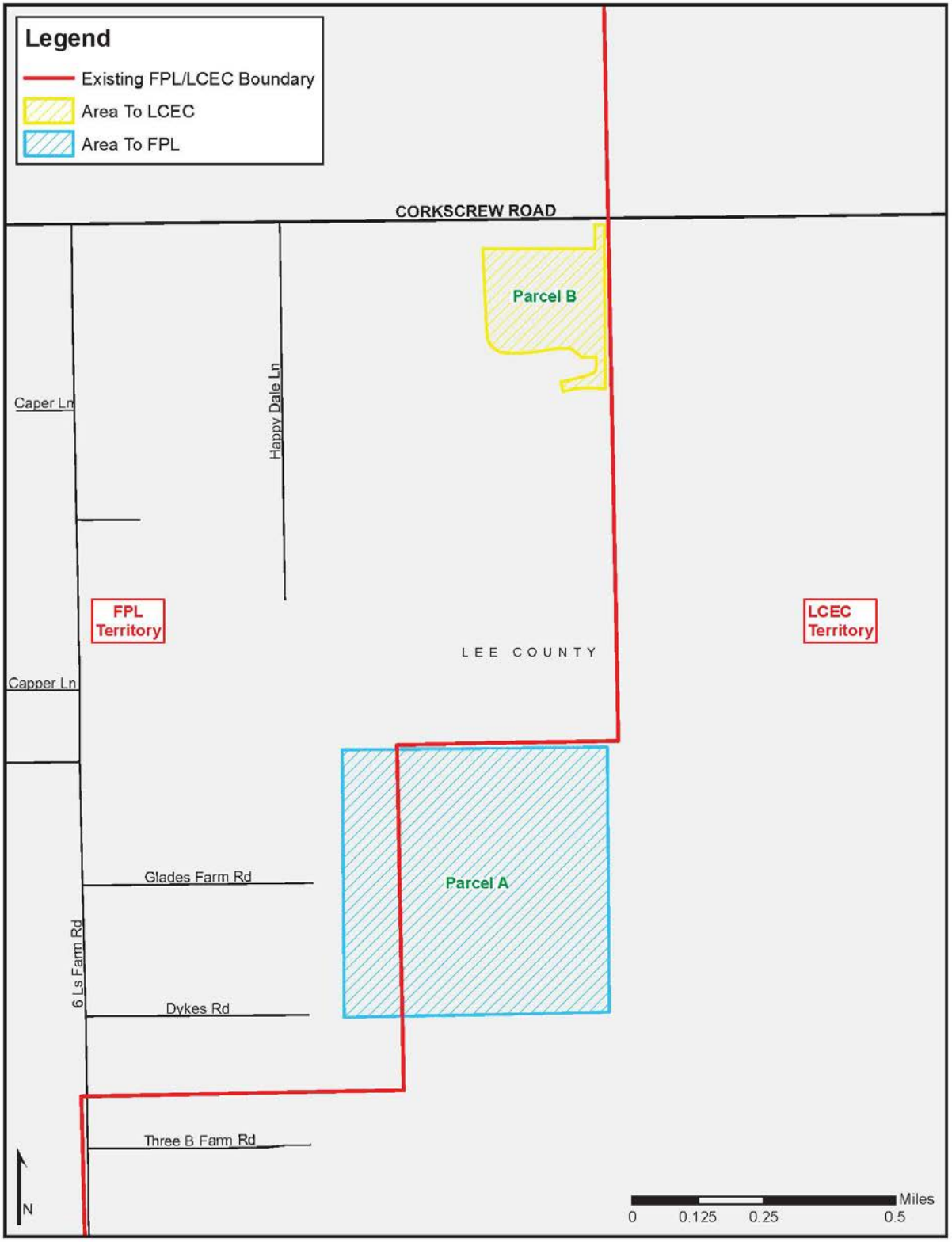
10970 S. CLEVELAND AVE.
SUITE #805
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
FAX: (239) 275-8457
www.metronfl.com

FILE NAME:	PROJECT NO.:	SHEET:
2150-8148 Parcel B.dwg	2150-8148	2 OF 2

EXHIBIT DATE:	DRAWN BY:	SCALE:	CHECKED BY:	FILE NO. (S-T-R)
3-9-2020	JDF	N/A	DJO	30-46-27


GENERAL HIGHWAY MAP
LEE COUNTY
FLORIDA
Miles
0 2.5 5 10
CHARLOTTE COUNTY
LCEC Territory
FPL Territory
CAPE CORAL
FORT MYERS
SANIBEL
ESTERO
BONITA SPRINGS
ALICO ROAD
CORKSCREW ROAD
DANIELS PKWY
VETERANS PKWY
PINE ISLAND RD
LEE BLVD
HENDRY COUNTY
COLLIER COUNTY
GULF OF MEXICO
NORTH
765
41
75
31
78
80
82
739


LCEC Territory
FPL Territory
FPL Territory
LCEC Territory
Parcel B
Parcel A
LEE COUNTY
FLORIDA
GULF OF MEXICO
Charlotte Harbor
General Legend


Legend
Existing FPL/LCEC Boundary
Area To LCEC
Area To FPL
CORKSCREW ROAD
Parcel B
Caper Ln
Happy Dale Ln
FPL Territory
LCEC Territory
LEE COUNTY
Capper Ln
Parcel A
Glades Farm Rd
6 Ls Farm Rd
Dykes Rd
Three B Farm Rd
N
Miles
0
0.125
0.25
0.5

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: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Ward, Coston) JGH
Office of the General Counsel (Schrader) JSC

RE: Docket No. 20200093-GU – Petition for approval of tariff modifications for liquified natural gas service by Peoples Gas System.

AGENDA: 09/01/20 – Regular Agenda –Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: 11/16/20 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

On March 16, 2020, Peoples Gas System (Peoples or utility) filed a petition for approval of a Liquified Natural Gas (LNG) Service tariff. LNG is natural gas that has been cooled to negative 260 degrees Fahrenheit, which causes the gas to condense into a liquid. Once in liquid form, the natural gas is 1/600th of its original volume, allowing for increased storage potential. LNG is currently used in Florida as a transportation fuel for maritime, rail, and other transportation applications. The proposed LNG tariff is contained in Attachment A of the recommendation.

Peoples waived the 60-day file and suspend provision pursuant to Section 366.06(3), Florida Statutes (F.S.), in an email dated April 9, 2020.[1] Staff issued two data requests in this docket. Staff issued its first data request to Peoples on April 2, 2020, to which the utility responded on April 17, 2020. Staff issued its second data request on July 31, 2020, to which the utility responded on August 7, 2020. The Commission acknowledged the intervention of the Office of

[1] Document No. 01864-2020.

the Public Counsel (OPC) in this docket by Order No. PSC-2020-0181-PCO-GU, issued June 10, 2020. OPC served interrogatories and requests for production on Peoples on June 5, 2010, which Peoples responded to on July 6, 2020.[2]

On May 22, 2020, a noticed informal telephonic meeting was held with Commission staff, Peoples, OPC, and other interested persons.[3] At the meeting, Peoples provided a presentation that has been placed in the docket file.[4] On July 31, 2020, Eagle LNG Partners (Eagle LNG), an interested person in the docket, submitted a letter to the Commission stating its opposition to the proposal.[5] On August 13, 2020, Peoples submitted to the Commission a letter in response to Eagle LNG's letter of opposition.[6] Copies of both letters have been filed as correspondence in this docket. On August 17, 2020, a second noticed informal telephonic meeting was held with Commission staff, Peoples, OPC, Eagle LNG, and other interested persons.

Commission Jurisdiction

Section 366.02(1), F.S., in part, defines a "public utility" as an entity that supplies gas (natural, manufactured, or similar gaseous substance) to the public within Florida. Section 366.02(1), F.S., also excludes from the definition of "public utility" municipal utilities, rural cooperatives, and:

> persons supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, *unless such person also supplies electricity or manufactured or natural gas.* [Emphasis added]

Therefore, staff believes that Peoples' proposed LNG service would fall under the activities of a public utility, as contemplated under Section 366.02(1), F.S., and the Commission may exercise jurisdiction over Peoples' rates and service in this area, pursuant to Section 366.04, F.S. Based on this interpretation, the Commission would also have jurisdiction over this matter pursuant to Sections 366.03, 366.05, and 366.06, F.S.

[2]

[3]Interested persons in the docket are: Eagle LNG Partners LLC, Thigpen Solutions LLC, Applied LNG Technologies LLC, Zion Jacksonville LLC, and Nopetro – CH4 Holdings LLC.
[4]Document No. 02719-2020.
[5]Document No. 04200-2020.
[6]Document No. 04409-2020.

Discussion of Issues

Issue 1: Should the Commission approve Peoples' proposed LNG tariff?

Recommendation: Yes. Staff recommends that the Commission should approve Peoples' proposed LNG tariff, as shown in Attachment A, effective with the issuance of the final Order in this docket. The LNG tariff would provide Peoples with an opportunity to provide LNG services to interested customers. A participating customer would enter into a contract with Peoples and all capital and operating costs associated with the LNG facility should be borne by the customer. (Ward, Coston)

Staff Analysis: In its petition, Peoples stated that major maritime and cruise companies, along with several of Florida's largest ports, have expressed interest in the utility providing an LNG fuel option through the development of LNG infrastructure. The utility highlighted that the International Maritime Organization, the specialized United Nations agency that sets global standards for the safety, security and environmental performance of international shipping, has required the marine sector to reduce sulphur emissions from ships by 80 percent beginning January 1, 2020. As a result, many maritime companies are considering natural gas as a fuel for cruise ships, container vessels, and bulk carriers.

In addition to the maritime industry, the utility also stated that other industries have expressed an interest in using LNG for transportation fuel. Examples provided in the petition include refuse companies using natural gas for transportation fleets and railroads using natural gas to power locomotives. Peoples stated that a significant challenge to using LNG as a transportation fuel is the lack of storage and bunkering facilities in Florida. The proposed tariff would allow Peoples the opportunity to work with these industries to create the supply infrastructure needed to meet the growing demand for LNG. Florida currently has three LNG plants (two in Jacksonville, one in Miami) that are owned and operated by unregulated LNG providers.

Potential Benefits of LNG

Peoples stated that the benefit of natural gas in its liquid state is that it is approximately 600 times less voluminous than gas in its traditional gaseous state. Converting natural gas into a liquid state makes it possible to transport natural gas to places that pipelines may not currently serve, thus potentially expanding the use of natural gas as a transportation fuel. Additionally, on-site LNG could serve as an immediate solution for customers who are unable to wait for pipeline infrastructure installation. The utility stated that LNG facilities could also provide greater resiliency for participating customers by avoiding disruptions caused by weather or supply interruptions. Currently, Florida does not have any large-scale storage facilities and relies on natural gas to be transported through interstate and intrastate pipeline systems.

The provision of LNG in Florida is a competitive market and other operators in this market are not subject to the Commission's jurisdiction. Peoples seeks to include LNG service under its regulated tariff, rather than through an unregulated subsidiary, because Peoples believes that

doing so creates operating efficiencies in terms of customer points of contact, operations and management expense, and economies of scale.[7]

Peoples explains that a prospective LNG customer would typically issue a Request for Proposals for the construction and maintenance of LNG facilities and Peoples could potentially compete with other unregulated LNG providers for the provision of such LNG service. Peoples' petition is the first request by a Florida investor-owned natural gas company for an LNG tariff.

Proposed Liquified Natural Gas Tariff

Under Peoples' proposed tariff, a participating customer would receive distribution service from the utility and pay Peoples' otherwise applicable rates, clauses and riders, and taxes based on the volume of the natural gas delivered to the LNG facility. Additionally, customers would pay a monthly LNG services charge specific to that customer, which would be calculated based on Peoples' gross investment in the storage and/or liquefaction facilities that serve the customer, as established in the LNG tariff. These facilities would be installed and maintained by Peoples and could be installed on either utility-owned property or the customer's premises. Peoples stated that "each LNG facility built by Peoples pursuant to the tariff will be unique to the particular customer(s) and industries served by such facility." Peoples expects that the requested LNG facilities will be in one of the following categories: (1) LNG liquefaction, storage, regasification and truck loading facilities; (2) LNG storage facilities; or (3) LNG mobile storage and regasification facilities.[8]

As outlined in the proposed tariff, Peoples would enter into an agreement with the customer to construct the LNG facility and provide the liquified natural gas. The agreement would include the required monthly services charge, which is designed for all costs to be fully paid by the customer over the life of the agreement.

The utility asserted that the monthly services charge would be designed to recover the cost of service to provide LNG service to a customer. The cost of service would include, but not be limited to, depreciation expense, return on capital, property taxes, insurance, operational expenses, and the fuel and electricity used to operate the LNG facilities. The costs of an LNG facility would include all of the necessary components and equipment needed to build the specific LNG facility for a customer's end use. Peoples stated that each facility would be designed for the specific needs and anticipated demand of each customer and the final costs would reflect that specific unit. Proposed tariff sheet No. 7.406 provides a listing of specific equipment that could be necessary for the construction of an LNG facility.

Peoples stated in its response to staff's first data request that the potential costs to construct an LNG facility under this tariff could range from $25 million to over $100 million.[9] The utility stated that it would evaluate each potential customer's credit worthiness prior to initiating an agreement under the tariff. Specifically, proposed tariff sheet No. 7.406-1 states that:

[7]Peoples' response to staff's second data request No. 2 (Document No. 04280-2020).
[8]Peoples' response to First Set of Interrogatories of Office of Public Counsel, Interrogatory No. 1 (Document No. 04738-2020).
[9]Peoples' response to staff's first data request No. 3 (Document No. 02065-2020).

> The agreement between Company and Customer may require a commitment by the Customer to purchase LNG Service for a minimum period of time, to take or pay for a minimum amount of LNG Service, to make a contribution in aid of construction, to furnish a guarantee, such as a surety bond, letter of credit, other means of establishing credit, and/or to comply with other provisions as determined appropriate by the Company.

In addition, Peoples stated that the contract agreements under the proposed LNG tariff would be required to comply with the utility's Corporate Governance policy. This policy requires that contracts of a certain amount be reviewed and authorized by differing levels of senior management prior to execution. For the contract to be authorized by Peoples' governance body, the customer must have demonstrated that it meets or exceeds a level of credit worthiness. Peoples stated that this step would help ensure that a customer taking service under this tariff should have the long-term financial stability to meet its obligations under the LNG service agreement. Peoples does not intend to bring individual LNG contracts before the Commission for approval.

Comments filed by Eagle LNG and Peoples' Response

On July 31, 2020, Eagle LNG submitted a letter to the Commission requesting that the Commission deny Peoples' proposed LNG tariff. Eagle LNG asserts four reasons as to why the Commission should deny the proposed tariff. First, Eagle LNG states that the LNG market is competitive and Commission regulation is only required when there is a natural monopoly. Second, approval of the tariff would put the general body of ratepayers at risk if the LNG customer can not fulfill its obligation under the contract and ratepayer risk is not justified in a competitive market. Third, Eagle LNG believes that Peoples should offer LNG services through a separate, non-regulated, company (i.e., a subsidiary of the corporate parent Emera). Finally, Eagle LNG believes that approval of the proposed LNG tariff sends the wrong signal to the competitive LNG market in Florida and puts Eagle LNG at a competitive disadvantage.

On August 13, 2020, Peoples submitted a letter to the Commission in response. First, Peoples asserts that the proposed tariff does not require Commission oversight of the LNG market; rather the LNG tariff is a natural extension of Peoples' natural gas business. Second, Peoples states that the LNG tariff would not put ratepayers at risk as Peoples will not be building speculative facilities, rather the utility will be building specific facilities to meet a requesting customer's needs. Peoples further states it will be contracting with well-capitalized customers and it is thus extremely unlikely that an LNG customer would default or declare bankruptcy. Third, Peoples states the proposed LNG tariff will not cause cross subsidization or regulatory inefficiency. Creating a separate company for LNG services would create greater inefficiencies and adding additional customers benefits the general body of ratepayers. Finally, Peoples asserts that the proposed LNG tariff would provide another LNG option to potential customers, increasing competition.

Similar Tariff Concepts

Peoples believes that the Commission has previously approved tariffs for Peoples that are similar in concept. The Commission first approved Peoples' Natural Gas Vehicle Service (NGVS) tariffs in 1992[10] and more recently modified the NGVS tariff in 2017. [11] The NGVS tariffs provide options for Peoples to install and maintain private or public fueling stations for compressed natural gas customers while allowing Peoples to recover its cost of providing these services. The monthly services charge calculation methodology under this tariff is 1.6 times the utility's gross investment in the facilities. Similar to the LNG market, the provision of fueling stations for compressed natural gas customers is a competitive market.

In 2017, the Commission approved a tariff to accommodate the receipt of renewable natural gas (RNG) on Peoples' distribution system.[12] The RNG tariff allows Peoples to recover from biogas producers the cost of upgrading the biogas and does not contain standard charges, as the services provided varies based on the steps needed to upgrade the biogas to RNG. The monthly services charge is equal to a mutually agreed upon percentage (between Peoples and the biogas producer) multiplied by Peoples' gross investment in the facilities necessary to provide biogas upgrading services.

Impact on General Body of Ratepayers

Peoples asserted that all costs associated with building and operating an LNG facility under this tariff would be borne by the end-use customers and would have no impact on the general body of ratepayers. The utility stated in response to staff's second data request that the assets, revenue, and expenses associated with this tariff would be included as part of its rate base surveillance reports; however, the utility stated that the LNG monthly services charge received from the LNG customer would offset the revenue requirements for these facilities.[13]

In response to OPC's interrogatory No. 4, the utility stated that in the unlikely event that unforeseen "risks impact an LNG investment based on the proposed tariff any application of cost to the general body of rate payers would have to be sought through a general base rate increase proceeding and approved by the Public Service Commission."[14] Based on this response, and discussions during the informal meetings, Peoples could consider seeking cost recovery for any remaining costs of an LNG facility from its general body of ratepayers should a customer default on an LNG contract. Peoples believes that the likelihood of such an event to be very remote. Additionally, if Peoples were to seek cost recovery from the general body of ratepayers for an LNG facility, the Commission would evaluate the prudency of Peoples' decision to enter into the contract and any impacts, including costs and benefits, to the general body of ratepayers.

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[10]Order No. 25626, issued January 22, 1992, Docket No. 910942-EG, *in Re: Petition for approval of Natural Gas Vehicle Conservation Program by Peoples Gas System, Inc.*

[11]Order No. PSC-2017-0195-TRF-GU, issued May 19, 2017, Docket No. 170038-GU, *in Re: Request for approval of tariff modifications related to natural gas vehicles and fueling facilities by Peoples Gas System.*

[12]Order No. PSC-2017-0497-TRF-GU, issued December 29, 2017, Docket No. 20170206-GU, *in Re: Petition for approval of tariff modifications to accommodate receipt and transportation of renewable natural gas from customers, by Peoples Gas System.*

[13]Peoples' response to staff's second data request No. 2 (Document No. 04280-2020).

[14] Peoples' response to First Set of Interrogatories of Office of Public Counsel, Interrogatory No. 4 (Document No. 04738-2020).

An additional impact on the general body of ratepayers under this tariff could be potential technical and administrative personnel costs associated with implementing the tariff. Peoples stated in response to staff's second data request that the utility does not anticipate incurring significant upfront costs to implement this tariff. The utility does anticipate hiring technical and administrative support in order to respond to customer requests for LNG services and will incorporate this program into its existing pipeline, compressed natural gas, and renewable natural gas development team. The utility stated that the additional staffing cost would be subject to review by the Commission as part of a future base rate proceeding.

Under this tariff, the utility would actively participate in Requests for Proposals by companies interested in obtaining LNG services. This process will require Peoples to place resources towards bidding for, and potentially negotiating, an LNG services contract. In response to staff's data request, the utility stated that it does not anticipate requesting recovery from its general body of ratepayers of any costs incurred as a result of an LNG bid or contract negotiations that does not result in a constructed facility.[15]

With respect to the Commission's Purchased Gas Adjustment (PGA) clause,[16] Peoples asserted in response to OPC's interrogatory No. 2 that the proposed LNG tariff is not contemplated to have any impact on the PGA costs for the general body of ratepayers. Peoples explained that an LNG customer will procure its own natural gas supply and, therefore, will not be included as a PGA customer.

Staff is recommending approval of the petition based, in part, on Peoples' assertion that it will implement a reasonable process to evaluate the credit worthiness of a potential customer and the utility's internal risk assessment policies. Based on this process, the utility does not anticipate any cost impact on the general body of ratepayers. Nonetheless, staff does recognize that, if approved, the Commission may be asked to evaluate cost recovery for any tariff default or under-recovery in a future rate petition. If this occurs, the utility should be put on notice that, as part of its review, the Commission will complete a thorough analysis of the utility's due diligence in entering into the contract, including the sufficiency of contract provisions designed to protect the general body of ratepayers.

Potential Benefit to the General Body of Ratepayers

Peoples stated that the proposed tariff would provide a benefit to the general body of ratepayers. The utility stated that potential customers under this tariff would increase the volume of gas on the existing distribution system. The utility stated this should result in lower overall costs to Peoples' general body of ratepayers through economies of scale, by spreading fixed costs across a larger customer base. Peoples noted that customers receive the same benefit through its existing NGVS tariff.[17]

In addition, Peoples stated that LNG has been used as a viable option by natural gas utilities to meet peak customer demand. While not currently planned, the utility highlighted that there could

[15]Peoples response to staff's second data request No. 1 (Document No. 04280-2020).
[16]Docket No. 20200003-GU, *In re: Purchased gas adjustment (PGA) true-up.*
[17]Order No. PSC-2017-0195-TRF-GU, issued May 19, 2017, Docket No. 2010038-GU, *in Re: Request for approval of tariff modifications related to natural gas vehicles and fueling facilities by Peoples Gas System.*.

be a potential scenario in which Peoples could expand its supply portfolio for diversity and reliability using LNG by partnering with a customer under this tariff, potentially taking advantage of economies of scale. If this scenario were to arise, the utility stated that the capacity or reliability needs that benefit the general body of ratepayers would require recovery through a general base rate proceeding.

Conclusion

Staff has reviewed Peoples' proposed LNG tariff, the utility's responses to staff's and OPC's data and discovery requests, and the letter submitted by Eagle LNG and Peoples' response. Staff believes that Peoples' proposed LNG service would fall under the activities of a public utility, as contemplated under Section 366.02(1), F.S., and the Commission may exercise jurisdiction over Peoples' rates and service in this area, pursuant to Section 366.04, F.S. Based on this interpretation, the Commission would also have jurisdiction over this matter pursuant to Sections 366.03, 366.05, and 366.06, F.S.

Staff recognizes that, if approved, the Commission may be asked to evaluate cost recovery for any tariff default or under-recovery in a future rate petition. If this occurs, the utility should be put on notice that, as part of its review, the Commission will complete a thorough analysis of the utility's due diligence in entering into the contract, including the sufficiency of contract provisions designed to protect the general body of ratepayers.

Staff recommends approval of Peoples' proposed LNG tariff, as shown in Attachment A, effective with the issuance of the final Order in this docket. The LNG tariff would provide Peoples with an opportunity to provide LNG services to interested customers and the utility has demonstrated a reasonable approach to implementing the tariff. A participating customer would enter into a contract with Peoples and all capital and operating costs associated with the LNG facility should be borne by the customer over the life of the contract.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a substantially affected person within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed. (Schrader)

Staff Analysis: If no protest is filed by a substantially affected person within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed.

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~~THIRD PARTY GAS SUPPLIER 4.101-2~~

~~YEAR ROUND CUSTOMER 4.101-2~~

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TECHNICAL TERMS AND ABBREVIATIONS (Continued)

materials and supplies for the purpose of constructing or maintaining facilities or is required to secure grants or permissions from any governmental agency to enable such part to fulfill its obligations hereunder, the inability of the party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions;

(2) a hurricane, storm, heat wave, lightning, freeze, severe weather event, earthquake or other act of God; or

(3) fire, explosion, war, riot, labor strike, terrorism, acts of the public enemy, lockout, embargo, civil disturbance, interference or regulation by federal, state or municipal governments, injunction or other legal process or requirement.

It is understood and agreed that the settlement of strikes, lockouts or other labor difficulties shall be entirely within the discretion of the party having the difficulty.

GAS. Natural Gas or a mixture of gases suitable for fuel, delivered through the Company's distribution system, having a heating value of not less than 1,000 BTU's per cubic foot.

GAS SERVICE. The supplying of Gas (or the transportation of Gas) by the Company to a Customer.

GAS SERVICE FACILITIES. The service line, Meter, and all appurtenances thereto necessary to convey Gas from the Company's Main to the Point of Delivery and which are owned by Company.

HIGH PRESSURE. Gas delivered at any pressure above the Standard Delivery Pressure.

LNG. Liquified Natural Gas or LNG is processed natural gas that has been condensed into a liquid form by reducing its temperature to approximately minus 260° F (minus 162° C) at ambient pressure.

MAIN. The pipe and appurtenances installed in an area to convey Gas to other Mains or to service lines.

METER. Any device or instrument used to measure and indicate volumes of Gas which flow through it.

METER READING DATE. The date upon which an employee of the Company reads the Meter of a Customer for billing purposes.

NORMAL BUSINESS HOURS. 8 a.m. to 5 p.m. Monday through Friday, excluding Federal holidays.

PANAMA CITY OPERATING AREA. The Panama City Operating Area consists of those Counties and Communities identified in Section 6.

POINT OF DELIVERY. The point at which Company's Gas Service facilities are connected to the Customer's Installation, and at which the Customer assumes responsibility for further delivery and use of the Gas. In all cases, the Point of Delivery for Gas to a Customer shall be at the outlet side of the meter or regulator, if any, whichever is farther downstream. The Point of Delivery shall be determined by Company.

RESIDENTIAL. When used to modify the term "Customer," means a Customer whose use of Gas is for residential purposes, regardless of the rate schedule pursuant to which such Customer receives Gas Service provided by Company.

RNG. Renewable Natural Gas, or gas produced from agricultural, animal, or municipal or other waste that, with or without further processing, (a) has characteristics consistent with the Company's compositional and quality standards for Gas, and (b) in the sole view of the Company does not otherwise pose a hazard to inclusion in the Company's distribution lines when co-mingled with Gas.

~~**STANDARD DELIVERY PRESSURE.** The Standard Delivery Pressure for Panama City Operating Area shall be 10 inches of water column (.36 p.s.i.g.). The Standard Delivery Pressure for the remainder of PGS~~

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a Division of Tampa Electric Company **Cancels ~~Second~~ Third Revised Sheet No. 4.101-1**
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~~service territory shall be 7 inches of water column (.25 p.s.i.g). No adjustment will be made for variations from the normal atmospheric pressure at the Customer's Meter. Gas delivered at Standard Delivery Pressure may vary from three inches to 15 inches of water column.~~

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TECHNICAL TERMS AND ABBREVIATIONS (Continued)

STANDARD DELIVERY PRESSURE. The Standard Delivery Pressure for Panama City Operating Area shall be 10 inches of water column (.36 p.s.i.g.). The Standard Delivery Pressure for the remainder of PGS service territory shall be 7 inches of water column (.25 p.s.i.g). No adjustment will be made for variations from the normal atmospheric pressure at the Customer's Meter. Gas delivered at Standard Delivery Pressure may vary from three inches to 15 inches of water column.

THERM. A unit of heat equal to one hundred thousand (100,000) BTUs.

THIRD PARTY GAS SUPPLIER. Any legal entity, other than the Company, providing Gas for transportation and delivery to a Customer on the Company's distribution system.

YEAR ROUND CUSTOMER. A Customer who receives (or who it is estimated will receive) Gas Service from Company during each month of a year, and who pays a Customer charge for each such month.

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RATE SCHEDULES

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Original Sheet No. 7.406

LIQUIFIED NATURAL GAS SERVICE
Rate Schedule LNG

Availability:

This rate schedule is available to any Customer for the purchase of Liquified Natural Gas ("LNG") service from Peoples Gas System throughout the service areas of the Company.

Applicability:

Applicable to Customers requesting liquified natural gas services through liquefaction of natural gas, storage of LNG, regasification of LNG to natural gas, and/or non-pipeline distribution of LNG ("LNG Service") for customer market segments including, but not limited to (1) use as a transportation fuel, including marine markets, rail, auto, jet propulsion and other transportation customers, (2) use to increase system reliability, peak shaving and to increase resiliency of their facilities, (3) Customers that cannot be served by pipeline by PGS for any reason, including without limitation, time to construct the pipeline, cost of constructing pipeline, remote location, reliability/resilience and intermittent demand and (4) LNG loaded by ISO containers and exported to foreign markets pursuant to a valid export license LNG Service under this Schedule is contingent upon arrangements mutually satisfactory to the Customer and Company for the design, location, construction, ownership, and operation of facilities required for the Company's provision of LNG Service.

Rate:

LNG Service facilities installed under the provisions of this schedule shall be owned, operated and maintained by the Company unless otherwise agreed to in an agreement for services between the parties. The rate for LNG Service supplied hereunder shall consist of a Monthly Services Charge and the transportation and delivery of natural gas under the Company's applicable Rate Schedules for General Service, Interruptible Service or Wholesale Service.

Monthly Services Charge:

The Monthly Services Fee shall be set forth in the agreement between the parties and unless otherwise specified in the agreement shall be billed in monthly installments over the term of this Agreement. The rate structure of the Monthly Services Fee shall be designed to recover the cost of service required to provide LNG Service to Customer. The rate structure includes, but is not limited to depreciation, return on capital, taxes and operational expenses, fuel used to operate facilities and electric costs to operate the facility. As used in this schedule, LNG Service facility costs to be recovered means the total installed cost of such LNG facilities, as determined by Company, which may include but are not limited to blowers, chillers, condensate removal equipment, compressors, heat exchangers, driers, pumps, interstage and aftercoolers, heavy constituent knockout equipment, filters, turbo expanders, liquid/vapor separators, distillation columns, fractionators, drivers, control valves (JT), vacuum insulated piping, condensers, accumulators, instrumentation, vaporizers, fire protection equipment, safety equipment, monitoring equipment, truck scales, vent and flare systems, waste water disposal systems, instrument air, power, communications, fuel gas, N2 systems, gas constituent removal equipment, quality monitoring equipment, storage, controls, piping, metering,

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propane injection, and any other related appurtenances, including any redundancy necessary to provide reliable LNG Service, before any adjustment for accumulated depreciation, a contribution in aid of construction, etc. The agreement between Company and Customer may require a commitment by the Customer to purchase LNG Service for a minimum period of time, to take or pay for a minimum amount of LNG Service, to make a contribution in aid of construction, to furnish a guarantee, such as a surety bond, letter of credit, other means of establishing credit, and/or to comply with other provisions as determined appropriate by the Company.

The Customer's monthly minimum charge under this Rate Schedule shall be the Monthly Services Reservation Charge.

Special Conditions:

1. All charges listed above are subject to applicable federal, state, or local taxes.

2. LNG Services provided hereunder shall be available only in connection with LNG that
   a. will be consumed in the State of Florida, or
   b. if not consumed in Florida,
      i. will not be vaporized for further transportation in interstate commerce by pipeline after its delivery to Customer by the Company pursuant to this Rate Schedule, and
      ii. will not be involved in a gas exchange or gas transportation by displacement transaction that would be deemed to circumvent the Federal Energy Regulatory Commission's jurisdiction, under the Natural Gas Act, over the interstate transportation of gas by pipeline.

3. The rates set forth under this schedule shall be subject to the operation of the Company's Tax and Fee Adjustment Clause set forth on Sheet No. 7.101-5.

4. Service under this schedule shall be subject to the Rules and Regulations set forth in this tariff.

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