

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: November 15, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (D. Smith, Mouring) *DS*
Division of Economics (Guffey, Draper) *SKG EAD JSH*
Division of Engineering (P. Buys, Graves, King) *PB*
Office of the General Counsel (Cowdery, Murphy, Brownless) *KC CM*

RE: Docket No. 20170235-EI – 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. *ALM*

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

AGENDA: 11/27/18 – Special Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

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 Commission's jurisdiction 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. (EXH 41, Int. 33)

The City of Vero Beach's (COVB or City) electric utility is a municipally-owned electric utility providing service to approximately 35,000 customer accounts using the COVB transmission and distribution facilities. (TR 137) The boundaries of the COVB service area were set pursuant to four territorial orders that approved territorial agreements between COVB and FPL.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 (the County) and portions of the Town of Indian River Shores (Indian River Shores or the Town). (TR 153)

On November 3, 2017, FPL and COVB filed a joint petition² for approval to terminate their territorial agreement. The joint petitioners stated that termination of the territorial agreement was sought in connection with FPL's acquisition of the COVB electric utility. The joint petitioners stated that on October 24, 2017, FPL and COVB entered into an Asset Purchase and Sale Agreement (the PSA) that reflects COVB's and FPL's agreement to sell and to purchase the COVB electric utility system for a cash payment of approximately \$185.0 million as well as other consideration. The joint petitioners stated that termination of the COVB/FPL territorial agreement can only occur, subject to Commission approval, if all conditions precedent to the PSA closing are satisfied. The joint petitioners further stated that, if the PSA does not close, COVB will continue to serve its customers and the existing territorial boundaries will remain in effect.

Directly related to the joint petition to terminate the COVB/FPL territorial agreement, FPL filed a petition³ for authority to charge FPL's rates and charges to COVB customers, and for approval of FPL's requested accounting treatment. FPL requests 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 \$114 million⁴ with respect to the City's electric utility system acquired by FPL; and (3) approve recovery of costs associated with the short-term power purchase agreement (PPA) with the Orlando Utilities Commission (OUC).

The Office of Public Counsel (OPC) was granted intervention in both dockets. The Commission granted FPL's Petition and the COVB/FPL Joint Petition in one proposed agency action order (PAA Order) issued on July 2, 2018.⁵ On July 20, 2018, the Civic Association of Indian River County, Inc. (CAIRC) timely filed an amended petition for administrative hearing on the PAA

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 Docket No. 20170236-EU.

³ Docket No. 20170235-EI.

⁴ FPL's initial petition calculated the estimated amount of the positive acquisition adjustment as \$116.2 million. This amount was revised in FPL's supplemental testimony to reflect the current request of \$114 million.

⁵ Order No. PSC-2018-0336-PAA-EU.

Order.⁶ OPC, Indian River County, and Indian River Shores requested and were granted intervention. A Prehearing Conference was held on October 3, 2018.⁷ A *de novo* administrative hearing was held before the Commission on October 18, 2018, as required by Sections 120.569 and 120.57, F.S. In addition, public testimony was taken before the Commission on October 18, 2018, as part of the proceeding.

The Commission has jurisdiction under Sections 366.04, 366.041, 366.05, and 366.06, F.S.

⁶ The Commission also received petitions requesting hearings on the PAA Order from Florida Industrial Power Users Group (FIPUG), Mr. Michael Moran, and Mr. Bill Heady. However, FIPUG withdrew its petition and Messrs. Moran and Heady were dismissed as parties for failure to attend the October 3, 2018 prehearing conference.

⁷ Pursuant to the Prehearing Order No. PSC-2018-0494-PHO-EU, Proposed Issues 2, 3, 4, 10, 14, 18, and 19 were not accepted as issues in the proceeding and were stricken. In order to avoid confusion, the remaining issues were not renumbered for purposes of the hearing and this staff recommendation. In addition, Issue 17 was removed at hearing. (TR 438)

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Discussion of Issues

Issue 1: What statutory provisions or other legal authority, if any, grant the Commission the authority and jurisdiction to approve the acquisition adjustment requested by FPL in this case?

Recommendation: The Commission has broad ratemaking authority under Sections 366.04(1), 366.041, 366.05, and 366.06, F.S., to decide whether to approve the acquisition adjustment requested by FPL. (Cowdery)

Position of the Parties:

FPL: The Commission has ample rate-setting and public interest authority pursuant to Sections 366.01, 366.04, 366.041, and 366.05, 366.06, F.S. There is also long-held precedent that supports such an approval, including the Commission's decisions in Docket Nos. 920949-EU, 120311-GU, 110133-GU, 060657-GU.

COVB: The COVB joins FPL's position on Issue 1.

Indian River County: The County joins FPL's position on Issue 1.

Town of Indian River Shores: The Town joins FPL's position on Issue 1.

OPC: The Commission has jurisdiction over the rates of electric utilities such as FPL, pursuant to Fla. Stat. § 366.04.

CAIRC: None. The law does not allow goodwill expenses to be added to rates. Speculative, opinion testimony does not replace legal standards found in statute and case law, nor any change in policy. Setting a precedent of such practice would have momentous impact on ratepayers in the future.

Staff Analysis: 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. (TR 345) A positive acquisition adjustment exists when the purchase price is greater than the net book value (purchase price premium). (TR 275) The approval of a positive acquisition adjustment for rate-making purposes means that a utility can recover the purchase price premium from all of its customers in rates. (TR 331) A positive acquisition adjustment is considered goodwill or going-concern value for accounting purposes. (TR 247-48)

Because an acquisition adjustment affects customer rates, the Commission has jurisdiction under several sections of Chapter 366, F.S. Section 366.04(1), F.S., grants the Commission exclusive jurisdiction to regulate and supervise each public utility with respect to its rates and service. In addition, Section 366.041, F.S., authorizes the Commission to consider, among other things in fixing rates, the cost of providing service and the value of such service to the public. Section 366.06(1), F.S., provides that, in setting rates, the Commission shall investigate and determine the actual legitimate costs of the property of each utility company actually used and useful in the public service. Section 366.05, F.S., gives the Commission the power to prescribe fair and reasonable rates and charges. The Legislature declared in Section 366.01, F.S., that Chapter 366,

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F.S., is an exercise of the police power of the state for the protection of the public welfare, and all the provisions of Chapter 366, F.S., shall be liberally construed for the accomplishment of that purpose.

Section 366.06, F.S., states that the net investment of each public utility used for ratemaking “shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor.” CAIRC argues that the Commission does not have jurisdiction to approve positive acquisition adjustments because Section 366.06, F.S., prohibits the Commission from approving an acquisition adjustment. (CAIRC BR 4) FPL witness Deason testified that Section 366.06, F.S., only prohibits the inclusion of goodwill or going concern value to the extent it exceeds payments made by the acquiring utility. He further testified that Section 366.06, F.S., does not prohibit the Commission from exercising jurisdiction to approve the acquisition adjustment based on the purchase price. In this case, the acquisition adjustment is part of the total purchase price. (TR 248, 253) Staff agrees with witness Deason that Section 366.06, F.S., does not prohibit the Commission from approving the acquisition adjustment requested by FPL in this case. 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. Staff recommends that the Commission find that the Commission has jurisdiction under its broad ratemaking authority pursuant to Sections 366.04(1), 366.041, 366.05, and 366.06, F.S., to decide whether to approve the acquisition adjustment requested by FPL.

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Issue 5: Should the Commission grant FPL the authority to charge FPL's rates and charges to City of Vero Beach's customers upon the closing date of the Asset Purchase and Sale Agreement?

Recommendation: Yes. If the Commission approves staff's recommendation on Issue 6, the Commission should grant FPL the authority to charge FPL's approved rates and charges to COVB customers upon termination of the territorial agreement, effective on the closing date of the PSA. FPL must notify the former COVB customers of the new rates and charges with the first bill containing the new rates. (Guffey, Draper, Cowdery)

Position of the Parties

FPL: Yes. Approval will generate the following savings for COVB customers: (i) a typical residential customer will save \$330 annually; (ii) a typical small store front will save \$410 annually; a typical office building or school will save \$7,600 annually; and (iv) a typical large retailer or hospital will save nearly \$80,000 annually.

COVB: Yes. The COVB joins FPL's position on Issue 5. Authorizing FPL to charge COVB customers FPL rates advances the public interest by allowing COVB customers to enjoy significantly lower electric bills, which is an indispensable component of the COVB Transaction. Without this approval, the COVB Transaction will not close.

Indian River County: Yes, County joins FPL's position on Issue 5.

Town of Indian River Shores: Yes. The Town joins FPL's position on Issue 5.

OPC: Yes.

CAIRC: Yes, as long, as they do not improperly add fees and costs to those rates and bills to hide the recoupment of the transaction, thereby eliminating any savings promised to the customers.

Staff Analysis: All parties agree that the Commission should grant FPL the authority to charge FPL's rates and charges to COVB customers upon the closing date of the PSA. FPL witness Cohen testified that FPL and COVB customers will immediately benefit from FPL's residential and commercial rates once the COVB customers are transitioned to receive service from FPL. (TR 53-56) OPC Witness Kollen testified that OPC supports charging FPL rates to former City of Vero Beach customers. (TR 89, 91) FPL witness Deason explained that for COVB to be willing to sell the utility to FPL, it was a requirement that COVB's customers would receive FPL rates. (TR 334) COVB witness O'Conner testified that Commission approval of FPL's request to charge COVB electric customers FPL's rates, is a condition precedent to closing on the PSA. (TR 370-371)

As part of its petition in Docket No. 20170235-EI, FPL asked the Commission to grant it the authority to charge its rates and charges to COVB's customers. Witness Deason testified that in order for FPL to charge its rates to former COVB customers, the Commission must approve the

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joint petition to terminate the COVB/FPL territorial agreement. (TR 279) 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 the Commission's approval for authority under Rule 25-9.044, F.A.C., to charge FPL's existing rates to the COVB customers. (EXH 2)

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 that will thereafter operate the utility must adopt and use the rates, classifications, and regulations of the former operating company unless the Commission authorizes a change.

In this case, because all parties agree that FPL rates and charges should be imposed, staff recommends that if the Commission approves staff's recommendation on Issue 6, the Commission should grant FPL the authority to charge its approved rates and charges to the former COVB customers upon termination of the territorial agreement effective upon the closing date of the PSA. The Commission should require FPL to notify the former COVB customers of the new rates and charges with the first bill containing the new rates.

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Issue 6: Should the Commission approve the joint petitioners' request to terminate the existing territorial agreement between FPL and COVB 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 COVB upon the closing date of the PSA. Upon closing of the PSA, FPL shall file revised tariff sheets Nos. 3.020, 3.010, and 7.020 to reflect the addition of the COVB service area to its description of territory and communities served. (Cowdery, Guffey, Draper)

Position of the Parties

FPL: Yes. Termination of the territorial agreement is an essential component of the COVB Transaction. Approval of the agreement's termination is in the public interest, as it enables approximately \$135 million in CPVRR savings for FPL's customers and significant immediate savings for COVB customers.

COVB: Yes. The COVB joins FPL's position on Issue 6. Both the COVB and FPL petitioned the Commission to terminate the territorial agreement because termination is an essential component of the COVB Transaction.

Indian River County: Yes, County joins FPL's position on Issue 6.

Town of Indian River Shores: Yes. The existing territorial agreement splits the Town causing residents to be served by two different utilities with vastly disparate rates and consumer protection safeguards. These disparities have spawned various lawsuits. Terminating the territorial agreement would unify electric service within the Town, eliminate the disparities, and settle protracted litigation.

OPC: No position at this time.

CAIRC: No. Petitioners have failed to prove that this transaction will be of benefit to the consumers, and therefore the existing territorial agreements should remain.

Staff Analysis: Section 366.04(2), F.S., gives the Commission the authority 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's responsibility in evaluating modifications of territorial agreements, and the applicable standard used, is 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) (finding that the territorial agreement as a whole contained no detriment to the public and should have been approved by the Commission). 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). The Commission's decision must be

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based 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.

In Docket No. 20170236-EU, FPL and COVB jointly ask the Commission to terminate their territorial agreement. The joint petition involves the transfer of customers from COVB to FPL. FPL and COVB's joint petition states that they are requesting termination of their existing territorial agreement in connection with FPL's acquisition of the COVB electric utility as addressed in Docket No. 20170235-EI. 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. The joint petition states that 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 petition states that if the territorial agreement is terminated, FPL will serve all of Indian River County, but if the PSA does not close, the joint petitioners will continue to operate pursuant to the Territorial Orders.

Witness O'Connor, the City Manager of the COVB, testified that the COVB City Counsel, duly elected by and representing the citizens of the COVB, directed the negotiations for the sale of the COVB electric utility with FPL, and that the customers of COVB living in the city support the sale. (TR 361, 363, 368-71) COVB customers testified at hearing in support of becoming FPL customers. (TR public hearing, October 18, 2018, pp. 30-47)

The record shows that for many years, COVB customers living outside the municipal boundaries of the city wanted to be served by FPL instead of by the COVB. There were multiple attempts to address COVB customer dissatisfaction through legislation. (TR public hearing, October 18, 2018, pp.7-8; EXH 53)⁸ In addition, two voter referenda were held that showed that COVB customers supported the sale of the COVB electric utility to FPL. (TR 366-68, 371, EXH 31 and 32) Multiple petitions for relief were filed with the Commission as far back as 2009, some of which resulted in court appeals. (TR 296-97; EXH 53)⁹ Litigation filed by the Town of Indian River Shores challenging the Commission's order denying the Town's petition to modify the COVB/FPL territorial agreement¹⁰ is pending at the Commission. Upon joint motion of Indian

⁸ Further attempts to pass Legislation to address the concerns of COVB electric customers living outside the City failed in 2010 (HB 725/SB 2632; HB 1397); 2011 (HB 899); 2013 (HB 733/SB 1620); 2014 (HB 813/SB 1248; HB 861/SB 1294); 2015 (HB 773; HB 337/SB 442); and 2016 (HB 5790/SB 840).

⁹ 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*. This 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, those negotiations did not result in a sale; 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*; Order No. PSC-15-0102-DS-EM, issued February 12, 2015, 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; Board of County Commissioners of Indian River County v. Graham*, 191 So. 3d 890 (Fla. 2016)(affirming Commission Order Nos. PSC-15-0101-DS-EM and PSC-15-0102-DS-EM); 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*.

¹⁰ 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*.

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River Shores and COVB, the hearing to address the Town's modification request is being held in abeyance pending closing on the PSA and termination of the COVB/FPL territorial agreement. (EXH 53)

The record shows that termination of the territorial agreement and transfer of COVB customers to FPL would not result in harm or detriment to the public interest. Witness Deason provided unrefuted testimony that the transfer from COVB to FPL would not result in degradation of the COVB customers' quality of service or reliability. (TR 333) The record further shows that the \$114 million positive acquisition adjustment equates to an estimated impact of \$0.11 per 1,000 kilowatt-hours (kWh) on a monthly residential bill if the requested acquisition adjustment is approved and FPL includes amortization of the positive acquisition adjustment in rates in its next rate proceeding. (EXH 59, BSP 00112). Staff believes this to be a *de minimis* rate impact that would not result in harm or detriment to the public interest. Further, as explained in Issue 15, Commission approval of FPL recovering costs associated with the short-term power purchase agreement with OUC will not result in harm or detriment to the public interest.

The Commission's approval of termination of the COVB/FPL territorial agreement and attendant transfer of customers from COVB to FPL would resolve the issues between COVB and Indian River Shores in the dispute over their territorial agreement that is pending before the Commission. The general rule that the legal system favors settlement of disputes by mutual agreement applies equally in utility service agreements between municipal electric utilities and other electric utilities under the Commission's jurisdiction. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997)(noting that the Commission's charge in proceedings concerning territorial agreements is to approve those agreements that work no detriment to the public interest). The termination of the territorial agreement as part of the PSA would resolve controversy over the COVB/FPL territorial agreement and is in the public interest.

Based on the foregoing, staff recommends that the Commission approve the joint petitioners' request to terminate the existing territorial agreement between FPL and COVB effective upon the closing date of the PSA. Upon closing of the PSA, FPL shall 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.

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Issue 7: What extraordinary circumstances, if any, exist to support the Commission's consideration of authorizing a positive acquisition adjustment in this case?

Recommendation: The combination of factors that support the Commission's consideration of a positive acquisition adjustment in this case are that (1) approximately 60 percent of COVB's electric customers live outside COVB's municipal boundaries; (2) there have been years of complex litigation between these customers and the COVB attempting to transfer these customers from COVB to FPL, including pending Commission Docket No. 160049-EU (presently in abeyance) concerning Indian River Shores' petition for modification of the COVB/FPL territorial agreement; (3) the customers living outside the municipal boundaries have tried for many years to seek legislative redress for their complaints; and (4) the COVB has had two voter referenda that show that the majority of COVB customers support a sale of the COVB electric utility to FPL. Based upon the totality of the unique and unusual facts listed above, staff recommends that the Commission should find that extraordinary circumstances exist that warrant the Commission's consideration of authorizing a positive acquisition adjustment. (Cowdery, D. Smith)

Position of the Parties:

FPL: The following extraordinary circumstances exist:

1. Lower rates for COVB customers
2. Reduced revenue requirements for existing FPL customers
3. Resolution to years of litigation
4. End of disenfranchisement
5. Improved service quality
6. Improvements and modernization for COVB's grid
7. Greater access to capital
8. More experienced management
9. The availability of OPC to provide representation to COVB customers
10. Diverse transaction beneficiaries

COVB: The COVB joins FPL's position on Issue 7.

Indian River County: The County joins FPL's position on Issue 7.

Town of Indian River Shores: COVB customers will receive lower rates. FPL's other customers will receive net present value savings of \$135 million from economies of scale. COVB's non-resident customers will receive regulatory protection from the Commission and OPC. COVB will receive millions of dollars in sale proceeds. Protracted territorial disputes will be resolved.

OPC: The evidence does not establish that extraordinary circumstances exist, as a matter of law.

CAIRC: None. No evidence has been presented, other than non-evidence hearsay and non-expert self-serving opinion, that would support such a finding. Customers living outside the

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municipal boundaries is commonplace, and a switch to FPL would have no effect on an ability to vote for your decision-makers regarding rates.

Staff Analysis: As discussed in Issue 9, the Commission must first determine if extraordinary circumstances exist that may warrant the consideration of a positive acquisition adjustment. Such logic was also recognized by witness Deason. (TR 269) In addition, OPC witness Kollen contends that this policy protects customers from utilities acquiring assets at inflated prices. (TR 93)

FPL witness Deason testified that there were nine customer benefits of FPL's purchase of the COVB electric utility that could be considered extraordinary circumstances supporting an acquisition adjustment. (TR 273-74) Although staff believes that extraordinary circumstances exist that support consideration of a positive acquisition adjustment, it disagrees in part with FPL's position on what circumstances in this case are extraordinary, as explained below.

FPL provided a 30-year cumulative present value of revenue requirements (CPVRR) analysis to demonstrate extraordinary circumstances in the form of reduced revenue requirements for FPL customers. (EXH 32, 267) FPL witness Deason testified that a CPVRR analysis is a tool to measure and weigh the revenue requirement impacts of competing alternatives. (TR 264) Witness Deason indicated CPVRR analyses have previously been used in need determination proceedings and proceedings related to the buyouts of power purchase agreements. (TR 265-266)

Staff acknowledges that CPVRR analyses are often used as a forward-looking decision making tool to evaluate options in power plant and transmission line need determination and other proceedings. However, the record does not show that this Commission has ever approved a positive acquisition adjustment based on a CPVRR analysis. Further, witness Deason acknowledged that it is within the Commission's discretion to find in a particular case that customer savings alone may not be sufficient to demonstrate extraordinary circumstances. (TR 267) In this case, the CPVRR analysis estimated the revenue requirement impact of FPL acquiring the COVB assets as well as the proposed acquisition adjustment and PPA with OUC. Staff recommends that projected reduced revenue requirements for FPL customers, which is the limited scope of a CPVRR analysis, is not an extraordinary circumstance that can support consideration of an acquisition adjustment.

Likewise, the rate disparity between COVB and FPL does not constitute an extraordinary circumstance that can support consideration of a positive acquisition adjustment. Unlike the FPC/Sebring case, where the acquired utility was in serious financial distress resulting in the highest electric rates in the state that were in jeopardy of becoming even higher,¹¹ the evidence shows that the COVB utility is financially sound. (TR 298, 327)

Electric utility customers cannot choose between electricity providers based on which provider has the lower rates. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla 1997) (Even a

¹¹ See 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)

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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). 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 exercise of the Commission’s 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 customers are permitted to allege extraordinary circumstances because they pay higher rates than the rates charged by another electricity provider, then every other 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.

Witness Deason testified that approximately 60 percent of COVB’s customers reside outside the City’s municipal borders. (TR 153, 296; EXH 53) This is the largest such percentage in the state of Florida (EXH 58). He testified that these customers feel that they do not have adequate recourse to address or challenge decisions concerning the operations and rates of the COVB utility as currently constituted and have sought recourse through both their local and state-level elected officials as well as through the courts and the Commission. (TR 296-97) He further testified that these initiatives have taken place over a long period of time. (TR 296)

There were multiple attempts to address COVB customer dissatisfaction through legislation. (TR public hearing, October 18, 2018, p. 8; EXH 53) 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. (TR public hearing, October 18, 2018, pp.7-8) Further attempts to pass legislation to address the concerns of COVB electric customers living outside the City failed in 2010 (HB 725/SB 2632; HB 1397); 2011 (HB 899); 2013 (HB 733/SB 1620); 2014 (HB 813/SB 1248; HB 861/SB 1294); 2015 (HB 773; HB 337/SB 442); and 2016 (HB 5790/SB 840). In addition, two voter referenda were held that showed that COVB customers supported the sale of the COVB electric utility to FPL. (TR 366-68, 371, EXH 31 and 32)

In addition to proposed legislation, multiple petitions were filed with the Commission as far back as 2009, some of which resulted in court appeals. (TR 296-97; EXH 53)¹² More recently, on January 5, 2016, the Town of Indian River Shores filed a petition for declaratory statement with the Commission that asked for a declaration that the Commission lacks jurisdiction to interpret

¹² 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*. This 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, those negotiations did not result in a sale; 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*; Order No. PSC-15-0102-DS-EM, issued February 12, 2015, 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; Board of County Commissioners of Indian River County v. Graham*, 191 So. 3d 890 (Fla. 2016)(affirming Commission Order Nos. PSC-15-0101-DS-EM and PSC-15-0102-DS-EM).

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Article VIII, Section 2(c), Florida Constitution for purposes of determining whether the Town has a constitutional right to be protected from COVB providing electric service within the Town without the Town's consent. In response, the Commission issued an order declaring that it has the jurisdiction under Section 366.04, F.S., to determine whether COVB has 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.¹³

On March 4, 2016, 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, requesting the Commission to move the entire Town of Indian River Shores out of COVB's service area and put it in FPL's service area. The Commission denied Indian River Shores' petition by a proposed agency action (PAA) order.¹⁴ The Town of Indian River Shores filed a petition for administrative hearing on the PAA order and COVB filed a cross-petition. However, because FPL and COVB had entered into negotiations for the purchase and sale of the COVB electric utility, Indian River Shores and COVB jointly requested that the Commission hold the proceeding in abeyance pending negotiations and sale of the utility. (EXH 53) The docket is currently being held in abeyance for this reason.

Settlement of disputes by mutual agreement between contending parties is in the public interest. *See AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997). If the PSA closes, including the required approval of the requested acquisition adjustment, the dispute about the territorial agreement between COVB and Indian River Shores that is pending before the Commission would be resolved. Resolution of this dispute is in the public interest.

The combination of factors that support the Commission's consideration of a positive acquisition adjustment in this case are that (1) approximately 60 percent of COVB's electric customers live outside COVB's municipal boundaries; (2) there have been years of complex litigation between these customers and the COVB attempting to transfer these customers from COVB to FPL, including pending Commission Docket No. 160049-EU (presently in abeyance) concerning Indian River Shores' petition for modification of the COVB/FPL territorial agreement; (3) the customers living outside the municipal boundaries have tried for many years to seek legislative redress for their complaints; and (4) the COVB has had two voter referenda that show that the majority of COVB customers support a sale of the COVB electric utility to FPL. Based upon the totality of the unique and unusual facts listed above, staff recommends that the Commission should find that extraordinary circumstances exist that warrant the Commission's consideration of authorizing a positive acquisition adjustment.

¹³ 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*.

¹⁴ 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*.

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Issue 8: Should the Commission consider alternatives other than what has been proposed by FPL with respect to the acquisition adjustment?

Recommendation: This issue concerns the amount of the acquisition adjustment, if any, and is addressed in Issue 11. (D. Smith, Cowdery)

Position of the Parties

FPL: No. The approvals that are before the Commission are the approvals required for the PSA to close. FPL has evaluated alternatives and methods of accomplishing the transaction, and having done so, has placed before the Commission the proposal that will satisfy the needs of both FPL and COVB.

COVB: No. The COVB joins FPL's position on Issue 8.

Indian River County: No. County joins FPL's position on Issue 8.

Town of Indian River Shores: No. The Town joins FPL's position on Issue 8.

OPC: The Commission has the ultimate discretion to consider all competent substantial evidence, weigh the several available options, and determine an outcome in the public interest.

CAIRC: The law would not seem to support any "alternatives" to a yes-or-no situation, even if many alternatives are available to the COVB which have not yet been pursued or were ignored.

Staff Analysis: The Commission has great discretion in determining what action to take with respect to the requested acquisition adjustment, and may take any action supported by law and evidence on record, including alternatives to the requested acquisition adjustment. Staff recommends that this issue concerns the amount of the acquisition adjustment, if any, and is addressed in Issue 11.

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Issue 9: Should the Commission approve a positive acquisition adjustment associated with the purchase of the COVB electric utility system?

Recommendation: Yes, the Commission should approve a positive acquisition adjustment. (D. Smith, Cowdery)

Position of the Parties

FPL: Yes. The public interest is furthered by the COVB Transaction and there are extraordinary circumstances present such that the Commission should properly authorize FPL a positive acquisition adjustment.

COVB: Yes. The COVB joins FPL's position on Issue 9.

Indian River County: Yes. The County joins FPL's position on Issue 9.

Town of Indian River Shores: Yes. The Town joins FPL's position on Issue 9.

OPC: No. No Commission approval is necessary to record an acquisition premium in Account 114. FPL is required to record the acquisition premium as "goodwill" under generally accepted accounting principles ("GAAP") and, more specifically, is required to record the acquisition premium in account 114 under the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USOA"). However, the Commission must determine whether FPL is allowed recovery of the acquisition adjustment either in this proceeding or in the Company's next base rate case.

CAIRC: No. There is no legal precedent for such action, as Sebring is specifically exempted as being such and is factually distinct in most respects. Water and gas cases, purposely and reasonably, are in a separate category. The statute says no, specifically, and must be given the most logical reading.

Staff Analysis: The only previous order in which the Commission approved a positive acquisition adjustment in the electric industry was in the FPC/Sebring case. (TR 258) In that case, when deciding whether to allow a positive acquisition adjustment for an electric utility purchase, the Commission first evaluated the specific facts and circumstances to determine whether there were extraordinary circumstances that warranted consideration of a positive acquisition adjustment.¹⁵ (TR 260) As explained in the FPC/Sebring Order, and as recognized by FPL witness Deason in this instant case, when one utility purchases another utility, a purchase price premium should be disallowed unless it is shown that extraordinary circumstances exist such that consideration of an acquisition adjustment would be appropriate.¹⁶ (TR 269) Staff agrees with OPC witness Kollen that this policy protects customers from utilities acquiring assets at inflated prices and provides incentive for utilities to minimize any acquisition costs in excess of the net book value of the acquired assets. (TR 93)

¹⁵ FPC/Sebring Order at pp. 1-2.

¹⁶ FPC/Sebring Order at p. 11.

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In the FPC/Sebring Order, after finding that extraordinary circumstances existed, the Commission next considered approval of a positive acquisition adjustment. In doing so, the Commission stated:

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 reasonable to other utility customers who are not directly involved in the proceedings at hand.¹⁷

Staff recommends that the basic analytical framework used in the FPC/Sebring Order should be applied in this case. That is, the Commission should first determine whether extraordinary circumstances exist that would support consideration of an acquisition adjustment. If the Commission finds that such extraordinary circumstances do exist, it then would determine the appropriateness of such a positive acquisition adjustment. As discussed in Issue 7, the record shows that extraordinary circumstances exist that would support consideration of the appropriateness of a positive acquisition adjustment.

The Commission's decision on whether to approve the requested acquisition adjustment must be in the public interest and must not harm either COVB or FPL electric customers. *See Gulf Coast Elec. Coop. v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999) (noting that in approving territorial agreements, the Commission must ensure that the agreement works no detriment to the public interest), *Utilities Com'n of City of New Smyrna Beach v. Fla. Pub. Serv. Com'n*, 469 So. 2d 731, 732-33 (Fla 1985) (stating that any customer transfer in a proposed territorial agreement must not harm the public, and the Commission should base its approval decision on the effect the agreement will have on all affected customers).

The record shows that upon the closing of the PSA, including the termination of the territorial agreement and transfer of COVB customers to FPL, there would be no harm or detriment to the acquired COVB customers. For example, witness Deason provided unrefuted testimony that transfer from COVB to FPL would not result in degradation of COVB customers' quality of service or reliability. (TR 333) Furthermore, bill comparisons between FPL and COVB customers show that a COVB residential customer who becomes an FPL customer who uses 1,000 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. COVB commercial and industrial customers would also see bill decreases based on usage. (EXH 52)

The record also shows that there would be no harm or detriment to the existing FPL customers. The \$114 million positive acquisition adjustment equates to an estimated impact of \$0.11 per 1,000 kWh on a monthly residential bill if the requested acquisition adjustment is approved and FPL includes amortization of the positive acquisition adjustment in rates in its next rate proceeding. (EXH 59, BSP 00112) Staff believes this to be a *de minimis* rate impact. Furthermore, staff believes that neither this *de minimis* rate impact nor the Commission's

¹⁷ FPC/Sebring Order at p. 8 (quoting 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).

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approval of FPL recovering costs associated with the short-term PPA with OUC will result in harm or detriment to the public interest.

Staff recommends that, if the Commission finds there to be extraordinary circumstances that support consideration of a positive acquisition adjustment and that the positive acquisition adjustment would not result in harm or detriment to the public interest, the Commission should approve a positive acquisition adjustment associated with FPL's purchase of the COVB electric utility system.

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Issue 11: What is the appropriate amount, if any, of a positive acquisition adjustment to be recorded on FPL's books for the purchase of the COVB electric utility system?

Recommendation: As discussed in Issues 7 and 9, the existence of extraordinary circumstances and the demonstration of a *de minimis* rate impact support a positive acquisition adjustment. Thus, a positive acquisition adjustment in the amount of \$114 million should be recorded by FPL. (D. Smith, Cowdery)

Position of the Parties

FPL: FPL estimates an acquisition adjustment of approximately \$114 million, which reflects the amount FPL paid to COVB over the net value of the assets purchased. FPL witness Herr conducted a fair value evaluation of the COVB electric utility. This evaluation confirms the purchase price of the COVB Transaction was reasonable.

COVB: The COVB joins FPL's position on Issue 11.

Indian River County: The County joins FPL's position on Issue 11.

Town of Indian River Shores: The Town joins FPL's position on Issue 11.

OPC: FPL is required to record the actual acquisition premium as "goodwill" under generally accepted accounting principles ("GAAP") and, more specifically, is required to record the acquisition premium in account 114 under the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USOA").

CAIRC: FPL is required to record the actual acquisition premium as "goodwill" under generally accepted accounting principles ("GAAP") and, more specifically, is required to record the acquisition premium in account 114 under the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USOA").

Staff Analysis: As discussed in Issues 7 and 9, the existence of extraordinary circumstances and the demonstration of a *de minimis* rate impact support a positive acquisition adjustment. Thus, staff recommends that a positive acquisition adjustment in the amount of \$114 million should be recorded by FPL. This amount is the difference between the negotiated purchase price between FPL and COVB of \$185 million and the net book value of the acquired utility assets of approximately \$71 million. (TR 248, 275)

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Issue 12: If a positive acquisition adjustment is permitted, what is the appropriate accounting treatment for FPL to utilize for recovery and amortization of the acquisition adjustment?

Recommendation: If the Commission approves a positive acquisition adjustment, FPL should be authorized to record the positive acquisition adjustment in FERC Account 114 – Electric Plant Acquisition Adjustments and record the amortization expense in FERC Account 406 – Amortization of Electric Plant Acquisition Adjustments over a 30-year period. (D. Smith)

Position of the Parties

FPL: The Company should be authorized to record the approximately \$114 million positive acquisition adjustment in FERC Account 114 – Electric Plant Acquisition Adjustments. It is appropriate to record the amortization expense in FERC Account 406 – Amortization of Electric Plant Acquisition Adjustments over a 30 year period.

COVB: The COVB joins FPL’s position on Issue 12.

Indian River County: The County joins FPL’s position on Issue 12.

Town of Indian River Shores: The Town joins FPL’s position on Issue 12.

OPC: If recovery is permitted, then FPL is required pursuant to the FERC USOA to record the amortization in account 406 *Amortization of Electric Plant Acquisition Adjustments*. If recovery is not permitted, then there is no amortization recorded in account 406.

CAIRC: If recovery is permitted, then FPL is required pursuant to the FERC USOA to record the amortization in account 406 *Amortization of Electric Plant Acquisition Adjustments*. If recovery is not permitted, then there is no amortization recorded in account 406.

Staff Analysis: The FERC Uniform System of Accounts (USOA) for Account 114 – Electric Plant Acquisition Adjustments (18 C.F.R. 101), requires a positive acquisition adjustment if the cost of the acquired system is greater than original cost less accumulated depreciation (i.e., net book value). (TR 90) Consistent with Accounting Standard Codification 980, FPL should record amortization expense associated with an acquisition adjustment in Account 406 over a 30-year period if the Commission approves recovery of the expense in rates pursuant to the requirements of both GAAP and the FERC USOA. (TR 90)

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Issue 13: Should the projected cost savings supporting FPL's request for a positive acquisition adjustment be subject to review in future FPL rate cases?

Recommendation: No, future review of the positive acquisition adjustment is unnecessary and is not required in this particular case. (D. Smith, Cowdery)

Position of the Parties

FPL: No. The benefits to customers from the COVB Transaction are measured by a CPVRR calculation, which takes a holistic view and is derived by spreading fixed costs over a larger base. The calculation is not predicated on any specific set of future management actions that would need to be monitored.

COVB: No. The COVB joins FPL's position on Issue 13.

Indian River County: No. The County joins FPL's position on Issue 13.

Town of Indian River Shores: The Town joins FPL's position on Issue 13.

OPC: Yes, but only if the Commission approves recovery of the acquisition premium. If so, then the Commission should specifically reserve the right to determine how the savings are measured in the subsequent proceeding and decline to affirm FPL's methodology, including its errors, in this proceeding. Alternatively, the Commission could determine in this proceeding that OPC's criticisms are correct and reflect the correction of those errors [re: FPL's CPVRR analysis] in its subsequent review of any savings.

CAIRC: Yes. Future impacts need to be seen and addressed if such a deviation from prior law is accepted.

Staff Analysis: Historically, the Commission has used a future review to evaluate the cost savings relied upon to support approval of positive acquisition adjustments and to ensure that the cost savings remain beyond the closing of the case.¹⁸ As discussed in Issues 7 and 9, projected cost savings are not used as the basis to approve a positive acquisition adjustment in this case. Therefore, staff recommends that the Commission find that future review of the positive acquisition adjustment is unnecessary and is not required in this particular case.

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.*

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Issue 15: Should the Commission approve recovery of costs associated with the short-term power purchase agreement with Orlando Utilities Commission?

Recommendation: Yes. FPL should be allowed to seek cost recovery of the payments associated with the PPA through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause). The energy payments should be recovered through the fuel portion of the Fuel Clause and the capacity payments should be recovered through the capacity portion of the Fuel Clause. (Graves, P. Buys)

Position of the Parties

FPL: Yes. It is appropriate for FPL recover the energy portion related to the OUC PPA through FPL's FCR Clause and the capacity component through the CCR Clause. FPL's requested method of recovery is like that of other power purchase agreements.

COVB: Yes. The COVB joins FPL's position on Issue 15.

Indian River County: Yes. The County joins FPL's position on Issue 15.

Town of Indian River Shores: Yes. The Town joins FPL's position on Issue 15.

OPC: OPC has no position at this time, although it notes that this agreement will increase the cost of service for the general body of FPL ratepayers, all else equal.

CAIRC: No, this agreement will increase the cost of service for the general body of FPL ratepayers and set a precedent contrary to PSC policy.

Staff Analysis: FPL witness Forrest testified 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 COVB's utility. He additionally testified 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 PPA with OUC effective upon the closing of the PSA through December 2020. (TR 152 and 158)

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. (TR 158 and 159, EXH 3) FPL is requesting that the payments associated with the PPA be recovered through the Fuel Clause. (TR 159; EXH 39, BSP 00043) In this respect, FPL's requested method of recovery is like that of other power purchase agreements. In addition, FPL indicated that the PPA is approximately \$14.1 million above avoided cost. (EXH 39, BSP 00038) Giving consideration to FPL's 2018 approved Fuel Clause recovery amount of \$3.2 billion,¹⁹ the estimated net costs associated with the OUC PPA (approximately \$6 million in 2019 and \$8 million in 2020) would have a *de minimis* impact on FPL's fuel clause cost recovery factors and, therefore, customer rates.

¹⁹ Order No. PSC-2018-0028-FOF-EI, p. 24 and 41.

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Typically, the Commission considers a negotiated power purchase agreement prudent for cost recovery purposes if it is demonstrated that the agreement will not result in costs above avoided cost. However, the joint petition to terminate the COVB/FPL territorial agreement states that the termination of the territorial agreement will be effective if all conditions precedent to the PSA are satisfied, which includes approval of cost recovery for the PPA. As discussed in Issue 6, the termination of the territorial agreement as part of the PSA would resolve controversy over the COVB/FPL territorial agreement and is in the public interest. Based on the foregoing, staff recommends that FPL should be allowed cost recovery of the payments associated with the PPA through the Fuel Clause. The energy payments should be recovered through the fuel portion of the Fuel Clause and the capacity payments should be recovered through the capacity recovery portion of the Fuel Clause.

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Issue 16: Is granting the relief requested by the applicants in the public interest?

Recommendation: Yes. If the Commission approves staff's recommendation on Issues 1, 5-9, 11-13, and 15, staff recommends that the Commission find that it is in the public interest to grant the relief requested. (Cowdery, D. Smith)

Position of the Parties:

FPL: Yes. A transaction providing COVB customers significant bill savings while simultaneously saving FPL customers approximately \$135 million is within the public interest. The resolution of a nearly decade-long struggle of COVB customers, businesses, and elected officials to receive FPL's lower rates is also in the public interest.

COVB: Yes. The COVB joins FPL's position on Issue 16.

Indian River County: Yes. The County joins FPL's position on Issue 16.

Town of Indian River Shores: Yes. The Town joins FPL's position on Issue 16

OPC: Granting FPL's rates and service to COVB customers may be in the public interest; however granting recovery of the acquisition premium as proposed will harm the general body of FPL customers.

CAIRC: No. Current evidence shows the public has been kept in the dark, purposely misled, about how "lower rates" would be accomplished. Granting FPL's rates to COVB customers will include undisclosed fees and costs negating any alleged savings. Sets a poor precedent for future rates.

Staff Analysis: 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). Determination of what is in the public interest rests exclusively with the Commission. *Citizens of State v. Fla. Pub. Serv. Com'n*, 146 So. 3d 1143, 1173 (Fla. 2014).

In support of its contention that the relief requested by FPL is not in the public interest, CAIRC argues: (1) COVB residents were not properly informed about the effect of the sale of the COVB electric utility to FPL; (2) the sale will have an adverse effect on taxes and city revenues; and (3) the sale negotiations were insufficient. (CAIRC BR 1-4, 8, 13-15, 17-22) These matters are not within the Commission's jurisdiction. Again, it is important to reiterate that the PSA is not subject to Commission approval. *See* 366.04(2), F.S.

OPC supports the proposed acquisition of the COVB electric utility by FPL and the authorization for FPL to charge its approved rates to former COVB customers. (OPC BR 1, 3) OPC concedes that granting FPL's rates and service to the COVB customers may be in the public interest. (OPC BR 8) OPC did not take a position on whether the Commission should approve recovery of costs associated with the short-term PPA or termination of the COVB/FPL territorial agreement.

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(OPC BR 3, 8) However, OPC argues that the acquisition adjustment will harm the general body of FPL ratepayers. (OPC BR 5; TR 91)

As discussed in Issue 6, staff recommends that the Commission should find that termination of the existing territorial agreement between FPL and COVB is in the public interest because it would resolve the dispute about the territorial agreement that is pending at the Commission between COVB and Indian River Shores. As discussed in Issues 7 and 9, staff recommends that the Commission should find that extraordinary circumstances exist and that approving a positive acquisition adjustment that would allow the PSA to close and the COVB/FPL territorial agreement to be terminated will be in the public interest. Such action would end years of litigation and legislative efforts by COVB electric customers who want to be transferred to FPL's service area. As discussed in Issue 15, approval of recovery of costs associated with the short-term PPA agreement with OUC is one of the conditions precedent for the PSA to close, which will allow for termination of the COVB/FPL territorial agreement. Based on the foregoing, the Commission should find that granting the relief requested by the applicants is in the public interest.

Issue 20: Should these dockets be closed?

Recommendation: Yes, these dockets should be closed after the time for filing an appeal has run. (Cowdery)

Position of the Parties

FPL: This issue was not addressed in FPL's post-hearing brief.

COVB: Yes. The COVB joins FPL's position on Issue 20. Upon issuance of an Order approving FPL and COVB's petition to terminate their territorial agreement and approving FPL's requested accounting treatment with regard to the COVB Transaction, these dockets should be closed.

Indian River County: This issue was not addressed in the County's post-hearing brief.

Town of Indian River Shores: Yes. Upon issuance of an Order approving FPL's and COVB's petition to terminate their territorial agreement and approving FPL's requested accounting treatment with regard to the COVB transaction, these dockets should be closed.

OPC: No.

CAIRC: Not until CAIRC is given the opportunity to complete depositions and discovery.

Staff Analysis: In its post-hearing brief, CAIRC states that the docket should not be closed until it is given the opportunity to complete depositions and discovery, citing to its Motion for Reconsideration of Order Granting Protective Order to the COVB. CAIRC's motion for reconsideration was considered and denied by the full Commission at the hearing on October 18, 2018. (TR 114-25) The hearing record is closed and no additional information may be added. Thus, these dockets should be closed after the time for filing an appeal has run.