

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 20170235-EI

In re: Joint petition to terminate territorial agreement, by Florida Power & Light and the City of Vero Beach.

DOCKET NO. 20170236-EU
ORDER NO. PSC-2018-0494-PHO-EU
ISSUED: October 5, 2018

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 3, 2018, in Tallahassee, Florida, before Commissioner Gary F. Clark, as Prehearing Officer.

APPEARANCES:

Bryan S. Anderson, ESQUIRE, and Kenneth M. Rubin, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408
On behalf of Florida Power & Light Company

James Michael Walls, ESQUIRE, 4221 W. Boy Scout Boulevard, Suite 1000, Tampa, Florida 33607-5780
On behalf of City of Vero Beach

Dylan Reingold, ESQUIRE, 1801 27th Street, Vero Beach, Florida 32960
On behalf of Indian River County

D. Bruce May, ESQUIRE, 315 S. Calhoun St., Ste. 600, Tallahassee, Florida 32301
On Behalf of the Town of Indian River Shores, Florida

Lynne A. Larkin, ESQUIRE, 5690 Hwy A1A, #101, Vero Beach, Florida 32963
On behalf of Civic Association of Indian River County, Inc.

Stephanie A. Morse, ESQUIRE, Tad David, ESQUIRE and Charles Rehwinkel, ESQUIRE, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida.

Charles W. Murphy, ESQUIRE, Suzanne Brownless, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff)

Mary Anne Helton, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
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Florida Public Service Commission General Counsel

PREHEARING ORDER

I. CASE BACKGROUND

Florida Power & Light Company (FPL or Company) and the City of Vero Beach (COVB) negotiated an agreement for the purchase and sale of COVB's electric utility assets. While the Florida Public Service Commission (Commission) does not have jurisdiction over the purchase and sale agreement, FPL petitioned the Commission to authorize the Company to charge its rates and charges to the former COVB customers and approve the Company's proposed accounting treatment to reflect the agreement. In addition, FPL and COVB filed a joint petition to terminate their territorial agreement. By Order No. PSC-2018-0336-PAA-EU, issued July 2, 2018 (PAA Order), the Commission authorized FPL to charge its rates to the COVB customers, approved termination of FPL and COVB's territorial agreement, approved recovery through base rates of a positive acquisition adjustment of \$116.2 million, and, with regard to the short-term power purchase agreement between FPL and OUC, approved recovery of the energy portion of the charges through the Fuel and Purchased Power Cost Recovery Clause and approved recovery of the capacity charges component through the Capacity Cost Recovery Clause. Several petitions for hearing were filed pursuant to Rules 25-22.029 and 28-106.201, F.A.C., and accordingly, this matter was set for a *de novo* hearing.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 366 and 120, Florida Statutes (F.S.). This hearing will be governed by said Chapters and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Direct/Supplemental Direct

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Sam Forrest	FPL	5, 6, 7, 8, 9, 15, 16
David Herr	FPL	11
Scott Bores	FPL	7, 16
Keith Ferguson	FPL	11, 12, 15
Tiffany C. Cohen	FPL	5, 7, 16
Terry Deason	FPL	1, 6, 7, 8, 9, 13, 16

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Jay Kramer	Civic Association of Indian River County, Inc. (CAIRC)	7, 16
Thomas P. White	CAIRC	7, 16, 17
Herbert Whittall	CAIRC	7, 16
Jens Tripson	CAIRC	7, 16, 17
Kenneth Daige	CAIRC	16, 17
Lane Kollen	Office of the Public Counsel (OPC)	5, 6, 7, 8, 9, 11, 12, 13, 16

Rebuttal

Sam Forrest	FPL	5, 6, 8, 16
Scott Bores	FPL	7, 16
Keith Ferguson	FPL	11, 12
Terry Deason	FPL	6, 16
James R. O'Connor	COVB	5, 6, 7, 9, 16
Brian M. Barefoot	Town of Indian River Shores (IRS or Town)	5, 6, 7, 9, 16

VII. BASIC POSITIONS

FPL: The approvals FPL and COVB are seeking from the Commission in this proceeding are essential to closing the COVB Transaction, a transaction nearly a decade in the making and which is solidly in the public interest. The COVB Transaction, in addition to resolving a years-long struggle of COVB customers, businesses, and elected officials to receive FPL's lower rates, benefits FPL's existing customer base by creating approximately \$135 million in CPVRR savings.

The COVB Transaction was structured to ensure that both FPL and COVB's primary goals were achieved; specifically, that: (1) FPL's customers not be harmed by the transaction, and (2) COVB customers receive FPL's lower electric rates. Achieving these goals was not as simple as finding an agreeable purchase price. The COVB Transaction required the parties to address unique challenges and develop sophisticated

solutions. In connection with the COVB Transaction, FPL and COVB needed to address power contracts to which COVB is a party, including (i) a 20-year wholesale services agreement with OUC to provide supplementary power to COVB, due to expire in 2023; and (ii) a series of three contracts for the City's share of the Florida Municipal Power Agency ("FMPA") generation entitlements from certain power plants. Through collaboration, COVB, FMPA, and FPL established a path forward to terminate COVB's power purchase obligations contemporaneous with the closing of the PSA. As part of the overall proposal and to enable COVB to terminate its obligations with OUC, FPL negotiated a short-term PPA with OUC for capacity and energy, commencing at the close of the COVB Transaction and extending through 2020. After all of the give-and-takes of this complex multi-year and multi-party negotiation, a completed transaction was finally derived that could effectively transition COVB's customers to FPL's rates and, yet, save FPL's customers \$135 million. These jointly developed solutions can only be effectuated by attaining the approvals that are before the Commission in this proceeding.

The events and circumstances that led to the COVB Transaction are extraordinary. Currently, over 60 percent of COVB's utility customers reside outside the City's municipal borders including customers residing in portions of unincorporated Indian River County, and portions of the Town of Indian River Shores. This means that most of COVB's customers do not vote for members of the COVB City Council, which sets rates for the COVB utility. COVB customers who live outside the City have complained in the past that they have no voice concerning the operation or management of the City's electric utility and no redress to any governmental authority. For many years, there has been controversy and litigation because COVB customers wanted to be served by FPL because it charges lower rates than COVB. Presently, transitioning COVB customers to FPL rates will save the typical COVB residential customer 22% on their electric bill, or \$330 per year. The COVB Transaction will put an end to the disenfranchisement issue by bringing all COVB rate setting and other regulatory issues affecting all COVB customers under the jurisdiction of this Commission. COVB customers will also gain representation by OPC. The COVB Transaction will also allow COVB customers to enjoy FPL's award-winning reliability and customer service, including among other benefits, access to FPL's Demand Side Management Conservation programs, 24-hour customer service to resolve customer needs, and a dedicated customer advocacy team. Former COVB customers will also gain access to FPL's highly experienced management in transmission, distribution, power generation, financial, technical and customer service.

In order to effectuate the COVB Transaction and provide the benefits described, FPL needs to make a substantial investment. FPL's required investment is represented in the PSA as the final, negotiated purchase price for the COVB electric assets of about \$185 million. FPL has provided testimony demonstrating that it has properly accounted for the costs to effectuate the COVB Transaction, including an approximate \$114 million acquisition adjustment, which is part of the costs which will be actually incurred by FPL to complete the COVB Transaction. The Commission, consistent with

its policy and precedent, should authorize the requested approvals in this proceeding, enabling \$135 million in CPVRR savings for FPL's existing customers and providing electric service at FPL's significantly lower rates to be provided to COVB customers.

COVB: Approval of the Florida Power & Light Company ("FPL") and the COVB petitions in these dockets is a condition precedent to the sale of the COVB electric utility to FPL. Termination of the territorial agreement between the COVB electric utility and FPL, Florida Public Service Commission ("FPSC") approval to charge the COVB electric customers FPL's existing retail electric rates, and FPSC approval of regulatory accounting matters including treatment of any acquisition adjustment arising from FPL's purchase of the COVB assets as a regulatory asset are conditions precedent to consummation of the sale of the COVB electric utility to FPL. Without these FPSC approvals, there is no sale, and the COVB, its citizens, and its electric utility customers are denied the benefits of the sale and FPL's provision of reliable, cost-effective electric service.

The COVB citizens have twice voted for referenda supporting the principle of selling the COVB electric utility to FPL, the COVB Council has held numerous public meetings to allow its citizens and members of the public to discuss and debate this issue, and the duly elected COVB Council has voted in favor of the sale of the COVB electric utility to FPL under the terms of the APA. The COVB has determined that the sale of the COVB electric utility to FPL is in the best interest of its citizens and its electric utility customers. There is no doubt the thousands of residents who receive more costly service from the COVB will benefit greatly from the transaction. This carefully balanced deal also will bring tangible benefits to the COVB. Proceeds from the sale will allow the COVB to pay off debt, meet pensions liabilities, and provide approximately \$30 million in unrestricted funding to meet the COVB's needs. Transactions like this one -- that benefit all and resolve complex and long-standing disputes -- are rare. In the COVB's view, it would be tragic if the FPSC allowed this extraordinary deal to die for lack of regulatory approval and, accordingly, the COVB respectfully requests the FPSC grant the petitions in these dockets.

INDIAN RIVER COUNTY (IRC):

Indian River County supports the July 2, 2018 Order No. PSC-2018-0336-PAA-EU approving the sale of the City of Vero Beach (COVB) electric system to FPL as structured. The acquisition is intended to bring much-needed rate relief to the residents of the City of Vero Beach, and those residents in the unincorporated areas of Indian River County and the Town of Indian River Shores that are currently served by the City of Vero Beach, while at the same time benefiting FPL's other customers. As recognized in the Florida Public Service Commission staff recommendation, the sale as structured will end "years of controversy" that included "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."

The Indian River County Board of County Commissioners has long believed that the best thing that could be done for economic development and for providing special help for many of our low income families would be for all county electric customers to have lower FPL rates. The Florida Public Service Commission must support the sale as structured in order to bring rate relief and reliable service to the citizens of our community.

Both the petitions by the Civic Association of Indian River County, Inc. and Brian Heady claim that no "exceptional circumstances" exist since out of city residents in both the Town of Indian River Shores and the unincorporated county, have "full voting representation on the City's Utility Commission". It is important to note that the City Utility Commission is advisory in nature only and is not a true Utility Commission. These petitioners also claim of "a dire burden on the City taxpayers" and threats of city bankruptcy. These are all false and unproven exaggerations being used in a scare tactic manner.

The issues raised by these petitioners are local political issues outside the scope of the Florida Public Service Commission. Just as the Florida Public Service Commission determined it had no authority to issue a declaration interpreting the City of Vero Beach – Indian River County franchise agreement (Order No. PSC-15-0102-DS-EM), the Florida Public Service Commission has no authority to rule upon the local political issues raised by the petitioners.

IRS: The Commission should approve the petitions filed by Florida Power & Light Company ("FPL") and the City of Vero Beach ("COVB"), and allow the Asset Purchase and Sale Agreement (the "PSA") between COVB and FPL to close. Approval of this carefully-balanced transaction would benefit the Town along with thousands of residents who receive more costly electric service from COVB. It would benefit COVB as proceeds from the sale will provide the COVB with millions of dollars in unrestricted funds which the COVB can use as it sees fit to meet its financial needs. And, it would benefit FPL's general body of ratepayers by approximately \$135 million dollars in present value due to economies of scale achieved from FPL serving the COVB customers. Without the Commission's approval, there will be no sale, and none of the aforementioned benefits will be realized.

What is more, Commission approval of this carefully balanced transaction would resolve a unique, complex and divisive service territory problem that has beleaguered the Town and the people of Indian River County for decades. Presently, the boundary line dividing the electric service territories of FPL and the COVB splits the Town in two. This highly unusual boundary configuration fragments electric service in the Town causing residents to be served by two different utilities with vastly different rates and levels of service. It also results in inequitable regulatory protections as Town residents served by FPL are afforded extensive regulatory protection by the Commission, while Town residents served by COVB are disenfranchised -- left unguarded by the Commission and having no vote in how COVB sets its rates or services. The degree of

their disenfranchisement is extraordinary and has spawned numerous lawsuits, the most recent of which was filed by the Town in PSC Docket No. 20160049-EU. That pending dispute implicates unique constitutional issues pertaining to the COVB's exercise of unregulated monopoly powers within the corporate limits of the Town without the Town's consent. Granting the requested regulatory approvals and allowing the PSA to close would settle this unique, long-standing litigation once and for all. It would also comport with the Commission's policy to favor settlement of service territory disputes by mutual agreement between contending parties.

A transaction like this one -- that benefits all stakeholders and resolves long-standing and complex disputes-- is extraordinarily rare. It would be a tragedy if this extraordinary deal were to die for a lack of regulatory approval. For all of these reasons, the Town respectfully requests that the Commission grant the regulatory approvals requested by FPL and COVB, and allow this carefully balanced transaction to close.

CAIRC: The factual and accounting errors put forth by FPL to support their petitions must be corrected in order that the citizens of Indian River County understand this transaction and its likely outcomes. To claim that COVB customers' rates will be lower is insufficient to promise for how long that will be the case, even if that much is true. Lower rates should not be the basis for finding extraordinary circumstances. Those same accounting errors call into question any claim of extraordinary circumstances and any claim of this rate structure being in the public interest. CAIRC asserts that the ratepayers involved around the State, as well as the local customers currently served by COVB, are owed the truth about how rates and fees will change now and in the future. The COVB customers should have been, and still should be, made aware of the many flaws, misrepresentations, and consequences of the factual misstatements made by FPL which include the proposed changes to rate structure and territorial agreements being requested by FPL. An unknowing public has been promised many things by local officials as well as the petitioner, which in any jurisdiction would not be considered good governmental practices. This also would set a precedent that guarantees future rate increases by FPL as it repeats this plan for other cities.

CAIRC is most concerned that the City representatives are unconcerned by the accounting and financial projection flaws identified in this docket, as well as with the City's attempts to silence those questioning the requests being made here by FPL. Due diligence has not been done in the interests of City residents.

CAIRC is the sole civic organization to step forward on behalf of the local COVB area, has been involved in utility issues from its creation in 1970, and continues its mission of doing so today. CAIRC maintains that FPL must satisfy the burden of proof for any and all relief sought in this proceeding.

OPC: The utility has the burden of proof to justify and support its proposals for recovery of costs, including but not limited to, proposals seeking the Commission's approval for particular accounting treatment, and any other affirmative relief sought, regardless of

whether an Intervenor provides evidence to the contrary. OPC supports the proposed acquisition and the authorization for FPL to charge its approved rates to former City of Vero Beach (COVB) customers. OPC questions whether proposed acquisition premium and related accounting treatment are consistent with Commission precedent or consistent with serving the public interest. OPC submits that the Commission is not required to make a decision on the proposed acquisition premium in this proceeding. Further, the data provided during discovery indicates the acquisition adjustment and accounting treatment requested by FPL are likely to impose undue costs on FPL's general body of customers for decades, and thus compromise the Commission's statutory obligation to set rates that are fair, just, reasonable and non-discriminatory.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS*

**Proposed Issues 2, 3, 4, 10, 14, 18 and 19 have not been accepted as issues in this proceeding. In order to avoid confusion, the remaining issues have not been renumbered.*

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?

FPL: The Commission is well within its authority to approve the acquisition adjustment requested in this case. The Commission has ample rate-setting and public interest authority pursuant to Sections 366.01, 366.04, 366.041, and 366.05, 366.06, Florida Statutes. Not only does statutory authority exist to support the Commission's approval of an acquisition adjustment, 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. (Deason)

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

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

IRS: The Town joins FPL's position on Issue 1.

OPC: No position at this time.

CAIRC: None.

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 2: Stricken.

ISSUE 3: Stricken.

ISSUE 4: Stricken.

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

FPL: Yes. 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. The bill changes between FPL and COVB can be summarized as follows: (i) typical residential customer will save 22% or \$330 per year under FPL rates; (ii) a typical small store front will save 22% or \$410 per year; a typical office building or school will save 30% or \$7,600 per year; and (iv) a typical large retailer, such as a grocery store, "big box" store or hospital will save 27% or nearly \$80,000 per year. Without this approval, the COVB Transaction will not close. (Forrest, Cohen)

COVB: Yes. The COVB joins FPL's position on Issue 5. (O'Connor)

IRC: Yes. County joins FPL's position on Issue 5.

IRS: Yes. The Town joins FPL's position on Issue 5. (Barefoot)

OPC: Yes.

CAIRC: No position at this time, as those actual numbers are in question.

STAFF: Staff has no position pending evidence adduced at hearing.

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?

FPL: Yes. Termination of the territorial agreement is an essential component of the COVB Transaction, which allows COVB electric customers to be transferred to FPL's lower rates. Both FPL and COVB have petitioned this Commission for the termination of the existing territorial agreement. Approval of the agreement's termination is in the public interest, as it enables approximately \$135 million in CPVRR savings for FPL's customers. (Forrest, Deason)

COVB: Yes. The COVB joins FPL's position on Issue 6. (O'Connor)

IRC: Yes. County joins FPL's position on Issue 6.

IRS: Yes. The Town joins FPL's position on Issue 6. The Town further states the current boundary line dividing the electric service territories of FPL and the COVB splits the Town in two. The configuration of this boundary line is highly unusual and fragments electric service in the Town causing residents to be served by two different utilities with vastly different rates and levels of service. It also results in inequitable regulatory protections as Town residents served by FPL are afforded extensive regulatory protection by the Commission, while Town residents served by COVB are disenfranchised -- left unguarded by the Commission and having no vote in how COVB sets its rates or services. The degree of their disenfranchisement is extraordinary and has spawned numerous lawsuits, the most recent of which was filed in PSC Docket No. 20160049-EU. Terminating the existing territorial agreement would unify electric service within the Town, eliminate disenfranchisement, and settle long-standing litigation once and for all. (Barefoot)

OPC: No position at this time.

CAIRC: No position at this time: dependent on the veracity and fairness of findings.

STAFF: Staff has no position pending evidence adduced at hearing.

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

FPL: The circumstances surrounding the COVB Transaction support that it is in the public interest, and there are numerous factors that indicate the presence of extraordinary circumstances. The following factors overwhelmingly support the Commission's determination of extraordinary circumstances:

1. Lower rates for both COVB and FPL customers;
2. Improved quality of service, reliability and storm restoration;
3. Improvements and modernization of the grid in the former COVB territory;
4. Greater access to capital;
5. More experienced operations and management;
6. An end to years of litigation before this Commission, Indian River County circuit courts and The Florida Supreme Court;
7. An end to the disenfranchisement of approximately 60% of the COVB customers who reside outside the city limits;
8. The availability of the Office of Public Counsel to provide representation of these citizens on electric utility matters before this Commission; and

9. The unique, pervasive nature of the beneficiaries of this transaction: specifically, citizens and electric customers of the COVB, FPL, Orlando Utilities Commission and the nineteen municipalities who receive power from Florida Municipal Power Agency each of whom approved this transaction. (Forrest, Bores, Cohen, Deason)

COVB: The COVB joins FPL's position on Issue 7. (O'Connor)

IRC: County joins FPL's position on Issue 7.

IRS: The Town joins FPL's position on Issue 7. The Town further states that extraordinary circumstances underlying this proceeding include, but are not limited, to (i) the extraordinary degree to which non-resident customers of the COVB electric utility are disenfranchised, (ii) the highly unusual territorial boundary configuration which fragments electric service in the Town causing neighbors to have vastly different regulatory protections, and to be served by two different utilities with vastly different rates and levels of service, and (iii) the unique constitutional dispute over COVB's exercise of unregulated monopoly powers within the corporate limits of the Town without the Town's consent. A transaction like this one -- that benefits all stakeholders and resolves long-standing and complex service territory disputes -- is extraordinarily rare. It would be a tragedy if this extraordinary deal were to die for a lack of regulatory approval. (Barefoot)

OPC: It is unclear whether FPL has established that any extraordinary circumstances exist. The Commission determined in the PAA Order that rate disparities do not constitute extraordinary circumstances. Precedent does not establish that territorial disputes in general constitute extraordinary circumstances sufficient to justify the imposition of harm on a general body of ratepayers.

CAIRC: None.

STAFF: Staff has no position pending evidence adduced at hearing.

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

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. The proposal before the Commission was derived over years of negotiation between FPL and COVB. To alter the proposal or deny the acquisition adjustment would have the effect of nullifying the COVB Transaction and washing away the nearly decade-long effort

of FPL and COVB to have FPL acquire COVB's electric utility system assets and serve its customers. (Forrest, Deason)

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

IRC: County joins FPL's position on Issue 8.

IRS: 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: No position at this time.

STAFF: Staff has no position pending evidence adduced at hearing.

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

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. (Forrest, Deason)

COVB: Yes. The COVB joins FPL's position on Issue 9. (O'Connor)

IRC: Yes. County joins FPL's position on Issue 9.

IRS: Yes. The Town joins FPL's position on Issue 9. (Barefoot)

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.

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 10: Stricken.

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?

FPL: As reflected on Exhibit KF-1, FPL estimates an acquisition adjustment of approximately \$114 million, which reflects the amount FPL paid to COVB over the net value of the amount purchased (with assets at net book value). FPL witness Herr conducted a fair value evaluation of the COVB electric utility. FPL used this evaluation to confirm that the purchase price of the COVB Transaction was reasonable. This valuation also provides evidence that the amount paid by FPL to acquire the COVB system is higher than the net book value of the system, thereby establishing the basis, from a regulatory perspective, for proper recovery of the acquisition adjustment from customers. (Ferguson, Herr)

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

IRC: County joins FPL's position on Issue 11.

IRS: 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: Adopt position of Office of Public Counsel.

STAFF: Staff has no position pending evidence adduced at hearing.

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?

FPL: The Company should be authorized to record the approximately \$114 million positive acquisition adjustment in FERC Account 114 – Electric Plant Acquisition Adjustments. In addition, it is appropriate to record the amortization expense in FERC Account 406 – Amortization of Electric Plant Acquisition Adjustments over a 30 year period, which is the average remaining estimated useful life of the acquired distribution assets since the primary purpose of the transaction is to serve

COVB's retail customers. These entries would be made only if the PSA closes.
(Ferguson)

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

IRC: County joins FPL's position on Issue 12.

IRS: 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: We adopt position of Office of Public Counsel.

STAFF: Staff has no position pending evidence adduced at hearing.

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?**

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. Determining the regulatory accounting and rate recovery for an investment based on reasonable projections and assumptions is appropriate and consistent with Commission practice, and such a decision should not be subject to hindsight review as a matter of regulatory policy. (Deason)

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

IRC: No. County joins FPL's position on Issue 13.

IRS: 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 in its subsequent review of any savings.

CAIRC: Yes.

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 14: **Stricken.**

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

FPL: Yes. It is appropriate for FPL recover the energy portion related to the OUC PPA through FPL's Fuel and Purchased Power Cost Recovery ("FCR") Clause and the capacity component through the Capacity Cost Recovery ("CCR") Clause. Thus, FPL's requested method of recovery is like that of other power purchase agreements. Approval of this recovery is essential to the close of the COVB Transaction. (Forrest, Ferguson)

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

IRC: Yes. County joins FPL's position on Issue 15.

IRS: 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.

STAFF: Staff has no position pending evidence adduced at hearing.

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

FPL: Yes. Approval of a transaction that allows COVB customers to receive FPL's lower rates while simultaneously providing approximately \$135 million CPVRR savings to FPL's existing customers is clearly within the public interest. The public interest is also served by the resolution and conclusion of a nearly decade-long struggle of COVB customers, businesses, and elected officials to receive FPL's lower rates. The fact that the typical COVB residential customers stands to save approximately \$330 a year by transitioning to FPL's rates also supports the conclusion that the transaction is within the public interest. These factors, along with the extraordinary circumstances present, clearly support a finding that the proposed COVB Transaction is in the public interest. (Forrest, Bores, Cohen, Deason)

COVB: Yes. The COVB joins FPL's position on Issue 16. (O'Connor)

IRC: Yes. County joins FPL's position on Issue 16.

IRS: Yes. The Town joins FPL's position on Issue 16. (Barefoot)

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: Not as far as the current evidence would suggest.

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 17: **Does the Civic Association of Indian River County, Inc. have standing to protest the Commission's proposed agency action granting FPL's petition for authority to charge FPL rates to former COVB customers and for approval of accounting treatment for the COVB transaction, and granting the joint petition of FPL and COVB to terminate the territorial agreement (Order No. PSC-2018-0336-PAA-EU)?**

FPL: No. To the extent CAIRC has shown any harm at all, it is only speculative harm based on matters that are outside the scope of the Commission's proposed agency action or beyond the Commission's jurisdiction. CAIRC is simply dissatisfied with the political process that led to the COVB City Council's approval of the agreement to sell the COVB electric utility to FPL, and is participating in this proceeding in an attempt to use the administrative process to challenge the sale, despite the fact that the typical COVB residential customer using 1000 kWh per month stands to save approximately \$330 a year by transitioning to FPL's rates.

COVB: No. The COVB joins FPL's position on Issue 17.

IRC: No. The County joins FPL's position on Issue 17.

IRS: No. The Town joins FPL's position on Issue 17.

OPC: No position at this time.

CAIRC: Yes.

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 18: **Stricken.**

ISSUE 19: Stricken.

ISSUE 20: Should this docket be closed?

FPL: Yes. 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.

COVB: Yes. The COVB joins FPL's position on Issue 20.

IRC: Yes. County joins FPL's position on Issue 20.

IRS: Yes. The Town joins FPL's position on Issue 20.

OPC: No position at this time.

CAIRC: No position at this time.

STAFF: Staff has no position pending evidence adduced at hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Sam Forrest	FPL	SAF-1	Asset Purchase and Sale Agreement
Sam Forrest	FPL	SAF-2	Power Purchase Agreement with OUC
David Herr	FPL	DH-1	David Herr Curriculum Vitae
David Herr	FPL	DH-2	Summary Report entitled "Valuation of COVB"
David Herr	FPL	DH-3 (confidential)	Detailed "Valuation of COVB" Report
Keith Ferguson	FPL	KF-1	COVB Preliminary Acquisition Journal Entries
Keith Ferguson	FPL	KF-2	OUC Power Purchase Agreement Journal Entries

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Tiffany C. Cohen	FPL	TCC-1	Typical Bill Comparisons — FPL vs. COVB
Tiffany C. Cohen	FPL	TCC-2	Historical Typical Residential Bill Comparison
Tiffany C. Cohen	FPL	TCC-3	Typical Bill Comparisons – FPL vs. COVB
Tiffany C. Cohen	FPL	TCC-4	Historical Typical Residential Bill Comparison
Tiffany C. Cohen	FPL	TCC-5	Industrial Bill Comparisons
Terry Deason	FPL	TD-1	Biographical Information for Terry Deason
Lane Kollen	OPC	LK-1	Resume of Lane Kollen
Lane Kollen	OPC	LK-2	ASC 980-350-35
Lane Kollen	OPC	LK-3	Description of Account 114, Uniform System of Accounts (USOA)
Lane Kollen	OPC	LK-4	Description of Account 406, USOA
Lane Kollen	OPC	LK-5	FPL's Response to OPC's Interrogatory No. 1
Lane Kollen	OPC	LK-6	FPL's Response to OPC's Interrogatory No. 7
Lane Kollen	OPC	LK-7	FPL's Response to OPC's Request for Production of Documents No. 9

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Lane Kollen	OPC	LK-8	Excerpts from Joint Application of NextEra and Gulf Power Company, FERC Docket No. EC18-117-000.
Thomas White	CAIRC	TPW-1	Resume of civic activities
<u>Rebuttal</u>			
Scott Bores	FPL	SRB-4	Example of Discounting at after-tax Weighted Average Cost of Capital
James R. O'Connor	COVB	JRO-1	COVB Municipal Code Section 2-102 explaining the role of the COVB Utilities Commission.
James R. O'Connor	COVB	JRO-2	A composite exhibit of the COVB "letters of interest" sent by the COVB to a representative of all municipal electric utilities, the largest municipal electric utilities, and all investor owned electric utilities in Florida inquiring about their interest in purchasing the COVB electric utility.
James R. O'Connor	COVB	JRO-3	Resolution No. 2011-33 certifying the results of the Referendum on Lease of City Power Plant Site.
James R. O'Connor	COVB	JRO-4	Resolution No. 2013-09 certifying the results of the Referendum on Sale and Disposition of Vero Beach Electric Utility.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
James R. O'Connor	COVB	JRO-5	The Asset Purchase and Sale Agreement by and between the COVB and FPL dated October 24, 2017 (the "APA").
Brian M. Barefoot	Town of Indian River Shores	BMB-1	Witness Biography

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

Staff's proposed stipulation of exhibit list and exhibits.

CAIRC's proposed stipulation of exhibit: 2016-2017-2018 City Council meeting minutes. (FPL stipulated to authenticity but not to relevance.)

IRS' proposed stipulation of exhibit: Four franchise/interlocal agreements.

FPL's October 4, 2018 proposed stipulation of exhibit: FPL's responses to OPC's 3rd set of interrogatories.

XI. PENDING MOTIONS

The CAIRC Motion for Reconsideration of Order Granting Request for Protective Order by City of Vero Beach and the COVB Response in Opposition.

FPL's Motion to Dismiss Protest of the Civic Association of Indian River County, Inc. [DN 05109-2018], dated August 6, 2018. (Hearing Issue 17)

OPC's October 3, 2018 Motion to Accept Supplemental Direct Testimony (Corrected Motion filed October 4, 2018).

XII. PENDING CONFIDENTIALITY MATTERS

None.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements shall be 10 minutes total to be shared by FPL, IRS, IRC, and COVB and 10 minutes total to be shared by CAIRC and OPC.

Issue 2, "How should the Commission weigh any unproven factual assertions in FPL's Petition?", is not in dispute in this case. The questions of whether the burden of proof has been met and how the Commission should weigh the record evidence are woven throughout the issues in this proceeding. Therefore, proposed Issue 2 shall be excluded from the hearing.

Issue 3, "Does FPL's request of a return of, and a return on, the requested acquisition adjustment violate the terms of FPL's current rate case settlement agreement?", is subsumed and may be argued by the parties in Issues 1 and 9. Therefore, Issue 3 shall be excluded as a separate issue for hearing.

Issue 4, "What legal authority to increase rates, if any, supports FPL's request for the Commission to consider and approve rate making principles related to acquisition adjustment?", is subsumed and may be argued by parties in Issue 1. Therefore, Issue 4 shall be excluded as a separate issue for hearing.

Issue 10, "If the Commission should approve a positive acquisition adjustment associated with the purchase of the COVB electric utility system, what is the appropriate economic analysis to determine the amount of the positive acquisition adjustment?", is subsumed and may be argued by the parties in Issue 11. Therefore, Issue 10 shall be excluded as a separate issue for hearing.

Issue 14, "Are the several contracts [OUC, FMPA] 'costs of service' for FPL that are eligible for recovery in customer rates?", is subsumed and may be argued by the parties in Issue 9. Therefore, Issue 14 shall be excluded as a separate issue for hearing.

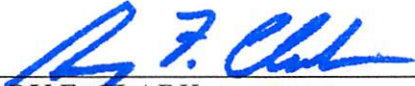
In accordance with Section VI. B. of Order No. PSC-2018-0370-PCO-EU, issued in these dockets on July 25, 2018, (Order Establishing Procedure), Mr. Michael Moran and Mr. Brian Heady are hereby dismissed as parties from this proceeding for failure to attend the October 3, 2018 prehearing conference. Issues 18 and 19 respectively address the standing of Mr. Moran and Mr. Heady. Because these parties have been dismissed from this proceeding, proposed Issues 18 and 19 are moot and shall be excluded from the hearing.

Commission Staff's September 28, 2018 Motion for Official Recognition of specified bills filed in the Florida Legislature is granted.

It is therefore,

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 5th day of October, 2018.



GARY F. CLARK
Commissioner and Prehearing Officer
Florida Public Service Commission
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CWM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.