

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: October 29, 2018

**CITIZENS' POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND
POST-HEARING BRIEF**

The Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), pursuant to the Order Establishing Procedure in this docket, Order No. 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, hereby submit this Post-Hearing Brief.

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. The evidence has not demonstrated that the accounting treatment FPL proposed for the acquisition premium is consistent with Commission precedent or consistent with serving the public interest. Further, the evidence shows 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. The Commission has the discretion to defer a decision on the proposed acquisition premium in this proceeding.

POSITIONS AND ARGUMENT ON DISPUTED 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?

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

ARGUMENT: Evaluation of the accounting treatment for acquisition adjustments is part of the general authority granted to the PSC to regulate the rates of electric utilities under its jurisdiction, as outlined in Fla. Stat. § 366.04. The authority to approve an acquisition adjustment is limited by the Commission's statutory obligations to (1) set rates that are fair, just, and reasonable, and (2) serve the public interest. Fla. Stat. § 366.06; *e.g.*, *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997). The PSC's authority to grant a particular acquisition adjustment is further limited by precedent which outlines the PSC's policy on acquisition adjustments. *In re: Petition for Acquisition Adjustment by AGL Resources*, Order No. PSC-07-0913-PAA-GU. Part of the determination of fair, just and reasonable rates in the case of an acquisition adjustment is the issue of whether the resulting rates are discriminatory to the general body of ratepayers. *In re: Joint Petition of Florida Power Co. and Sebring Utilities Commission*, Order No. PSC-1992-1468-FOF-EU, p. 8 (stating it would be discriminatory to pass additional costs related to an acquisition onto the acquiring company's general body of ratepayers).

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

This issue was excluded by the Prehearing Officer, per Order No. PSC-2018-0494-PHO-EU.

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?

This issue was excluded as a separate issue by the Prehearing Officer (subsumed in Issues 1 and 9), per Order No. PSC-2018-0494-PHO-EU.

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?

This issue was excluded as a separate issue by the Prehearing Officer (subsumed in Issue 1), per Order No. PSC-2018-0494-PHO-EU.

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")?

POSITION: *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?

POSITION: *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?

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

ARGUMENT: **Argument for Issues 7-11:**

It is well-established that individuals do not have the right to service by a particular utility based on their perception of personal advantage. *Storey v. Mayo*, 217 So. 2d 304, 307-308 (Fla. 1968). Consistent with this fundamental regulatory principle, and following naturally therefrom, is the similar concept that rate disparities alone do not constitute extraordinary circumstances. *Cf. AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997)(denying intervention in territorial dispute to customer who complained of rate disparity). Further, territorial disputes in general do not constitute extraordinary circumstances sufficient to justify the imposition of harm on a general body of ratepayers. The PSC has previously outlined five factors to consider in the evaluation of whether sufficient benefits would inure to the general body of ratepayers to justify allowing a positive acquisition adjustment in a gas case, and the factors did not include either the elimination of rate disparities or the need to resolve a territorial dispute. *In re: Petition by Florida Public Utilities Co.*, Order No. PSC-14-0015-PAA-GU, p. 3.

The Commission should not approve recovery of the positive acquisition adjustment from the general body of ratepayers, as proposed.

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. (TR. Vol. I, 95-100, 102-110). 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. (TR. Vol. I, 95). Further, as relates to deficiencies in FPL's economic analysis, if COVB's contracts with OUC and FMPA are considered a "cost of service" for FPL, that factor would also increase the cost of service for the general body of FPL ratepayers, all else equal. During the course of this litigation, FPL has submitted three different economic analyses to support its position, after conceding errors in its previous attempts to quantify the alleged savings that would result from the transaction. Still, all three studies continue to suffer from errors highlighted by OPC's expert in his direct testimony. (TR. Vol. I, 103, 110). In at least one instance, the changes FPL made to its testimony after its third attempt at the economic analysis were contradictory and inconsistent with its own previous evaluation of the same facts. (TR. Vol. I, 104-105).

As applied to the general body of FPL's customers, the positive acquisition adjustment proposed will harm said customers. (TR. Vol. I, 91).

Alternatives are available to the Commission.

In lieu of deferring a decision, the Commission could exercise its discretion, in light of the questionable evidence supporting net benefits to customers, and select an adjustment at or about 50% in disallowance of the Petitioner's request, i.e. allocate that portion to FPL's shareholders.

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

POSITION: *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.*

ARGUMENT: See Argument at Issue 7.

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

POSITION: *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.*

ARGUMENT: See OPC’s Argument at Issue 7. See also, TR. Vol. I, 90.

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?

This issue was excluded as a separate issue by the Prehearing Officer (subsumed in Issue 11), per Order No. PSC-2018-0494-PHO-EU.

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?

POSITION: *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”).*

ARGUMENT: See Argument at Issue 7. See also, TR. Vol. I, 90.

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?

POSITION: *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.*

ARGUMENT: See TR. Vol. I, 90-91.

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?

POSITION: *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.*

ARGUMENT: See OPC’s Argument in Issue 7 regarding alternatives available to the Commission.

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

This issue was excluded as a separate issue by the Prehearing Officer (subsumed in Issue 9), per Order No. PSC-2018-0494-PHO-EU

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

POSITION: *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?

POSITION: *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.*

ARGUMENT: See OPC's Argument at Issue 7.

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 withdrew its Motion regarding standing, so this issue is moot. (TR. Vol. III, p. 438).

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)?

The Prehearing Officer ruled this issue was moot and excluded from the hearing. Order No. PSC-2018-0494-PHO-EU, p. 24.

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)?

The Prehearing Officer ruled this issue was moot and excluded from the hearing. Order No. PSC-2018-0494-PHO-EU, p. 24.

ISSUE 20: Should this docket be closed?

POSITION: *No.*

Dated this 29th day of October, 2018

Respectfully Submitted

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