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 April 4, 2023

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Item 1

State of Florida



Public Service Commission

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

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

DATE: March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Sapoznikoff) *SMC*
Division of Accounting and Finance (Richards) *ALM*
Division of Economics (Guffey) *JGH*

RE: Docket No. 20230025-WS – Proposed amendment of Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases; Rule 25-30.456, F.A.C., Staff Assistance in Alternate Rate Setting; and Rule 35-30.457, F.A.C., Limited Alternative Rate Increase.

AGENDA: 04/04/23 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

RULE STATUS: Proposal Should Not Be Deferred. The Rules Must Be Effective July 1, 2023.

SPECIAL INSTRUCTIONS: None

Case Background

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

These three rules set forth the upper gross annual revenue limits for determining eligibility for water and wastewater utilities to receive staff assistance in rate setting. Section 367.0814(1),

Docket No. 20230025-WS

Date: March 23, 2023

Florida Statutes (F.S.), requires the Commission to adjust the gross annual revenue limits every five years, using the most recent cumulative five years of the price index established by the Commission pursuant to Section 367.081(4), F.S. Pursuant to this section, the amended rules need to be effective on July 1, 2023.

To comply with the statutory mandate set forth in Section 367.0814(1), F.S., staff initiated rulemaking to amend the rules to adjust the gross annual revenue limit for staff-assisted rate cases. The Notice of Development of Rulemaking for these rules appeared in the January 20, 2023, edition of the Florida Administrative Register, Volume 49, Number 13. There were no requests for a rule development workshop, and no workshop was held.

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

Discussion of Issues

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

Recommendation: Yes. The Commission should propose the amendment of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as set forth in Attachment A. The Commission should also certify the rules as minor violation rules. (Sapoznikoff, Richards, Guffey)

Staff Analysis: Rule 25-30.455, F.A.C., allows certain water and wastewater utilities to petition the Commission for staff assistance in rate applications by submitting an “Application for a Staff-Assisted Rate Case.” Rule 25-30.456, F.A.C., allows certain water and wastewater utilities to petition the Commission for staff assistance in alternative rate setting by submitting an “Application for Staff Assistance in Alternative Rate Setting.” Rule 25-30.457, F.A.C., allows certain water and wastewater utilities to seek a limited alternative rate increase. Staff recommends that the Commission propose the amendment of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as set forth in Attachment A. Staff is recommending the amendment of these rules to comply with the statutory mandate set forth in Section 367.0814(1), F.S., that the gross annual revenue level to obtain staff assistance with rate setting be adjusted every five years based on the most recent cumulative five years of the price index established by the Commission pursuant to Section 367.081(4)(a), F.S.

Currently, Rules 25-30.455 and 25-30.456, F.A.C., allow water and wastewater utilities whose total gross annual operating revenues are \$300,000 or less for water service, \$300,000 or less for wastewater service, or \$600,000 or less on a combined basis, to be eligible for staff assistance in rate or alternative rate cases. Rule 25-30.457, F.A.C., currently allows water and wastewater utilities whose total gross annual operating revenues are \$300,000 or less for water service, or \$300,000 or less for wastewater service, to be eligible for staff assistance for a limited rate increase.

To comply with the statutory mandate of Section 367.0814(1), F.S., staff recommends increasing the gross annual operating revenue eligibility from \$300,000 or less to \$335,000 or less, per system type, or from \$600,000 or less to \$670,000 or less, when a combined basis is allowed. Staff derived the adjustment amounts based on the application of the five-year cumulative index (12.15 percent) established by the Commission pursuant to Section 367.081(4), F.S. When applied, the five-year cumulative index increases the estimated gross annual revenue threshold level by \$35,000.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., for each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., are currently listed as minor violation rules by the Commission. These rules are minor violation rules because the violation of these rules would not result in economic or physical harm to a person, cause an adverse effect on the public health, safety, or welfare, or create a significant threat of such harm. Violations of

Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., with the proposed amendments would continue to be minor violations. Therefore, for the purposes of filing the proposed amended rules for adoption with the Department of State, staff recommends that the Commission certify Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as minor violation rules.

Statement of Estimated Regulatory Costs

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

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

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

Conclusion

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

Issue 2: Should this docket be closed?

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

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

1 **25-30.455 Staff Assistance in Rate Cases.**

2 (1) Water and wastewater utilities whose total gross annual operating revenues are \$335,000
3 ~~\$300,000~~ or less for water service or \$335,000 ~~\$300,000~~ or less for wastewater service, or
4 \$670,000 ~~\$600,000~~ or less on a combined basis, may file with the Office of Commission Clerk
5 an application for staff assistance in rate applications by submitting a completed staff assisted
6 rate case application. Reasonable and prudent rate case expense is eligible for recovery
7 through the rates developed by staff. Recovery of attorney fees and outside consultant fees
8 related to the rate case is determined based on the requirements set forth in Section
9 367.0814(3), F.S. To be eligible for staff assistance under this rule:

10 (a) The applicant or utility owner must have at least one year of experience operating the
11 utility for which the rate increase is being requested;

12 (b) The utility must be in compliance with its annual report filing in accordance with
13 subsection 25-30.110(3), F.A.C.; and

14 (c) The utility must have paid all required regulatory assessment fees or must be current on
15 any approved regulatory assessment fee payment plan.

16 (2) The appropriate application form, Commission Form PSC/AFD 2-W (11/86) (Rev. 06/14),
17 entitled "Application for a Staff Assisted Rate Case," is incorporated into this rule by
18 reference and is available at: <http://www.flrules.org/Gateway/reference.asp?No=Ref-04415>.

19 The form is also available on the Commission's website, www.floridapsc.com.

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

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

25 (b) If the Commission has received four or more applications in the previous 30 days; or, if the

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1 Commission has 20 or more docketed staff assisted rate cases in active status on the date the
2 application is received, the Commission will deny initial evaluation of an application for staff
3 assistance and close the docket. When an application is denied under the provisions of this
4 paragraph, the Commission staff will notify the applicant of the date on which the application
5 may be resubmitted.

6 (c) Initially, determinations of eligibility will be conditional, pending an examination of the
7 condition of the applicant's books and records.

8 (5) Upon making its final determination of eligibility, the Commission staff will notify the
9 applicant in writing as to whether the application is officially accepted or denied. If the
10 application is accepted, a staff assisted rate case will be initiated. If the application is denied,
11 the notification of application denial will state the deficiencies in the application.

12 (6) The date of Commission staff's written notification to the utility that the utility is eligible
13 for staff assistance under this rule will be considered the date of official acceptance of the
14 application by the Commission. The official date of filing is 30 days after the official
15 acceptance of the application by the Commission staff.

16 (7) The application is deemed denied if the utility does not remit the filing fee, as provided by
17 paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

18 (8) An applicant may request reconsideration of the application denial within 15 days of
19 receipt of notification that the application is denied. The request will be decided by the full
20 Commission.

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

24 (10) A petition to protest the Commission's proposed agency action must conform to Rule 28-
25 106.201, F.A.C.

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1 (11) In the event of a protest of the Commission's Notice of Proposed Agency Action Order in
2 a staff assisted rate case, the utility must:

3 (a) Provide prefiled direct testimony in accordance with the Order Establishing Procedure
4 issued in the case. At a minimum, that testimony must adopt the Commission's Proposed
5 Agency Action Order;

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

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

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

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

16 (13) In the event of a protest of the Commission's Proposed Agency Action Order in a staff
17 assisted rate case, the Commission staff will:

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

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

22 (c) Provide to the utility materials to assist the utility in the preparation of its testimony and
23 exhibits. This material will consist of an example of testimony filed by a utility in another
24 case, an example of testimony that would support the Proposed Agency Action Order in this
25 case, an example of an exhibit filed in another case, and examples of prehearing statements

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1 and briefs filed in other cases.

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

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

4 *12-16-08, 8-10-14, 2-19-17, 7-1-18, 12-8-21, _____.*

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1 **25-30.456 Staff Assistance in Alternative Rate Setting.**

2 (1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., water
3 and wastewater utilities whose total gross annual operating revenues are \$335,000 ~~\$300,000~~ or
4 less for water service or \$335,000 ~~\$300,000~~ or less for wastewater service, or \$670,000
5 ~~\$600,000~~ or less on a combined basis, may file with the Office of Commission Clerk an
6 application for staff assistance in alternative rate setting by submitting a completed staff
7 assisted application for alternative rate setting. To be eligible for staff assistance under this
8 rule:

9 (a) The applicant or utility owner must have at least one year of experience operating the
10 utility for which the rate increase is being requested;

11 (b) The utility must be in compliance with its annual report filing in accordance with
12 subsection 25-30.110(3), F.A.C.; and

13 (c) The utility must have paid all required regulatory assessment fees or must be current on
14 any approved regulatory assessment fee payment plan.

15 (2) The application form, Commission Form PSC/AFD 25 (11/93) (Rev. 06/14), entitled
16 “Application for Staff Assistance for Alternative Rate Setting,” is incorporated into this rule
17 by reference and is available at: [http://www.flrules.org/Gateway/reference.asp?No=Ref-](http://www.flrules.org/Gateway/reference.asp?No=Ref-04414)
18 [04414](http://www.flrules.org/Gateway/reference.asp?No=Ref-04414). The form is also available on the Commission’s website, www.floridapsc.com.

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

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

24 (b) If the Commission has received four or more alternative rate setting applications in the
25 previous 30 days; or, if the Commission has 20 or more docketed staff assisted rate cases in

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1 active status on the date the application is received, the Commission will deny initial
2 evaluation of an application for staff assistance and close the docket. When an application is
3 denied under the provisions of this paragraph, the Commission staff will notify the applicant
4 of the date on which the application may be resubmitted.

5 (c) Determinations of eligibility will be conditional, pending an examination of the condition
6 of the applicant's books and records.

7 (5) Upon making its final determination of eligibility, the Commission staff will notify the
8 applicant in writing as to whether the application is officially accepted or denied. If the
9 application is accepted, staff assistance in alternative rate setting will be initiated. If the
10 application is denied, the notification of application denial will state the deficiencies in the
11 application.

12 (6) The date of Commission staff's written notification to the utility that the utility is eligible
13 for staff assistance under this rule will be considered the date of official acceptance of the
14 application by the Commission. The official date of filing is 30 days after the date of official
15 acceptance of the application.

16 (7) The application is deemed denied if the utility does not remit the filing fee, as provided by
17 paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

18 (8) An applicant may request reconsideration of the application denial within 15 days of
19 receipt of notification that the application is denied. The request will be decided by the full
20 Commission.

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

25 (10) The Commission will limit the maximum increase in operating revenues to 50 percent of

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1 test year operating revenues.

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

5 (12) A substantially affected person may file a petition to protest the Commission's Proposed
6 Agency Action Order regarding a staff assisted alternative rate setting application within 21
7 days of issuance of the Notice of Proposed Agency Action Order as set forth in Rule 28-
8 106.111, F.A.C.

9 (13) A petition to protest the Commission's proposed agency action must conform to Rule 28-
10 106.201, F.A.C.

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

16 (15) In the event of a protest, the maximum increase established in subsection (10) of this rule
17 no longer applies.

18 (16) In the event of a protest of the Commission's Proposed Agency Action Order in a staff
19 assisted alternative rate setting application, the utility must:

20 (a) Provide prefiled direct testimony in accordance with the Order Establishing Procedure
21 issued in the case. At a minimum, that testimony must adopt the Commission's Proposed
22 Agency Action Order;

23 (b) Sponsor a witness to support source documentation provided to the Commission staff in its
24 preparation of the staff engineering and accounting analysis and the staff proposed agency
25 action recommendation in the case;

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- 1 (c) Include in its testimony the necessary factual information to support its position on any
2 issue that it chooses to take a position different than that contained in the Commission's
3 Proposed Agency Action Order; and,
- 4 (d) Meet all other requirements of the Order Establishing Procedure.
- 5 (17) Failure to comply with the dates established in the Order Establishing Procedure, or to
6 timely file a request for extension of time for good cause shown, may result in dismissal of the
7 staff assisted alternative rate setting application and closure of the docket.
- 8 (18) In the event of protest of the Commission's Proposed Agency Action Order in a staff
9 assisted alternative rate setting application, the Commission staff will:
- 10 (a) File prefiled direct testimony to explain its analysis in the proposed agency action
11 recommendation. In the event the staff wishes to alter its position on any issue, it will provide
12 factual testimony to support its changed position;
- 13 (b) Meet all other requirements of the Order Establishing Procedure; and,
- 14 (c) Provide to the utility materials to assist the utility in the preparation of its testimony and
15 exhibits. This material will consist of an example of testimony filed by a utility in another
16 case, a sample of testimony that would support the Proposed Agency Action Order in this
17 case, an example of an exhibit filed in another case, and examples of prehearing statements
18 and briefs filed in other cases.
- 19 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*
20 *History—New 11-30-93, Amended 1-31-00, 12-16-08, 8-10-14, 7-1-18, 12-8-21, _____.*
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1 **25-30.457 Limited Alternative Rate Increase.**

2 (1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., or to
3 staff assistance in alternative rate setting as described in Rule 25-30.456, F.A.C., water
4 utilities whose total gross annual operating revenues are \$335,000 ~~\$300,000~~ or less for water
5 service and wastewater utilities whose total gross annual operating revenues are \$335,000
6 ~~\$300,000~~ or less for wastewater service may file with the Office of Commission Clerk an
7 application for a limited alternative rate increase of up to 20 percent applied to metered or flat
8 recurring rates of all classes of service.

9 (2) The application for limited alternative rate increase must contain the following
10 information:

- 11 (a) The name of the utility as it appears on the utility's certificate and the address of the
12 utility's principal place of business;
- 13 (b) The type of business organization under which the utility's operations are conducted;
- 14 (c) If the utility is a corporation, the date of incorporation and the names and addresses of all
15 persons who own five percent or more of the utility's stock;
- 16 (d) If the utility is not a corporation, the names and addresses of the owners of the business;
- 17 (e) A schedule showing the annualized revenues by customer class and meter size for the most
18 recent 12-month period using the rates in effect at the time the utility files its application;
- 19 (f) A schedule showing the current and proposed rates for all classes of customers;
- 20 (g) A statement providing the specific basis or bases for the requested rate increase;
- 21 (h) If the requested rate increase is based upon the utility's underearning or the utility's
22 expectation to underearn, a statement explaining why the utility is, or is expected to, underearn
23 its authorized rate of return;
- 24 (i) A statement that the figures and calculations upon which the change in rates is based are
25 accurate and that the change will not cause the utility to exceed its last authorized rate of

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- 1 return on equity;
- 2 (j) A statement that the utility is currently in compliance with its annual report filing in
3 accordance with subsection 25-30.110(3), F.A.C.;
- 4 (k) A statement that the utility has paid all required regulatory assessment fees or is current on
5 any approved regulatory assessment fee payment plan;
- 6 (l) A statement that an order in a rate proceeding that established the utility's rate base, capital
7 structure, annual operating expenses and revenues has been issued for the utility within the 7-
8 year period prior to the official date of filing of the application; and
- 9 (m) Any additional relevant information in support of the application and reasons why the
10 information should be considered.
- 11 (3) Within 30 days of the application's filing date, Commission staff will notify the utility in
12 writing that the application requirements of subsection (2) of this rule have been met or that
13 the requirements of subsection (2) have not been met with an explanation of the application's
14 deficiencies.
- 15 (4) The date of Commission staff's written notification to the utility that the requirements of
16 subsection (2) of this rule have been met will be considered the date of official acceptance by
17 the Commission of the application. The official date of filing is established as 30 days after the
18 official acceptance by the Commission of the application. The application is deemed denied if
19 the utility does not remit the filing fee as required by paragraph 25-30.020(2)(f), F.A.C.,
20 within 30 days after the official acceptance of the application.
- 21 (5) A financial or engineering audit of the utility's financial or engineering books and records
22 will not be required in determining whether to approve or deny the application.
- 23 (6) Based upon the criteria contained in subsection (2), the Commission will approve, deny, or
24 approve the application with modifications that may include a reduction or an increase in the
25 requested rate increase, within 90 days from the official filing date as established in subsection

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1 (4) of this rule.

2 (7) Any revenue increase granted under the provisions of this rule shall be held subject to
3 refund with interest in accordance with subsection 25-30.360(4), F.A.C. Subsection 25-
4 30.360(6), F.A.C., does not apply to any money collected subject to refund under this
5 subsection.

6 (8) The Commission staff will conduct an earnings review of the twelve-month period
7 following the implementation of the revenue increase.

8 (a) At the end of the twelve-month period, the utility has 90 days to complete and file Form
9 PSC 1025 (03/20), entitled “Limited Alternative Rate Increase Earnings Review,” which is
10 incorporated into this rule by reference and is available at
11 <http://www.flrules.org/Gateway/reference.asp?No=Ref-11955>.

12 (b) In the event the utility needs additional time to complete the form, the utility may request
13 an extension of time supported by a statement of good cause that must be filed with
14 Commission staff within seven days prior to the 90-day deadline. “Good cause” means a
15 showing of financial hardship, unforeseen events, or other events outside the control of the
16 utility, but does not include reasons such as management oversight.

17 (c) If the Commission staff’s earnings review demonstrates that the utility exceeded the range
18 of its last authorized rate of return on equity, such overearnings, up to the amount held subject
19 to refund, with interest, shall be disposed of for the benefit of the customers. If the
20 Commission staff determines that the utility did not exceed the range of its last authorized
21 return on equity, the revenue increase will no longer be held subject to refund.

22 (9) In the event the proposed agency action order is protested pursuant to Rule 28-106.111,
23 F.A.C., by a substantially affected person other than the utility, the utility must file a staff
24 assisted rate case application pursuant to Rule 25-30.455, F.A.C., within 21 days from the date
25 the protest is filed or the utility’s application for a limited alternative rate increase will be

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1 | deemed withdrawn.

2 | (10) Upon the utility filing a staff assisted rate case application pursuant to subsection (9) of
3 | this rule:

4 | (a) The utility may implement the rates established in the proposed agency action order on a
5 | temporary basis subject to refund with interest in accordance with Rule 25-30.360, F.A.C.:

6 | (b) The limit on the maximum increase provided in subsection (1) of this rule will no longer
7 | apply; and

8 | (c) The application will be processed under Rule 25-30.455, F.A.C.

9 | *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*
10 | *History—New 3-15-05, Amended 12-16-08, 8-10-14, 7-1-18, 6-2-20, _____.*

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DATE: February 24, 2023

TO: Susan Sapoznikoff, Senior Attorney, Office of the General Counsel

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

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

Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., applicable to water and wastewater utilities, are being amended to increase the upper threshold for eligibility for staff assistance in rate case applications. Specifically, the recommended revisions update adjustments to the gross annual revenue level required by Section 367.0814(1), Florida Statutes (F.S.). The referenced statute requires that the gross annual revenue threshold level be adjusted on July 1, 2013, and every five years thereafter, based on the most recent cumulative five years of the price index established by the Commission pursuant to Section 367.081(4)(a), F.S.

Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases, defines the eligibility requirements for a water or wastewater utility to qualify for a Staff Assisted Rate Case (SARC). The recommended rule revisions increase the upper threshold of total gross annual operating revenues from \$300,000 to \$335,000 or less for water or wastewater utilities, or from \$600,000 to \$670,000 or less on a combined basis.

Rule 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting, defines the eligibility requirements for a water or wastewater utility to qualify for staff assistance in alternative rate setting. The alternative rate setting process is less detailed than that conducted for a SARC and limits the maximum increase in operating revenues to 50 percent of test year operating revenues. The recommended rule revisions increase the upper threshold of total gross annual operating revenues from \$300,000 to \$335,000 or less for water or wastewater utilities, or from \$600,000 to \$670,000 or less on a combined basis.

Rule 25-30.457, F.A.C., Limited Alternative Rate Increase, allows for a limited alternative procedure to a SARC. This procedure is less detailed than that conducted for a SARC and may allow for a limited alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of service. The recommended rule revisions increase the upper threshold of total gross annual operating revenues from \$300,000 to \$335,000 or less for water or wastewater utilities, or from \$600,000 to \$670,000 or less on a combined basis.

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

SERC Memo
Page 2

recommended rule revisions. No regulatory alternatives were submitted pursuant to Section 120.541(2)(g), F.S. None of the impact/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e), F.S., will be exceeded as a result of the recommended revisions.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases; Rule 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting; and Rule 25-30.457, F.A.C., Limited Alternative Rate Increase.

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

Yes

No

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

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

Yes

No

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

A. Whether the rule directly or indirectly:

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

Economic growth Yes No

Private-sector job creation or employment Yes No

Private-sector investment Yes No

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

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

Productivity Yes No

Innovation Yes No

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

Yes No

Economic Analysis: Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., applicable to water and wastewater utilities, are being amended to increase the upper threshold for eligibility for staff assistance in rate case applications. The recommended revisions would benefit the qualifying utilities. There are no anticipated new costs to the utilities as a result of the recommended rule revisions.

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

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

The amended rule will apply to approximately 83 water utilities and 58 wastewater utilities that qualify for staff assisted rate cases.

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

The affected individuals would be the customers of the above stated utilities.

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

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

- None. To be done with the current workload and existing staff.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

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

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

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

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

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

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

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

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

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

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

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

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

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

- None.

Additional Information:

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

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

Item 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: March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Higgins, G. Kelley, Zaslow) *ALM*
Division of Economics (Hampson) *JGH*
Office of the General Counsel (Brownless, Sandy) *JSC*

RE: Docket No. 20230001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

AGENDA: 04/04/23 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 1, 2023, Florida Power & Light Company (FPL or Company), filed for a mid-course correction of its 2023 fuel cost recovery charges (MCC Petition).¹ The Company last filed for a mid-course correction of its fuel charges in January 2023. The January 2023 mid-course correction was approved at the March 7, 2023 Commission Conference. Following the January 2023 mid-course correction, the Company's projected fuel-related revenue requirement continued to shift downward. This projected cost shift prompted the Company to file for a subsequent mid-course correction (instant petition) to incorporate the reduction into customer rates.

¹Document No. 01638-2023.

Mid-Course Corrections

Mid-course corrections are used by the Florida Public Service Commission (Commission) between annual clause hearings whenever costs deviate from revenue by a significant margin. Under Rule 25-6.0424, Florida Administrative Code (F.A.C.), which is commonly referred to as the “mid-course correction rule,” a utility must notify the Commission whenever it expects to experience an under- or over-recovery of certain service costs greater than 10 percent. The notification of a 10 percent cost-to-revenue variance shall include a petition for mid-course correction to the fuel cost recovery or capacity cost recovery factors, or shall include an explanation of why a mid-course correction is not practical. The mid-course correction rule and its codified procedures are further discussed throughout this recommendation.

FPL’s Petition

In its MCC Petition, the Company estimates an approximate \$494 million reduction of fuel-related costs for the 2023 period relative to its previous estimate. FPL is proposing to apply approximately \$379 million of this amount to the period May 2023 through December 2023, and the remaining approximate \$115 million to be included in its 2024 fuel cost recovery factors. FPL states the purpose of implementing the cost reduction over this period is to partially offset the bill impact associated with the storm restoration costs approved for collection from April 2023 through March 2024 in Docket No. 20230017-EI.²

The Company is requesting that its revised fuel cost recovery factors and associated tariff become effective beginning with the May 2023 billing cycle. The proposed effective date is further discussed in both Issues 1 and 2.

The Commission is vested with jurisdiction over the subject matter of this proceeding by the provisions of Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, and 366.06, F.S.

²Approved at the March 7, 2023 Commission Conference.

Discussion of Issues

Issue 1: Should the Commission modify FPL's currently-approved fuel cost recovery factors for the purpose of incorporating its projected 2023 fuel cost reduction?

Recommendation: Yes. Staff recommends the Commission approve adjustments to FPL's fuel cost recovery factors for the purpose of incorporating a portion of the Company's projected 2023 fuel cost reduction. Accordingly, FPL's currently-approved 2023 fuel cost recovery factors should be reduced by \$378,598,949. (Zaslow, G. Kelley, Higgins)

Staff Analysis: FPL submitted its prior 2023 mid-course correction petition on January 23, 2023, for the purposes of addressing its under-recovery of 2022 fuel costs. The Company's 2022 net under-recovery of fuel costs was approximately \$2.1 billion. Through the January mid-course correction, FPL proposed to account for approximately \$937 million of its 2022 under-recovery in the current, or 2023 period and defer approximately \$1.2 billion for collection in 2024. The request also included incorporating a reduction to FPL's then-estimated 2023 fuel-related costs in the amount of approximately \$1.0 billion. The January mid-course correction request was approved at the March 7, 2023 Commission Conference. The Company subsequently updated its 2023 fuel cost projection. The results of this update indicate FPL's projected 2023 fuel-related costs are approximately \$494 million lower than estimated in January 2023. This reduction is primarily due to lower assumed prices for natural gas. The main factor influencing the decline in natural gas prices in 2023 is mild winter weather across large parts of the country resulting in lower natural gas consumption.³

The Company developed its proposed mid-course correction amount using 11 months of forecasted sales data (May 2023 through March 2024). The factors proposed in this proceeding are currently contemplated to be charged for eight months in 2023. As is typical procedure, later this year newly developed 12-month-applicable factors will be proposed for authorization to begin with the first billing cycle of January 2024.

Projected 2023 Fuel Cost Recovery Position

FPL's estimated 2023 fuel-related costs have decreased substantially since the filing of its previous mid-course correction in January 2023.⁴ More specifically, the Company now estimates a reduction to its 2023 fuel-related costs in the amount of \$493,878,360. The Company proposes to apply \$378,598,949 of this amount to rates in 2023, and \$115,279,411 to rates in 2024.⁵

The primary factor driving the change in projected 2023 fuel costs is lower assumed pricing for natural gas. More specifically, the underlying market-based natural gas price data used for the previous or January mid-course correction was sourced on January 3, 2023.⁶ This underlying data was used to produce an estimated average 2023 delivered natural gas cost of \$5.70 per million British thermal unit (MMBtu).⁷ However, as indicated in its MCC Petition, FPL now

³March 2023 EIA Short-Term Energy Outlook, https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf

⁴Document No. 00354-2023.

⁵Document No. 01638-2023.

⁶Document No. 00354-2023.

⁷*Id.*

estimates its average cost of delivered natural gas in 2023 will be \$4.95 per MMBtu, representing a decrease of (13.2) percent.⁸ The updated cost estimate was based on natural gas futures/prices sourced on February 1, 2023, or roughly one month later than the previous estimate used to set current rates.⁹

Mid-Course Percentage

Using the values shown on Schedule E1-B of the MCC Petition and following the methodology prescribed in Rule 25-6.0424(1)(a), F.A.C., the mid-course percentage is equal to the estimated end-of-period total net true-up, including interest, divided by the current period's total actual and estimated jurisdictional fuel revenue applicable to period, or $(\$707,462,276) / \$3,829,271,573$.¹⁰ This calculation results in a mid-course correction level of (18.5) percent at December 31, 2023.¹¹

Fuel Factor

FPL's currently-approved annual levelized fuel factor beginning with the first April 2023 billing cycle is 3.957 cents per kilowatt-hour (kWh).¹² The Company is requesting to decrease its currently-approved 2023 annual levelized fuel factor beginning May 2023 to 3.526 cents per kWh, or by (10.9) percent.

Bill Impacts

In Tables 1-1 and 1-2 below, staff displays the bill impacts of the mid-course correction proposal to typical residential customers using 1,000 kWh of electricity a month in FPL's Peninsular and Northwest (former Gulf Power Company) service territories. Following Tables 1-1 and 1-2, staff addresses the impact of the proposed MCC on non-residential customers:

⁸Document No. 01638-2023.

⁹*Id.*

¹⁰Document No. 01638-2023, Schedule E1-B.

¹¹Through its prior mid-course correction, FPL received authorization at the March 7, 2023 Commission Conference to defer (\$1,201,340,636) of its 2022 fuel cost under-recovery to 2024. Accounting for this deferral, the mid-course percentage is equal to $\$493,878,360 / \$3,829,271,573$, or 12.9 percent.

¹²Approved at the March 7, 2023 Commission Conference.

Table 1-1
FPL Peninsular Service Territory
Monthly Residential Billing Detail for the First 1,000 kWh

Invoice Component	Currently-Approved Charges April 2023 (\$)	Proposed Charges Beginning May 2023 (\$)	Difference (\$)	Difference (%)
Base Charge	\$80.11	\$80.11	\$0.00	0.0%
Fuel Charge	36.56	32.24	(4.32)	(11.8%)
Conservation Charge	1.22	1.22	0.00	0.0%
Capacity Charge	2.12	2.12	0.00	0.0%
Environmental Charge	3.12	3.12	0.00	0.0%
Storm Protection Plan Charge	3.82	3.82	0.00	0.0%
Storm Restoration Surcharge	15.30	15.30	0.00	0.0%
Transition Rider	<u>(1.58)</u>	<u>(1.58)</u>	<u>0.00</u>	0.0%
Gross Receipts Tax and Regulatory Assessment Fee	<u>3.71</u>	<u>3.60</u>	<u>(0.11)</u>	(3.0%)
Total	<u>\$144.38</u>	<u>\$139.95</u>	<u>(\$4.43)</u>	(3.1%)

Source: Document No. 01638-2023.

FPL’s currently-approved total residential charge for the first 1,000 kWh of usage for April 2023 is \$144.38.¹³ If the Company’s mid-course correction proposal is approved, then the current total residential charge for the first 1,000 kWh of usage beginning in May will be \$139.95, a decrease of approximately (3.1) percent. Concerning non-residential customers, FPL reported that bill decreases based on average levels of usage for small-sized commercial customers would range from approximately (3.0) to (3.9) percent, (3.9) percent for medium-sized commercial customers, (4.2) percent for large-sized commercial customers, and (6.8) percent for industrial customers.¹⁴

¹³Document No. 01638-2023.

¹⁴Document No. 02167-2023.

**Table 1-2
 FPL Northwest Service Territory
 Monthly Residential Billing Detail for the First 1,000 kWh**

Invoice Component	Currently-Approved Charges April 2023 (\$)	Proposed Charges Beginning May 2023 (\$)	Difference (\$)	Difference (%)
Base Charge	\$80.11	\$80.11	\$0.00	0.0%
Fuel Charge	36.56	32.24	(4.32)	(11.8%)
Conservation Charge	1.22	1.22	0.00	0.0%
Capacity Charge	2.12	2.12	0.00	0.0%
Environmental Charge	3.12	3.12	0.00	0.0%
Storm Protection Plan Charge	3.82	3.82	0.00	0.0%
Storm Restoration Surcharge	15.30	15.30	0.00	0.0%
Transition Rider	16.85	16.85	0.00	0.0%
Gross Receipts Tax and Regulatory Assessment Fee	<u>4.20</u>	<u>4.08</u>	<u>(0.12)</u>	<u>(2.9%)</u>
Total	<u>\$163.30</u>	<u>\$158.86</u>	<u>(\$4.44)</u>	<u>(2.7%)</u>

Source: Document No. 01638-2023.

FPL’s currently-approved Northwest total residential charge for the first 1,000 kWh of usage for April 2023 is \$163.30.¹⁵ If the Company’s mid-course correction proposal is approved, the current total Northwest residential charge for the first 1,000 kWh of usage beginning in May will be \$158.86, a decrease of approximately (2.7) percent. Concerning non-residential customers, FPL reported that bill decreases based on average levels of usage for small-sized commercial customers would range from approximately (2.6) to (3.4) percent, (3.5) percent for medium-size commercial customers, and (3.7) percent for large-size commercial customers. A figure associated with an industrial class for the Northwest service territory was not identified.¹⁶

Summary

FPL’s MCC Petition indicates a need for its fuel recovery factors to be revised. As shown in the MCC Petition, the Company’s projected 2023 fuel-related costs have been reduced by \$493,878,360. The Company proposes to account for \$378,598,949 of this fuel cost reduction in the current period and defer \$115,279,411 into 2024. The revised fuel cost recovery factors associated with staff’s recommendation are shown on Appendix A.

¹⁵Document No. 01638-2023.

¹⁶Document No. 02167-2023.

Conclusion

Staff recommends the Commission approve adjustments to FPL's fuel cost recovery factors for the purpose of incorporating a portion of the Company's projected 2023 fuel cost reduction. Accordingly, FPL's currently-approved 2023 fuel cost recovery factors should be reduced by \$378,598,949.

Issue 2: If approved by the Commission, what is the appropriate effective date for FPL's revised fuel cost recovery factors?

Recommendation: The fuel cost recovery factors, as shown on Appendix A, should become effective with the first billing cycle of May 2023. (Hampson, Brownless, Sandy)

Staff Analysis: Over the last 20 years in the Fuel Clause docket, the Commission has considered the effective date of rates and charges of revised fuel cost recovery factors on a case-by-case basis. The Commission has approved fuel cost recovery factor rate decreases effective sooner than the next full billing cycle after the date of the Commission's vote with the range between the vote and the effective date being from 25 to 2 days. The rationale for that action being that it was in the customers' best interests to implement the lower rate as soon as possible.¹⁷

In its MCC Petition, FPL proposes to lower its 2023 fuel factors beginning with the first billing cycle of May 2023. In the instant case, there are 27 days between the Commission's vote on April 4th and the beginning of FPL's May 2023 billing cycle (May 1st).¹⁸

Concerning advisement of the instant request, the Company has engaged in numerous outreach efforts regarding the potential bill impacts of its proposal. Specifically, FPL issued a press release on March 1, 2023, informing its customers of the mid-course correction proposal. Further, on March 1, 2023, and subsequently on March 7, 2023, the Company informed its customers of the future potential adjustments related to the mid-course correction through a web-based billing information portal titled "2023 Bills". The Company also sent emails to residential and small business customers on March 9, 2023, that included a description of the mid-course correction proposal. The Company also plans to separately contact numerous commercial, industrial, and governmental customers to inform them of its proposal and the potential impact on their bills.¹⁹

¹⁷Order No. PSC-08-0825-PCO-EI, issued December 22, 2008, in Docket No. 080001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-09-0254-PCO-EI, issued April 27, 2009, in Docket No. 090001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-11-0581-PCO-EI, issued on December 19, 2011, in Docket No. 110001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-12-0342-PCO-EI, issued July 2, 2012, in Docket No. 120001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-2012-0082-PCO-EI, issued February 24, 2012, in Docket No. 120001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-15-0161-PCO-EI, issued April 30, 2015, in Docket No. 150001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-2018-0313-PCO-EI, issued June 18, 2018, in Docket No. 20180001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order PSC-2020-0154-PCO-EI, issued May 14, 2020, in Docket No. 20200001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

¹⁸Document No. 02167-2023.

¹⁹*Id.*

Conclusion

Staff recommends that the fuel cost recovery factors, as shown on Appendix A, become effective with the first billing cycle of May 2023.

Issue 3: Should this docket be closed?

Recommendation: No. The 20230001-EI docket is an on-going proceeding and should remain open. (Brownless, Sandy)

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

FLORIDA POWER & LIGHT COMPANY

~~Sixty-Second~~~~Sixty-Third~~ Revised Sheet No. 8.030
 Cancels ~~Sixty-Second~~, ~~Sixty-First~~ Revised Sheet No. 8.030

BILLING ADJUSTMENTS										
The following charges are applied to the Monthly Rate of each rate schedule as indicated and are calculated in accordance with the formula specified by the Florida Public Service Commission.										
RATE	FUEL			CONSERVATION		CAPACITY		ENVIRON- MENTAL	STORM PROTECTION	
	SCHEDULE	¢/kWh	¢/kWh	¢/kWh	¢/kWh	\$/kW	¢/kWh	\$/kW	¢/kWh	¢/kWh
	Levelized	On-Peak	Off-Peak							
RS-1, RS-1 w/RTR-1 1 st 1,000 kWh	3.6563 2.24			0.122			0.212		0.312	0.382
RS-1, RS-1 w/RTR-1 all addn kWh	4.6564 2.24			0.122			0.212		0.312	0.382
RS-1 w/RTR-1 All kWh		0.2860 0.379	(0.1270) 0.161	0.122			0.212		0.312	0.382
GS-1	3.9683 5.36			0.125			0.220		0.323	0.346
GST-1		4.2543 9.15	3.8453 3.75	0.125			0.220		0.323	0.346
GSD-1, GSD1-EV, GSD-1 w/SDTR (Jan - May)(Oct - Dec)	3.9683 5.36					0.43		0.72	0.279	0.70
GSD-1 w/SDTR (Jun-Sept)		4.8805 0.23	3.8533 3.46			0.43		0.72	0.279	0.70
GSDT-1, HLFT-1 GSDT-1w/SDTR (Jan - May)(Oct - Dec)		4.2543 9.15	3.8453 3.75			0.43		0.72	0.279	0.70
GSDT-1 w/SDTR (Jun-Sept)		4.8805 0.23	3.8533 3.46			0.43		0.72	0.279	0.70
GSLD-1, CS-1, GSLD1-EV GSLD-1w/SDTR (Jan - May)(Oct - Dec)	3.0643 5.32					0.47		0.80	0.281	0.73
GSLD-1 w/SDTR (Jun-Sept)		4.8755 0.18	3.8483 3.42			0.47		0.80	0.281	0.73
GSLDT-1, CST-1, HLFT-2, GSLDT-1 w/SDTR (Jan-May & Oct-Dec)		4.2403 9.10	3.8403 3.71			0.47		0.80	0.281	0.73
GSLDT-1 w/SDTR (Jun-Sept)		4.8755 0.18	3.8483 3.42			0.47		0.80	0.281	0.73
GSLD-2, CS-2, GSLD-2 w/SDTR (Jan - May)(Oct - Dec)	3.0223 5.05					0.49		0.80	0.244	0.66
GSLD-2 w/SDTR (Jun-Sept)		4.8304 9.80	3.8203 3.17			0.49		0.80	0.244	0.66
GSLDT-2, CST-2, HLFT-3, GSLDT-2 w/SDTR (Jan - May)(Oct - Dec)		4.2173 8.81	3.8123 3.46			0.49		0.80	0.244	0.66
GSLDT-2 w/SDTR (Jun-Sept)		4.8304 9.80	3.8203 3.17			0.49		0.80	0.244	0.66
GSLD-3, CS-3	3.8483 4.29					0.45		0.73	0.226	0.10
GSLDT-3, CST-3		4.1253 7.96	3.7283 2.73			0.45		0.73	0.226	0.10

(Continued on Sheet No. 8.030.1)

Issued by: Tiffany Cohen, Executive Director, Rate Development & Strategy
 Effective: ~~April 1, 2022~~

FLORIDA POWER & LIGHT COMPANY

~~Thirty-Ninth Thirty-Eighth~~ Revised Sheet No. 8.030.1
 Cancels ~~Thirty-Eighth Thirty-Seventh~~ Revised Sheet No. 8.030.1

(Continued from Sheet No. 8.030)

BILLING ADJUSTMENTS (Continued)

RATE	FUEL			CONSERVATION			CAPACITY			ENVIRON- MENTAL		STORM PROTECTION		
	SCHEDULE	e/kWh	e/kWh	e/kWh	e/kWh	\$/kW	\$/kW	e/kWh	\$/kW	\$/kW	e/kWh	e/kW	\$/kW	\$/kW
	Levelized	On-Peak	Off-Peak											
OS-2	3.0233 505			0.085				0.127			0.211	0.815		
MET	3.0233 505				0.42			0.69			0.258		0.74	
CILC-1(G)		4.2543 915	3.8453 375		0.51			0.81			0.234		0.68	
CILC-1(D)		4.2193 882	3.8133 347		0.51			0.81			0.234		0.68	
CILC-1(T)		4.1353 796	3.7283 273		0.51			0.79			0.208		0.11	
SL-1,OL-1, RL-1, PL-1/SL-1M, LT-1,OS I/II	3.0113 462			0.038				0.016			0.044	0.288		
SL-2, GSCU- 1/SL-2M	3.0683 536			0.090				0.137			0.207	0.316		
					<u>RDC</u>	<u>DDC</u>		<u>RDC</u>	<u>DDC</u>				<u>RDC</u>	<u>DDC</u>
SST-1(T)		4.1353 796	3.7283 273	0.05	0.03			0.09	0.04		0.292		0.01	0.01
SST-1(D1)		4.2543 915	3.8453 375	0.05	0.03			0.09	0.04		0.565		0.12	0.05
SST-1(D2)		4.2493 910	3.8403 371	0.05	0.03			0.09	0.04		0.565		0.12	0.05
SST-1(D3)		4.2173 881	3.8123 346	0.05	0.03			0.09	0.04		0.565		0.12	0.05
ISST-1(D)		4.2193 882	3.8133 347	0.05	0.03			0.09	0.04		0.565		0.12	0.05
ISST-1(T)		4.1353 796	3.7283 273	0.05	0.03			0.09	0.04		0.292		0.01	0.01

(Continued on Sheet No. 8.030.2)

Issued by: Tiffany Cohen, Executive Director, Rate Development & Strategy
 Effective: ~~April 1, 2022~~

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: March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (D. Buys, Mouring) *ALM*
Office of the General Counsel (Dose) *JSC*

RE: Docket No. 20220210-EI – Petition requesting approval of an AFUDC rate, effective January 1, 2023, by Florida Public Utilities Company.

AGENDA: 04/04/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Florida Public Utilities Company (FPUC or Company) does not currently have an authorized rate for an Allowance for Funds Used During Construction (AFUDC). On December 9, 2022, FPUC (the electric division) filed its petition requesting approval of an AFUDC rate of 6.80 percent, effective on January 1, 2023. The Company's request did not comport with the filing requirements specified in Rule 25-6.0141, Florida Administrative Code (F.A.C). On December 20, 2022, FPUC filed an amended petition requesting approval of an AFUDC rate of 6.80 percent, effective October 1, 2022. Staff filed its initial recommendation for this matter on January 27, 2023, for the February 8, 2023 Commission Conference. On February 3, 2023, the recommendation was withdrawn from the February 8, 2023 Commission Conference to allow staff more time to evaluate the Company's adjustments to the capital structure used to calculate the AFUDC rate. An informal meeting was held telephonically with FPUC, the Office of Public Counsel (OPC), and staff to resolve the concerns of the parties. On March 3, 2023, FPUC filed

revised Schedules A, B, and C in support of an AFUDC rate of 5.82 percent to be effective October 1, 2022.¹ Subsequently, FPUC realized Schedules A, B, and C, filed on March 3, 2023, did not reflect the appropriate adjustment to the accumulated deferred tax balance in the capital structure. Corrected versions of Schedules A, B, and C were submitted by FPUC to staff on March 17, 2023, reflecting an AFUDC rate of 5.12 percent.² The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, and 366.06, F.S.

¹Document No. 01750-2023.

²Document No. 02318-2023.

Discussion of Issues

Issue 1: Should the Commission approve FPUC's request to establish an AFUDC rate of 5.12 percent?

Recommendation: Yes. The appropriate AFUDC rate for FPUC is 5.12 percent based on a 13-month average capital structure for the period ended September 30, 2022. (D. Buys)

Staff Analysis: Based on its amended petition filed on December 20, 2022, and revised Schedules A and B submitted on March 17, 2023, FPUC requested approval of an AFUDC rate of 5.12 percent. Rule 25-6.0141(3), F.A.C., Allowance for Funds Used During Construction, provides the following guidance:

(3) The applicable AFUDC rate will be determined as follows:

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

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

In support of its requested AFUDC rate of 5.12 percent, FPUC provided its calculations and capital structure in Schedules A and B submitted on March 17, 2023.³ Schedule A included the 13-month average capital structure ended September 30, 2022. Staff reviewed the schedules and determined that the proposed rate was calculated in accordance with Rule 25-6.0141(3), F.A.C. In its calculation, the Company appropriately used the mid-point return on equity of 10.25 percent, which was approved by Order No. PSC-2014-0517-S-EI.⁴ The AFUDC rate calculation and capital structure are presented in Attachment 1.

Based on its review, staff believes that the requested AFUDC rate of 5.12 percent is appropriate and should be approved.

³Document No. 02318-2023.

⁴Order No. PSC-2014-0517-S-EI, issued September 29, 2014, in Docket No. 20140025-EI, *In re: Application for rate increase by Florida Public Service Commission*.

Date: March 23, 2023

Issue 2: What is the appropriate monthly compounding rate to achieve FPUC's requested annual AFUDC of 5.12 percent?

Recommendation: The appropriate monthly compounding rate to achieve an annual AFUDC rate of 5.12 percent is 0.004170. (D. Buys)

Staff Analysis: FPUC requested a monthly compounding rate of 0.004170 to achieve an annual AFUDC rate of 5.12 percent. In support of the requested monthly compounding rate of 0.004170, the Company provided its calculations in Schedule C included in its corrected response to staff's data request submitted on March 17, 2023.⁵ Rule 25-6.0141(4)(a), F.A.C., provides the following formula for discounting the annual AFUDC rate to reflect monthly compounding.

$$M = [(1 + A/100)^{1/12} - 1] \times 100$$

Where: M = discounted monthly AFUDC rate

A = annual AFUDC rate

The rule also requires that the monthly compounding rate be calculated to six decimal places.

Staff reviewed the Company's calculation and determined it was derived in accordance with Rule 25-6.0141(4), F.A.C., as presented in Attachment 2. Therefore, staff recommends that a monthly compounding AFUDC rate of 0.004170 be approved.

⁵Document No. 02318-2023.

Issue 3: Should the Commission approve FPUC's requested effective date of October 1, 2022, for implementing the AFUDC rate?

Recommendation: Yes. The AFUDC rate should be effective October 1, 2022, for all purposes. (D. Buys)

Staff Analysis: FPUC's requested AFUDC rate was calculated using the most recent 13-month average capital structure for the period ended September 30, 2022. Rule 25-6.0141(6), F.A.C., provides that:

No utility may charge or change its AFUDC rate without prior Commission approval. The new AFUDC rate will be effective the month following the end of the 12-month period used to establish that rate and may not be retroactively applied to a previous fiscal year unless authorized by the Commission.

The Company's requested effective date of October 1, 2022, complies with the requirement that the effective date does not precede the period used to calculate the rate, and therefore should be approved.

Issue 4: Should this docket be closed?

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

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.

**FLORIDA PUBLIC UTILITIES COMPANY
 CAPITAL STRUCTURE USED FOR THE REQUESTED AFDUC RATE
 AS OF SEPTEMBER 30, 2022**

COMPANY AS FILED				
<u>CAPITAL COMPONENTS</u>	<u>JURISDICTIONAL AVERAGE</u>	<u>CAPITAL RATIO</u>	<u>COST OF CAPITAL</u>	<u>WEIGHTED COST OF CAPITAL</u>
COMMON EQUITY	\$42,066,879	38.73%	10.25%	3.97%
LONG-TERM DEBT	30,217,101	27.82%	3.34%	0.93%
SHORT-TERM DEBT	9,456,215	8.71%	1.66%*	0.14%
CUSTOMER DEPOSITS	3,922,366	3.61%	2.29%*	0.08%
DEFERRED INCOME TAXES	22,962,105	21.14%	0.00%	0.00%
TOTAL	\$108,624,666	100.00%		5.12%

* 13-MONTH AVERAGE

**FLORIDA PUBLIC UTILITIES COMPANY
METHODOLOGY FOR COMPOUNDING AFUDC RATE
AS OF SEPTEMBER 30, 2022**

COMPANY AS FILED

<u>MONTHS</u>	<u>AFUDC BASE</u>	<u>MONTHLY AFUDC RATE</u>	<u>CUMULATIVE AFUDC RATE</u>
1	1.000000	0.004170	0.004170
2	1.004170	0.004187	0.008357
3	1.008357	0.004205	0.012561
4	1.012561	0.004222	0.016783
5	1.016783	0.004240	0.021023
6	1.021023	0.004257	0.025280
7	1.025280	0.004275	0.029556
8	1.029556	0.004293	0.033848
9	1.033848	0.004311	0.038159
10	1.038159	0.004329	0.042488
11	1.042488	0.004347	0.046835
12	1.046835	0.004365	0.051200

Annual Rate (R) = 0.0512

Monthly Rate = $((1+R)^{(1/12)})-1 = 0.004170$

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: March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (D. Buys, Mouring) *ALM*
Office of the General Counsel (Watrous) *JSC*

RE: Docket No. 20230031-EI – Request for approval of change in rate used to capitalize allowance for funds used during construction (AFUDC) from 6.22% to 6.37%, effective January 1, 2023, by Florida Power & Light Company.

AGENDA: 04/04/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Florida Power & Light Company's (FPL or Company) current Allowance for Funds Used During Construction (AFUDC) rate of 6.22 percent was approved by Order No. PSC-2019-0218-EI, issued June 3, 2019.¹ On March 2, 2023, FPL filed its request for approval to change its AFUDC rate from 6.22 percent to 6.37 percent, effective January 1, 2023. As required by Rule 25-6.014(5), Florida Administrative Code, (F.A.C.), FPL filed with its request Schedules A, B, and C identifying the capital structure, capital structure adjustments, and the methodology used to calculate the monthly AFUDC rate. The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.), including Sections 366.074, 366.05, and 366.06, F.S.

¹Order No. PSC-2019-0218-PAA-EI, issued June 3, 2019, in Docket No. 20190087-EI, *In re: Request for approval of change in rate used to capitalize allowance for funds used during construction (AFUDC) from 5.97% to 6.22%, effective January 1, 2019, by Florida Power & Light Company.*

Discussion of Issues

Issue 1: Should the Commission approve FPL's request to increase its AFUDC rate from 6.22 percent to 6.37 percent?

Recommendation: Yes. The appropriate AFUDC rate for FPL is 6.37 percent based on a 13-month average capital structure for the period ended December 31, 2022. (D. Buys)

Staff Analysis: FPL requested an increase in its AFUDC rate from 6.22 percent to 6.37 percent. Rule 25-6.0141(3), F.A.C., Allowance for Funds Used During Construction, provides the following guidance:

(3) The applicable AFUDC rate will be determined as follows:

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

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

In support of its requested AFUDC rate of 6.37 percent, FPL provided its calculations and capital structure in Schedules A and B attached to its request. Staff reviewed the schedules and determined that the proposed rate was calculated in accordance with Rule 25-6.0141(3), F.A.C. The requested increase in the AFUDC rate is due to an increase of 37 basis points in the weighted cost of common equity, offset by a decrease of 17 basis points in the weighted cost of long-term debt, and a decrease of 5 basis points in the weighted cost of short-term debt. In its calculation, the Company appropriately used the mid-point return on equity of 10.80 percent, which was approved by Order No. PSC-2022-0358-FOF-EI, issued October 1, 2022.² The AFUDC rate calculation and capital structure are presented in Attachment 1.

Based on its review, staff believes that the requested increase in the AFUDC rate from 6.22 percent to 6.37 percent is appropriate, consistent with Rule 25-6.0141, F.A.C., and recommends it be approved.

²Order No. PSC-2022-0358-FOF-EI, issued October 21, 2022, in Docket No. 20210015-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

Issue 2: What is the appropriate monthly compounding rate to achieve FPL's requested annual AFUDC rate of 6.37 percent?

Recommendation: The appropriate monthly compounding rate to achieve an annual AFUDC rate of 6.37 percent is 0.005159. (D. Buys)

Staff Analysis: FPL requested a monthly compounding rate of 0.005159 to achieve an annual AFUDC rate of 6.37 percent. In support of the requested monthly compounding rate of 0.005159, the Company provided its calculations in Schedule C attached to its request. Rule 25-6.0141(4), F.A.C., provides a formula for discounting the annual AFUDC rate to reflect monthly compounding.

$$M = [(1 + A/100)^{1/12} - 1] \times 100$$

Where: M = discounted monthly AFUDC rate

A = annual AFUDC rate

The rule also requires that the monthly compounding rate be calculated to six decimal places.

Staff reviewed the Company's calculation and determined that it was derived in accordance with Rule 25-6.0141(4), F.A.C. as shown on Attachment 2. Therefore, staff recommends that a monthly compounding AFUDC rate of 0.005159 be approved.

Issue 3: Should the Commission approve FPL's requested effective date of January 1, 2023, for implementing the new AFUDC rate?

Recommendation: Yes. The AFUDC rate should be effective January 1, 2023, for all purposes. (D. Buys)

Staff Analysis: FPL's requested AFUDC rate was calculated using a 13-month average capital structure for the period ended December 31, 2022. Rule 25-6.0141(6), F.A.C., provides that:

No utility may charge or change its AFUDC rate without prior Commission approval. The new AFUDC rate will be effective the month following the end of the 12-month period used to establish that rate and may not be retroactively applied to a previous fiscal year unless authorized by the Commission.

The Company's requested effective date of January 1, 2023, complies with the requirement that the effective date does not precede the period used to calculate the rate, and therefore should be approved.

Issue 4: Should this docket be closed?

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

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.

**FLORIDA POWER & LIGHT COMPANY
 CAPITAL STRUCTURE USED FOR THE REQUESTED AFDUC RATE
 AS OF DECEMBER 31, 2022**

COMPANY AS FILED				
<u>CAPITAL COMPONENTS</u>	<u>JURISDICTIONAL AVERAGE</u>	<u>CAPITAL RATIO</u>	<u>COST OF CAPITAL</u>	<u>WEIGHTED COST OF CAPITAL</u>
COMMON EQUITY	\$26,855,347,514	48.08%	10.80%	5.19%
LONG-TERM DEBT	17,473,378,641	31.29%	3.63%	1.14%
SHORT-TERM DEBT	807,452,438	1.45%	1.93%*	0.03%
CUSTOMER DEPOSITS	431,270,364	0.77%	2.12%*	0.02%
DEFERRED INCOME TAXES	6,310,858,685	11.30%	0.00%	0.00%
FAS 109 DEFERRED INC. TAX	3,029,951,855	5.43%	0.00%	0.00%
INVESTMENT TAX CREDITS	942,149,496	1.69%	0.00%	0.00%
TOTAL	\$55,850,408,993	100.00%		6.37%

* 13-MONTH AVERAGE

**FLORIDA POWER & LIGHT COMPANY
METHODOLOGY FOR COMPOUNDING AFUDC RATE
AS OF DECEMBER 31, 2022**

COMPANY AS FILED			
MONTHS	AFUDC BASE	MONTHLY AFUDC RATE	CUMULATIVE AFUDC RATE
1	1.000000	0.005159	0.005159
2	1.005159	0.005186	0.010345
3	1.010345	0.005213	0.015558
4	1.015558	0.005240	0.020798
5	1.020798	0.005267	0.026064
6	1.026064	0.005294	0.031358
7	1.031358	0.005321	0.036679
8	1.036679	0.005349	0.042028
9	1.042028	0.005376	0.047404
10	1.047404	0.005404	0.052808
11	1.052808	0.005432	0.058240
12	1.058240	0.005460	0.063700

Annual Rate (R) = 0.0637

Monthly Rate = $((1+R)^{(1/12)})-1 = 0.005159$

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: March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Davis, Ellis) *TB*
Office of the General Counsel (M. Thompson, J. Crawford) *JSC*

RE: Docket No. 20220186-EI – Petition for approval of purchased power agreement between Tampa Electric Company and Pasco County.

AGENDA: 04/04/23 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On November 4, 2022, Tampa Electric Company (TECO or Company), filed a petition requesting approval of a negotiated purchased power agreement (PPA) for the purchase of firm capacity and energy with Pasco County, Florida (Pasco). A copy of the PPA is attached (Attachment A). The PPA is based on Pasco’s Waste-to-Energy Facility (WTE Facility) located in Spring Hill, Florida, which is an existing 31 megawatt (MW) Qualifying Facility (QF). The WTE Facility is located in the territory of Duke Energy Florida, LLC (DEF), and would require access to DEF’s transmission capacity to deliver the electricity to TECO. Pasco is proposing to initially sell 21 MW, with the option to sell 25 MW, of firm capacity and energy to TECO for a 10-year period from January 1, 2025, through December 31, 2034.

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

Discussion of Issues

Issue 1: Should the Commission approve cost recovery of the negotiated purchased power agreement between Pasco and TECO?

Recommendation: Yes, the fixed energy priced agreement should be approved. However, in order to minimize risks to ratepayers, all transmission costs above the negotiated cost cap contained in the agreement and future costs associated with renewable energy credits should not be approved for cost recovery at this time. (Davis)

Staff Analysis: Pasco proposes to sell 21 MW from its WTE facility (with an option to increase up to 25 MW when planned facility upgrades are completed) of firm capacity and energy at a 92 percent monthly availability to TECO for a term from January 1, 2025, through December 31, 2034. The date of planned facility upgrades are not known at this time. The facility will use municipal solid waste as its primary fuel, a source of renewable energy pursuant to Section 366.91(2)(e), F.S. The price structure in the contract has no capacity payment, but an “all-in” confidential dollars per megawatt-hour (MWh) energy rate payment. The initial rate is fixed for the first 5 years and steps up to a higher energy price in years 6-10.

The contract has two notable features relating to transmission and renewable energy credits (RECs). Regarding transmission, as the Pasco WTE Facility is interconnected and located within DEF’s service territory, it will require use of a portion of DEF’s transmission capacity to deliver energy to a delivery point with TECO. Traditionally, a QF such as Pasco would request this service and pay DEF for the transmission service pursuant to Rule 25-17.0889, Florida Administrative Code (F.A.C.). However, Section 5 of the PPA makes TECO responsible for requesting and securing the required transmission service from DEF and for paying all costs including potential transmission studies, system upgrades if needed, and transmission capacity fees based on DEF’s Open Access Transmission Tariff (OATT). TECO’s monthly payments to Pasco would be reduced by the amount of the transmission expenses incurred below the negotiated cost cap. In essence, such treatment would assign the cost of transmission service to Pasco, consistent with Rule 25-17.0889, F.A.C. However, any transmission expenses above the cost cap, including transmission studies and system upgrades, would be paid by TECO and potentially recovered through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause).

The other notable feature relates to RECs. RECs are tradeable renewable energy credits, which can be certified to represent the production of energy from a renewable power source typically in increments of 1 MWh. An entity can purchase a REC in order to retire it to either meet a regulatory requirement (such as a state or federal renewable portfolio standard) or to otherwise claim the environmental aspects of the energy produced. TECO will receive the RECs associated with the energy purchased through the contract at no cost, with some caveats. These caveats include two main components: (1) if federal or state legislation establish a value for RECs, TECO would be required to pay the larger of these two values to Pasco; and (2) if Pasco is able to find a third party buyer, TECO would be required to sell them to the third party and provide the proceeds to Pasco or purchase the RECs themselves, in a de facto right of first refusal arrangement. In the latter scenario, REC payments would also be applied to the transmission cost cap, potentially reducing amounts paid by TECO.

Rule 25-17.0832(3), F.A.C., states that in reviewing negotiated firm capacity and energy contracts for the purpose of cost recovery, the Commission shall consider factors relating to the contract that would impact the utility's customers, including: need for power by purchasing utility and/or Florida utilities statewide, the cost-effectiveness of the contract, security provisions for early payments, and performance guarantees associated with the facility. These factors are evaluated below.

Need for Power

Based on TECO's 2022 Ten-Year Site Plan (TYSP), the next planned capacity addition that could be avoided is a natural gas-fired reciprocating engine, rated at 18.7 MW with an in-service date of January 1, 2028. Therefore, the PPA's firm capacity of 21 MW could defer the construction of the future generation unit for the duration of the PPA. As TECO is projected to rely upon natural gas for up to 85 percent of its energy during the contract period, according to its 2022 TYSP, the PPA would improve the Company's fuel diversity by increasing the contribution of renewable resources. Therefore, staff believes the proposed negotiated contract will enhance TECO's system reliability and increase TECO's fuel diversity.

Cost-Effectiveness

Rule 25-17.0832(3)(b), F.A.C., states in part that the Commission should consider whether the cumulative present worth of payments to a QF are no greater than the cumulative present worth of the purchasing utility's avoided cost of capacity and energy. In its petition, TECO stated that the estimated benefits of the PPA ranged from \$4.3 million to \$11.4 million on a net present value (NPV) basis. The reason for the savings are primarily reduced fuel, with other avoided costs including deferred generation capital, fixed O&M, and deferred natural gas transport. The break-even point for the cost-effectiveness of the PPA occurs in the first year of the contract for both the low and high savings range. The range is dependent upon when or if the facility upgrades from 21 MW to 25 MW, and the analysis includes the impact of system benefits from the avoided capacity and fuel, versus the costs of the PPA energy payments and DEF transmission costs. In response to Staff's First Data Request, TECO stated that the cost-effectiveness was based on the Company's 2021 TYSP, not the 2022 TYSP which was filed April 1, 2022, well before the filing of TECO's petition. As a result, staff requested a revised analysis using the Company's 2022 TYSP and the most recent available fuel forecasts.¹ In response to Staff's Data Request, TECO provided that the cost-effectiveness now ranged from \$1.2 million to \$9.0 million on a NPV basis. The reason for the savings for this range is the same as the previous range. The break-even point occurs in the first year for the 21 MW scenario and the third year for the 25 MW scenario. Table 1-1 summarizes the cost-effectiveness scenarios reviewed by staff for the PPA.

¹ TECO's revised analysis uses the same fuel forecast from the Company's midcourse correction filed on January 23, 2023.

**Table 1-1
 PPA Savings Scenarios**

Scenario	Savings (\$million)	
	High (21 MW)	Low (25 MW)
Petition: 2021 TYSP and Fuel Forecast	\$11.4	\$4.3
Revised: 2022 TYSP and 01/23 Fuel Forecast	\$9.0	\$1.2

Source: TECO’s Response to Staff’s First Data Request.²

Economic Risks

Because the PPA includes fixed energy rate payments, the rates are not allowed to float with changes to TECO’s system fuel costs. This allocates all the risk of fuel price fluctuations from the Pasco WTE Facility to TECO’s ratepayers. For example, if fuel costs do not escalate as quickly as projected in the cost-effectiveness analyses, it may result in a loss to customers. Conversely, if fuel costs escalate faster, customers would see an increased benefit. Regardless, TECO would remain obligated to pay the contracted rate and may seek to recover the costs from the ratepayers through the Fuel Clause, subject to Commission review.

In a previous docket, the Commission has expressed concerns regarding fixed price contracts.³ In Docket No. 20110090-EQ, the Commission noted in its approval of a Progress Energy Florida, Inc. (PEF) PPA that also featured fixed energy rates for the duration of the contract, that:

While the company does not make a return on purchased power, it is responsible for protecting the ratepayers during negotiations with renewable power providers and should include terms and conditions that minimize risk to the company’s general body of ratepayers. By using fixed prices for all components of the contract, risks associated with fuel price fluctuations are shifted to the ratepayers, and away from the renewable generator. PEF should strive in its future negotiations to be diligent in protecting its ratepayers from undue or excessive risk. Notwithstanding the benefits of a negotiated purchase power agreement, in negotiating future contracts and to protect the ratepayers, utilities and companies should strive to adhere to Rule 25-17.250, F.A.C., in that only a portion of the base energy costs associated with the avoided unit shall be fixed, and prospectively, utilities should strive not to established a “100 percent fixed” or a majority fixed base energy cost.

An example of this risk posed to ratepayers is highlighted in the revised analysis requested by staff, with TECO noting a decrease in its fuel projections as part of its midcourse correction. Changes in forecasts, including fuel savings and other factors such as transmission rates and deferred capacity, reduced the NPV benefit as shown in Table 1-1.

² Document No. 00828-2023, filed on February 2, 2023 in Docket No. 20220186-EI.

³ See Order No. PSC-11-0439-PAA-EQ, issued October 11, 2011, in Docket No. 20110090-EQ, *In re: Petition for Approving Negotiated Power Purchase Agreement between Progress Energy Florida, Inc. and U.S. Ecogen Polk, LLC*.

The proposed PPA also exposes ratepayers to a new form of risk associated with transmission costs. The typical purchased power agreement assumes all transmission costs are carried by the QF. For example, in TECO's Standard Offer Contract, the QF is solely responsible for all cost to provide transmission to the point of interconnection with TECO.⁴ As discussed above, the PPA assigns the cost of securing transmission service to TECO. The costs are then passed along to Pasco up to the negotiated cost cap. Based on the analysis provided by TECO, transmission costs above the cost cap are projected to be incurred by TECO no earlier than in year 4 of the 10-year contract, with transmission costs higher if Pasco is able to deliver at a higher output (up to 25 MW pursuant to the PPA). TECO describes the transmission cost risk as having decreased between filing its petition and the revised analysis requested by staff, as DEF's transmission cost forecast was lower than used in the petition's analysis. However, the transmission cost above the negotiated cost cap remains a risk to ratepayers.

While the contract is projected to be cost-effective based on the assumed transmission cost risks in TECO's analysis, if the PPA is approved this cost could be passed on to the ratepayers since the costs are incurred by TECO as part of the PPA. In response to Staff's Second Data Request, Questions Nos. 7 through 9, TECO stated that it would not seek recovery for costs for transmission studies, upgrades and associated administrative costs with arranging transmission services.⁵ This still leaves ratepayers potentially liable for any transmission costs associated with DEF's OATT above the cost cap. To be consistent with Rule 25-17.0889, F.A.C. and to prevent adding any transmission risks to ratepayers, staff recommends that all costs associated with transmission services above the cost cap should not be eligible for cost recovery at this time.

Renewable Energy Credits

Based on the proposed PPA, TECO will receive RECs when purchasing power through the contract at no cost to TECO, except under certain circumstances. If a monetary value is established by a state or federal government entity, the higher of the established governmental monetary values will be used as a basis of payment to Pasco. If no governmental monetary value is established, then Pasco has the option to market the RECs to a third party buyer. However, if Pasco is successful in finding a third party buyer, TECO has a de facto right of first refusal. Under this scenario, TECO would either pay the market price or sell the RECs to a third party buyer, and turn the proceeds over to Pasco. At this time, there is no federal or state legislation requiring the purchase of RECs. Staff recommends that the Commission's approval of the PPA not be considered as approval of any future REC purchases pursuant to the PPA, but that TECO be required to demonstrate the need for their purchase if it seeks cost recovery in the future.

Security and Performance Guarantees

Security in this contract include provisions to ensure repayment of firm capacity and energy payments in the event that the qualifying facility fails to deliver firm capacity and energy pursuant to the terms and conditions of the contract. Rule 25-17.0832(3)(c), F.A.C., requires the Commission to consider if such security is adequate for the contract. The QF is an existing facility which eliminates the risk of early "all-in" energy (which includes capacity) payments due to construction delays. However, the contract begins in year 2025 and the avoided unit is

⁴ See Order No. PSC-2022-0247-PAA-EQ, issued June 9, 2022, in Docket No. 20220070-EQ, *In re: Petition for Approval of revisions to standard offer contract and rate schedule COG-2, by Tampa Electric Company*.

⁵ Document No. 01713-2023, filed on March 2, 2023 in Docket No. 20220186-EI.

scheduled for 2028 implementation. If the QF defaults during this time period, the contract includes a termination payment table for determining compensation to TECO.

Performance guarantees, as included in this contract, detail how a QF is to operate and require financial penalties or other remedies should it fail to do so within the contract's terms and conditions. Rule 25-17.0832(3)(d), F.A.C., requires the Commission to consider whether the utility's ratepayers will be protected by the contract's terms. Staff has reviewed the performance guarantees contained in the negotiated contract and believes they are adequate. These protections include a lower energy rate payment if Pasco WTE facility does not provide a monthly energy availability of at least 92 percent at TECO-DEF service territory boundary. Also, if the Pasco WTE Facility has an availability less than 70 percent for any 6-months in a calendar year during the contract, this failure will be considered a default which means TECO can recover costs of obtaining replacement power from Pasco.

Conclusion

Based on TECO's most recent planning assumptions, the fixed-price purchased power agreement is projected to provide TECO's customers NPV benefits that range from \$1.2 to \$9.0 million over a ten year period. However, in order to minimize risks to ratepayers, all transmission costs above the negotiated cost cap contained in the agreement and future costs associated with renewable energy credits should not be approved for cost recovery at this time.

Issue 2: Should this docket be closed?

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

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

Execution Version

**CONTRACT FOR THE PURCHASE OF
CONTRACTED CAPACITY AND ASSOCIATED ENERGY**

This Contract for the Purchase of Contracted Capacity and Associated Energy from a small Qualifying Facility ("**Contract**") is made and entered into this _____ day of _____ 2022, by and between Pasco County, a political subdivision of the state of Florida and the owner and/or operator of a Facility, as defined below, by and through its Board of County Commissioners, hereinafter referred to as the "**Capacity and Energy Provider**" or "**CEP**" and Tampa Electric Company, a private utility corporation organized under the laws of the State of Florida (hereinafter referred to as the "**Company**"). The CEP and the Company are also identified hereinafter individually, as a "**Party**" and collectively, as the "**Parties**".

WITNESSETH:

WHEREAS, the CEP is the owner and/or operator of a Facility; and

WHEREAS, the CEP desires to sell Contracted Capacity and Associated Energy, as those terms are defined below; and

WHEREAS, the Company desires to purchase Contracted Capacity and Associated Energy from the Facility; and

WHEREAS, the CEP has signed an Interconnection Agreement with the Transmission Service Provider that serves the CEP's Facility, as defined below; and

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Definitions:

- (a) **Alternate REC Market:** "Alternate REC Market" shall have the meaning set forth in Section 12.
- (b) **Alternate REC Market Price Change:** "Alternate REC Market Price Change" shall have the meaning set forth in Section 12.
- (c) **Associated Energy:** "Associated Energy" shall mean the energy generated at the Facility, as defined below, by the generating source designated to supply Contracted Capacity and which is delivered to the Company at the Delivery Point, as defined below.
- (d) **Availability Adjustment:** "Availability Adjustment" shall have the meaning set forth in Section 7(a).
- (e) **Availability Guarantee:** "Availability Guarantee" shall have the meaning set forth in Section 7(a).

- (f) **Available Schedule:** "Available Schedule" shall have the meaning set forth in Section 11.
- (g) **Capacity and Energy Provider or CEP:** "Capacity and Energy Provider" or "CEP" shall have the meaning set forth in the preamble.
- (h) **CEP Event of Default:** "CEP Event of Default" shall have the meaning set forth in Section 13(a).
- (i) **CEP Termination Payment:** "CEP Termination Payment" has the meaning set forth in Section 13(c)(iii).
- (j) **Company:** "Company" has the meaning set forth in the preamble.
- (k) **Company Event of Default:** "Company Event of Default" shall have the meaning set forth in Section 13(b).
- (l) **Company Termination Payment:** "Company Termination Payment" has the meaning set forth in Section 13(c)(ii).
- (m) **Contract:** "Contract" shall have the meaning set forth in the preamble.
- (n) **Contract Price:** "Contract Price" shall have the meaning set forth in Exhibit I.
- (o) **Contract Year:** "Contract Year" shall mean any calendar year during the Term and with respect to the first and last "Contract Year" such partial calendar year.
- (p) **Contracted Capacity:** "Contracted Capacity" shall mean twenty-one (21) megawatts that the CEP commits to reserve, make available and supply to the Company from its Facility on a firm, first call, subordinate-to-no-other-entity-or-party, must-take basis, and for which the Company commits to pay the CEP. Such amount shall be a twenty-one (21) MW block of capacity from the Facility as of January 1, 2025, which may be increased up to twenty-five (25) MW upon written notice by the CEP that the Facility has increased its capacity and such increased capacity can be shown to the satisfaction of Company (in which case the Contracted Capacity in this Contract shall be 25 MW after such notice and acceptance); provided that such increase shall be contingent on the availability of transmission capacity as identified in Section 5 herein.
- (q) **Delivery Point:** "Delivery Point" shall mean the point on the Company's transmission system at the interface with the Transmission Service Provider's transmission system at which the CEP shall deliver Contracted Capacity and Associated Energy via the Transmission Service Provider pursuant to a Transmission Service Agreement that shall be secured by Company as provided herein.

- (r) **Delivery Period:** "Delivery Period" shall have the meaning in Section 2.
- (s) **Designated Avoided Unit:** "Designated Avoided Unit" shall mean the generating unit identified in the Appendix C, with effective date July 8, 2021, to the Company's Retail Tariff Schedule COG-2 as the Company's avoided unit, selected by CEP as the unit CEP wishes to help avoid, or defer, the cost of which is incorporated in both the pricing under this negotiated agreement and the termination payment amounts set forth in Exhibit II.
- (t) **Eastern Prevailing Time:** "Eastern Prevailing Time" or "EPT" shall mean the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Time.
- (u) **Environmental Attributes:** means the beneficial environmental attributes related to the Contracted Capacity and Associated Energy that would provide value or benefit, but will not create liability or detriment, which would include the beneficial attributes from (i) any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, including RECs, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, demand reductions or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and renewable energy credits, CO2 credits, emissions reduction credits and all those that otherwise arise or result from the generation of energy from the Facility, and all those arising or resulting from the existence of the Facility) (1) howsoever titled and whether known or unknown, (2) whether existing as of the execution date or at any time during the Term, and (3) whether such Environmental Attributes have been certified or verified under any renewable standard, including all those that could qualify or do qualify for application toward compliance with any local, state, federal green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, or other environmental program, incentive, mandate or objective, in each case whether voluntary or mandatory, and (ii) any environmental benefit Company otherwise would have realized from or related to the Contracted Capacity and Associated Energy if Company rather than CEP had constructed, owned or operated the Facility. Environmental Attributes do not include production, energy, or investment tax credits.
- (v) **Facility:** "Facility" shall mean the Pasco Solid Waste Resource Recovery Facility located in Pasco County, Florida, with the current physical address of 14230 Hays Road, Spring Hill, Florida.
- (w) **Federal Change in EA Law:** "Federal Change in EA Law" shall have the meaning set forth in Section 12.

- (x) **Federal Change in EA Law Price Change:** “Federal Change in EA Law Price Change” shall have the meaning set forth in Section 12.
- (y) **FERC:** “FERC” shall mean the Federal Energy Regulatory Commission or any similar or successor governmental body exercising the same or equivalent jurisdiction.
- (z) **FIN 46R:** “FIN 46R” shall have the meaning set forth in Section 14(a).
- (aa) **Florida Change in EA Law:** “Florida Change in EA Law” shall have the meaning set forth in Section 12.
- (bb) **Florida Change in EA Law Price Change:** “Florida Change in EA Law Price Change” shall have the meaning set forth in Section 12.
- (cc) **Force Majeure:** Force Majeure shall have the meaning set forth in Section 14(d).
- (dd) **FPSC:** “FPSC” shall mean the Florida Public Service Commission or any similar or successor governmental body exercising the same or equivalent jurisdiction.
- (ee) **Interconnection Agreement:** “Interconnection Agreement” shall mean the agreement and associated documents by and among CEP and the Transmission Service Provider (which as of the date of this Contract is Duke Energy Florida) governing the terms and conditions of the interconnection of the Facility by which capacity and energy will be delivered during the Term of this Contract from the Facility to the Transmission Service Provider at the Interconnection Point, which subsequently through Third-Party Transmission Services, allows for receipt of Contracted Capacity and Associated Energy by Company.
- (ff) **Interconnection Point:** “Interconnection Point” shall mean the plant busbar connection to the high side of the Facility’s step-up transformer(s) where capacity and energy shall be delivered to the Transmission Service Provider that serves the Facility, from which the CEP will transmit through Third-Party Transmission Services Contracted Capacity and Associated Energy to Company. The Interconnection Point shall be specified in detail in the Interconnection Agreement.
- (gg) **Interest Rate:** “Interest Rate” shall mean, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- (hh) **MW:** “MW” shall mean megawatt.

- (ii) **MWh:** "MWh" shall mean megawatt hours.
- (jj) **Non-Dispatched Capacity:** "Non-Dispatched Capacity" shall mean the amount of Contracted Capacity that the Company cannot receive during any given hour, due to an emergency condition, including interruptions on the Company's transmission system; any events or circumstances necessitating the maintenance of the reliability and integrity of any part of the Company's system; events or circumstances necessitating the prevention of the endangerment of life or property; events or circumstances necessitating the prevention of significant disruption of electric service to the Company's customers; or requests by the state's reliability coordinator or bulk power system balancing agent in efforts to maintain electric grid stability.
- (kk) **Non-Dispatched Energy:** "Non-Dispatched Energy" shall mean the energy associated with Non-Dispatched Capacity and which the Company declines to accept during any given hour, due to the reasons stated in the definition of Non-Dispatched Capacity.
- (ll) **Non-Planned Maintenance Months:** "Non-Planned Maintenance Months" shall have the meaning set forth in Section 10(c).
- (mm) **Party or Parties:** "Party" or "Parties" shall have the meaning set forth in the preamble.
- (nn) **Price Changes:** "Price Changes" shall have the meaning set forth in Section 12.
- (oo) **Pasco Transmission Cost Cap:** "Pasco Transmission Cost Cap" shall have the meaning set forth in Exhibit III.
- (pp) **Performance Security:** "Performance Security" shall have the meaning set forth in Section 8.
- (qq) **Planned Maintenance:** "Planned Maintenance" shall mean any scheduled or planned maintenance of the Facility, and the production of Associated Energy from the Facility, that would lead to an outage of the Facility and shall be scheduled in accordance with Section 10.
- (rr) **Product:** "Product" shall mean the Contracted Capacity, Associated Energy, any other ancillary services required for delivery, and Environmental Attributes associated with the Contracted Capacity and Associated Energy purchased hereunder.
- (ss) **Qualifying Facility:** "Qualifying Facility" shall mean a cogeneration facility, or small power production facility, that satisfies the definition of, and qualifies as, a Qualifying Facility in accordance with the provisions of Subpart B of Subchapter K, Part 292 of Chapter I, Title 18, Code of Federal Regulations (C.F.R.), promulgated by the FERC, as the same may be amended from time

to time, and must be “new capacity” pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA), construction of which began on or after November 9, 1978.

- (tt) **REC Trading Costs:** “REC Trading Costs” shall have the meaning set forth in Section 12.
- (uu) **Renewable Energy Credits or RECs:** “Renewable Energy Credits” or “RECs” means any and all credits, including any emissions reduction credits, such as CO2 emission reduction credits, for renewable energy that could qualify or does qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program or other renewable energy or environmental mandate or objective at any time during the Term.
- (vv) **Renewable Generating Facility:** “Renewable Generating Facility” shall mean a generating facility that satisfies the definition of, and qualifies as, a renewable generating facility in accordance with the provisions of Section 366.91, Florida Statutes, and Rule 25-17.210 (1), F.A.C.
- (ww) **Replacement Cost:** “Replacement Cost” means (a) with respect to Company, the costs incurred by Company, acting in a commercially reasonable manner, to purchase at the Delivery Point a replacement for the Product over the remainder of the Delivery Period, plus the costs incurred by Company in purchasing such substitute Product and any additional transmission charges reasonably incurred at the Delivery Point or any other Company transmission system interface; provided, that if no replacement is obtained, then the termination payment amount set forth on Exhibit II for such Contract Year will be utilized for this calculation; and also including the full cost of the Third-Party Transmission Services Company has reserved for the remainder of the Delivery Period; and (b) with respect to CEP, the costs incurred by CEP, acting in a commercially reasonable manner, to sell at the Delivery Point the Product over the remainder of the Delivery Period, plus the costs incurred by CEP in entering into an arrangement with a substitute purchaser and any additional transmission charges reasonably incurred at the Interconnection Point or any other Transmission System Provider transmission system interface (above the Pasco Transmission Cost Cap); provided, if no replacement is obtained, then the Transmission Service Provider “as-available” energy price will be utilized for this calculation. In either event, the Party making the determination will provide reasonable evidence to the other Party of the Replacement Cost determined hereunder. In the event the Transmission Service Provider “as-available” energy price is utilized, the calculation shall be the net present value for all future years.
- (xx) **Sales Price:** “Sales Price” means the price at which CEP, acting in a commercially reasonable manner, resells from the Facility Contracted Capacity and Associated Energy not received by Company; provided, if no

replacement is obtained, then the Transmission Service Provider "as-available" energy price will be utilized for this calculation. In any event, CEP shall provide reasonable evidence of the Sales Price as so determined hereunder.

- (yy) **SEC:** "SEC" shall have the meaning set forth in Section 14(q).
 - (zz) **Term:** "Term" shall have the meaning set forth in Section 2.
 - (aaa) **Third-Party Transmission Services:** "Third-Party Transmission Services" shall mean the firm transmission service(s) and ancillary services required to deliver Contracted Capacity and Associated Energy from the Facility (Interconnection Point) to the Company's transmission system (Delivery Point).
 - (bbb) **Transmission Service Agreement:** "Transmission Service Agreement" shall mean the contract by which Company shall obtain Third-Party Transmission Services from Transmission Service Provider to transmit Associated Energy from the Facility to the Company's transmission system at the Delivery Point.
 - (ccc) **Transmission Service Provider:** "Transmission Service Provider" means the owner of the transmission system related to the Facility (and interconnection provider under the Interconnection Agreement) and counterparty to the Transmission Service Agreement, which as of the date of this Contract is Duke Energy Florida, but would include any successor thereto by name change, operation or law or otherwise permitted.
 - (ddd) **TSP Disconnect Event:** "TSP Disconnect Event" shall mean any event in which the Transmission Service Provider requires CEP to disconnect the Facility from its transmission system.
2. **Term:** This Contract shall commence immediately upon its execution by the Parties and shall terminate at 12:00 A.M. on January 1, 2035 ("**Term**"). The delivery of Contracted Capacity and Associated Energy shall be from 12:00 A.M. January 1, 2025, through 11:59 P.M. December 31, 2034 ("**Delivery Period**"). The beginning of the Term and effectiveness of this Contract is subject to Company receiving unconditional approval from the FPSC, FERC and any other governmental entity necessary to approve this Contract and that pursuant to any such approvals Company shall not be disallowed from, and shall have full allowance for, recovering all costs associated with this Contract and the payments by Company hereunder.
 3. **Company's Capacity and Energy Purchase Commitment:** The Company agrees to purchase all Contracted Capacity and Associated Energy, excluding Non-Dispatched Energy, generated at the Facility and provided to the Company at the Delivery Point by the CEP pursuant to this Contract, excluding the amount of capacity and energy consumed by the Facility's station service equipment (such as generator auxiliaries, emissions control and monitoring equipment, fuel handling

equipment, etc.) and all transmission system losses incurred by the CEP to effect delivery of Contracted Capacity and Associated Energy to the Delivery Point, except as otherwise provided herein. The Parties agree that the sale of Contracted Capacity and Associated Energy includes the sale and transfer of all Environmental Attributes associated therewith at no cost, except as more specifically discussed in Section 12 below. If Company fails to receive Associated Energy at the Delivery Point (other than an event excused hereunder, including Force Majeure), then Company shall pay to CEP on the date payment would otherwise be due in respect of the month in which such failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. For clarity, the amount of Contracted Capacity and Associated Energy will be metered at the Delivery Point.

4. **Non-Dispatched Capacity and Non-Dispatched Energy Restriction:** To the extent that there is Non-Dispatched Capacity and Non-Dispatched Energy during a given hour, such Non-Dispatched Capacity and Non-Dispatched Energy may be sold as "as-available" energy by CEP to third parties.
5. **Responsibilities for Interconnection Service, Third-Party Transmission Service and Company Transmission Service:** It is the responsibility of the CEP to request and secure the required interconnection service from the Transmission Service Provider that serves the CEP's Facility, and CEP shall be responsible to arrange and pay to interconnect the Facility to the Transmission Service Provider and any other interconnection costs related to the Facility, including any telemetering equipment needed to account for the dynamic scheduling of Associated Energy from the Facility (which shall be the sole cost and expense of CEP). Since the Facility is not located within the Company's transmission system, Company shall request and secure the required Third-Party Transmission Service(s) required to deliver Contracted Capacity and Associated Energy to the Company's transmission system; provided that the Transmission Service Agreement costs associated with such Third-Party Transmission Service shall be passed through to CEP and reduce the payments otherwise due by Company hereunder (up to the Pasco Transmission Cost Cap and subject to the additional reduction in accordance with Section 12 below). With respect to the Transmission Service Agreement, it is the responsibility of Company to: (i) satisfy the Transmission Service Provider's Open Access Transmission Tariff requirements and/or all non-FERC jurisdictional transmission service agreements required to deliver Contracted Capacity and Associated Energy to the Company, as applicable; and (ii) request and purchase all required firm Third-Party Transmission Services in a timely manner to satisfy the provisions of this Contract. The transmission reservation will be for a capacity at the Interconnection Point to account for line losses and allows for receipt of 21 MW to Company at the Delivery Point. When CEP seeks to increase the Contracted Capacity, the Parties shall meet and confer on the availability of additional transmission capacity to allow for up to 25 MW to be

delivered to the Delivery Point and the above provisions shall apply to such increased amount.

More specifically with respect to the Transmission Service Agreement, if Transmission Service Provider requires a transmission study prior to confirming the transmission reservation under the Transmission Service Agreement, Company (at its own expense and without passing through to CEP) will pay for such study. If such study identifies unexpected costs, such as transmission and/or distribution system upgrades (or other affected system costs) required to facilitate the delivery of energy under this Contract, Company shall, in its sole discretion, have the option to (a) pay such costs for its own account (without passing through to CEP); or (b) terminate this Contract; provided, that CEP shall have the right to pay for such additional costs in order to not have the Contract terminate, with the acceptable means by which the CEP will pay for such costs to be determined by the Parties. If the Contract is so terminated, neither party will have any further obligations hereunder.

6. Payment and Billing:

- (a) The calendar month shall be the standard period for all payments under this Contract (other than any CEP Termination Payment or Company Termination Payment, as applicable). As soon as practicable after the end of each month, Company will render to the CEP a purchase statement for the payment obligations, if any, incurred hereunder during the preceding month. The Company agrees to pay the CEP for Product delivered to the Company at the Delivery Point at the rates set forth on Exhibit I, which payments shall be fixed for the applicable Contract years and not subject to escalation (as set forth in the purchase statement provided by Company to CEP pursuant to this Section 6).
- (b) All purchase statements under this Contract shall be due and payable in accordance with each Party's purchase statement instructions (e.g., wiring instructions) on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the purchase statement or, if such day is not a business day, then on the next business day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.
- (c) A Party may, in good faith, dispute the correctness of any purchase statement or any adjustment to a purchase statement, rendered under this Contract or adjust any purchase statement for any arithmetic or computational error within twelve (12) months of the date the purchase statement, or adjustment to a purchase statement, was rendered. In the event a purchase statement or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion

of the purchase statement shall be required to be made when due, with notice of the objection given to the other Party. Any purchase statement dispute or purchase statement adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) business days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to a purchase statement is waived unless the other Party is notified in accordance with this Section 6(c) within twelve (12) months after the purchase statement is rendered or any specific adjustment to the purchase statement is made.

- (d) The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of the Product during the monthly billing period under this Contract, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- (e) If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, interest, and payments or credits, that Party shall pay such sum in full when due.
- (f) With respect to CEP, the Parties agree to recognize that this Section 6 is subject to Florida's Prompt Payment Act (Florida Statutes Sections 218.70-218.80) and allows CEP, for all purposes of this Section 6, forty-five (45) days after receipt of any purchase statement, as applicable, to make payment, including interest.

7. Availability:

- (a) **Availability Guarantee and Availability Adjustment:** During the Delivery Period, CEP guarantees that the Facility shall be 97.0% available during the months of January, February, June, July, August, September, October and December and 92.0% available during the months of March, April, May and November ("**Availability Guarantee**"). During the Delivery Period, the ("**Availability Adjustment**") shall be calculated for each month and rounded to the nearest 0.1% as follows:

$$AA = (AG - AED/EED) * 2 * AEP$$

WHERE:

- AA = Availability Adjustment
- AG = Availability Guarantee applicable to such month
- AED = Actual Energy Delivered from the Facility to the Delivery Point
- EED = the maximum Expected Energy Delivered, calculated as Contracted Capacity multiplied by the total hours in the applicable month (less any Non-Dispatched Energy in such month and less any MWh not produced due to Planned Maintenance or Force Majeure)
- AEP = Associated Energy Payment, which is the unadjusted Contract Price

The Availability Adjustment multiplied by the applicable Associated Energy will be included as a reduction in the purchase statement from Company to CEP as set forth in Section 6. If the above calculation leads to a negative number, then the Availability Adjustment shall be zero. Illustrative examples of these calculations are set forth on Exhibit I.

- (b) At any time during the term of this Contract that CEP is unable to deliver energy from the Facility, and such event is not due to Planned Maintenance or Force Majeure, CEP, in its discretion, may deliver replacement energy to Company from a third-party source as a replacement for the Product contemplated under this Contract; provided, however in such instance, the replacement energy must be generated by a Renewable Generating Facility. In this event, CEP shall be responsible for: (i) arranging delivery from such third-party source to the Delivery Point; and (ii) all associated transmission charges, line losses, service charges, and other applicable fees and costs necessary for the delivery of all or any of the replacement energy from the third-party source. Delivered third-party energy must include the identical Environmental Attributes as energy provided from the Facility, and Company must receive ownership of the identical Environmental Attributes the same as if Company had received the Associated Energy from the Facility. For clarity, transmission costs incurred by CEP to deliver replacement energy to the Delivery Point do not accumulate as costs towards the Pasco Transmission Cost Cap.

- 8. **Performance Security Guarantees:** The Parties require certain security guarantees from each other to ensure performance under this Contract in order to protect their respective interests in the event the other Party fails to comply with the Terms in this Contract, which shall be in form and substance as described herein. In any Contract Year, if (i) with respect to Company, Company does not maintain a minimum Moody's senior unsecured investment credit rating of Baa3 and a

minimum Standard & Poor's senior unsecured investment credit rating of BBB-, or (ii) with respect to CEP, CEP does not maintain a minimum Moody's senior unsecured investment credit rating of Baa3 and a minimum Standard & Poor's senior unsecured investment credit rating of BBB-, that Party shall provide security, whether in the form of cash, letter of credit, security bond, or other form of collateral acceptable to the other Party, which shall equal the transmission charges under the Transmission Service Agreement for the following twelve (12) month period or remainder of the term (the "Performance Security").

9. **Reserved.**

10. **Production and Maintenance Schedule:** During the Term, the CEP agrees to the following:

- (a) The CEP shall provide the Company in writing prior to June 1st of each calendar year an estimate of the amount of electricity to be generated by the Facility and delivered to the Company for each month of the following calendar year, including a tentative schedule of the time, duration and magnitude of any Planned Maintenance of the Facility or reductions to the amount of Contracted Capacity that the CEP can make available at the Delivery Point. CEP shall use commercially reasonable efforts to schedule Planned Maintenance during the months of March, April, May, October and November. CEP shall notify the Company ninety (90) days prior to any Planned Maintenance of the Facility to confirm such schedule, and CEP agrees to use commercially reasonable efforts to comply with such schedule. CEP shall promptly notify the Company of any changes to the Planned Maintenance schedule, subject to the restrictions provided in subsection (b) below.
- (b) During the Delivery Period, the Facility may have up to two (2) major turbine overhaul outages, one for its currently operating turbine (such outage anticipated to be in 2028) and one for a proposed new turbine (such outage anticipated to be in 2032); it being understood between the Parties that such outages are on an anticipated seven (7) year schedule. CEP will use all commercially reasonable efforts to comply with this schedule; however, the Parties acknowledge such schedule is subject to change. Such outages will be included in the Planned Maintenance scheduling set forth in subsection (a) above. The calculation of EED for availability in Section 7 will be reduced by the actual amount of Planned Maintenance (i) up to sixty-five (65) days in 2025 or until the proposed new turbine comes online; (ii) up to sixty (60) days in all other years after the proposed new turbine comes online and without a major turbine overhaul outage; and (iii) up to seventy-five (75) days of Planned Maintenance during the years in which major turbine overhaul outages are conducted, which shall be applied in the month in which the Planned Maintenance occurs; provided, that if the Planned Maintenance exceeds the days provided above, such additional days shall not reduce EED as provided herein.

- (c) By July 1st of each calendar year, the Company shall notify the CEP in writing whether the requested scheduled maintenance period(s) for the Facility per Section 10(a) are acceptable; provided, if any Planned Maintenance is scheduled in months other than March, April, May, October and November ("**Non-Planned Maintenance Months**"), Company shall have sole discretion to object to such schedule. If the Company cannot accept any of the period(s) requested during Non-Planned Maintenance Months, the Company shall advise the CEP of the time period closest to the requested period(s) when the outage(s) can be scheduled; provided, the Parties agree to meet to seek to finalize a mutually acceptable Planned Maintenance schedule. Once the schedule has been established and approved, either Party requesting a subsequent change in such schedule, except when such event is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed.
 - (d) During the Term, the CEP will contract with or employ a qualified Facility operator. The CEP shall ensure that operating personnel are on duty at all times, twenty-four (24) clock hours per calendar day and seven (7) calendar days per week.
 - (e) The CEP shall promptly update the yearly generation schedule and maintenance schedule of the Facility as soon as any change to such schedules are determined to be necessary.
 - (f) The CEP shall comply with reasonable requirements of the Company regarding day- to-day or hour-by-hour communications between the Parties relative to the performance of this Contract.
11. **Availability Procedure:** Commencing on the calendar day prior to the beginning of the Delivery Period, and continuing each calendar day thereafter during the Delivery Period, by 7:00 A.M. EPT, Company shall assume an hourly schedule from the CEP equal to the Contracted Capacity per hour; provided the CEP shall electronically transmit to the Company an hourly schedule for the next calendar day of the Contracted Capacity and Associated Energy to be delivered during the days CEP forecasts the energy delivery per hour to be any value less than the Contracted Capacity. The hourly schedule shall be for the entire calendar day, including what hours CEP cannot provide such Contracted Capacity and Associated Energy during the next day ("**Available Schedule**"). The CEP's Available Schedule for Fridays will include Saturday, Sunday, and Monday schedules. The CEP's Available Schedule during holiday periods will be similarly adjusted to include the holiday period.
12. **Environmental Attributes:** The Parties agree that Company's purchase of Contracted Capacity and Associated Energy covered by this Contract includes all Environmental Attributes associated therewith, at no cost, since the Parties also agree that the current legislative and regulatory rulings within the State of Florida neither establish a definitive market for the monetary value of any Environmental Attributes nor allow Company to recover the cost of such value by rule. In the event

that there is a change in law or regulation with respect to the value and recovery of Environmental Attributes, such that (i) the Florida legislature through the enactment of a new law (signed into and effective as law through all required procedures) recognizes a monetary value of the Environmental Attributes that can be created by the Facility if it meets the qualifications in such legislation with respect to waste-to-energy power and (ii) the Florida Public Service Commission by written order approves cost recovery of such costs by Company (collectively, a "**Florida Change in EA Law**"), the Parties agree to meet within 90 days of notice from one party to the other of such Florida Change in EA Law and adjust the terms of this Contract prospectively (i.e. to account for Environmental Attributes related to such Florida Change in EA Law only in future Contract Years and not Environmental Attributes created prior to such date) to account for the monetary value of such Environmental Attributes to CEP. If the Parties agree on the application to such Florida Change in EA Law to this Contract, the adjustment to the fixed price set forth in Exhibit I (the "**Florida Change in EA Law Price Change**") would be line-itemed separately on the purchase statement and begin the third full billing month following the date of such Florida Change in EA Law, subject to the below.

Furthermore, in the event there is a change in law or regulation of the Federal government through the enactment of a new law (signed into and effective as law through all required procedures) that recognizes a monetary value of such Environmental Attributes that can be created by the Facility if it meets the qualifications in such legislation with respect to waste-to-energy power (a "**Federal Change in EA Law**") that exceeds any approved price increase from a Florida Change in EA Law, the Parties agree to meet within 90 days of notice from one Party to the other of such Federal Change in EA Law and adjust the terms of this Contract prospectively (i.e. to account for Environmental Attributes related to such Federal Change in EA Law only in future Contract Years and not Environmental Attributes created prior to such date) to account for that higher monetary value of such Environmental Attributes to CEP. If the Parties agree on the application to such Federal Change in EA Law to this Contract, the incremental adjustment to the fixed price set forth in Exhibit I (the "**Federal Change in EA Law Price Change**" and together with the Florida Change in EA Law Price Change, the "**Price Changes**") would be line-itemed separately on the purchase statement and begin the third full billing month following the date of such Federal Change in EA Law, subject to the below.

If no Florida Change in EA Law or Federal Change in EA Law has occurred or exists, but either (i) a valid, clearly defined monetary value of the Environmental Attributes associated with waste-to-energy power develops (and the Facility qualifies for such program) in the United States or (ii) a valid, bulk purchaser (for example, a large-scale retailer, corporation, or environmental markets broker) within the United States extends a formal offer to purchase the RECs at a stated price ("**Alternate REC Market**"), the Parties agree to meet within 90 days that notice is given by one Party to the other on such Alternate REC Market to account for the monetary value of such Environmental Attributes in that Alternate REC Market to CEP, including allowing Company the option to pay the market value

and retain ownership of the RECs and any monetary value associated with such RECs must be indicative of the type, vintage, and volume of the RECs traded. Any such Alternate REC Market sale will have a minimum volume equivalent to thirty (30) days of RECs based on the Contracted Capacity at 97% capacity factor. If the Parties agree on the application to such Alternate REC Market to this Contract and Company sells such RECs in the Alternate REC Market or retains the ownership of the RECs, the revenue paid to Company for such RECs shall be passed through to CEP as set forth in Exhibit I (the "**Alternate REC Market Revenue**"), which would be line-itemed separately (subject to adjustment and reduction as described below) on the purchase statement and begin the first full billing month following the date of such Alternate REC Market Revenue being paid to Company as contemplated by the agreement between Company and such Alternate REC Market participant.

For clarity, in all of the cases stated above, CEP only receives the monetary value associated with such Environmental Attributes, not ownership of the Environmental Attributes. For further clarity, the Company owns the Environmental Attributes associated with any capacity and energy that it purchases and receives from CEP pursuant to this Contract; and CEP retains ownership of the Environmental Attributes associated with any capacity and energy it produces that is not sold, transferred, or delivered to the Company.

In all cases where a Price Change or Alternate REC Market Revenue, as applicable, would apply to payment in any month, if the Transmission Service Agreement cost exceeds the Pasco Transmission Cost Cap in such month, the Price Change or Alternate REC Market Revenue, as applicable, will be reduced by Company's Transmission Service Agreement cost above the Pasco Transmission Cost Cap, if such reduction results in a positive value. If Company's Transmission Service Agreement costs above the Pasco Transmission Cost Cap exceeds the Price Change or Alternate REC Market Revenue, as applicable, CEP shall not receive a Price Change or Alternate REC Market Revenue, as applicable.

In all cases where a Price Change or Alternate REC Market Revenue, as applicable, would apply to payment in any month, the incremental REC sale revenue that CEP receives, after accounting for the Company's Transmission Service Agreement costs, as applicable, is the net of the REC sales revenue and any costs administered by the REC market administrator, system or trading platform for the REC trades ("**REC Trading Costs**"). The Price Change or Alternate REC Market Revenue, as applicable, will be reduced by Company's REC Trading Costs if such reduction results in a positive value. If Company's REC Trading Costs exceed the Price Change or Alternate REC Market Revenue, as applicable, CEP shall not receive a Price Change or Alternate REC Market Revenue, as applicable.

In the event there is an ability to monetize RECs in an Alternate REC Market, then:

- (a) For 2025 through 2032 vintage RECs, CEP shall have the right to seek to find a buyer for such RECs over a two (2) year period after the close of the

applicable vintage year applicable to such RECs. If no buyer is found within the applicable two-year sale period for a given REC vintage, CEP will no longer market such RECs from such vintage year.

- (b) For 2033 and 2034 vintage RECs, CEP shall have the right to seek to find a buyer (i) for 2033 vintage RECs as of January 1, 2034 and (ii) for 2034 vintage RECs at the close of each month that the RECs are generated through November 30, 2034 vintage RECs. If any 2033 or 2034 vintage RECs remain unsold as of the end of the Term, Company has the right to either purchase the RECs at the average price at which CEP sold RECs in the Alternate REC Market over the previous twenty-four (24) months or transfer the ownership of those remaining unsold 2033 and 2034 vintage RECs to the CEP.

For all vintage years (i.e., 2025 through 2034), if CEP finds a buyer for the Environmental Attributes, CEP shall present the volume and price for Company's review. Company will have the option to either (i) pay that price in full to CEP and retain the RECs or (ii) transfer the volume of RECs to CEP to allow CEP to monetize the RECs with the buyer.

Illustrative examples of these calculations are set forth on Exhibit I.

13. Default:

- (a) The CEP shall be in default ("CEP Event of Default") under this Contract if it:
- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); or
 - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; or
 - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
 - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation thereof; or

- (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or
 - (vi) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;
 - (vii) fails to perform in accordance with Section 8;
 - (viii) fails to achieve an availability of seventy percent (70%) for any six (6) months in a given Contract Year.
 - (ix) fails to comply with Section 14(f) in connection with an attempted assignment of this Contract.
 - (x) fails to pay Company any undisputed amount payable by CEP to Company pursuant to this Contract by the due date (including with respect to failure to meet the Availability Guarantee) and CEP fails to cure such failure to pay within forty-five (45) days after receipt of written demand from Company.
 - (xi) made any representation, warranty, or covenant hereunder that proves to be incorrect in any material respect when made, unless the CEP promptly commences and diligently pursues action to cause such representation, warranty, or covenant to become true in all material respects and does so within thirty (30) days after written notice thereof has been given to CEP by Company (unless such cure is not capable of being effected within such thirty (30) day period, in which case CEP will have an additional thirty (30) day period in which to perform such cure) and such cure removes any material adverse effect on Company of such representation, warranty, or covenant having been incorrect.
 - (xii) fails to perform or comply with any other material term or condition of this Contract, other than those listed above, which failure continues for thirty (30) days after written notice from Company.
- (b) The Company shall be in default ("**Company Event of Default**") under this Contract if it:

- (i) fails to pay CEP any undisputed amount payable by Company to CEP pursuant to this Contract by the due date and Company fails to cure such failure to pay within forty-five (45) days after receipt of written demand from CEP.
 - (ii) fails to perform or comply with any other material term or condition of this Contract, other than as provided in Section 13(b)(i) above which failure continues for thirty (30) days after written notice from CEP.
- (c) **Default Remedy:**
- (1) If Company has the right to terminate this Contract due to a CEP Event of Default, the following shall apply:
- (i) If CEP defaults pursuant to Section 13(a)(viii) of this Contract, after receipt of such notice of termination from Company, CEP shall have the right to an additional cure period of three (3) consecutive months (including the month in which the notice is given) following such notice to cause the Facility to meet at least seventy percent (70%) availability over such three (3) month period; provided, if CEP fails to achieve such result, CEP shall have an additional ninety (90) days to secure a replacement of the Product to be delivered pursuant to the terms of this Contract at the Delivery Point for the remainder of the Delivery Period. The terms and conditions of such replacement Product shall be the same as provided herein and subject to the approval of Company.
 - (ii) If CEP does not choose or fails to cure pursuant to subsection (i) above, Company will be entitled to immediately terminate this Contract and recover from CEP all amounts then owed by CEP to Company under this Contract and recover from CEP the Company's Replacement Cost less the value of this Contract to Company over the remainder of the Delivery Period (determined in a commercially reasonable manner) ("**Company Termination Payment**"). Any purchase statement that includes such Company Termination Payment shall include a written statement explaining in reasonable detail the calculation of such amount.
 - (iii) If CEP terminates this Contract due to a Company Event of Default, CEP will be entitled to recover from Company all amounts then owed by Company to CEP under this Contract and recover from Company the positive difference, if any, between the value of this Contract to CEP over the remainder of the Delivery Period (determined in a commercially reasonable manner) and the CEP Replacement Cost (the "**CEP**

Termination Payment⁷). Any purchase statement that includes such CEP Termination Payment shall include a written statement explaining in reasonable detail the calculation of such amount.

14. General Provisions:

- (a) **Permits:** The CEP hereby agrees to seek to obtain any and all governmental permits, certifications, or other authority the CEP is required to obtain as a prerequisite to engaging in the activities provided for in this Contract. The Company hereby agrees to seek to obtain any and all governmental permits, certifications or other authority the Company is required to obtain as a prerequisite to engaging in the activities described in this Contract.
- (b) **Indemnification:** The Company and the CEP shall each be responsible for its own facilities in ensuring adequate safeguards for other Company customers, the Company and CEP personnel and equipment, and for the protection of its own generating system. To the extent permitted by law, the Company and the CEP shall each indemnify and save the other harmless from any and all claims, demands, costs, or expense for loss, damage, or injury to persons or property of the other caused by, arising out of, or resulting from:
 - (i) any act or omission by a Party or that Party's contractors, agents, servants and employees in connection with the installation or operation of that Party's generation system or the operation thereof in connection with the other Party's system; and
 - (ii) any defect in, failure of, or fault related to a Party's generation system; and
 - (iii) the negligence of a Party or negligence of that Party's contractors, agents, servants and employees.
- (c) **Insurance:** On or before the Effective Date, the CEP shall deliver to the Company proof of all insurance CEP maintains on the Facility per its operating agreements, which insurance shall be adequate for the operation and maintenance of the Facility. If reasonably requested after the Effective Date, CEP shall deliver such proof of insurance as soon as reasonably practicable. CEP shall pay all premiums and other charges due on said policies and keep its policies in full force and effect during the Term.
- (d) **Force Majeure:** If either Party shall be unable, by reason of Force Majeure, to carry out its obligations under this Contract, either wholly or in part, the Party so failing shall give written notice and full particulars of such cause or causes to the other Party as soon as possible after the occurrence of any such cause; and such obligations shall be suspended during the continuance of such hindrance, which, however, shall be remedied with all possible dispatch. The term ("**Force Majeure**") shall be taken to mean all acts of God,

strikes, lockouts or other industrial disturbances at the manufacturing site of the major equipment components or the construction site, wars, blockades, insurrections, riots, arrests and restraints of rules and people, pandemics, explosions, fires, floods, lightning, wind, perils of the sea, accidents to equipment or machinery or similar occurrences, and shall specifically include a TSP Disconnect Event and any interruption or curtailment of firm transmission service by Transmission Service Provider to the Delivery Point; provided, however that no occurrence may be claimed to be a Force Majeure occurrence if it is caused by the negligence or lack of due diligence on the part of the Party attempting to make such claim and specifically does not include interruption in fuel supply (but does include interruption of fuel transportation); provided, however, Force Majeure shall include an interruption in fuel supply that is due to a transportation failure by a third party that would otherwise constitute a Force Majeure (and such failure could not be prevented or mitigated by the commercially reasonable actions of CEP or said third party). The CEP agrees to pay the costs necessary to reactivate the Facility and/or the interconnection with the Transmission Service Provider system if the same are rendered inoperable due to actions of the CEP, its agents, or Force Majeure events affecting the Facility or the interconnection with Transmission Service Provider. If CEP is the claiming party, Force Majeure does not include any action taken by CEP in its governmental capacity.

(e) **Representations, Warranties, and Covenants of the CEP:**

The CEP represents and warrants that as of the date this Contract is executed:

- (i) **Organization, Standing and Qualification:** The CEP is a political subdivision of the State of Florida duly organized and validly existing in good standing under the laws of and has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The CEP is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on the Company.
- (ii) **Due Authorization, No Approvals, No Defaults, etc.:** Each of the execution, delivery and performance by the CEP of this Contract has been duly authorized by all necessary action on the

part of the CEP, does not require any approval, except as has been heretofore obtained, of the Board of County Commissioners, of the CEP or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the CEP, except for such as have been duly obtained, and does not contravene or constitute a default under any law, or any agreement, judgment, injunction, order, decree or other instrument binding upon the CEP, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract.

- (iii) **Compliance with Laws:** The CEP has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The CEP is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the CEP or the Company. By entering into this Contract, the CEP represents and warrants that Facility is a Qualifying Facility and a Renewable Generating Facility and confirms such representation and warranty with the signature of the CEP's authorized representative on this Contract.

CEP warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court, (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

In addition, CEP warrants continuing throughout the term of this Contract as follows: (i) entry into and performance of this Contract by CEP are for a proper public purpose within the meaning of any applicable law, (ii) the term of this Contract does not extend beyond any applicable limitation imposed by any applicable law, and (iii) CEP's obligations to make payments hereunder are unsubordinated obligations and such payments are otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all CEP's obligations hereunder.

- (iv) **Governmental Approvals:** Except as expressly contemplated herein, neither the execution and delivery by the CEP of this Contract, nor the consummation by the CEP of any of the transactions contemplated thereby, requires the consent or

approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of governmental authority, except in respect of permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the CEP has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

- (v) **No Proceedings:** There are no actions, suits, proceedings or investigations pending or, to the knowledge of the CEP, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on the CEP's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. The CEP has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment. CEP is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.
- (f) **Assignment:** The Company and the CEP shall have the right to assign its benefits under this Contract, but the CEP shall not have the right to assign its obligations and duties without the Company's prior written consent and such consent shall not be unreasonably withheld.
- (g) **Disclaimer:** In executing this Contract, the Company does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the CEP or any assignee of this Contract.
- (h) **Notification:** For purposes of making any and all non-emergency oral and written notices, payments or the like required under the provisions of this Contract, the Parties designate the following to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions changing such designate.

For the CEP:

Pasco County Solid Waste Director
14230 Hayes Road
Spring Hill, FL 34610

with a copy to:

Pasco County Attorney

8731 Citizens Drive, Suite 340
New Port Richey, FL 34654

For the Company:

Tampa Electric Company
Attention: Director, Origination & Trading
P.O. Box 111
Tampa, Florida 33601

with a copy to:

Tampa Electric Company
Attention: Associate General Counsel
P.O. Box 111
Tampa, Florida 33601

- (i) **Governing Law and Jurisdiction:** This Contract shall be governed by and construed and enforced in accordance with the laws, rules, and regulations of the State of Florida and the Company's Tariff as may be modified, changed, or amended from time to time. Any action brought under this Contract or with respect to any claim arising from the subject matter thereof shall be brought and heard in a state court of competent jurisdiction at the West Pasco Judicial Center in New Port Richey, Pasco County, Florida. If the claim(s) that form the basis for any such action must be adjudicated in federal court, then venue for that action shall be in the United States District Court for the Middle District of Florida, Tampa Division.
- (j) **Waiver of Jury Trial:** Each party waives, to the fullest extent permitted by applicable law, any and all rights it may have to a trial by jury in respect of any suit, action or proceeding relating to this Contract or any credit support document. Each party (i) certifies that no representative, agent or attorney of the other party or any credit support provider has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Contract and provide for any credit support document, as applicable, by, among other things, the mutual waivers and certifications in this Section.
- (k) **Severability:** If any part of this Contract, for any reason, be declared invalid, or unenforceable by a court or public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of this Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion and provided, further, that if any such event occurs, the Parties shall use their best efforts

to reform this Contract in order to give effect to the original intention of the Parties.

- (l) **Complete Contract and Amendments:** All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties to this Contract.
- (m) **Survival of Contract:** This Contract, as it may be amended from time to time, shall be binding and inure to the benefit of the Parties' respective successors-in-interest and legal representatives.
- (n) **Record Retention:** The CEP agrees to retain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder, and to cause all CEP entities to retain for the same period all such records.
- (o) **No Waiver:** No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.
- (p) **Set-off:** The Company may at any time, but shall be under no obligation to, set off any and all sums due from the CEP against sums due to the CEP hereunder.
- (q) **Assistance With the Company FIN 46R Compliance:** Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("**FIN 46R**"), as well as future amendments and interpretations of those rules, may require the Company to evaluate whether the CEP must be consolidated, as a variable interest entity (as defined in FIN 46R), in the financial statements of the Company. The CEP agrees to fully cooperate with the Company and make available to the Company all financial data and other information, as deemed necessary by the Company, to perform that evaluation on a timely basis at inception of this Contract and periodically as required by FIN 46R. If the result of the evaluation under FIN 46R indicates that the CEP must be consolidated in the financial statements of the Company, the CEP agrees to provide financial statements, together with other required information, as determined by the Company, for inclusion in disclosures contained in the footnotes to the financial statements and in the Company's required filings with the Securities and Exchange Commission ("**SEC**"). The CEP shall provide this information to the Company in a timeframe consistent with the Company's earnings release and SEC

filing schedules, to be determined at the Company's discretion. The CEP also agrees to fully cooperate with the Company and the Company's independent auditors in completing an assessment of the CEP's internal controls as required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of the Company.

- (r) To the extent allowed by law, neither Party shall disclose the price terms of this Contract to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable and legal, use reasonable efforts to prevent or limit the disclosure. Any Party who receives a request for production of documents related to the price terms of this Contract shall provide notice to the other Party at least ten (10) days prior to producing the information unless production of the documents is required in less than ten (10) days, in which case the Party from whom production is sought shall provide notice to the other Party as soon as is reasonably possible following the Party's receipt of a request for production of documents. The purpose of this notice requirement is to afford each Party an adequate opportunity to undertake steps necessary to protect the confidentiality of the information as provided under Florida Statutes. The Party opposing disclosure shall bear all costs in any proceedings seeking to protect the confidentiality of the information. Such opposing Party shall also indemnify the other Party for any fines or third-party costs awarded by the court to be paid by the other Party as a result of the opposing Party's opposition to disclosure.

IN WITNESS WHEREOF, a duly authorized officer of CEP and the Company have executed this Contract the day and year first above written.

Attest:

Pasco County, Florida

By: _____

Nikki Alvarez-Sowles, Esq.
Pasco County Clerk and Comptroller

Kathryn Starkey, Chairman
Pasco County Commission

TAMPA ELECTRIC COMPANY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

[signature page to Contract]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Exhibit I - 2

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Exhibit I - 3

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Exhibit I - 4

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Exhibit I – 5

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Exhibit I - 6

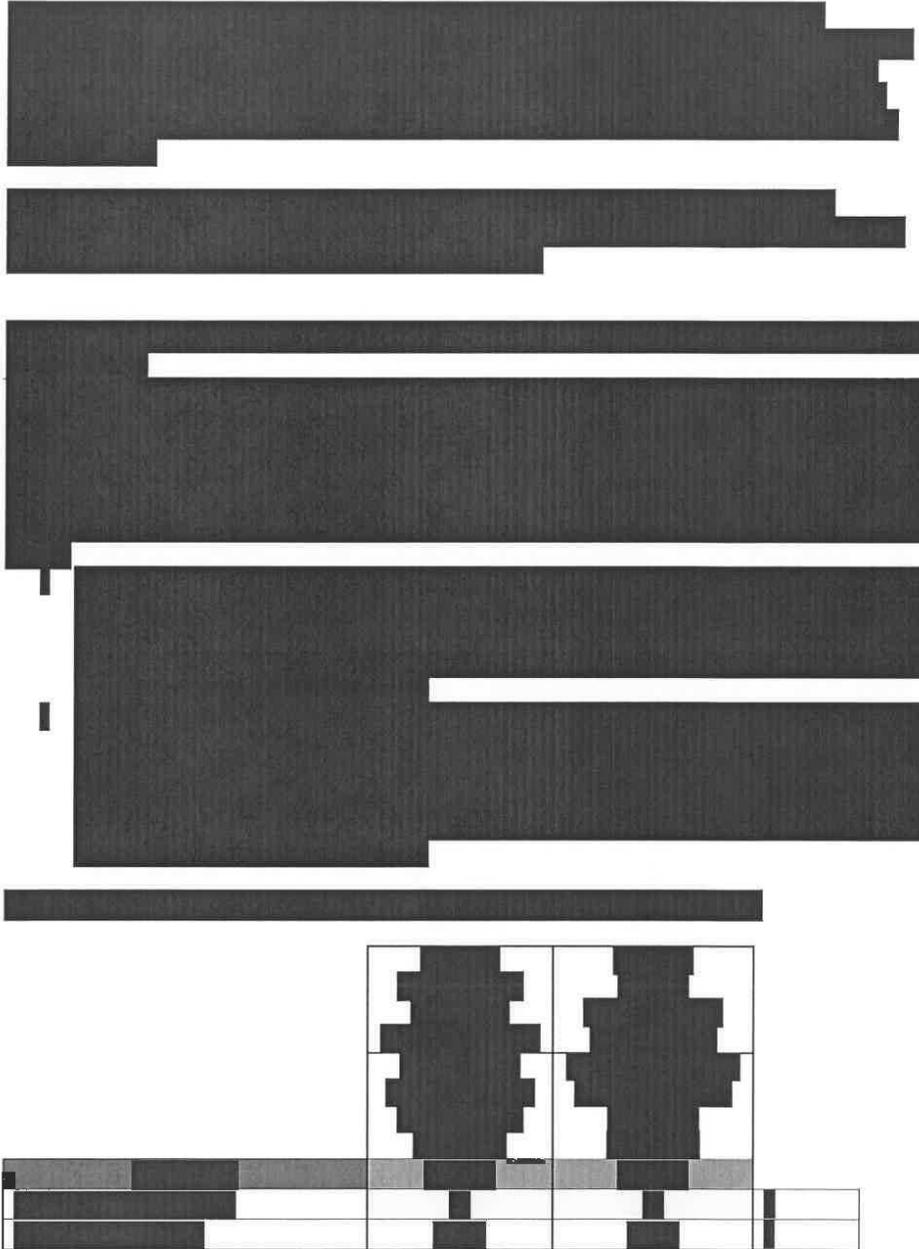
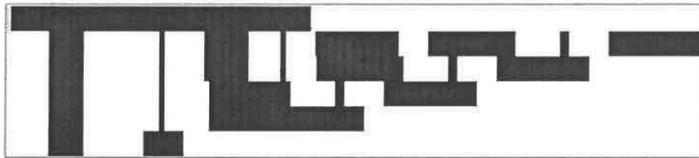
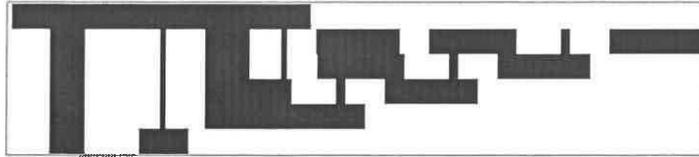


Exhibit I - 7

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Exhibit I - 12

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EXHIBIT III
Pasco Transmission Cost Cap



Exhibit III – 1

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: March 23, 2023

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

FROM: Marissa Ramos, Public Utilities Supervisor, Division of Engineering *MR LK*

RE: DN 20210189-WU - Application for transfer of water facilities of Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility and Certificate No. 647-W to Windward Camachee Marina Owner LLC d/b/a Camachee Cove Yacht Harbor Utility, in St. Johns County.

Please find attached a REVISED Recommendation for the above mentioned docket. The revisions were necessary due to staff receiving updated information from the Company. In addition to revising the filing and agenda conference dates, revisions were made to pages two and three only.

State of Florida



Public Service Commission

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

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

DATE: ~~February 23, 2023~~ March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Lewis, Ramos) *TB*
Division of Accounting and Finance (Cicchetti, Fletcher, Sowards, Veaghna) *ALM*
Division of Economics (Betha, Hudson)
Office of the General Counsel (Sandy) *JSC JGH*

RE: Docket No. 20210189-WU – Application for transfer of water facilities of Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility and Certificate No. 647-W to Windward Camachee Marina Owner LLC d/b/a Camachee Cove Yacht Harbor Utility, in St. Johns County.

AGENDA: ~~03/07/23~~ 04/04/23 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility (Camachee or Seller) is a Class C water utility providing water service to approximately 68 residential and 28 general service customers in St. Johns County. The Utility is located in the St. Johns River Water Management District (SJRWMD) and is in the Water Resource Caution Area. Wastewater service is provided by the City of St. Augustine. In its 2021 Annual Report, Camachee reported operating revenues of \$166,837 and a net operating loss of \$20,837.

Camachee began operations in 1977. Camachee was granted an original certificate to operate a water utility in St. Johns County in 1988, subsequent to the county turning jurisdiction over to the Florida Public Service Commission (Commission). The county rescinded our jurisdiction in 1989. The Commission granted a grandfather water certificate to Camachee in 2009, after the county transferred jurisdiction back to the Commission.¹ The Utility's last rate increase was in 2017 through a limited revenue proceeding.²

On December 1, 2021, Windward Camachee Marina Owner LLC d/b/a Camachee Cove Yacht Harbor Utility (Windward, Utility, or Buyer) filed an application with the Commission for the transfer of Certificate No. 647-W from Camachee to Windward in St. Johns County, pursuant to Rule 25-30.037(2), Florida Administrative Code (F.A.C.). After the buyer's application was filed with the Commission, the Office of Public Counsel communicated its concerns with the Utility's transfer application in writing and during an informal meeting with the Utility, and Commission staff.³ As a result, on November 22, 2022, the Utility provided Commission staff with a survey, consisting of a map and description of a recorded water utility easement utilized by Buyer, and the mortgage release executed by the Buyer's lender as requested by Commission staff, in order to process the Utility's application.⁴ By letter dated March 8, 2023, the Buyer clarified that there was a scrivener's error within the previous filing of the recorded easement and that the land upon which the water treatment plant is located is indeed owned by the Buyer pursuant to the recorded special warranty deed filed as part of its original application.

This recommendation addresses the transfer of the water system and Certificate No. 647-W and the appropriate net book value of the water system for transfer purposes, and the revision of certain miscellaneous service charges. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

¹ Order No. PSC-09-0752-PAA-WU, issued November 16, 2009, in Docket No. 20090185-WU, *In re: Application for grandfather certificate to operate water utility in St. Johns County by Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility.*

² Order No. PSC-17-0108-PAA-WU, issued March 27, 2017, in Docket No. 20160145-WU, *In re: Application for limited revenue proceeding in St. Johns County, by Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility.*

³ Document Nos. 02085-2022, filed March 24, 2022 and 02313-2022, filed April 7, 2022.

⁴ Document No. 11758-2022, filed November 29, 2022.

Discussion of Issues

Issue 1: Should the transfer of Certificate No. 647-W in St. Johns County from Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility to Windward Camachee Marina Owner LLC d/b/a Camachee Cove Yacht Harbor Utility, be approved?

Recommendation: Yes. The transfer of the water system and Certificate No. 647-W is in the public interest and should be approved effective the date that the sale becomes final. The resultant Order should serve as the Buyer's certificate and should be retained by the Buyer. The Utility's existing rates and late payment charge, as shown on Schedule No. 3, should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The Utility is current with respect to regulatory assessment fees (RAFs) and annual reports and should be responsible for filing annual reports and paying RAFs for all future years. (Lewis, Veaghn, Bethea)

Staff Analysis: On December 1, 2021, Windward filed an application for the transfer of Certificate No. 647-W from Camachee to Windward in St. Johns County. The application complies with Section 367.071, F.S., and Commission rules concerning applications for transfer of certificates. The sale to the Buyer occurred on August 31, 2021, contingent upon the Commission's approval, pursuant to Section 367.071(1), F.S.

Noticing, Territory, and Land Ownership

Windward provided notice of the application pursuant to Section 367.071, F.S., and Rule 25-30.030, F.A.C. No objections to the transfer were filed, and the time for doing so has expired. The application contains a description of the service territory, which is appended to this recommendation as Attachment A. ~~Windward provided a copy of a recorded utility easement on November 22, 2022, as evidence that~~ As part of its application, Windward provided a copy of a recorded special warranty deed demonstrating that it owns the land upon which the treatment facilities are located, and therefore, meets the requirements of ~~has rights to long term use of the land upon which the treatment facilities are located pursuant to~~ Rule 25-30.037(2)(s), F.A.C.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(g),(h) and (i), F.A.C., the application contains a statement regarding financing and a copy of the Purchase Agreement, which included the purchase price, terms of payment, and a list of the assets purchased. There are no customer deposits, guaranteed revenue contracts, developer's agreements, customer advances, leases, or debt of Camachee that must be disposed of with regard to the transfer. According to the Purchase Agreement, the total purchase price for the entire marina, including the water utility assets, is \$32,885,000. On November 14, 2022, the Buyer stated the specific purchase price of the water utility assets should be set equal to the net book value (NBV) as established by the Commission.⁵ As discussed in Issue 2, staff has calculated a NBV of \$228,846 for the water system. Therefore, staff recommends a purchase price of \$228,846 for the water utility assets should be recognized.

⁵ Document No. 11556-2022.

Facility Description and Compliance

The Utility's water treatment plant is rated at 70,977 gallons per day (gpd). Raw water is drawn from two ground wells and treated by reverse osmosis, aeration, and chlorination. Water is stored in a 24,000-gallon ground tank and a 264-gallon bladder tank before distribution. The Florida Department of Environmental Protection (DEP) conducted an inspection of the water treatment facilities on June 14, 2021, and it was found to be in compliance with the DEP's rules and regulations, including primary and secondary standards.

Technical and Financial Ability

Pursuant to Rule 25-30.037(2)(l) and (m), F.A.C., the application contains statements describing the technical and financial ability of the Buyer to provide service to the proposed service area. As referenced in the transfer application, the Buyer will fulfill the commitments, obligations, and representation of the Seller with regards to utility matters. The Buyer indicated that it has no experience in the water or wastewater industry; however, Windward retained the existing plant operators and office personnel to ensure the continued operation of the water facilities.

Furthermore, the Buyer has stated that it will use its sister company, Windward Marina St. Augustine, to provide funding to the Utility. Staff reviewed the financial statement of Windward Marina St. Augustine, and believes the Buyer has documented adequate resources to support the Utility's operations. Based on the above, staff recommends that the Buyer has demonstrated the technical and financial ability to provide service to the existing service territory.

Rates and Charges

The Utility's rates were last approved in a 2017 limited proceeding rate case for water.⁶ Subsequently, the rates have been amended by four price index rate adjustments with the last one being in 2020. The Utility has no initial customer deposits, no service availability charges, and the Utility is built out. The late payment charge was approved in 2009.⁷ Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a Utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission.

In addition, the Utility has miscellaneous service charges, which were also approved in 2009. However, the miscellaneous service charges do not conform to Rule 25-30.460, F.A.C., and are discussed in Issue 3. Therefore, staff recommends that the Utility's existing rates and late payment charge as shown on Schedule No. 3, should remain in effect, until a change is authorized by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C.

⁶ Order No. PSC-17-0108-PAA-WS, issued March 27, 2017, in Docket No. 20160145-WU, *In re: Application for limited revenue proceeding in St. Johns County, by Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility.*

⁷ Order No. PSC-09-0752-PAA-WU, issued November 16, 2009, in Docket No. 20090185-WU, *In re: Application for grandfather certificate to operate water utility in St. Johns County by Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility.*

Date: ~~February 23, 2023~~ March 23, 2023

Regulatory Assessment Fees and Annual Report

In its application, the Buyer indicated that it will be responsible for paying the Utility's RAFs and filing its annual reports for the year of transfer and subsequent years. The Seller fulfilled the Utility's RAF and annual report requirements for 2020 and the Buyer fulfilled these requirements for 2021. The Buyer is responsible for the Utility's 2022 RAFs and annual report, which are due by March 31, 2023. Based on the above, staff has verified that the Utility is current with respect to its RAFs and annual reports.

Conclusion

Based on the foregoing, the transfer of the water system and Certificate No. 647-W is in the public interest and should be approved effective the date that the sale becomes final. The resultant Order should serve as the Buyer's certificate and should be retained by the Buyer. The Utility's existing rates and late payment charge, as shown on Schedule No. 3, should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The Utility is current with respect to regulatory assessment fees (RAFs) and annual reports and should be responsible for filing annual reports and paying RAFs for all future years.

Date: ~~February 23, 2023~~ March 23, 2023

Issue 2: What is the appropriate net book value for the Windward Camachee Marina Owner LLC d/b/a Camachee Cove Yacht Harbor Utility water system for transfer purposes, and should an acquisition adjustment be approved?

Recommendation: The appropriate net book value (NBV) of the water system for transfer purposes is \$228,846, as of August 31, 2021. No acquisition adjustment is warranted as the purchase price is equal to NBV. Within 90 days of the date of the final order, the Utility should be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in the Utility's 2022 Annual Report when filed. (Veaghn)

Staff Analysis: Rate base was last established for the Utility as of December 31, 2008.⁸ The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of August 31, 2021. Staff's recommended NBV is shown on Schedule No. 1.

Utility Plant in Service (UPIS)

The Utility reflected a UPIS balance of \$573,206 as of August 31, 2021. Audit staff determined the Seller did not make the Commission ordered adjustments established in Order No. PSC-10-1026-PAA-WU to reflect the correct plant balance as of December 31, 2008. Using staff's work papers from the last rate case to establish the beginning balances, and supporting invoices for plant additions, audit staff calculated a UPIS balance of \$554,392 as of August 31, 2021. Therefore, staff recommends a UPIS balance of \$554,392 as of August 31, 2021.

Land

The Utility reflected a land balance of \$10,000 as of August 31, 2021. Camachee's land balance was established in Order No. PSC-2010-1026-PAA-WU. There have been no additions to land since December 31, 2008. Therefore, staff recommends a land balance of \$10,000 as of August 31, 2021.

Accumulated Depreciation

The Utility reflected an accumulated depreciation balance of \$339,350 as of August 31, 2021. Camachee recorded accumulated depreciation as a grand total; it was not broken down by plant account. Staff auditors recalculated depreciation accruals for all water accounts since the last rate case through August 31, 2021, using the audited UPIS balances and the depreciation rates established by Rule 25-30.140, F.A.C. As a result, staff recommends that the accumulated depreciation balance be decreased by \$3,805. Accordingly, staff recommends a total accumulated depreciation balance of \$335,545 as of August 31, 2021.

⁸ Order No. PSC-10-0126-PAA-WU, issued March 3, 2010, in Docket No. 20090230-WU, *In re: Application for staff-assisted rate case in St. Johns County by Camachee Island Company, Inc. d/b/a/ Camachee Cove Yacht Harbor Utility.*

Date: ~~February 23, 2023~~ March 23, 2023

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

The Utility reflected CIAC and accumulated amortization of CIAC balances of \$0 as of August 31, 2021. The Utility has no authorized service availability charges, and has not received any donated property. Therefore, staff recommends a CIAC balance of \$0, and accumulated amortization of CIAC balances of \$0, as of August 31, 2021.

Net Book Value

The Utility reflected a NBV of \$243,855 as of August 31, 2021. Based on the adjustments described above, staff recommends a NBV of \$228,846. Staff's recommended NBV and the National Association of Regulatory Utility Commissioners, Uniform System of Accounts balances for UPIS and accumulated depreciation are shown on Schedule Nos. 1 and 2, as of August 31, 2021.

Acquisition Adjustment

Under Rule 25-30.0371, F.A.C., an acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of the acquisition. As discussed in Issue 1, the Buyer stated the purchase price of the water utility and its assets should be set equal to the NBV established by the Commission. Because the NBV for this Utility at the time of transfer is equal to the purchase price, an acquisition adjustment is not warranted.

Conclusion

Based on the above, staff recommends a NBV of \$228,846, as of August 31, 2021. No acquisition adjustment should be included in rate base. Within 90 days of the date of the consummating order, the Buyer should be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in the Utility's 2022 Annual Report when filed.

Date: ~~February 23, 2023~~ March 23, 2023

Issue 3: Should Windward Camachee Marina Owner LLC d/b/a Camachee Cove Yacht Harbor Utility's miscellaneous service charges be revised to conform to amended Rule 25-30.460, F.A.C.?

Recommendation: Yes. The miscellaneous service charges should be revised to conform to the recent amendment to Rule 25-30.460, F.A.C. The tariff should be revised to reflect the removal of the initial connection and normal reconnection charges. Windward should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. Windward should be required to charge the approved miscellaneous services charges until authorized to change them by the Commission in a subsequent proceeding. (Betha)

Staff Analysis: Effective June 4, 2021, Rule 25-30.460, F.A.C., was amended to remove initial connection and normal reconnection charges.⁹ The definitions for initial connection charges and normal reconnection charges were subsumed in the definition of the premises visit charge. The Utility's miscellaneous service charges consist of initial connection and normal reconnection charges. The normal reconnection charge is more than the premises visit charge. Since the premises visit entails a broader range of tasks, staff believes the premises visit charge should reflect the amount of the normal reconnection charge of \$30. Therefore, staff recommends that the initial connection and normal reconnection charges be removed, the premises visit charge should be revised to \$30, and the definition for the premises visit charge be updated to comply with amended Rule 25-30.460, F.A.C. The Utility's existing and staff's recommended miscellaneous service charges are shown below in Table 3-1.

Table 3-1
Utility Existing and Staff Recommended Miscellaneous Service Charges

	<u>Utility Existing</u>	<u>Staff Recommended</u>
Initial Connection Charge	\$25.00	-
Normal Reconnection Charge	\$30.00	-
Violation Reconnection Charge	\$30.00	\$30.00
Premises Visit Charge	\$15.00	\$30.00

Conclusion

Based on the above, staff recommends the miscellaneous service charges should be revised to conform to the recent amendment to Rule 25-30.460, F.A.C. The tariff should be revised to reflect the removal of the initial connection and normal reconnection charges. Windward should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheet

⁹ Order No. PSC-2021-0201-FOF-WS, issued June 4, 2021, in Docket No. 20200240-WS, *In re: Proposed amendment of Rule 25-30.460, F.A.C., Application for Miscellaneous Service Charges.*

Date: ~~February 23, 2023~~ March 23, 2023

pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. Windward should be required to charge the approved miscellaneous services charges until authorized to change them by the Commission in a subsequent proceeding.

Date: ~~February 23, 2023~~ March 23, 2023

Issue 4: Should this docket be closed?

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

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

Windward Camachee Marina Owner LLC
d/b/a Camachee Cove Yacht Harbor Utility

Water Service Area
St. Johns County

Township 7 South, Range 30 East

Sections 5 and 8

Territory description of portions of Sections 5 and 8, Township 7 South, Range 30 East, St. Johns County, Florida, Being more fully described as follows:

For point of reference, commence at an old red cedar post found by previous surveys and described in deeds as marking the Southwest corner of said Government Lot 3, Section 5, Township 7 South, Range 30 East, also being the Point of Beginning; thence North 21°03'00" West, 686.19'; thence North 60°12'45" East, 6.66'; thence North 31°46'56" West, 669.00'; thence North 24°31'19" West, 1434.26'; thence North 03°52'55" West, 1638.13'; thence North 08°52'55" West, 557.00'; thence North 30°51'32" East, 60.46'; thence North 16°38'00" West, 70.00'; thence North 03°38'00" West, 462.00'; thence South 27°38'00" East, 1452.00'; thence South 02°38'00" East, 1320.00'; thence South 22°08'00" East, 462.00'; thence South 73°38'00" East, 130.00'; thence South 30°56'51" East, 515.05'; thence South 18°00'36" West, 478.81'; thence South 38°34'49" East, 613.35'; thence North 57°27'21" East, 173.28'; thence North 21°12'24" West, 76.64'; thence South 75°55'59" East, 126.55'; thence South 30°55'59" East, 50.00'; thence South 29°04'01" West, 70.00'; thence South 16°39'00" East, 133.08'; thence North 85°12'32" East, 75.94' to the intersection with a curve being concave to the South, having a radius of 50.00' and Delta of 33°33'37"; thence along the chord of said curve, North 86°13'12" East, 28.87'; thence North 07°10'06" West, 228.78'; thence North 63°02'16" East, 157' more or less to the mean highwater line; thence Southeasterly, meandering along the mean highwater line, 1200' more or less; thence South 25°01'07" West, 110.00'; thence South 22°57'00" East, 24.24'; thence South 67°03'00" West, 115.75'; thence South 00°31'00" East, 718.29' to the intersection with a curve being concave to the Southeast having a radius of 2392.00' and Delta of 02°42'18", said curve also being the Northerly right-of-way line of State Road A-1-A; thence Southwesterly along said curve an arc length distance of 112.93' to the Point of Curvature of said curve; thence South 48°31'00" West, along said Northerly right-of-way line, 381.63'; thence North 21°03'00" West, 1022.21' to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

**Windward Camachee Marina Owner LLC
d/b/a Camachee Cove Yacht Harbor Utility**

**pursuant to
Certificate Number 647-W**

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

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-09-0752-PAA-WU *	11/16/09 *	20090185-WS 20210189-WU	Grandfather Certificate Transfer

***Order Number and date to be provided at time of issuance.**

**Windward Camachee Marina Owner LLC
d/b/a Camachee Cove Yacht Harbor Utility**

Schedule of Net Book Value as of August 31, 2021

<u>Description</u>	<u>Balance Per Utility</u>	<u>Adjustments</u>	<u>Staff</u>
Utility Plant in Service	\$573,205	(\$18,814)	\$554,392
Land & Land Rights	10,000	0	10,000
Accumulated Depreciation	(339,350)	3,805	(335,545)
CIAC	0	0	0
AA of CIAC	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>\$243,855</u>	<u>(\$15,009)</u>	<u>\$228,846</u>

**Windward Camachee Marina Owner LLC
d/b/a Camachee Cove Yacht Harbor Utility**

Schedule of Staff Recommended Account Balances as of August 31, 2021

Account No.	Description	UPIS	Accumulated Depreciation
304	Structures & Improvements	\$204,210	(\$103,170)
307	Wells and Springs	41,910	(41,910)
309	Supply Mains	14,771	(3,343)
310	Power Generation Equipment	24,827	(4,250)
311	Pumping Equip	19,850	(11,103)
320	Water Treatment Equipment	68,385	(66,559)
330	Distribution Reservoirs	80,515	(34,158)
331	Transmission and Distribution Mains	85,131	(61,990)
334	Meter and Meter Install.	10,241	(6,391)
340	Office Furniture & Equip.	377	(377)
347	Misc. Equip	<u>4,175</u>	<u>(2,296)</u>
	Total	<u>\$554,392</u>	<u>(\$335,547)</u>

**Windward Camachee Marina Owner LLC
d/b/a Camachee Cove Yacht Harbor Utility**

Monthly Water Rates

Residential and General Service

Base Facility Charge by Meter Size

5/8" x 3/4"	\$21.35
3/4"	\$32.03
1"	\$53.38
1-1/2"	\$106.75
2"	\$170.80
3"	\$341.60
4"	\$533.75
6"	\$1,067.50

Charge Per 1,000 gallons – Residential

0 – 3,000 gallons	\$3.48
3,001 – 6,000 gallons	\$10.37
6,001 – 12,000 gallons	\$15.57
Over 12,000 gallons	\$20.74

Charge Per 1,000 gallons – General Service

\$13.89

Flat Rate – General Service

\$109.72

Private Fire Protection

Base Facility Charge by Meter Size

5/8" x 3/4"	\$1.78
3/4"	\$2.67
1"	\$4.45
1 1/2"	\$8.90
2"	\$14.23
3"	\$28.47
4"	\$44.48
6"	\$88.96

Miscellaneous Service Charges

Late Payment Charge

\$5.00

Item 7

State of Florida



Public Service Commission

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

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

DATE: March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Ward, Hampson) *JGH*
Office of the General Counsel (Thompson) *JSC*

RE: Docket No. 20230032-GU – Petition for approval of transportation service agreement with Florida Public Utilities Company by Peninsula Pipeline Company, Inc.

AGENDA: 04/04/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 2, 2023, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition seeking approval of a firm transportation service agreement (Transportation Agreement) between Peninsula and Florida Public Utilities Company (FPUC) (collectively, the parties). The purpose of the Transportation Agreement is to ensure continuance of gas service to FPUC after the impending acquisition by Peninsula of certain pipeline facilities in the immediate area of the City of Lake Wales in Polk County. Peninsula operates as an intrastate natural gas transmission company as defined by Section 368.103(4), Florida Statutes (F.S).¹ FPUC is a local distribution

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

company (LDC) subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S.

By Order No. PSC-07-1012-TRF-GP,² Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers. Peninsula provides gas transportation service only; it does not engage in the sale of natural gas. Pursuant to Order No. PSC-07-1012-TRF-GP, Peninsula is allowed to enter into certain gas transmission agreements without prior Commission approval.³ However, Peninsula is requesting Commission approval of this proposed Transportation Agreement as it does not fit any of the criteria enumerated in the tariff for which Commission approval would not be required.⁴ The parties are subsidiaries of Chesapeake Utility Corporation, a Delaware corporation, and agreements between affiliated companies must be approved by the Commission pursuant to Section 368.105, F.S., and Order No. PSC-07-1012-TRF-GP.

In 1999, the Commission approved a pipeline lease agreement (1999 agreement) between FPUC (Florida Division of Chesapeake Utilities Corporation at the time) and Citrusuco North America, Inc. (Citrusuco) for pipeline facilities in the Lake Wales area.⁵ Citrusuco owns and operates a citrus processing plant in Lake Wales. In 1999, Citrusuco constructed a natural gas pipeline that provides access for the Citrusuco processing plant to the Florida Gas Transmission (FGT) interstate natural gas pipeline. The Citrusuco-owned pipeline runs from the FGT Lake Wales gate station to Citrusuco's meter at the entrance of its citrus processing plant.

Pursuant to the 1999 agreement, Citrusuco owns the pipeline and leases it to FPUC for operation and maintenance. FPUC receives certain quantities of natural gas at the Lake Wales Gate Station for Citrusuco's use and transports the natural gas on the pipeline to Citrusuco's facility. In addition, FPUC accesses the pipeline to serve customers in the Lake Wales area. The 1999 agreement expired in 2019 and has been renewed on a monthly basis.

Peninsula has been in discussions with Citrusuco to acquire the pipeline from Citrusuco through a Pipeline Purchase and Sale Agreement. This purchase agreement between Peninsula and Citrusuco, which contains a negotiated purchase price, does not require Commission approval. Upon acquisition, Peninsula would maintain and operate the pipeline and provide transportation service to FPUC pursuant to the proposed Transportation Agreement. Citrusuco would continue to receive natural gas service from the pipeline. Peninsula stated that the closing of the purchase agreement is contingent on Commission-approval of the proposed Transportation Agreement.

The proposed Transportation Agreement and project map are shown as Attachments A and B to this recommendation. Pursuant to the Transportation Agreement, FPUC will continue to utilize the Citrusuco pipeline system to serve its customers in and around Lake Wales, Florida. On

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

³ Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Original Sheet No. 11, Section 3.

⁴ Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Original Sheet No. 12, Section 4.

⁵ Order No. PSC-99-2106-PAA-GU, issued October 25, 1999, in Docket No. 991168-GU, *In re: Petition by the Florida Division of Chesapeake Utilities Corporation for approval of CTS Gas Transportation Service Agreement with Citrusuco North America, Inc.*

Docket No. 20230032-GU

Date: March 23, 2023

March 8, 2023, staff had an informal conference call with Peninsula and FPUC regarding the petition. During the evaluation of the petition, staff issued a data request to the parties for which responses were received on March 13, 2023.⁶ Peninsula requested expedited approval of the proposed Transportation Agreement and that the Commission consider it at the April 4, 2023 Agenda Conference. The Commission has jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105, F.S.

⁶ Document No. 02200-2023.

Discussion of Issues

Issue 1: Should the Commission approve the proposed Transportation Agreement dated March 1, 2023 between FPUC and Peninsula?

Recommendation: Yes, the Commission should approve the proposed Transportation Agreement dated March 1, 2023 between FPUC and Peninsula. The proposed Transportation Agreement is reasonable and meets the requirements of Section 368.105, F.S. Furthermore, the proposed Transportation Agreement benefits FPUC's current and potential future customers by ensuring that there is an uninterrupted supply of natural gas to Lake Wales, Florida.

Staff Analysis:

Proposed Transportation Service Agreement

The parties have entered into the proposed firm Transportation Agreement to enable FPUC to continue to serve natural gas customers in and around the area of Lake Wales once Peninsula has acquired the Citrusuco pipeline system.

The proposed Transportation Agreement specifies an initial term of 20 years and thereafter shall be extended on a year-to-year basis, unless either party gives no less than 90 days of written notification of termination. If either party desires to negotiate modifications to the rates or terms of this Transportation Agreement, they may do so no less than 120 days prior to expiration of the current active term. The proposed Citrusuco pipeline acquisition is discussed below and the project map depicting the pipeline is Attachment B to this recommendation.

Citrusuco Pipeline Acquisition

The Citrusuco pipeline consists of approximately 11 miles of 8-inch steel pipeline and associated facilities. The pipeline runs from the FGT Lake Wales gate station to Citrusuco's meter at the entrance of its citrus processing plant.

In the petition, Peninsula stated that it has negotiated an acquisition agreement with Citrusuco for the Citrusuco pipeline system and that the closing of the pipeline acquisition agreement is contingent on Commission approval of the proposed Transportation Agreement. If the proposed Transportation Agreement is approved, Peninsula stated that it will take over ownership of the pipeline, as well as operation and maintenance of the facilities from FPUC. Peninsula will provide service to FPUC pursuant to the proposed Transportation Agreement. In response to staff's data request, the parties explained that the Citrusuco pipeline falls within the portfolio of projects typically operated by Peninsula, instead of FPUC.

The parties stated that after the closing of the acquisition, FPUC will serve Citrusuco for six years pursuant to the Commission-approved Contract Transportation Service Rider which allows FPUC to provide reduced rates to commercial or industrial customers with alternate fuel capabilities. Afterwards, FPUC asserts that Citrusuco would be served under a standard rate schedule.

Anticipated System Benefits

The parties assert that the proposed Transportation Agreement will enable FPUC to continue to obtain gas supply from FGT upon Peninsula's acquisition of the Citrusuco pipeline. In response to staff's first data request, FPUC stated that it believes there is too much risk involved in leasing key facilities from an unrelated entity such as Citrusuco.⁷ FPUC believes that Peninsula's ownership of the pipeline will protect the general body of ratepayers from potential unforeseen price increases or service challenges tied to a leasing arrangement. FPUC stated that the Citrusuco pipeline is a key strategic asset for FPUC's gas supply and operations in the City of Lake Wales. Additionally, FPUC stated that it anticipates growth in the immediate area of the pipeline, and that Peninsula owning the pipeline would position FPUC to meet the anticipated growth.

Furthermore, the parties asserted that purchasing the existing pipeline through a negotiated purchase price would be less costly than installing a new, separate pipeline to serve FPUC's customers. FPUC estimated that it would cost approximately \$15.46 million to build another, similar feed to its Lake Wales system. By instead acquiring the existing pipeline from Citrusuco, Peninsula would be avoiding additional costs, and therefore reducing the total cost to be recovered from FPUC's general body of ratepayers.

Negotiated Monthly Reservation Payments to Peninsula

The parties assert that the negotiated monthly reservation charge contained in the proposed Transportation Agreement is consistent with market rates, because the rates are substantially the same as rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. The parties assert that Peninsula will recover the purchase price of the pipeline from Citrusuco through the monthly reservation charge (confidential) to FPUC as shown in Exhibit A to the proposed Transportation Agreement.

FPUC is proposing to recover its payments to Peninsula through Purchased Gas Adjustment (PGA) and swing service rider mechanisms. The PGA allows FPUC to periodically adjust the price of natural gas supplied to its customers to reflect the actual cost of gas purchased and delivered on behalf of the customers. The swing service rider allows FPUC to recover intrastate capacity costs from their transportation customers and is a cents per therm charge that is included in the monthly customer gas bill of transportation customers.

Conclusion

Based on the petition and the parties' responses to staff's data request, staff believes that the proposed Transportation Agreement is reasonable and meets requirements of Section 368.105, F.S. Furthermore, the proposed Transportation Agreement benefits FPUC's current and potential future customers by ensuring that there is a continuous supply of natural gas to the City of Lake Wales. Staff therefore recommends approval of the proposed Transportation Agreement between Peninsula and FPUC dated March 1, 2023.

⁷ Document No. 02200-2023.

Issue 2: Should this docket be closed?

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

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

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT entered into this 28 day of February, 2023, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company" or "PPC"), and Florida Public Utilities Company, a corporation of the State of Florida (herein called "Shipper" or "FPUC"). PPC and FPUC are sometimes referred to herein individually as "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, Company is engaged in discussions to acquire a pipeline system from Citrusuco North America, Inc. ("Citrusuco") in Lake Wales, Florida which extends from start point at the Florida Gas Transmission ("FGT") Lake Wales gate station to Citrusuco's meter at the front entrance of its citrus processing plant ("Citrusuco Pipeline System"); and

WHEREAS, FPUC currently utilizes said Citrusuco Pipeline System to serve FPUC distribution customers in the area under a separate agreement with Citrusuco that is currently month-to-month; and

WHEREAS, Company intends to execute a Pipeline Purchase and Sale Agreement with Citrusuco North America, Inc., a Delaware corporation ("Purchase and Sale Agreement") to acquire and operate the Citrusuco Pipeline System; and

WHEREAS, Shipper desires to obtain Firm Transportation Service ("FTS") from Company in the event Company acquires the Citrusuco Pipeline System; and

WHEREAS, Company desires to provide Firm Transportation Service to Shipper in accordance with the terms hereof;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, Company and Shipper do covenant and agree as follows:

ARTICLE I
DEFINITION

Unless otherwise defined in this Agreement, all definitions for terms used herein have the same meaning as provided in Company's Tariff.

ARTICLE II
QUANTITY & UNAUTHORIZED USE

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

2.1 The Maximum Daily Transportation Quantity ("MDTQ") and the Maximum Hourly Transportation Percentage ("MHTP") shall be set forth on Exhibit A attached hereto. The applicable MDTQ shall be the largest daily quantity of Gas, expressed in Dekatherms, which Company is obligated to transport on a firm basis and make available for delivery for the account of Shipper under this Agreement on any one Gas Day.

2.2 If, on any Day, Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, such unauthorized use of transportation quantities (per Dekatherm) shall be billed at a rate of 2.0 times the rate to be charged for each Dekatherm of the MDTQ as set forth on Exhibit A of this Agreement.

ARTICLE III
FIRM TRANSPORTATION SERVICE RESERVATION CHARGE

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be assessed in accordance with the terms and conditions set forth herein as of the Effective Date (as defined in Section 4.1 below).

3.2 The parties agree to execute and file with the Commission a petition for approval of this Agreement within thirty (30) days of execution by both parties.

3.3 If, at any time after the Execution Date (as defined in Section 9.3 hereof) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional tax charges (including, without limitation, income taxes and property taxes) with regard to the service provided by Company under this Agreement, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's Tariff.

3.4 If, at any time after the Execution Date and throughout the term of this Agreement, the Company is required by any Governmental Authority asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional capital expenditures with regard to the service provided by Company under this Agreement, other than any capital expenditures required to provide transportation services to any other customer on the pipeline system serving Shipper's facility, but including, without limitation, mandated relocations of Company's pipeline facilities serving Shipper's facility and costs to comply with any changes in pipeline safety regulations, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

immediately upon the effective date of such action. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's Tariff.

ARTICLE IV
TERM AND TERMINATION

4.1 Subject to all other provisions, conditions, and limitations hereof, the term of this Agreement for purposes of performance by the Parties shall commence on the date of execution of the Purchase and Sale Agreement ("Effective Date") and shall continue in full force and effect for an initial period of twenty (20) years from the Effective Date ("Initial Term"). Thereafter, the Agreement shall be extended on a year-to-year basis ("Renewed Term"), unless either Party gives written notice of termination to the other Party, not less than (90) days prior to the expiration of the Initial Term or Renewed Term (jointly, "Current Term"). This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the Parties' respective rights under applicable law or in the event Company does not close on the Citrus Pipeline System or by September 1, 2023, in which case this Agreement shall terminate automatically.

4.2 No less than 120 days before expiration of the Current Term, either Party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewed Term. Neither Party is obligated to, but may, agree to any mutually acceptable modification to the Agreement for the subsequent Renewed Term. In the event the Parties reach agreement for a modification to the Agreement for the subsequent Renewed Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing and signed by both Parties prior to the expiration of the Current Term.

4.3 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, pursuant to the Rules and Regulations of Company's Tariff, shall survive the other parts of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement, otherwise fails to meet Company's standards for creditworthiness set forth in Section C of the Rules and Regulations of the Company's Tariff, otherwise violates the Rules and Regulations of Company's Tariff, or defaults on this Agreement, Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's Tariff.

ARTICLE V
COMPANY'S TARIFF PROVISIONS

5.1 Company's Tariff approved by the Commission, including any amendments

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

thereto approved by the Commission during the term of this Agreement (“Company’s Tariff”), is hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between Company’s Tariff and the specific provisions of this Agreement, the latter shall prevail, in the absence of a Commission Order to the contrary.

ARTICLE VI
REGULATORY AUTHORIZATIONS AND APPROVALS

6.1 As of the Effective Date of this Agreement, Company’s obligation to provide service is conditioned upon receipt and acceptance of any necessary regulatory authorization to provide Firm Transportation Service for Shipper in accordance with the Rules and Regulations of Company’s Tariff.

ARTICLE VII
DELIVERY POINT(S) AND POINT(S) OF DELIVERY

7.1 The Delivery Point(s) for all Gas delivered for the account of Shipper into Company’s pipeline system under this Agreement, shall be as set forth on Exhibit A attached hereto.

7.2 The Point(s) of Delivery shall be as set forth on Exhibit A attached hereto.

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter’s system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper’s Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper’s behalf. The Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper’s account to Company’s Point(s) of Delivery identified on Exhibit A.

ARTICLE VIII
SCHEDULING AND BALANCING

8.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by the Transporter to the Delivery Point(s) and delivered by Company to the Point(s) of Delivery. Shipper shall promptly provide notice to Company of all such nominations. Imbalances between quantities (i) scheduled at the Delivery Point(s) and the Point(s) of Delivery, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company’s Tariff, as such provisions, and any amendments to such provisions, are approved by the Commission.

8.2 The parties hereto recognize the desirability of maintaining a uniform rate

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month. Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline system at a daily rate of flow not to exceed the applicable MDTQ for the Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's Tariff.

ARTICLE IX
MISCELLANEOUS PROVISIONS

9.1 **Notices and Other Communications.** Any notice, request, demand, statement, or payment provided for in this Agreement, unless otherwise specified, shall be sent to the parties hereto at the following addresses:

Company: Peninsula Pipeline Company, Inc.
500 Energy Lane, Suite 200
Dover, Delaware 19901
Attention: Contracts

Shipper: Florida Public Utilities Company
208 Wildlight Avenue
Yulee, Florida 32097
Attention: Contracts

9.2 **Headings.** All article headings, section headings and subheadings in this Agreement are inserted only for the convenience of the Parties in identification of the provisions hereof and shall not affect any construction or interpretation of this Agreement.

9.3 **Entire Agreement.** This Agreement, including the Exhibit attached hereto, sets forth the full and complete understanding of the Parties as of the date of its execution by both parties (the "Execution Date"), and it supersedes any and all prior negotiations, agreements and understandings with respect to the subject matter hereof. No Party shall be bound by any other obligations, conditions, or representations with respect to the subject matter of this Agreement.

9.4 **Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 9.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the Parties expressly acknowledge that the limitations on amendments to this

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments that are or may be necessary to comply with the requirements of, or are otherwise approved by, the Commission or its successor agency or authority.

9.5 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either Party, the Parties shall negotiate in good faith an equitable adjustment in the provisions of this Agreement.

9.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver, unless otherwise specifically identified as such in writing. No waiver shall be binding unless executed in writing by the Party making the waiver.

9.7 Attorneys' Fees and Costs. In the event of any litigation between the Parties arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover all costs incurred and reasonable attorneys' fees, including attorneys' fees in all investigations, trials, bankruptcies, and appeals.

9.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties. Neither Company nor Shipper is in any way or for any purpose, by virtue of this Agreement, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

9.9 Assignment and Transfer. No assignment of this Agreement by either Party may be made without the prior written approval of the other Party (which approval shall not be unreasonably withheld) and unless the assigning or transferring Party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Agreement of the assigning or transferring Party. Upon such assignment or transfer, as well as assumption of the duties and obligations, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and the assumption of duties and obligations.

9.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each Party shall proceed with diligence to file any

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any applicable law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either Party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either Party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the Commission, over this Agreement or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 9.10, Company shall continue to transport and Shipper shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either Party from performing hereunder, then neither Party shall have any obligation to the other during the period that performance under the Agreement is precluded. If, however, any Governmental Authority's modification to this Agreement or any other order issued, action taken, interpretation rendered, or rule implemented, will have a material adverse effect on the rights and obligations of the Parties, including, but not limited to, the relative economic position of, and risks to, the Parties as reflected in this Agreement, then, subject to the provisions of Sections 3.3 and 3.4 of this Agreement, the Parties shall use reasonable efforts to agree upon replacement terms that are consistent with the relevant order or directive, and that maintain the relative economic position of, and risks to, the Parties as reflected in this Agreement as of the Execution Date. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

(i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.3 or 3.4 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either Party's rights and benefits under this Agreement, each Party shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of firm transportation service under this Agreement shall continue; provided that neither Party shall be required to take any action pursuant to this Section which is reasonably likely to have a materially adverse effect on such Party's rights and benefits under this Agreement.

(ii) If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120)

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE
days prior written notice to Shipper.

9.11 Applicable Law and Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either Party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

9.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any Party who has signed it.

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

COMPANY
Peninsula Pipeline Company, Inc.

By: Marissa Stipa
Marissa Stipa

SHIPPER
Florida Public Utilities Company

By: Bill Hancock
Bill Hancock

Title: Director

Title: Assistant Vice President

Date: March 1, 2023

Date: March 1, 2023

(To be attested by the corporate secretary if not signed by an officer of the company)

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

EXHIBIT A

FIRM TRANSPORTATION SERVICE AGREEMENT BETWEEN

PENINSULA PIPELINE COMPANY, INC.

AND

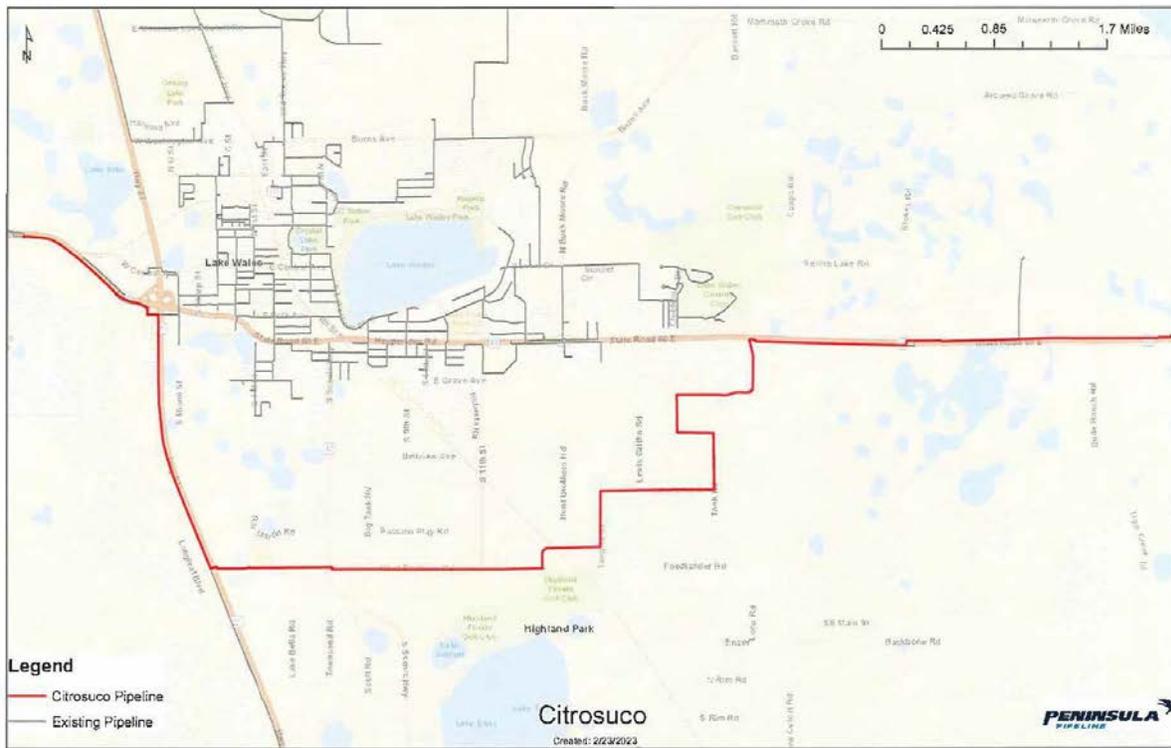
FLORIDA PUBLIC UTILITIES COMPANY

<u>Description of Transporter Delivery Point(s)</u>	<u>Description of Point(s) of Delivery</u>
<u>Florida Gas Transmission- Lake Wales gate station</u>	<u>Various delivery points terminating at or near Highway 60 and Dude Ranch Road</u>

Total MDTQ (Dekatherms): [REDACTED] Dt/Day

MHTP: [REDACTED] %

Monthly Reservation Charge: [REDACTED] ([REDACTED]/Dekatherm/day). This charge is subject to adjustment pursuant to the terms of this Agreement.



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: March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Ward, Hampson) *JGH*
Office of the General Counsel (Dose) *JSC*

RE: Docket No. 20230012-EU – Joint petition for approval of first amendment to a territorial agreement, by Tampa Electric Company and City of Bartow, Electric Department.

AGENDA: 04/04/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 9, 2023, Tampa Electric Company (TECO) and the City of Bartow, Electric Department (Bartow), collectively the joint petitioners, filed a petition seeking Commission approval of an amendment to their current territorial agreement in Polk County (the proposed amendment). TECO serves retail customers in Hillsborough County and in portions of Polk, Pinellas, and Pasco Counties. Bartow serves retail customers within and adjacent to the City of Bartow, Polk County, Florida.

In 1985, the Commission approved the original territorial agreement between TECO and Bartow.¹ The instant petition seeks to amend the territorial boundaries to accommodate

¹ Order No. 15437, issued December 11, 1985, in Docket No. 19850148-EU, *In re: Joint petition for approval of territorial agreement between City of Bartow and Tampa Electric Company.*

Docket No. 20230012-EU

Date: March 23, 2023

development within the Ranches at Lake McLeod subdivision (Ranches at Lake McLeod or subdivision), as shown in Attachment B to the recommendation. All other terms and conditions of the current agreement, shown in Attachment A, would remain in place.

During the review of this joint petition, staff issued one data request to the joint petitioners on March 1, 2023, for which responses were received on March 10, 2023. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S).

Discussion of Issues

Issue 1: Should the Commission approve the joint petition by TECO and Bartow to amend their territorial agreement related to the boundaries in Polk County?

Recommendation: Yes, the Commission should approve the joint petition by TECO and Bartow to amend their territorial agreement related to the boundaries in Polk County. The approval of this amendment would enable TECO and Bartow to redefine their existing service boundary to better serve future customers in Polk County and will not be a detriment to the public interest. Furthermore, it appears that the proposed territorial amendment eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. (Ward)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the amendment to the territorial agreement will cause a detriment to the public interest, the amendment should be approved.²

Proposed Amendment to the 1985 Territorial Agreement

A new residential subdivision, known as Ranches at Lake McLeod, is currently under development in Polk County. A section of the existing service boundary runs through the planned subdivision. The joint petitioners explained that the current service boundary runs through proposed home lots, across planned streets, and without regard to future utility easement areas in the subdivision.

The joint petitioners stated that they had discussions for the provision of electric service to the new subdivision, which led to a mutual agreement between TECO and Bartow regarding the most efficient, reliable provision of electricity to the new subdivision. Under this agreement, the revised boundary lines would follow planned streets and along lot lines within the subdivision. The joint petitioners assert that this proposal would allow both utilities to have sufficient access to the areas to be served. Furthermore, the joint petitioners assert that the proposed territorial amendment would not cause a decrease in the reliability of electric service to the existing and future ratepayers of either utility and would prevent the uneconomic duplication of facilities. Pursuant to Rule 25-6.0440(1)(f), F.A.C., the joint petitioners provided a map depicting the proposed boundary line of the subdivision. The map is shown in Attachment B to this recommendation.

Pursuant to Rule 25-6.0440(1)(b), F.A.C., the joint petitioners provided the original 1985 territorial agreement, shown in Attachment A to the recommendation. In paragraph 26 of the petition, the joint petitioners explained that the terms and conditions of the original 1985 territorial agreement remain in effect; the only proposed change is to modify the boundary line within the new subdivision. Furthermore, the joint petitioners explained that the 1985 territorial agreement continues to remain in effect until terminated or modified by the joint petitioners.

² *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

Date: March 23, 2023

Under the proposed division of the development, TECO would serve 541 lots, including 140 in the North Ranch segment of the subdivision, and Bartow would serve 469 lots. In paragraph 19 of the petition, the joint petitioners explained that the North Ranch segment of the subdivision is wholly within TECO's service area and was not part of the negotiations leading to this boundary line amendment. Aside from the unaffected North Ranch segment, this subdivision has not yet been developed. Therefore, there are no current customers or facilities to be transferred as a result of the proposed territorial amendment. Similarly, there are no affected customers to be notified as required by Rule 25-6.0440(1)(d), F.A.C.

Conclusion

After review of the petition, the proposed territorial amendment, and the joint petitioners' responses to staff's data request, staff recommends that the Commission should approve the proposed amendment to the territorial agreement between TECO and Bartow in Polk County. Staff believes that the proposed territorial amendment will enable TECO and Bartow to redefine their existing service boundary to better serve future customers in Polk County and will not cause a detriment to the public interest. Furthermore, it appears that the proposed territorial amendment eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service.

Issue 2: Should this docket be closed?

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

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.

APPENDIX "A"

**TERRITORIAL BOUNDARY AGREEMENT
BETWEEN
TAMPA ELECTRIC COMPANY
AND
THE CITY OF BARTOW, FL.**

Section 0.1 THIS AGREEMENT, made and entered into this 16th day of APRIL, 1985, by and between TAMPA ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as "TECO" and the CITY of BARTOW - Electric Department, a city incorporated and existing under the laws of the State of Florida, herein referred to as "BARTOW";

WITNESSETH:

Section 0.2 WHEREAS, TECO is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.3 WHEREAS, BARTOW is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.4 WHEREAS, the areas in which each party is supplying retail electric service are in close proximity and abut in Polk County, TECO and BARTOW desire to cooperate in the public interest in supplying service in a manner so as to avoid uneconomic waste, potential safety hazards and other adverse effects that would result from duplication of electric facilities in the same area.

Section 0.5 WHEREAS, the execution of this AGREEMENT by the parties hereto is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

Section 0.6 NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto do hereby agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1 **TERM:** After this AGREEMENT becomes effective pursuant to Section 3.4 hereof, it shall continue in effect until termination or until modification shall be mutually agreed upon, or until termination or modification shall be mandated by governmental entities or courts with appropriate jurisdiction. Fifteen (15) years from the date above first written, but not before, either of the parties hereto shall have the right to initiate unilateral action before any governmental entity or court with appropriate jurisdiction, seeking to obtain modification or cancellation of this AGREEMENT.

ARTICLE II

ESSENCE OF AGREEMENT

Section 2.1 The boundary line delineating the retail electric service areas of the parties is marked on the map attached hereto and labeled Exhibit A, and said boundary line is further described in (a) and (b) as follows:

WINTER HAVEN

(a) Commence at the southeast corner of the northeast 1/4 of Section 30, Township 29, Range 26 east, run thence north along the east boundary of said Section 30 to the northeast corner of said Section 30, run thence west along the north boundary of said Section 30 to the southeast corner of the southwest 1/4 of Section 19, Township 29 south, Range 26 east, run thence north to the southeast corner of the southwest 1/4 of Section 18, Township 29 south, Range 26 east, run thence west along the south boundary of said Section 18 to the southwest corner of said Section 18, run thence north along the

west boundary of said Section 18 to the intersection of the said west boundary and the south right-of-way of State Road 559, run thence westerly in a straight line along the projected right-of-way of State Road 559 to the easterly right-of-way of line of State Road 555, run thence southwesterly along said right-of-way line to a point 900 feet west of the east boundary of Section 22, Township 29 south, Range 25, run thence south parallel to and 900 feet west of the east boundary of said Section 22 to the south boundary of said Section 22, run thence west along the south boundaries of Sections 22 and 21, Township 29 south, Range 25 east, to the southwest corner of said Section 21, run thence north along the west boundary of said Section 21 into Lake Hancock to a point of intersection with the westerly projected north boundary of Section 22, Township 29 south, Range 25 east, run thence west along the projected north boundary of said Section 21 to a point in Lake Hancock located 1,900 feet east of the southeast corner of Section 13, Township 29 south, Range 24 east, for a point of termination. All lying in Polk County, Florida.

PLANT CITY

(b) Commence at the southeast corner of the southwest 1/4 of Section 3, Township 31 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of Section 15, Township 30 south, Range 24 east, run thence east along the north boundaries of Sections 15 and 14, Township 20 south, Range 24 east, to the northeast corner of the northwest 1/4 of said Section 14, run thence

north to the center of Section 2, Township 30 south, Range 24 east, run thence west to the center of Section 3, Township 30 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 3, run thence east along the north boundary of said Section 3 to the southeast corner of the southwest 1/4 of Section 34, Township 29, south Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 34 for a point of termination. All lying in Polk County, Florida.

Section 2.2 The area generally north of said boundary line (a) and generally west of said boundary line (b) is reserved to TECO (as relates to BARTOW), and the area generally south of said boundary line (a) and generally east of said boundary line (b) is reserved to BARTOW (as relates to TECO), with respect to service to retail customers.

Section 2.3 The parties agree that neither party, except as provided in Section 2.4, will provide or offer to provide electric service at retail to future customers within the territory reserved to the other party.

Section 2.4 The parties recognize that, in specific instances, good engineering practices (or economic constraints on either of the parties) may from time to time indicate that small service areas and/or future retail electric customers should not be served by the party in whose territory they are located. In such instances, upon written request by the party in whose territory they are located to the other party, the other party may agree in writing to provide service to such small service areas and/or future retail electric customers, and it is understood that no additional regulatory approval will be required for such agreement(s). By the execution of this AGREEMENT, the parties acknowledge that TECO may continue to provide retail electric service to existing and future phosphate customers and/or customers served at transmission voltage (69 KV and above) in the area of Polk County reserved for BARTOW.

Section 2.5 This AGREEMENT shall apply only to the provision of retail electric service by the parties hereto and shall have absolutely no application or effect with respect to either party's sale of "bulk power supply for resale," which is defined to mean all arrangements for supply of electric power in bulk to any person for resale, including but not limited to, the taking of utility responsibility for supply of firm power in bulk to fill the full requirements of any person engaged or to be engaged in the distribution of electric power at retail, and/or interconnection with any persons for the sale or exchange of emergency power, economy energy, deficiency power, and such other forms of bulk power sales or exchanges for resale made for the purpose or with the effect of achieving an overall reduction in the cost of providing electric power supply.

Section 2.6 Nothing in this AGREEMENT is intended to affect the power plants, transmission lines, or substations of one party which are now located, or may in the future be located in the service area of the other party, and any problems between the respective parties involving these types of facilities shall be settled at the General Office level of the parties.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1 The failure of either party to enforce any provision of this AGREEMENT in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2 Neither party shall assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of the other party, but otherwise, this AGREEMENT shall insure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3 This AGREEMENT shall be governed by the laws of the State of Florida.

Section 3.4 The parties recognize and agree that both companies are subject to the jurisdiction of the Florida Public Service Commission (hereinafter called the "Commission") and further agree that this AGREEMENT shall have no force and effect unless and until it is submitted to and approved by the Commission in accordance with applicable procedures. The parties further agree that the AGREEMENT, if and when approved by the Commission, shall be subject to the continuing jurisdiction of the Commission and may be terminated or modified only by Order of the Commission. No modification or termination of this AGREEMENT by the parties hereto shall be effective unless and until approved by the Commission. Each party agrees to promptly notify the other in writing of any petition, application or request for modification of the AGREEMENT made to the Commission and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

Section 3.5 This AGREEMENT shall be effective on the date it is approved by the Florida Public Service Commission in accordance with Section 3.4 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST:

TAMPA ELECTRIC COMPANY

BY: [Signature]
Secretary

BY: [Signature], 4-16-85
Vice President Date

ATTEST:

CITY OF BARTOW, FL

BY: [Signature]
City Clerk

BY: [Signature] APR 4 1985
Vice Mayor Date

Approved as to correctness
and form:

Approved as to substance:

By: [Signature]
City Attorney

By: [Signature]
City Manager

