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: May 25, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (D. Smith, Mouring) DS BG ALM
Division of Economics (Draper, Guffey) EJD
Division of Engineering (P. Buys, Graves, King) TB
Office of the General Counsel (Cowdery)

RE: Docket No. 20170235-EI – Petition by Florida Power & Light Company for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction.

Docket No. 20170236-EU – Joint petition to terminate territorial agreement, by Florida Power & Light Company and the City of Vero Beach.

AGENDA: 06/05/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Florida Power & Light Company (FPL) is an investor-owned electric utility operating under the jurisdiction of this Commission pursuant to the provisions of Chapter 366, Florida Statutes, (F.S.). FPL provides generation, transmission, and distribution service to approximately 4.9 million retail customer accounts or an estimated 10 million people.

The City of Vero Beach's (COVB or City) electric utility is a municipally-owned electric utility providing service to customers through approximately 35,000 customer accounts using the COVB transmission and distribution facilities. The boundaries of the COVB service area are set pursuant to four Commission territorial orders that approved territorial agreements between COVB and FPL (Territorial Orders).[1] Approximately 60 percent of COVB's utility customers reside outside the City's municipal borders including customers residing in portions of unincorporated Indian River County (County), and portions of the Town of Indian River Shores (Town or Indian River Shores). In addition to the Commission-approved Territorial Orders, COVB operated in Indian River County and Indian River Shores under franchise agreements, which have since expired.[2] For many years, there has been controversy because customers living outside the City have wanted to be served by FPL because it has lower rates than COVB. The customers who live outside the City have argued that they have no ability to vote for the members of the COVB City Council and thus have no voice concerning the operation or management of the City's electric utility and no redress to any governmental authority.

Legislation was passed in 2008 that required a municipal electric utility meeting certain criteria to conduct a referendum of its customers on the question of whether a separate electric utility authority should be created to operate the business of the city's electric utility. Section 366.04(7), F.S. COVB did not conduct such a referendum because it alleged that it did not meet the criteria that would require it to conduct such a referendum. Further attempts to pass Legislation to address the concerns of COVB electric customers living outside the City failed in 2010 (HB 725 Mayfield/SB 2632 Negron; HB 1397 Mayfield); 2011 (HB 899 Mayfield); 2013 (HB 733 Mayfield/SB 1620 Garcia); 2014 (HB 813 Mayfield/SB 1248 Latvala; HB 861 Mayfield/SB 1294 Altman); 2015 (HB 773 Mayfield; HB 337 Mayfield/SB 442 Altman); and 2016 (HB 5790 Mayfield/SB 840 Simpson).

In 2009, a complaint was filed with the Commission by two COVB customers asking for a hearing to address Commission enforcement of Section 366.04, F.S., and review the territorial agreement between COVB and FPL.[3] The complaint alleged concerns about COVB's proposed changes to rates significantly higher than FPL's rates. The complaint also alleged that the City Council had entered into a series of ill-fated electric utility agreements and decisions that led to a small, outmoded and costly utility, that the City siphoned utility revenue for city budget purposes rather than utility operations or reserves, that over 60 percent of customers living outside the City

[1] *See* Order No. 5520, issued August 29, 1972, in Docket No. 72045-EU, *In re: Application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach*; Order No. 6010, issued January 18, 1974, in Docket No. 73605-EU, *In re: Application of Florida Power & Light Company for approval of a modification of territorial agreement and contract for interchange service with the City of Vero Beach, Florida*; Order No. 10382, issued November 3, 1981 and Order No. 11580, issued February 2, 1983, in Docket No. 800596-EU, *In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas*; and Order No. 18834, issued February 9, 1988, in Docket No. 871090-EU, *In re: Petition of Florida Power & Light Company and the City of Vero Beach for approval of amendment of a territorial agreement.*

[2] Indian River County's franchise agreement with COVB expired in February 2017, and Indian River Shore's franchise agreement with COVB expired in November 2016. Staff has no information that new franchise agreements are in place.

[3] Docket No. 090524-EM, *In re: Complaint of Stephen J. Faherty and Glenn Fraser Heran against the City of Vero Beach for unfair electric utility rates and charges*.

had no voice with city elected officials, and that the City offered no conservation incentives such as rebates for installing more energy efficient appliances. The complaint was voluntarily dismissed in 2014 because of then on-going negotiations between FPL and COVB concerning the possible purchase and sale of COVB's electric system. However, these negotiations did not result in a sale.

By letter dated July 18, 2014, Indian River Shores advised COVB that it was taking several actions to achieve rate relief for its citizens who received electric service from the City. The Town filed a complaint against COVB in Indian River County Circuit Court Case No. 31-2014-CA-000748, one count of which asked the circuit court to declare that COVB was subject to and must comply with the requirement of Section 366.04(7)(a), F.S., to have a referendum. The lawsuit also challenged COVB's electric rates as unreasonable, oppressive, and inequitable, and raised "a Constitutional challenge regarding the denial of rights" to COVB electric customers living in Indian River Shores.

Following unsuccessful mediation between Indian River Shores and COVB pursuant to the Florida Governmental Conflict Resolution Act, Chapter 164, F.S.,[4] Indian River Shores filed an amended complaint asking the circuit court, in part, to declare that upon expiration of the franchise agreement giving COVB permission to provide electric service in Indian River Shores, COVB had no legal right to provide electric service in Indian River Shores. In its amended complaint, Indian River Shores alleged that COVB sought to exert extra-territorial monopoly powers and extract monopoly profits within the corporate limits of the Town of Indian River Shores without the Town's consent. The Town alleged that even though COVB's electric utility paid no corporate income taxes, no property taxes, had access to low cost financing subsidized by tax-free bonds, and was not subject to the costs of complying with state mandated energy efficiency and conservation requirements, COVB's electric rates had been some of the highest in Florida over the previous ten years, and were substantially higher that FPL's rates.

Indian River Shores further alleged that although FPL's electric rates were regulated by the Commission, COVB's rates were not regulated by the Commission but were managed by the COVB City Council. The amended complaint alleged that approximately 65 percent of COVB's electric customers were located outside of the City and thus had no voice in electing the official that managed the City's electric utility system and set their electric rates. The Town alleged that COVB's high electric rates were due to factors within the City's control, including (1) abdicating its operational and managerial responsibilities to entities with which it had entered into expensive long-term power supply arrangements without appropriate oversight and due diligence; (2) the City was bound to above-market power prices under the long-term power supply arrangements agreed to by the City; (3) the City administered its electric utility power supply without appropriate hedging, interest-rate swaps, and other risk management protocols needed to mitigate fuel price volatility and keep electric power costs as low as reasonably possible; and (4) electric utility revenues were diverted to COVB's general revenue fund as a means to keep ad valorem taxes on property within the City artificially low and to cover costs that had nothing to do with operation of the City's electric utility. Indian River Shores alleged

[4] Indian River County also participated in this mediation.

that COVB had not operated its electric utility and furnished electric services in accordance with normally accepted electric utility standards, but rather had acted imprudently in its utility management.

COVB filed a motion to dismiss the circuit court franchise agreement claim, which the Commission supported in court as amicus curiae. On November 11, 2015, the circuit court granted the motion to dismiss, finding that the question of whether COVB had the authority to continue to provide electric service within Indian River Shores upon expiration of the franchise agreement was squarely within the Commission's jurisdiction to decide. The circuit court did not dismiss the count that COVB's electric rates were unreasonable. However, Indian River Shores subsequently voluntarily dismissed its lawsuit with prejudice.

In 2014, Indian River County filed a petition for declaratory statement with the Commission asking for a declaration that upon expiration of its franchise agreement with COVB in February, 2017, the County would have the right to choose its electricity provider. In its petition, Indian River County alleged that more than half of COVB's electric customers were outside the City limits in the unincorporated parts of the County, and that while the exemption from Commission jurisdiction for municipal utilities was understandable where the customers are all or mostly all city residents, the majority of COVB's customers had no political or regulatory recourse regarding COVB as their electric service provider. The County further alleged that the situation was especially egregious since COVB refused to hold a referendum under Section 366.04(7), F.S., or to otherwise create an electric utility authority that would include representation of non-city customers. The petition alleged that COVB's electric service to customers who lived outside the City in unincorporated Indian River County had become increasingly more contentious and controversial, that the non-city COVB electric customers who receive no city services were contributing two-thirds as much revenue to general government as is generated by the City's property taxes, and that COVB's rates were approximately one-third higher than FPL's rates. The Commission denied this petition for failing to meet the statutory requirements necessary to obtain a declaratory statement.[5]

Also in 2014, COVB filed a petition with the Commission asking for a declaration that upon expiration of its franchise agreement with the County, it would have the right and obligation to continue providing electric service in unincorporated Indian River County under the Commission-approved Territorial Orders. The Commission issued an order declaring that COVB has the right and obligation to continue to provide retail electric service in the territory described in its Territorial Orders upon expiration of its franchise agreement with the County.[6] The County appealed both orders, and both Commission orders were affirmed by the Florida Supreme Court.[7]

---

[5] Order No. PSC-15-0101-DS-EM, issued February 12, 2015, in Docket No. 140142-EM, *In re: Petition for Declaratory Statement by the Board of County Commissioners, Indian River County, Florida*.
[6] Order No. PSC-15-0102-DS-EM, issued February 12, 1015, in Docket No. 140244-EM, *In re: Petition of Vero Beach for a Declaratory Statement Regarding Effect of Commission's Orders Approving Territorial Agreements in Indian River County*.
[7] *Board of County Commissioners of Indian River County v. Graham*, 191 So. 3d 890 (Fla. 2016).

On January 5, 2016, Indian River Shores filed a petition for declaratory statement with the Commission, asking for a declaration that the Commission lacks jurisdiction to interpret Article VIII, Section 2(c), Florida Constitution, for purposes of determining whether Indian River Shores has a constitutional right to be protected from COVB providing electric service within Indian River Shores without Indian River Shores' consent. In response, the Commission issued an order declaring that it had the jurisdiction under Section 366.04, F.S., to determine whether COVB had the authority to continue to provide electric service within the corporate limits of Indian River Shores upon expiration of the franchise agreement and that in a proper proceeding, the Commission has the authority to interpret the phrase "as provided by general or special law" as used in Article VIII, Section 2(c), Florida Constitution.[8]

On March 4, 2016, pursuant to Sections 120.57 and 366.04, F.S., Indian River Shores filed a Petition for Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution. Indian River Shores asked the Commission to modify the Territorial Orders between FPL and COVB by moving the entire Town of Indian River Shores out of COVB's service area and placing it within the electric service area of FPL. In its Petition, based on essentially the same specific allegations made in the Circuit Court Amended Complaint as detailed above, the Town argued that the Commission should modify the Territorial Orders because COVB was operating as an unregulated monopoly within the Town and subjected captive customers in the Town to excessive rates, inferior quality of services, and other monopoly abuses contrary to the public interest. The Town alleged that some of its citizens were served by FPL and some by COVB, and that, as a consequence, the Town's residents received vastly different service, at vastly different rates, with vastly different regulation and oversight, and that the current territory boundary pitted neighbor against neighbor and caused discord and confusion among Town residents.

Indian River Shores also alleged that having FPL as the single electric provider would allow all Town residents access to the energy conservation programs offered by FPL, give access to FPL's deployment of solar generation and smart meters, which were not offered by COVB and would dramatically reduce the utility costs to the Town's residents, and would provide the Town with the benefits of FPL's highly regarded management expertise and high customer satisfaction ratings. The petition alleged that the Town's residents were overwhelmingly in favor of having FPL as the single electric provider within the Town. The Commission issued a proposed agency action (PAA) order denying the petition for modification.[9] The Town of Indian River Shores filed a petition for administrative hearing on the PAA order and COVB filed a cross-petition. Upon joint motion of Indian River Shores and the City, the hearing proceeding is being held in abeyance pending closing on the purchase and sale of the COVB electric utility to FPL.

---

[8] Order No. PSC-16-0093-FOF-EU, issued March 4, 2016, in Docket No. 160013-EU, *In re: Petition for declaratory statement regarding the Florida Public Service Commission's jurisdiction to adjudicate the Town of Indian River Shores' constitutional rights*.
[9] Order No. PSC-16-0427-PAA-EU, issued October 4, 2016, in Docket No. 160049-EU, *In re: Petition for modification of territorial order based on changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution, by the Town of Indian River Shores*.

Procedural Background

On November 3, 2017, FPL filed a petition in Docket No. 20170235-EI for authority to charge FPL's rates and charges to COVB customers and for approval of FPL's requested accounting treatment. As part of its petition, FPL filed testimony and exhibits of six witnesses. FPL's petition states that on May 16, 2017, FPL presented a letter of intent to COVB for the potential purchase of the City's electric utility system, which was subsequently executed by both parties. FPL states that, thereafter, FPL and the City negotiated an agreement for the sale of the COVB's electric utility assets. Negotiations were also held with the Florida Municipal Power Agency (FMPA) and the Orlando Utilities Commission (OUC) to resolve COVB's contractual obligations with those entities that would be necessary in order to close the transaction. On October 24, 2017, FPL and COVB entered into an Asset Purchase and Sale Agreement (the PSA). The PSA reflects COVB's and FPL's agreement to sell and to purchase the COVB electric utility system. Pursuant to the PSA, FPL will acquire assets of the COVB electric utility system for a cash payment of approximately $185.0 million as well as other consideration.

The petition states that in connection with the PSA, COVB needs to address power contracts to which it is a party, including (1) a 20-year wholesale services agreement with OUC to provide supplementary power to COVB, due to expire in 2023 (Wholesale Services Agreement); and (2) a series of three contracts for the City's share of the FMPA generation entitlements from certain power plants, namely St. Lucie Unit 2 and Stanton Units 1 and 2 (collectively "FMPA Entitlements"). The petition further states that, pursuant to the provisions of the PSA, COVB's Wholesale Services Agreement with OUC and COVB's obligations to FMPA for the FMPA Entitlements would terminate upon the closing of the PSA. FPL states that, as part of the PSA and to enable the COVB to terminate its obligations with OUC, FPL negotiated a short-term power purchase agreement (PPA) with OUC for capacity and energy, commencing at the close of the PSA and extending through 2020.

FPL states in its petition that in order to implement the PSA, it is requesting that the Commission: (1) grant FPL approval to charge its approved rates and charges to the COVB customers; (2) approve the establishment and base rate recovery of a positive acquisition adjustment of approximately $116.2 million with respect to the City's electric utility system acquired by FPL; and (3) approve recovery of costs associated with the short-term PPA with OUC. An acquisition adjustment is the difference between the purchase price paid to acquire a utility asset or group of assets and the depreciated original cost, or net book value, of those assets. A positive acquisition adjustment exists when the purchase price is greater than the net book value. With respect to the OUC PPA, FPL requests that the Commission: (1) approve recovery of the energy portion of charges through FPL's Fuel and Purchased Power Cost Recovery Clause; and (2) approve recovery of the capacity charges component through the Capacity Cost Recovery Clause.

In addition, on November 3, 2017, FPL and COVB filed a joint petition in Docket No. 20170236-EU for approval to terminate their Commission-approved territorial agreement. The joint petition alleges that termination of the territorial agreement is sought in connection with FPL's acquisition of the COVB electric utility and FPL's petition to charge FPL's approved rates and charges and for the approval of its requested accounting treatment.

Intervention of the Office of Public Counsel (OPC) in both dockets was acknowledged by Order Nos. PSC-2018-0145-PCO-EI (Docket No. 20170235-EI) and PSC-2018-0163-PCO-EU (Docket No. 20170236-EU).[10]

Commission Jurisdiction

The Commission has jurisdiction over the matters raised in the petitions filed in Docket Nos. 20170235-EI and 20170236-EU pursuant to Sections 366.06 and 366.076, F.S. To be clear, FPL is not requesting and the Commission does not have jurisdiction over approval of the transfer of the City's electric utility assets to FPL. In the 1974 Grid Bill,[11] as part of the Legislature's regulatory regime over electric utilities, the Commission was given limited regulatory jurisdiction over municipal electric utilities. *See* 366.04(2), F.S. The Legislature gave the Commission authority over municipalities to prescribe uniform systems and classifications of accounts; to prescribe a rate structure for all electric utilities; to require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes; to approve territorial agreements; to resolve territorial disputes; and to prescribe and require the filing of periodic reports and other data. The purchase and sale agreement between COVB and FPL is not subject to approval by the Commission.

Further, the Legislature did not give the Commission jurisdiction over municipal rates. *Lewis v. Public Service Commission*, 463 So. 2d 227 (Fla. 1985)(stating that the Commission's jurisdiction over rate structure does not include jurisdiction over the actual rates charged by a municipal electric utility). Because the Commission lacks this jurisdiction, it does not have authority to determine what COVB's electric rates should be or whether they are "too high" compared to FPL's current rates. The Florida Supreme Court has stated that as part of Florida's legislatively constructed regulatory regime, if customers of municipal electric utilities have complaints of "excessive rates or inadequate service their appeal under Florida law is to the courts or the municipal council." *Story v. Mayo,* 217 So. 2d 304, 308 (Fla. 1968), *cert. denied*, 395 U.S. 909 (1969).

---

[10] Order No. PSC-2018-0145-PCO-EI, issued March 15, 2018, in Docket No. 20170235-EI, *In re: Petition by Florida Power & Light Company (FPL) for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction;* Order No. PSC-2018-0163-PCO-EU, issued March 26, 2018, Docket No. 20170236-EU, *In re: Joint petition to terminate territorial agreement, by Florida Power & Light Company and the City of Vero Beach.*

[11] The Grid Bill codified the Commission's authority to approve and review territorial agreements involving investor-owned utilities and expressly granted the Commission jurisdiction over rural electric cooperatives and municipal electric utilities for approving territorial agreements and resolving territorial disputes. *See Richard C. Bellak and Martha Carter Brown, Drawing the Lines: Statewide Territorial Boundaries for Public Utilities in Florida,* 19 Fla. St. L. Rev. 407, 413 (1991).

Discussion of Issues

Issue 1: Should the Commission grant FPL the authority to charge FPL's rates and charges to COVB's customers upon the closing date of the PSA?

Recommendation: Yes, the Commission should grant FPL the authority to charge FPL's approved rates and charges to COVB's customers effective upon the closing date of the PSA because they would become FPL customers. FPL should notify COVB's customers of the new rates and charges with the first bill containing the new rates. (Draper)

Staff Analysis: This issue addresses the request in the petition filed by FPL in Docket No. 20170235-EI to grant FPL the authority to charge its rates and charges to COVB's customers. The PSA provides for the COVB customers to become FPL electric customers and receive service at the applicable FPL rates and charges upon the closing of the PSA. Specifically, the PSA states that FPL has the responsibility for securing approval from the Commission for authority under Rule 25-9.044, F.A.C., to charge FPL's existing rates to the COVB customers.[12]

Rule 25-9.044(1), F.A.C., states that in the case of a change of ownership or control of a utility that places the operation under a different or new utility, the company which will thereafter operate the utility must adopt and use the rates, classifications, and regulations of the former operating company unless authorized to change by the Commission.

In response to staff's first data request, FPL provided bill comparisons between FPL and COVB customers. A COVB residential customer who becomes an FPL customer who uses 1,000 kilowatt hours (kWh) would see a bill decrease from $126.10 to $99.37, a decrease of $26.73 or approximately 21.2 percent, based on rates effective March 2018.[13] COVB commercial and industrial customers would also see bill decreases based on usage.

Regarding customer notification, FPL explains that FPL's proposal to acquire the COVB electric utility has been the subject of public debate and discussion for nearly a decade up to the time when the City Council voted in favor of the sale in October 2017. FPL further states that the proposed sale of the COVB electric utility to FPL was addressed in two public referendums and during numerous publicly noticed City Council meetings. In addition, FPL states that it plans to hold two open houses before the transaction closes in order to address all customer questions and concerns.

Staff recommends that the Commission authorize FPL to charge FPL's approved rates and charges to the COVB customers effective upon the closing date of the PSA because they would become FPL customers. FPL should notify the COVB customers of the new rates and charges with the first bill containing the new rates. Staff believes, given the lengthy public debate regarding the proposed FPL/COVB transaction and the fact that FPL's current rates and charges

[12] Document No. 09427-2017, Exhibit SAF-1, page 63.
[13] In its November 3, 2017 Petition, FPL states that a residential customer using 1,000 kWh per month would save $16.34 per month. This calculation was based on September 2017 COVB bills and January 2018 FPL bills. In response to staff's first data request, FPL provided updated bill calculations based on rates effective March 2018.

are lower than the City's rates, customer notification with the first bill containing the new rates is sufficient.

Issue 2: Should the Commission approve the joint petitioners' request to terminate the existing territorial agreement between FPL and the City of Vero Beach upon the closing date of the PSA?

Recommendation: Yes, the Commission should approve the joint petitioners' request to terminate the existing territorial agreement between FPL and the City of Vero Beach effective upon the closing date of the PSA. Upon closing of the PSA, FPL should file revised tariff sheets Nos. 3.020, 3.010, and 7.020 to reflect the addition of the COVB service area to the description of territory and communities served. Commission staff should be given authority to administratively approve these tariff sheets consistent with the Commission's decision. (Guffey, Draper)

Staff Analysis: This issue addresses the joint petition of FPL and the City in Docket No. 20170236-EU to terminate their territorial agreement. The joint petition involves the transfer of customers from COVB to FPL. Section 366.04(2), F.S., gives the Commission the power to approve territorial agreements between municipal electric utilities and investor-owned electric utilities. Any modification or termination of a Commission-approved territorial order must be made by the Commission pursuant to its exclusive jurisdiction. *See Public Service Commission v. Fuller*, 551 So. 2d 1210, 1212 (Fla. 1989). The Commission has the responsibility to ensure that the termination of the territorial agreement and concomitant transfer of customers to FPL results in no harm or detriment to the public interest. *See AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997), *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731, 732-33 (Fla. 1985). The public interest is the ultimate measuring stick to guide the Commission's decision. *Gulf Coast Electric Cooperative v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999). Utility ratemaking is viewed as a matter of fairness. *GTE Florida Inc. v. Clark*, 668 So. 2d 971, 972 (Fla. 1996). The Commission should base its decision on the effect termination of the territorial agreement will have on all affected customers, both those transferred and those not transferred. *See New Smyrna Beach*, 469 So. 2d at 732.

The joint petition states that the petitioners seek termination of their existing territorial agreement in connection with FPL's acquisition of the COVB electric utility that is addressed in Docket No. 20170235-EU. The joint petition states that the termination of the territorial agreement will be effective if all conditions precedent to the PSA are satisfied and the transaction closes. If the territorial agreement is terminated, FPL will be serving all of Indian River County. If the PSA does not close, the joint petitioners will continue to operate pursuant to the Territorial Orders.

Currently, COVB serves 29,258 residential, 5,721 commercial, and 144 street light customers for a total of 35,123 customers. As discussed in Issue 1, FPL will provide electric service to COVB's customers at FPL's approved rates and charges upon the closing date of the PSA.

The joint petitioners state that FPL's purchase of COVB's electric system is projected to result in more economical service to both COVB's customers and FPL's current customers and, therefore, termination of the territorial agreement is in the public interest. COVB's existing service territory is surrounded by FPL's service territory. The joint petitioners state that the geographic configuration will allow FPL to make efficient use of resources in providing electric service to COVB's customers. The joint petitioners further state that termination of the territorial agreement will result in excellent service reliability for COVB's customers. Additionally, the joint petitioners state COVB's residential and commercial customers will be eligible to participate in FPL's energy conservation programs and commercial customers will have the opportunity to enroll in economic development rates.

Regarding customer notification of the proposed termination of the territorial agreement, the joint petitioners explain that FPL's proposal to acquire the COVB electric utility has been the subject of public debate and discussion for nearly a decade. In addition, the joint petitioners state that FPL plans to hold two open houses before the transaction closes in order to address all customer questions and concerns, including termination of the territorial agreement.

Conclusion

Staff recommends approval of the joint petitioners' request to terminate the existing territorial agreement between FPL and COVB effective upon the closing date of the PSA. Staff believes that termination of the territorial agreement results in no harm or detriment to the public interest. Upon closing of the PSA, FPL should file revised tariff sheets Nos. 3.020, 3.010, and 7.020 to reflect the addition of the COVB service area to the description of territory and communities served. Commission staff should be given authority to administratively approve the tariff sheets consistent with the Commission's decision.

Issue 3: Should the Commission authorize FPL to recognize a positive acquisition adjustment on its books associated with the purchase of the COVB electric utility system?

Recommendation: Yes. The extraordinary circumstances demonstrated in this case support approval for FPL to record a positive acquisition adjustment in the amount of $21.3 million on its books in Federal Energy Regulatory Commission (FERC) Account 114 - Electric Plant Acquisition Adjustments and to amortize this amount over the requested period of 30 years. (D. Smith, Cowdery)

Staff Analysis: As explained in the Case Background, the Commission does not have jurisdiction over the transfer of the COVB's electric utility assets to FPL. The narrow question before the Commission is whether FPL's proposed accounting treatment should be approved.

Legal Standard

The Commission's policy with respect to acquisition adjustments has been to evaluate the specific facts and circumstances on an individual case by case basis and to determine whether there are extraordinary circumstances that warrant the approval of a positive acquisition adjustment. This policy as applied to electric investor-owned utilities is explained in Order No. PSC-92-1468-FOF–EU, where the Commission analyzed the issue of allowing a positive acquisition adjustment in the case of the acquisition of the Sebring Utilities Commission (Sebring) electric system by Florida Power Corporation (FPC).[14] In that case, FPC purchased the Sebring electric system for $54.0 million, paying a premium of approximately $36.5 million over the net book value (NBV) of $17.5 million.

As described in the 1992 FPC/Sebring Order, Sebring was in serious financial distress, with debt service bringing it to the verge of bankruptcy. Sebring was in default of its bond covenants and its rates were not sufficient to cover the debt service and maintain required reserve margins. Sebring's rates were the highest in the state, and to comply with its bond covenants would require an estimated thirty-seven percent rate increase, raising the typical residential electric bill to $151 per 1,000 kWh. The Commission determined that extraordinary circumstances existed for allowing a positive acquisition adjustment because the acquisition of the Sebring electric system represented the most reasonable resolution of Sebring's financial problems.

The Commission approved a going concern value of $5.7 million as the value above NBV which reasonably could be approved as benefitting the general body of FPC's existing customers. In its decision, the Commission quoted the Florida Supreme Court in *C.F. Industries, Inc. v. Nichols*, 536 So. 2d 234, 238-39 (Fla. 1988), in which the Court affirmed the Commission's approval of standby rates to be charged cogenerators:

> In setting rates, the PSC has a two-pronged responsibility: rates must not only be fair and reasonable to the parties before the PSC, they must also be fair and

[14] Order No. PSC-92-1468-FOF–EU, issued December 17, 1992, in Docket No. 920949-EU, *In re: Joint Petition of Florida Power Corporation and Sebring Utilities Commission for Approval of Certain Matters in Connection with the Sale of Assets by Sebring Utilities Commission to Florida Power Corporation, affirmed, Action Group v. Deason*, 615 So. 2d 683 (Fla. 1993). (FPC/Sebring Order)

> reasonable to other utility customers who are not directly involved in the proceedings at hand. Standby rates which did not properly recover the cost-of-service would unfairly discriminate against other customers by requiring them to subsidize the standby service.[15]

The Commission applied this standard in the FPC/Sebring case. The cost of the debt attached to the Sebring electric system was not recovered from the existing general body of FPC customers through an acquisition adjustment. Instead, the Commission stated that the debt that the Sebring electric system had accrued was a "cost of service" attached to that system, and that attaching that cost of service to a different existing general body of customers was against the principles of ratemaking. Apart from the recovery of the NBV and the going concern value, the Commission found all other recovery to be the responsibility of Sebring to be specifically recovered from the existing and future customers in the Sebring service area.

> The record of this proceeding makes it perfectly clear, despite many Sebring customers' wish that it be otherwise, that the cost of the Sebring debt is a cost to serve the Sebring customers. . . . We find that the Sebring rider rate appropriately identifies the additional cost to serve Sebring customers, appropriately allocates that cost to those customers, and appropriately insulates Florida Power Corporation's general body of ratepayers from the costs that were not incurred for their benefit.[16]

The public interest is the ultimate measuring stick to guide the Commission's decisions. *Gulf Coast Electric Cooperative v. Johnson,* 727 So. 2d 259, 264 (Fla. 1999). Utility ratemaking is viewed as a matter of fairness. *GTE Florida Inc. v. Clark*, 668 So. 2d 971, 972 (Fla. 1996).

FPL's Request for a Positive Acquisition Adjustment

In its petition filed on November 3, 2017, FPL requested approval to record and recover through base rates a positive acquisition adjustment of $116.2 million and for approval to recover the costs associated with a short-term power purchase agreement (PPA) with OUC through the applicable cost recovery clause factors. The instant issue deals with FPL's request for base rate recovery of the positive acquisition adjustment. FPL's request for recovery of costs associated with the PPA with OUC is addressed in Issue 4.

FPL states that the acquisition of the COVB system will benefit the existing general body of FPL customers because FPL projects that the incremental costs to serve the COVB customers will be less than the incremental revenues received from those same customers. FPL also states that the addition of the COVB customers will reduce the shared amount of fixed cost spread across FPL's existing general body of customers. FPL provided a cumulative present value revenue requirements (CPVRR) analysis that shows potential 30-year present value savings of $105.3 million to the existing general body of FPL customers.[17]

[15] Order No. PSC-92-1468-FOF–EU, p. 8.
[16] Order No. PSC-92-1468-FOF–EU, p. 8.
[17] The CPVRR analysis includes the short-term PPA with OUC addressed in Issue 4. Following discovery by staff and OPC, FPL amended its 30-year CPVRR analysis to account for the tax savings from the Tax Cuts and Jobs Act,

FPL identifies three cases involving natural gas utilities where the Commission addressed positive acquisition adjustments. These cases involved the acquisition of Florida City Gas by AGL Resources, Inc. (AGLR), the acquisition of Florida Public Utilities Company (FPUC) by the Florida Division of Chesapeake Utilities Corporation (Chesapeake), and the acquisition of Indiantown Gas Company by FPUC.[18] FPL alleges that in these cases, the Commission identified five factors that have been considered in determining whether an acquisition and any resulting positive acquisition adjustment are in the public interest. FPL states that these five factors are: (1) increased quality of service; (2) lowered operating costs; (3) increased ability to attract capital for improvements; (4) a lower overall cost of capital; and (5) more professional and experienced managerial, financial, technical, and operational resources. FPL states that due to its size and expertise in the electric utility industry, all five of these factors will be met for the benefit of the COVB customers if the transaction is consummated.

FPL also cites the case of the acquisition of Sebring by FPC.[19] FPL states that the FPC/Sebring case is a good example of the Commission approving a positive acquisition adjustment.

Positive Acquisition Adjustment Analysis

Extraordinary Circumstances

The Florida Commission, as well as almost every other state commission, practices original cost ratemaking. Under original cost ratemaking, the value of a utility's rate base is determined by the depreciated original cost of the property devoted to public service. An acquisition adjustment is the difference between the purchase price paid to acquire a utility asset or group of assets, and the depreciated original cost, or net book value (NBV), of those assets. A positive acquisition adjustment exists when the purchase price is greater than the NBV.

As noted earlier, the Commission's policy concerning consideration of acquisition adjustments for electric utilities has been that, for ratemaking purposes, absent a clear demonstration of extraordinary circumstances, the purchase of a utility system at a premium does not affect the determination of rate base. In other words, if the purchase price of a utility is greater than the NBV, the difference between the purchase price and NBV is not passed on to the general body of customers vis-a-vis an increase in rate base absent a demonstration of extraordinary circumstances. Such a policy protects customers from utilities "swapping assets" and inappropriately increasing costs to customers. For example, if a utility paid \$2 million for a \$1 million piece of equipment, the Commission would appropriately deny the unjustified \$1 million additional cost. Similarly, when one utility purchases another utility at above depreciated original

---

which became law on December 22, 2017. The amended CPVRR projects 30-year present value savings of \$127.0 million.

[18] Order No. PSC-07-0913-PAA-GU, issued November 13, 2007, in Docket No. 060657-GU, *In re: Petition for approval of acquisition adjustment and recognition of regulatory asset to reflect purchase of Florida City Gas by AGL Resources, Inc.*; Order No. PSC-12-0010-PAA-GU, issued January 3, 2012, in Docket No. 110133-GU, *In re: Petition for approval of acquisition adjustment and recovery of regulatory assets, and request for consolidation of regulatory filings and records of Florida Public Utilities Company and Florida Division of Chesapeake Utilities Corporation.;* Order No. PSC-14-0015-PAA-GU, issued January 6, 2014, in Docket No. 120311-GU, *In re: Petition for approval of positive acquisition adjustment to reflect the acquisition of Indiantown Gas Company by Florida Public Utilities Company.*

[19] Order No. PSC-92-1468-FOF–EU.

cost, any cost above the depreciated original cost should be disallowed unless extraordinary circumstances indicate it would be in the best interests of customers to allow an acquisition adjustment. The premium paid above the depreciated original cost does not represent a contribution of capital to public service.

FPL cites to Rule 25-30.0371, F.A.C., in support of its request. Rule 25-30.0371, F.A.C., addresses acquisition adjustments for water and wastewater utilities. The rule states the Commission's policy that applies to all industries: A positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. However, the circumstances that may be considered extraordinary circumstances for allowing a positive acquisition adjustment when a larger water or wastewater utility purchases a small, troubled utility do not apply to the facts of FPL's purchase of the COVB electric utility.

FPL also cites to five factors that have been considered in determining whether extraordinary circumstances exist for allowing a positive acquisition adjustment for a gas utility purchase: (1) increased quality of service; (2) lowered operating costs; (3) increased ability to attract capital for improvements; (4) a lower overall cost of capital; and (5) more professional and experienced managerial, financial, technical, and operational resources. The facts do not demonstrate any extraordinary circumstances related to COVB's electric utility concerning these factors that would support a positive acquisition adjustment.

The FPC/Sebring Order is the only similar case where the Commission approved a positive acquisition adjustment in the electric industry. This case provides guidance in addressing FPL's petition. The difficulty associated with addressing the question of whether a positive acquisition adjustment should be allowed in the electric industry and applied to the general body of customers was expressed in the Commission's decision in the FPC/Sebring case.

> From our regulatory perspective the case has been a difficult one. As a general rule, we do not preapprove the prudence of rate base acquisitions outside of a rate case, nor do we usually permit acquisition adjustments, particularly outside of a rate case. … To those who would view our decision here as precedent, we categorically state that this decision has no precedential value. It is limited to the unique set of facts in this case.[20]

However, there are differences between the facts surrounding FPL's request for a positive acquisition adjustment and the facts in the FPC/Sebring case. First and foremost, COVB is not on the verge of bankruptcy. In addition, the relative rate disparity in the FPL/COVB transaction is far less than the rate disparity present in the FPC/Sebring case. FPL's petition states that for a typical residential customer on a 1,000 kWh basis, FPL's rates were approximately $16 per month less than COVB's rates. Due to a subsequent rate increase implemented by COVB and a rate decrease for FPL due to the removal of the Hurricane Matthew surcharge, the rate disparity is now approximately $27 per month. In contrast, at the time of the FPC/Sebring transaction, the incremental difference for a typical residential customer on a 1,000 kWh basis between FPC's

[20] Order No. PSC-92-1468-FOF–EU, p.11.

rates and Sebring's rates was approximately $39 per month. Moreover, it was noted that in order for Sebring to produce sufficient revenues to meet its bond covenants on a stand-alone basis, the resulting rate differential would have doubled to $80 per month.

It is important to note that a disparity in rates alone does not constitute an extraordinary circumstance that can support a positive acquisition adjustment. Electric utility customers cannot choose between electricity providers based on which provider has the lower rates. A significant price differential in electric rates between two electricity providers does not give a customer a substantial interest in the outcome of a proceeding on a proposed territorial agreement. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla 1997). It is established law that "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." *Story v. Mayo*, 217 So. 2d 304, 307 (Fla. 1968), *cert. denied*, 395 U.S. 909 (1969). In the Commission's exercise of jurisdiction over territorial agreements, larger policies are at stake than one customer's self-interest. *Lee County Electric Co-op v. Marks*, 501 So. 2d 585, 587 (Fla. 1987). If a customer is permitted to allege extraordinary circumstances simply because they pay higher rates than the rates charged by another electricity provider, then every person or entity in Florida would have grounds to argue they too are entitled to be served by a different electricity provider with lower rates.

Another difference between the facts in FPL's request for approval of a positive acquisition adjustment and what was approved in the FPC/Sebring case relates to how the premium paid over NBV was handled. FPL requests that the entire premium over the NBV of $116.2 million ($185.0 million purchase price less the NBV of $68.8 million) be recovered through base rates from its general body of customers. As noted earlier, in the FPC/Sebring case, the net premium of approximately $30.8 million (the purchase price of $54.0 million less the NBV of $17.5 million and the going concern value of $5.7 million) was not included in the amount of the positive acquisition adjustment FPC was authorized to record on its books.

As described in the Case Background, approximately 60 percent of COVB's customers reside outside the City's municipal borders. For many years, these customers have been frustrated by their inability to have a voice in the operation of the City's electric utility or in rate setting decisions. These customers have wanted to be served by FPL because of its lower rates. This dissatisfaction has resulted in years of controversy, repeated efforts to address issues through legislation, multiple filings with the Commission, and litigation between the City of Vero Beach and the Town of Indian River Shores and Indian River County. Staff has received no objections in either Docket Nos. 20170235-EI or 20170236-EU from any COVB or FPL customers. The legal system favors settlement of utility territorial disputes by mutual agreement between contending parties. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997). The sale of the COVB electric utility to FPL and attendant transfer of customers from COVB to FPL will resolve the ongoing contention between the COVB and Indian River County and the Town of Indian River Shores. For these reasons, staff believes that FPL has demonstrated extraordinary circumstances that justify the Commission approving a positive acquisition adjustment.

Positive Acquisition Adjustment Amount

Analysis of FPL's Requested Accounting Treatment

While staff acknowledges there are extraordinary circumstances due to the unique nature of the territorial issues in this case that may merit the Commission granting approval of some amount of a positive acquisition adjustment, staff disagrees with the basis suggested by FPL for consideration of a positive acquisition adjustment. Staff believes that, consistent with the Commission's order in the FPC/Sebring case, the amount of the acquisition adjustment should be reasonably related to the ensuing benefit to the general body of FPL customers.

FPL's request for a positive acquisition adjustment associated with the acquisition of the COVB electric utility system can be distinguished from the acquisition adjustments addressed in the natural gas cases cited by FPL in several significant respects. In each of these cases, the positive acquisition adjustment is recorded on the books of the natural gas company that was acquired. This means that the recovery of the acquisition adjustment is borne solely by the customers that were acquired. For example, because the portion of the positive acquisition adjustment associated with the acquisition of Florida City Gas is recorded on the books of Florida City Gas rather than the books of AGLR, recovery of this cost is through the rates charged by Florida City Gas to its customers, not the rates charged by AGLR to its general body of customers. The same holds true for the other two acquisitions. Because FPL is proposing to integrate COVB customers into its customer base and to record the positive acquisition adjustment on its own books, the 4.9 million current FPL customers, and not the approximately 35,000 COVB customers, will be the customer base that will pay the vast majority of the acquisition adjustment. In addition, while a positive acquisition adjustment was recorded on the books of the FPUC Gas Division following the acquisition by Chesapeake, there was no positive acquisition adjustment requested or recorded on the books of the FPUC Electric Division, which was also acquired in the same transaction.

Another distinction between the acquisition adjustments approved for the natural gas transactions and the acquisition adjustment requested by FPL concerns the issue of future review. In each of these approvals, the orders specifically required that the permanence of the cost savings supporting the request for a positive acquisition adjustment would be subject to continuing review. If it were to be determined that the cost savings no longer exist, the acquisition adjustment may be partially or totally removed as deemed appropriate by the Commission. FPL's petition has specifically requested that once approved, there would be no further review of the positive acquisition adjustment. In other words, unlike these prior cases, under FPL's request there would be no requirement for FPL to demonstrate that the projected savings, supporting its requested positive acquisition adjustment, actually ever materialize.

As noted earlier, FPL claims that its CPVRR analysis demonstrates that there will be no harm to its existing customers if its proposed accounting treatment is approved as filed. However, there are certain assumptions in the CPVRR analysis that draw this conclusion into question. The first concern deals with the central assumption that FPL will receive an ever increasing revenue stream above the cost to serve the COVB customers. In year 2019, the analysis assumes it will cost $1.1 million more to serve the COVB customers than FPL will receive in revenue from this group. However, in each of the successive years, this differential between the revenues received and the cost to serve is assumed to reverse and grow such that by 2032, FPL is receiving $22.1 million more in annual revenue than its cost to serve the COVB customers. Over the first 14 years, the analysis assumes FPL will receive $209 million more in revenue directly from the COVB customers than its incremental cost to serve these same customers over this period. Under a cost of service regulatory paradigm, it is not reasonable to assume revenues will continuously increase while costs decline or remain relatively flat.

Another concern with the CPVRR analysis is the assumption regarding the incremental fixed costs and capital for generation needed to serve the COVB customers. The analysis assumes $0 will be invested during the first 14 years. However, beginning in year 2033, the analysis assumes $20.6 to $31.0 million will be invested each and every year thereafter. In other words, the analysis assumes $0 investment in incremental generation to serve the COVB customers over the first 14 years but $434 million will be spent over the final 16 years. It is not reasonable to assume that all incremental generation costs will be incurred in the outer years. For example, FPL's Ten Year Site Plan identifies generation additions during the 2018 – 2027 planning period.

Because present value calculations assign the most weight to values in the early years and the least weight to values in the outer years, by assuming $209 million of incremental revenues in excess of costs in the early years and the entire $434 million of incremental generation costs in the outer years, the CPVRR analysis will produce a positive outcome compared to the result expected if the revenues and costs were spread more evenly across the time period in question. For example, if this one assumption regarding incremental fixed costs and capital for generation is reversed, meaning the annual projected amounts that total $434 million are incurred during 2019 – 2034 instead of the last 16 years (2033 – 2048), the CPVRR result flips from a positive $105 million to a negative $22 million. Therefore, if the costs are assumed to have all occurred in either the later years or the early years, the CPVRR results become skewed.

Under FPL's requested accounting treatment, only the general body of FPL's existing customers are exposed to risk. If the requested accounting treatment is approved as filed, FPL will receive base rate recovery of the acquisition adjustment whether the assumed savings materialize or not. Specifically, FPL projects it will earn an equity return on the $116.2 million acquisition adjustment of $92.5 million on a nominal basis and $50.3 million on a net present value basis. The approximately 35,000 customers of COVB will immediately receive a rate reduction of approximately $27 per month: a rate reduction that would only be possible if another, unrelated group of customers would be responsible for paying off $150 million in debt and contractual obligations on COVB's behalf. Under the request as filed, the benefits to FPL and the COVB customers will be known when the transaction closes. Finally, these benefits will inure to FPL and the customers of COVB whether the projected savings occur or not. In contrast, the purported benefits of the transaction to FPL's current customers are entirely dependent upon whether the projected savings assumed in the CPVRR analysis come to fruition. In addition, any benefit to the 4.9 million current FPL customers will not be known until years in the future, and that will only be if FPL is required to track the savings over time, something FPL has specifically requested not be part of the approval process.

Going Concern Value

In the FPC/Sebring case, the Commission approved a positive acquisition adjustment by determining a going concern value based on the Sebring electric system's value as a mature system with an established customer base.[21] Similarly, COVB is a mature system with an established customer base. Due to the unique circumstances in this case, it is reasonable to attach a going concern value to the COVB customer base.

The 1992 FPC/Sebring Order was used as a basis for evaluating and calculating the value of the acquired COVB customer base. In the FPC/Sebring Order, the Commission recognized a going concern value of $4,491,000 for the value of Sebring's approximately 13,000 customers.[22] Based on those figures, staff calculated an average value of $345 per customer for the Sebring customers. This was assumed as an appropriate estimation of the value of an acquired electric customer in 1992. In the current case, staff adjusted the $345 average amount per customer to account for inflation from 1992 to 2018 using the Consumer Price Index for All Urban Customers.[23] Staff believes that accounting for inflation is appropriate and reasonable. The resulting calculation provides a 2018 average value of $608 per acquired customer. The COVB electric utility system represents approximately 35,000 customers to which staff applied the $608 average value per customer. This results in a total of approximately $21.3 million for the value of COVB's customer base. In the absence of a more specific cost estimate, staff believes this is a reasonable proxy for estimating the value of a mature system with an established customer base of COVB's size.

Staff believes the remaining amount above the NBV and going concern value represents obligations inherent to the COVB system, including the debt and the contracted payment amounts to FMPA and OUC. Similar to the Sebring case, this debt and these contractual obligations represent the cost of serving the customers of the COVB electric utility system. In the FPC/Sebring case, the gross premium of approximately $36.5 million was related to the debt obligation of Sebring. In the FPL/COVB transaction, the majority of the $185.0 million purchase price is for the following: (1) to pay off $20.4 million of debt of COVB; (2) to buy out $108.0 million of contractual obligations with FMPA; and (3) to buy out $20.0 million of contractual obligations with OUC. As with the case with Sebring, this debt and these contractual obligations were incurred solely for the benefit of the COVB customers and cannot be construed as providing any benefit to FPL's existing customers. It is not reasonable nor proper ratemaking policy to expect FPL's existing customers, who see no direct benefit from these contractual obligations, to be responsible for the fulfillment of these contracted amounts.

Staff notes that, while FPL and COVB have not proposed a surcharge in their PSA similar to the rider used in the Sebring case, the circumstances surrounding the PSA and similarities to the Sebring case lead staff to believe that such a rider or another similar mechanism could potentially be an appropriate mechanism for recovery of costs associated with serving the COVB

---

[21] Order No. PSC-92-1468-FOF–EU, p. 9.

[22] The total going concern value of $5.7 million recognized in the FPC/Sebring Order included the $4.5 million amount associated with the customer base and approximately $1.2 million for other considerations separate from the value of an established customer base.

[23] https://data.bls.gov/pdq/SurveyOutputServlet

customers.[24] Such a rider could be tailored by the parties to the PSA, as it was in the FPC/Sebring transaction, to provide COVB customers with immediate rate relief while allowing FPL recovery of the costs associated with serving the newly acquired customers. In addition, COVB customers would immediately receive the benefits from becoming FPL customers as well as resolution of the ongoing territorial dispute, and at the same time insulating FPL's 4.9 million existing customers from any costs not incurred for their benefit.

Conclusion

The extraordinary circumstances demonstrated in this case support approval for FPL to record a positive acquisition adjustment in the amount of $21.3 million on its books in Federal Energy Regulatory Commission (FERC) Account 114 - Electric Plant Acquisition Adjustments and to amortize this amount over the requested period of 30 years.

[24] FPL could also request approval for rate relief in its next base rate case associated with the acquisition of the COVB system.

Issue 4: Should the Commission approve recovery of costs associated with the short-term power purchase agreement with OUC?

Recommendation: Consistent with staff's recommendation in Issue 3, staff recommends that the recovery of payments to OUC should be limited to actual annual savings and should be recovered through the Fuel and Purchased Power Cost Recovery Clause. (Graves, P. Buys)

Staff Analysis: FPL states that obtaining COVB's release from an existing wholesale contract with OUC, due to expire in 2023, is a necessary step to proceed with the acquisition of the City's utility. FPL additionally states that OUC would not grant COVB a release from the wholesale contract without additional compensation beyond the $20 million that COVB committed to pay from the proceeds of the sale. As such, FPL negotiated a power purchase agreement (PPA) with OUC effective upon the closing of the PSA through December 2020. FPL asserts that the PPA will bring value to OUC and will unlock the savings that FPL's existing customers are projected to realize from consummating the overall acquisition.

Under the terms of the PPA, FPL is obligated to purchase a specified amount of capacity at a specified price from OUC. The purchase of energy is optional and is based on FPL anticipating an economic benefit of calling on the energy. Monthly energy costs are based on heat rate, duration of the purchase, and the daily price of natural gas. Energy costs also contain a defined operation and maintenance component. FPL states that the PPA would effectively be exercised as a peaking option to cover load during periods of high demand. However, FPL has made no assertion or demonstration that the PPA is needed for reliability purposes.

FPL requests that the payments associated with the PPA be recovered through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause). In this respect, FPL's requested method of recovery is like that of other power purchase agreements.

Staff believes that negotiated power purchase agreements should be considered prudent for cost recovery purposes if it is demonstrated that the agreement can reasonably be expected to be at a cost which does not exceed full avoided cost. Plainly stated, a power purchase agreement should not have a negative economic impact on a utility's customers.

FPL states that, from an avoided cost perspective, FPL customers will receive a total of approximately $6.9 million in net energy savings, compared to total fixed costs of $23.5 million. Therefore, based on FPL's estimates at this time, the PPA is approximately $16.6 million above avoided cost. Table 4-1 summarizes the estimated costs and savings associated with the PPA over the estimated term of the agreement.

Table 4-1

Summary of Estimated Costs and Savings from OUC PPA

	a	b	c=a-b
	Fixed Payments to OUC	Net Fuel Savings	Net Savings
2018	$2,466,000	$585,963	($1,880,037)
2019	$9,899,100	$3,250,640	($6,648,460)
2020	$11,167,980	$3,060,082	($8,107,898)
Total	**$23,533,080**	**$6,896,685**	**($16,636,395)**

Source: FPL response to Request No. 2 of Staff's Third Data Request

When considering FPL's economic analysis of the PPA, the agreement should not be considered prudent for full cost-recovery. Additionally, as previously discussed, FPL has negotiated the PPA as a means to effectuate its acquisition of COVB. Similar to staff's analysis in Issue 3, it is not reasonable nor proper to expect FPL's existing general body of customers, who see no direct benefit from the PPA, to be responsible for the fulfillment of the PPA. Based on the above, staff believes that costs above actual savings should not be recovered from FPL's existing customers. As discussed in staff's analysis for Issue 3, a rider paid by COVB customers or another similar mechanism may be appropriate to recover costs above actual savings.

Conclusion

Consistent with staff's recommendation in Issue 3, staff recommends that the recovery of payments to OUC should be limited to actual annual savings and should be recovered through the Fuel Clause.

Issue 5: Should this docket be closed?

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

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.