

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

DOCKET NO. 20170236-EU

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

FILED: SEPTEMBER 26, 2018

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2018-0370-PCO-EU issued July 25, 2018, and the Second Order Modifying Order Establishing Procedure, Order No. PSC-2018-0445-PCO-EU issued August 31, 2018, submit this Prehearing Statement.

APPEARANCES:

STEPHANIE A. MORSE, Esquire
Associate Public Counsel
CHARLES REHWINKEL, Esquire
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida.

A. **WITNESSES:**

Lane Kollen Subject: FPL's plan to acquire the Vero Beach Municipal Electric System, its request for accounting treatment of the acquisition premium and its request to amortize the regulatory asset and recover the amortization expense, along with a return on the regulatory asset.

Issues 5 - 16

B. **EXHIBITS:**

<u>Witness</u>	<u>Exhibit #</u>	<u>Title</u>
Lane Kollen	LK-1	Resume of Lane Kollen
Lane Kollen	LK-2	ASC 980-350-35
Lane Kollen	LK-3	Description of Account 114, Uniform System of Accounts (USOA)
Lane Kollen	LK-4	Description of Account 406, USOA
Lane Kollen	LK-5	FPL's Response to OPC's Interrogatory No. 1
Lane Kollen	LK-6	FPL's Response to OPC's Interrogatory No. 7
Lane Kollen	LK-7	FPL's Response to OPC's Request for Production of Documents No. 9

C. **STATEMENT OF BASIC POSITION**

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.

D. STATEMENT OF FACTUAL ISSUES AND POSITIONS

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?**

OPC: No position at this time.

ISSUE 2: **How should the Commission weigh any unproven factual assertions in FPL's Petition?**

OPC: The Commission should accord unproven factual assertions little, if any, weight in accord with a party's burden of proof.

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?

OPC: No position at this time.

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?

OPC: No position at this time.

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”)?

OPC: Yes.

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?

OPC: No position at this time.

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

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.

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

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.

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

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.

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?**

OPC: The amount of an acquisition adjustment is not based on an economic analysis; it is simply the difference between the acquisition price and the net book value of the assets acquired. However, the recovery allowed may be a function of an economic analysis if the Commission determines that "savings" to the general body of FPL ratepayers is the relevant standard, and if the Commission determines that there will be savings. There appear to have been numerous errors in the FPL's economic analysis, which, if corrected, indicate that the acquisition will impose costs on ratepayers, not savings. Additionally, the Tax Cuts and Jobs Act necessarily will reduce the savings further, rather than increase the savings as FPL claims. If FPL's revenue requirement is less due to the lower income tax gross-up and its rates are reduced accordingly, then Vero Beach's contribution to that reduced revenue requirement is reduced, and thus, the “savings” necessarily are reduced as well.

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?

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”).

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?

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.

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?

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.

ISSUE 14: Are the several contracts [OUC, FMPA] “costs of service” for FPL that are eligible for recovery in customer rates?

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

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

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.

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

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.

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)?

OPC: No position at this time.

ISSUE 18: Does Michael Moran 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)?

OPC: No position at this time.

ISSUE 19: Does Brian Heady 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)?

OPC: No position at this time.

ISSUE 20: Should this docket be closed?

OPC: No position at this time.

E. STIPULATED ISSUES:

None.

F. PENDING MOTIONS:

Citizens have no pending motions.

G. REQUESTS FOR CONFIDENTIALITY

Citizens have no pending requests for claims for confidentiality.

H. OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT

OPC has no objections to any witness' qualifications as an expert in this proceeding.

I. REQUEST FOR SEQUESTRATION

OPC does not request sequestration of any witnesses.

J. REQUIREMENTS OF ORDER

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 26th day of September, 2018.

Respectfully submitted,

JR Kelly
Public Counsel

/s/Stephanie A. Morse
Stephanie A. Morse
Associate Public Counsel
Charles J. Rehwinkel
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 26th day of September, 2018, to the following:

Kenneth A. Hoffman
Florida Power & Light Company
215 S. Monroe Street, Suite 810
Tallahassee FL32301-1858
ken.hoffman@fpl.com

Civic Association of Indian River County, Inc.
Lynne A. Larkin
5690 HWY A1A, #101
Vero Beach FL 32963
lynnelarkin@bellsouth.net

Kenneth Rubin/Bryan Anderson
Florida Power & Light Company
700 Universe Boulevard
Juno Beach FL 33408
ken.rubin@fpl.com
bryan.anderson@fpl.com

Kathryn Cowdery/Charles Murphy/Rosanne Gervasi
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
kcowdery@psc.state.fl.us
rgervasi@psc.state.fl.us
cmurphy@psc.state.fl.us

Dylan Reingold, County Attorney
Indian River County Board of
County Commissioners
1801 27th Street - Building A
Vero Beach FL 32960
dreingold@ircgov.com

Jon C. Moyle, Jr./Karen A. Putnal
c/o Moyle Law Firm, PA
Florida Industrial Power Users Group
118 North Gadsden Street
Tallahassee FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com

Mr. James O'Connor
City of Vero Beach
P. O. Box 1389
Vero Beach FL 32961
citymgr@covb.org

Brian T. Heady
406 19th Street
Vero Beach FL 32960
brianheady@msn.com

Michael Moran
P.O. Box 650222
Vero Beach, FL 32965
mmoran@veromet.net

/s/Stephanie Morse
Stephanie A. Morse
Associate Public Counsel
Florida Bar # 0068713